

Response to “The Creation Lottery” by Julian Savulescu and John Harris (CQ Vol 13, No 1)

The Creation Lottery and Method in Bioethics: A Comment on Savulescu and Harris

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I am in general a great admirer of the work of Savulescu and Harris (S&H), not because I think their conclusions are often right but because they state these conclusions and their arguments very clearly. In their joint paper “The Creation Lottery,” they do, nevertheless, tendentiously overstate their case both with regard to the conclusions that flow from identifying natural reproduction as a creation lottery (CL) and in seeing their exchange¹ as an example of good method in bioethics. In the following short comment I want to point to some of the problematic areas in S&H’s arguments.

The structure of the argument that S&H put forward is ostensibly based on granting the “embryo rightist” the premise that killing embryos is wrong and then showing that even with this premise certain liberal conclusions follow concerning IVE, embryo experimentation, and cloning.² The purpose is to convince, or perhaps just to embarrass, the opponents. From S&H’s other writings we know that they only grant this premise for the sake of argument. They do not believe that embryos have

any moral status and find nothing inherently wrong in creating and destroying embryos. Outside this particular argument, they therefore have other, and in their view more direct and better,³ arguments for the same, or very similar, liberal conclusions.

It is important to note that the success of S&H’s argument will have different effects with regard to two different kinds of embryo rightists that S&H do not distinguish between in their paper. For the embryo rightist who holds that it is never right to kill embryos, that the value of embryos can never be traded against any other moral considerations, and that the life of one embryo cannot be traded off the life of another embryo—let us call him or her the absolute embryo rightist—S&H’s argument is devastating if it goes through, because it shows that even the absolute embryo rightist accepts trade-offs involving embryos in natural reproduction.

For the nonabsolute embryo rightist who holds that the lives of embryos have value but that this value is not always overriding or absolute, the effects of S&H’s argument are much less serious. To use an analogy, that I accept war and the loss of human life in a case where the enemy is bent on enslaving my whole community does not show that I do not hold human

life in high esteem, only that I do not hold it as an absolute or always overriding value.

As far as I know, there are very few absolute embryo rightists about. Many seem to hold that embryonic human life is as valuable as adult human life, but that in itself does not lead to absolute embryo rightism, unless it is combined with the idea that a human life has absolute value and can never be sacrificed or traded off against any other good. This latter idea is held by very few. S&H's conclusions may therefore be less troublesome for actual embryo rightists than S&H would like to believe.

The Main Argument

S&H claim that acceptance of natural reproduction entails acceptance of a range of other reproductive techniques. They claim that this is so simply because natural reproduction is a CL,⁴ and these other reproductive techniques are morally isomorphic to natural reproduction. They are also creation lotteries and must therefore be accepted if one accepts natural reproduction. Is this true?

Not really. For most of S&H's arguments to work, they need several other premises.⁵ This is perhaps most obvious in their discussion of cloning where they state "Acceptance of natural reproduction entails acceptance of reproductive cloning, at least from the perspective of the safety and efficiency of the practice" (p. 93). A little later in the paper S&H acknowledge that this conclusion (and several of the other conclusions stated quite categorically earlier on) only follows if one or both of two further premises are true: (1) the loss and/or deformity rate of cloning is similar to or lower than natural reproduction (the "comparative premise"), or (2) that the fact that a given technique is the only way

a specific population of embryos could come into existence entails that the actual percentages of the lottery does not matter, as long as there is a chance for each embryo (the "only chance premise").

The comparative premise has the advantage that it is relatively uncontroversial. It is difficult to see how it can be rejected if what matters is the wrongness of killing embryos. If we rely on the comparative premise we do get the conclusion that S&H call "striking," that "if cloning were ever to become more efficient than natural reproduction, then we would have a *moral obligation to clone*" (p. 94, emphasis in original). We do, however, also get some other conclusions that I believe that S&H must have seen but decided not to mention.⁶ These include that until we have good reason to believe that cloning is as efficient as natural reproduction we should not attempt it, and that there were moral obligations not to attempt IVF before 1978 and for the first many years of actual IVF practice when it was much less efficient than natural reproduction.⁷ Even more problematic from the point of view of S&H's desired conclusions is that, if we rely on the comparative premise, their justification of creating and donating some embryos directly for research does not work, unless IVF becomes considerably more efficient than natural reproduction. If we, for instance, allocate 50% of embryos directly for research, IVF has to become twice as efficient as natural reproduction for the total practice to be comparable to natural reproduction.⁸ The embryo rightist is thus currently not committed to accepting cloning or embryo experimentation on the comparative premise and may never be committed to accept them if the empirical odds do not turn out right.

