

# WRONGFUL LIFE: PARADOXES IN THE MORALITY OF CAUSING PEOPLE TO EXIST

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## I Harm and Identity

The issue I will discuss can best be introduced by sketching a range of cases involving a character I will call the Negligent Physician.

### The First Preconception Variant

A couple are considering having a child but suspect that one of them may be the carrier of a genetic defect that causes moderately severe mental retardation or cognitive disability. They therefore seek to be screened for the defect. The physician who performs the screening is negligent, however, and assures the couple that there is no risk when in fact the man is a carrier of the defect. As a result, the couple conceive a child with moderately severe cognitive impairments.

Had the screening been performed properly, a single sperm from the man would have been isolated and genetically altered to correct the defect. The altered sperm would then have been combined in vitro with an egg drawn from the woman and the resulting zygote would have been implanted in the woman's womb, with the consequence that she would later have given birth to a normal child.

Notice, however, that the probability is vanishingly small that the sperm that would have been isolated and altered would have been the very same sperm that in fact fertilized the egg during natural conception. And let us suppose that the egg that would have been extracted for in vitro fertilization would also have been different from the one that was fertilized during natural conception. In that case the child who would have been conceived had the screening been done properly would have developed from a wholly

different pair of gametes and would thus in fact (even if it is not a matter of metaphysical necessity) have been a different child from the retarded child who now exists.

This fact poses a serious problem, which Derek Parfit calls the Non-Identity Problem.<sup>i</sup> Let us assume that the life of the actual retarded child, though drastically limited in the goods it can contain, is not so bad as not to be worth living. But, if the child's life is worth living, then the Negligent Physician's action was not worse for the child. For if the Negligent Physician had not acted negligently, that child would never have existed; and to exist with a life that is worth living cannot be worse than never to exist at all.

Before exploring the implications of this problem, let us consider its scope. Parfit has shown that numerous types of act may affect the timing of a significant number of conceptions and thus, over time, greatly affect who will exist in the future. Because of this alone, the Non-Identity Problem is surprisingly wide in scope. But I want to consider a different dimension to the scope of the problem. Consider a second variant of the case of the Negligent Physician.

#### The Second Preconception Variant

A couple intend to conceive a child in vitro. A single sperm and a single egg have already been extracted. Before these genetic materials are joined, however, the couple request to be screened for the genetic defect that causes mental retardation. The physician performs the screening in a negligent manner, the genetic materials are combined without alteration, and in consequence the woman later gives birth to a child with moderately severe mental retardation.

In this variant, if the Negligent Physician had performed his task properly, the single sperm that had already been extracted would have been genetically altered before being combined with the egg. Thus the child who would have existed had the Physician not been negligent would have developed from the same pair of gametes that the actual

retarded child developed from. Would it have been the same child? Did the Negligent Physician cause the very same child who would have been cognitively normal to be retarded instead?

This is controversial. But it is not absurd to suppose that the cognitively normal child who would have existed had the sperm been altered would have been a different child from the actual retarded child - or, as I will say, that the genetic alteration would have been identity-determining with respect to the child. This is not simply because many of the properties or characteristics of the retarded child are very different from those that the cognitively normal child would have had. Whether or not an infant gets dropped on its head may make an equally profound difference to the properties the subsequent child will have, but no one doubts that the child who suffers brain damage from being dropped on its head would be the same child as the normal child who would have developed had the infant not been dropped. What makes the preconception case different is that the genetic alteration of the sperm significantly alters the conditions of the subsequent person's origin or coming-into-existence.<sup>ii</sup> It is surely true that you would not have existed if a different man from your father had inseminated your mother at the time you were conceived. The substitution of a different sperm would have been identity-determining with respect to the child who would have existed. But if conception from a different sperm is identity-determining with respect to the subsequent child, then it is not absurd to suppose that conception from a radically altered sperm could be identity-determining as well.

This could be true for several reasons. The alteration might be sufficiently radical to result in the existence of a new and different sperm - that is, the original sperm would be destroyed and a new one would exist in its stead. This, however, is most unlikely. It is somewhat more plausible to suppose that the alteration to the sperm would cause the conception to result in a different zygote, hence a different organism, and hence a different person. The most plausible supposition, however, is that the alteration of the

sperm would be identity-preserving with respect to the sperm and the organism but would be identity-determining with respect to the self or person that would eventually emerge in association with the organism.

The view that alterations to genetic materials may be identity-determining with respect to the person who eventually develops from them seems compatible with the widely accepted doctrine of the necessity of origin. One can concede that a person could not have developed from any gametes other than those from which he in fact developed and yet hold that those gametes, had they been altered in certain ways, could have caused the existence of a different person.

If alterations to the physical materials from which a person will later develop can be identity-determining, then the scope of the Non-Identity Problem depends on when we begin to exist. Suppose we accept - as I believe we have reason to do - that each of us began to exist when the brain of his or her fetal organism developed the capacity for consciousness and mental activity.<sup>iii</sup> Before that, all that existed was an unoccupied human organism that was not and never would be identical with the conscious subject to whose existence it would eventually give rise. With this assumption as background, consider:

#### The Early Prenatal Variant

A woman is unaware that she is in the early stages of pregnancy. Her physician prescribes a powerful drug for her without ascertaining whether she is pregnant and without warning her that the drug causes serious birth defects if taken when one is pregnant. After taking a course of the drug, the woman moves to another area where she discovers that she is pregnant. Unaware of the effects of the drug, she does not tell her new physician that she has taken it. Seven months later she gives birth to a child with moderately severe mental retardation.

