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Method, Mediations, and the Moral Dimensions of Preimplantation Genetic Diagnosis

Janet L. Dolgin
Maurice A. Deane School of Law at Hofstra University

METHOD, MEDIATIONS, AND THE MORAL DIMENSIONS OF PREIMPLANTATION GENETIC DIAGNOSIS

JANET L. DOLGIN*

I. INTRODUCTION

In responding to Professor Smolin's hypothetical about Brenda and John Smith's reproductive options,[1] this essay focuses on two matters. First, the essay explores one aspect of the several options facing the Smiths—that involving preimplantation genetic diagnosis. Second, and more important, this essay suggests a methodological approach to bioethical conundrums such as those raised by the Smith hypothetical.

Concepts of morality flow from and reflect a society's ideology.[2] Understandings of the world and the way people live their everyday lives are fundamentally connected to the value people place on themselves, other people, relationships, events, and things in the world. That is to say, moral beliefs are inseparable from larger systems of meaning.

From within a society such as our own that has jettisoned many of the frames within which social truths were once anchored, it is

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* Jack and Freda Dicker Distinguished Professor of Health Care Law, Hofstra University School of Law. B.A., philosophy (Barnard College); M.A., Ph.D., anthropology (Princeton University); J.D. (Yale Law School). I am grateful to Hofstra University School of Law for research support, to Elizabeth Henries and Sreyankar Homchaudhuri, students in the class of 2005 at the Hofstra University School of law for their help with research, and to Cindie Leigh, Reference Librarian, Hofstra University School of Law, for her intelligent and generous assistance.

[1] David M. Smolin, *Does Bioethics Provide Answers?: Secular and Religious Bioethics and Our Procreative Future*, 35 CUMB. L. REV. 473, 496-97(2005).

[2] The term "ideology" is not used here in reference to a system of false beliefs or in reference to a system of political beliefs. Rather, it is used in reference to the underlying, pervasive forms through which people understand themselves, other people, and the world in which they live. This use of the term follows that of the anthropologist Louis Dumont. Dumont wrote:

> Our definition of ideology thus rests on a distinction that is not a distinction of matter but one of point of view. We do not take as ideological what is left out when everything true, rational or scientific has been preempted. We take everything that is socially thought, believed, acted upon, on the assumption that it is a living whole, the interrelatedness and interdependence of whose parts would be blocked out by the a priori introduction of our current dichotomies.

LOUIS DUMONT, FROM MANDEVILLE TO MARX: THE GENESIS AND TRIUMPH OF ECONOMIC IDEOLOGY 22 (Univ. of Chicago Press 1977).

often difficult to justify privileging one presumptively moral choice above others in bioethical, as in other, settings. Even more, in a relativistic universe,[3] few ideological and moral choices are likely to gain universal approbation.

Some individuals, allied with one or another sectarian belief system committed to ultimate "truths," may assess the options available to the hypothetical couple (John and Brenda Smith) from a platform of moral certainty. But for contemporary American society as a whole, such assessments are of limited practical use. Most contemporary attempts to assess the moral dimensions of the choices facing the hypothetical Smiths[4]—including especially choices presented by the option of using preimplantation genetic diagnosis[5]—are likely to reflect difficulties involved in separating "right" from "wrong" and in justifying particular moral distinctions and categorizations within a heterogeneous society largely committed to some combination of heterodoxy and relativism.

This essay describes an approach to moral conundrums (such as those occasioned by reproductive technology, including preimplantation genetic diagnosis) in a heterogeneous society. The approach, referred to as "mediative," is designed to clarify aspects of the process of moral contemplation. It does not aim to secure any particular sort of resolution or conclusion. In this sense, the approach is not exclusively committed to any particular religious or philosophical perspective regarding bioethical questions and can most felicitously accommodate many of them.

The approach reflects an anthropological apperception: the effort to understand the Other (the stranger, the outsider, the foreigner) depends on a process of mediating between the analyst's

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[3] *See* ROBERT C. SOLOMON & KATHLEEN M. HIGGINS, A SHORT HISTORY OF PHILOSOPHY 244 (Oxford Univ. Press 1996) (describing "relativism" as the "central concern" of twentieth century philosophy). Solomon and Higgins write, "Idealism, the transcendental and sometimes even absolute confidence that had heralded the beginning of the last century [the nineteenth], would not be found in this one [the twentieth]." *Id.*

[4] *See* Smolin, *supra* note 1, at 496-97. In light of space limitations, this essay does not focus on all the fascinating, morally complicated questions raised by the John and Brenda Smith hypothetical. Rather, it tries to describe a methodological approach to the hypothetical generally and then focuses on two specific concerns that have been expressed about preimplantation genetic diagnosis.

[5] Preimplantation genetic diagnosis is a procedure that extracts eggs from the female and combines them with the donor's sperm in the lab. Cells are later removed from the embryos and tested for such things as abnormalities, disease, and sex traits. The embryos possessing the desired characteristics are then placed inside the mother's uterus. *See* Jason Christopher Roberts, *Customizing Conception: A Survey of Preimplantation Genetic Diagnosis and the Resulting Social, Ethical, and Legal Dilemmas*, 2002 DUKE L. & TECH. REV. 12.

beliefs and the beliefs of the Other.[6] The process is complicated because anthropologists usually begin without a clear sense of the Other's beliefs and with an incomplete or even misguided sense of their beliefs. The mediative approach that this essay describes requires a similar effort to understand the Other's beliefs from inside one's own and to become conscious, or more conscious, of one's own beliefs through reference to those of the Other. Thus, the process involves delimiting and then mediating among one's own and some Other's "moral" presumptions and choices. The first aspect of the task involves trying to reveal various assumptions underlying moral choices and conclusions. Then, the analyst must try to situate himself or herself in the ideological gap among different, often conflicting, presumptions in order to make sense of each set of presumptions from the perspective of another set of presumptions.

Part II of this essay delimits the scope of moral debate about preimplantation genetic diagnosis ("PGD").[7] This Part describes arguments that both favor and disfavor the technique. Part III then outlines the mediative approach to moral dilemmas such as those posed by PGD.

II. PERSPECTIVES ON PREIMPLANTATION GENETIC DIAGNOSIS

In the United States,[8] moral contemplation of preimplantation genetic diagnosis may be especially important because the tech-

[6] These notions of Self and Other resemble those found in JEAN-PAUL SARTRE, EXISTENTIALISM AND HUMAN EMOTIONS (Bernard Frechtman trans. 1957). Sartre wrote,

> [a person] realizes that he can not be anything . . . unless others recognize it as such. . . . The other is indispensable to my own existence, as well as to my knowledge about myself. . . . Hence, let us at once announce the discovery of a world we shall call inter-subjectivity; this is the world in which man decides what he is and what others are.

Id. at 37-38.

[7] The Smith hypothetical raises questions beyond those raised by preimplantation genetic diagnosis, including questions about gestational surrogacy. Because this essay focuses on describing a methodological approach to moral discourse rather than on concrete conclusions, space precludes analysis of each reproduction option facing the hypothetical Smiths. In short, this essay focuses on preimplantation genetic diagnosis and considers only indirectly some of the other moral conundrums raised by the hypothetical.

