

Liberalism and Eugenics

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ABSTRACT

‘Liberal eugenics’ has emerged as the most popular position amongst philosophers writing in the contemporary debate about the ethics of human enhancement. This position has been most clearly articulated by Nicholas Agar, who argues that the ‘new’ liberal eugenics can avoid the repugnant consequences associated with eugenics in the past. Agar suggests that parents should be free to make only those interventions into the genetics of their children that will benefit them no matter what way of life they grow up to endorse. I argue that Agar’s attempt to distinguish the new from the old eugenics fails. Once we start to consciously determine the genetics of future persons, we will not be able to avoid controversial assumptions about the relative worth of different life plans. Liberal eugenicists therefore confront the horns of a dilemma. They may allow parents the freedom to act on their own assumptions about these matters with the consequences that the options available to children will be significantly determined by their parents and that future distributions of life plans will be strongly influenced by existing ideas about the nature of the good life. Alternatively, they may require the state to protect the future wellbeing of children against their parents, at the cost of placing decisions by the state at the heart of the “new” eugenics. Either way, the consequences of widespread use of technologies of genetic selection are likely to look more like the old eugenics than defenders of the new eugenics have acknowledged.

Keywords

Liberal eugenics; Human enhancement; Ethics; Agar; Transhumanism; Eugenics; Preimplantation genetic diagnosis.

1. INTRODUCTION

In his writings on 'liberal eugenics', Nicholas Agar has championed a modern form of eugenics, emphasizing parental autonomy and informed by the historical experience of previous eugenics programs, which might avoid the repugnant consequences associated with eugenics in the past [Agar 1998; Agar 2004]. Agar is an advocate of eugenics in so far as he urges a policy that would allow each generation to determine the genes of the next. His position is a liberal one because it leaves the choice of which genes to select to individuals rather than the state.

Agar's defence of liberal eugenics consists in arguing that such a policy will not have the consequences of the eugenics of the thirties; specifically, it won't lead to a loss of diversity of what he calls 'life plans'. The principle he proposes to prevent such unacceptable consequences makes reference to John Rawls' work in political philosophy. He argues that parents should be free to make only those interventions into the genetics of their children that will benefit them no matter what way of life they grow up to pursue and endorse. According to Agar, this restriction, combined with some observations about the limits of our genetic powers, serves to establish that liberal eugenics will not lead to a world in which the population are all engineered to live one particular form of life.

I will argue that Agar's attempt to distinguish the new from the old eugenics fails. The maximin principle he proposes fails to distinguish a set of uncontroversially morally permissible modifications. Once we start to consciously determine the genetics of future persons, we will not be able to avoid controversial and contested assumptions about the relative worth of different life plans. As a result, liberal eugenicists confront the horns of a dilemma. They may allow parents the freedom to act on their own assumptions about these matters with the consequences that the options available to children will be significantly determined by their parents and that future distributions of life plans will be strongly influenced by existing ideas about the nature of the good life. Alternatively, they may require the state to protect the future wellbeing of children against their parents, at the cost of placing controversial decisions by the state at the heart of the 'new'

eugenics. Either way, the consequences of widespread use of technologies of genetic selection are likely to look more like the old eugenics than defenders of the new eugenics have acknowledged.

Agar's paper 'Liberal Eugenics' was a significant contribution to the literature on the ethics of genetic engineering of humans in its own right. It was anthologised in a widely read Blackwell collection on applied ethics, edited by Helga Kuhse and Peter Singer [Agar 1999].¹ Moreover, the arguments in the original paper are representative of positions taken by a much larger group of critics. In particular, Agar's position is extremely close to that taken by Buchanan et al. in one of the most comprehensive and influential discussions of the ethical issues raised by the new genetic technologies [Buchanan et al. 2000]. Indeed, 'liberal eugenics' is arguably the most plausible position for those who believe that it is possible to balance the competing claims of parental autonomy, the rights of the child, and concerns about the social consequences of eugenics, and still leave the door open for some intervention into the human genome. Thus while my detailed criticism in what follows will be directed at Agar, the arguments involved will be relevant to a much wider set of critics and to the possibility of liberal eugenics more generally.

2. AGAR'S ACCOUNT

2.1 The case for genetic interventions

Agar first sets out reasons arguments that have lead a number of writers to embrace liberal eugenics.²

Various authors, including: Jonathan Glover; Dena Davis; John Robertson; Philip Kitcher; Julian Savulescu;

¹ Agar later went on to expand the argument of this paper in a book length treatment published with Oxford University Press [Agar 2004]. However, the philosophical underpinnings of liberal eugenics are exposed much more clearly in the article length treatment [Agar 1999], which will therefore be the main focus of my attention here.

² For the purposes of this paper I will assume, as Agar [1999: 172] does, that in the not-too-distant future preimplantation genetic diagnosis and (perhaps) other new technologies will allow us sufficient control over the genetics of our children to be able to 'engineer for' a wide variety of character traits. In particular, I will assume that we will be able to select for or against a wide

John Harris; Allen Buchanan, Dan W. Brock, Norman Daniels and Daniel Wikler; and Agar himself, see support for liberal eugenics as following from our attitudes towards parents' rights to determine their children's education and towards genetic intervention to avoid disability [Glover 2006; Davis 2001; Robertson 1994; Savulescu 2006; Savulescu 2001; Harris 2007; Buchanan et al. 2000].

