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Tolerating the Intolerable: The Case of Female Genital Mutilation

The case of female circumcision (or female genital mutilation—FC/FGM) raises the broader question of what stance the liberal constitutional state should adopt when cultural customs offensive to its citizens are practiced in countries outside its jurisdiction or in minority communities within it. The author argues that one can support international efforts for a global ban on FC/FGM but tolerate the practice in liberal democratic societies.

Xiaorong Li 2

Killing Mary to Save Jodie: Conjoined Twins and Individual Rights

In September, 2000, British surgeons separated month-old conjoined twins against their parents' wishes. The operation prolonged indefinitely the life of one twin while causing the immediate death of the other. The author analyzes the competing views of the twins' embodiment that informed the debate over their separation, and argues that the resolution of their conflicting claims was a more difficult task than either side of the debate acknowledged.

David Wasserman 9

Workplace Wars: How Much Should *I* Be Required to Meet the Needs of *Your* Children?

In exploring the charge that "family-friendly" policies in the workplace penalize fellow workers without children, the author argues that all of society's members share some responsibility for assisting parents in raising children well, that this responsibility is best met by broadly shared tax policies and government programs, and that working parents must be realistic about the tensions that exist between work and parenthood.

Claudia Mills 15

The Ethics of Making the Body Beautiful: What Cosmetic Genetics Can Learn from Cosmetic Surgery

The author considers several recent ethical attitudes toward cosmetic surgery in order to anticipate and offer recommendations concerning the ethical challenges society will encounter when genetic therapies used for cosmetic purposes become a real option in the future.

Sara Goering 21

Tolerating the Intolerable: The Case of Female Genital Mutilation

Xiaorong Li

Recently, when a hospital in Seattle revealed its plans to design a medically safe clitoridectomy, the public reacted with such outrage that the plans were abandoned. In the Boston area, doctors at the African Women's Health Practice (part of the obstetrics and gynecology department at Brigham and Women's Hospital) champion efforts to ban the practice globally but at the same time treat Somali immigrants suffering complications from the procedure.

A little known legislative act, passed in 1996, makes performing clitoridectomy on underage persons in the U.S. illegal, implying that adults are free to undergo the procedure. At the same time, however, U.S. policy condemns the practice in other countries. The U.S. has granted asylum to some who have fled their home countries in fear that the surgery would be forced upon them. In a celebrated decision, the U.S. Immigration Appeal Court in 1996 granted political asylum to Fauziya Kassinga, a nineteen-year-old citizen of Togo, who had been sheltered from forced clitoridectomy by her father, a wealthy businessman, until his death.

One must ask what a liberal constitutional state . . . should do when cultural customs offensive to . . . its citizens are practiced either in countries outside its jurisdiction or in minority communities within it.

In advocating a policy that condemns the practice abroad, the U.S. seems at least in part to rely on the view held by international human rights organizations and the United Nations. They call for an end to female circumcision worldwide, insisting that it is a violation of women's human rights. (Some assert that "female circumcision" is a euphemism and insist that the practice more precisely be described as "female genital mutilation." This article hereafter refers to the practice as FC/FGM.) International human rights advocates and some liberal philosophers insist that one standard must be applied in all places: because FC/FGM violates human rights, it must be banned both abroad and in the U.S.

But not everyone agrees with this single-standard approach, and some support a different single standard. Cultural relativists, for instance, insist that one should tolerate both abroad and at home *any* practice that is meaningful to a culture—and thus FC/FGM should be accepted worldwide. Complicating matters further, American public sentiment at times seems to reject both views, and instead expresses support for a dual standard: the public seems to want to prohibit FC/FGM in liberal societies, but it is reluctant to intervene in other societies where the practice is part of the culture.

Not only does the apparent inconsistency in the domestic and international positions of the U.S. require explanation, but its inconsistent position also raises a broader question. One must ask what a liberal constitutional state—such as the U.S.—should do when cultural customs offensive to the liberal conscience and values of (most of) its citizens are practiced either in countries *outside* its jurisdiction or in minority communities *within* it. This question will become an increasingly salient public policy issue since, as the community of émigrés expands, those who value controversial traditions will want to practice them in an adopted country.

This article rejects the notion that a single standard applies in all cases, and explores yet another possibility, suggested by the 1996 legislation. The article makes the case for a dual standard. That is, one can reasonably support international efforts for a global ban on FC/FGM, while at the same time urging toleration of the ritual in liberal democratic societies.

To make this case, the article first presents a hypothetical scenario to bring to light an ambiguity in the 1996 legislative act concerning the U.S. position toward FC/FGM. The article then outlines the arguments for two very different and incompatible attitudes toward FC/FGM. Human rights advocates argue for a global ban on FC/FGM, while cultural relativists insist that the practice should be tolerated. The article next turns to two accounts of liberalism, and here too conclusions differ. Liberal feminism supports a ban on FC/FGM; a second liberal argument, sometimes termed "liberal cosmopolitanism," favors toleration of the practice in other cultures but allows for its ban in liberal societies. Critically examining these philosophical positions allows one to reason-



"Thanks, mom, for not circumcising me," reads the sign of one woman who, among hundreds of marchers in downtown Nairobi on July 31, 1998, marked the start of a U.N. campaign to combat violence against women in Africa. (AP Wide World Photo/Khalil Senosi)

ably support the *reverse* of the liberal cosmopolitan standard—that is, liberal states should *oppose* FC/FGM practiced abroad but *tolerate* it at home.

Dual Standards at Home and Abroad

The World Health Organization has distinguished four types of FC/FGM, ranging from the most thorough excision of female genitalia to a less drastic ritual cutting. Depending on what type of FC/FGM is performed, the immediate health consequences of the procedure can include such complications as pain and bleeding that can lead to hemorrhage and even death. Long-term consequences can include irreversible loss of the clitoris, and possibly the outer and inner labia. Chronic infection, infertility, difficult pregnancy and childbirth, as well as painful sexual intercourse and menstruation, are also common permanent effects of the procedure.

To better understand the complex ethical issues and often conflicting sentiments that surround FC/FGM, consider the following scenario. Imagine X, an adult female citizen of the United States, who strongly desires to assert her cultural affiliation and believes that by undergoing FC/FGM she signals her fidelity to a notion of female chastity and ideal womanhood shared by her community. (For the sake of argument, it is irrelevant whether X was born into, has inherited, or has converted to the tradition.) Along with other like-minded persons—most likely first or second generation immigrants from countries where FC/FGM is widely practiced—she hopes to establish the tradition in her adopted country.

To bring the salient elements of the case into stark relief, one must allow three further assumptions. First, one must accept that X is of a normal frame of mind, i.e., she is psychologically fit and suffers from no recognizable psychological disorder involving, for instance,

impulses for self-mutilation. She also is capable of understanding general health information and making day-to-day decisions. Second, it is important to assume that, in theory if not in practical application, X—like all women in the U.S.—enjoys full constitutional rights and has recourse to legal protection from persecution if she chooses *not* to undergo FC/FGM or if she wants to leave her cultural group. She also enjoys a full range of socioeconomic opportunities, including the freedom to marry the person of her choice. (We may further assume that adults in the larger society are generally reluctant to choose circumcised women as wives or sexual partners. Thus, X understands that undergoing FC/FGM means that her choice of partners may be limited to those who

ing its implicit permission for adults in the U.S. The remainder of this article argues that there exist morally plausible considerations that support the dual standard suggested in the 1996 Act. That is, X should be permitted to choose FC/FGM in liberal constitutional states, while the procedure ought to be prohibited in countries where basic rights are in jeopardy and women are systematically discriminated against and subjugated. To make this case, it is useful first to turn to two philosophical positions that insist on a single standard: international human rights advocates support a worldwide ban on FC/FGM; cultural relativists contend that the practice should be tolerated globally.

Those who choose FC/FGM for a daughter often consider the ritual necessary to secure her social acceptance and socioeconomic security.

share her traditional values.) One must assume, finally, that X enjoys access to medical technology and facilities that allow her doctors to perform the procedure safely and with minimal adverse health consequences. Presented in this way, the case of X raises the following question: Should the liberal society tolerate X's choice to undergo FC/FGM and refrain from intervening with those who assist in the surgery?

Although no woman has relied on the U.S. courts to assert her right to undergo the procedure, the 1996 "Federal Prohibition of Female Genital Mutilation Act" denies FC/FGM only to women under eighteen years of age. But the Act raises many questions. It authorizes U.S. representatives at international financial institutions to "use the voice and vote of the United States to oppose any loan or other utilization of the funds of their respective institution, other than to address basic human needs" for any government or country, which "(1) has, as a cultural custom, a known history of the practice of female genital mutilation; and (2) has not taken steps to implement educational programs designed to prevent the practice of female genital mutilation." The Act mandates that the U.S. refuse loans to countries in which FC/FGM is commonplace, but offers no assistance for programs aimed at empowering women and girls. The Act is also too blunt, drawing no distinction between surgeries performed on women and those performed on minors.

As important, it is hard to know how to apply the Act to the U.S. domestic scene. Were X to rely on the Act to support her desire to pursue FC/FGM in the U.S., a firestorm would likely result. The Act is absolute in its condemnation of the practice abroad, but little thought seems to have been given to defend-

The International Human Rights Argument for Global Prohibition of FC/FGM

In advocating a global ban on FC/FGM, the international human rights camp does *not* stress that the practice offends the liberal moral conscience, nor does it insist that FC/FGM is an extension of cultural beliefs about female inferiority and subjugation. Instead, it contends that FC/FGM is an act of violence—often forced upon girls and women—which threatens lives and health. It insists that the practice violates the basic right to be free from degrading, cruel, and inhumane treatment.

The human rights camp has a convincing case, particularly when one realizes that FC/FGM is routinely forced on girls as young as four or five years old, and the practice is sustained through social coercion. Most would conclude that young girls cannot offer their free consent based on a full understanding of the consequences of the procedure. Though older girls might better understand the health consequences of the ritual, their dependence on their family, friends, and a social network—the same group that also demands that they undergo FC/FGM—effectively bars them from offering their free consent.

The issue of informed consent is a complicated one, however. In general, parents should be trusted to make decisions to promote the wellbeing of their children. Those who choose FC/FGM for a daughter often consider the ritual necessary to secure her social acceptance and socioeconomic security. (It is also common for parents and relatives to restrain girls during the procedure and to hunt for them if they escape.) Adults who elect to undergo FC/FGM prior to their marriage, or after the birth of their first child, may also see the surgery as a means to secure their social status. However, to argue that these instances represent informed or free actions ignores the fact that those who refuse the procedure—for themselves or their female relatives—are guaranteed an equally, or more, painful life of economic deprivation and social ostracism.

One cannot be said to have real choices if the options are so few and so bleak. So long as the basic political and social structures of some societies remain patriarchal—girls and women continue to face unequal access to education, are allowed only restricted employment outside the home (if employment is allowed at all), and must rely on marriage and motherhood for their livelihood—decisions to undergo FC/FGM are not freely made.