[8] In contrast to the United States, Britain has long regulated assisted reproductive technology and as part of that effort, has regulated PGD. *See* Human Fertilisation and Embryology Act, 1990, c. 37 (Eng.). In Britain, PGD is largely prohibited for non-medical purposes. *Id. See also* Meredith Mariani, Note, *Stem Cell Legislation: An International and Comparative Discussion*, 28 J. LEGIS. 379 (2002). That is

nique is virtually unregulated by the federal government and by the states.[9]

Even so, preimplantation genetic diagnosis in the United States has been debated in earnest.[10] Section A of this Part considers a number of concerns that have been expressed about the consequences and implications of preimplantation genetic diagnosis.[11] Section B considers moral debate about PGD in comparison to moral debate about abortion.

A. *Moral Challenges to Reliance on Preimplantation Genetic Diagnosis*

Many commentators in the United States and elsewhere have considered the moral implications of preimplantation genetic diagnosis,[12] and have delineated and considered a variety of moral

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the case as well in a number of other countries, including Australia, Canada, and Japan. *Id.* at 410 n.211. *See also* Rob Stein, *A Boy for You, a Girl for Me: Technology Allows Choice; Embryo Screening Stirs Ethics Debate*, THE WASHINGTON POST, Dec. 14, 2004, at A10.

The difference between legal responses to reproductive technology generally and PGD specifically in the United States and in Britain is not surprising. Even today, British society is more homogeneous than society in the United States and thus more likely to reach the sort of consensus about matters, such as reproductive technology, that can be institutionalized through legal regulation. Furthermore, people in the United States are on the whole more committed to liberty and free choice and less committed to the preservation of tradition than are people in Britain. Moreover, and probably more important, health care in Britain is funded by the national government. As a result, the British government has been far more involved in directing health care professionals and health care institutions than is the case in the United States.

[9] No state laws directly regulate PGD at present. *See* PRESIDENT'S COUNCIL ON BIOETHICS, SCREENING AND SELECTION (2004), *available at* http://www.bioethics.gov/reports/reproductionandresponsibility. Although there are three sources of federal law that might be relevant, none are. *Id.* The Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a, which regulates laboratories performing the testing, is not now applicable to tests performed in the context of IVF (as is PGD). 42 U.S.C § 263a (2004). The authority of the Federal Drug Administration extends to devices made and sold for use in genetic testing, but does not extend to tests developed within laboratories in which they are used (as PGD tests generally are). *Id.* Finally, PGD is generally not seen as a matter of human subject research. Therefore, the technique is not subject under federal law to Institutional Review Board certification or other federal rules regulating human subject research. *Id. See also* SCREENING AND SELECTION, *supra*, at nn.25, 33 & 29.

[10] *See* SCREENING AND SELECTION, *supra* note 9, at nn.23-33 & 36.

[11] A few of the positions considered in this Section were voiced in British publications. *See, e.g.*, Robert J. Boyle & Julian Savulescu, *Ethics of Using Preimplantation Genetic Diagnosis to Select a Stem Cell Donor for an Existing Person*, 323 BRIT. MED. J. 1240, 1242 (2001). *See also* SCREENING AND SELECTION, *supra* note 9, at nn.83-85.

[12] *See, e.g.*, CHRISTIAN MUNTHE, PURE SELECTION: THE ETHICS OF PREIMPLANTATION GENETIC DIAGNOSIS AND CHOOSING CHILDREN WITHOUT ABORTION (1999); Richard

challenges to the technique. In the view of some analysts, one or more such challenges have proved determinative, and they have accordingly disfavored the technique.[13] More often, analysts have responded to concern about preimplantation genetic diagnosis with arguments that favor the technique with regard at least to some, though not necessarily to all, of its potential uses.[14] The following five concerns about preimplantation genetic diagnosis are among those most frequently noted by commentators.[15]

First, preimplantation genetic diagnosis is likely to involve embryonic destruction. To those pro-life adherents who posit that personhood begins at conception,[16] embryonic destruction is morally impermissible. Even more, many others, including some pro-choice adherents, assess PGD in light of "respect" presumptively owed to human embryos.[17] Such analysts almost always presume to

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Ashcroft, *Bach to the Future: Response to: Extending Preimplantation Genetic Diagnosis: Medical and Non-medical Uses*, 29 J. MED. ETHICS 217 (2003), *available at* http://www.jmedethics.com; J.A. Robertson, *Extending Preimplantation Genetic Diagnosis: Medical and Non-medical Uses*, 29 J. MED. ETHICS 213 (2003), *available at* http://www.jmedethics.com; Susan M. Wolf et al., *Using Preimplantation Genetic Diagnosis to Create a Stem Cell Donor: Issues, Guidelines & Limits*, 31 J.L. MED. & ETHICS 327 (2003).

[13] *See, e.g.*, FRANCIS FUKUYAMA, OUR POSTHUMAN FUTURE: CONSEQUENCES OF THE BIOTECHNOLOGY REVOLUTION 96-97 (2002). Writing of "genetic modification" generally rather than PGD specifically, Fukuyama suggests that parental choices may be guided by "scientists and doctors with their own agendas" and suggests further that "[t]here are good prudential reasons to defer to the natural order of things and not to think that human beings can easily improve on it through casual intervention." *Id.*

[14] *See, e.g.*, Robertson, *supra* note 12, at 213.

[15] Another concern, somewhat different than those delineated in this Section, involves the risk of possible physical harm to children who result from embryos that have been created through use of in vitro fertilization (used to facilitate PGD), and that have been subjected to cell extraction for genetic testing (the goal of PGD). MUNTHE, *supra* note 12, at 159-203. Even more, the procedure could in theory present risks to future generations in that early embryonic cells are germ cells. Gametic as well as somatic cells result from these germ cells. *Id.* at 160. Thus, it may take several generations before it can be concluded definitively that PGD poses no physical risk to children born after the technique is performed (or to the children of those children).

[16] Some abortion opponents are not committed to the position that personhood commences at conception. Kristin Luker notes that "abortion teachings are relatively vague for non-Catholics," and that many Protestant ministers who do not find abortion "acceptable" do not premise that position on "official" church doctrine. KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 276 n.41 (1984) (citing FRANK J. CURRAN, RELIGIOUS IMPLICATION IN THERAPEUTIC ABORTION 153-65 (Harold Rosen ed., 1954)).

[17] Robertson, *supra* note 12, at 213 (noting that even "those who view the early embryo as too rudimentary in development to have rights or interests . . . may disagree . . . over whether particular reasons for PGD show sufficient respect for

balance the benefit of PGD in particular cases against disrespect to embryos inherent in the technique.[18]

Second, preimplantation genetic diagnosis threatens to commodify children. Selecting the traits of one's child before gestation suggests a supermarket of options that may result in parents' valuing children for discrete traits rather than for their personhood more broadly.[19] Concern about the commodification of children born as a result of embryo selection following PGD has often been expressed with regard to "non-medical" uses of PGD. But the categorical distinction between medical and non-medical uses of PGD may blur as various non-medical uses (e.g., uses to produce cosmetic results) are medicalized.[20] Moreover, certain medical uses of PGD raise moral conundrums relating to commodification of children. For instance, using PGD to create a "donor sibling" for a sick child treats the donor child (even if that child is otherwise desired) as a means to help some other. At least as worrisome, such children could, in effect, be turned into "lifelong donor[s]" to the older, ill child.[21] A child "selected" as a donor sibling may suffer guilt later in life if the transplant does not work. And if, at some point, a donor child resists additional requests for donation, negative consequences for that child within the family could be overwhelming.[22]

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embryos and potential offspring to justify intentional creation and selection of embryos").