These authors deny that the distinction between shaping people via genetic interventions and shaping them via environmental interventions is of moral significance. Given that we allow parents substantial latitude over the environment in which they bring up their children, which is likely to have a significant affect on the character of their children, why should we prevent them from using genetic technologies to similar ends?

[Agar 1999: 171–2; Harris 2007: 1–3; Agar 2004: 111–20; Buchanan et al. 2000: 156–61; Harris 1998: 171–4, 203; Savulescu 2008; Savulescu 2006] Similarly, liberal eugenicists reject the distinction between genetic interventions with a therapeutic purpose and those aimed at enhancing a normal child [Agar 1999: 172–3].

Our ideas about normal human capacities already reflect the influence of a modern diet and medical attention, both pre and antenatal; restricting the technologies that can determine what is normal to existing and/or historical technologies appears morally arbitrary. Moreover, our motivation for endorsing some of these – therapeutic – interventions seems to require us to also embrace interventions designed to *enhance* capacities or quality of life. If the avoidance of suffering justifies intervention to prevent disease or discomfort stemming in part from a genetic condition, the same motivation should justify intervention to prevent conditions that affect those currently considered as normal, which are associated with suffering, such as frustration in our projects due to our physical or mental limits, or a limited life expectancy. Thus,

variety of mental and psychological traits. It has been suggested that there is a significant genetic component to intelligence, memory, predisposition to depression, alcoholism, schizophrenia, homosexuality, anti-social personality disorder, and tendency to violence after sexual assault [Savulescu 2005; Savulescu et al. 2006]. If this is true, and we can identify these traits and develop tests for them, then by choosing which zygotes to bring to term, parents will be able to select against, or perhaps even for, these traits and thereby wield significant influence on the character of their offspring. Of course, just how much control we will be able to exercise over the traits of our children by selecting their genes is controversial. See, for instance, [Resnik and Vorhaus 2006].

even if we can formulate an account of ‘normal’ human capacities, it is hard to see why this should have any normative weight [Kitcher 1996: 124; Buchanan 2000: 153–4; Harris 2007: 8, 14, 19–28]. Finally, liberal eugenicists hold that once we use genetic technologies at all, even just to prevent life-threatening genetic conditions, we are engaged in ‘inescapable eugenics’ [Agar 1999: 174] and reshaping the genetic makeup of humanity.

If we are inescapably involved in eugenics, how should our genetic interventions be guided? Agar distinguishes between two different questions about the use and arrangement of the ‘goods of genetic engineering’ [Agar 1999: 172]. There is the question of how these goods affect the life of the person whose genes have been manipulated: call this the question of their ‘internal’ arrangement. There is also a question about how these goods affect and are distributed amongst individuals and social groups across society: call this the question of their ‘social’ arrangement.

2.1.1 Genetic interventions and individual welfare

As far as the internal distribution of genetic goods goes, both deontological and consequentialist grounds suggest that genetic interventions should be guided by a concern for the child’s welfare or ‘quality of life’. Agar [1999: 174] cites approvingly Philip Kitcher’s account of how we may assess someone’s quality of life, by asking questions about three things:

- 1) Have they developed any sense of what is significant or of ‘What matters’?
- 2) To what extent are those desires that are central to their life plan satisfied? Did they achieve those things that mattered?
- 3) What has been the character of their experience? What was the balance of pleasure and pain in their life?

Asking these questions will allow us to assess the internal arrangement of genetic goods. We should restrict genetic interventions to those that do not decrease the wellbeing of the children whose genes are being chosen for them.

I do not want to dispute the appropriateness of these criteria as a measure of quality of life. However, I *do* want to argue that these ideas cannot play the role that defenders of liberal eugenics require of them. At this juncture I shall merely note a significant ambiguity that is present in the first two of these questions. This concerns the question of what weight we should give to our own considered opinions about ‘what matters’ when we try to answer them. I will return to this issue below when I turn to discuss the real source of Agar’s interest in the internal arrangement of goods, which is the implications this arrangement has for the *social* arrangement of goods.

2.2 The eugenic challenge to liberalism

If we characterise a liberal society as one that encompasses a diversity of different ways of life or ‘life plans’, then this diversity consists in a range of lived explorations of different ideas about how human life is best lived – call these life plan roles – and a number of people who occupy these roles. Agar points out [Agar 1999: 174–5] that genetic engineering poses a unique threat to liberal political thinking because of the gap it opens between life plan roles and those who fill them. If we modify future generations of humans so that they have no desire to take up certain life plan roles then it seems as though no individuals are harmed.³ An important set of arguments for liberalism, founded on respect for (existing) individuals, simply have no application here [Agar 1999: 175]. Moreover, any consensus on life plans as a result of a widespread

³ In fact, this conclusion is too swift, as existing persons may be harmed by actions that would reduce the future prevalence of the life plans with which they identify. One way in which this might occur is if existing persons have future directed goals, the success of which, or perhaps even the conditions of possibility of which, depend on the existence of future persons with similar life plans [Sparrow 2005]. Existing persons may also be harmed if it is the case that a couple’s decision to select against particular life plans in their children expresses a disrespect for existing persons in these roles [Sparrow 2008].

practice of genetic manipulation would undermine liberalism by threatening the diversity at its foundations [Buchanan et al. 2000: 177]. In the absence of diversity, societies may have little reason not to adopt (non-liberal) political institutions that reflect the resulting consensus about how persons should live. The likelihood that the engineering of life plans would have such diversity-reducing consequences is greatly increased by the fact that observations about the existing social order will typically play a role in parents' calculations regarding the future wellbeing of their children [Agar 1999: 175]. Thus the facts that homosexuals are widely discriminated against, or that the prospects of achieving certain goals for women in this society are less than those for men, are likely to be influential on parents' choices about what sort of children to have. That is to say, various sorts of market pressures or collective action problems may arise which serve to mitigate in favour of certain decisions from parents and thus produce uniformity [Sparrow 2007]. Agar therefore worries that even a liberal eugenics – that is, a eugenics without any overall direction or state control – might lead to a dramatic reduction in the range of life plans represented in society in the future.

