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# Genetic Enhancements and Expectations

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## **Genetic enhancements and expectations**

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### **Abstract**

Some argue that genetic enhancements and environmental enhancements are not importantly different: environmental enhancements such as private schools and chess lessons are simply the old-school way to have a designer baby. I argue that there is an important distinction between the two practices – a distinction that makes state restrictions on genetic enhancements more justifiable than state restrictions on environmental enhancements. The difference is that parents have no settled expectations about genetic enhancements.

## Genetic enhancements and expectations

Maybe genetic enhancements like IQ and memory boosts – when, if ever, they become possible – are not so different from environmental enhancements like private schools, tutors, camps, and lessons. Private schools and chess lessons are simply the old-school way to have a designer baby. Or at least so some argue.

May a parent use genetic enhancements? It is likely that some parents will want to. But the question I want to discuss here is this: are there any grounds on which the rest of us might be justified in using the law and other institutions to prevent parents from using genetic enhancements – especially when we do not prevent them from using environmental enhancements for the same purpose? Parents are usually understood to have broad freedom with respect to the measures they can take with their children; an important question concerns whether parents should have that same latitude with respect to new genetic technologies.

One obvious answer focuses on risk: for some time these new genetic technologies may lack the relative safety of environmental interventions. But eventually risk will diminish and questions about access will return.

A second answer justifies restricting access based on putative intrinsic differences between genetic and environmental interventions. Environmental interventions do nothing more than bring out the best in individuals, while genetic interventions change the *identity* of the individual; and this distinction justifies stricter laws and policies regarding the use of genetic measures – or so the argument goes. This second answer has come under increasing criticism.

An even more common target of criticism is a claimed distinction between treatments for disease and enhancements. Genetic interventions that treat diseases should be available and legally permissible, but not those that enhance, some have argued. But it has proven difficult to distinguish treatments from enhancements in any stable way. And in any case, the distinction would not address our question, since both classes of intervention that interest us are enhancements.

I want to defend a different answer. Both types of intervention exacerbate existing inequalities. Many environmental measures that significantly increase a child's economic and social opportunities are available only to the wealthy, and this will also certainly be the case with new genetic measures. Exacerbating inequality is morally worrisome, but this alone is not enough to distinguish between the environment and genetics, since both kinds of enhancement can make inequality worse. However, there should be stronger constraints on parental use of genetic interventions than on environmental measures. An important difference between the two, setting aside risk and claimed identity-changing issues, concerns *expectations*. Parents have settled expectations in the case of environmental interventions: they have formed and initiated plans and projects around the freedom to send their children to certain schools and lessons. No such expectations yet exist for new genetic technologies, precisely because they are new.

## **THE CONSISTENCY ARGUMENT**

Some think that consistency demands that we treat genetic and environmental interventions the same. They concede that these interventions increase inequality; and

they also concede that this inequality is morally undesirable. But the fact that parents already have broad rights to use environmental means to improve their children's opportunities seems to entail that genetic means for the same purpose must also be equally unrestrained. The abstracted argument seems to be this:

#### The Consistency Argument

1. X is a state-permitted practice that results in some economic inequality.
2. Y is a new practice that is expected to result in some economic inequality.
3. If X and Y are expected to be relevantly similar practices, then the state must also permit Y.
4. X and Y are expected to be relevantly similar practices.
5. Therefore, the state must also permit Y.

Here "X" is the use of environmental interventions to improve one's children, and "Y" is the use of genetic interventions to improve one's children.<sup>i</sup>

Fans of consistency who also worry about inequality may choose to take the argument in a different direction: they may think that *both* sorts of intervention should be impermissible. In its extreme form, this argument strips parents of any rights to shape their children at all. A less extreme form puts limits on parental shaping rights when the inequality they promote is above some significant threshold. For now, I want to concede instead that the state is correct to allow parents to use environmental interventions that promote inequality.