In *Davis v. Davis*, Tennessee's highest court concluded that "preembryos are not, strictly speaking, either 'persons' or 'property,' but occupy an interim category that entitles them to special respect because of their potential for human life." Davis v. Davis, 842 S.W.2d 588, 597 (Tenn. 1992).

[18] In practice, the balancing procedure is often theoretical rather than actual. *See Davis*, 842 S.W.2d at 597. Yet, in actually deciding between the disputing gamete donors, the *Davis* court elided respect owed to embryos and focused instead on balancing the rights of the two gamete donors. *Id.* at 604.

[19] *See* Robertson, *supra* note 12, at 213.

[20] The trend toward medicalization is evident in the October 2004 decision of the Cleveland Clinic to perform a face transplant. Lawrence K. Altman, *The Ultimate Gift: 50 Years of Organ Transplants*, N.Y. TIMES, Dec. 21, 2004, *available at* http://www.nytimes.com/2004/12/21/health/21orga.html. *See also* E. Haavi Morreim, *About Face: Downplaying the Role of the Press in Facial Transplantation Research*, 4 AM. J. BIOETHICS 27 (2004) (suggesting caution before proceeding with facial transplantation); O.P. Wiggins et al., *On the Ethics of Facial Transplantation Research*, 4 AM. J. BIOETHICS 1 (2004) (supporting performance of facial transplantation).

[21] Wolf, *supra* note 12, at 330.

[22] *Id.* at 331. The authors also note a concern about "subjecting the child-to-be to the risks of IVF (mainly twin or potentially higher-order multiple gestation)" and note concern about "possible risks of PGD solely to benefit another child with no medical benefit to the child-to-be." *Id.* at 332.

Third, preimplantation genetic diagnosis has been criticized as a form of eugenics.[23] Some commentators have downplayed the danger of PGD's eugenic potential, claiming that it differs from previous types of eugenic practices in that it is not imposed on populations by the state but is chosen by individual prospective parents.[24] Yet, others have worried about the implications of privatizing eugenics in this way. For instance, Gilbert Meilander, a member of the President's Council on Bioethics, remarked:

> After all, many people don't just desire a child. They desire a child of a certain sort, a boy or a girl, a child with certain abilities, a child lacking certain diseases, and it seems to me that if we simply buy the assumption that the desire is an entitlement, we are simply privatizing eugenic choices in certain ways.[25]

Fourth, a number of commentators have voiced broad concern about the high cost of preimplantation genetic diagnosis.[26] PGD depends on in vitro fertilization, which usually costs over $10,000.[27] In addition, genetic testing usually costs between $2,500 and $4,000. The total cost (often not covered by health insurers) is more than many prospective parents can afford.[28] Thus, the technique will often not be available to people without significant independent resources.[29]

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[23] *See* David S. King, *Preimplantation Genetic Diagnosis and the "New" Eugenics*, 25 J. MED. ETHICS 176 (1999) (suggesting the need to regulate PGD because it "opens up the possibility of a radical expansion of the current eugenic regime, creating a consumer-driven form of eugenics").

[24] Two commentators even suggest that "the best way to prevent state-sponsored eugenics is to ensure that couples—not the state, professionals or other organizations—retain control over reproduction and the decision of which children to have." Robert J. Boyle & Julian Savulescu, *Ethics of Using Preimplantation Genetic Diagnosis to Select a Stem Cell Donor for an Existing Person*, 323 BRIT. MED. J. 1240, 1242 (2001).

[25] PRESIDENT'S COUNCIL ON BIOETHICS, BIOTECHNOLOGY AND PUBLIC POLICY (2002), *available at* http://www.bioethics.gov.

[26] Am. Soc'y for Reproductive Med., *Chapter 11: Preimplantation Genetic Diagnosis*, 81 FERTILITY & STERILITY, Supp. 4, S37-S38 (2004) (describing PGD's "relatively high cost" as one of its "main disadvantages"), *available at* http://www.fertstert.org; J.A. Raeburn, *Commentary: Preimplantation Diagnosis Raises Philosophical Dilemma*, 311 BRIT. MED. J. 540 (1995) (noting that PGD might "supplant prenatal diagnosis for several single gene disorders" if it were "easy or inexpensive (which it is not)").

[27] Genetics & Pub. Policy Ctr., *Preimplantation Genetic Diagnosis: A Discussion of Challenges, Concerns, and Preliminary Policy Options Related to the Genetic Testing of Human Embryos* 22 (2004), *available at* http://www.dnapolicy.org.

[28] *Id.*

[29] Some commentators have expressed concern that the high cost of PGD could "widen and worsen the gap between the 'haves' and the 'have-nots' in society." PRESIDENT'S COUNCIL ON BIOETHICS, REPRODUCTION AND RESPONSIBILITY: THE

Fifth, members of the disability rights critique[30] and some others worry that the use of preimplantation genetic diagnosis to select against embryos with genetic alterations associated with disability will cause harm to existing people who have such disabilities. To disabled people, preimplantation genetic diagnosis presents a "fear of elimination."[31] Moreover, it suggests that prospective parents will (or even that they *should*) respond to problems faced by people with disabilities with biological, rather than social, solutions.[32] Prospective parents unwilling to undergo PGD may even be viewed as irresponsible.[33] A related concern at the level of society generally, focuses on the implications of facilitating creation of increasing biological homogeneity.

B. *Comparing Debate About Preimplantation Genetic Diagnosis with Debate About Abortion*[34]

For prospective parents concerned about having a child with a particular trait or, more usually, about having a child free of a particular disease (e.g., Tay Sachs, cystic fibrosis, Down syndrome), PGD offers an alternative to prenatal genetic testing followed by abortion.[35] Moreover, both abortion and PGD raise questions about the status and sanctity of embryonic and fetal life. As a result, debate about PGD generally occurs in the broad context of debate about abortion.

However, in contrast with debate about abortion—which is almost always understood as debate about values—debate about PGD more often occurs within a broadly amoral (presumptively

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REGULATION OF NEW BIOTECHNOLOGIES, c. 3 (2004), *available at* http://www.bioethics.gov.

[30] *See* Erik Parens & Adrienne Asch, *The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations, in* PRENATAL TESTING AND DISABILITY RIGHTS 3 (2000). Parens and Asch argue "that prenatal genetic testing followed by selective abortion is morally problematic, and that it is driven by misinformation." *Id.* at 13.

[31] Suzanne Holland, *Selecting Against Difference: Assisted Reproduction, Disability and Regulation*, 30 FLA. ST. U. L. REV. 401, 407-08 (2003) (noting fear of many disabled people and some homosexuals that society would wish to "eliminate" them through prenatal genetic testing).

[32] *Id.* at 408.

