

## *Confronting Rationality*

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From the first initiatives in preimplantation genetic diagnosis (PGD) and gene therapy through the advent of stem cell research to the development of mammalian cloning, the past two decades have witnessed remarkable advances in “reprogenetic” medicine: the union of assisted reproductive technologies (ARTs) with genetic control. This period has also been marked by intense debates within the bioethical literature and in national policy forums about the appropriate uses of these emerging human capabilities. We can now, in a limited way, select for genetic traits, and the power to modify the genome or introduce new gene sequences is not far off. How should these new powers be used?

### **Häyry’s Taxonomy**

Matti Häyry’s *Rationality and the Genetic Challenge* arrives at an appropriate moment in our reprogenetic debates.<sup>1</sup> Two decades of discussion have not produced greater clarity about the issues or a narrowing of disagreements. On the contrary, there has been a proliferation of intensely opposing views. For some bioethicists, reproductive cloning is a potentially useful addition to our repertoire of ARTs, whereas for others, the thought of parents producing twins of themselves is repugnant, a modern form of incest or cannibalism. For some, genetic selection and human genetic engineering promise a healthier and better future for the species; for others they express a Promethean project likely to lead to new bouts of eugenic oppression and a deformed humanity.

Häyry’s goal is not to add another opinion to the intense pro and con debates about these new technologies, but to examine the debates themselves and identify the factors that render them so intractable and seemingly irresolvable. By following the discussions across a set of seven reprogenetic possibilities—seeking to have the “best” babies, allowing people to select for deaf embryos or “savior” siblings, reproductive cloning, embryonic stem cell research, gene therapies, and considerable life extension—Häyry produces a taxonomy of argumentative strategies, which he describes as “rationalities” that differ from one another in their sources of inspiration, their most basic values, and their ways of assessing goods and evils.

In a key second chapter, “Rational Approaches to the Genetic Challenge,” Häyry identifies three broad rationalities of this sort. One, exhibited in the writings of Jonathan Glover and John Harris, is basically utilitarian in its approach. It is characterized by close analyses of the empirical consequences of new technologies and the attempt to assess them in terms of “concrete, tangible, easily understandable elements” (p. 25), especially their measureable impacts in terms of human well-being or suffering. By and large, this approach is pro-reprogenetics and optimistic about its future implementation. A second

approach, evidenced in the writings of Leon Kass and Michael Sandel, stands at the opposite end of the argumentative continuum. It eschews the seeming clarity and empiricism of the first view and, in Häyry's words, confronts moral problems "in their complexity and with their emotional, social, and spiritual connections, acknowledging that they can contain mysteries which cannot be grasped by reason alone" (p. 26). By and large, with some differences on specific issues, these writers are opposed to most reprobative innovations. A third approach mediates the two extremes. As evidenced in the work of Jürgen Habermas and myself, it insists on the publicness of ethical discourse. In trying to determine what is right or wrong, it requires us to consider everyone's interests and opinions "and promote rules that could be agreed to by all reasonable people" (p. 26). Although this approach shares Glover's and Harris's demand for clarity and transparency in ethical assessments, it can also address some of Kass's or Sandel's concerns by accommodating what is "widely shared without necessarily insisting on an explanation for it" (p. 26).

By elucidating these different rationalities, Häyry believes he has discovered a way out of the impasse of our current reprobative debates. The point of his book, he says,

is to show that rationalities vary, that disagreement is not necessarily an indication of stupidity or wickedness, and that although ethical issues have solutions within individual rationalities, they cannot be universally solved by intellectual arguments. People should listen to each other more and try to understand each other's ways of thinking. This would not automatically give us the right answers to our questions. But it could help us to get rid of some of the currently popular wrong answers, and possibly pave the way to finding better ones in the future (p. xii).

Both Häyry's work and his larger goal are admirable. His close study of the bioethical debates, by organizing the underlying rationalities behind our surface disagreements, helps us identify the fundamental methodological and value differences driving them. It also helps us discern those matters on which reasonable people can disagree, such as the weighting of remote but significant harms against clear present benefits. By encouraging us to listen to one another and scrutinize our own assumptions for prejudices or unexamined commitments, it fosters dialogue and enhances the possibility of agreement.

