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Correspondence to Dr Robert Sparrow, Centre for Human Bioethics, School of Philosophical, Historical, and International Studies, Monash University, Clayton, Victoria 3800, Australia; robert.sparrow@arts.monash.edu.au

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Harris, harmed states, and sexed bodies

Robert Sparrow

ABSTRACT

This paper criticises John Harris's attempts to defend an account of a 'harmed condition' that can stand independently of intuitions about what is 'normal'. I argue that because *Homo sapiens* is a sexually dimorphic species, determining whether a particular individual is in a harmed condition or not will sometimes require making reference to the normal capacities of their sex. Consequently, Harris's account is unable to play the role he intends for it in debates about the ethics of human enhancement.

INTRODUCTION

In a series of books and papers published since the early 1990s, John Harris has developed and defended an ethics of human enhancement that denies the normative significance of the capacities of a "normal human body". Instead, Harris uses the idea of a "harmed condition" to distinguish those cases where we are obligated to use available medical technology to transform the capacities of particular bodies from those where we are not. I will argue that Harris fails in his attempt to provide an account of a "harmed condition" that can stand independently of intuitions about what is "normal". The fact that *Homo sapiens* is a sexually dimorphic species means that attempts to evaluate whether a given individual is in a harmed condition will sometimes require making reference to their sex—and therefore to the normal capacities of that sex. This, in turn, has implications for the plausibility of Harris's account of the reasons we have to enhance human beings.

HARRIS AND HARMED STATES

The debate about the ethics of human enhancement is perhaps the most vigorous controversy in bioethics and applied ethics today. Harris's account of the reasons we have to 'enhance' human beings is simple. By definition, 'enhancements' are things that make people's lives go better. As Harris points out, a concern for wellbeing suggests that we have reason to want people to have better lives regardless of whether we are considering 'therapy'—restoring normal functioning—or 'enhancement'—improving functioning beyond the species norm.^{1–3}

The application of this argument is straightforward when enhancements involve improvements to the capacities of existing persons, as is the case, for instance, with vaccinations, cosmetic surgery and hormonal contraception. As to deny such enhancements to individuals is to condemn them to lower wellbeing than otherwise would be the case, Harris suggests that we are *prima facie* obligated to make these enhancements available to

everyone. More controversially, Harris has argued along the same lines for the use of germline gene therapy to enhance human beings.^{1, 4}

However, Harris is also concerned to promote the benefits that might be achieved through the use of technologies of genetic selection to choose which people come into the world. Genes play a fundamental role in human biology and it seems likely that if we can choose the genes of our children we may be able to 'enhance' them in various ways that might have quite significant impacts on their life prospects and wellbeing. For those couples willing to reproduce using in-vitro fertilisation, preimplantation genetic diagnosis (PGD) already makes available the option to choose embryos—and therefore children—on the basis of knowledge of their genes. More speculative technologies, such as cloning or the creation of multiple embryos using ova derived from patient-specific induced pluripotent stem cells, hold out the prospect of more extensive control over our children's genes and therefore of more significant enhancements.⁵

Discussions of the ethics of PGD involve unique philosophical difficulties as a result of the fact that this technology is not 'person-affecting'—as Derek Parfit famously put it.⁶ As a result, it is controversial as to whether or not we may speak of decisions about embryo selection as harming or benefiting specific individuals. If parents decide to bring into existence a 'normal' child with a life expectancy of 75 years, when they might have chosen a child with 'superior' genes that would have a life expectancy of 100 years, then it might appear that their actual child cannot claim to have been harmed by this decision as the alternative would not have led to their having a longer life expectancy but rather to the birth of someone else! Even more paradoxically, for the same reason, as long as parents choose children who have lives that are 'worth living'—in the sense that the overall balance of pleasure and pain is marginally positive so that it would not be reasonable for them to prefer to be dead—their child would seem to have no grounds for complaint.⁷ In these sorts of cases, the counterfactual that is usually held to be central to the concept of harm—if A had acted differently, B would have been better off—fails (if A had acted differently here, B would not have been better off; instead, C would have existed in B's place).

It is in order to negotiate these philosophical subtleties that Harris offers a version of a 'harmed state' account of our obligations to transform the capacities of individuals using our available medical (and other) technology. Harmed state accounts, which focus on the wellbeing of the individual at a given moment rather than a comparison with their state at some moment 'prior' to the harm, do allow

us to describe choices about which people we bring into the world as harming or benefiting those people we do bring into the world.

Harris explains what he means by a 'harmed condition' in the context of a discussion of the nature of disability.