However, no one—citizens of liberal states included—enjoys complete freedom of choice. In the U.S., for instance, the choice to diet or undergo cosmetic surgery is undoubtedly conditioned by dominant social (and often media-driven) notions of beauty, and thus these “choices” also are not made in complete freedom. But there is a morally significant difference between *having no choice* about one’s basic security and life prospects without undergoing FC/FGM on the one hand, and, on the other, *finding it difficult* to resist or escape from the pressure of socially dominant notions of beauty. Women in the U.S. can live good lives without surrendering to such social pressures, but women in many societies who escape FC/FGM are denied socioeconomic security and fear that their choice will be overturned by force.

Another critique of the conventional approach by human rights groups is that legal bans on FC/FGM have proven ineffective in the absence of measures to address the inequities that perpetuate the practice in the first place. Although the governments of the Sudan and Egypt banned FC/FGM in the 1940s and 1950s, one finds little evidence of decline in the number of procedures performed, or of improvement in the legal and socioeconomic status of women. Today, from 60% to 90% of all women and girls undergo FC/FGM in those African countries where the practice is traditional, *regardless whether the practice is legal or not*. Further, prosecution of those who take part in FC/FGM only compounds the problem, driving the practice underground to be performed in unsafe conditions.

An effective campaign against FC/FGM on human rights grounds requires the recognition that undesirable consequences of the practice are worsened by the absence of structural protection of women’s basic rights. Such practices can be called “structure-sensitive,” and FC/FGM is but one example of a structure-sensitive practice. Although not all structure-sensitive practices violate the basic rights of women, all *structure-insensitive* practices do. Widow burning, honor killing, war-time rape and marital rape, domestic violence, and female infanticide, for instance—constitute serious and direct violations of women’s vital human rights wherever they occur. Their harms are not mitigated by general political, social, economic, or structural conditions. (U.S. courts at times have accepted a “cultural defense” in cases involving, for

instance, the murder of wives by jealous husbands, or the arranged marriages of underage daughters. Such defenses are problematic because they tolerate practices that involve the violation of basic rights, despite the fact that the societies in which these harms occur *guarantee* those basic rights.) This article contends that FC/FGM is a structure-sensitive practice whose effects can be mitigated in a liberal society. To make this case, however, it is important to examine another approach to FC/FGM—that of the cultural relativist.

The Cultural Relativist Argument for Unconditional Tolerance of FC/FGM

Cultural relativists insist that traditional practices must be understood in cultural context, a crucial element ignored by the human rights camp. University of Chicago anthropologist Richard A. Shweder, for instance, along with a team of legal and cultural scholars, has advocated the broadest tolerance of cultural differences in the United States and elsewhere. Shweder and his colleagues propose fundamental changes to American law in order to accommodate numerous practices—including FC/FGM—so long as they can be demonstrated to promote some social or cultural good.

Cultural relativists claim that any attempt to criminalize cultural practices such as FC/FGM in the U.S. is nothing but an “official attempt to force compliance with the cultural norms of American middle class life.” Since American liberal moral norms stem from the value systems of many cultures, no single system can claim priority on modernity, progress, and rationality, or insist that it exercises a culturally neutral point of view.

But the cultural relativist urges toleration of many practices—in other societies as well as in minority communities within liberal societies—even though they may seem offensive from a “Western” point of view. The cultural relativist also draws no distinctions between structure-sensitive and structure-insensitive practices. Their position inevitably leads to the view that not only is FC/FGM tolerable, but so are, perhaps, widow burning, honor killing, and female infanticide—any practice, in fact, so long as it has cultural or religious roots.

But the relativist call for tolerating *other* cultures has trouble contending with disputes about a practice that arise *within* a culture. For instance, members of the same communities that are home to FC/FGM commonly condemn the ritual. Since the 1960s, doctors in the Sudan, Somalia, and Nigeria have documented and publicized the harmful consequences of the procedure. Arguing that the practice deviates from their own religious norms, local scholars and activists challenge interpretations of the Koran or *hadith* (sayings attributed to the

prophet Muhammad) that support FC/FGM in Islamic societies. In Egypt, for instance, opponents of FC/FGM ask how parents can obey the command of the Koran to protect their children, who are God's blessings, and yet subject their daughters to the pain and medical risk of FC/FGM. Others wonder why a woman's genitalia must be excised, since her anatomy is God's creation. Opponents also argue that since FC/FGM jeopardizes a woman's health, it cannot be considered a *sunna*, or good religious action. They argue that the ritual violates the command of the Islamic faith to seek the welfare of all its adherents.

Since intra-cultural disputes are common, the "outsider" must decide *whose* values or interests in the divided cultural community should be tolerated. But in choosing to tolerate the majority view, one risks recognizing a locally dominant faction, which likely can enforce controversial practices and subjugate the vulnerable. As important, the cultural relativist who urges toleration of any culturally-based practice within a liberal society endangers the very existence of that society. While tolerance is a value that has shaped the liberal constitutional structure of the U.S., a liberal society is *not* obliged to tolerate practices incompatible with it. If FC/FGM harms basic liberal constitutional institutions, then the state's commitment to tolerance must become a lesser priority. Advocating unbounded toleration compromises the commitment of liberal states to secure the lives and equal liberties of citizens.

How Morally Significant Are Cultural Boundaries?

Both the international human rights perspective and the cultural relativist support applying a single standard in their treatment of cultural practices in liberal and nonliberal societies (although they reach different conclusions about *what* that standard should be). However, both views are too doctrinaire in their understanding of the moral significance of cultural boundaries—human rights advocates tend to argue that claims to cultural relevancy *in no way* inform the morality of a practice; cultural relativists insist that cultural relevancy is the *most important* consideration.

Another view recognizes that cultural differences between liberal and nonliberal societies are morally significant, and consequently liberal moral standards *in some circumstances* must be suspended in judging cultural practices. Two liberal political philosophers, John Rawls and Michael Walzer, have developed versions of "liberal cosmopolitanism," which (simplified here because of space considerations) espouse this view.

Both are reluctant to allow liberal states to intervene in societies with illiberal practices, unless those practices violate basic, or "urgent" human rights. For them

"basic" or "urgent" rights include the right to life and basic liberties, and the freedom from slavery, genocide, and mass expulsion. So long as no violation of this kind occurs, Rawls and Walzer counsel the liberal state to tolerate the cultural practices of other societies, even if those practices would—or should—be prohibited according to liberal constitutional standards. According to this approach, while U.S. intervention in sovereign states practicing genocide is permissible, coercive policies intended to extinguish cultural practices are objectionable. Those holding this view thus might oppose withholding loans to countries with no programs for educating women about FC/FGM—precisely what is advocated in the 1996 law.

In urging toleration of practices abroad that one might not tolerate at home, Rawls and Walzer recognize that one's own (liberal) culture might not be able to discern or understand the moral judgments of other cultures. But neither thinker would accept that a culture could offer any kind of moral justification for the violation of human rights. This reveals that their view is actually based on a context-based assessment of harms. Structure-sensitive practices such as FC/FGM *can* lead to grave violations of basic human rights in countries where these rights are not secure. But the harms of such practices are likely to be minor where these rights are systematically safeguarded. What renders FC/FGM tolerable or intolerable from a cosmopolitan liberal perspective has little to do with some kind of *cultural* justification; rather, the extent of harm resulting from FC/FGM—and whether those harms rise to the level of basic rights violations—depend, to a large extent, on the different basic political structures in these societies.

Liberal Feminist Arguments for Intolerance

It is important at this juncture to examine a second kind of liberal argument, one that is in tension with the Rawls-Walzer liberal cosmopolitan account. Some liberal feminists argue that even the most "enlightened" practice of FC/FGM is entirely inconsistent with the support of women's equal rights and liberties. These feminists insist that any cultural community that practices sex-based discrimination cannot enjoy support from a liberal constitutional state, and such practices cannot be tolerated abroad. FC/FGM is particularly deplorable, in their view, because sexist beliefs underlie the practice. Supporters of FC/FGM commonly point to the necessity of controlling female sexuality and upholding patriarchal society. Further, the procedure is often performed at men's insistence. The liberal feminist contends that, for women to enjoy human rights as equal human beings, one must interfere with illiberal or sexist practices *wherever* they occur—even in liberal societies.

Susan Okin, for instance, argues that nonliberal cultures and subcultures should either become extinct or rid themselves of their sexist practices. For Okin, multiculturalism is laudable in a liberal democracy *only if* its minority subcultures can survive such reforms. However, critics of Okin's view routinely suggest that the list of practices she would see abolished is too far-reaching and undiscriminating. She is also criticized for offering no way to morally rank such practices as wearing head scarves or veils, forced child marriage, FC/FGM, polygamy, wife beating, widow burning, and honor killing. Although all of these practices are sexist, critics are troubled by the suggestion that no line can be drawn between *tolerable* sexist and illiberal practices and *intolerable* ones.

According to this view, furthermore, sexist and illiberal practices are no less morally objectionable simply because women *themselves* choose to take part in them. The choice of X to undergo FC/FGM is as morally objectionable as if others coerced her into undergoing the procedure. In fact, the list of practices impermissible for X is extensive—it is also morally unacceptable for her to take part in such sex trades as pornography or prostitution, for her to choose breast augmentation, or for her to diet in hopes of attaining a (likely patriarchally-dictated) standard of beauty.

This view challenges the distinction that the nineteenth century moral philosopher John Stuart Mill famously drew between those illiberal practices that harm others and infringe on their liberties without their informed consent, and those that do not. Liberal feminists such as Okin insist that sexist practices are bad for women—regardless of what any particular woman believes is good or meaningful for *herself*. Their view rests on an understanding that the moral worth of a human life is defined by autonomy, individual freedom, and gender equality, and thus a life shaped by sexist beliefs is unworthy of the respect of a liberal state. According to this view, in choosing FC/FGM, X accepts her dehumanization, and she perpetuates a belief system that justifies the social control over women and limits the exercise of their full potential.

Both feminist liberals and political liberals value equal constitutional protection of basic liberties for all citizens. But once those basic liberties are secure, the political liberal urges toleration of illiberal views and practices, while the feminist parts company and insists that illiberal practices have no place in a liberal state, which should promote the morally worthy life defined by liberal values.

A Reasonable Dual Standard

Applying the positions presented thus far to the case of X, the hypothetical women who resides in a liberal society and seeks to undergo FC/FGM, one finds:

1. The **international human rights advocate** argues that FC/FGM violates women's human rights and therefore the practice should be banned in liberal and nonliberal societies alike.

2. Arguing that traditional practices must be understood in cultural context, the **cultural relativist** argues for toleration of FC/FGM in both liberal and nonliberal societies.

3. The **liberal cosmopolitan** is reluctant to justify international intervention to end illiberal (sex-discriminatory) practices in nonliberal societies, so long as no "urgent" human rights are violated; a ban on illiberal practices in liberal societies is permissible.

4. The **liberal feminist** opposes sex-discriminatory practices such as FC/FGM, arguing that these practices have no place in a liberal society.

Political liberalism allows for yet another approach. This approach is based on the recognition that reasonable persons, who enjoy freedom of conscience and expression, will always disagree about conceptions of human nature and notions of the good. Liberal states should allow citizens to practice what they believe so long as their practices do not undermine the basic liberal constitutional structure of the society. By inference, the liberal state should safeguard children from undergoing FC/FGM, since minors cannot offer their informed consent. The liberal state also has an interest in encouraging in girls a sense of their equality, in order that they exercise their equal rights and fulfill their responsibilities as adult citizens. FC/FGM would undermine their developing sense of equal worth. Similar points have been made in strictly enforcing laws banning child pornography and child prostitution in this country, while at the same time laws banning adult prostitution often lack enforcement, indicating a degree of state tolerance.

