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Ludger HONNEFELDER*

Bioethics and the normative concept of human selfhood

The course of public debate as well as common issues presently discussed among ethicists make it clear that developments in the *life sciences* and their application in modern medicine are confronting humanity with questions that surpass by far the usual complex problems concerning the mere regulation of innovative technologies. These questions pertain to the core of our self-understanding as human beings, and are as such pertinent to the foundations of morals and ethics on which we base our lives.

This is not true of all discoveries in the field. Many developments in the *life sciences* are completely novel and require a high degree of regulation. However, as experience has shown, even though the process is not a simple one, or one capable of resolving all questions raised, in many areas of the life sciences and their medical applications it suffices to refer to the accepted norms at hand in order to reach a consensus regarding the extent of necessary regulation.

But questions remain which can be resolved neither by the application of widely accepted norms, nor by the generation of new norms on the basis of widely accepted principles; and it is these questions which presently attract attention within the public at large as well as within the scholarly debate. What makes these questions so important is neither the novelty of the application context, nor the complexity of the consequences involved; it is the intimate link to the foundations of our morals and to our normative self-image which guides us in our quest to develop and to instigate new norms. This has a direct impact on the normative self-understanding of human beings, which is based on our status as responsible agents and as bearers of elementary rights and obligations.

If we try to identify the specific fields in which we are faced with such 'fundamental' questions, then surely innovations concerning possible intervention in genetics and reproductive medicine such as the cloning of human beings, germline manipulation or embryo selection are to

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be included. The question to be answered is the following: Is the implementation of these novel possibilities on human beings consistent with the basic norms of accepted universalist morals or ethics and the criteria of responsible action manifested therein, or does it put the basic norms and thereby the very endeavor of ethics, which is founded on the reciprocal recognition of autonomous subjects, into question? How can we determine the status of the questions themselves and to what extent can we reach a consensus concerning the answers?

1. *From Chance to Choice: The approach of 'liberal eugenics'*

Progress in molecular biology and medicine has undoubtedly led to means of intervention which have not only considerably expanded – or at least promise to expand – the scope and magnitude of medical diagnosis and therapy, but which have also enabled us to manipulate the genetic endowment of humans in a way which would have a direct impact on human identity and human nature – a possibility which has thus far been completely out of our reach. Even proponents of *germinal choice technology* such as G. Stock consider the possibility of intervening in or determining the genome of future individuals as „the greatest challenge“, since it is inextricably related to „what it means to be a human being“ and inevitably „changes our image of ourselves“¹. What, however, is the precise change under scrutiny and which challenge does it raise?

For R. Dworkin, the Anglo-American human rights theorist, it is the possibility of displacing the boundary between *inherited* and *produced* nature that has caused the cloning of human beings and intervening in or determining the genome of future individuals to be met by such widespread intuitive resistance. For, according to Dworkin, the boundary between *chance* and *choice* is nothing less than the „spine of our ethics and our morality“² and is as such fundamental to our distinction between „what nature has created“ and „what we do in thatworld“³. It allows us to distinguish between what simply happens to us and what we are responsible for, and thus „structures our values as a whole“⁴. Only because we are who we are by coincidence and not by choice does not mean that we have to somehow justify the 'genetic lottery' in which all participate.

¹ G. STOCK, *Redesigning Humans. Our Inevitable Genetic Future*, Boston-New York 2002, 110, 196, 155.

² R. DWORKIN, *Sovereign Virtue. The Theory and Practice of Equality*, Cambr. Mass. 2000, 444; ders., *Playing God*, in: *Prospect*. Selected Features, May 1999.

³ Dworkin, *Sovereign Virtue* (Anm.2) 443.

⁴ Ebd. 444.

On the contrary – we must show solidarity with it⁵. If this boundary becomes displaceable, then the nature thus far prescribed to us will no longer be „the absolute paradigm“⁶ for something which is important to us for the simple reason that it lies beyond our scope of power and responsibility. Humankind is afraid of losing its footing, and our fear of thus losing security and stability expresses itself in our concern that with such a significant genetic modification, as is made possible by contemporary molecular medicine, we shall begin „playing God“⁷.

According to Dworkin, what causes intuitive resistance is therefore not only the genetic modification, but primarily its impact on our value system. For it affects values which, being intrinsic to the objects and events in question, are to be regarded as *detached values*. These are to be distinguished from *derivative values*, which result either from a recourse to interests, a cost benefit analysis or from social compromise⁸.