[33] SCREENING AND SELECTION, *supra* note 9 (suggesting that "[a]s the aggregate effect of parental choices reshapes society's understanding of 'normal' or 'acceptable' phenotypes, parents might feel social pressure to undergo PGD").

[34] The comparison is considered in the context of the mediative approach. *See infra* Part III.C.2.

[35] *See* C. Cameron & R. Williamson, *Is There an Ethical Difference Between Preimplantation Genetic Diagnosis and Abortion?*, 29 J. Med. Ethics 90, 90 (2003).

objective) frame.[36] Assessments of PGD are more likely than assessments of abortion to focus on the uses and implications of sophisticated reproductive technology. That focus facilitates an *a*moral perspective—one comparatively unconcerned with the moral dimensions of the procedure. In contrast, debate about abortion is more likely to focus on family relationships. In short, debate about PGD is more likely to displace and diminish concerns about moral responsibility than is debate about prenatal testing followed by abortion if test results prove disappointing.[37]

More specifically, even though PGD depends on the extraction of ova, an invasive procedure, it differs from abortion in that it occurs in a laboratory before the creation of a physical bond between mother and developing embryo or fetus. Thus, for people who do not presume that personhood begins at conception, moral debate about PGD is less likely to focus on the meaning of "mother" and child and the scope of the parent-child relationship than is moral debate about abortion.[38] Again, the consequence is that debate about PGD is easily articulated in the "objective" language of science and technological development, while debate about abortion is more likely to be articulated in the language of family and human connection. Accordingly, it becomes easier to displace or elide moral implications of preimplantation genetic diagnosis than moral implications of abortion following disappointing prenatal genetic test results. Perhaps, for those pro-choice advocates concerned with the moral implications of abortion, PGD seems to raise fewer moral concerns. Cameron and Williamson[39] suggest, for instance, that

> [w]hen the eight cell embryo is in culture, it has not acquired the additional respect and emotional attachment associated with implantation, growth or ultrasound visualisation. The em-

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[36] This concern is later considered in more detail. *See infra* Part III.C.

[37] Christian Munthe makes a similar point in noting that PGD and other, related procedures "mark the starting point of a new era, where the possibility of choosing children is gradually being separated from morally controversial procedures such as abortion." MUNTHE, *supra* note 12, at 14.

[38] This result is suggested by John Robertson:

> While persons holding right to life views will probably object to PGD for any reason, those who view the early embryo as too rudimentary in development to have rights or interests see no principled objection to all PGD. They may disagree, however, over whether particular reasons for PGD show sufficient respect for embryos and potential offspring to justify intentional creation and selection of embryos.

Robertson, *supra* note 12, at 213.

[39] Cameron & Williamson, *supra* note 35, at 90-92.

> bryo is still in the charge of a laboratory, and decisions that are taken do not involve the mother in a physical process where she participates in termination of pregnancy.[40]

It is thus not surprising that preimplantation genetic diagnosis is often favorably compared to abortion as a means of selecting certain embryos but not others. A short "commentary," published in the *British Medical Journal* soon after PGD was first used successfully to select among human embryos,[41] remarked—as if it were obvious and thus not open to serious debate—that "because genetic tests before implantation can remove the need for abortion they are a preferred approach for couples who are offered the choice."[42] Indeed, because preimplantation genetic diagnosis can be framed to elide the debate about abortion, it has been far less strenuously subjected to moral criticism than has prenatal testing followed by abortion.[43]

In significant part, the debate about PGD has differed from the wider debate about abortion (at least for people not committed to the view that personhood begins at conception) not so much because the second technique (abortion) is objectively less moral than the first (PGD) on some putative scale of moral acts, but rather because it has been harder to disguise the moral dimensions of abortion than those of PGD. That is, abortion may seem more troubling than PGD to many commentators and patients because the relationships involved in, and thus the social consequences of, abortion are more transparent and thus harder to ignore than those implicated by PGD.

III. APPROACHING THE MORAL CONUNDRUMS

This Part describes an approach to bioethical questions such as those occasioned by the Smith hypothetical.[44] The approach is referred to as mediative because of its similarities to the ethnographic process of mediation between Self and Other essential to the task

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[40] *Id.* at 92. The authors suggest that an eight cell embryo may be viewed as a "possible life" whereas a ten-week embryo "has more status." *Id.*

[41] The first use of PGD on a human embryo followed by the birth of a baby occurred at Hammersmith Hospital in London in 1989. MUNTHE, *supra* note 12, at 21.

[42] Raeburn, *supra* note 26, at 540. *See also* King, *supra* note 23, at 176 (noting that "[i]t is generally thought that PID [PGD] represents an improved form of prenatal diagnosis, primarily because it allows women to embark on a pregnancy with the certainty (subject to testing errors) that the child will not be affected by genetic disorder, rather than face the trauma of pregnancy termination").

[43] King, *supra* note 23, at 176.

[44] *See* Smolin, *supra* note 1, at 496-97.

of understanding the cultural Other. The approach is not a substitute for faith-based systems of belief or for theories constructed by moral philosophers. Moreover, the approach does not prefer any particular system of religious belief or moral philosophy to others. Rather, the approach is intended as an intellectual supplement—an intellectual tool, perhaps—encouraging analysts working from within various ideological frames to identify unself-conscious assumptions undergirding their own conclusions as well as assumptions undergirding conclusions of others that conflict with their own conclusions.

A. *Approaches to Bioethics*

For some, moral concerns about preimplantation genetic diagnosis must be located firmly inside the debate about abortion. Others concerned about the moral implications of preimplantation genetic diagnosis have focused on specific uses of the method rather about its use, regardless of purpose. For this second group, arguments favoring and disfavoring PGD (generally or for certain purposes) sometimes resemble arguments favoring and disfavoring abortion in that they reflect broad ideological[45] perspectives within which people locate themselves. But sometimes this second group separates debate about PGD from issues implicated in the debate about abortion, including the importance and moral scope of embryos, disability, illness, women, gender, pregnancy, and family relationships.

For some members of both groups, moral conclusions about PGD and related forms of reproductive technology may flow from and be justified in terms of belief systems presumptively anchored in supernatural truths. To those outside the belief systems in question, those conclusions may prove useful as models and guidelines but do not have the status of irrefutable truth.[46] Within the contemporary world of secular academia, for instance, the majority of moral assessments rely on, or at least invoke, various aspects of

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[45] *See supra* note 2 and accompanying text defining "ideology".