Applied to the case of X, this understanding of FC/FGM would allow her to decide whether to undergo the procedure—so long as she has full access to medical information, safe medical facilities, and her full range of basic rights are secure. The liberal state must also protect her from physical coercion to undergo FC/FGM, and it must provide the socioeconomic securities that prevent women from "choosing" FC/FGM out of desperation.

This brand of political liberal would not support elimination of public funding to the minority community within a liberal society that allows—but does not coerce—members to practice FC/FGM. The political liberal would not support a ban on the practice, which would communicate to members of the community that their beliefs are not worthy of respect by the liberal state and the society at large. Yet this form of liberalism could—without contradiction—at the same time advocate banning FC/FGM in countries lacking institutional protection of basic, or "urgent," rights.

The case for treating differently FC/FGM internationally and domestically illustrates the importance of taking a structure-sensitive approach to illiberal cultural practices. One must look at the broader circumstances in which a practice is embedded to accurately discern the harm that results from that practice. Consider the difference between FC/FGM and male circumcision. Although both practices seem to fulfill a similar cultural role—as a rite of passage, and to celebrate entry into a community, for instance—and both demand irreversible physical alterations to the body, the two practices are very different. Male circumcision is usually accompanied by brief pain, only rarely harms health, and carries no irreversible loss of sexual or reproductive function. It also does not subjugate men to women or take from men control of their sexuality. Arguing for toleration of FC/FGM worldwide based on the fact that circumcision of males is also a permissible practice ignores a crucial difference between the two practices. Male circumcision is *not* structure-sensitive and its harms are likely to be minor in societies *with* or *without* the structural protection of basic rights. FC/FGM is structure-sensitive and its harms can be magnified when women lack basic rights.

In liberal societies, the harms of FC/FGM can be mitigated. One could argue that adult FC/FGM is comparable to another accepted practice—cosmetic surgery. In this case, individuals (ideally) make informed choices, and the procedure is likely to result in some harm. Yet, one's decision to undergo cosmetic surgery (or FC/FGM) harms no one else, and it does not compromise the liberal state's interest in safeguarding equal basic liberties. However, X's decision is not ethically equivalent to choosing to wear a headscarf, entering into a polygamous marriage, or choosing celibacy (by becoming a nun, for example)—in these cases a woman's decision is reversible and her social compromises need not be permanent. But X's choice to undergo FC/FGM, which involves permanent physical and social changes—just as cosmetic surgery does—should be permitted in a liberal society.

This article has made the case that liberal societies should tolerate those illiberal practices that do not violate basic rights, and thus the 1996 Act's dual standard is defensible. It is important to note that X—or any women residing in a liberal society—might consider that FC/FGM is unnecessary for the cultural purposes that it was meant to serve. Certainly, if the meaning of the ritual is to acknowledge the importance of chastity and devotion to husband and children, then other symbolic ceremonies could sufficiently express a woman's commitment to these values. Cultural communities could abandon the traditional practice of FC/FGM and develop other rituals to celebrate rites of passage and to

make good-faith pledges. The sincerity of these pledges need not require the disabling of women (or men). And maiming a woman offers no guarantee of her chastity—especially if *she* no longer believes in its value.

The encouraging news is that, as options and opportunities open to women, the socioeconomic incentives for undergoing FC/FGM will disappear. Resistance by women in patriarchal communities also promises to continue. Liberal states can best help women in patriarchal societies and minority communities by supporting institution-building and capability development programs that seek to secure the rights of women and to empower girls. Such measures support domestic initiatives for change within cultural and sub-cultural communities. Although liberal states should support efforts to ban practices such as FC/FGM in societies that do not protect basic rights, liberal states can afford to tolerate such practices when basic rights are secure. So long as citizens make informed decisions about practices in a way that does not undermine the protection of basic liberties and rights, liberal states should treat these undertakings as expressions of belief and faith.

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Killing Mary to Save Jodie: Conjoined Twins and Individual Rights

David Wasserman

In September, 2000, British physicians separated 1-month-old conjoined twins, Jodie and Mary, after a failed legal appeal by their parents. Joined at the abdomen, with partially fused spines and a shared bladder, the twins were kept alive by a single working heart and pair of lungs, both on Jodie's side, and presumably both controlled by Jodie's brain. The heart and lungs on Mary's side did not function, but the aorta on Jodie's side fed directly into the aorta on Mary's side, supplying Mary with oxygenated blood. Physicians estimated that if they remained conjoined, both would be likely to die in six months to a year from the strain on the single working heart. Separated, Mary was likely to die immediately, which she did, while Jodie was estimated to have "a 95-percent chance of leading a normal life."

I will argue that the decision to separate the twins was deeply troubling, despite the fact that without the surgery, neither might be alive by the time of this writing. The Court of Appeal upheld the surgery as the only way to defend Jodie against Mary's lethal parasitism. But the claim that Mary was a deadly threat to Jodie, rather than the fellow victim of an embodiment inadequate to sustain them both, cannot be made out from the biological facts alone. The justification for killing Mary rested more heavily than the Court was willing to acknowledge on judgments about their comparative life prospects, judgments that the recourse to self-defense could not avoid or circumvent.

The Legal Case

The twins' parents had come to England to assure better medical care for their children. The hospital in which the twins were born wanted to separate them, to give one a reasonable chance for prolonged life. The parents sought judicial intervention to stop a proce-

cedure which they regarded as murdering one child to save another. Both courts that heard the case declared that the twins were persons, with lives of equal intrinsic value. But both ruled against the parents, on different grounds.

The trial judge allowed the surgery on the ground that it would be in the interests of Mary as well as Jodie, or at least not against Mary's interests, since, if she was not separated, her few remaining months would "be simply worth nothing to her, they would be hurtful." He also found that the separation would not be a "positive act," but an omission akin to the withdrawal of life support that British courts had already upheld.

The Court of Appeal rejected both rationales offered by the trial judge, the first on the ground that Mary had an interest in her continued life, however brief and limited. As Lord Justice Ward concluded, "It cannot be in Mary's best interests to undergo surgery." Moreover, the separation could not be treated as a mere withdrawal of life-support: "Surgery would amount to a positive act of invasion of [Mary's] bodily integrity with no medical or other benefits flowing from it."

Lord Justice Ward, then, agreed with the parents that the surgery would "save Jodie but murder Mary." And while he maintained that it was legitimate to take account of the "actual quality of life that each child enjoys and may be able to enjoy," he sought to avoid "a balancing of the Quality of Life in the sense that I value the potential of one human life more than another." He concluded that he could uphold the surgery without such balancing, because Mary could exercise her equal right to life only by violating Jodie's:

She is alive, because and only because, to put it bluntly but nonetheless accurately, she sucks the lifeblood of Jodie and she sucks the lifeblood out of Jodie. . . . Mary's parasitic living will surely be the cause of Jodie's ceasing to live.



Jodie had a right to defend herself even though Mary's threat was obviously innocent, and not even unlawful:

The six-year-old boy indiscriminately shooting all and sundry in the school playground is not acting unlawfully because he is too young for his acts to be so classified. . . . [K]illing that six year old boy in self-defence would be fully justified and the killing would not be unlawful. I can see no difference in essence between that resort to legitimate self-defence and the doctors coming to Jodie's defence and removing the threat of fatal harm to her presented by Mary's draining her life blood.

If Lord Justice Ward saw Mary as a deadly parasite, others saw her as a sacrificial victim. One commentator declared that "because of her disabilities, Mary was deemed unfit to live, a medical freak now only useful to cannibalize for her sister's benefit." Another held that the surgery denied Mary "life and dignity" and reduced her to a "quarry for raw materials." Bioethicist Alice Dreger has argued that such a sacrifice would never have been permitted if the twins had "not been born with a strange conformation":

The logic that it is better to save one patient than to lose two is not applied elsewhere. Imagine, for example, that Jodie and Mary had been born separate, conscious, identical twins, and that one had a bad heart while the other had a bad liver. Imagine also that no appropriate brain-dead organ donors were readily available, and one or both twins would die shortly without replacement organs. Would we decide that it was acceptable to kill one of the girls to harvest an organ and save the other in that case? No.

Dreger offered a second analogy against Lord Justice Ward's view that the separation can be justified as defending Jodie against Mary's deadly parasitism: "If I were accidentally trapped with another person in a time-lock vault that had an air supply adequate for one or the other but not both of us, it would not be right for me to intentionally kill him to try to save myself even though he was, in effect, unintentionally killing me." On Dreger's view, then, Mary's irregular embodiment subjected her to a surgical sacrifice that would otherwise be out of the question.

Two Views of the Twins' Embodiment

Dreger's view of Mary as a sacrificial victim, no less than Lord Justice Ward's view of Mary as an unintentional aggressor, reflects a contested understanding of the twins' "strange conformation." If the twins' separation can be seen as a forced organ transfer, it is only because the organs in Jodie's body are seen as belonging to Mary as well. On this understanding of their embodiment, Mary and Jodie share a single, asymmetrical body, and each has an equal interest in every part of it (except, perhaps, each other's brains, heads, and necks). The surgery is like a forced and unequal partition of jointly-owned property, that transfers Mary's half interest in the working heart and lungs to Jodie. But Mary can be seen as having that interest at the out-

set only because those organs are under her skin as well as Jodie's. Clearly, no one else besides Mary would have a claim to the heart and lungs that repose in Jodie's body (or less tendentially, in the body cavity closest to Jodie's head).

On the other hand, it is only if the working organs are seen as belonging exclusively to Jodie that Mary can be seen as an aggressor. It is only by the use of those organs that Mary endangers Jodie's life; she does not threaten her in any more direct way, as if, say, she were the vector for some deadly pathogen.

If the organs are Jodie's alone, separating Mary is not like killing the other person in a time-lock vault with a limited air supply: the analogy breaks down because neither person trapped in the vault has exclusive title to the air. On this view of the twins' embodiment, Jodie is not competing with Mary for a common resource but defending her organs against Mary's wrongful appropriation. Shouldn't Jodie (like the man who finds himself attached to an ailing violinist in Judith Jarvis Thomson's hypothetical) be allowed to sever a life-threatening attachment to another being, however vital that attachment is to the other? A proponent of surgery

Dreger's view of Mary as a sacrificial victim, no less than Lord Justice Ward's view of Mary as an unintentional aggressor, reflects a contested understanding of the twins' "strange conformation."

could turn Dreger's claim of discriminatory treatment around: if the surgeons do not operate, Jodie would be denied a right to self-defense she would otherwise enjoy, just because of the "strange conformation" that places her aggressor under the same skin.

How do we adjudicate between these conflicting understandings of the twins' embodiment? How can the configuration of their bodies (or body) determine their ownership of the vital organs, let alone determine whether the surgery constitutes a forced organ transfer or a defense against lethal aggression?

Different aspects of the twins' embodiment could be adduced to support opposing conclusions about their title to the vital organs in Jodie's body cavity. The fact that those organs were located on Jodie's side made them look like they belonged exclusively to her, an impression strengthened by the fact that Mary had her "own" set of organs, however inert. On the other hand, the fact that Mary and Jodie came into the world with a shared bladder, fused spines, and an extensive network of vascular attachments, particularly a direct connection from one aorta to the other, suggested that they were structured or conformed to share their vital organs.