2.3 Liberal eugenics

The question Agar addresses, then, is how can we be sure that the widespread use of genetic technologies will not lead to the nightmare scenario popularly associated with eugenics, of a world of greatly reduced human diversity? What arguments can a liberal muster to ensure that genetic modification is neutral between morally acceptable life plans? [Agar 1999: 176].⁴

⁴ Liberals must make some such qualification to their goal of neutrality to avoid the accusations that liberalism is committed to nothing at all by way of an account of what a good life consists in and, consequently, of being psychologically unrealistic. There are some possible life plans that are so obviously wicked or wretched that it would be entirely wrong for us to be neutral in our attitude towards them. It would also be psychologically unrealistic to expect that people *could* be.

2.3.1 *Life plans and capacities*

Agar's strategy is to draw attention to how engineering affects the individuals who are engineered. He argues that if we are suitably concerned with their welfare and given certain constraints on our ability to ensure that individuals will be well suited to particular life plans, then we must refrain from attempting to favour some life plans over others. Concern for the *internal* arrangement of genetic goods will restrict the *social* arrangement of these goods in such a way as to substantially reduce the likelihood that liberal eugenics will lead to an unacceptable loss of diversity of life plans [Agar 1999: 176].

To show this, Agar distinguishes between life plans and capacities that are useful in pursuit of them [Agar 1999: 176]. Capacities are human abilities or traits, for example, intelligence, height, having webbed feet, that are then utilised in the pursuit of life plans. According to Agar, while we may be able to identify and engineer in relation to capacities, we cannot reliably engineer people so as to ensure that they realise particular life plans [Agar 1999: 176].

Agar puts forward two reasons why life plans are less amenable to our designs than capacities. Life plans are necessarily psychologically mediated. For a way of life to count as a life plan, it must reflect a conscious deliberation about what makes a good human life. Life plans can only be lived 'from the inside'. The decision to embrace a particular life plan is therefore not one that can be engineered [Agar 1999: 177]. Because they are psychologically mediated, they are also very much subject to environmental contingency. They are environmentally *specific*, in that many life plans simply won't be possible except in certain social settings, and environmentally *sensitive*, in that small changes in a child's environment may have major consequences for the life plans that they eventually embrace [Agar 1999: 177].

It is worth noting here how much Agar's defense of liberal eugenics relies on a premise about our inability to achieve a certain class of eugenic goals. If we *could* engineer life plans, his argument would collapse.

Respect for different life plans themselves doesn't seem to play any role in Agar's version of liberalism.⁵

This is a strange *sort* of argument for liberalism.

However, a more immediate problem with Agar's division of possible interventions into capacities and life plans concerns whether it captures the entire range of possible interventions. Some character traits that seem amenable to shaping through genetic intervention appear to be neither. Take, for instance, some of the character traits that are likely targets for future genetic intervention; sex, 'race', physical appearance ('looks'), and sexual preference.⁶ Are these best described as life plans or capacities?

The first three don't seem to be either. They are clearly not 'life plans'. Changing the appearance, or race of the child, seems to have little impact on their ability to pursue the projects that they might grow up to embrace, which suggests that they do not alter their capacities either.⁷ Changing their sex might, if mother/fatherhood counts as a life plan, but otherwise seems to have few implications for the ability of children to pursue whatever life plans they choose.

Sexual preference, on the other hand, looks more like a question of life plan; at the very least, it is emblematic of the sort of human variation that a liberal society should embrace and defend. It's true that

⁵ Moreover, Agar's claims about our inability to influence life plans are weaker than they first appear. As Agar acknowledges, just as life plans are influenced by the environment, they may also be influenced by the distribution of our natural talents [Agar 1999: 177]. So by shaping capacities we can also wield some, if uncertain, influence over a life plans.

⁶ Of these four, race – at least – is a social rather than a genetic concept. Nevertheless it seems likely that it will be possible to engineer for those physical characteristics that are socially associated with 'race'. Similarly, while 'sexual preference' is typically understood to refer to the *social* category of homo/hetero-sexual, there may well be a genetic component in the etiology of same-sex attraction.

⁷ Of course, in particular social contexts, especially racist ones, choosing the race of a child might well have a profound impact on the projects that they are likely to grow up to embrace. However, this is not because genetic modification of race allows influence over life plans, or is a capacity that might fail them; instead it demonstrates the role of the environment in shaping life plans. Similarly, changing the appearance of a child might affect their ability to pursue a career as a fashion model or character actor.

there's a difference between being attracted to same-sex partners and being a conscious advocate of a gay lifestyle. However, it is implausible to argue that one's actual sexual desires are 'capacities' that might either help or hinder one in pursuit of a life plan that one chooses independently of them.