[46] Chapter 3 of the Report and Recommendations of the National Bioethics Advisory Commission on Cloning Human Beings illustrates the investigation of religious views for insights about "categories such as 'nature,' 'reason,' 'basic human values,' and family values.'" *Cloning Human Beings: Report and Recommendations of the National Bioethics Advisory Commission*, 39 (June 1997), *available at* http://www.georgetown.edu/research/nrcbl/nbac/pubs.html. The Report did not rely conclusively on any sectarian voice, but it took a wide variety of such voices into account. *See id.*

Kantian theory,[47] utilitarian theory,[48] and/or a number of newer approaches such as critical race,[49] feminist,[50] and communitarian theories.[51] Each perspective offers guidelines and suggests limits useful in assessing moral conundrums such as those raised by PGD. For a number of reasons, however, none can be relied on definitively to resolve such conundrums for the larger society. First, each theory rests on a set of assumptions that are immune to proof.[52] Second, in practice, each theory can result in conflicting conclusions.[53] Third, moral philosophy, partly because it is formulated in abstract terms, may be difficult to apply to the resolution of practical dilemmas.[54]

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[47] Kant proposed as a "categorical imperative" that one "ought never to act except in such a way that [his or her] maxim shall become a universal law." IMMANUEL KANT, GROUNDWORK OF THE METAPHYSIC OF MORALS 70 (H.J. Paton, trans., Harper & Row 1964) (1785). A second version of the categorical imperative asserts that one should never treat a person (including oneself) as a means only. *Id.*

[48] Among the most important proponents of utilitarian moral theory were Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873). JANET L. DOLGIN & LOIS SHEPHERD, BIOETHICS AND THE LAW (forthcoming 2005).

[49] *See, e.g.*, Lisa Chiyemi Ikemoto, *Some Tips on How to Endanger the White Male Privilege in Law Teaching*, 19 W. NEW ENG. L. REV. 79 (1997).

[50] *See, e.g.*, Rosemarie Tong, *Feminist Approaches to Bioethics, in* FEMINISM AND BIOETHICS: BEYOND REPRODUCTION 67 (1996). *See generally* Karen H. Rothenberg, *New Perspectives for Teaching and Scholarship: The Role of Gender in Law and Health Care*, 54 MD. L. REV. 473 (1995) (summarizing various forms of feminist bioethical theory).

[51] Communitarian theories stress the good of the social whole rather than the good of the individual. *See, e.g.*, ALASDAIR MACINTYRE, AFTER VIRTUE (2d ed. 1984). A somewhat different perspective that focuses on community is referred to as an "ethics of care." *See, e.g.*, CAROL GILLIGAN, IN A DIFFERENT VOICE (1982); Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 VT. L. REV. 1 (1990).

[52] Many commentators have noted, for instance, the difficulty for utilitarian theorists of identifying "pleasure" and "pain." Moreover, utilitarian approaches do not explain how to quantify pleasure and pain for purposes of concluding that one approach is more moral than another. *See* DOLGIN & SHEPHERD, *supra* note 48.

[53] Kantian morality, for instance, may seem to impose two duties that cannot both be effected (e.g., tell the truth; keep confidences). *See* DOLGIN & SHEPHERD, *supra* note 48. Utilitarianism can result in conclusions that conflict not only with other utilitarian conclusions but with general notions of moral behavior (e.g., supporting the sacrifice of a small number of people for the greater pleasure of a large number). John D. Arras et al., *Moral Reasoning in the Medical Context in Ethical Issues in Modern Medicine, in* ETHICAL ISSUES IN MODERN MEDICINE 1, 9-14 (5th ed. 1999).

[54] *See* Tom L. Beauchamp, *Does Ethical Theory Have a Future in Bioethics?*, 32 J.L. MED. & ETHICS 209 (2004). Beauchamp asserts that a "practical price" is paid for the abstract quality of moral theory: "It is often unclear whether and, if so, how theory is to be brought to bear on dilemmatic problems, public policy, moral controversies, and moral conflict—which I will here refer to as problems of practice." *Id.* at 209.

This essay now delineates a methodological approach to moral dilemmas (such as those occasioned by PGD). The approach aims to facilitate discourse about bioethical theory and practice across various ideological divides. The approach does not presume to arrive at unchallengeable moral conclusions. Its focus is on process. Again, the approach is not intended to displace moral theory grounded in philosophy or systems of religious belief. To the contrary, the more that philosophical moral theories and religious systems of belief are taken into account, the richer the method's results will likely be.

B. A "Mediative" Approach

The mediative approach proposed here bears resemblance to, but should not be confused with, theories directing the work of mediators who assist in the resolution of conflicts between two or more disputants. More particularly, it should not be confused with an approach proposed by Nancy Dubler and Carol Liebman called "bioethics mediation,"[55] which is constructed to deal with actual disputes, mostly in hospital settings, among patients, family members, and health care providers.[56] In contrast, the method proposed here addresses bioethical questions that concern society broadly rather than particular disagreements among or uncertainties faced by actual disputants facing personal choices. Moreover, the approach proposed involves primarily an intellectual process aimed at revealing and assessing assumptions lying beneath debate about bioethical conundrums.

The mediative approach proposed here is familiar (though not by that name) to anthropologists engaged in the effort to un-

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[55] *See* NANCY N. DUBLER & CAROL B. LIEBMAN, BIOETHICS MEDIATION: A GUIDE TO SHAPING SHARED SOLUTIONS (2004).

[56] Dubler and Liebman's book describes a mediation practice aimed at responding to the particular dilemmas, involving choices about life and death, that typically occur in hospital settings. *Id.* at 8-9. The authors portray bioethics mediation in terms resembling descriptions of mediation in a host of other settings, such as those involving employment, family, and consumer disputes. *Id.* Dubler and Liebman write:

> In mediation the historical facts are important only insofar as they give the mediator and the parties an understanding of how each of them experienced the event that brought them to mediation. Another way to conceptualize the difference between mediation and adjudication is to think of mediation as a process that allows the discovery of that version—or interpretation—of reality that can accommodate the coinciding and conflicting interests and needs of the participating parties.

Id. at 9.

mask assumptions in terms of which the cultural Other thinks about and acts in the world.[57] One anthropologist describes the method as follows:

> [Anthropology] is a dialectic science of reflection whose advancement (obviously not inevitable) consists in the expansion and deepening of its discourse. At the most abstract level, this discourse is between cultures, but concretely it is between a specific researcher and the people of a particular culture. We must remember, of course, that a researcher can be outside a group only to the degree that he is inside another. Since the condition of both the subject and the object are historically located, knowledge is only possible through successive mediations. The mediations, however, must be retained or all is lost. The aim of anthropology is the comprehension of others in order to return, changed, to ourselves.[58]

That effort demands that one's own assumptions be revealed and challenged as strenuously as the assumptions of the cultural Other. The anthropological task requires the analyst to mediate between Self and Other in the effort to unmask assumptions that undergird different ways of living. In the anthropological encounter the process of mediating between Self and Other allows the analyst to situate him or herself within an ideological frame while at the same time, he or she works to decipher and move toward the ideological frame within which the cultural Other is situated. This will almost inevitably lead, in turn, to shifts in the analyst's ideological frame of reference.

In the context of assessing bioethical questions such as those presented by the John and Brenda Smith hypothetical, one can rely upon a similar type of mediative process. The task obviously differs from that faced by anthropologists, but important aspects of the method, as used in each context, resemble those used in the other.[59] The process entails three distinct stages.

First, the process requires the analyst to account for diverse propositions likely to be accepted by at least some important seg-

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[57] The author of this essay did anthropological fieldwork among Mormons in Arizona and among members of the Jewish Defense League. *See* JANET L. DOLGIN, JEWISH IDENTITY AND THE JDL (1977); Janet L. Dolgin, *Latter-Day Sense and Substance, in* RELIGIOUS MOVEMENTS IN CONTEMPORARY AMERICA 519 (Irving I. Zaretsky & Mark P. Leone eds., 1974).