At the same time, however, there is a deep problem with the conclusion that Häyry draws from his research. Moral disagreements, he tells us, "cannot be universally solved by intellectual arguments." But if this is so, how can they be solved? Is it by holding to our moral opinions but legally tolerating one another in our respective courses of action or policies? This is a morally useful strategy in many cases of disagreement and one that Häyry seems to favor for some of the issues he examines (e.g., the choice of deaf or savior children). But such "agreeing to disagree" cannot always be a solution to moral problems because one party to the debate may hold as necessary the legal prohibition of conduct by those acting on the opposing view. Our persistent abortion debates illustrate the problem. Surely "pro-life" advocates would not be content with a solution that decriminalizes abortion while leaving others free, as they see it, "to kill babies." But if debates like these really "cannot be universally solved by intellectual arguments" how can they be solved? By violence? Should might make right? Or should the

issue be settled by which party has more numbers, more power, or more resources at its disposal to impose its will?

This cannot be right. The purpose of morality is to afford a reasoned and principled guide to conduct. Morality *is* the application of reason to social disputes. Thus, moral reasoning can never abandon an area of practical disagreement. It must always provide a unique and freely agreed upon solution to such disagreements. In some cases, this solution may involve an agreement to disagree, but when this is so, that agreement is itself a unique solution to the dispute: one that is rationally accessible to—and accepted by—all parties. Thus, Häyry's conclusion that reprobogenetic debates are, at bottom, rationally irresolvable is not only a counsel of despair, but it encourages abandonment of rational efforts to discern the appropriate ways of reasoning through moral problems. In fact, I do not think that Häyry himself relinquishes a commitment to a rational methodology for addressing moral problems. In various places in the book, he advocates reasonable positions amidst widespread disagreements. His conclusions regarding when it is morally right to agree to disagree may provide evidence that he has a more basic mode of settlement in mind. The language of differing rationalities and universally irresolvable disagreements, however, often obscures this method.

### A Confrontational Rationality

In what follows I want to develop a single "rationality" for addressing our reprobogenetic choices. I have spent most of my career developing this rationality in conversation with the work of Immanuel Kant, John Rawls, Bernard Gert, and others and applying it to a range of bioethical and reprobogenetic issues. This methodology *is* confrontational: it wades into a debate and always applies a unique method of approaching and ordering the matters of disagreement. It does, and it must, always provide a unique solution. However, that solution may not be the choice of any one of the expressed moral positions in the debate (for example, "that it is right or wrong to do such and such to one's future child"). Instead, it may be the conclusion that, in the absence of a determinative agreement on harms or benefits and in view of the harms involved in favoring any one position, individual liberty should be allowed to prevail—a formal agreement to disagree. But this conclusion is itself a moral judgment, such that the decision to give relatively free sway to a plethora of moral views is itself a unitary and singular moral decision. I mention this here because on some of the issues treated by Häyry, we will see that I accept his practical conclusions regarding law's neutrality about the forms of conduct at issue. But that apparent similarity in our positions should not obscure a profound theoretical difference. Whereas Häyry advocates legal neutrality because the rationalities involved are basic and irresolvable, I do so because I believe a single, appropriate method of moral reasoning leads to the moral conclusion that people should be allowed to express differing personal moral views and act on them, except where doing so would constrain others from doing so as well.

The "confrontational" view I advocate is well described by Häyry:

Green agrees with Habermas that moral norms should be acceptable to all. His formulation of this is: "The right thing to do is that which omniscient, rational persons would accept as a public rule of conduct

(norm): that is, as a form of conduct known by everyone and applicable to everyone" (p. 37).

This position should be reasonably familiar. As I have argued elsewhere, it expounds the meaning in Kant's various formulations of the categorical imperative;<sup>2</sup> it resonates quite clearly with Rawls's descriptions of the "original position,"<sup>3</sup> and it expresses Gert's view that moral reasoning relies only on beliefs "required by reason."<sup>4</sup> Two matters, however, deserve further explanation: the role of omnipartiality in the reasoning process and the emphasis on the public nature of the resulting moral rules.