The distinction between capacities and life plans therefore does not seem to capture the nature of traits such as the race, sex, appearance or sexual preference of individuals. This failure of classification is not merely an academic concern; it has significant implications for the sort of world that is likely to be produced by liberal eugenics. While we may not be able to engineer capacities, it is very likely that we will be able to engineer the first three of these traits – and we *may* be able to shape sexual orientation. This already suggests that liberal eugenics may result in a disturbing level of homogeneity if parents are motivated by social circumstances to prefer particular outcomes in these domains. A society which allowed liberal eugenics might well end up overwhelmingly white, blond-haired, blue-eyed, and heterosexual [Sparrow 2007]. This uniformity may also extend to life plans to some degree, insofar as, for instance, same-sex attractedness constitutes, or is associated with, particular life plans [Agar 1999: 179].

2.3.2 *The limits of our eugenic powers*

However, let us concede to Agar that – for the most part – we cannot reliably engineer life plans. What we *can* do is engineer capacities to suit those life plans that we think are best. As Agar points out, there is, though, an obvious danger in doing so. Our inability to control the life plans that children eventually adopt means that our efforts to guarantee them appropriate capacities may be in vain, or even counterproductive, should they choose a life plan other than those we have shaped their capacities to advantage. Many capacities are only advantageous in the pursuit of a small range of life plans and may be disadvantageous in most. For instance, being 7' 2" will be a tremendous advantage if a child should grow up wanting to be a professional basketball player, but a disaster if he has his heart set from a young age on being a jockey or a ballet dancer. Our inability to determine life plans means that our attempts to engineer capacities to suit them may go badly wrong.

2.3.3 The social arrangement of genetic goods

A concern for the internal arrangement of genetic goods therefore seemingly places severe restrictions on appropriate genetic interventions. Does this concern rule out genetic tinkering altogether? Agar thinks not. Instead, he thinks that we should respond to this possibility by adopting a ‘maximin’ principle to regulate genetic interventions. He suggests that:

Goods of genetic engineering must be allocated to an individual in a way that improves prospects associated with all possible life plans – most especially the worst off potential life plan. [Agar 1999: 178]

Out of concern for children’s quality of life, we should not alter their capacities in ways that would disadvantage them if they adopted an unexpected life plan: genetic interventions which do not carry this risk remain legitimate.⁸ That is, as long as parents’ interventions would benefit the least well-off life plan, they will be acceptable. In this way, even if their children grow up with different ideas about how they wish to live their lives than their parents had hoped, they will not have been disadvantaged.

Importantly, this criterion rules out genetic interventions that are tied too closely to a particular vision of how human life is best lived, or that are designed to thwart certain life plans.⁹ By ensuring that future generations are no less free to pursue any given life plan than they would have been in the absence of the intervention, it guards against the possibility that genetic intervention will dramatically reduce human diversity. Agar holds, therefore, that the maximum principle licenses a wide range of eugenic interventions by parents without risking the dangerous and illiberal consequences of the old eugenics.

3. EVALUATING THE ‘MAXIMIN’ PRINCIPLE IN GENETICS

There are four main problems with the ‘maximin’ principle as a means of regulating genetic interventions.

⁸ Compare Buchanan et al. [2000: 167-168].

⁹ See also Buchanan et al. [2000: 170-171].

3.1 Would any capacities meet the maximin test?

The first problem is whether any eugenic interventions would meet the maximin test. Is the range of morally acceptable ‘life plans’ so homogenous that *any* enhancement would advantage – or at least not disadvantage – them all? It is not easy to come up with examples of increases in capacity that would not be seen as disadvantages by someone committed to one life plan or another.

The most plausible candidate for capacity which would suit all life plans is a nebulous capacity of ‘intelligence’. However, as Agar notes, the concept of intelligence is a contested one [Agar 1999: 179–80]. A proper unpacking of just what is involved in being ‘intelligent’ reveals a collection of a more finely grained set of capacities, such as memory, perceptual speed, etc. Agar admits that it is far from clear that all life plans would benefit from every one of these capacities. Moreover, there may be trade offs between them. This means that any given attempts to increase intelligence, by realizing some particular combination of its component capacities, may well disadvantage particular life plans – and so fail the maximin test.

The other set of capacities that look like likely candidates for genetic tinkering by the liberal eugenicist are those which might be described as contributing to ‘health’ or ‘fitness’. Perhaps an extended life span, resistance to disease, a large lung capacity, looseness of limb, a certain general athletic ability, etc, are advantageous in pursuit of any conceivable life plan?

However, identifying such general purpose capacities is more difficult than at first sight appears. Consider the following two ideas about how human life is best led.

Firstly, consider the idea that the good life involves total immersion in ‘Deaf culture’. Over the past several decades, some deaf people have asserted that they should be acknowledged as members of a minority culture – Deaf culture – organised around the use of a signed language and with its own set of practices and institutions, rather than as identified as disabled [Davis 2007; Dolnick 1993; Edwards 2005; Lane 1992; Kauppinen 2006]. In some cases, individuals’ identification with this culture is sufficiently strong for them to deny that they would like to be capable of hearing [Aumann 2001: 16-17; Dolnick 1993: 38]. In 2002 a

US couple received extensive media coverage for their decision to seek out a sperm donor with a family history of congenital deafness for assistance in an IVF procedure in order to maximise their chances of having a deaf child [Mundy 2002: W22]. One way of understanding this desire is as a desire that their children should grow up as members of Deaf culture, presumably because these parents believe that the goods it offers are an important precondition for the good life [Sparrow 2005].

Secondly, consider the idea that the best sort of human life involves a lifetime of faith, fortitude, and sacrifice in the service of a religious ideal. Mother Teresa is perhaps a role model here. This idea of the good life identifies it with the exercise of certain virtues in the pursuit of some particular end.

