BOOK REVIEW

DEFENDING THE GENETIC SUPERMARKET:

THE LAW AND ETHICS OF SELECTING THE NEXT GENERATION

By Colin Gavaghan

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Colin Gavaghan's contribution to the current debate on the law and ethics of embryo selection explores the defence of a "genetic supermarket" model of regulation of pre-implantation genetic diagnosis. This model relies on the concept of reproductive autonomy and individual choice. As he writes: "before the state imposes restrictions on individual choice (especially in areas as important and intimate as reproduction), it should be required to demonstrate a plausible justification for doing so." His ethical approach is firmly based on human rights. The book is a critique of ethical positions at both ends of the spectrum: those wishing to restrict all possibilities of embryo selection, and those considering it a moral duty to produce the best possible children. Though the literature on the ethics of selecting the next generation is well developed, there appears to be an inclination towards defending either end of the spectrum and this book provides an additional viewpoint in this debate.

Chapter one starts with a description of the current attack on "the genetic supermarket", which is followed by a crucial limitation of the concept of "the genetic supermarket" in this work: it is considered as current genetic selection, excluding further ranging, and as yet hypothetical, scenarios dealing with genetic modification. As Gavaghan emphasises, these last types of intervention are not (yet) possible, and therefore he focuses on the ethics and regulation of preimplantation genetic diagnosis (PGD), a technique that allows couples to choose which embryo to implant based on its existing genetic characteristics.

In chapter two, the concepts of choice and reproductive autonomy are developed as guiding principles for both ethics and regulation. The argument is as follows: autonomy is a core value in the human rights tradition, and therefore choices that are vitally important to individuals, including reproductive choices, should be left to individuals themselves without state or other interference, unless there is evidence of serious harm to others.

Gavaghan's focus on freedom of choice as a result of individual human rights is pervasive. However, I would like to point out that it is important to identify some limits to this approach; for instance the range of acceptability of reproductive autonomy as a human right. Additionally, there are concerns with the rhetoric surrounding choice, particularly in healthcare settings at this time. The concept of

responsibility and choice as two sides of the same coin may hollow the true meaning of choice. Real choice may involve choosing not to select or to select for instance a child with a disability: if responsibility is included as part of the choice package, this may lead to a decrease in support for less favoured choices. This is clearly not Gavaghan's conception of choice, but it might have been helpful to emphasise this explicitly.

Chapter three aims to define the sort of harms, which could constitute convincing reasons to restrict reproductive autonomy and thus access to PGD as argued in chapter two. The principle of harm, as developed here, is predominantly concerned with harms to one's interests. In this context, it is crucial whether potential interests, i.e. the embryo's interests are taken into account. It is argued in line with others that such potential interests are not persuasive, and thus that the focus needs to be on harms to actual persons with interests. Children who are born as a result of selection do develop actual interests. These are important when weighing the harms of PGD. This includes, for instance, psychological harms due to the expectations of parents and harms due to the choice of particular traits. Thus, the first group that may be harmed are the children of the genetic supermarket which are the focus of chapters four and six.

Chapter four discusses Parfit's non-identity problem, which is crucial to potential harms to future people, and thus also to the question whether future children might be harmed by PGD. Parfit's conclusion is that harms which are intrinsic to the creation of a human being, very rarely outweigh the interests of being born at all; only those harms that make a life worse than non-existence would qualify. In this way the selection of an embryo during PGD is intrinsic to the existence of the subsequent child of "the genetic supermarket" in this way. Thus only harms to the future child, that outweigh the benefits of being born, would provide arguments to restrict reproductive choice, i.e. this would be the case if an embryo is selected with traits such that render its subsequent life is not worth living. It becomes very difficult to argue that being born, for instance, to lesbians or deaf is a harm of such magnitude, that it would be better not to be born at all. In the same way, it is straightforwardly argued that no harms of this type would be accrued by being selected as a donor to an existing person, which is known as saviour siblings.

In chapter six, the ethical arguments as well as the changing stance of the HFEA on saviour siblings are discussed. Past and current inconsistencies in the UK's regulation are noted, including the distinction between the Hashmi and Whitaker cases and the parental exception. Gavaghan mentions an important issue with the non-identity problem, namely that it feels counterintuitive and that it may even be disregarded on that ground because it is very challenging to grapple with. The overall conclusion, however, is that the children of the genetic supermarket are highly unlikely to be harmed by their selection in any meaningful way.