A disability is surely a physical or mental condition we have a strong rational preference not to be in, it is, more importantly, a condition which is in some sense a 'harmed condition'. I have in mind the sort of condition in which if a patient presented with it unconscious in the casualty department of a hospital and the condition could be easily and immediately reversed, but not reversed unless the doctor acts without delay, a doctor would be negligent were she not to attempt reversal. Or, one which, if a pregnant mother knew that it affected her fetus and knew also she could remove the condition by simple dietary adjustment, then to fail to do so would be to knowingly harm her child. (Harris, p 180).⁵

If we bring someone into existence who is in a 'harmed condition' then we have harmed them—even though if we had made another choice someone else would have existed in their place.

It has to be said that both the scope and force of the obligation that Harris argues we have to avoid harming our children in this way remain somewhat mysterious. The fact that he introduces the idea of a 'harmed condition' in the context of the definition of 'disability' might be taken to imply that Harris thinks that we only have an obligation to avoid bringing people into the world with a 'disability'—a not implausible conclusion. However, Harris is very clear that the notion of disability he is defending does not map onto our ordinary notion of an impairment of normal species functioning. He insists that,

...a harmed condition is defined relative both to one's rational preferences and to conditions which might be described as harmful. Disability is then defined not relative to normal species functioning but relative to possible alternatives (Harris, pg 92).¹

Moreover, Harris argues that once the available alternatives include enhancement it may be rational to prefer to avoid being (what we currently consider to be) normal.² In the future, children born with the capacities of normal children today will, on Harris's account, be disabled.

It now appears that our obligations to avoid bringing children into the world in a 'harmed condition' are incredibly—indeed implausibly—demanding: we will be morally obligated to provide each and every available enhancement to our children. Given that Harris has defined enhancements as things that make human lives go better and as it is rational to prefer that one's life goes better, it will be rational to wish to avoid being deprived of any enhancement. Parents who fail to maximise the wellbeing of their offspring by providing them with the full suite of available enhancements will have harmed their children.

Interpretation of Harris's substantive view of the extent of the obligations bearing on parents is further complicated by the use he makes of a distinction between harming and wronging in the context of non-person-affecting choices. While Harris holds that we have strong reasons to avoid harming our children, he does not believe that we wrong them as long as they are born with a 'life worth living' (Harris, pgs 108–19).⁴ As a consequence, he does not believe that it is appropriate for the state to interfere with such choices (Harris, pgs 94–5; Harris, pgs 117–19).¹ He also argues that it is morally permissible for a couple to bring children into the world in a harmed condition if they could have had (genetic?) children no other way (Harris, pg 108).¹ Elsewhere, I

have argued that there are real philosophical tensions involved in maintaining all of these various claims.⁸

Yet while important questions remain about the precise nature and force of the reasons we have to avoid harming our children in non-person-affecting choices, Harris's notion of a 'harmed condition' does provide philosophical support for the widespread and plausible intuition that parents are under at least some obligation to be concerned for the welfare of their children when they make decisions about what sort of children they are going to bring into the world. What is far less clear is whether we can in fact, as Harris intends, assess whether someone is in a harmed condition without making reference to an idea of the normal capacities of a human body.

HARMED STATES AND SEXED BODIES

Homo sapiens is a sexually dimorphic species. Naively, the human race is divided into men and women: in fact, humans display a range of sexual characteristics and traits, with some individuals possessing traits from both sexes.⁹ ¹⁰ Nevertheless, the two biological sexes, male and female, are both statistically normal and species typical—in the sense of being necessary to characterise the species *Homo sapiens* properly. Male and female individuals have very different reproductive capacities; there are also significant other differences in physiology and metabolism between the sexes.¹¹

As I have argued at length elsewhere, the existence of the two sexes poses a profound problem for advocates for human enhancement.¹² ¹³ Once we start to think of the capacities of humans in terms of what is better or worse the question naturally arises as to whether men or women might have superior capacities. Denying that there is anything special about 'normal' capacities, as Harris does, vitiates the most obvious way to block this comparison.

The emergency room test

The challenge that sexual dimorphism poses for Harris's 'harmed state' account quickly becomes apparent when we introduce sexed bodies into the 'emergency room test'. Imagine that:

A 14-year-old girl and a 14-year-old boy walk into a hospital emergency department, each complaining about their general health after experiencing some headaches and nausea. During the consultation it is discovered that neither has experienced menarche and on examination it is discovered that neither has a womb. Fortunately, the technology to safely transplant wombs has recently been developed and (in one of those coincidences so beloved by medical ethicists) suitable donors are available in the next ward.