Had this Negligent Physician not prescribed the drug, the woman would have had a cognitively normal child rather than a retarded child. Would it have been the same child? Most people believe that the woman's having taken the drug was identity-preserving with respect to the child - that is, that her retarded child would himself have existed and been normal had she not taken the drug. But this may be in part because they believe that the child already existed in the form of an embryo when his mother took the drug. On the assumption that we do not begin to exist until the fetal brain acquires the capacity to support consciousness, this belief is false. The damage that was done to the embryo preceded the coming-into-existence of the child and radically affected the nature of the organism that would eventually give rise to his existence. It is therefore not absurd to suppose that the damage was identity-determining with respect to the child - that is, that the cognitively normal child would have been a numerically different person from the retarded child.

The Early Prenatal Variant of the Negligent Physician case may thus contrast with

The Late Prenatal Variant

A physician negligently prescribes a powerful drug for a woman who is in the eighth month of pregnancy. The drug causes damage to the fetus's brain and the child to whom she gives birth is, as a consequence, moderately to severely cognitively impaired.

In this case a conscious subject has already begun to exist in association with the fetal organism at the time when the drug is taken. This case is, therefore, relevantly like that in which an infant suffers brain damage from being dropped on its head: the retarded child who develops as a result of the brain damage is numerically the same child as the child who would have existed had the damage not been done. The life of the retarded child and the hypothetical life of the cognitively normal child are two possible histories of one and the same person. The brain damage is, in short, identity-preserving rather than identity-determining with respect to the child.

The idea that damage to the developing fetal brain may be identity-determining when it occurs early in pregnancy but is identity-preserving late in pregnancy is challenged by a consideration of adjacent cases near the middle of the range - specifically, cases on either side of the time that the conscious subject begins to exist. Suppose that I began to exist at approximately time  $t$ . If, just prior to  $t$ , the fetal organism from which I developed had been damaged or genetically altered so as to cause moderately severe mental retardation, it is plausible to suppose, according to the view that I am defending, that this would have prevented my existence and caused the existence of a different, retarded individual instead. But if the same damage or genetic alteration had occurred shortly after  $t$ , it seems that this would have caused me to be retarded since I would then have been on hand to suffer the damage. Yet it seems strange to suppose that the damage or alteration would have been identity-determining if it occurred just prior to  $t$  but identity-preserving if it occurred just after  $t$ , especially if the interval between the two times would not have been very great.

Perhaps this problem is not as embarrassing as it may seem. Most contemporary theorists are reductionists about personal identity over time. They hold that truths about personal identity over time are wholly analyzable into truths about physical or psychological continuity, or both. According to this view, there may be cases in which claims about personal identity are underdetermined by the facts of physical and psychological continuity. In these cases, identity may be indeterminate, so that claims about identity may be neither true nor false. If reductionism is correct in the case of personal identity over time, it is plausible to assume that it holds in the case of our problem as well - the problem, that is, of personal identity in different possible histories (or, to borrow the more technical term, across possible worlds). If reductionism is right, then it may be that the cases on either side of  $t$  are cases in which it is indeterminate whether the individual who would have been cognitively impaired would have been me. The problem is not epistemological: it is not that the truth is there but we do not have

access to it. Rather, there is no truth of the matter whether I would have existed had the fetal organism from which I developed suffered serious brain damage either shortly before or shortly after *t*.

Here is another problem. While very extensive alterations or damage to a human embryo may be identity-determining with respect to the child who will later develop from it, it seems intuitively clear that minor alterations are identity-preserving.<sup>iv</sup> Imagine, for example, a genetic alteration to an embryo that has only one effect: to cause the resulting person to have blue eyes rather than brown. Surely the blue-eyed person would be numerically the same person as the brown-eyed person. I do not, however, have a criterion for distinguishing between those forms of damage or genetic alteration to a human embryo that are identity-determining with respect to the subsequent person and those that are not. I offer only a few vague suggestions. First, in order for damage or alteration to a developing human organism to be identity-determining with respect to the person whose life the organism supports, it generally must affect the conditions of the person's origin and thus must occur before the person begins to exist in association with the organism. Second, if it is true, as I believe, that we are essentially minds, then damage or alteration to a developing human organism is more likely to be identity-determining if it significantly affects the way that the brain develops and thus is profoundly determinative of the subsequent person's psychological properties and capacities. Third, and finally, if the damage or alteration does not significantly affect the development of the brain, it is more likely to be identity-determining the more radical or extensive the physical changes it causes would be. It seems, for example, that I would have existed had the embryo from which I developed been genetically altered in such a way that it failed to develop a left hand. But it is less plausible to suppose that I would have existed if the embryo had been altered in such a way as to change its sex.

The question whether the damage to the embryo is identity-determining in the Early Prenatal Variant of the Negligent Physician case is of some significance for arguments

that are sometimes pressed by the disabilities movement. Spokespersons for the disabled often object to genetic screening programs. Programs that screen for genetic defects prior to conception are intended to allow people to avoid conceiving disabled children and hence are held to express the assumption that disabled people should not exist. Programs that screen for genetic defects in the fetus are intended to allow people to abort defective fetuses and subsequently conceive normal children. They are therefore held to express the assumption that the existence of a normal person is better than the existence of a disabled person. Both these assumptions are held to be insulting to the dignity of the disabled. Neither of these assumptions seems to be implied, however, by the view that it can be better for a particular person not to have a certain disability than to have it. Thus it seems fully compatible with respect for the dignity of the disabled to object to screening programs while acknowledging that it would be desirable to find cures for certain disabilities. If, however, certain forms of gene therapy are identity-determining when applied to the human embryo, then these forms of intervention do not constitute cures for disability but rather have the same effect as screening programs: that is, they prevent the existence of a disabled person while causing the existence of a different, normal person instead. In short, certain forms of gene therapy that have been thought to be immune to the objection that they are implicitly demeaning to the disabled may not avoid that objection after all.