Our intuitive judgments about the ownership of the twins' organs are strongly affected by the details of their embodiment: by how extensively they are conjoined and by how they came to depend on the same set of vital organs. If the two had been connected only by an umbilical cord, or if it turned out that the organs on Mary's side had become dysfunctional as the result of trauma that occurred sometime after twinning, it would be harder to see Mary as sharing, or having an interest in, the organs in Jodie's body cavity. In contrast, it would have been much harder to treat the organs as Jodie's alone if the twins had been more symmetrically embodied, with one centrally located heart and pair of lungs.

To some, maybe most, observers, the twins' actual embodiment falls closer to the former cases than the latter, leaving little ambiguity about the ownership of their organs. The Court of Appeal described each twin

Even if they were clear, consistent, and uncontested, our social practices regarding privacy and bodily integrity would be difficult to extend to cases of conjoined embodiment.

as having her own set of organs, and critics often adopted its usage even as they disputed its conclusions. It does seem natural to speak of the working organs as "Jodie's," and labored to speak of them as "the organs in Jodie's body cavity." But conceding this does not eliminate the moral ambiguity about Mary's claim to the continued use of those organs. The fact that we are inclined to speak of the organs as Jodie's hardly compels us to treat her as having the same rights in those organs against Mary that a normally embodied child would have in her organs against the rest of the world.

As Jeffrey Reiman has observed, we have developed, under the rubric of privacy, a complex set of social norms that ground the rights a normally embodied person has in "his" body. Those practices are informed, but not dictated, by the facts of normal embodiment—by the special control and access that individuals have to particular bodies. There are a variety of ways that a society could acknowledge that special control and access, and even within our own society there is controversy about how we should do so. There is protracted disagreement, for example, about how extensive a right people should have to destroy their bodies, dispose of their remains, or profit from the commercial development of their cell lines. Moreover, the autonomy that our social practices accord to individuals over their bodies is limited by

the threat of adverse consequences. If we no longer believe, with Oliver Wendell Holmes, that a person's freedom to procreate may be curtailed to prevent the transmission of a genetic defect, we still believe that a person's freedom of movement may be curtailed to prevent the spread of an infectious disease.

Even if they were clear, consistent, and uncontested, our social practices regarding privacy and bodily integrity would be difficult to extend to cases of conjoined embodiment. The autonomy a discretely-embodied person enjoys over her own body rests to some degree on the recognition of a domain of self-regarding activity, where the risks and benefits of a course of action redound far more directly to that individual than to anyone else. The more extensive and intimate causal nexus between conjoined twins would make it far more difficult to delineate such a domain for each twin with respect to the other. We might well recognize limits on what each twin could do with, or to, her own body, based on the interests of the other twin, limits that we would reject, or that would have no counterpart, for physically-discrete people. Thus, Kenneth Himma suggests that we would prohibit suicide by one adult conjoined twin if it would cause the other to die, even if we normally permitted adults to kill themselves. But we can only speculate about the extent and kind of limits we would recognize. In some cases, we might be deeply uncertain or divided. How, for example, would we respond to the demands of a 22-year-old Jodie to be separated from her barely-sentient sister, when both would otherwise die within a year, and their separation would prolong Jodie's life by at least a decade while causing Mary's immediate death? If we are uncertain how to resolve the conflicting claims of conjoined adults, we can hardly expect a clear resolution of the conflicting claims raised on behalf of conjoined infants. Thus, even if the organs in Jodie's body cavity can be said to be hers, the kind of property she has in those organs, and her right to exclude Mary from their use, are by no means clear.

If we did not regard the twins' embodiment as morally ambiguous, the resolution of the case would be straightforward, however wrenching and painful. For those, like Lord Justice Ward, who see Mary as having had no more claim than a normal twin to Jodie's vital organs, the state had a compelling interest in enforcing Jodie's right against a lethal imposition, even if the parents favored it. For those, like Dreger, who see Mary as having had as much of a claim to the organs as Jodie, the state would have had a compelling interest in preventing their separation even if the parents had favored it. The resolution of the case is far more difficult if neither twin can be said to have an overriding right which the state is obliged to enforce.

The New Progressive Era: Toward a Fair and Deliberative Democracy

Peter Levine

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Responses to Indeterminacy

We have two powerful impulses in the face of such indeterminacy, impulses which in the case of Jodie and Mary pull us in opposite directions. The first is to let the parents decide, not as surrogates for the twins, a role for which they have no special insight or expertise, but because they have to live, intimately, with the consequences of the choice. The second is to decide on the basis of the expected outcome—to compare the duration and quality of the lives the twins would likely have if they were separated or allowed to remain conjoined — their expected life spans, and their potential levels of consciousness, social interaction, and independence. Both options are problematic. Typically, parents are granted authority over decisions concerning

Perhaps the strongest reason for the recourse to parental autonomy is also the most troublesome: to avoid the alternative of deciding the twins' fates on the basis of public judgments about the comparative quality of their lives.

their children when that authority is necessary for them to maintain their supervisory roles over their children's upbringing, when they have special insight into their children's interests, preferences, and values, or when the stakes are too low to require outside intervention. Clearly, none of these conditions apply to the case of Jodie and Mary.

Perhaps the strongest reason for the recourse to parental autonomy is also the most troublesome: to avoid the alternative of deciding the twins' fates on the basis of public judgments about the comparative quality of their lives. Jodie was not only more "viable" than Mary, but more aware, alert, and responsive, capable of becoming, with surgical assistance, a more or less normal adult. Despite the courts' insistence that they regarded Jodie and Mary as moral and legal equals, it appeared to many observers that Mary was sacrificed not—or not only—as a threat to Jodie, but as an inferior being, whose interest in continued life was accorded far less weight. That conviction found support in the language that Lord Justice Ward used in upholding the twins' separation. Mary was condemned for her "parasitic living;" for "sucking the lifeblood out of Jodie." A parasite is not merely a threat; it is a lower organism.

Proponents of surgery might respond that the decision to separate the twins did not require any judgment about the comparative quality of their lives, let alone the denigration of Mary's; they might insist that the choice was simply between saving one twin or losing both. This response would be plausible if both

twins would have died almost immediately without surgery. Unlike Dreger, I would not find it objectionable to apply “the logic that it is better to save one patient than two” in such circumstances, even if saving the one meant killing the other. (Indeed, if both would have died almost immediately, it could be argued, even without recourse to self-defense, that Jodie’s right to be rescued, rather than any calculation of the comparative benefits of saving her, justified the surgery. If one of the men in Dreger’s time-lock vault would die almost immediately no matter what was done, while the other could survive alone, it might be justifiable to cut the air supply of the first, briefly accelerating his death.)

But the actual choice in the case of Jodie and Mary was not between the almost-immediate death of both twins and Jodie’s survival. Even proponents of surgery conceded that it was likely to deprive Mary of six months or a year of sentient existence, a life during which she might well experience not only pleasure and pain, but some rudimentary forms of bonding and attachment. The choice was not between saving one child and letting both die, but between consigning two children to short, limited lives and ending one of those lives abruptly to greatly prolong the other. I suspect that the inclination of the proponents to treat the latter choice as no different than the former reflects the assumption that several months of minimally sentient existence would have so little value for Mary that she could not be said to have an interest—at least a morally cognizable or legally enforceable interest—in their preservation.

It may be possible to recognize Mary’s interest in continued life while concluding that sufficiently large disparities in the length and quality of life *should* be decisive in a case like this. But it is important to appreciate the extent to which our judgments depend on the disparity in the quality, as well as the length, of the twins’ lives. What if Mary, though lacking central nervous system control of the functioning heart and lungs in Jodie’s body cavity, had a normally developing brain, and Jodie, though having control of the heart and lungs, was barely sentient? Mary would be no more or less of an innocent threat than she was in the actual case, although she might look less like a parasite; the only difference would be in the twins’ cognitive capacities and potential. I suspect that many people who favored separation in the actual case would at least hesitate to approve it in these circumstances, where it would bring immediate death to the more conscious child, depriving her of six months or a year of life, and indefinitely prolong the life of the less conscious child. (Or, perhaps less fancifully, consider a case where twins with vast disparities in cognitive potential were more symmetrically embodied, in such a way that surgery could indefinitely prolong the life

of either one, while immediately killing the other. Many of us, I suspect, would be inclined to save the more conscious child, rather than choose randomly or let both die within a year. But we could hardly justify that choice as a response to lethal aggression.)

Even if we think that some disparities in the twins’ cognitive capacity and potential should make a difference in resolving such conflicts, we may be reluctant to have our courts or other public agencies decide how much of a disparity should matter. In part, our reluctance reflects the fact that line-drawing would be a contentious, divisive, and painful exercise. In a society with a plurality of reasonable conceptions of the good, there is likely to be substantial disagreement about the comparative quality of different lives. Leaving the decision to the parents would prevent such contentious judgments from becoming legal precedent or public policy. But our reluctance to impose our judgment on the parents also reflects the fact that we have reason to distrust our judgment, to fear that we will give too much weight to perceived differences in quality, and confuse quality with biological normality.

The excessive sway of quality-of-life judgments is suggested by variations where Mary does not pose an imminent threat to Jodie’s life, but merely threatens her longevity, mobility, or quality of life. I find myself all too willing to kill Mary to increase Jodie’s life

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expectancy from 30 or 35 years to 60 or 70 years, or to spare Jodie the burden of dragging Mary around the rest of their lives. In these circumstances, it would be hard to justify separation even if the self-defense analogy was apt—we should hesitate to kill innocent aggressors who threaten only reduced life expectancy or chronic impairment.

The medical response to other conjoined twins gives us further reason to distrust our quality-of-life judgments about such cases. Dreger suggests that the grim prognosis often given for such twins may reflect a dread of, rather than doubts about, their conjoined survival. Doctors may consciously or unconsciously exaggerate the likelihood of their death because they regard their conjoined survival as no better, or worse, than death. She may well be right, based on anecdotal evidence of other conjoined twins who far exceeded the life expectancies announced by the doctors who wanted to separate them, and on the way the doctors describe the

prospects of their survival. As one surgeon declared, "It is appropriate to separate even in situations where one won't survive. Going through life conjoined is just not an appealing option." Even the lawyer for the parents of Jodie and Mary described the twins' survival as a "horrible spectre." When we consider the rewarding lives that some conjoined twins have led, despite severe physical challenges and morbid public scrutiny, it becomes apparent that this view of conjoined survival is distorted by ignorance and prejudice.

In the case of several conjoined twins, separation was attempted even when the odds of one or both twins surviving conjoined were conceded to be higher than in the case of Jodie and Mary, or when the odds of one or both twins surviving their separation was lower. The 1993 case of the Lakeberg, Minnesota twins is an example of the latter: closely conjoined twins with a single heart and liver and with little chance of surviving together were separated by an operation that was virtually certain to kill one of them immediately and unlikely to significantly prolong the life of the other; the one died during surgery, the other ten months later. To be sure, the decision in cases like Lakeberg are explained in part by a desire to increase the odds, however slightly, of *someone* surviving, but that desire appears to have greater sway when the advertised benefits would result from anatomical normalization.