In chapter five, potential harms to those carrying traits that may be selected against are considered in detail. The concerns voiced are divided in two categories: objective harms and expressivist objections. Objective harms may include the possibility that as a trait becomes rarer discrimination may increase; Gavaghan describes this as an unsubstantiated but plausible claim. However, there is some data on increased discrimination towards disfigured people in western societies where plastic

(reconstructive) surgery is the norm (Bolt and Wijsbek, 2002).[1] Even so, an increase in discrimination would not constitute a *prima facie* sufficient reason to restrict individual choice in reproduction; instead it provides an argument in favour of compensating measures for victims of discrimination and for fostering tolerance in society. In the case of gender selection careful monitoring would allow an assessment of the harms of selection to either sex, and to society at large; significant gender imbalances may possibly prove harmful, but are not necessarily a consequence of allowing sex selection, particularly in many western countries. Gavaghan argues that by initiating a permissive approach to gender selection, the possibility is created for sufficient data to emerge (dis)confirming harmful effects, which would allow for subsequent regulatory measures if necessary.

The second objection is expressivist or subjective, which encapsulates the idea that if people are allowed to select against a particular disability or sex, then existing people with these traits may feel devalued (by society). The defence against these objections is, in my opinion, one of the strongest in the book. Point by point, Gavaghan addresses the objections, stressing that even though people may feel devalued, this is not necessarily due to societal judgments. Additionally, he emphasises that making people feel bad is not a sufficient argument to restrict other people's autonomy generally. Finally and crucially, he argues that the type of line drawing required to establish which conditions are sufficiently severe to merit PGD, currently the case in the UK provides more support for the expressivist concerns, than a free parental choice model, like "the genetic supermarket", because one could conclude that society (as a whole) considers those traits that merit PGD as undesirable.

Finally, the book turns to objections which cannot be conceived of as harms to particular people including the idea of genetic justice, and the last chapter (seven) of the "defence" is devoted to justice and the genetic supermarket. The question is raised whether leaving the possibility of PGD entirely to individual choice, would cause or increase inequality. This depends on the concept of justice and its approach to innate talents. Gavaghan argues that some of these concepts of justice may require a subsidised genetic supermarket model. However, as he points out, the (state's) choice to subsidise PGD for some, but not all of the possible traits, leads to the type of line drawing, which provides reasonable grounds for expressivist objections of particular (often disabled) groups.

All in all, the book provides a compelling case for a choice approach towards PGD as a justifiable regulatory framework from the perspective of human rights. As such, it is valuable addition to the current literature but it does not encompass everything it promises in the title. First, the concept of the genetic supermarket used in this book is not comprehensive. The attack on the "genetic supermarket" is sketched in its full glory in chapter one, but this attack concerns designer children in the widest sense, including alterable characteristics. Gavaghan's choice to focus on PGD only seems reasonable, but it is not truly addressing the ethics and regulation of "the genetic supermarket."

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[1] I Bolt and H Wijsbek with I de Beaufort and M Hilhorst (eds.), *Beauty and the Doctor; Moral Issues in Health Care with Regard to Appearance*, (2002) Final report of a European Research Project. DG Science, Research, Development EUR PL 963164.

The second element which is not self-evident from the title is that the book provides a primarily *ethical* defence of choice as a principle for regulating embryo selection, but it lacks a detailed discussion of the actual regulation of embryo selection; only occasionally the legal framework in the UK is referred to, primarily to criticise its incoherence and flaws in (ethical) design. Considering the book provides predominantly ethical arguments in favour of the choice model, it may have been beneficial to elaborate on more choices in the hypothetical genetic supermarket, because potential alteration of embryos presents some difficult conundrums, which are not addressed.

As an additional result of the primarily ethical focus, the book fails to address many practical implications of regulating on the basis of this choice model. This is clear for instance in chapter two, which glances over problems with the *law* as opposed to the *ethics* of selecting the next generation, such as the fact that it is rarely possible for regulators to choose a particular ethical outlook and to base subsequent rules on, for example, the basis of ethical plurality, and the concerns of regulators about election and public opinion. One response to the plurality argument would be that international human rights provide the most universal ethic. Equally in chapter seven, by its own admission, the problems with justice and the genetic supermarket cannot be easily solved, without compromising some of the previous arguments. Clearly this part of the defence of the genetic supermarket needs additional work, and hopefully that might be accommodated in a follow-up study.

Despite these minor issues, Gavaghan's book is a stimulating read that identifies a much needed ethical middle way between the extreme positions on embryo selection, ranging from calls to banning of these types of selection on one hand, to reproductive beneficence as a moral duty on the other.

Eva Asscher

Post-doctoral fellow at TILT (Tilburg Institute for Law Technology and Society), University of Tilburg and visiting fellow at RCAS (Robert Schumann Centre for Advanced Studies), European University Institute, Florence. Supported by NWO PIONIER project: Regulating Biotechnology.