For most of my purposes in this paper, it is unnecessary to determine whether the Negligent Physician's action is identity-determining in the two controversial cases: the Second Preconception Variant and the Early Prenatal Variant. I mention these cases primarily to speculate about the scope of the problem I wish to consider. It is entirely clear that, on any view of the matter, the Non-Identity Problem does arise in the First Preconception Variant. And it is also intuitively clear as well as metaphysically defensible that it does not arise in the Late Prenatal Variant - that is, that damage or alteration to the late-term fetus does not cause one individual to cease to exist and



another to appear in its place. Because I wish to focus on the contrast between these two cases, I will henceforth refer to the First Preconception Variant simply as the Preconception Case and the Second Prenatal Variant as the Prenatal Case.

Return now to the Preconception Case. It is clear that the Negligent Physician's action is morally objectionable, but why it is objectionable? It certainly seems that his negligence has harmed the couple, who have been denied many of the joys of parenthood and who instead have the often anguishing burden of caring for a relatively unresponsive and highly dependent child. In the law they would be warranted in bringing a "wrongful birth" suit against the Physician, in which they as plaintiffs would claim damages for the harms his negligence has caused them.

Some, indeed, argue that the fact that the Negligent Physician's action was worse for the parents provides an exhaustive explanation of the wrongness of his conduct. Once it is noted that he has seriously harmed the parents, there is nothing more to be said.<sup>v</sup> This, however, seems wrong. To understand why, imagine a couple, both of whom are specialists in genetic engineering, who desire to have a child with moderately severe mental retardation (perhaps because they would prefer a child who would never desire or be able to live independently of them). Thus, rather than conceiving a child now in the normal way, they extract a single sperm from the male, genetically alter it, combine it in vitro with an egg extracted from the woman, and implant the zygote in woman's womb, with the consequence that she later gives birth to a cognitively disabled child. Assume that both gametes from which this child developed are different from those that would have combined had they conceived a child in the normal way, and that the retarded child is therefore uncontroversially a different individual from the child they would otherwise have had. As in the Preconception Case, their action is not worse for the child (assuming that its life is worth living). Nor have they been harmed, for they have achieved precisely the result they wanted. Most of us, however, strongly sense that what they have done is morally objectionable.

There is, indeed, some reason to question whether, even in the Preconception Case, the Negligent Physician's action is actually harmful to the parents. In many cases at least, the parents of cognitively disabled children come to love their actual child and thus find it difficult to wish that that child had never existed and that they had had a different, normal child instead. (In most cases, of course, the alternative that parents wistfully envisage is one in which their retarded child is born without disability. Being unaware of the Non-Identity Problem, they are unaware that this outcome was not among the possibilities.) If, however, the parents in the Preconception Case cannot sincerely wish that they had had a different child, then at the very least some argument is required to show that the Physician's action has harmed them.<sup>vi</sup>

I will not press this point but will grant that one reason why the Physician's negligence is objectionable is that it harmed the parents. As I noted, however, there seems to be more to it than this. Most of us believe that, quite independently of the impact of the Physician's action on the parents, the retarded child ought not to have been caused to exist and that, given that he has been wrongfully caused to exist, the Physician should be required to pay damages both to compensate the parents for the injury done to them and, insofar as possible, to enhance the life of the child. If pressed to defend these beliefs, our impulse is to claim that the Physician's action was harmful to the child. But this response seems precluded by the recognition that, because of the Non-Identity Problem, the Physician's action was not worse for the child.

Suppose that, in the Preconception Case, the retarded child's life would not be worth living. Changing this feature brings the case into conformity with the typical profile of "wrongful life" cases in the law.<sup>vii</sup> These cases have created considerable confusion, in part because even when the child plaintiff's claim is that his life is not worth living, it seems impossible to sustain the charge that the act that caused him to exist was worse for him. This seems true as a matter of logic, since the claim that being caused to exist is worse for the child implies that the alternative would have been better

for the child. But the alternative is for the child never to exist, in which case there is never any subject for whom anything could be good or bad, better or worse.

Some have thought that there is no more problem here than there is in claiming, contrary to Epicurus's argument, that continuing to exist can be better for a person than ceasing to exist. For that too may seem to require a comparison between existence and nonexistence. But this is a mistake; one can make the choice between continuing to exist and ceasing to exist by simply comparing two possible lives - a longer one and a shorter one - and asking which would be the better life. This kind of solution is not available when the choice is between life and total nonexistence rather than between continued life and posthumous nonexistence.

This problem is not insuperable, at least where morality is concerned. We can judge that it would be wrong to cause a person to exist on the ground that her life would be noncomparatively bad, even if it would not be worse than never to exist.<sup>viii</sup> Such a life might be bad if, for example, its bad features outweighed the good. According to this view, one's reason not to cause a person to exist with a life that would not be worth living has the following peculiar character. It is a reason not to do what would be bad for an actual person (since the person would obviously be actual when she suffered the bad effect of one's act), though, if one acts on the reason, there is then no actual person whom one has spared from anything bad.

While we can thus explain why it may be morally wrong to cause a person to exist whose life would not be worth living, there remain serious obstacles to recognizing wrongful life suits in the law. One concerns the measurement of damages due to the plaintiff. The standard measure in tort law - make the plaintiff as well off as he or she would have been had the tortious act not been done - evidently cannot be applied since, had the alleged tort not been committed, the plaintiff would never have existed. In many cases, moreover, the plaintiff's life is not worth living because of genetic defects that cannot be remedied. In these cases, the life cannot be made worth living and an award of

damages would be of no benefit to the plaintiff, whose suffering can be ended only by euthanasia. This would be awkward for the law to recognize, since it does not countenance euthanasia.