I choose the term "omnipartiality" because I believe "impartiality," with its suggestion of detachment and impassiveness, does not well describe the active, empathetic identification with the perspective and interests of other persons that morality requires. When reasoning morally, agents must put aside their own beliefs and preferences and sequentially adopt and weigh those of every other agent affected by the decision (including themselves). In doing so they use the salient and uncontested values among themselves as determinative factors in arriving at a decision.

It is true, of course, that there is no belief, value, or even mode of reasoning that is universally shared by all moral agents. It may, therefore, seem that omnipartiality will not itself eliminate all disagreements, because even when reasoning omnipartially, agents are likely to perceive things differently and come to different conclusions. We see this in some of our bioethical debates and in the alternate "rationalities" described by Häyry. However, this does not mean that universal agreement is impossible, because at each point of impasse, rational agents can adopt a further decision rule or procedure for resolving the disagreement. That is, examining the dispute among themselves as omnipartial persons, they can back off any matter of disagreement, put aside their position at this point in the omnipartial debate, and, using whatever uncontested decision procedures remain, omnipartially decide how this second-order disagreement should be settled.

Elsewhere, I have called this procedure "regressive omnipartiality."<sup>5</sup> I believe it is suggested in various places in Rawls's writings, for example, in his selection of "primary goods" (rights and liberties, powers and opportunities, income and wealth) as a reasonable currency for thinking about the proper goals of a just society.<sup>6</sup> As Rawls notes, all rational persons do not agree on the values that a constitutional order should promote. Even when reasoning impartially, they might be expected to draw on their own "comprehensive doctrines" (religious, political, or metaphysical views) to prioritize goods differently, leading to basic disagreements on the outlines of a constitutional order.<sup>7</sup> But, in Rawls's view, such disagreements force a further retreat from one's beliefs and preferences to identify those goods "that normally have a use whatever a person's rational plan of life."<sup>8</sup> Thus, even while recognizing that there are some persons, such as impassioned saints and ascetics, who have no use for increased income and who may even believe its pursuit to be a spiritual hindrance, omnipartial persons are able to back off this dispute and omnipartially determine that maximizing income is a choiceworthy objective for a just society. This is so because of certain relatively uncontested truths that remain in force once one's position in the first-order value debate is put aside: that agreement is needed on some values lest

reasoned discussion fail, that many people value income, and that the harm inflicted by prioritizing it on those who do not is tolerable. Here, a second-order omnipartial decision is made about which factors should rule a contested first-order (omnipartial) disagreement over values. Rawls employs very similar reasoning to defend a maximin rule as a reasonable choice strategy for the selection of the basic distributive principles for a just society. Recognizing that people differ substantially in their willingness to take risks, a consideration that will affect even impartial reasoning and lead to different distributive principles, he nevertheless argues that a maximin strategy makes most sense in choices that have randomly distributed, enduring, and fateful outcomes.<sup>9</sup>

The second matter that requires explanation in the conception of morality I am defending is the claim that moral reasoning is always about public rules of conduct. This means that morality is inherently and necessarily public in its nature. When I judge that something is morally permissible, I am essentially saying that the form of conduct involved can be publicly known by all moral agents and accepted by them as a rule of conduct available to everyone. There is no such thing as secret moral rules (although, paradoxically, there can be publicly known and accepted nonpublic practices, such as a doctor's act respecting a patient's privacy). It is the lack of this public dimension, not its distributive implications, I believe, that renders utilitarianism in all its forms an unacceptable moral theory. And it is this public dimension that explains the implicit power of so many deontological objections to utilitarianism. For example, it is frequently observed that utilitarianism, in violation of our moral intuitions, seems to approve the gross mistreatment of one or a few persons (e.g., their cannibalization for body parts) so long as the net benefit to others (transplant recipients) outweighs the harms to the victims. Utilitarians often reply that such behaviors are in fact wrong because they risk creating public anxiety or mistrust and, therefore, on balance do not promote the greatest good. But this reply will not suffice if the conduct at issue can be kept secret. For utilitarianism in all its forms, publicity is a contingent fact, not a necessary one, and two wrongs (a misdeed plus its cover-up) can make a right.<sup>10</sup> In a public rule theory like mine, however, what must be secured for such secret cannibalization to be judged right is public knowledge and acceptance of the rule. But of course, the public nature of this rule eliminates the possibility of secrecy. Everyone must know they are approving a practice that can permit their secret cannibalization. Deontologists who object to utilitarianism because of cases like this are right to defend forms of conduct and moral principles regardless of their net consequences for persons in the case at hand ("*Fiat justitia ruat caelum*"). What they miss, however, is the presence in almost all these cases of public rules with consequences that risk (or protect) all (omnipartial) rational agents. Lacking an awareness of the underlying rational basis of their position and tenaciously defending rules in all cases, they are also often incapable of properly balancing rules in conflict.