If, as in the case of displacing the boundary between *chance* and *choice*, the validity of intrinsic values is affected, then we should not be surprised when „deep moral uncertainty“ results and the fear of a „moral free-fall“⁹ spreads.

As gravely as Dworkin is inclined to describe the situation, he is not prone to draw the consequence that we should completely refrain from making use of these novel possibilities; for this would be „cowardice in the face of the unknown“¹⁰. The proper reaction can only be one of further developing our morals with regard to the new challenge.

With this result, which he himself only sketches, Dworkin concurs with the much more exhaustive diagnosis and substantiated approach put forward by a group of prominent American bioethicists, namely A. Buchanan, D. W. Brock, N. Daniels and D. Wickler, in the book *From Chance to Choice*¹¹. This group also sees the genetic modification of humans by means of cloning, germline intervention and embryo selection on the basis of genetic testing, as raising a radically new type of challenge. What renders this challenge so fundamental is the potential not only to develop forms of therapy for treating hitherto incurable diseases, but also to „shape some of the most important biological characteristics of the human beings we choose to bring into existence“¹². After reaching the necessary level of technical development, there are several reasons which

⁵ Vgl. ebd. 445.

⁶ Ebd.444.

⁷ Ebd.

⁸ Vgl. ebd. 427f.

⁹ Ebd. 445f.

¹⁰ Ebd.

¹¹ A. BUCHANAN u.a., *From Chance to Choice*. Genetics and Justice, Cambridge 2000.

¹² Ebd.XV.

could lead us to make use of such a potential: the implementation of individual rights, especially the right to reproductive freedom, the desire of future parents to have as perfect a child as possible, but also motives resulting from public health care or job market interests – not to speak of the concept of „genetic communitarianism“ as propagated by some social groups with recourse to the freedom of religion.

What gives weight to the moral challenge lying in such scenarios is, according to the mentioned group of authors, not only the concern that our capacity for moral judgement and implementation might well not suffice to effectively draw the necessary boundaries in time, especially considering the temptations raised by the potential of these innovations. For to this purpose we would have to be certain about the values that allow us to also distinguish in this field between what we *can* do, and what we *should* do. However, it is precisely this certainty which is missing. We must therefore ask: „What are the most basic moral principles that would guide public policy and individual choice concerning the use of genetic interventions in a just and humane society in which the powers of genetic intervention are more developed than they are today?“¹³.

As the question reveals, the diagnosed moral challenge goes far beyond questions concerning mere application. It concerns the very foundations of morality; however, this is no reason for a general ban, but rather – so the argument for permitting therapy – a reason and incentive for a thorough review and further development of our fundamental moral principles. According to the authors, this is also not contradicted by a historical analysis. For the „shadow of eugenics“, with which the second chapter of the study extensively deals¹⁴, does not end up labeling eugenics – which is precisely what the discussed genetic modifications are all about – as simply illegitimate. But what could the basic moral principles be, which would permit a feasible distinction between legitimate and illegitimate eugenics and could thus effectively tackle the outlined challenge?

In attempting to answer this basic question, the authors do not depart from the field of deontological ethics, as expressed in the language of fundamental rights based on elementary demands. In an appendix¹⁵ dedicated solely to methodological questions, the authors emphasize the necessity to foster a broad and balanced discourse to mediate between our basic moral intuitions, and specify the ideas considered fundamental to the „liberal moral-political theory“¹⁶ which should be adhered to, namely the ideas of moral individualism, the fundamental equality of all people, the ability to criticize and revise individual concepts of the good

¹³ Ebd.4f.

¹⁴ Vgl. ebd. 27-60.

¹⁵ Vgl. ebd. 371-382.

¹⁶ Ebd. 373.

with respect to justice in basic institutions and the necessity of distinguishing between the public sphere and the private¹⁷.