In this paper I will put these cases aside and focus instead on cases, such as the Preconception Case, in which a child is caused to exist with a handicap but nevertheless seems to have a life that is worth living. These too may be considered “wrongful life” cases, at least in an extended sense, as they are cases in which we think that, for one reason or another, the child ought not to have been caused to exist. Moreover, the same problem arises in these cases: how can it be wrong to cause the child to exist if this is not worse for the child? The puzzle goes deeper in these cases, however, because the problem is not merely that the comparison required by the logic of term “worse” cannot be made. As I noted, in the standard cases of wrongful life in which the child’s life is not worth living, the logical problem can be circumvented by noting that, even if it is not worse for the child to be caused to exist, it is bad for it. But in cases in which the child’s life is worth living, it is not only not worse for the child to be caused to exist but it is not bad for it either, since the good aspects of its life seem to outweigh the bad. Indeed, if it is bad for a child to be caused to exist with a life that is not worth living, then it seems that, by parity of reasoning, it should be good for a child to be caused to exist with a life that is worth living. If that is right, then the challenge is to explain why it is objectionable in such cases as the Preconception Case to cause a child to exist when this is in fact good for the child. Are we reduced, after all, to appealing only to the effects on the parents?

## **II Threats to Common Sense Beliefs**

The Non-Identity Problem threatens a number of common sense moral beliefs. Certainly our initial response to the Preconception Case is that the Negligent Physician owes compensation not just to the parents but also to the child. And, as I noted earlier, we retain an obscure sense that the Physician owes a debt to the child even when we

understand that, because of the Non-Identity Problem, his action was not worse for the child and may even have been good for the child. Can this intuition be defended?

We will return to the question of the Negligent Physician's moral liability later. There is an even more serious problem - a problem with broad implications for moral theory - that should be introduced now. It can be seen, perhaps, in a comparison of the Preconception Case and the Prenatal Case. In both cases the Negligent Physician fails in his professional responsibilities and in both cases his negligence results in the birth of a retarded child. The difference is that in the Prenatal Case this is the same child who would have existed had the Physician not been negligent while in the Preconception Case it is a different child. Does this difference make a moral difference? Many of us, when considering the two cases, fail to find that what happens in the Prenatal Case is worse.

The relevant point may be easier to appreciate in an example devised by Parfit. It differs from my Negligent Physician cases in three salient respects: it involves allowing disabilities to occur rather than causing them, it does not involve negligence or evident wrongdoing, and the stakes are higher because the number of people involved is greater.

#### The Medical Programs

There are two rare conditions, J and K, which cannot be detected without special tests. If a pregnant woman has Condition J, this will cause the child she is carrying to have a certain handicap. A simple treatment would prevent this effect. If a woman has Condition K when she conceives a child, this will cause this child to have the same particular handicap. Condition K cannot be treated, but always disappears within two months. Suppose next that we have planned two medical programs, but there are funds for only one; so one must be cancelled. In the first program, millions of women would be tested during pregnancy. Those found to have Condition J would be treated. In the second program, millions of women would be tested when they intend to try to become pregnant. Those found to have Condition K would be warned to

postpone conception for at least two months, after which this incurable condition will have disappeared. Suppose finally that we can predict that these two programs would achieve results in as many cases. If there is Pregnancy Testing, 1,000 children a year would be born normal rather than handicapped. If there is Preconception Testing, there would each year be born 1,000 normal children rather than ... 1,000 different, handicapped children.<sup>ix</sup>

Is there a moral reason to cancel one program rather than the other? Both programs have equivalent effects on parents. So the difference is this. If Pregnancy Testing is cancelled, 1,000 children will be born handicapped each year who would otherwise have been normal. Cancellation of Pregnancy Testing would be worse for those children. If Preconception Testing is cancelled, 1,000 children will also be born handicapped each year. But these children would never have existed if there had been Preconception Testing; therefore the cancellation of Preconception Testing would not be worse for them.

Does this difference between the programs make it worse to cancel Pregnancy Testing? Parfit believes that both programs are equally worthwhile and that it makes no moral difference which is cancelled. I will assume that this judgement, which he calls the No-Difference View, is correct. The relevant bad effect of cancelling Pregnancy Testing - that there would be a thousand handicapped children per year who would otherwise have been normal - is no worse than the corresponding bad effect of cancelling Preconception Testing - that there would be a thousand handicapped children per year rather than an equal number of different children who would have been normal. (Parfit notes, plausibly, that if Preconception Testing would detect more cases, it would be preferable to retain it rather than Pregnancy Testing.) Parfit claims, moreover, that we have the same reason not to cancel Pregnancy Testing that we have not to cancel Preconception Testing.<sup>x</sup> Since the reason not to cancel Preconception Testing cannot be that this would be worse for the children who would be born handicapped, he therefore

concludes that the fact that the cancellation of Pregnancy Testing is worse for the children affected cannot be part of the explanation of why the cancellation would be bad. He then generalizes the No-Difference View, claiming, in effect, that the fact that an effect is worse for people, or bad for them, is never part of the fundamental explanation of why the effect is bad. The area of morality “concerned with beneficence and human well-being,” he writes, “cannot be explained in person-affecting terms.”<sup>xi</sup> It must instead be explained in impersonal terms.