### The Deaf Child Case

Against this background let me turn now to one of Häyry's issues to trace my way through it using the theoretical approach I have sketched here. My aim is to contrast this approach with one that rests on merely reporting the contrasting rationalities. I want to repeat in advance that my practical conclusions are not far

from Häyry's. What I propose to show, however, is that from a more rigorous theoretical perspective, the differing moral positions with which he engages have serious flaws. If we conclude that none of them are compelling enough to command our assent and are drawn toward a position of nonintervention in parental decisionmaking, it is because none of these views represents a compelling, valid rationality and because one can craft an independent rational argument for tolerance in this case.

The issue I have in mind concerns the wish of some Deaf parents to have a deaf child (the use of the capital letter here indicates that these parents identify themselves as proud members of the nonhearing community.) Some people in this situation have already used very rudimentary reproductive technology to fulfill their wishes. Thus, two Washington area lesbian women who live together, both of whom are deaf and hold graduate degrees from Gallaudet, the national university for the deaf, called on the assistance of a hereditarily deaf male friend to provide sperm that they used by the "turkey-baster method" to conceive and bear two deaf children.<sup>11</sup> Now that genes for hereditary deafness have been identified,<sup>12</sup> it is possible for other deaf individuals to ask physicians performing IVF and PGD to assist them in their quest to have a deaf child.

Häyry begins his discussion by considering the argument advanced by John Harris, which, he says, "combines features of the traditional medical ethos and the more specifically consequentialist approach" (p. 83). The governing consideration for both these views is a commitment to avoiding (or minimizing) harm to others. In Harris's view, there is no question that using reprogenetic medicine deliberately to have a deaf child harms that child. He makes this point by comparing four different scenarios: deafening a hearing child, not curing an illness that would make a hearing child deaf, not making a deaf newborn hearing when there is a chance, and selecting a "deaf embryo." Because the four ways of acting are similar in terms of their net impact on the child's well-being, Harris concludes, they are morally similar—and equally wrong. If we would put someone in jail for child abuse for puncturing the eardrums of his or her newborn, why would we not judge the use of PGD to achieve the same result as morally wrong? Both choices equally violate the "do no harm" rule.

Despite this argument, however, Harris does not believe that this moral judgment should be transformed into legal prohibitions or regulations. A series of further arguments to which I will return momentarily lead him to privilege parental reproductive autonomy, at least where the choice of embryos is concerned.

If Harris's position holds down one side of the moral debate, Häyry identifies an opposing position that he terms the "social view" of deafness. This position, often enunciated by disability scholars and advocates for the Deaf community, sees deafness and other disabilities as "social constructs which harm individuals and groups to whom they are assigned" (p. 85). Those who hold the social view challenge the idea that deafness should be counted as a harm and maintain that there is nothing intrinsically wrong with being deaf. Rather, deafness is an integral part of who one is, and the lives of deaf people can be as full as those of hearing persons. According to the social view, whatever harm is experienced by deaf people "is caused by the attitudes of people without the difference or impairment and by the ensuing poor recognition of the needs of those with particular conditions" (p. 85).

In the ensuing discussion of both these positions, Häyry makes a number of insightful critical points that lead him to what he terms a “non-directive compromise.” But Häyry never identifies the critical flaws in moral reasoning associated with each of these perspectives, nor does he develop a coherent rational argument to provide compelling support for parental liberty in this realm of choices.