On the backdrop of a system of morals based on these ideas, the authors regard the new options made possible by genetics as an extension of individual rights and freedoms and consider the very act of endorsing and protecting these individual rights, such as the right to reproductive freedom, as drawing the necessary line to rule out objectionable practices, including state-controlled eugenics¹⁸. The right to reproductive freedom with respect to making use of the possibilities that genetic technology and reproductive medicine may offer, is naturally constrained by the formal requirements of justice, equal opportunity, the principle of nonmaleficence, and the recognition of the freedoms of others. What follows from this is the obligation to observe the welfare of yet nonexistent human beings affected by our actions, including avoiding suffering and promoting care. This implies that in some cases the deployment of medical innovations would be refused, in others it would be permitted, which would also not completely rule out cases of enhancement. As for individual freedoms and justice, the state has the obligation to protect the right to reproductive freedom, to enable equal access to the opportunities in question, and to accompany the impact for handicapped people through a „morality of inclusion“. Prohibition is only acceptable on the grounds of avoiding foreseeable damage or upholding equal opportunity, inevitably leading to a limited „genetic stewardship“ by the state with respect to „the genetic well-being of future generations“¹⁹. „Moral firebreaks“ such as the distinctions between positive and negative eugenics or therapy and enhancement do not offer an adequate solution to challenge raised by these new technologies, but rather the endorsement of reproductive freedom, which in exceptional cases does not rule disregarding the interests of third parties including those of the offspring, as long as the principle of nonmaleficence as well as justice is upheld.

2. The debate concerning the ethical self-image of the human race

A diagnosis of the situation differing in several important aspects from the study of the American group of authors, and thus drawing different conclusions with respect to permissible therapeutic measures, is presented by J. Habermas in his newest bioethical publication²⁰. In accordance with

¹⁷ Vgl. ebd. 379.

¹⁸ Vgl. vor allem das Schlußkapitel in Buchanan (Anm.11) 304-345.

¹⁹ Ebd.336f.

²⁰ J. HABERMAS, *Auf dem Weg zu einer liberalen Eugenik? Der Streit um das ethische Selbstverständnis der Gattung*, in: ders., *Die Zukunft des Menschlichen. Auf dem Weg zu einer*

Dworkin and the cited American study (to which Habermas refers in his notes), he agrees that possibility of genetic modification of human beings would radically displace the boundary between nature as we find it and nature as we ourselves create it, between *chance* and *choice*, a boundary which is constitutive of the human condition. Such a displacement would entail putting the system of norms on which our morals are based into question. Contrary to the authors mentioned, Habermas argues that the basic norms would not only be challenged, but rather directly affected. For if it is inherent to the human condition that the determination of one's genetic individuality be immune to manipulation by third parties in a way which surpasses all common possibilities of intervention (such as the choice of a partner), then the deliberate selection or modification of an individual's genome by means of genetic technology would change the nature of the entire species. For such a modification would „unilaterally and irreversibly intervene in the formation of a future person's identity“ and breach „the boundary-sustaining, deontological sanctuary... which guarantees one's personal inviolability, individuality and the unrenounceability one's own subjectivity“²¹. It would affect the personal identity of the person in question who, due to such foreign intervention, would no longer experience himself or herself as the sole author of his or her own biography. It would also affect the *moral community*, since it would raise members confronted with the „scenario of a dislocated future“²² who would have a different relation to their own inception than all others²³. In contrast to all postnatal socialization efforts by others, these prenatal foreign intentions infringe on one's biography in a way to which the affected person can no longer relate²⁴. If the intervention is irreversible and all attempts at revision ruled out, then the reciprocity and symmetry constitutive to moral equality is destabilized. What is then affected by the prospect of genetically modifying future human beings is the close association between personal inviolability and „the sanctity of a person's natural physical development and embodiment“²⁵. The decision to dissociate the two would constitute, according to Habermas, not the displacement of one of many boundaries of human influence that have thus far been drawn by nature; it would constitute nothing less than a „self-declaration concerning the ethical self-image of our species... which in turn determines whether we may further regard ourselves as authors of our own biographies and recognize

liberalen Eugenik?, Frankfurt 2001.

²¹ Vgl. J. HABERMAS, *Replik auf Einwände*, in: Deutsche Zeitschrift für Philosophie 50 (2002) 283-298, 287.

²² Ebd.

²³ Vgl. ebd. 72ff.

²⁴ Vgl. ebd. 93ff.

²⁵ Ebd. 41.

each other as autonomous agents and persons²⁶.