The latter inference has broad-ranging implications for moral theory. I will explore these in some detail in Section IV; for the moment I will illustrate the significance of Parfit’s claim by mentioning one implication that is of particular interest to me. I mentioned earlier my belief that each of us began to exist only when the brain of his or her physical organism developed the capacity to generate consciousness and mental activity. This understanding of personal identity, if correct, provides the basis for what seems to be a plausible argument for the permissibility of early abortion. For, according to this view, an early abortion does not kill one of us but instead merely prevents one of us from coming into existence. The organism that is killed is not numerically identical with the later person and thus is not deprived of the later life that is precluded. Early abortion, then, is morally comparable to contraception: there need be no one for whom it is worse. The power of this view is illustrated by its ability to explain a common but otherwise puzzling judgement: namely, that it is less objectionable to kill a perfectly healthy early fetus than it is to injure or damage it in a comparatively minor way, e.g., a way that causes the subsequent person to have a minor physical disability. The explanation is that, provided that the abortion is desired by the parents, killing the fetus is not worse for anyone, while damaging the fetus harms the person to whose existence the fetus subsequently gives rise.<sup>xii</sup> In short, the instance of prenatal injury has a victim while early abortion does not.

According to the No-Difference View, however, that an act is bad or worse for someone is no part of the explanation why its effects are bad; accordingly, an act may have a bad effect, and thus be seriously morally objectionable, even if there is no one for whom it is worse or bad in any way (for example, the cancellation of Preconception Testing would be bad even if it were not bad for the parents). Hence, if Parfit is right, the fact that prenatal injury is worse for the future child does not explain why it is bad to injure a fetus; nor can one infer from the claim that an early abortion is worse for no one that it is not bad. For it might be bad impersonally.<sup>xiii</sup> The No-Difference View thus appears to undermine this otherwise powerful argument for the permissibility of early abortion.

### **III Approaches that Identify a Victim**

Some writers have sought to address the threats that the Non-Identity Problem poses to common sense beliefs by arguing that, even in such cases as the Preconception Case, a child born with a disability is adversely affected by the act that causes the disability, even if its life is worth living and it would never have existed had the act not been done. Imagine, for example, that yet another Negligent Physician gives a woman who is having trouble conceiving a child an inadequately tested fertility drug that both allows her to conceive a child and causes the child to suffer from some dreadful disease later in life. It seems reasonable to say that the Physician's act was the cause of the child's contracting the disease and that, in causing the terrible disease, the act harmed the child - even though it was not, on balance, worse for the child that the act was done. And, according to one proponent of this approach, "that an agent is morally accountable for someone's suffering a harm, by virtue of having performed a certain action, seems a perfectly intelligible 'person-affecting' explanation why his action is objectionable."<sup>xiv</sup>

This approach has to be extended somewhat if it is to be applied to cases such as the Preconception Case. For, while contracting a disease is a discrete event that involves the worsening of a prior condition, congenital mental retardation is an inherent, constitutive



aspect of a person's nature, not a contingent addition to his life. It is less easy, therefore, to regard the fact that the child in the Preconception Case is retarded as a harm. Still, we may invoke Joel Feinberg's notion of a "harmed condition" in order to assimilate this case into the paradigm to which the vocabulary of harm is applicable. A harmed condition is "a condition that has adverse effects on [an individual's] whole network of interests," and is "the product of a prior act of harming."<sup>xv</sup> Congenital retardation seems to doom many of the retarded individual's interests to frustration. And we may, if only for the sake of argument, grant that the Negligent Physician's action in the Preconception Case counts as an act of harming. The objection, then, to the Physician's action is that it causes the child to exist in a harmed condition. The child is therefore appropriately seen as the victim of this action.

It is not clear whether this approach, which may be called the harm-based approach, presupposes that it can be a harm to be caused to exist in a harmed condition. Some proponents of the harm-based approach might wish to avoid being committed to the claim that to be caused to exist can be either good or bad for a person. They will therefore want to claim that the Negligent Physician harms the retarded child not by contributing to causing his existence but instead by causing him to be cognitively disabled. It is not obvious, however, that this distinction is tenable, since this child can exist only if he is disabled and the actual effect of the Negligent Physician's action is simply to cause this child to exist rather than another child. But I will put this problem aside and assume for the sake of argument that the Negligent Physician's action causes the child's harmed condition - namely, its cognitive disability.

The harm-based approach raises many questions. What, for example, counts as a harmed condition? Is physical unattractiveness or low IQ a harmed condition? Presumably those who argue for this approach wish to avoid the implication that those whose genes make it likely that their offspring would be physically unattractive or have a low IQ would harm their children by causing them to exist (and therefore presumably

ought not to have children). There are several options. One would be to equip the notion of a harmed condition with a threshold that would place ordinary ugliness or low intelligence below the threshold but would locate moderately severe mental retardation above it. But in restricting the harm-based approach to cases involving only relatively serious conditions, this revision leaves us without a response in a wide range of cases in which the Non-Identity Problem arises. Consider, for example, a further variant of the Preconception Case in which a couple seek screening for a genetic defect that causes one's child to have an IQ that is roughly 60 points lower than it would otherwise be. As a result of the Physician's negligence, they have a child with an IQ of 90. If the defect had been detected, the man's sperm would have been altered to correct the defect and they would have conceived a different child with an IQ of 150. Surely we want to condemn the Physician's negligence in this variant on substantially the same ground on which we condemn it in the original Preconception Case. But, on the assumption that an IQ of 90 counts as only ordinary low intelligence, the Negligent Physician has not caused the child in this variant to exist in a harmed condition. So, when it incorporates the stipulated threshold, the harm-based approach lacks the resources to explain how the Physician's action has had any bad effect other than the effect on the couple.