From the perspective of a moral theory relying on the omnipartial choice of public rules, there are several significant problems in Harris’s argument. Most obvious is his equation of the deliberate disabling of a newborn, by deafening it, with “not curing an illness that would make a hearing child deaf, not making a deaf newborn hearing when there is a chance, and selecting a ‘deaf embryo.’” Because all four of these actions have the same consequence, Harris, in good utilitarian fashion, concludes that they are morally equivalent. To his credit, Häyry sees a problem here, noting that these interventions may be relevantly different because “some of them involve acts while others involve omissions” (p. 88). Unfortunately, this distinction, whose force in this case would require further moral argument, will not entirely work here because “selecting a deaf embryo” seems to be at least as much of an “act” as perforating the eardrums of a newborn, making it difficult to see why both should not be morally condemned as Harris believes.

But when viewed as public rules, the four types of behavior differ significantly. Consider the fourth practice. A public rule permitting parents to disable a child like this is indisputably a nightmare. In a world where this rule prevailed, how would we even begin to separate valid parental efforts to serve their child’s best interests from child abuse? As public rules, the three other practices, while raising challenging questions, do not rise to this level of clear unacceptability. For example, rules penalizing parents who fail to cure an illness that would make a hearing child deaf or fail to make other efforts to restore hearing to a deaf newborn raise difficult questions concerning the degree of effort and expense required as well as the possible need for sophisticated monitoring of parental conduct. A rule prohibiting parents from selecting deaf embryos for transfer would significantly limit the right of parental disposition of embryos in the IVF setting and bring a new level of surveillance to parental and medical decision-making there. This is not to say that there are not good reasons for opposing all of the practices mentioned by Harris. But each practice raises different questions, and the public rules approving or condemning each practice vary widely in their import and acceptability. Harris grounds his argument concerning the wrongfulness of selecting for deaf embryos by likening it to the intuitively repugnant deafening of a hearing child. But from the perspective of omnipartial public reasoning, the two practices are relevantly different, so Harris’s argument does not work.

Let me reinforce this point by returning us briefly to the real-life case of the two Washington-area women who used sperm from a deaf friend and a turkey baster in order to have two deaf children. The outcome in this case—the consequences for the children born—is identical to that in each of the four practices mentioned by Harris. It would seem that he should conclude that we must issue a negative moral judgment on their conduct as we would to any of the other four practices. Yet a (moral) rule condemning two deaf women who, on their own and without the aid of medical assistance, try to have a deaf child raises an array of complex

questions. Do we really wish to begin issuing moral judgments about the reproductive decisions people make in their bedrooms? To what extent might such judgments extend to disabled couples, all of whose children are likely to inherit a disability? Overall, there seems to be some reason for withholding judgment in such cases and not seeking in any way to actively interfere with the women's liberty. My point is not to approve of these two women's conduct, but merely to point out that when the topic is morally allowable social practices, it is crucial to look not simply at outcomes or consequences, but to examine closely the range of considerations raised by approving or disapproving the practice at issue and to the types of enforcements of that may follow from these judgments.

If Harris misses this complexity in his treatment of the moral issues raised by using PGD for deafness, he is equally imprecise and misleading in the reasoning that leads to his conclusion that we should avoid legal prohibitions in this case. His argument here seems to rest on two considerations. One is respect for reproductive freedom and autonomy, an undeniable good whose suppression constitutes a harm. The second consideration is that a child brought into being even with significant disabilities cannot be said to be wronged. Häyry summarizes this second consideration:

Harris, while insisting that it is wrong to bring avoidable suffering into the world, is also adamant in declaring that parental choices should be respected as long as the resulting children can be expected to have at least a minimally decent life ahead of them. Unless the lives of individuals are so miserable that they would not by any account be worth living, the individuals themselves are not harmed by being brought into existence. According to Harris, 'most disabilities fall far short of the high standard of awfulness required to judge a life to be not worth living' (p. 88).<sup>13</sup>

Häyry slightly misreports Harris's position here. In the underlying article by Harris to which Häyry refers, and in Harris's book *Wonderwoman and Superman*, Harris does not say that children who are brought into being with a disability are not harmed, but he insists that they are not wronged:

Whereas the parents would be harming their children, in that they brought children into the world in a harmed condition when they had the alternative of bringing healthy children into the world, they did not wrong those children because the children would clearly have a life worth living. In a case like this the parents have wronged no one, but have harmed some children unnecessarily, but those who were harmed had no complaint because for them the alternative was non-existence.<sup>14</sup>

Those familiar with the ethical literature on reproductive responsibility and related legal discussions of "wrongful life" will recognize here the influence of Derek Parfit, David Heyd, John Robertson, and other writers who have argued that one does not wrong a child even if one knowingly brings it into existence with appalling degrees of handicapping or physical suffering because a decision not to have *that* child would lead to the existence of a different child and deprive that child of the good of existence. According to this line of reasoning, the only instance where one can clearly determine that bringing a child into being is morally unacceptable is where it suffers to such a degree that a rational adult experiencing the same suffering would choose to end his or her life. Short of that



severe degree of injury, the child cannot be said to have been wronged by having been given the opportunity to live.

There are so many things wrong with this argument that it would require another paper to itemize and develop them. I have done so elsewhere,<sup>15</sup> and I do not introduce the topic to revisit the complex issues involved in judgments of wrongful life. What I want to point out, however, is the absence here of any kind of comprehensive theoretical approach to identifying wrongful behavior. We have the claim that a child can be harmed but not wronged, with no corresponding account of what makes behavior wrong. The only focus (again, perhaps a utilitarian one) is on the child's net welfare. Because the child presumably values its life and would not relinquish it short of experiencing egregious suffering, the child has not, on balance, been sufficiently harmed to say that a wrong has been done.

But a moment's reflection shows that not everything that is wrong involves some identifiable, living person suffering harm. For example, if I, as an attorney, choose for selfish reasons to deliberately ignore and violate the last will and testament of a deceased client, it cannot be said that I am harming my dead client. Yet I am clearly acting wrongly. Why so? Because moral judgments of wrongful behavior are made by the community of omnipartial, rational persons and relate to the public forms of conduct at issue. Clearly, this community will not authorize, and can only condemn, the conduct of an attorney who for personal reasons disregards his client's formally expressed last wishes.

When this same omnipartial rational community looks at reproductive behavior, its focus is much wider than on a resulting child. It must look at the entirety of society and ask whether the deliberate or knowing production of people with disabilities is advisable. It must consider the alternatives, including the requirement that every effort be made to ensure the birth of a healthy and normal child. Where the child itself is concerned, it must ask what the implications are of avoiding its birth. Is anyone significantly injured by not being allowed to come into being? Is being born a positive good that we should be obligated to foster? (The answer to both these questions, I think, is no.) All these considerations, I believe, lead to the conclusion that, other things being equal, it is wrong to knowingly and deliberately bring a seriously handicapped child into the world. This is so even when the degree of injury is far short of that which would rationally justify suicide. This does not mean, of course, that such conduct must be legally prohibited. A key phrase here, of course, is "other things being equal." This broad conclusion requires a further series of judgments in which the undesirability of deliberate handicapping must be weighed against the pressing claims of reproductive liberty, the difficulties of imposing or enforcing judgmental standards, and the perverse implications of social judgments in this intensely private area. My own view is that the dangers of social intervention in parental liberty are usually so great that we are better off relying on education and moral encouragement rather than on harsh social judgments or legal prohibitions. Only in the most extreme cases—serious drug or alcohol abuse during pregnancy—is it reasonable to counsel legal restraint, and, even here, one must assess the perverse effects of criminalization, including the possibility of driving pregnant women away from medical care.