[58] PAUL RABINOW, SYMBOLIC DOMINATION: CULTURAL FORM AND HISTORICAL CHANGE IN MOROCCO 100 (1975).

[59] Assumptions lying beneath contemporary bioethical debates include assumptions about personhood, life, death, relationships, illness, and other essential matters.

ments of a society as moral anchors (moral "truths.")[60] This stage of the process need not be undertaken anew by each analyst, but each analyst must become familiar with moral anchors that have been identified (by the analyst or by others) within the relevant social universe. These moral anchors include basic dictates such as "do not murder."

Two familiar problems arise, and each suggests limitations of the approach. Dictates such as "do not murder," though generally accepted, are never absolute moral anchors, even from a sociological perspective. Not *everyone* agrees that murder is always wrong.[61] Furthermore, people may disagree about the meaning and scope of a particular moral dictate. Different definitions of "murder," for instance, result in different understandings of moral and immoral behavior even among those who agree that murder is always wrong. At these edges (where widely accepted moral anchors are disavowed or variously defined),[62] moral disagreements are least likely to be reconcilable. But for the most part, people, especially within a particular cultural context, agree about some set of basic moral dictates. These dictates (despite their potential fragility) punctuate and sustain the field on which bioethical analysis can proceed.

The second stage of the mediative approach[63] requires the analyst to become immersed in the specific subject at issue (e.g., reproductive options or, more specifically, preimplantation genetic diagnosis). At this stage, the analyst attempts to delineate a broadly accepted panoply of assumptions that lie behind moral assessments within the society about the matters being considered (here, as-

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[60] This stage of the process is not as daunting as the description suggests because the task has been undertaken by countless others, whose work is available for study and review. There is a large collection of literature constructed by legal scholars, philosophers, economists, anthropologists, psychologists and many others that describes and considers society's most basic moral dictates.

[61] The history of Nazi Germany bears witness to such disagreement. *See, e.g.*, J.M. ROBERTS, TWENTIETH CENTURY: THE HISTORY OF THE WORLD, 1901-2000 431 (1999) (describing Nazi Germany as a place and age in which people "in power in a civilized country deliberately chose to turn their backs on civilization").

[62] The contemporary debate about abortion is illustrative. If one believes that fertilized eggs are full humans from a moral perspective, then abortion is murder. It is especially hard to apply successfully the mediative approach to disagreements about matters such as the moral status of embryos because the assumptions supporting various positions are deeply internalized and carry intense emotional power. Moreover, for some disputants in the debate about abortion, for instance, such assumptions are supported by theological truths that suggest ontological certainty. *See infra* note 86 (reviewing Catholic doctrine about moral status of embryos).

[63] These "stages" are not as distinct in practice as the description provided here might suggest. Each stage merges into the other two.

pects of human reproduction and reproductive choice). Such assumptions will likely be greater in number and less broadly agreed upon within society than dictates such as "do not murder" (relevant to the first stage of inquiry). This second stage of the mediative approach will probably have no clear-cut end. The more fully the analyst becomes aware of assumptions underlying various social perspectives (which may even shift during the period of analysis), the closer he or she will come to describing the moral landscape without distortion. As a practical matter, many of these assumptions and the varied opinions and beliefs they spawn can be identified by studying cultural texts developed in response to the moral conundrum at issue. These texts include scholarly articles, newspaper accounts, and assertions by ordinary people expressing their views (in private conversations, interviews, or as reported in media or other accounts). Further, reviewing the history of ideas relevant to the subject of interest is a valuable source of information at this stage of analysis.

The third stage of the mediative approach requires the analyst to challenge social assumptions identified (in stage two) as underlying moral debate about the bioethical issue of concern (e.g., the morality of relying on various uses of preimplantation genetic diagnosis). A central aim at this stage of the mediative process is to reveal instances of cultural distortion (e.g., masked social assumptions or displaced social motives). The process resembles, at the level of society, certain aspects of the psychoanalytic process at the level of the individual.[64] The hope in unmasking social distortion, as in unmasking the distorting processes of the individual's unconscious, is that enlightenment may prove felicitous at the level of practice.

C. *Brenda and John Smiths' Choices: Beyond Good and Evil?*[65]

The hypothetical about Brenda and John Smith's reproductive choices implicates virtually all of the concerns about preimplantation genetic diagnosis noted in Part II of this essay as well as some others. This Section briefly illustrates the type of insight to which

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[64] Sigmund Freud showed the power and enormity of that part of a person's mental life that is largely hidden from the person. THE INTERPRETATION OF DREAMS (James Strachey trans., James Strachey ed. 1954)

[65] The heading is a play on Friedrich Nietzsche, *Beyond Good and Evil, in* BASIC WRITINGS OF NIETZSCHE (Walter Kaufmann trans., Walter Kaufmann ed. 1968).

the mediative approach might give rise.[66] First, this Section addresses the capacity of society to elide some of the more difficult questions about preimplantation genetic diagnosis by locating a largely *amoral* frame within which to entertain the morality of the procedure.[67] Then, the Section suggests that the mediative approach might be applied to study certain faith-based responses to preimplantation genetic diagnosis.[68]

1. Morality and Amorality: Which Masks the Other?

This account of the mediative process, as applied to the Smith hypothetical, will begin at stage three[69] of the process.[70] Moreover, the account will focus on only one (contested) social assumption that emerges at stage two of the process. It is, however, a basic assumption about the essential character of the debate itself. The assumption in question concerns the *moral status* of debate about preimplantation genetic diagnosis.[71] Some theorists and commentators have assumed that debate about PGD is essentially moral in character. Others have assumed that debate about PGD can and should be cast in amoral terms. Still other theorists and commentators appear to have assumed that debate about PGD is essentially moral in character; yet, in fact they have assessed PGD in the presumptively "objective" language of science and technology. Thus, examination of the assumption that PGD is (or is not) and that it should (or should not) be grounded in a universe of moral discourse reveals a series of texts and an even longer series of *pre*texts and *sub*texts.

At least three aspects of the debate about PGD facilitate a perspective presumptively committed to a universe of moral discourse but in fact eliding that universe in favor of another universe of discourse that focuses on apparently objective facts and truths.

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[66] In light of the space constraints of the project, the discussion is intended to suggest the terms of a thorough analysis, but it is not presumed to constitute that analysis.

[67] *See supra* notes 36-43 and accompanying text.

[68] Both subsections focus, at least in part, on the implications of the debate about abortion for the debate about preimplantation genetic diagnosis.

[69] I do not review the first two stages here in the interests of space and because in significant part the analyses required by stages one and two in examining one bioethical dilemma will resemble the analyses required for examination of many other bioethical dilemmas.

[70] *See supra* notes 60-64 and accompanying text (delineating stages of mediative process).

[71] *See supra* notes 12-33 and accompanying text (noting potential to view PGD in amoral terms).

First, as noted in Part II,[72] social assessments of preimplantation genetic diagnosis often lead to comparison with prenatal testing followed by abortion. That comparison suggests that assessments of PGD are moral assessments. Preimplantation genetic diagnosis raises moral dilemmas resembling those that punctuate the more familiar debate about abortion.[73] Thus, debate about PGD may focuses on efforts to distinguish the technique from abortion or to conflate the technique with abortion.