Another option is to try to distinguish among the various cases on the basis of differences in causal responsibility. It can be argued, for example, of parents who have a child that is predictably physically unattractive or of low intelligence that, while they are responsible for the child's existence, the fact that the child is unattractive or unintelligent is not attributable to the act that caused the child to exist. There is, in fact, no act that causes the child to be unattractive or unintelligent; this is just the way the child is. Thus parents who have an unattractive or unintelligent child do not thereby harm the child. By contrast, consider again the Negligent Physician who administers an untested fertility drug that enables a child to be conceived but also causes the child to develop a serious disease later in life. In this case one and the same act is both a causally necessary

condition of the child's existence and the cause of the disease. This act harms the child, though it is not worse for him.

The problem with this response is that it does not seem to divide the cases in the desired way. Reconsider the original Preconception Case. Here the Negligent Physician's action is a causally necessary condition of the retarded child's existence, but it does not seem to be the cause of the retardation, any more than the act of conceiving a predictably ugly child is the cause of the child's ugliness. In each case, that is just the way the child is. So any conception of causal responsibility that allows us to deny that the parents of an ugly child harm the child by causing him to exist seems also to imply that the Negligent Physician in the original Preconception Case does not harm the retarded child. Yet the desire to show that the Physician does harm the child is precisely what motivates people to accept the harm-based approach.

Assume, then, that the harm-based approach accepts that to cause someone to exist with a congenital genetic defect is to harm that person if the defect constitutes or inevitably causes a harmed condition. In that case, it seems that we must revert to the option of distinguishing between congenital conditions that count as harmed conditions and those that are insufficiently serious, or perhaps sufficiently widespread or normal, not to count as harmed conditions. (Otherwise the same objection to causing the retarded child to exist in the Preconception Case will apply in all cases of causing people to exist, since everyone has congenital characteristics that adversely affect their interests - e.g., I have a constellation of interests having to do with achieving great things in philosophy but am thwarted by deficiencies in native intelligence.)<sup>xvi</sup> As I noted above, this means that the harm-based approach is at most only a partial solution to the Non-Identity Problem; but even a partial solution may constitute progress.

There remains, however, a further problem. In the Preconception Case, and the other cases with which we are concerned, the child whose existence inevitably involves a harmed condition nevertheless has a life that is worth living. The life is worth living

because the goods it contains together outweigh the badness of the harmed condition and its effects within the victim's life. Why cannot we say that the act that harmed the child by causing him to have a harmed condition was not bad because the harmed condition is compensated for by the goods of life that the child would not have had if the act had not been performed? There are many instances in which it is best to harm a person for the sake of the compensating benefits that the harmful act brings to that same person - for example, painful or disfiguring medical procedures that are necessary to save a life. If it is not bad, overall, to cause these harms, why is it bad for the Negligent Physician to cause the harm he causes, which is similarly outweighed? (It might be argued that what makes medical procedures that cause harm permissible is the patient's consent; thus the relevant difference between these cases and the Preconception Case is that in the latter the retarded child cannot consent to accept his retardation as the cost of having the compensating goods of life. But it is easy to imagine cases in which it is best to perform a disfiguring or otherwise harmful operation to save a person's life even when the person cannot consent - e.g., because he is unconscious at the time that the decision to operate must be made.)

The problem here is more serious than it may initially seem. In any case in which a child is caused to exist there is a finite probability that the child will have a congenital defect that will constitute or inevitably cause a harmed condition. If, in cases of causing a person to exist, a harmed condition cannot be outweighed by the goods that the life will contain - in the sense that it remains worse, other things being equal, to cause the child to exist - then it is difficult to see how the probability of a congenital harmed condition can be outweighed by the probability that the life will also contain compensating goods.<sup>xvii</sup> But, if the probability that a child will have a congenital harmed condition cannot be outweighed by the probability of compensating goods, then it seems that, at least where expected effects are concerned and when other things are equal, it is worse to have a child than not to have a child.

One response to this objection is to claim that, in the Preconception Case, the Negligent Physician is responsible for the harmed condition (i.e., cognitive disability) but not for any of the goods that the retarded child's life contains. The goods are attributable to other causes. On this view, there are no benefits attributable to the Negligent Physician's action that are capable of compensating the child for the harm that the action has caused. This response, however, seems untenable. If the Negligent Physician is responsible for the retardation because it is an inherent aspect of the child's nature and is therefore attributable to those causal factors that produced that child with that nature, then he should be equally responsible for those inherent aspects of the child's nature that are good or beneficial for the child. If it makes sense (as it may not: see note 15) to say that the retardation adversely affects the child's interests, then it should also make sense to say that the good inherent aspects of the child's nature positively affect the child's interests. Finally, if to cause the retardation is to cause a harm (or a harmed condition), then to cause the good aspects of the child's nature should be to cause benefits (or beneficial conditions). If all this is right, then the Negligent Physician's action not only harms but also benefits the child - not necessarily by causing the child to exist but by causing the child's life to contain certain goods). And, since the child's life is worth living, it is reasonable to suppose that the benefits outweigh the harms.

A second response to the objection is to claim that, in the case of ordinary procreation, the risk of harming the child by causing him to have a congenital harmed condition is outweighed not by any probable compensating goods that the child's life might contain but instead by the expected benefits to the parents (and perhaps others in the society) of having the child. It might be thought that this response prevents us from objecting if a couple (such as the couple in my example in section I) deliberately conceive a child with a congenital harmed condition rather than a normal child. But this worry can be dispelled by noting that parental interests may be sufficiently important to outweigh a slight risk of causing a harmed condition without being important enough to

outweigh a high risk of causing a harmed condition, which there would presumably be if the parents intended to cause such a condition. Still, the appeal to parental interests cannot rescue the harm-based approach. For this appeal in effect grants the objection that there is always a presumption against procreation based on the risk of causing a congenital harmed condition - a risk that cannot be offset by the probability of compensating benefits within the life. But it is hard to believe that procreation is, in ordinary conditions, an activity that requires the interests of the prospective parents or of other preexisting persons to tip the balance in favor of permissibility. In ordinary circumstances, there simply is no prima facie objection to or presumption against procreation - or, rather, if there is such a presumption, it derives from current conditions of overpopulation rather than from the risk of causing a congenital harmed condition.