The first two premises of the consistency argument seem plausible. But some will want to question premise four: some will think there is an important intrinsic difference between the types of interventions. Genetic interventions change an individual's identity, the argument goes, while environmental interventions do not. Environmental means

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<sup>i</sup> Something like this argument seems implicit in Buchanan, Brock, Daniels, et al.[1] The authors have their own worries about this argument.

merely “bring out the best” that is already inherent in a child without changing who he or she is. By contrast, genetic interventions change something more fundamental and essential to the child’s identity.

But this argument relies on a tendentious and simplistic notion of personal identity. First, it is not clear that the child *has* a singular identity at the points of its existence that interest us – at least, a singular identity in the sense needed for the argument to work. A fetus or newborn has a set of genetic predispositions, none of which necessarily add up to a single, clear individual. Altering these predispositions would not necessarily change who the being *is*, because there is not yet a stable, single being *to be* changed. The case is even clearer in the case of pre-conception interventions: here there is certainly no single individual who might be altered. Second, even in a stable, single individual, genetic changes would not necessarily constitute an identity change. Suppose we were able to boost your immune system; you would not think you were a different individual if this procedure were performed on you. And it would not seem to matter to personal identity if the procedure were environmental (say, a vaccination) or genetic.<sup>ii</sup>

Instead I want to challenge the third premise of the consistency argument. Suppose we concede that genetic and environmental interventions are relevantly similar practices: there is nothing intrinsic to each that lets us distinguish them when it comes to the question of what, through institutions and the law, we should allow others to do. But it is not the case that we can make no other distinction here. I believe that an important difference between the two lies instead outside them, in the social practices that have

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<sup>ii</sup> For a similar argument, see Buchanan, Brock, Daniels et al.[1] pp. 159-161. I do think there is a better argument for an intrinsic difference between the two types of interventions. There is a sense in which genetic interventions change the *range* of capabilities and attributes an emerging individual might have in a way quite different from environmental interventions.

formed around one but not the other. In other words, though relevantly similar *intrinsically*, the use of these interventions is importantly different *extrinsically and externally*.

The external difference is best captured by the notion of *expectations*. Expectations are beliefs about futures states of affairs around which people choose projects and structure their lives. Some expectations are unreasonable, and some are fleeting: these are probably not morally important. But reasonable, stable, settled expectations can matter a great deal. And it is the moral weight of settled expectations that explains why the state is permitted to make more intrusive restrictions on access to emerging genetic technologies. People have settled expectations about environmental interventions such as private schools and tutors; but they do not have these expectations about forthcoming genetic interventions. The notion of expectations lets us reject the third premise of the consistency argument and defend instead what we might call the “Pre-Emption Principle:”

#### The Pre-Emption Principle

The state is more justified in restricting one of a class of relevantly similar practices if:

- (i) The practice would substantively worsen existing economic inequality; and
- (ii) The practice is new, such that no settled expectations have been formed on it.

## **EXPECTATIONS**

Expectations are an important but underappreciated factor in normative ethics.<sup>iii</sup> We characterized expectations as beliefs about futures states of affairs around which

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<sup>iii</sup> But see Leslie P. Francis’s work on expectations.[2, 3] Although I concede in this paper that parent expectations about environmental interventions can be reasonable and morally weighty, Francis argues for

people choose projects and structure their lives. Why should we think they have moral weight?

A central argument for the importance of expectations concerns the value of autonomy. We take it as morally weighty that rational beings can choose ends and pursue them in certain uncoerced ways. We value both the capacity itself and specific exercises of that capacity. The weight autonomy has is not absolute: the autonomous choices of different agents can clash, and there may be other relevant moral factors as well. But autonomy is morally important – even for consequentialists, who take it as often instrumentally valuable.

Expectations have weight because they are tied to autonomy: agents choose projects on the understanding that social conditions and other matters will stay the same, or at least change in predictable ways. Agents cannot meaningfully exercise their autonomy in the absence of some sense of how their choices will turn out. Valuing autonomy means creating and protecting the conditions under which it can be meaningfully exercised. So expectations are morally important.