It would be naive to think that the parents of conjoined twins would not make equally questionable judgments about the comparative quality or value of their children's lives if the decision were left to them—after all, it was the Lakeberg parents who insisted on the risky separation of their twins. Even parents who, like the parents of Jodie and Mary, initially saw their twins' fates as bound together by God or Nature, would face powerful social and economic pressure to take a more utilitarian view. But they would make their decisions privately, without creating destructive precedent. If we take the decision away from parents, particularly parents fervently opposed to intervention, we may take a small but significant step towards establishing the priority of anatomically and cognitively normal lives in our health care policy, and perhaps towards state-sponsored eugenics. We should be terribly wary of ordering the death of a child, even a sickly, oddly-formed, and barely sentient child, because we see her as a parasite on a child with greater health, vigor, and cognitive potential.

On the other hand, our experience with the "privatization" of reproductive decision-making has made it clear that the absence of direct state coercion does not mean the absence of coercive social pressure or distorting social bias. There is something to be said for a critical public examination of the kind of judgments that many parents will privately make, or will feel compelled by social or economic pressure to conform to. What is clear is that quality-of-life judgments will play some role in the terribly difficult decisions that often have to be made about conjoined twins. Whether or not it is better to assign those decisions to parents or the state, it is important to have a public debate about the role that quality-of-life judgments should play.

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Workplace Wars: How Much Should I Be Required to Meet the Needs of *Your* Children?

Claudia Mills

Johnny's mom leaves work early to coach Johnny's soccer team; Katie's dad leaves work early to attend Katie's kindergarten graduation—while other, childless (or, alternatively, childfree) workers stay late to pick up the slack. Johnny's mom and Katie's dad both receive, as part of their benefit packages, health insurance for Johnny and Katie, as well as the opportunity to contribute to a tax-free childcare account—benefits not available to colleagues without children. While many applaud such company efforts to assist working parents, struggling under a dual burden of employment and parenthood, recently a chorus of voices has been raised to challenge “family-friendly” policies, charging that they are friendly to families at the expense of unfairness to fellow workers without children.

Are the special needs of parents ones we should be seeking to meet? If so, who is this “we”—the government, employers, fellow workers? What policies in the workplace are most fair to parents and non-parents alike?

Responsibilities, Choices, and Needs

One first answer here, which I hear from some of my most environmentally conscious friends, is that the rest of us should bear no responsibility whatsoever for parents' special needs, because people shouldn't be becoming parents in the first place. In a world as crowded as ours, and as environmentally threatened, people should not be having children at all. Admittedly, those in Western, developed nations are not currently reproducing at greater than replacement rates; nonetheless, it is these children who have the heaviest and most destructive “ecological footprint.” One of my friends, environmentally outraged, refused to speak to his own brother after his third nephew was born! Few of us subscribe to this draconian environmental ethic, however. Children provide such a great part of the good of life that it seems unreasonable to expect people to forgo the central life experience of

parenthood in exchange for environmental benefits that are speculative and diffuse.

On the other end of the spectrum, it is claimed that the continued production of children is a positive good for all of us, and parents are thus to be congratulated, and heartily and humbly assisted in their endeavor. According to this view, those who do not have children, far from being paragons of environmental virtue, are parasites on those who do. Sylvia Ann Hewlett, chairman of the National Parenting Association, is quoted in the *Denver Rocky Mountain News* as saying, “Children are 100 percent of the future and we are all stakeholders in their future because they are the folks who will be paying our Social Security. If you are a childless adult you are kind of a free rider on the effort

Having children . . . is a morally permissible but not morally mandatory choice that persons make to enrich their own lives.

of raising children.” But this view as well seems overstated. Collectively we may need and want *some* people to be having children, but we hardly feel the more, the better. And most of those who have children don't approach the having of children in this light, as a duty grimly assumed for the benefit of humankind generally.

We are left, then, with a middle position. Having children, I claim, is a morally permissible but not morally mandatory choice that persons make to enrich their own lives. This would seem to support the view that the consequences of this choice—the increased needs that parenthood brings—should be regarded by and large as the responsibility of the parents alone. After all, if they didn't want to assume those burdens, they could have refrained from having children. We see a similar reaction in other areas of life in which special needs flow from voluntary choices rather than



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from the vagaries of chance and the uncertainties of fortune. We question whether we should be collectively providing medical care for those whose medical problems arise from poor lifestyle choices: smoking, over-eating, risky sexual behaviors. Moving closer to our current topic, some question whether welfare payments should be provided to poor mothers who repeatedly bear children out of wedlock.

However, even as we question the provision of assistance in such cases, by and large we do continue to provide it, and to feel morally uncomfortable with the refusal to provide it. Our response to need, we hope, is not in the first place dictated by a detached judgment regarding the cause of that need; we aspire to be more open-hearted than that. However, as the need in question becomes chronic rather than acute, and poses a less dire threat to life and health, we rethink our willingness to offer aid. We would rescue a child drowning in a pond, however she came to be floundering there; we don't feel the same way about repeatedly picking up our neighbor's child from day care, when he *could* leave work on time but chooses to stay late. In the latter case, we may wonder whether we have left the realm of "needs" behind altogether.

Yet it may be a mistake to press too heavily on the voluntariness of the choice to bear and raise children. While this is indeed a choice we make, it seems to be

misrepresented as a (mere) "lifestyle choice." Having children is such a central part of a full human life, something Aristotle felt comfortable including as a fundamental element in *eudaimonia*, human flourishing. While some—and perhaps a growing number—obviously define flourishing for themselves differently, it is hardly eccentric to view a full human life as including children of one's own (biological or adopted) to love and care for. Life without children seems importantly similar, in my view, to life without sex. There are those who live a full and joyous life without sex; yet most of us don't feel that sex is something we can simply ask people to renounce, as the price of absolving themselves of responsibility for any future offspring (although some of us do). So, while we can consider the bearing and raising of children as a choice, it is not a choice which most people feel blithely free to take or leave, especially given heavy societal pressures and expectations to reproduce.

It is not clear how relevant this concession is, however, to the question we are pursuing here. For even if we accept that parents' special needs don't flow from choices we can reasonably ask them to forgo, we may be wary of workplace policies which place too much weight on the meeting of particular, personal needs. To be blunt, "To each according to his needs," is not, contrary to what many Americans in a recent opinion poll

reported believing, a creed enshrined in the American Constitution. While I will argue below that allocation according to need *is* an important principle at the level of government policy, in the workplace other competing principles—such as allocation according to effort, or to accomplishment—command greater allegiance.

In the case of meeting parental need, it would seem strikingly unfair to most of us to pay parents more than non-parents for the same work, on the grounds that they have greater income requirements. In the past considerations such as this provided the rationale for paying men higher salaries (as family “breadwinners”) than women without dependents. It is not only the sexism here that troubles us, but also the unfairness of giving greater pay to one employee than to another for the same contribution.

If we move toward the other extreme, however, of disregarding need, we can arrive at some seemingly ludicrous results. Should one worker complain that another, who suffers a heart attack, receives considerably greater benefits from his company-provided health insurance policy than she does from hers? Lisa Benenson, editor of *Working Mother* magazine, is

Greater parental need is an insecure foundation for greater parental benefits—partly because the need flows from a voluntary choice, partly because we are only moderately willing to apportion workplace benefits according to need. . . .

quoted in the *New York Times* as asking, “If the person at the desk next to you gets cancer, do you think of them as ‘earning’ more because their health dollar costs are higher?” However, the health insurance case is a special one, which can’t be generalized too far. The whole idea of health insurance is based on a commitment to risk-sharing; if we were just going to pay for our own health-care needs, unwilling to take a chance on having to pay for anybody else’s, we wouldn’t have gotten health insurance in the first place. We recognize that health insurance is in some respects a lottery, in which we may emerge as either winners or losers.

A better example to test our willingness to match benefits to needs might be: Suppose a company provides each employee with three days of bereavement leave annually, as needed. Would it make sense to allow the non-bereaved to use this leave to enjoy summer barbecues or time at the spa? Here, while intuitions may differ, this doesn’t seem to me absurd. As we shall see below, many employers are moving in precisely this direction, of providing an extensive and variable menu of benefits from which both parents and non-parents can choose at will. Of course, what employers are willing and financially able to provide

for all may fall considerably short of what employees in special circumstances need. But here it may be unreasonable for the needy to expect their plight to be addressed by their employer rather than by a general societal safety net.

My conclusion so far, then, is that greater parental need is an insecure foundation for greater parental benefits—partly because the need flows from a voluntary choice (although one that is hardly trivial or eccentric), partly because we are only moderately willing to apportion workplace benefits according to need, in any case.

A more promising approach, I suggest, proceeds as follows. Whatever we decide about the choice to have children, and our appropriate response to the needs generated by it, nobody benefits when children are not raised well. It may or may not be in my interest that you have children; but it is definitely in my interest that your children, once here to share the planet with me, grow up to be as happy, loving, good, and decent as possible. This is one kind of argument that supports the provision of free public education to all children, financed by the contributions of taxpaying parents and non-parents alike. What good does it do anyone to have children growing up uneducated? And, we can also ask, what good does it do anyone to have children growing up with poor parenting? So even if we understand the choice to have children as one that implies the responsibility to assume at least some of the additional burdens involved in raising these children, we all—parents and non-parents alike—have a stake in seeing these children raised well. We all share an interest in the optimal raising of our future citizens, neighbors, colleagues, and friends.

Now, this argument appeals to the enlightened self-interest of non-parents, regarding the raising of other people’s children. It may therefore seem to fall short of grounding actual moral obligations. What if someone were to listen to the argument just offered, and shrug and say, “Maybe I’m being foolishly shortsighted in not wanting to assist you with the raising of your children, but, frankly I just don’t care”? Here my response is that one of the deepest problems of political philosophy is to establish actual obligations on the part of those who profess not to care about the collective benefits to be generated by collective cooperation: those who don’t want to pay their share for national defense, or environmental protection, or other public goods. It is simply not feasible to permit individuals to opt out at will on the provision of collective benefits, while still remaining full-fledged citizens and members of our common life. Moreover, I argue that it is morally imperative (and not merely optional) for us to ensure that all persons’ *basic* needs are met, simply out of respect for basic human rights. Thus, we all bear some responsibility for meeting all children’s most basic

Genetics and Criminal Behavior

David Wasserman and Robert Wachbroit, Editors

This volume brings together a group of essays by leading philosophers of science, ethicists, and legal scholars, commissioned for an important and controversial conference on genetics and crime. The essays address basic conceptual, methodological, and ethical issues raised by genetic research on criminal behavior but largely ignored in the public debate. They explore the complexities in tracing any genetic influence on criminal, violent, or antisocial behavior, the varieties of interpretation to which evidence of such influences is subject, and the relevance of such influences to the moral and legal appraisal of criminal conduct. The volume provides a critical overview of the assumptions, methods, and findings of recent behavioral genetics.

Contributors: Robert Wachbroit, Elliott Sober, Kenneth F. Schaffner, Kenneth A. Taylor, Ian Hacking, Allen Gibbard, Marcia Baron, Peter Van Inwagen, Patricia S. Greenspan, Michael Slote, Jorge L.A. Garcia, and David Wasserman

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needs (for food, shelter, health care, and education), not as a duty owed to these children's parents, but as a duty owed to the children, as our fellow human beings, themselves. However, current workplace policies aim beyond the bare meeting of basic, universal human needs, toward facilitating good, rather than just minimally adequate, parenting.