Against the background of such a diagnosis, it should come as no surprise that the conclusions Habermas draws regarding permissible therapeutic measures differ from those of the American authors cited earlier. If modifications are not possible without the stipulated consequences and with our status as autonomous agents and the equality in choosing a life-plan a cornerstone of our moral heritage is affected, then a deployment of such measures would not be possible without abolishing our moral foundation. The idea of „liberal eugenics“, as put forward by Dworkin and the others, is for Habermas self-contradictory²⁷. According to him, the only justifiable application is in non-instrumental cases which are inherent to the „logic of healing“²⁸; such as permitting an intervention in cases without any possibility of obtaining a subject’s consent if and only if it serves the purpose of treating or avoiding serious disease and one would otherwise expect the subject to consent to such treatment. Of course such an attempt to safeguard reciprocity and symmetry presupposes that the unborn human is to be regarded as a second person²⁹. In addition, a purely therapeutic intervention for which we would be justified in expecting the subject’s consent, made possible however – as in the case of pre-implantation diagnostics – only through the elimination of other human lives, nevertheless remains committed to the principle of protecting those deemed worthy of protection; the latter group, according to Habermas, includes prenatal human life thus sheltering it from instrumental exploitation³⁰.

If one asks how and why the principles of just coexistence, as expressed in the concept of the inviolability of human dignity, may be extended to encompass the entire species as well as unborn human life, then, according to Habermas, one can only refer to the „ethical self-image of the human race“ in the Ethos of the species („Gattungsethik“) inherent to our moral convictions. It is in this self-image that „the abstract rational morals of human-rights subjects themselves... find their footing“³¹ and which calls – on this side of the public debate concerning the moral status of the embryo – for an anticipation of the subject-status of unborn human beings and thereby for an extension of the right to protection from free and equal subjects to prenatal life as well.

²⁶ Ebd. 49.

²⁷ Vgl. ebd. 86ff.

²⁸ Ebd. 79.

²⁹ Vgl. ebd. 66ff.

³⁰ Vgl. ebd. 56-69.

³¹ Ebd.74; vgl. auch ebd. 96.

3. Key anthropological questions

Despite their differences, all authors discussed agree that the options now open to us have a direct impact on the foundations of the human condition. The reason for this is that intervening in human nature has an impact on the identity of a person in such a way that directly affects his autonomy and social equality. The moral relevance of such an intervention lies not in the fact that it modifies human nature as such, but rather in the resulting displacement of the boundary between *naturally developed* and *created*.

If it is inherent to the human condition that the boundary between *naturally developed* and *produced* is highly relevant to the identity of a human being and his self-understanding, and at the same time, this boundary is not fixed but can instead be significantly displaced, then we must ask ourselves what distinguishes the new prospect of modifying the genome of future human beings from other displacements of the boundary between nature and culture, or between *chance* and *choice*, that have accompanied the history of mankind as a cultural being thus far? Is this transformation not inherent to man's quality of transcending his own nature³², perhaps even with the consequence that „playing God“ will sooner or later be our destiny?³³ The mentioned authors supply us only with an indirect answer to the question as to what boundary, from a moral point of view, the displacement of the boundary between *naturally developed* and *produced* should itself respect. According to Habermas, the American group of authors regards the nature affected by genetic modification as a kind of „inner environment“ to which the subject in question can himself relate³⁴. The plea in favour of „liberal eugenics“ would in fact lose its plausibility without such a premise. For the general relation between a subject and a person, this would not be convincing if we presuppose an inextricable union between a personal and an organic system, unless of course we restrict genetic modifications to areas that are not crucial to personal identity, but rather belong to a kind of „inner environment“. In this case, the normative upshot of „liberal eugenics“ would already be inherent in its anthropological premises and would dismiss all genetic modifications to which a subject could no longer relate. This leaves the question unanswered whether and to what extent there are genetic modifications that have such a restrictive character and whether the interpretation of human nature as an „inner environment“ is at all plausible.

³² Vgl. K. Rahner, *Schriften zur Theologie VIII*, Einsiedeln-Zürich 1967, 286-321.

³³ Vgl. T. Peters, *Playing God? Genetic Determinism and Human Freedom*, New York u.a. 1997.

³⁴ Vgl. Habermas (Anm.24) 89.

In contrast to the position discussed, Habermas regards the displacement of the boundary between *naturally developed* and *produced* by means of genetic modification as being morally contentious, because it involves manipulation by third parties who intervene in the self-understanding constitutive to a subject's identity in such a way, that – with the exception of the mentioned therapeutic case – the subject can no longer retrospectively relate to the intervention. For this reason it must be regarded as an unjustifiable infringement of personal autonomy and the principle of equality. This leads to the conclusion that the heteronomy of nature is to be respected since it maintains autonomy and equality more strongly than the intervention by third parties, except when such an intervention conforms with the „logic of healing“ in which the patient is regarded as a second person whose consent we would otherwise be justified in expecting to obtain. Although the reference to autonomy and equality relieves Habermas from recurring to strong anthropological premises, it also forces him to make speculations regarding the extent to which genetic modifications would indeed result in a deficiency in autonomy and equality³⁵.