Second, the moral connotations of preimplantation genetic diagnosis can be encompassed by an essentially amoral frame of reference. Perhaps this is because of the salience of the technological aspects of PGD and of the laboratory setting in which it is carried out.[74] That context encourages an image of the process that elides the complicated human relationships invoked by considerations of abortion. For instance, questions about gender equality and about the scope of the parent-child relationship can be displaced in discussions of PGD more readily than in discussions of abortion or of most reproductive choices.[75] In fact, a number of analysts who favor preimplantation genetic diagnosis have commented that the technique should not and need not be subjected to the sort of moral criticism and ideological disagreement that surround discussions of abortion because, among other things, the status of an (unwanted) embryo in a culture dish is less controversial than the status of a(n) (unwanted) fetus in a woman's uterus.[76] Two analysts assert that

> [b]ecause embryos are so rudimentary in development they are not generally viewed as having interests or rights. Thus, they have no right to be placed in a uterus and may be discarded if they carry the gene for serious disease. Instead, some find it preferable to discard at the embryonic stage rather than to abort fetuses who are more fully developed.[77]

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[72] *See supra* notes 8-43 and accompanying text.

[73] More specifically, questions about the moral status of embryonic life are common to discourse about abortion and to discourse about PGD.

[74] *See supra* note 5.

[75] The Smith hypothetical, for instance, asks about the moral implications of a decision to rely on a gestational surrogate in order to save the intending mother (Brenda Smith) from the burden of pregnancy. *See* Smolin, *supra* note 1, at 496-97. That issue immediately raises obvious questions about the scope and meaning of maternity and parentage generally.

[76] *See* Robertson, *supra* note 12, at 213. This step is precluded for those committed to the understanding, usually a matter of theological belief, that personhood begins at conception.

[77] Sozos J. Fasouliotis & Joseph G. Schenker, *Preimplantation Genetic Diagnosis Principles and Ethics*, 13 HUM. REPROD. 2238, 2241 (1998).

Third, some commentators have displaced the moral implications of preimplantation genetic diagnosis by favorably comparing the technique to forms of eugenic selection, now widely condemned, that were relied on in the early decades of the twentieth century. Eugenic practices at that time included involuntary sterilization, selective contraception, and admonitions against interbreeding for people identified as upper class.[78] Several authors have suggested that PGD avoids the moral pitfalls of earlier forms of eugenic practice because it is not applied at the level of society but is selected by individual prospective parents exercising their right to autonomy and choice.[79] One author even claims that comparisons between PGD and eugenics serve a false morality:

> An attempt is made to seize high moral ground by applying the term "eugenics" to what others would simply identify as parental choices used to reduce the risks of certain birth defects in their offspring. The freely chosen desire of an individual couple to reduce the frequency of cystic fibrosis, for example, in their offspring is considered by most members of society to be rightly a matter of individual choice for them and not a matter of eugenics. The couple's choice is not part of a grand design to "improve" the human race according to a predetermined plan.[80]

That PGD can be distinguished from state-enforced eugenics programs would not, however, seem conclusively to remove PGD from the focus of moral debate.

Finally, the very term PGD, an acronym used because of its brevity (as compared with the longer term preimplantation genetic diagnosis) may also serve to mask the moral implications of the technique.[81] The term itself (PGD instead of the full name) encourages recognition of the technique as a "fact," rather than a procedure with implications for human relationships.[82]

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[78] ELLEN CHESLER, WOMAN OF VALOR: MARGARET SANGER AND THE BIRTH CONTROL MOVEMENT IN AMERICA 123, 215-16 (1992).

[79] *See* Fasouliotis & Schenker, *supra* note 77, at 2241. *But see* King, *supra* note 23, at 176 (arguing that PGD is eugenic "even though no state coercion is involved").

[80] Fasouliotis & Schenker, *supra* note 77, at 2241.

[81] As a compromise between the awkwardness of repeating the full term (preimplantation genetic diagnosis) and the skewing that may follow consistent use of the acronym (PGD), this article (especially in the early sections) shifts between use of the full term and use of the acronym.

[82] Herbert Marcuse made a similar point about "abbreviations." Marcuse wrote,

> [t]he abbreviations [such as NATO and AFL-CIO] denote that and only that which is institutionalized in such a way that the transcending connotation is cut off. The meaning is fixed, doctored, loaded. Once it has become an official vocable, constantly repeated in general usage, "sanc-

Furthermore, one type of approach to questions raised by preimplantation genetic diagnosis presumes to assess the appropriateness of the technique while eliding moral discourse; this approach involves quantitative measures and the suggestion that such measures can and should be relied on to assess PGD. Robert Boyle, a clinical geneticist, and Julian Savulescu, a professor of medical ethics, invoke "Pareto optimality and rational choice" in considering the "ethics" of PGD to create a donor sibling.[83] The authors define a "Pareto optimal state of affairs as one that is at least as good as all alternative states of affairs in all relevant respects and better in some respects."[84] Boyle and Savulescu conclude that

> [T]he . . . principle of Pareto optimality makes it rational for fertile couples without a history of genetic disease to use in vitro fertilisation and PGD to have a child who will provide stem cells for an existing child. All the alternatives are likely to produce a new child but less likely to save the existing child.[85]

The authors are thus asserting that some added "good" that PGD brings about justifies use of the technique.

My concern with Boyle and Savulescu's approach is not that the conclusion (approval of PGD to produce a donor sibling) is necessarily immoral or wrong. It is instead that the narrow focus of the Boyle-Savulescu approach precludes appreciating a host of concerns that should be addressed by anyone assessing the moral appropriateness of PGD for the purpose specified. Among those concerns are the psychological consequences for both children (the older, ill child and the younger, donor sibling) over time; the effect of recurrent claims that may be placed on the donor sibling; the potential distortion of the parent-child relationship (whether for good or for bad) that may follow the "selection" of a child to save another child; the hubris that may increasingly inhere in a society that assists its members in selecting prospective children for specific uses; unknown physical risks to the child selected through PGD and to that child's children, and so on. These concerns may or may not alter one's conclusion about the morality of relying on preimplantation genetic diagnosis to produce a donor sibling, but to ignore such concerns and deny their relevance is to elide moral discourse in favor of an approach that replaces the dialectic inher-

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> tioned" by the intellectuals, it has lost all cognitive value and serves merely for recognition of an unquestionable fact.

HERBERT MARCUSE, ONE-DIMENSIONAL MAN, 94 (1964).

[83] Boyle & Savulescu, *supra* note 11, at 1242.

[84] *Id.*

[85] *Id.*

ent in discourse with the notion that moral conclusions about reproductive options can be derived from arithmetic formulas (even if they are understood as metaphor).

Discourse about moral matters, especially within a heterogeneous society such as the contemporary United States, depends on those engaged in debate and discussion sharing and dissecting conflicting assumptions. The process demands the courage to challenge one's own assumptions and conclusions as well as the assumptions and conclusions of the other. The more the participants are able to challenge each conclusion (one's own and the other's) as well as assumptions that surround those conclusions, the more each will be prepared to identify distortions and misplaced assumptions that undergird his or her own assertions as well as those of the other.