S&H might say that the actual figures for natural reproduction do not matter because "Even if 99% of em-

bryos perished during natural reproduction, embryo rightists and other defenders of natural reproduction would go on regardless" (p. 90), but that argument is invalid. First, we would have to know whether they would go on believing their actions to be morally right or just go on because they suffered from akrasia (like many consequentialist philosophers knowing that they should donate much more money to the poor). Second, if I as a moral agent have to take the decision in which CL to create my embryos, I have to make that decision on the current figures, and I would have a moral obligation to choose the CL with the lowest embryo loss rate. That another decision might be the morally right one if reality was different is neither here nor there.

The only-chance premise does provide all the conclusions S&H desire, but it does so at significant cost. It is clearly more controversial than the comparative premise, and it does not follow in any straightforward way from the views held by embryo rightists concerning the value of embryonic life.⁹ A full discussion of the validity of the only-chance premise is beyond the scope of this short comment, but it is worth noting that S&H's short argument for the premise is flawed. S&H rely on the claim that those who denied an obligation to create "the best people—that is, people with the longest and best-quality lives" (p. 93) would have no objections left on the basis of safety or efficiency to reproductive technologies. This argument only works by equating all forms of causal responsibility with moral responsibility and leads directly to the conclusion that I am as morally responsible (and blame-worthy) for the eventual death of any of my natural children in their old age as if I had killed a perfect stranger.

From the point of argument analysis it is also worth noting that accept-

ing the only-chance premise makes the whole CL analogy superfluous in most instances, because the only-chance premise directly entails that, if a given way of reproduction (whether it entails a lottery or not) is the only way in which a specific embryo could have a chance of life, that way of reproduction is morally acceptable.

Some Further Problems in the Argument

There is an important ambiguity in S&H's definition of a creation lottery. They state that a CL "involves the creation of a population of embryos for the purpose of creating a new human being" (p. 92, emphasis added).

This seems to be a valid description of natural reproduction, IVF, and reproductive cloning, but a more problematic description of the voluntary assignment of embryos to research as a condition of reproduction. In this situation there is clearly more than one purpose, and there seems to be no good reason to let the parents in question choose how to describe the purpose. It could just as well be described as "for the purpose of creating embryos for research."

A further criticism is that S&H's argument proceeds as if the people they call "embryo rightists" only have one moral principle—something like "it is as wrong to kill an embryo as an adult human being"—and that all their objections to reproductive technologies flow from this principle.¹⁰ This may be true of S&H's cardboard-cutout version of an embryo rightist, but it is not true of most real-life opponents of new reproductive technologies. It is outside the scope of this short comment to go through the long list of arguments or concerns, so I will just mention some that are widely held.

The Catholic Church's official opposition to many types of new reproduc-

tive technologies is, for instance, not only based on considerations about the embryo but also on considerations about the illicitness of separating the procreative and unitive functions of the procreative enterprise¹¹ and in general on a teleological approach to the analysis of procreation. This is the reason that the Catholic Church is and always has been opposed to IVF, even in cases where all embryos are implanted.

Another belief held by many whom S&H would identify as embryo rightists is that reproduction is important in a nonpersonal sense. They might accept both that childlessness is an alternative to natural reproduction and that natural reproduction is voluntary, but they would see the loss in not reproducing as much more than a personal loss to them. This could, again, be backed by various arguments, including some relying on the teleology of human nature.

Many who are skeptical concerning the new reproductive technologies also base this skepticism in a more jaundiced view of the overall blessings of new technologies than that evidently held by S&H.

Is the Savulescu-Harris Exchange an Example of Good Method in Bioethics?

S&H end their joint paper by claiming that it is “an example (albeit far from perfect) of method in bioethics” (p. 95). This is clearly true. It is difficult to see how a paper in bioethics could not be an example of method in bioethics. The previous paragraphs do, however, imply that S&H believe that their exchange is not only an example of method in bioethics but a good example of method in bioethics.