It seems clear to me that doctors would be negligent if they did not make a womb transplant available to the 14-year-old girl in this scenario; she is indeed in a 'harmed condition'.¹² However, it does not seem to be the case that the doctors would be negligent if they did not offer a womb transplant to the young boy.¹³ Consequently, the boy is not in a harmed condition. Yet

¹²In the case of the young woman, this scenario is based upon a real condition, Mayer–Rokitansky–Kuster–Hauser syndrome, which sometimes presents precisely as described here.¹⁴

¹³It is a further and distinct question whether there would be anything wrong with making a womb transplant available to the boy, if he should desire it (I am inclined to think there would not be). However, as I discuss further below, because Harris's account of a harmed condition is supposed to guide us in our choices about what sort of people to bring into the world, it does not ask what individual people prefer but rather what it would be rational for them to prefer (Harris, pg 181).³ We cannot, therefore, resolve the question of whether a man without a womb is in a harmed condition by reference to what he desires at the time.

¹An almost identical passage appears in Harris, *Enhancing Evolution* (Harris, pg 91).¹

these intuitions rely crucially on the idea that it is normal for a woman to have a womb and not for a man.¹⁵ That is, they rely upon an account of the capacities of a normal male and normal female human body. When it comes to deciding whether someone is in a harmed condition or not, we must first know their sex, and then compare their capacities with the normal capacities of their sex.

Of course, it is open to Harris at this point to argue that, once womb transplants become safe and available, men are in a harmed condition if they do not have a womb. This would be a brave argument, if only because it would imply that in the not-too-distant future ordinary men will be disabled. However, the real problem with this move is what it implies for 'human enhancement' using PGD.

'What it is rational to prefer'

While the use of PGD to select for genes that might contribute to the development of above-species-typical capacities is largely hypothetical, the use of PGD to establish the sex of an embryo—and thus the presence or absence of a large number of genes—is now a routine procedure. Given the biological significance of sex and the role that an individual's sex often plays in practice in determining their life prospects, one might then wonder about the ethics of choosing the sex of one's child and whether it might be rational to prefer to be one sex or the other.¹⁶

Harris himself holds that it is not rational to prefer to be born either male or female. Gender, he insists, is a 'neutral trait' (Harris, pg 147).¹ Yet in the absence of further argument, which he does not provide, this is extremely implausible in the context of other claims that he makes about what it is rational to prefer.

For a start, Harris is very clear that a variation in capacities does not have to be large in order to count as a 'harmed condition' and therefore a 'disability'.

We have reasons for declining to create or confer even trivial harms, and we have reasons to confer and not withhold even small benefits (Harris, pg 386).²

Harris offers the case of 'the loss of the first joint of the little finger' as an example of a small difference in capacities that is nevertheless a harm (Harris, pg 93).¹ Parents who implant an embryo that has a gene coding for the absence of this joint harm their child if they could have implanted an embryo with the gene for the complete little finger instead. It is hard to believe that the differences between male and female biology have less impact on an individual's life than this!

In fact, there is a significant difference between the sexes that means that male children have something that Harris explicitly mentions as a harm. In an early discussion of harmed conditions, Harris states:

If the condition in question was one which set premature limits on their lifespan—made their life shorter than it would be with treatment, or was one which rendered her specially vulnerable to infection, more vulnerable than others, we would surely recognise that she had been harmed and perhaps to some extent disabled (Harris, pg 180).³

Men do have significantly shorter life expectancies than women, dying on average approximately 3–7 years earlier, partly because men are indeed 'specially vulnerable to infection'

compared with women.⁴ To be born male is thus, according to Harris's own account, to be born 'harmed and perhaps to some extent disabled'.

Harris might want to insist that there are other benefits of being male that compensate for or outweigh the harm men experience by virtue of their reduced life expectancy. The most obvious advantages of being male result from the impact of widespread sexism on the life prospects of men and women. One would want to be careful about concluding that these should enter into calculations about what it is rational to prefer lest the obligation to enhance our children turns into an obligation to reinforce injustice.^{8 18} Nevertheless, perhaps there are other—less problematical—advantages that men have and women lack. If these are substantial enough it may even be rational to prefer to be male. Yet given the extent of the differences in male and female biology it would be truly remarkable if there were really no difference in the expected welfare of male and female children.

NEUTRAL BECAUSE NORMAL?

There is, perhaps, an intimation of these issues in the peculiar way in which Harris expresses the claim that it is not rational to prefer to be born a boy or a girl. Harris claims that:

It is not *ethically* [my emphasis] speaking better to be a boy rather than to be a girl. To say that a human trait or feature is *morally* [my emphasis] neutral is to say that there is no *moral* [my emphasis] reason to prefer to have that trait nor to be without it, no *moral* [my emphasis] reason to try to create that trait or feature, nor any reason to try to eliminate it, no *moral* [my emphasis] reason to hope for it or fear it. In short, gender is not normally the occasion for *rational regret* [emphasis in original] (Harris, pg 147).¹

Note the strange slippage in this passage between what it is rational to prefer and what traits we have 'moral reason to prefer' or what is 'ethically better'. All of Harris's previous discussion of the reasons we have to enhance our children has been expressed in terms of what it is rational—not 'moral'—to prefer and in terms of the expected welfare of the child. In this context, it is hard to see why being born male, with a lower life expectancy and without the capacity to become pregnant, or female, lacking whatever advantages one wishes to attribute to men, could not be grounds for rational regret. Now, all of a sudden, we learn that the real question is not what would harm or benefit us but what it is 'ethically' better to be. The nature of this ethical comparison is left unexplained.

