

Emily Jackson

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A Response to Saviour Siblings: A Relational Approach to the Welfare of the Child in Selective Reproduction

Emily Jackson

Much of the debate over the acceptability, or not, of choosing embryos in order to ensure that the resulting child would be a good tissue match for a sick older sibling, has focussed upon the question of whether the so-called 'saviour sibling' would be harmed. In one corner are those who maintain that the child might suffer psychologically from the knowledge that they were conceived in order to save another's life. There are also concerns that the child might feel guilty if the transplant is unsuccessful, or that they might come under pressure to undergo repeated transfusions or even organ donation in the future. Of course, a child conceived in the normal way might also feel obliged to act as a tissue donor for a sick brother or sister. In order to ensure that their consent is genuine, doctors will commonly offer siblings the option of a 'contrived medical excuse': that is, if they do not wish to donate, their family might be told that they are not a suitable donor. It will be harder to employ such tactics when a child was conceived in order to be a good tissue match.

In the other corner are those who maintain that the child would, in fact, be *benefitted* from being selected in this way. As well as the advantages of simply being alive (absent the IVF process, followed by embryo selection, this child would not exist), the child might also be likely to enjoy a positive relationship with their cured older sibling and with their parents who will not be either distracted by caring for a desperately ill child or wracked by bereavement.

Michelle Taylor-Sands' new book cuts through this debate by arguing that the focus of each of these opposing positions is unduly individualistic, and that we should instead focus upon the interests of the family within which the child will live. This 'relational model' would not artificially isolate the child, and disaggregate her interests from those of the 'intimate collective' of which she will be an integral part.

It would seem to be so obviously in the interests of the family as a whole to identify someone who could act as a donor for a sick child that a relational approach would surely invariably come down in favour of selective reproduction. Taylor-Sands is careful not to rule out the possibility that this might not always be the case, however. Where parents fail to protect a child's 'basic interests', the collective wellbeing of the family does not necessarily come first

I agree with much of Taylor-Sands argument, and it neatly demonstrates how the law's bright-line individualism often sits uneasily with the messy 'give and take' of family life. But then it is easy (for this reader, at least) to sympathise with the 'collective interests' of a family in which one child desperately needs a bone marrow transplant. If the case study was instead parents who wished to deprive their child of conventional cancer treatment because of a profoundly held belief in miracles or homeopathy, or parents who refuse to consent to a blood transfusion because they genuinely believe that this will lead to the child's eternal damnation, this reader would find the 'collective interests' of the family less empathetic and persuasive. Perhaps these are easy cases, on Taylor-Sands' model, where the parents' choice would fail to protect the child's 'basic interests', but from the parents' point of view, they are not easy cases and the

law's straightforward overruling of the family's deeply held belief in where their 'collective interests' lie can be challenging.

In almost all situations, the law acknowledges that parents are the best judges of their children's interests. State interference with parental discretion tends to be triggered only when a child is at risk of significant harm. The use of the word 'significant' effectively confirms that there is a level of non-significant harm which children might reasonably be expected to tolerate as part of the compromises inherent in normal family life. Of course, in the case of selective reproduction, the child does not exist when the decision about whether to create a saviour sibling is taken. But it nevertheless seems reasonable to employ a similar threshold in order to judge whether the child should be brought into existence. This is the way in which the Human Fertilisation and Embryology Authority has interpreted the 'welfare' clause in the Human Fertilisation and Embryology Act 1990, as amended, and it is consistent with the reasonable and defensible assumption that most people can be assumed to be good enough parents.

To invoke the family's collective interests as the test of whether the creation of a saviour sibling is acceptable did not seem to me to be a million miles away from this ostensibly more individualistic 'significant harm' test for interference with parental discretion. Taylor-Sands acknowledges that where a child's 'basic interests' are at stake, the family's perception of their 'collective interests' will not be decisive, but could it be argued that this relational model might, in practice, simply be another way to describe a 'significant harm' threshold for state intervention in parental autonomy?

Might it additionally be argued that invoking the interests of the child to be born in order to defend the creation of saviour siblings does not necessarily commit one to an excessively individualistic model in which the child's interests are disaggregated from those of the family unit in which they will live? Curing one child's disease through bone marrow donated by another is very clearly in the family's interests, but it is also surely almost always in the donor child's own interests, because thriving siblings and happy parents self-evidently make for a more satisfying and positive childhood than a dying or dead sibling and anguished or devastated parents.

For those who argue against saviour siblings, would a relational model stop them from maintaining that the harm caused to the saviour sibling is significant enough to trigger Taylor-Sands' 'failure to protect basic interests' exception? I'm not sure that it would. There are those who believe, wrongly in my view, that the harm that will result from being selected to be a good tissue match is indeed significant.

In short then, I am convinced by Taylor-Sands' argument: children benefit from existing in flourishing family units, which depend upon mutual support and cooperation in order to thrive. Whether one justifies the creation of saviour siblings on the grounds of the family's collective interests, or the interests of the individual child, within the family upon which she depends, I find it baffling that anyone, having seriously contemplated the alternative, could ever believe that it would be preferable *not* to have the opportunity to save one's sibling's life.