I beg to differ. Claiming that this is a good example of method in bioethics is somewhat like claiming that a

discussion between left- and right-wing Trotskyites on the exact implications of the necessity of continuing the international proletarian revolution is a paradigm example of good political debate. S&H clearly engage with each other and find their discussion highly interesting, but they never truly engage with the people for whom they claim their argument to be relevant and compelling (the “embryo rightists”), just as most Trotskyites never engaged with the real workers they were arguing about or the capitalists they were ostensibly arguing against. The only role of the “embryo rightists” is as a foil for S&H’s brilliant analysis; and to fulfill that role the position of the “embryo rightists” has to be simplified and misrepresented, as I have just discussed.

I agree with S&H that “Bioethics is disappointing for its lack of constructive dialogue” (p. 95), but maybe their own dialogue would have been more constructive if it had engaged with some real opponents, with some real and significant differences of opinion, instead of mute straw men.

Notes

1. To which I have contributed in some small way as a critical reader of drafts of Harris’s contributions.
2. The structure of the S&H paper is thus ostensibly the same as the famous Judith Jarvis Thomson paper on abortion.
3. The arguments in this exchange rely on what S&H believe to be a false premise, so an argument for the same conclusion that only relies on premises believed by S&H to be true must be better in their view.
4. Defined by S&H in the following way:

A creation lottery involves the creation of a population of embryos for the purpose of creating a new human being, and this practice involves the unavoidable death of some of these embryos and the unavoidable production of grossly deformed and disabled human beings. (p. 92)

5. I do not intend to go through all the other premises they need, and will just assume that the embryo rightists reciprocate the granting of their central premise with the granting of the incoherence of both the act/omission distinction and the double-effect principle that are both central to S&H's argument.
6. S&H are not required to accept these conclusions outside the constraints of this particular argument, but if the argument is really about what an embryo rightist is compelled to accept by identifying natural reproduction as a CL, then S&H cannot within the constraints of this argument claim to have established anything that does not follow from the argument itself.
7. This is the converse of the statement just quoted.
8. Here it is probably important to note that on the comparative premise would be the case that, if efficiency gains in IVF were achieved by embryo selection, then the discarded embryos would have to be taken into account in the calculations. It is not the raw take-home-baby rate that matters.
9. The standard way of arguing for the only-chance premise through an application of Parfit's identity problem is irrelevant in the current context because it only succeeds in showing that no harm and/or wrong can be claimed by an individual who is the result of a certain kind of reproduction, if that was the only way that individual could have been created. From this it follows that someone who has been cloned cannot complain that he or she has been harmed and/or wronged by cloning.

The embryo rightist, however, locates the harm and/or wrong not in relation to the survivors but in relation to those embryos that do not survive. It is only if embryos have no moral value that a complete only-chance premise could follow from Parfit's identity problem because the embryos simply fall out of the equation.
10. The only place where S&H mention other moral ideas of the embryo rightists is where

- it suits their argument to claim that "If embryo rightists do not believe that we can benefit from past evil, as they typically do not, embryo rightists should oppose even embryo-sparing AR" (p. 91). This is, by the way, rather disingenuous, given that very few people hold the view that all benefit from past evil is wrong. What matters in nonconsequentialist arguments about past evil is most often the mechanism by which I as the present agent benefit from past evil.
11. See, for instance: John Paul II. *Evangelium Vitae* 1995:chap. 1, sect. 23:

Within this same cultural climate, the body is no longer perceived as a properly personal reality, a sign and place of relations with others, with God and with the world. It is reduced to pure materiality: it is simply a complex of organs, functions and energies to be used according to the sole criteria of pleasure and efficiency. Consequently, sexuality too is depersonalized and exploited: from being the sign, place and language of love, that is, of the gift of self and acceptance of another, in all the other's richness as a person, it increasingly becomes the occasion and instrument for self-assertion and the selfish satisfaction of personal desires and instincts. Thus the original import of human sexuality is distorted and falsified, and the two meanings, unitive and procreative, inherent in the very nature of the conjugal act, are artificially separated: in this way the marriage union is betrayed and its fruitfulness is subjected to the caprice of the couple. Procreation then becomes the "enemy" to be avoided in sexual activity: if it is welcomed, this is only because it expresses a desire, or indeed the intention, to have a child "at all costs," and not because it signifies the complete acceptance of the other and therefore an openness to the richness of life which the child represents.