The ideas of what it is 'ethically better' to be and of what traits we have moral reasons to have or not have are therefore extremely mysterious. However, even the introduction of the more familiar idea that we might have no moral reason to create a trait is puzzling in this context. What 'moral' reasons could there be, for instance, for allowing male children to be born in a harmed condition with shorter life expectancy?

It is true, as I noted above, that we do not typically think that it would be negligent not to treat someone for their sex if they came into the emergency department. However, as we have seen, that is because we make reference to a notion of the normal capacities of each sex. Harris disavows the idea that we

¹⁶Of course, the ethics of sex selection may not be settled by whether it is rational to prefer male or female children. However, if Harris is right about the sorts of reasons that should bear on our reproductive decision-making, this question will be crucial.

⁴For male and female life expectancies around the world, see WHO, *World Health Statistics 2009*, Table 1.¹⁶ For discussion of the reasons why men tend to die younger, see also Cameron and Bernardes, 1998.¹⁷

should make reference to what is normal in determining whether we have reason to treat or enhance. He also derides several of the other arguments that might be made to resist sex selection, when they are made in defence of the idea that we have no reason to select against deafness or other forms of disability. Therefore, if Harris is to be consistent with his discussion of disability, it is not open to him to argue that the two sexes represent different ways of being, 'neither better nor worse than each other' (Harris, pg 384);² that the existence of two sexes contributes to diversity and the richness of life; (Harris, pg 106)¹ or, that to acknowledge that one sex is better than the other would express a morally reprehensible attitude towards existing members of the 'inferior' sex (Harris, pgs 95–107).¹ The comparison with arguments about disability is important here because the moment we abandon the idea that the wellbeing of the child should be the determining consideration in decisions about treatment and enhancement and introduce the idea of what is 'ethically better'—or allow other 'moral reasons' for our choice—a significant conceptual space opens up for disability activists to argue that it is not 'ethically better' to have normal capacities rather than the capacities of people with various disabilities or to insist that we also have 'moral reasons' not to select against disabilities. Why should the difference in the capacities of men and women be the only difference that we have no 'moral reason' to eliminate?

Harris therefore owes his readers an account of what other reason there might be for thinking that there is no question about whether it is better to be a boy or a girl. This account must explain the relationship between what it is rational to prefer and the as-yet significantly under-described notion of the capacities that it is 'ethically better' to be born with. In order to be consistent with his previously published claims, Harris will somehow need to explain why we have grounds for preference between any number of other small differences in capacity but no grounds for preference between the normal capacities of men and women—without making reference to the idea of the normal. This is, I think it is fair to say, a formidable task.

IMPLICATIONS

Until Harris provides such an explanation, his 'harmed state' account cannot underpin a plausible ethics of human enhancement. When it comes to those aspects of human biology that differ between the sexes, the 'emergency room test' works—if it works at all—by making reference to a notion of the normal capacities of each sex. Without the notion of the normal, we cannot avoid the conclusion that it is rational to prefer to be one sex rather than the other. I have not attempted here to determine which sex has superior capacities: what matters for the evaluation of Harris's argument is only that it is vanishingly

unlikely that neither sex is superior. Harris's account will thus imply that either male children or female children are born in a condition that it is rationally preferable to avoid and are thereby disabled. Moreover, parents will be obligated to use sex selection technologies to avoid harming their children by allowing them to be born the inferior sex; the force of this obligation will be precisely as strong as the obligation Harris believes parents have to enhance their children or to refrain from bringing them into existence with other unavoidable disabilities.^{vi} The conclusion that 50% of the population are in a harmed condition—and that 50% of those parents who have conceived children naturally since the invention of sex selection technologies have harmed their children by allowing them to be born in this state—is too high a philosophical price to pay for Harris's enthusiasm for enhancement.

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^{vi}The aggregate impact of parents acting on this obligation might well be problematical—at least until humans are capable of reproducing without both sexes. However, this is an argument against a policy of routine sex selection for one sex rather than against the existence of an obligation on parents to promote the welfare of their child. Moreover, Harris is justifiably cynical about the ethics of allowing some people to be born in a harmed condition in order to produce some public good (Harris, pg 106).¹ For further discussion, see Sparrow.^{12 13}