Both of these are possible life plans (or life plan roles). They have current occupants – and therefore advocates. They don't seem to be the sort of visions of the good life that we should deny are 'morally acceptable' and refused to tolerate. Thus, these examples should reduce our faith that health or fitness are neutral concepts, improvements in which would advantage all life plans.

The example of Deaf culture is salutary because it reveals that what most people hold as fairly straightforwardly part of the idea of health is unnecessary for the pursuit of certain goods and indeed is seen by some as positively disadvantageous. Interventions to improve hearing, or to reduce the chance of a genetic condition resulting in deafness, may frustrate the life plans of those who come to identify with Deaf culture.¹⁰ If a life as a member of Deaf culture is within the range of reasonable variation in life plans then these interventions should therefore fail the maximin test.

¹⁰ It might be objected here that hearing persons are perfectly capable of learning signed languages and that consequently being capable of hearing does not prevent one from participating in Deaf culture [Levy 2002]. However, ability to sign may not be sufficient for individuals to realise the goods of membership in Deaf culture, either because full cultural membership is premised on the mutual recognition of other members of the culture – which may be denied to those who can hear – or because it is unlikely that those who can hear would be sufficiently immersed in signing culture to acquire the requisite fluency in sign and the shared experiences which are constitutive of cultural membership.

The possibility that a life plan might involve the exercise of devotion, fortitude, and sacrifice grounds a more radical challenge to the idea that improvements in health or physical capacity are always to be welcomed. Indeed, it suggests that health, or an increase in physical capacity, may not be unmitigated goods at all. Interestingly, according to this account of the good life, a moderate amount of suffering is actually productive.¹¹ It allows one to exercise and demonstrate important virtues. Too much suffering may cripple a life and render the expression of these virtues unlikely. Too little, however, will offer no opportunity to exercise them, and may lead to a shallow and unsatisfying existence. If a child grows up to embrace this life plan but has a long life of perfect health – if their life goes too easy – they may feel that they have been prevented from fully realizing their goals. Thus even improvements in health or generalised capacities may fail the maximin test.

It turns out, then, that even the most promising areas for capacity enhancement risk running foul of the maximin test once we pay proper attention to the nature of the capacities involved and the range of possible life plans. In a way, this conclusion should come as no surprise to the advocate of liberal eugenics. An important assumption in the argument motivating liberal eugenics is that any account of ‘normal’ capacities reflects controversial assumptions about what are natural human characteristics and/or about the nature of human flourishing [Harris 2007: 13–17, 19–27, 35]. The argument above extends this intuition to any account of ideal or ‘all purpose’ capacities, which may no more be delineated without controversial assumptions about the proper ends of life than may ‘normal’ capacities .

Another reason to wonder if any interventions would meet the maximin test is the possibility that the human organism is already operating near its (structural, metabolic, cognitive, athletic) maximum efficiency such that enhancements to function in one area are not possible without sacrificing capacity in another. There may be limits on what we can achieve to improve human functioning through genetic tinkering. If this

¹¹ The argument that limits on human abilities and life expectancy are actually productive has been made by a number of authors [Sandel 2007; McKibben 2003; Parens 1995].

should turn out to be the case then there will be little room to enhance capacities without disadvantaging any life plans.

The conclusion that there are some capacities that might be enhanced while disadvantaging no possible life plans would require a detailed empirical investigation of the diversity of actually existing life plans and of the capacities that those currently in these roles wish that they possessed. Whether or not genetic modification could improve any of the list of desirable capacities we settle upon, without sacrificing others, will also remain an open question, until we know much more about the limitations and possibilities of human genetic modification. For the moment, we must admit that there are significant reasons to doubt that any genetic interventions could meet the maximin principle.

3.2 The scope of the maximin principle

A second difficulty with the maximin principle concerns its proper scope. Insofar as we are concerned for the wellbeing of the child, it looks as though the maximin principle should regulate all distributions of capacities, regardless of how they have come about. If this were the case, the maximin principle turns out to be very intrusive. Properly applied, it would require that we conduct a rigorous genetic assay of every embryo in order to assess how its capacities were likely to affect the full range of life plans, and for us to step in and modify its genetic structure if we found that it had capacities that would be disadvantageous to some particular life plan.¹² A particularly troubling implication is that it seems as though we might have to intervene whenever we find embryos with natural distributions of capacities that suit particular life plans but would disadvantage others. The same principle that requires us to limit the troughs of human genetic potential seems also to mitigate against the peaks, if these peaks happen to also be associated with capacities

¹² Thus Dov Fox, in his response to Agar's paper, argues that parents are morally *obligated* to 'do away with or provide resistance against near-universally harmful general-purpose traits such as blindness, paraplegia, or down syndrome' in those children that they bring into the world [Fox 2007: 14]. However, Agar's concern that parental interventions should not disadvantage *any* life plans suggests this obligation should take the more radical form discussed here.

that might disadvantage certain life plans [Agar 1999: 179]. Liberal eugenics would therefore result in the birth only of children who are potential Jack's or Jill's of all trades but who are likely to be masters of none. Paradoxically, it produces its own sort of uniformity.

Agar thinks he can avoid this unfortunate implication by restricting the scope of the principle to *modifications* of the capacities of children only [Agar 1999: 179]. That is, according to Agar, we are only obligated to govern our actions according to the maximin principle when we are considering *changing* our child's capacities.