So a full moral analysis of the deaf child case leads to practical conclusions very similar to those advocated by Harris, Häyry, and even defenders of the "social view" of disability. Once they have received informed counseling and

advice, parents should be free to use the new reproductive technologies, even if they choose to have a deaf child (though medical professionals should also be free to decline to assist them). But the underlying reasoning that leads to this conclusion is radically different among these approaches. Harris's argument exhibits all the flaws of a utilitarian theory that ignores the public rule dimensions of moral choice. It further imports some of the misleading reasoning associated with Parfit's nonidentity argument and rejections of the possibility of the wrongful life approach to reproductive responsibilities. Häyry's "nondirective compromise" exhibits sound intuitive reasoning in the face of dramatically competing "rationalities." But he sees only a part of the matter when he bases his permissive conclusion on "a full recognition of the moral contestedness of the practice" (p. 92). Many issues are highly contested but still either permit or require resolution. (Discussions of the rights of homosexual persons afford many good examples.)

Häyry gets much closer to the full process of omnipartial reasoning here when he observes that in this case, a resolution favoring liberty is reasonable because defenders of neither the medical or social view wish to face "directiveness as defined by the opposition" (p. 93). I would translate this point into a more complete theoretical account in the following way: under conditions of omnipartiality each side to this dispute must recognize that it is unable to deploy convincing reasons based on uncontested facts or values for its position. Backing off this first-level dispute and surveying the options, omnipartial agents recognize that favoring one side or the other for any reason (perhaps because of that side's numerical superiority or slightly favorable balance of reasons) holds out the grave risk of being forced into obeying a rule of conduct one finds loathsome. In contrast, although permitting liberty to all parties allows *others* to do loathsome things, it spares oneself from having to do them. If we reason omnipartially at this secondary level, therefore, "agreeing to disagree" is a rational choice strategy. It would not be so in cases where others' freedom of action so jeopardized oneself (as in permitting racial slavery or the suppression of women) that it could not reasonably be allowed. Thus, Häyry's conclusions and some of his insights are compelling, but they lack this larger theoretical approach and framework.

The "social view," too, offers many morally wise and useful insights, including the powerful role of social discrimination in worsening the condition of disabled people and the emphasis on the quality of life experienced by many people with disabilities. But, lacking resort to a forum of omnipartial rational analysis, this position makes unsustainable claims regarding the status of disabilities. Deafness, like blindness or paraplegia, is undeniably a disability. Even with a maximum of social support, deaf individuals lack abilities that omnipartial persons would reasonably value (such as the ability to appreciate music). They are exposed to a higher degree of life- and health-threatening risks (the unheard car horn), and, in order to minimize their exposure to these problems, they must reduce their liberty to pursue their objectives (for example, by being limited for full functioning to disability-friendly environments).<sup>16</sup> It is also true, of course, that there are specific benefits to being deaf (the satisfactions and expressiveness of signing; membership in a warm and supportive community), but these do not eclipse the conclusion that, *other things being equal*, omnipartial, rational persons would not choose to be deaf. The fact that "other things are never equal," that

deaf individuals often surmount their handicap and live fully satisfying lives is a counsel of restraint: we must be very hesitant to institute policies that only further disadvantage people with disabilities. But this wisdom should not replace clarity of moral judgment.

### Disagreements with Habermas

In the preceding, I have tried to outline a more rigorous approach to the moral analysis of complex reprogenetic issues than I believe is evidenced by Häyry and many of his interlocutors. Obviously, this is only a sketch, and very many questions remain. Häyry insightfully identifies one of the most important of these. Because both Jürgen Habermas and I lay claim to a similar rational methodology that relies on the universal assent by “all reasonable people” (p. 26), why is it that we disagree so sharply in our conclusions? As Häyry observes, “Habermas and Green ... tend to lean towards the opposite ends of the debate—Habermas towards complexity and Green towards simplicity” (p. 40). Concretely, I cautiously favor enhancement genetics, whereas Habermas condemns it; I support the eventual reproductive use of cloning, whereas Habermas sees it as a gross violation of a child’s autonomy. In view of these disagreements, how can it be said that the rational methodology we both employ yields determinative conclusions?