4. The moral challenge

Allow me to summarize the points stated thus far.

1. What constitutes the *moral* challenge according to the authors mentioned is the fact that the novel possibilities of intervention raise questions concerning premises, which have not needed addressing in traditional moral discourse, and that meeting the challenge requires additional premises which most likely cannot be formulated on the basis of traditional morals; these premises applying to the general framework as well as specific contexts.

2. The American group of authors asks whether our system of morals can be based on the reciprocal recognition of autonomous and equal subjects if genetic modifications affect the *nature* constitutive of a subject's identity, in addition to the fact that these modifications are inflicted on not yet existing subjects. And if so, how can a consensus be reached regarding regulation, if even displacing state-controlled eugenics to the individual decision of parents does not solve the general problems associated with eugenic application of genetic technology? If, as opposed to the „public health model“, the „personal service model“ is not able to solve the problems, then one must ask whether there is a *third approach* which might allow the use of genetic modification without infringing on equality, autonomy or personal inviolability?³⁶.

³⁵ Vgl. dazu Siep (Anm.37)....

³⁶ Vgl. ebd. 11ff.

3. The answer developed by the American group of authors suggests that this is possible if one applies the constraints of nonmaleficence and equal opportunity, as guaranteed to born humans, to future humans as well³⁷. But the question remains as to how such a principle can be introduced to an individual case without having unacceptable consequences in other areas? And how could we justify not being able to grant future and unborn human beings a status rendering them worthy of protection?

4. If one includes forms of genetic *enhancement* as an area in which one may legitimately apply the principles of nonmaleficence and equal opportunity, then one faces the problems of identifying what is to be considered as an „enhancement“, of determining for which forms of enhancement one can presuppose otherwise obtaining the patient’s consent³⁸, and of deciding how to avoid a social „colonization“ of natural inequalities and their consequences³⁹. If one wishes to achieve this through restrictions on the basis of the principles of nonmaleficence and adequate care and curtail reproductive freedom by means of state measures, one would then have to justify at least the state action involved by appealing to criteria such as disease relation.

5. Concerning the extension of entitlements to justice granted to autonomous and equal subjects to not yet existing humans, the authors face the problem that, according to accepted morals, not yet existing humans are not regarded as legal subjects and it has not yet been possible to reach a social consensus regarding the moral status of unborn human beings on the basis of these morals.

6. Habermas sees clearly that the moral intuition to the effect that cloning, germline intervention and embryo selection are seen as a violation of the right to self-determination and the principle of equality can only be adequately established if one presupposes an „intrinsic value of human life before birth“⁴⁰. However, he considers an interpretation of human development in favour of an unconditional moral status even of unborn humans as „reasonably controversial“⁴¹. If „human dignity“ is, strictly speaking, contingent upon the symmetry of relationships, then its „inviolability“ could only hold for legal subjects⁴².

7. This, however, does not rule out for Habermas that the members of a legal community may mutually make a moral commitment to grant unborn human beings though not „inviolability“, but „undisposability“⁴³, and „as a refe-

³⁷ Vgl. Buchanan (Anm.11) 242-257.

³⁸ Vgl. ebd. 219ff.

³⁹ Vgl. ebd. 82ff.

⁴⁰ Habermas (Anm.24) 61.

⁴¹ Ebd. 60f.

⁴² Vgl. ebd.62.

⁴³ Ebd. 59.

rence point for our obligations [grant them] legal protection"⁴⁴. Beyond mere appreciation for what it is, pre-personal life, though not yet „addressable in its *prescribed* role as a second person, [has] an integral value for the entirety of an *ethically* constituted form of life“, so that it – and this is the suggestion – should be granted protection on the basis of the „dignity of human life“, though not due to „human dignity, which is legally guaranteed to all persons“⁴⁵.

5. Critical evaluation and an alternative: The recourse to human dignity and human rights.

If we proceed on the basis of the arguments presented thus far, we are faced with grave problems and doubts regarding both the diagnosis and the therapeutic measures associated with the positions discussed.