However, in the context of the arguments that are motivating liberal eugenics, this restriction appears arbitrary, especially once we have the technology to modify human capacities with ease.¹³ If it is wrong to bring a child into the world with a set of capacities that suits one life plan and would disadvantage all others, why should it matter whether this is the result of the parent's choice to make use of a technology or to refuse to make use of it? The result for the child is the same either way.

3.3 The motivational problem

The third problem with the maximin principle as a mechanism for regulating genetic interventions concerns our motivations for adopting it. Why should parents accept this restriction on their freedom to modify their children so as to promote the particular ways of life they feel would be best for them? In particular, why is it

¹³ In correspondence, Agar has denied that parents are obligated to intervene to prevent their children being disadvantaged by their natural genome if they were to choose certain life plans and suggested that we should think of parental obligation to intervene in the genetic make-up of their children by analogy with a liberal approach to educational choices. He suggests that parents are required only to provide their children with a certain basic minimum of educational—or genetic—goods and that “enhancements” beyond this point are optional. However, this approach to the distribution of genetic goods is radically at odds with the “maximin” principle he advocated in his original paper insofar as a “natural” distribution of genetic goods might severely disadvantage some life plans while advantaging others—even if the minimum threshold were met. Consequently, some further argument is required to explain why modified genomes and “natural” genomes must meet different tests.

reasonable to expect that parents should be concerned for the wellbeing of those who might occupy the worst off life plan roles? Alternatively, why should we as a community support the idea that the state should intervene to protect the interests of the least well-off life plans? Why should we care about the flourishing of life plans, the worth of which we don't believe in?

Life plans are too abstract for us to be concerned about them. Recall that if life plan diversity is reduced by genetic interventions then this will occur without any frustration or harm occurring to individuals [Agar 1999: 174–5]. All that will happen is that individuals will be born who will be happy to live *this* way rather than *that*. This case is importantly different from the case where we are considering the affects of our political institutions on different life plans where real, live, identifiable people will be affected and where, furthermore, they are likely to be clamouring that we take account of this fact. The liberal spirit involved in liberal eugenics therefore seems to require a higher level of neutrality than ordinary liberalism.

The extent of what we are required to do becomes more apparent when we remember that many of these ways of life that we are asked to consider may be such that we ourselves strongly disapprove of them. Life plans, like conceptions of the good, are in competition with each other. Commitment to any life plan requires that we negatively evaluate at least some others. It may be, therefore, that the least well-off life plan is one that we think is stupid or despicable. Yet the application of the maximin principle would require us to be concerned for the flourishing of anyone who might come to occupy this life plan.

Agar would presumably respond that it is not the flourishing of life plans in the abstract that we should be concerned with – this would be to ask too much – but the wellbeing of our children, who might come to embrace them. It is the identification with the interests of another, based on a genetic or nurturing relation with a particular individual, which is supposed to generate a regard for the wellbeing of those with life plans we despise.

However, parental love may be insufficient to motivate for the concern for the wellbeing of others that Agar's argument requires here. The parental relation will only guarantee a concern for the wellbeing of our child if it always extends as far as the case when they choose a life plan we despise. Yet, might we not

disown our child in these circumstances, and cease to be concerned for their wellbeing? Indeed, if they were to become someone whose ambitions and values we despise, might we not even wish them poorly?

We have here, then, a conflict between two different, competing, models of parental love. Sometimes we think of parental love as unconditional.¹⁴ This sort of love would ground a concern for the wellbeing of our children even if they should adopt life plans which we feel are foolish or repugnant. At other times, however, we endorse another conception of parental love that acknowledges that it is sometimes rightly responsive to the character of the child. Concern for the wellbeing of my child is grounded, at least partially, in the idea my child represents one of my projects, and is tied to me by certain shared values and commitments. This link can be broken if my child does not come to share these. This – I would argue – more plausible conception of parental love will not ground an identification with the interests of even our own children if they should come to adopt life plans that we believe are worthless. In the absence of any such identification, the question of why we should be concerned for the wellbeing of those who come to have the worst off life plans remains.

3.4 Are judgments about wellbeing uncontroversial?

The fourth – and perhaps most important – problem with adopting the maximin principle as a mechanism for regulating our genetic interventions concerns whether judgments about wellbeing are uncontroversial, especially when the relative merits of different life plans are under dispute. That is, will all reasonable people agree on when a genetic intervention threatens a child's wellbeing? If not, then the future distribution of capacities is likely to be strongly influenced by the existing distribution of opinion about which choices are valuable in life.

¹⁴ Interestingly, we do often place a genetic restriction on the scope of this love. If it turns out that a child isn't our own, in the sense of being a product of our gametes, we think it less unreasonable that this love be withdrawn.

Recall the way that Agar argued that we should assess wellbeing by asking three questions about the character of the life that we're considering. As noted above, there is a significant ambiguity in his account, which concerns the proper role played by our own ideas about the worth of life plans in answering two of these questions. There are two quite different ways we might go about this.

Agar's argument requires that we try to answer these questions from the perspective of the person about whom we are asking them, and put aside our own beliefs about the nature of the good life. If the person whose wellbeing we are considering has any sense that *something* is significant in life then they are well on their way to passing the first test. What we are concerned with in answering this question is the extent to which they have developed this idea themselves (autonomously), and how developed and coherent it is. *What* it is that they think that matters is unimportant. We then proceed to use *their* idea of what matters to answer the second part of the second question. That is, in assessing the extent to which they have achieved those things that mattered, we assess the extent to which they have achieved those things that they *think* mattered. We thus effectively collapse the two parts of the second question. This may lead to counter intuitive – even repugnant – conclusions in cases where people adopt life plans which seem to us obviously worthless or wicked.