The harm-based approach fails because it has no explanation of why an act that is assumed to cause a congenital harmed condition ought not to be done even when it also causes compensating benefits. There is, however, an alternative approach of the same sort - one that identifies a victim - that offers such an explanation. According to this approach, which we may call the rights-based approach, there are certain harmed conditions that are sufficiently serious that to cause them constitutes a violation of the victim's rights.<sup>xviii</sup> Assume that, according to this view, the Negligent Physician in the Preconception Case violates one of the retarded child's rights. (Again this is problematic. It is not obvious exactly what right is supposed to be violated or that the requisite causal connections obtain between the Negligent Physician's action and the relevant aspect of the child's condition.<sup>xix</sup> But waive these difficulties.) While the Negligent Physician's action was not worse, or bad on balance, for the child, since the harm it caused is outweighed by compensating goods, that is not a sufficient justification for the action. For, even if an act is on balance beneficial to a person, or on balance promotes the person's well-being or good, that is in general not a justification for the act if the act also violates the person's rights. Our rights protect us even from certain well-

meaning forms of action aimed at our own good. Thus the central objection to the harm-based approach - that it cannot explain why the Negligent Physician's action is wrong if the harm it causes is outweighed by compensating benefits - is met by the rights-based approach.

But the rights-based approach faces other objections. Imagine a disability - condition X - that is not so bad as to make life not worth living but is sufficiently serious that to cause someone to exist with condition X would be, according to the rights-based approach, to violate that person's rights. One objection to the rights-based approach is that, if it is wrong to cause someone to exist with condition X, then it should also be wrong to save someone's life if the only way of doing so would also cause the person to have condition X and it is not possible to obtain the person's consent to being saved in this way. Suppose, for example, that a late-term fetus (which we may assume would be numerically identical with the person into whom it would develop) contracts a disease that requires a certain treatment in order to survive but that the treatment inevitably causes condition X. Whether or not there is a strong moral reason to save the fetus for its own sake, it seems intuitively clear that it would not be wrong to treat the fetus, thereby saving its life. But saving it involves causing it to have condition X and thus, apparently, violates its rights. If it is not permissible to violate a right on the ground that the act that violates the right on balance benefits the right-bearer, then it seems that the rights-based approach implies that it would be wrong to save the fetus.

The proponent of the rights-based view may reply that this is a case involving a conflict of rights. While the fetus has a right not to be caused to have condition X, it also has a right to be saved.<sup>xx</sup> And in this case the right to be saved, being more important, overrides the right not to be caused to have condition X. This reply assumes, however, that priority between the two rights is determined by the comparative strengths of the interests they protect. But the strength of a right does not vary proportionately with the strength of the interest it protects (assuming that it protects an interest at all). The

importance of any interest it might protect is only one of a number of factors that contributes to determining the strength of a right. Among the more important determinants is whether the right is positive or negative. The right to life, or the right not to be killed, and the right to be saved both protect the same interest: namely, the interest in continuing to life or in avoiding death. But the right not to be killed is a negative right and is thus held, by theorists of rights, to be considerably stronger, other things being equal, than the right to be saved. But if negative rights are in general considerably stronger than corresponding positive rights, then it is at least arguable that the negative right not to be caused to be disabled is stronger, or more stringent, than the positive right to be saved.

Let us suppose, however, if only for the sake of argument, that it is true that the late-term fetus's right to be saved overrides its right not to be caused to have condition X, so that the rights-based approach does not imply that it would be wrong to save the fetus. Now consider a parallel case involving an early-term fetus. The fetus has a disease that will rapidly be fatal unless it is treated; but the treatment causes condition X.<sup>xxi</sup> Assume that the claim that I noted earlier is correct - namely, that individuals such as you and I do not begin to exist until our organisms acquire the capacity to support consciousness and mental activity. If that is right, then an early-term fetus does not support the existence of an individual of the sort that you and I essentially are. There is no one there to have a right to life or a right to be saved. Hence, according to the rights-based approach, there is a strong reason not to treat the fetus, since treating it would violate the right of the later person not to be caused to have condition X, but no countervailing rights-based reason to treat it. The rights-based approach therefore implies that it would be wrong, other things being equal, to treat the fetus.

This seems an implausible result. But what is even more implausible is that the rights-based approach distinguishes morally between the case of the late-term fetus and the case of the early-term fetus, claiming that one may treat the former but not the latter.



As I indicated, the approach may imply that it is wrong to treat the late-term fetus as well. If so, the approach would avoid the embarrassment of treating the two cases asymmetrically. But the claim that it is wrong to treat the late-term fetus is itself quite implausible. There is, of course, a way around the dilemma, which is to reject the view that we do not begin to exist until the fetal organism develops the capacity to support consciousness. If we begin to exist when the human organism begins to exist, shortly after conception, then it may be defensible to claim that in both cases the fetus has a right to be saved and that this makes it permissible to treat the fetus despite the fact that doing so infringes its right not to be caused to be disabled. But the supposition that even early fetuses have a right to be saved from death is quite a radical view, with implications for abortion and other issues that many will be reluctant to accept.