5.1. Let us begin with the diagnosis:

As the discussion thus far has clarified, the innovative possibilities of genetic intervention into the nature of the human subject lead a universalist system of morals, which serves as a foundation for both positions, not only to the limits of its capacity, but also question important premises underlying it.

a) Due to the fact that moral systems are constituted in relationships of mutual recognition, morality becomes dependent upon the existence of legal subjects and remains restricted to such. The intuition that unborn or future human beings are to be included can only be indirectly accounted for, either by an *extension* of the concepts of equality and justice beyond the previously defined strict members of a possible moral community or by *introducing additional criteria for being worthy of protection*. If, as is necessary in the first case, one extends the (strong) concept of a legal subject, as posited in the moral systems in question, to include unborn and future human beings, this, as was shown, inadvertently leads to counterintuitive consequences, such as the unrestricted subsumption under the criterion of equality (which encompasses all subjects). Other possibilities of bestowing moral claims to unborn or future human beings, such as by a principle of anticipation with recourse to a species-related ethos, may clearly only be established at the price of expanding the concept. However, such an expansion would be inconsistent with the fundamental contractualist character of such a moral system. For the anticipation can only then be reasonably applied to an unborn human if an identity of the unborn human with the born legal subject is stipulated, which presupposes the extension which shall be introduced by such anticipation. Moreover it is not very convincing if the call for expanding the number of addressees of a universalistically conceived moral system can only be accounted for by a species related ethos which *by definition* is not justifiable in a universalist way.

⁴⁴ Ebd.66.

⁴⁵ Ebd.67.

- b) Furthermore, the presupposed concept of an autonomous, responsible subject implies a relationship of the subject to its own nature as that of a system to its (inner) environment. This, however, amounts to a latent form of Cartesianism, which is itself cast into serious doubt precisely due to the possibility of intervening into a subject's nature by the novel means of genetic technology. Modifications of nature by others which directly affect the identity of a subject and its relation to itself and furthermore touch the fundamental equality between subjects in a severe manner, change the subject in a way to which it can no longer relate. The vulnerability of the subject which becomes evident by the discussed options of genetic manipulation, presupposes a concept of the unity of a subject and its nature, or more precisely, a interleaving of identity and non-identity, of subject and nature, which cannot be properly accounted for in the concept of an autonomous, responsible subject without surrendering its function as being constitutive to moral systems.
- c) The precarious character of the relationship between subject and nature becomes evident when (as discussed by the American group of authors) we try to apply justice claims under the conditions of possible modifications of a subject's nature. If justice involves (if not in all cases, then in general) correcting natural inequalities, what then could serve as a measure for justice if nature, including all previous 'natural inequalities', becomes the object of human production? A modification affecting not only this or that property, but rather the entire ensemble, would constitute not only 'colonization' of natural inequalities, but rather a kind of total expropriation. In the extreme (and perhaps fictional) case of producing nature in its entirety, it becomes evident that the boundary between *naturally developed* and *produced* can be displaced even further, and that this cannot arbitrarily continue without fundamentally transforming the relations involved. A measure for the limits to the displacement of the boundary cannot be derived from the concept of an autonomous subject. The recourse to the „logic of healing“, that is, to the criterion of disease and health is intuitively appealing. However, it presupposes as point of comparison a concept of nature which in its entirety is intact; such a recourse is in addition plagued with the recurring problem of proper delineation.
- d) If the boundary deemed necessary is to be drawn in form of legally binding regulations *in lieu of* the unborn or future subjects affected by the displacement, we must then ask what criteria should such a stand-in protection adhere to. Since in the case of unborn and future subjects the recourse to their stipulated intentions actually relies on what we ourselves deem to be the good or obligatory, we are in need of something like an objective order of goods and claims. Habermas relies on an „objective legal order“. However, such an order inevitably emerges from the given relationship of a subject to its nature. How could the recourse function if this relationship itself is ren-

dered an object of modification? Moreover, we are faced with key questions regarding an order of rights and goods, such as the priority of a life without genetically caused handicaps over physical life itself – a question which a contractualistically founded universal moral system can only address on the basis of the self-determination of the affected person.