Note that when we are assessing the wellbeing of *future* people's lives this investigation necessarily involves a further level of abstraction. We cannot use their actual ideas of what matters to assess the quality of their lives because we are considering people who have no ideas about what matters – because they have no ideas at all. However, if anything, according to this way of thinking this adds strength to the idea that we should not base our assessment of wellbeing on our own ideas of what a good life consists in. To do so would be to impose our values on future persons and would defeat the purpose of looking to wellbeing as a measure of the worth of future lives. If we have no knowledge of what they think matters, and we are not to use our own judgments about what matters, then we may only proceed by assessing the extent to which they are likely to have any such ideas at all. As long as they have any conception of the good at all, then they have an idea of what matters, regardless of the content of that conception. Similarly, our judgment as to whether they are likely to achieve those things that matter must take the form of an assessment as to whether they are likely to

achieve their own goals, whatever they come to be, and without reference to any particular set of ideas about what does matter.

However, there is another way in which to answer these questions. We might adopt an ‘objective list’ theory of wellbeing and use our own considered ideas about the good as indicative of the contents of the ‘list’ [Parfit 1984: 499–501; Griffin 1986]. We would then start from our own most considered judgments that ‘these things matter, these things don’t’ and use these judgements as the basis of our assessment of the life plans of others. Even if someone has well formed and considered opinions about what matters, if these are sufficiently different from our own, then we may judge that while they *think* they do, they don’t *really* have a sense of what matters. Their life, and wellbeing, suffers because of this. Their goals are misguided and their efforts wasted, because they are pursuing worthless ends.

Similarly, when we move to assess whether someone has achieved ‘those things that matter’, we may do so with reference to our own convictions about what matters. We assess whether they have achieved those (particular) things that *really* matter. Again, we may judge that some people who are very satisfied with their lives, because they have achieved most of their own goals, in fact have a poor quality of life. They may in fact have achieved very few of the things that matter in life, so that we must say that – despite their happiness – their lives have not ‘gone well’.

According to this way of thinking, we *cannot* evaluate a person’s wellbeing without any reference to such ideas. In ruling out – as any plausible account of what wellbeing consists in must – modes of life that, while freely chosen, are obviously pernicious, we inevitably draw upon substantive ideas about what makes a human life worth living. There is no answer to the questions that Agar holds are integral to the assessment of wellbeing which does not make reference to some ideas about the relative merits of different life plans.

As was the case above, asking these questions about future people rather than existing people complexifies the matter somewhat. We cannot assess their actual ideas about what matters, or what they have achieved, because they have none, and have (as yet) achieved nothing. All we can do is imaginatively project into the future and consider their wellbeing, should they come to adopt various different life plans. Our best guess

about their wellbeing will therefore rest heavily on our predictions about what life plans they are likely to adopt.¹⁵

So we have two different ways of answering the questions upon which our assessments of wellbeing rest, depending on whether or not we make reference to our own best judgments about what the good life consists in. If we are inclined to answer these questions in the second of the ways that I have described then judgments about wellbeing will involve substantive value judgments. The question now arises, which should we adopt when seeking to apply the maximin test?

I believe the latter of these accounts is more plausible, especially when we are considering the future of our own children. To neglect our own conclusions about the relative virtues of different life plans and assess the wellbeing of others as though their own ideas about the proper ends of a human life were the only thing relevant to their wellbeing would be to adopt a relativism or scepticism about life plans. It would be to evidence a lack of commitment to them, by saying in effect that we lack sufficient confidence in them to employ them to evaluate the lives of others.¹⁶ Moreover, we have a special responsibility for the education and shaping of our own children. It would be bizarre to suggest that we should think about their futures in the same way as we would people with whom we have no parental relationship. When we are thinking about the possible future of our children it is therefore fitting that we make use of our own considered judgments about what is worthwhile and worthless in a human life. We would fail in our duty as parents if we did not try to pass on the benefits of whatever lessons we have learnt in life.

¹⁵ If it were parents speculating about the well-being of children whose genes they have shaped to suit their chosen projects, there is an obvious and substantial danger of wishful thinking here.

¹⁶ Note that the usual set of arguments as to why we would adopt such a reserved position on the value of our own judgments about life plans presuppose a motivation to be concerned for the well-being of those with life plans we despise that, I argued above, is lacking when we are considering the case of future persons.

4. WHEN MAXIMIN FAILS

The limitations of the maximin principle, which I have identified here, mean that it is not capable of playing the role at Agar requires of it. Agar wants to allow genetic interventions without leading to a world of greatly reduced diversity. Yet, separately and together, the difficulties noted above mean that the range of genetic modifications permitted by liberal eugenics will be strongly influenced by the existing distribution of life plans across a society

If there are no ‘general-purpose’ capacities that will satisfy the maximin test then any decision parents make about their child’s genes will negatively affect some morally acceptable life plans. Given that once parents began modifying the genetics of their children it is inevitable that their decisions will limit the options available to their children, parents might as well aim to provide them with the set of capacities that they believe to be best. While they should obviously exercise some caution in relation to how narrow a range of life plans they try to advance for (and in) their children for reasons similar to those that Agar surveys, no matter what genes they choose they will be disadvantaging certain life plans and advancing others. The failure of Agar’s attempt to restrict the scope of the maximin principle to *modifications* of capacities makes the dilemma facing parents especially urgent as it seems that even if they turn their back on genetic technologies they cannot help but be at least partially responsible for the flourishing of their children’s life plans. Moreover, it is implausible to expect that parents should always be concerned about the impact of their choices should their children grow up to adopt life plans that are radically different to their own. Finally, if parents *must* inevitably make reference to their own ideas about the proper ends of a human life in thinking about the wellbeing of the children they are going to bring into the world then the genetic interventions each generation chooses will be strongly influenced by the existing distribution of ideas about the good. For all these reasons, attempts to regulate genetic interventions according to the maximin principle will not prevent a homogenizing influence being exercised on the society of the future by the current distribution of ideas about how life should be lived once the use of genetic technologies becomes widespread.