2. The Status of Embryonic Life

This subsection considers in greater detail the first aspect of preimplantation genetic diagnosis (its easy comparison to and differentiation from abortion) that has facilitated the elision of moral questions in discussions of preimplantation genetic diagnosis. That remains the case, however, only if reference to the ontological status of preimplantation embryos is largely avoided.

Application of the mediative approach to disagreements about the ontological status of embryonic life in the context of disagreements about preimplantation genetic diagnosis directly implicates the most controversial concerns occasioned by abortion. Those concerns involve explicit disagreements about personhood, the form and force of family relationships, and the scope of ultimate "truths." The possibility of applying the mediative approach to such matters can here only be suggested.

The ideological divide between those who eschew abortion and embryonic selection for any purpose because both possibilities are perceived to result in the death of persons,[86] and those who do

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[86] Catholic doctrine, for example, provides that personhood begins at conception and, accordingly, that the moral status of the embryo and of the fetus does not differ from that of a full-grown person:

> [T]he fruit of human generation, from the first moment of its existence, that is to say from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality. The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.

not see embryos and fetuses as persons and who may approve of abortion or embryonic selection for all or for a variety of purposes, often appears virtually unbridgeable. The first position is likely to be grounded in a faith-based system of belief.[87] The second is not. In addition, each position suggests an array of ideological preferences largely rejected by advocates of the other position.[88]

Many commentators have concluded that the gap between pro-life and pro-choice adherents cannot be bridged.[89] To the extent that that is so, the mediative approach reaches its limits. But even with regard to debates such as that about the status of fetal and embryonic life, ideological opponents can work to reveal and to share unstated or disguised assumptions. This may be especially useful in stimulating discourse in the context of what Thomas Murray referred to as "the complex tapestry of . . . beliefs" that incorporates more specific beliefs about embryos and fetuses.

The discursive process associated with the mediative approach is not, as Murray's remarks suggest, likely to convince either group in the abortion or PGD debate that the other is correct. It is, however, likely to encourage each side more fully to acknowledge and consider the "complex tapestry of beliefs" that determines the other side's position in the debate.[90]

Kristin Luker's pioneering effort to reveal the complicated "tapestry of beliefs," to quote Murray again, that undergirds different twentieth-century perspectives about abortion suggests how the analyst might apply the mediative approach to the debate about abortion (and to that part of the debate about preimplantation genetic diagnosis that flows from the larger debate about abortion). The effort requires fair delineation of a broad panoply of positions. It then requires the analyst to reveal assumptions under-

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CONGREGATION FOR THE DOCTRINE OF THE FAITH, RESPECT FOR HUMAN LIFE (1987), *available at* http://www.ewtn.com/library/curia/cdfhuman.htm.

[87] *See id.*

[88] *See, e.g.*, LUKER, *supra* note 16 (revealing and analyzing correlations between views about abortion and views about a variety of other matters including family relationships and gender).

[89] *See, e.g., Promoting Ethical Regenerative Medicine Research and Prohibiting Immoral Human Reproductive Cloning: Hearing Before the Senate Comm. On the Judiciary*, 108th Cong. 112-115 (2003) (statement of Thomas H. Murrary, President, The Hastings Center), *available at* http://www.gpoaccess.gov/chearings/108scat1.html (concluding that he could not "imagine" "an argument or act" that would prove to either side in the debate about the "embryo-as-person" that the other side was correct).

[90] *See, e.g.*, Janet L. Dolgin, *Embryonic Discourse*, 31 FLA. ST. U. L. REV. 101 (2003) (analyzing debate about abortion in context of disagreements about embryonic stem cell research and non-reproductive cloning).

lying those positions. That effort, in its turn, demands an understanding of ideological history and of the interplay between that history and individuals' assumptions and choices.

By setting conclusions about matters such as abortion and preimplantation genetic diagnosis in a larger historic and sociocultural context, adherents of diverse, even seriously antagonistic, perspectives may find some ground for common debate. That debate might, for instance, begin with matters that participants find comparatively less threatening than the status of fetuses or embryos—matters such as aspects of the history of ideas underlying development of conflicting perspectives. Debate might then proceed to consideration of matters more openly controversial. Even if such an approach does not, as it almost certainly will not, result in shared conclusions, it may foster communication and appreciation for the *shared* "tapestry of beliefs" that constitute the panoply of perspectives.

IV. CONCLUSION

This essay has focused on method and process rather than on specific reproductive options presented by the Smith hypothetical. The presumption underlying this focus is that a society's capacity to safeguard moral choice depends on its capacity self-consciously to imagine moral choices within a larger ideological frame, and to consider each such choice in light of the silent assumptions that undergird that choice.

Questions such as those raised by the Smith hypothetical can and must be debated actively and widely. However, in a large, heterogeneous society only a few delimiting moral anchors (e.g., "do not murder") are viewed as essentially incontrovertible.[91] Moreover, secular thinkers have not constructed, and probably cannot construct, models of philosophical analysis that result in unassailable moral anchors.[92] In light of these uncertainties, active debate,

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[91] *See* JOHN RAWLS, A THEORY OF JUSTICE (1971) (suggesting that even such dictates as "do not murder" can involve definitional problems and are not necessarily agreed to by everyone).

[92] John Rawls's suggestion that social policy could be justly constructed if those designing the policy stood behind a "veil of ignorance," has seemed compelling to many. *See id.* However, Rawls's provocative suggestion has been widely criticized and reviewed. Among other things, critics have argued that Rawls's policymakers would have to know *something* about life on the other side of the veil, and what they would know would significantly affect their proposals. In a later work, Rawls acknowledged that there would need to be some shared presumptions and commitments. *See* JOHN RAWLS, POLITICAL LIBERALISM (1993).

carried out in good faith, is essential to the preservation of sound community.

This essay has suggested an approach to moral debate in a society such as the contemporary United States. The approach aims, primarily, to reveal unself-conscious assumptions in which bioethical choices and conclusions are grounded. Some such presumptions are shared broadly within the society. Some are shared within relatively self-contained social communities. Others are even more idiosyncratic. The approach does not presume to resolve moral debate. Rather, it presumes to make the terms of such debate as transparent as possible and thus to facilitate discourse among those whose choices differ and whose conclusions appear to be irreconcilable.[93]

[93] Many efforts to assess the morality of PGD and related techniques assume too much too quickly. One editorial in the *Journal of the American Medical Association*, for instance, concludes a short essay on the "ethical implications" of PGD by noting that "[t]he avoidance of the pain and suffering of an affected child is considered to be worth more than the moral status of early embryos." Marian D. Damewood, *Ethical Implications of a New Application of Preimplantation Diagnosis*, 285 J. AM. MED. ASS'N 3143, 3144 (2001). Whether or not the assessment is "moral," that sort of declaration discourages ethical debate and thus discourages each side's (all sides') benefiting morally from the others. The editorial goes on to state that the "overriding concern" in assessing PGD is "[e]thical thinking that balances the status of the embryo with other relevant considerations pertaining to the woman, her family, and any future children." *Id.* In that formulation the terms "ethical thinking" and "balancing" are rendered virtually indistinguishable. A closer examination would ask in much greater detail about the terms and implications of the "balancing" being proposed.