Now, the appeal to the widely shared benefits of optimal child rearing can take us only so far. Raising happy, healthy children is an important societal goal, but it is not our only societal goal. Indeed, raising happy, healthy children is not even the only goal of those children's parents, who presumably continue to care about other aspects of their lives as well: their work, their marriages, their contributions to the larger community. So we need now to consider actual policy proposals regarding the treatment of parents and non-parents in the workplace, and in the community beyond.

How Far Do We Go?

If we recognize compelling reasons to provide at least some assistance to parents in child rearing, what does this mean in practice? Who should be assisting parents, and how? There is currently a wide range of options possible. The federal government provides tax breaks for parents by giving a \$2,800 tax deduction for each dependent in a family, as well as an additional dependent-care credit (up to \$4,800), and has recently added a \$500 per child tax credit. There are calls for greater governmental subsidization of day care, and for stricter governmental regulation of day care. Employers can provide more or less "family-friendly" policies, ranging from the provision of health insurance benefits for family members, to tax-free dependent-care accounts, to on-site, company-sponsored day care, to flextime and other ways of structuring a more accommodating workplace. And fellow workers and neighbors also lend various amounts of informal assistance: staying late when working parents need to be at home, watching children when working parents need to be at work.

Note that some family-friendly policies make it easier for parents *not* to work (by easing the financial burden imposed by children, and so reducing the need for parents to generate additional income); some make it easier for parents *to* work (by, for example, providing high-quality, affordable day care). Which kind of policies we favor will depend on our other views about how children are best raised: by stay-at-home parents or by working parents. I will not enter that debate here, except to say that, just as children are an important part of a flourishing, full human life, so is work. Just as I am reluctant to ask workers to forgo being parents, so am I reluctant to ask parents to forgo being workers. I do happen to think it is beneficial for chil-

dren to see both male and female parents as making some (paid or unpaid) contribution to the world beyond the home. But even if I didn't, I would not want to insist that parents—or any of the rest of us—are required to do *everything possible* to raise the *best possible* children. I will return to this issue below.

At this point, our question is, given the desirability of some family-friendly policies, who should bear the cost of putting family-friendly policies in place? I want to argue that it is best if this cost is shared as widely as possible, by all members of society. For the good in question—the raising of healthy, happy children—is a public good, equally shared by all. Thus, it is preferable, in my view, to provide family benefits through general governmental revenues. This would include tax deductions for dependents (I would limit this to deductions for *two* children, to address the environmental concerns raised above), deductions for child care as a legitimate business expense, and (in an ideal society) provision of welfare services and health care to all children, as to all persons generally.

I find it more problematic when differential benefits are provided to parents not by the government, but by employers (and more problematic still when working parents, through their own informal arrangements, simply impose a greater share of work on childless workers). Here it does seem to me that the provision of differential benefits to working parents violates our strong, long-standing commitment to the principle of equal pay for equal work. Elinor Burkett, author of *The Baby Boon: How Family-Friendly America Cheats the Childless*, says (in a *Denver Post* article), “If compensation packages given to parents are worth \$10,000 more than those given to non-parents, then we’re compensating parents for their fertility and not their work.”

Thus I would argue for company policies that, as far as possible, treat parents and non-parents alike, by extending to all the benefits needed primarily by parents. This would mean offering a mix-and-match menu of benefits from which all workers could choose: health insurance for dependents, additional vacation time, flex-time, and so forth. The case for uniform (but more generous) benefits goes like this. Employees have many needs, beyond the need to care for small children. As we move through the cycle of life, the need to care for growing children is replaced by the need to care for aging parents (though some, in the so-called “sandwich generation,” may face both needs simultaneously). Employees who struggle with poor health would welcome a less strenuous schedule. Benefits such as flextime and enhanced personal leave (e.g., the typical European worker receives six weeks of annual leave, to our two weeks) would greatly enrich the lives of all workers, parents and non-parents alike. Many commentators have observed the extent to which the early twenty-first century workplace deforms and degrades human life.

Juliet Schor, in *The Overworked American*, argues that leisure time has declined steeply for Americans in the past three decades. We work longer for less satisfaction, neglecting other passions and interests. It would be in the interest of all of us to adopt, as Jerome Segal has recently argued, a more graceful and humane pace of life. Theda Skocpol, Professor of Government and Sociology at Harvard, suggests that the solution to the workplace wars lies in looking for “ways to modify working conditions to facilitate both family and community involvements by everyone. In that way, contributions by parents can be considered one of a range of ways in which people engage in caring work and civic involvements.” Even now some employers allow, and encourage, their employees to do a certain amount of community service on company time; employers could offer employees a choice of release time for *either* community service *or* family commitments.

Extending this idea still further, we might suggest that government offer tax benefits to its citizens for a range of important and life-enhancing activities: for dependent care generally, rather than child care more

Part of maturity, indeed part of living gracefully, is to accept that all resources, including life itself, are finite.

narrowly (as is the case with most of the deductions in the current tax code); for continuing education; and even for various other rewarding activities. The core idea here is to permit, and indeed to promote, the seeking of our own flourishing in our own chosen way.

Having It All

Would uniformly more benign workplace (and tax) policies solve the conflict between working parents and non-parents?

It may seem that uniform policies here would do violence to Aristotle's famous injunction to treat likes alike, and unlikes differently. Working parents may still complain that uniform policies would continue to leave them significantly disadvantaged at the end of the day. They have the same health stresses of their own as non-parents, the same obligations to elderly parents, the same need for a more graceful and humane pace of life. Plus, they have *kids*. So they need financial support and release time to meet parental obligations in addition to what they need just to *live*. Moreover, in our society at the present time, this double burden (triple burden? quadruple burden?) is especially likely to fall on women, who still assume a disproportionate share of childcare and other domestic responsibilities.

Here, though, is where I think working parents go too far. Part of maturity, indeed part of living gracefully, is to accept that all resources, including life itself, are finite. Quite simply, the time I spend doing x will be time I will not spend doing y. It would be unreasonable for parents to expect to face no consequences whatsoever for their choice to become parents. While the gendered inequities here trouble me deeply—mothers generally face greater consequences for their choice to become mothers than fathers do for their choice to become fathers—I don't think the best way to address these is to introduce further divisive inequities between parents and non-parents.

While I cannot document this, I suspect that some of the most bitter conflicts with working parents comes from those who consciously chose not to have children so as to pursue other valued objectives. Workers who are not currently parents, but were in the past, may be able to sympathize with working parents, even as they may mourn that certain benefits were not in place when they were struggling to balance home and work. (Of course, some are not: "I struggled without affordable day care; you should have to struggle, too.") Workers who are not currently parents, but will be someday, have a clear interest in seeing family-friendly policies put firmly in place, though this may not be an interest they are able fully to recognize (many of us have stories of friends who made a comically abrupt turn-around here on the day they discovered *they* were about to become parents). Those unable to have children may have less sympathy for working parents' laments: they would give anything to be able to assume such a double "burden." And those who made the decision not to have children just so that they could concentrate on professional success, or a strong marital relationship, or other interests, may well think: I made my choice and I'm living with it; why can't you live with yours?

A memory from my adolescent years comes to mind here. In the days before backpacks, I would limp home every day from school under the groaning weight of a huge armful of heavy textbooks. My best friend Debbie skipped and scampered beside me, unencumbered with any books whatsoever. Finally, one especially hot and weary afternoon, I asked her if she might want to help me out by carrying a few of my books. Her answer stayed with me for the next thirty years. "Claudia," Debbie told me, "if I wanted to carry home textbooks, I'd carry home textbooks, and I'd study, and I'd get good grades, but I don't want to carry home textbooks, so I don't." Her message was clear: if I wanted the good grades so badly, I would have to carry the weight of books that went with it.

To learn to live with our choices, and the inescapable limits they impose on us, is to give up the pipe dream of having it all. Yet one of the cruel paradoxes of our time is that just as parents are entering the work force in record numbers, the expectations for what counts as

adequate parenting are also increasing. The less time parents have to give to parenting, the more we have come to expect of them as parents. Recent years have seen a staggering proliferation of extracurricular activities for children, all of which require parental chauffeuring, zealous attendance at games, endless recognition ceremonies. We not only have to be dutiful soccer moms, cheering at every soccer game, but, with children playing in two sports simultaneously, and studying two musical instruments, we have to cheer at every soccer game *and* every swim meet *and* every piano recital *and* every violin recital, as well as coach their Destination Imagination teams and plan extravaganzas for Vacation Bible School. We have seen the rise of what has been called "hyper-parenting"; we have taken too seriously the goal of *optimal* child rearing, as opposed simply to good parenting.

Now, it is admittedly difficult for individuals to act alone to buck societal trends. Working parents do feel intense pressures today—both to parent as if they were not workers, and to work as if they were not parents. But the sad, or perhaps not so sad, perhaps liberating and joyous, truth is that this can't be done. The sooner we accept this truth, the better it will be for us as workers, as parents, as human beings.

A rich and full life is a great good. I for one do not want to force people to choose between work and parenthood; and we all share some responsibility for meeting children's basic needs and assisting parents in raising tomorrow's citizens. It is best when this responsibility is met by broadly shared tax policies and governmental programs, and by workplace policies that offer a more humane and graceful way of working to parents and non-parents alike. But working parents also need to be realistic and non-hubristic, to accept the limitations of time and life, and experience the distinctive joy that such acceptance can bring.

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Sources: Scott Lehigh, "Childless Give Birth to Revolt for Equality," *Denver Rocky Mountain News* (May 23, 2000) (and reprinted from the *Boston Globe*); Lisa Belkin, "The Backlash Against Children," *New York Times (Magazine)*, July 23, 2000; Bill Briggs, "Pampered Parents? Childless Employees Beginning to Grumble About Inequalities," *Denver Post* (July 9, 2000); Elinor Burkett, *The Baby Boon: How Family-Friendly America Cheats the Childless* (Free Press, 2000); Juliet Schor, *The Overworked American: The Unexpected Decline of Leisure* (Basic Books, 1992); Jerome Segal, *Graceful Simplicity: Toward a Philosophy and Politics of Simple Living* (Henry Holt, 1999); Theda Skocpol is quoted from the *Communitarian Network*, "Feedback from Communitarian Update # 27" (May 16, 2000); Alvin A. Rosenfeld, Nicole Wise, and Robert Coles, *Hyper-Parenting: Are You Hurting Your Child by Trying Too Hard?* (St. Martin's Press, 2000).

The Ethics of Making the Body Beautiful: What Cosmetic Genetics Can Learn from Cosmetic Surgery

Sara Goering

Work to map the human genome is nearly complete, intensifying the debate about the appropriate uses of the information contained within this “book of life.” We want to understand what these gene sequences make possible, and how they might be manipulated for good or for ill. We want to glean whether this knowledge will lead to new avenues for discrimination, or bridge such divides by highlighting the similarities in our biology. We ask ourselves whether we can avoid using our knowledge of the human genome for unethical ends.