4.1 Liberal eugenics and the state

One possible response to my concerns about motivation, and perhaps about determinations of wellbeing, is to deny that it should be parents making these judgments about wellbeing.

This has some initial plausibility. After all, why should the wellbeing of future persons be the exclusive concern of their parents? Parents do not own their children, and the welfare of children is not exclusively the concern of parents. If parents mistreat their children then society, represented by the state, may intervene in order to protect them. This already occurs if the choices parents make in relation to their children's education look likely to severely curtail their life prospects in the future [Feinberg 1980]. While we allow parents substantial liberty in relation to the education of their children, if they seek to excessively limit their children's future we demand that the state should intervene to defend their children's interests. There is a precedent here for the state taking action to enforce the maximin principle [Buchanan et al. 2000: 171; Fox 2007].

Proffering the state as the agent whose responsibility it is to ensure that genetic interventions are regulated by the maximin principle *appears* to offer a solution to the problem of motivation. While individuals have no reason to be concerned about the future flourishing of life plans they despise, it might be argued that the state, as the neutral guardian of the interests all citizens, including future citizens, does. In fact, the question remains why anyone might believe that this is the proper role of the state in relation to future persons: to discuss this matter further would require revisiting arguments already surveyed at length above; reasons of space prevent me from doing so here.

In any case, appointing the state as guardian of childrens' interests, is at best only a partial solution to the question of how we should assess wellbeing posed above. The force of the argument above, that choices based on judgments concerning the relative merits of competing life plans are inevitable for a number of reasons, is not reduced by making the state, rather than individual parents, responsible for these judgments.

This has a number of significant and unfortunate consequences for the overall shape of Agar's account. Most obviously, it reduces the difference between liberal and traditional eugenics. The history of state sponsored eugenic programs is an exceedingly grim one. Yet it turns out that liberal eugenics is also motivated and guided by substantive judgments about the nature of the good, made and administered by the state. The state would be playing a direct role in shaping the genetics of our future society. Those with unorthodox ideas about life plans will not be allowed to use genetic technologies to assist their children to pursue these. A 'liberal' eugenics, in which the state determines eugenic goals, and which restricts some parents access to eugenic technologies, is not so different from the old eugenics.

5. THE SHAPE OF EUGENICS TO COME

My analysis of Agar's argument therefore suggests that attempts to formulate liberal eugenics confront the horns of a dilemma.¹⁷

If they allow that parents are the proper location of a concern for the wellbeing of future children then, I have argued, it is inevitable and proper that assessments of the worth of life plans enter into parent's assessment of which capacities to enhance. This has two consequences. Firstly, the choices of some parents are going to look counter-intuitive – even repugnant – to other individuals and perhaps to most liberals [Savulescu 2002]. Secondly, insofar as parents are influenced in their attitudes by the attitudes and decisions of others, this opens the door for eugenics via the 'tyranny of the majority'.

¹⁷ In a paper published in *Medicine, Health Care, and Philosophy* recently Teun Dekker has also argued that liberals face the horns of a dilemma and must choose between defending the freedom of parents or defending the *autonomy* of children. However, his account neglects the Rawlsian aspect of Agar's original paper on Liberal Eugenics and is therefore too swift to identify Agar with one 'horn' of this dilemma. Moreover, Dekker accepts what I have here denied – the existence of genetic interventions that would improve the prospects associated with all possible life plans (which he calls 'natural public goods') – with the consequence that he believes that it *is* possible to promote the future well-being of children without reference to substantive conceptions of the good. These differences between us mean that it is not possible to neatly map the different positions Dekker identifies onto those I have discussed here [Dekker 2009].

If, in order to avoid these consequences, we insist that the state should guard the wellbeing of future citizens against their parents, then liberal eugenics does not look all that different from a more traditional eugenics. It will rely upon the regulative authority of the state, and do so in the service of non-neutral assumptions about the relative merits of different life plans.

Given that Agar advertised liberal eugenics as a palliative to concerns about the authoritarian nature of traditional eugenics, I believe that liberals should choose the first horn of this dilemma. That is, liberals should allow parents to modify their children however they like. In the short term its consequences for the human genome are unlikely to be too confronting. However, in the longer term, it is likely that liberal eugenics will have the diversity reducing consequences that Agar set out to dissociate it from. In embracing liberal eugenics, we are embracing eugenics, if not by the state, then by public opinion and market forces.

There are arguments in favour of liberal eugenics beyond those that I have had opportunity to consider here: in particular, that the possible reduction of diversity is a price worth paying in order to defend the freedom of parents to shape their children as they desire or to engage in the ‘inescapable eugenics’ required to avoid the birth of children with life-threatening disabilities. Our ultimate assessment of liberal eugenics will depend on our answers to these further questions. However, what I have shown here is that, if we do adopt liberal eugenics, we may well threaten the human diversity that liberalism in other contexts has been at pains to defend.

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