The claim is not that all reasonable expectations must be met: bad luck – natural disasters and accidents, for instance – can destroy even modest projects. And the claim is not that social conditions must never change; that would be both impossible and hopelessly conservative. But broad stability and reliability in social conditions is important – especially when the autonomous choices at issue concern having and raising children, among the most intimate and personal choices human agents have. Parents who attempt to improve their children’s capabilities and opportunities operate squarely within

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more caution: parental expectations about private schools might be weak or negligible in light of the background injustice of great disparities in wealth and opportunity.



this set of intimate, personal choices. Expectations will matter here if they matter anywhere. Under current social conditions, parents can send their children to private schools, involve them in sports organizations and chess clubs, provide them with music lessons and advanced technology, and improve their health through promoting exercise and proper diet. Any and all of these interventions can give children competitive economic and social advantages – advantages that generally translate into greater wealth and well-being. In the aggregate, these interventions can promote widespread inequality, something morally worrisome in the degree to which it currently exists.

Among these environmental interventions, we might think some more protected against state and institutional interference than others. Some interventions are particularly personal and close to parents – passing on a love of books or music or activity, for instance. These and other interventions are usually available to all parents, regardless of income or social status. Promoting exercise and good diet need not require more than a modest income (although even here the least well-off can be victims of poor education concerning diet and health). But other environmental interventions are only available to the well-off. Private schools are the paradigmatic case. It is here that the consistency argument is most relevant: if we allow well-off parents to use these means to help their children, why should we not also allow well-off parents to purchase genetic interventions for the same purpose?

Expectations provide a crucial answer. Generations of parents have been able to plan their lives and their children's lives around the existence of private education. Morally weighty expectations reside in non-parents as well: participants in private schools, from local private elementary schools to Ivy League behemoths, have structured

their lives around the continued existence of these institutions. Donors to these institutions expect their contributions to promote certain ends even after they die. But the central case concerns parents, since the most important expectations are those that concern relationships with one's offspring.

A controversial example of the use of expectations appears in the opinion written by Justices O'Connor, Kennedy, and Souter for *Casey v. Planned Parenthood* (1992). *Casey* was of course a direct challenge to *Roe v. Wade*, and many predicted that the Court might directly overturn *Roe*. Instead *Roe*'s "central holding" was upheld, although with a significant shift, from allowing restrictions on abortion only when there exist compelling reasons, to allowing restrictions on abortion when these restrictions do not impose an "undue burden" on the right to choose. Most important for our purposes are the justices' arguments in *Casey*'s joint opinion. O'Connor, Kennedy, and Souter might not have voted for *Roe* in 1973; but they were unwilling to overturn its central holding because people have formed settled expectations about the choice to have an abortion. The justices say that to overturn *Roe* would deny the fact that

"...for two decades of economic and social developments, [people] have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." [4]

The fact that people have "ordered their thinking and living around" [4] *Roe* puts constraints on what the state may do in this case. Whatever we think about the rest of *Casey* (including the "undue burden" standard, and what Scalia claims is an improperly

*selective* use of *stare decisis*), the justices are right to concern themselves with expectations.

Analogously, the fact that people have “ordered their thinking and living around” the existence and availability of environmental interventions to improve their children puts some constraints on state intrusion. These constraints are defeasible, and I defend no particular position here about their strength. But a crucial point is this: people have no such settled expectations about *genetic* interventions. Genetic measures aimed at increasing a child’s abilities and opportunities are still largely theoretical, and those that do exist – sex selection, for instance – are still new and controversial enough that few have made personal and intimate project choices based on them.

Expectations limit what the state can do to reduce side effects of environmental interventions that promote economic inequality; but there are fewer such expectations-based limits on the state in the case of genetic interventions. Even if there are other factors that argue for limits on the state, proponents of the consistency argument simply fail to notice the moral weight of expectations. State restrictions on genetic enhancements are more justifiable than state restrictions on environmental enhancements.

Competing interests: None

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