To respond fully to Häyry’s question—and to Habermas’s arguments—would require a book, perhaps a further expansion of points already made in my book *Babies by Design*,<sup>17</sup> and I cannot undertake anything like that here. What is needed, in any case, is a point-by-point analysis from an omnipartial, rational standpoint of each disagreement and of the assumptions underlying it. I fully agree with Habermas that morally responsible reproductive decisionmaking must take into account the interests of the children we actually bring into existence (but *not* those we do choose not to have). They are dialogue partners in our cross-generational moral reasoning process. Indeed, this point was the basis of my first published work, an examination of the population-related responsibilities of each generation to its successors.<sup>18</sup> But it is one thing to take the standpoint of our future child and quite another to claim, as Habermas consistently does, that she would object to every unilateral, nonmedically required alteration I make in her genetic inheritance. Eduardo Mendieta has done an excellent job of critically examining Habermas’s reasoning.<sup>19</sup> He observes, for example, that it is simply not clear that we can expect universal assent to therapeutic interventions (those that eliminate a possible disease condition), as Habermas claims, but that we cannot expect similar assent to widely useful enhancements, such as stronger bodies or longevity.<sup>20</sup> In other words, the bright lines that Habermas perceives become less clear under aggressive rational questioning.

And that is just the point. The methodology that both Habermas and I employ is designed to facilitate close-grained rational analysis regarding the acceptability of social practices to suitably objective rational agents. At each point, this requires careful reasoning, the defense of premises, and attention to available factual evidence and claims. Speculative considerations can never be entirely avoided, and Habermas is to be applauded for his imaginative efforts to understand the possible impacts of our reproductive choices on our children’s lives. But such

efforts must always be grounded in experience and the best available information from human psychology, sociology, history, and other relevant disciplines. Indeed, the power of this methodology in organizing inquiry and focusing debate is its highest recommendation. That two thinkers using this methodology come to different conclusions should not lead us to conclude that the methodology is inadequate. It should rather encourage new and more rigorous applications of the methodology to every matter under debate.

## Notes

1. Häyry M. *Rationality and the Genetic Challenge: Making People Better?* Cambridge, UK: Cambridge University Press; 2010. Henceforth all page references are in the text.
2. Green RM. The first formulation of the categorical imperative as literally a “legislative” metaphor. *History of Philosophy Quarterly* 1991;8(2):163–79.
3. Rawls J. *A Theory of Justice*. Cambridge, MA: Harvard University Press; 1971:Ch. 3.
4. Gert B. *Morality: Its Nature and Justification*, rev. ed. New York: Oxford University Press; 2005. I further develop and apply this view, which I call the “NORM” (Neutral, Omnipartial Rule-Making) method in my book *The Ethical Manager: A New Method for Business Ethics*. New York: Macmillan; 1994.
5. Green RM. Rationality redux: A definitional and moral challenge to Gert’s account of rationality. Forthcoming in a festschrift in honor of the work of Bernard Gert.
6. See note 3, Rawls 1971:62.
7. Rawls introduces the concept of “comprehensive doctrines” in his *Political Liberalism*. New York: Columbia University Press; 1993.
8. See note 3, Rawls 1971:62.
9. See note 3, Rawls 1971:154–5.
10. I leave aside the question of whether rule utilitarianism is, at bottom, a utilitarian or a public rule theory. My own view is that it is the former. See note 4, Green 1994:80–2.
11. Mundy L. A world of their own. *Washington Post Magazine*, 2002 Mar 27.
12. Mutations in the connexin 26 (Cx26) gene have been found to be responsible for 50% of prelingual severe-to-profound nonsyndromic hearing loss. See McGuiert WT, Smith RJ. Connexin 26 as a cause of hereditary hearing loss. *American Journal of Audiology* 1999;8(2):93–100.
13. Häyry quotes Harris’s discussion from Harris J. Is there a coherent social conception of disability? *Journal of Medical Ethics* 2000;26:100.
14. See note 13, Harris 2000:97.
15. Green RM. Parental autonomy and the obligation not to genetically harm one’s child: Implications for clinical genetics. *The Journal of Law, Medicine and Ethics* 1997;25(1):5–15.
16. For a more complete account of this analysis, see the discussion of malady in Gert B, Culver C, Clouser KD. *Bioethics: A Return to Fundamentals*. New York: Oxford University Press; 1997:Ch. 5.
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19. Mendieta E. Habermas on human cloning: The debate on the future of the species. *Philosophy & Social Criticism* 2004;30:721–43.
20. See note 19, Mendieta 2004:727.