Genetic manipulation for aesthetic reasons—cosmetic genetics—will be one of the important ethical challenges citizens must face in the future. The number of surgeries performed for cosmetic reasons has grown dramatically during this past decade, and it is plausible to believe that consumer demand will increase pressure to develop genetic techniques used for aesthetic enhancement. But we can recognize and debate those ethical challenges now, *before* techniques are developed which allow cosmetic genetics to become a part of an inevitable future reality.

Concerns about the ethics of cosmetic surgery offer important insights for cosmetic genetics. After briefly discussing what is meant by “plastic surgery,” “cosmetic surgery,” and “cosmetic genetics,” this article explores one kind of argument commonly used in bioethics—the argument from precedent—to show that it cannot adequately discern or assess the ethical challenges posed by cosmetic genetics. The article then looks to some of the recent ethical attitudes toward cosmetic surgery in order to anticipate—and make recommendations about—the ethical challenges we will encounter when genetic therapies used for cosmetic purposes become a real option in the future.

The Popularity of Cosmetic Surgery

The term “plastic surgery” covers a broad range of surgeries that alter appearance. The term includes a wide range of reconstructive surgeries, which attempt to replace or repair congenitally malformed, damaged,

or amputated areas of the body. Another subset of plastic surgery is cosmetic surgery, which is the topic of the present article. When used in this article, “cosmetic surgery” refers to surgery chosen primarily for aesthetic reasons or in hopes that one will become more socially acceptable. (In this discussion, “cosmetic surgery” does not refer to surgery intended to alleviate physical discomfort—as in breast reduction surgery, which relieves stress on the chest and back muscles caused by overlarge breast tissue—or which contributes to the physiological function of an individual.)

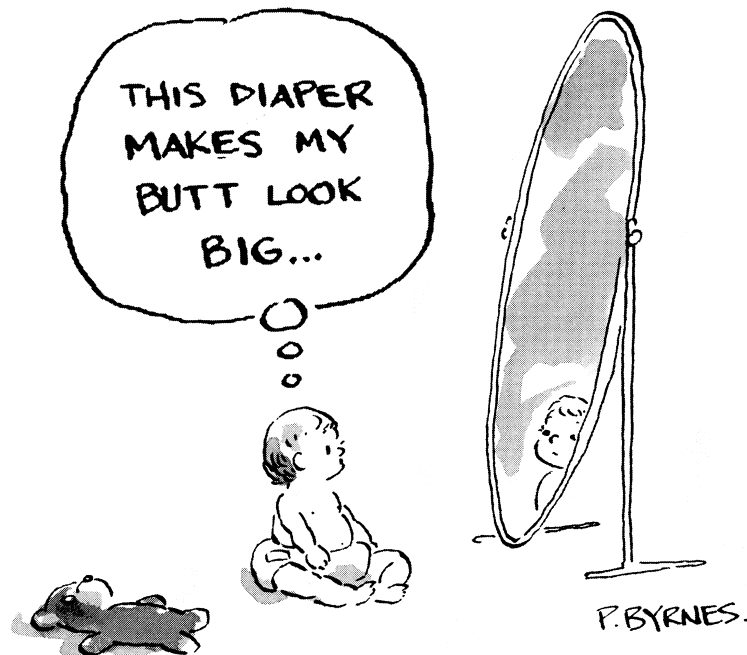
Insurance policies typically cover expenses incurred by reconstructive surgery, and some surgeries to correct functional disturbances (such as drooping eyelids that make seeing difficult). However, surgery for aesthetic reasons—cosmetic surgery—is widely available on a fee-for-service basis only. Despite its cost—a routine facelift is about \$5,700—the popularity of cosmetic surgery is on the rise. According to the American Society of Plastic Surgeons, between 1992 and 1999 the number of cosmetic surgery procedures performed in the United States and Canada has risen 175%. Several

If one can choose surgery to create the bodily changes one desires, then why not choose genetic therapies to create those bodily changes or . . . select desired physical traits for one's future children.

types of surgery have seen an even more dramatic increase: liposuction has increased 389% and breast augmentation surgery has increased 413%.

Some anticipate a great market in genetic techniques applied for aesthetic enhancement. If one can choose surgery to create the bodily changes one desires, then why not choose genetic therapies to create those bodily changes or (by selective embryo implantation or the use of genetic therapies undertaken *in vitro* or during gestation) select desired physical traits for one's future

It begins



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children? In cosmetic genetics, the body *itself* produces such desired features as having blue eyes, being tall, maintaining a low body-fat ratio, developing larger breasts, or looking less “ethnic” (by designing nose shape, eye-lid structure, hair texture, or skin color, among other features).

No genetic therapies exist today which make these options a reality, and many might be untroubled by the development of genetic techniques used for aesthetic enhancement, viewing cosmetic genetics as simply an extension of cosmetic surgery. But such a relaxed attitude would be a mistake, one which depends on accepting an “argument from precedent.”

The Argument from Precedent

In anticipating the introduction of a new practice in medicine, citizens—and ethicists, too—commonly employ an “argument from precedent” to judge the ethical standing of the contemplated practice. That is, we compare the ends achieved by a new technology to those achieved by older accepted practices, and where these ends are similar, we conclude that the use of the new technology is morally permissible. Bioethics often relies on some version of the argument from precedent

to assess the permissibility of new human genetic therapies. Since we treat genetic disorders such as cystic fibrosis to reduce their debilitating symptoms, so the argument goes, we ought to be willing to employ genetic interventions to eliminate diseases or treat their symptoms more effectively. Or, since we value childhood immunization, we ought to be willing to take advantage of genetic interventions to increase immunity. Applied in this way, the argument from precedent attempts to preserve morality by building on a foundation of previously accepted practices.

The argument from precedent is commonly appealed to, but rarely is it investigated fully, and recent work shows that its problems are significant. One difficulty is that it does not attend to morally relevant features in assessing the means used to achieve a desired end. Just because two different means accomplish the same general goal, we cannot assume they both achieve that goal in a moral way. We may share the goal of having our children learn well in school, for instance, but not find two alternate means—smaller class sizes versus increased use of Ritalin—ethically equivalent. Each strategy focuses on different “objects”—the child’s

environment, on the one hand, and the child's biology, on the other—and each leads to radically different experiences for the child. Decreased class size allows for more attention from teachers, more opportunity for students to express themselves, and a child's success relies on the *expression of his own personality* and talents. Increased prescription of Ritalin locates the problem *within* the child, suggesting to her that she is deficient and requiring that she *change herself* to meet the demands of others. Although it is not clear that the Ritalin option is necessarily immoral, it certainly deserves more sustained moral evaluation than it receives when we resort to the argument from precedent.

An even more basic, yet under-appreciated, problem with the argument from precedent is that it often does not include an independent ethical evaluation of commonly accepted practices. According to one understanding of the argument, concerns about cosmetic genetic enhancements for humans might be regarded as morally unfounded because cosmetic surgery is a popular and widely accepted method of altering one's

Concerns about cosmetic genetic enhancements for humans might be regarded as morally unfounded because cosmetic surgery is a popular and widely accepted method of altering one's physical appearance.

physical appearance. Some might argue, in fact, that cosmetic genetics is *preferable* to cosmetic surgery because the techniques of cosmetic genetics eliminate the need for invasive surgery, which is an unavoidable part of many cosmetic procedures.

But this understanding obscures new ethical issues that arise with a new medical development. It also makes too quick a jump from what *is* practiced to what *ought* to be practiced. As Erik Parens, a bioethicist at the Hastings Center, notes, "There are many things we've always done that we think we ought not to do either now or in the future."

Further, cosmetic surgery is itself a hotly debated practice. Some critics have raised concerns over such issues as the quality of informed consent, the certification of plastic surgeons, and the riskiness of some procedures. But many feminist critics of cosmetic surgery emphasize deeper and more intractable moral issues, arguing that cosmetic surgery exacerbates "harmful conceptions of normality." These norms of appearance, they argue, are directed mainly at women, and specify what they *ought to look like* in a way that demands significant investments in time, energy, and money. Since most normal women cannot meet the societal ideal, even those with otherwise healthy, well-functioning bodies believe they have aesthetic "deficiencies" and

feel dissatisfied with their corporeal lot. Feminist thinker Naomi Wolf says it well:

When a modern woman is blessed with a body that can move, run, dance, play, and bring her to orgasm; with breasts free of cancer, a healthy uterus, a life twice as long as that of the average Victorian woman, long enough to let her express her character on her face; with enough to eat and a metabolism that protects her by laying down flesh where and when she needs it . . . the Age of Surgery undoes her immense good fortune. It breaks down into defective components the gift of her sentient, vital body and the individuality of her face, teaching her to experience her lifelong blessing as a lifelong curse.

A recent survey reports that 56% of women and 43% of men are dissatisfied with their overall appearance. Body doubles, air brushing, and digital magic help perfect the image of a societal ideal, and because many do not question the social pressure to achieve these unreasonable "norms," they contemplate—and many undertake—the risk of major surgery simply to approach that societal ideal. Although some of the procedures are fairly non-invasive and risk-free, others are painful, debilitating and liable to cause permanent damage. Individuals recovering from facelifts can look and feel as though they have been seriously beaten, their payment of money—as well as swollen, reddened skin—in hopes of a long-term gain in aesthetic beauty.

The truth is, however, that those who undergo the surgery gain much *more* than just an aesthetic advantage. How one looks affects not only one's self-esteem and confidence, but also how others regard one's competence, personality, and likelihood for success. Even if the beauty standard is not fair or appropriate, from the perspective of rational self-interest it makes sense for individuals to undergo cosmetic surgery.

Yet if we think only of ourselves and the possibility for individual gain, we never contemplate the bigger picture and, when appropriate, act collectively. Because we want to think of ourselves as completely free agents, we deceive ourselves about our motivations and we become oblivious to the manipulation of others. With a narrow, individual focus, we may inadvertently act to sustain or reinforce harmful conceptions of normality rather than address their flawed assumptions. It is crucial to consider carefully why so many individuals currently pursue cosmetic surgery, how their individual actions shape the larger culture, and how their choices might spur developments in the even more tempting realm of cosmetic genetics.

Does Cosmetic Surgery Serve "Cultural Dopes"?

Although feminist thinkers generally agree that the pressures to conform to a youthful, slender, smooth-skinned, wide-eyed, often Eurocentric appearance are rooted in historical injustices, they disagree about how

to understand the role of the individual in contributing to the popularity of cosmetic surgery. How one understands the relationship between the desires and motivations of the individual and the dictates of society leads to different strategies for addressing the problem of the pressure to conform to a "norm" of beauty.

One view of this relationship holds that women who undergo cosmetic surgery always do so wholly *because* of harmful norms, despite their claims to the contrary—they claim to be doing it for themselves. This view depicts women as passive "cultural dopes," controlled by their environment but unaware of that control. As feminist thinker Susan Bordo notes,

People don't like to think that they are pawns of astute advertisers or even that they are responding to social norms. Women who have had or are contemplating cosmetic surgery consistently deny the influence of media images. 'I'm doing it for me,' they insist. But it's hard to account for most of their choices (breast enlargement and liposuction being the most frequently performed operations) outside the context of current cultural norms.