5.2. Let us now proceed with the therapy

If we wish – as is the case in the positions discussed – to allow for the intuition that the basic requirements of universalist morals be extended to future and unborn human beings, then in founding such a moral system we will not be able to avoid introducing premises that go beyond what is acceptable within a contractualist framework. Since it has become clear that the intuition calls for such premises and these are – at least to some extent – implicitly advocated in the positions discussed, it would fully correspond with the method of establishing a reflective equilibrium between our fundamental moral intuitions – as propagated by the American group of authors – if we were to introduce an appropriate revision in the founding of a universalist moral system.

- a) The basic intuition calling for an extension of the group of moral addressees to future and unborn humans is in my opinion nothing but the basic intuition on which the idea of human rights is based, and which secures this idea's binding character. It is the belief that all living beings that we refer to by means of the sortal predicate „human being” have an intrinsic or unconditional value which bars them from being evaluated in comparison to other goods. This means that all morality is based on a fundamental practical judgement stating that a human, as a living being equipped with the natural capacities of reason and free will is an intrinsic or unconditional good, and that humans have this value simply for being humans, that is, regardless of all other properties except for the property of being human; in other words, for being referred to by means of the sortal predicate „human”.
- b) This fundamental practical judgement can itself be accounted for in more detail, to which purpose there are several approaches. A rather apparent explanation is that we presuppose such a value judgement in all contexts of action and communication, and that its denial would lead to the dissolution of the framework regarded by all participants as binding. In this sense we are justified in claiming that a contractualist founding of a moral system presupposes such a fundamental practical judgement.
- c) If, in contrast to the intention underlying the idea of human rights, the fundamental practical judgement which assigns human beings their intrinsic value is not to be arbitrarily restricted, then it has to refer to human beings *as human beings*, that is it has to refer to the same object to which the sortal predicate „human being” refers. However, the sortal

predicate „human being” refers to a certain type of living being during the time of its existence. Modern enlightenment had taken this into account and placed in the *General land law for Prussian states (Allgemeinen Landrecht in den preussischen Staaten)* from 1794 all humans under the protection of law from their birth to their deaths. Kant also states that we are obliged to maintain the concept of substance in practical philosophy as well, and regard human beings as a living beings in the sense of persisting entities and correspondingly as goods worthy of protection.

- d) If intrinsic value must be assigned to humanbeings as human beings, and the human being is to be understood as a specific unity of subject and nature, then the natural dispositions, which must be regarded as necessary conditions for subjectivity, are to be protected as well. This is so in the case of the idea of human rights when under the label of „human rights” we protect – from intervention by the state or by others – certain natural frame-conditions such as bodily integrity and the right to life as fundamental rights. This could be considered as a departing point for designating the boundary beyond which intervention by means of genetic technology and reproductive medicine would be regarded as illegitimate, insofar as they would affect future or unborn human beings which as such are not able to give their consent.

Bioetyka i normatywne konsekwencje koncepcji człowieka

STRESZCZENIE

Rozwój nauk o życiu oraz ich zastosowanie w medycynie prowadzi do pytania, które jest często pomijane, chociaż odnosi się ono tak ważnej sprawy jak regulacja prawno-etyczna nowych technologii. Waga tego pytania nie rodzi się jednak ani ze względu na nową sytuację, ani też z powodu konsekwencji nowych rozwiązań, ale przede wszystkim z racji wewnętrznych związków istniejących między uzasadnieniem moralności i obrazem człowieka, co umożliwia odnajdywanie nowych norm moralnych. Dotyczy to szczególnie genetyki i medycyny zajmującej się reprodukcją ludzką. Możliwość genetycznych modyfikacji człowieka przesuwają granicę pomiędzy naturą zastaną a naturą stworzoną przez ludzi; pomiędzy istniejącą szansą a dokonywanym wyborem. Jest to granica konstytuująca ludzką kondycję. To przesunięcie granicy może zakwestionować całą dotychczasową moralność opartą na naturze.

Modyfikacja genomu pojedynczego człowieka może prowadzić w konsekwencji do zmiany natury całego gatunku. Oznaczałoby to także naruszenie tożsamości osoby. Człowiek mógłby patrzeć na siebie jako na autora własnej biografii. W tej sytuacji należy odwołać się do podstawowej intuicji, która stanowi fundament praw człowieka, że ludzka istota posiada wewnętrzną i nieuwarunkowaną wartość, która chroni ją przed porównywaniem do innych dóbr. Oznacza to, że ludzka istota posiada wartość sama w sobie, niezależnie od takich czy innych jej właściwości.