By participating in cosmetic surgery, these women flee from the realities of aging and change because traits associated with age are deemed unattractive by society. They want to avoid *being themselves*, but they claim to do it *for themselves*. In response to those women who claim to have finally discovered their real selves through cosmetic surgery (a claim that raises interesting issues of authenticity, akin to those patients of Peter Kramer who claim to have discovered their "real selves" through the use of Prozac), Bordo insists that such individuals both *deny* themselves the opportunity to understand our shared human condition of physical vulnerability, mortality, and impermanence, and they also *reinforce* harmful conceptions of normality through their actions. In effect, their actions increase pressure to fit the norm.

But if women who select cosmetic surgery are merely cultural dopes, then they seem to be absolved from responsibility for their actions. They simply follow the direction of outside forces that *shape* their desires. The best solution to the harmful conceptions of normality accepted by the "cultural dope" view is to change cultural pressures. This might be accomplished by demanding that the advertising industry present greater diversity in the body shapes of models. Careful regulation of the advertising industry might limit the creation of those new markets that rely on advertising aimed at *expanding* the scope of body image concerns. A more radical contingent might even find it appropriate to outlaw certain procedures. However, although the "cultural dope" view recognizes the myriad of strong cultural pressures exerting their influence on women, it denies that women are—or can be—free agents. Women are unthinking puppets of culture, and their behavior changes only because cultural norms change.

Does Cosmetic Surgery Create "Empowered Agents" (or Moral Hypocrites?)

Other feminist writers, such as Kathy Davis, argue that women who pursue cosmetic surgery are a picture of empowered agency. In her experience interviewing such women, Davis found that, rather than serving as "cultural dopes," these women were generally fully aware of the seemingly impossible system of appearance norms. Working as agents within their cultural constraints—yet cognizant of those constraints—they saw surgery as a "lamentable and problematic, but understandable course of action." In short, women choose the lesser of two evils: they act to attain the beauty norm rather than fall victim to it. Davis commends what she sees as women acting to control their identities. She reports that many women were "ashamed for feeling ashamed" of their bodies and chose cosmetic surgery *despite* strong objections from partners, friends, and family who offered constant reassurances about the women's natural beauty.

How one understands the relationship between the desires and motivations of the individual and the dictates of society leads to different strategies for addressing the problem of the pressure to conform to a "norm" of beauty.

Surprisingly, she found that even the women who did not have successful surgeries claimed that they had gained a better sense of their own agency and identity by their experience.

Although some good can come from adversity, it seems odd to commend a bad experience. Certainly one need not approve of the general situation that gives rise to it. In addition to her valorization of agency, Davis does not directly confront the fact that her interviewees appeared to hold one set of standards for themselves and another for other women. Each considered her own case exceptional, *she* had exceeded the "limit to how much suffering you should have to put up with" and suffered "more than what a woman should . . . have to endure." However, by Davis's own admission, most of these women were not obviously abnormal or atypical prior to their surgeries. Thus, the very consideration that Davis suggests makes these women more than cultural dopes—their ability to recognize the harmful norms that influence them and to make the best choices possible given these norms—seems to reveal hypocrisy (or at least some level of special pleading). By making exceptions in their *own* cases, these women illustrate their lack of commitment to their proclaimed general principle. Moral evaluation of this situation cannot praise these women for their agency; instead, their choice raises

questions of their integrity and the reasons for allowing personal exceptions.

Margaret Little offers another version of the “empowered agent” position. Suggesting that a change in beauty norms will take great effort, and probably could not be completed within one individual’s lifetime, she argues that it would be an unjustifiable sacrifice to deny cosmetic surgery to individuals who suffer *today* because of their bodily condition. Little concludes that it would be morally permissible for surgeons to continue to provide cosmetic surgery so long as they work at the same time to change the very norms that bring them most of their customers:

If one must perform surgeries to help people meet suspect norms of appearance (out of concern for their suffering, say) then one must maintain an overall stance of fighting the norms. The only way to participate in the surgeries without de facto promoting the evil whose effects one decries is to locate the surgery in a broader context of naming and rejecting the evil norms. One’s purpose and meaning – that of alleviating the extreme burdens the system places on some – can be expressed only if one’s broader actions stand squarely against the norms.

By “broader actions” Little means that cosmetic surgeons should “speak out against the suspect content of the norms” both in public and in their private consultations with patients. Cosmetic surgeons ought to discuss with prospective patients the option of not having any surgery at all, and they must clarify the risks and possible side effects of contemplated procedures.

However, it *already* is common practice for cosmetic surgeons to assess the surgical and “emotional” success of procedures their patients contemplate. It is also routine to discuss with patients their expectations, and to inform them of risks and other options available to them. Even if cosmetic surgeons did not do what Little advocates, her suggestion seems strange because it relies on the very person who benefits from the women’s desire for surgery (both financially and psychologically, since surgeons derive personal satisfaction from their skill) to try to *eliminate that desire*. Placing the responsibility for revising the norm in such hands is likely to create minor change, if any. Little might also ask women who undergo cosmetic surgeries to speak out against the harmful norms that influenced their decisions. Surely this would be even stranger. Most women hesitate to discuss their surgeries, and those who do would find themselves in the odd position of telling others not to do something that has made them individually better off. One can hardly expect a surgically altered, societally-perfect advocate for changing beauty standards to be taken seriously. Adopting this tactic avoids sacrificing women to social change only to limit their capacity to promote social change.

Can Cosmetic Surgery Contribute to the “Revalorization of the Ugly”?

Is there any way to *recognize* the suspect norms, *accept* the practice of cosmetic surgery, and *avoid* the conclusion that women who receive it are either cultural dopes or apparent hypocrites? Kathryn Morgan proposes a fairly shocking response to this problem. She suggests that women ought to “take back” cosmetic surgery and use it to highlight the arbitrariness of the cultural norms that currently lead women to choose cosmetic surgery. In order to “revalorize the ugly” Morgan proposes (tongue-in-cheek) that women start requesting skin wrinkling procedures, fat injections for their thighs, and techniques specifically designed to make their breasts and eyelids sag. Her proposal intends to show both the strength and the arbitrariness of the current beauty norms. If we are horrified to think of women undergoing drastic and unnecessary surgical measures to make a point, then we should also be horrified to think of women undergoing drastic and unnecessary surgical procedures to gain social acceptability.

When suspect social norms are at the root of a practice and are themselves reinforced by continued patronage of it, one at best achieves only temporary and personal comfort by continuing the practice.

French performance artist Orlan might be a case for Morgan, although Orlan’s nine cosmetic surgeries have been aimed more at critiquing the possibility of the ideal body than at specifically creating ugliness. Orlan has attempted to make her face resemble a compilation of the facial structures of beautiful women painted by great artists, in order to “show, by example, that the legacy of masculine portrayals of feminine beauty precludes women’s full agency and control.” To this end, she has had, for example, silicone implanted in her forehead to make it more closely resemble the forehead of Mona Lisa. Her pursuit of cosmetic surgery is a political act. She is “not against *all* cosmetic surgery, but against *the way it is used*” – to make women fit a code of feminine beauty that requires conformity rather than individuality.

Lessons for Cosmetic Genetics

Several lessons can be learned from this brief survey of the ethics of cosmetic surgery. One learns that when suspect social norms are at the *root* of a practice and are themselves *reinforced* by continued patronage of it, one at best achieves only temporary

and personal comfort by continuing the practice. Davis admires the protagonist of Fay Weldon's novel *The Life and Loves of a She-Devil*, for:

She does not see cosmetic surgery as the perfect solution and she is well aware of the enormous price for women who undertake it. Under the circumstances, however, it is the best she can do. For she knows only too well that the context of structured gender inequality makes this solution – as perhaps any solution – at best, a temporary one.

However, in acting for individual comfort, one undercuts larger societal goals. Further, societal norms at times seem intractable only because they require collective action for change.

The debates about the ethics of cosmetic surgery can inform the coming debate over the appropriateness of cosmetic genetics. But even before cosmetic genetics becomes a reality, citizens can recognize its dangers and take action to enact legislative bans, distribute research funds in a thoughtful way, and initiate widespread public education programs. Prudence suggests placing a temporary moratorium on public funding for genetic research designed to identify or offer therapy to alter primarily cosmetic traits. Certainly, devastating genetic disorders must have priority.

If cosmetic screening tests or genetic therapies eventually become available (through private or corporate research, or through extensions of approved federally-funded research), hospitals and clinics should impose regulations that restrict the use of such tests. Expectant parents often want as much information as possible about their future child, but clinics can determine when such tests are appropriate, or refuse to employ them altogether.

Finally, one cannot overemphasize the need for a broad public education program. Even if hospitals and clinics impose their own restrictions, it seems likely that entrepreneurs will step forward eagerly to offer such services outside the regular medical setting. The best way to combat that issue is to address market demand. Public education programs that emphasize health, and promote the beauty and uniqueness of diverse body shapes, would help all of us be more satisfied with our bodies (and more likely to accept a future child who does not fit the ideal). With sincere effort, we might be able to abandon an ideal based on a specific physical body type and embrace an ideal that emphasizes such deeper commitments as participation in society, intellectual prowess, and emotional caregiving. Better funding for programs that focus on these deeper commitments might accelerate change. For instance, Girls Incorporated is a national program that aims to help young girls "confront subtle societal messages about their value and potential." Included in the program is a Bill of Rights that stresses the "right to accept and enjoy the bodies [girls] were born with and not to feel pressured to compromise their health in

order to satisfy the dictates of an 'ideal' physical image."

Cosmetic genetics can learn this lesson from cosmetic surgery: if a practice contributes to or reinforces harmful conceptions of normality, we should look for other means to achieve individual interests. We often dismiss alternatives too quickly because we cannot be certain that other people will follow suit, and if they do not, we might put ourselves at a disadvantage. But social change does not happen on its own. The answer is one that promotes agency, but not agency with moral blindfolds. No doubt we ought to respect individual choices, and to support individuals who feel unduly pressured. At the same time, however, we must be willing to criticize the choices that stem from individual agency, especially when those choices ignore the harmful conceptions of normality or unfairly create special exceptions for individuals. We certainly cannot benefit our children by making them the "perfect" offspring of cultural dopes or moral hypocrites.

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mance artist Orlan aimed at gaining "the chin of Sandro Botticelli's *Birth of Venus*, the forehead of da Vinci's *Mona Lisa*, the lips of Gustave Moreau's *Abduction of Europa*, the eyes of a Fountainebleau School *Diane Chasseresse*, and the nose of Gerard's *First Kiss of Eros and Psyche*," according to Peg Brand, "Bound to Beauty: An Interview with Orlan" in *Beauty Matters*, edited by Peg Brand (Indiana University Press, 2000). The issue of genetic therapies for genetic disorders is a complex one. The disability rights movement, for instance, notes that many conditions the general public would be tempted to "cure" through genetic therapies may not in fact rightly be considered physiologically undesirable. For a discussion of this debate, see *Prenatal Screening and Disability Rights*, edited by Erik Parens and Adrienne Asch (Georgetown University Press, 2000), and Anita Silvers, David Wasserman, and Mary B. Mahowald, *Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy* (Rowman and Littlefield, 1998); on limits to cosmetic screening and genetic therapies, see Jeffrey Botkin, "Developing Professional Standards for Diagnostic Services" in the *Prenatal Testing* volume and also Parens's "Is Better Always Good? The Enhancement Project" in the Parens et al. volume. For information on Girls Incorporated, see its web site at <http://www.feminist.com/girlsinc.htm>.

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