If I am right about the metaphysics, the case of the early-term fetus involves a choice between causing a child to exist with a disability and allowing it to be the case that the child fails to come into existence. It is not a feature of the case that, if the early-term fetus is untreated, a different, normal child (i.e., without either the disease or condition X) will be caused to exist instead. Cases of this sort are helpful in testing the plausibility of the harm-based and rights-based approaches. For these approaches hold that what is fundamentally objectionable about causing a person to exist with a congenital disability (i.e., one that constitutes a harmed condition or necessarily causes a right to remain unfulfilled) is found in the inherent condition of the person, not in anything extrinsic to the person's life. Thus their plausibility can best be tested by reference to cases in which the only conceivable objectionable features are intrinsic to the life of a person caused to exist with a disability. In other cases, such as the Preconception Case, in which a person is caused to exist with a disability and there was the alternative of causing a normal child to exist instead, these approaches may yield the intuitively correct judgement but for the wrong reason. For it may be that the comparative dimension to the case - i.e., that the Negligent Physician causes a disabled

child to exist rather than a normal child - is an essential part of the explanation of why it is objectionable to cause the disabled child to exist.

To test the approaches that identify a victim, we should therefore consider cases that lack this comparative dimension. Imagine, then, a situation in which any child one might cause to exist would have a congenital harmed condition, or a right that would necessarily remain unfulfilled. It is not possible, in the circumstances, to cause a normal child to exist instead. Would it be wrong for a couple who wish to have a child to conceive a child in these circumstances? Most people believe that, provided that the child's life would be worth living and that the motives of those who would cause the child to exist would not be discreditable, it would not be worse, or bad, or wrong (other things being equal) to cause the child to exist. This is not just an intuition. The reason that it is not bad to cause the child to exist is, as I suggested in discussing the harm-based approach, that the goods that the child's life contains compensate for the presence of the harmed condition, without which the child would not exist. Thus the fact that the harm-based and rights-based approaches imply that it would be wrong to cause the child to exist constitutes a serious objection to them.<sup>xxii</sup>

What we need is an account that explains why it is objectionable to cause a disabled child to exist when it would be possible to cause a normal child to exist instead (as in the Preconception Case) but accepts that it is not bad, and is thus permissible if other things are equal, to cause a child to exist with the same disability when any child one might cause to exist would necessarily have that disability. It is difficult to find an approach of the victim-based type that does both these things since these approaches do not locate the objection to causing a disabled child to exist in factors that are comparative or in any way extrinsic to the condition of the child. There is, however, one approach of this sort that has a certain amount of promise. This account invokes the notion of a restricted life - a notion introduced by Kavka in his influential and important paper on the Non-Identity Problem.<sup>xxiii</sup> Kavka defines a restricted life as "one that is significantly deficient in one

or more of the major respects that generally make human lives valuable and worth living." He goes on to note, however, that "restricted lives typically will be worth living, on the whole, for those who live them."<sup>xxiv</sup> I will use Kavka's suggestive term in a slightly different way to refer to a life that is objectively not worth living but is subjectively tolerable, and may indeed be overall enjoyable to the individual whose life it is. Such a life is, I will say, subjectively worth living but objectively not worth living. (I put aside the question whether there could be a life that was objectively worth living but subjectively not worth living.) As an example, consider the life of Adolf Hitler. There is reason to believe that Hitler was, during most of his adulthood, abundantly satisfied with his life. Judged by the usual standards, he was a reasonably happy man. His life was therefore subjectively worth living: he found it well worth living. But was his life objectively worth living? Was this in reality a good life for him to have - better, at least, than no life at all? It is plausible, I think, to claim that Hitler's adult life was a dreadful life - not just in its effects on others but dreadful for him (even though he himself failed to recognize this).<sup>xxv</sup> This is not the kind of life that it could be good for anyone to have. It would have been better for Hitler if he had died in his twenties.<sup>xxvi</sup>

How does the notion of a restricted life help with the Non-Identity Problem? Assume that the retarded child in the Preconception Case has a restricted life. This explains why it was bad that the Negligent Physician's action resulted in the child's existence: the child's life is not worth living; it is objectively bad for the child to exist with that sort of life. If the child's life is genuinely restricted, then the goods that it contains do not, on balance, compensate for the child's harmed condition. This also supports the claim that the Negligent Physician owes the child compensation. For the Physician's negligence was culpable and had a victim: the child, for whom the Physician's action was bad.

This explanation is, however, essentially noncomparative: it does not mention the alternative possible outcome in which a normal child would have existed. It focuses

entirely on the intrinsic features of the retarded child's life. How, then, can it explain the permissibility of causing a child with a life like this to exist when it would not be possible to cause a normal child to exist instead? This approach must, it seems, claim that there is a serious prima facie reason not to have such a child - namely, that it would be objectively bad for the child. Yet, although a life that is objectively not worth living is bad, it is not nearly so bad if it is subjectively worth living as it would be if it were also subjectively not worth living. For a life that is objectively not worth living but is nevertheless subjectively worth living is not experienced as a burden by the person whose life it is. Thus the moral presumption against causing a person to exist with a restricted life may be overridden by countervailing considerations that are considerably weaker than those that would be required to override the much stronger presumption against causing a person to exist with a life that would be both subjectively and objectively not worth living. Assuming, then, that the desire to have a child has a certain normative force (e.g., that it is supported by a right of procreation), it might be that the desire of a couple to have a child could be sufficient to outweigh the harm they would do to the child by causing it to exist with a restricted life. But this same desire would be insufficient to justify causing a child to exist with a restricted life when it would be possible to have a normal child instead. For the reasonable desire to have a child could be satisfied by having the normal child. There would have to be some other reason to justify doing what would cause a child with a restricted life to exist rather than a normal child. And in the ordinary circumstances of life it is doubtful that there could be a reason sufficiently strong to justify the harm to a child with a restricted life.

Even when it would be permissible for a couple to cause a child to exist with a restricted life, the child would have a claim to compensation comparable in force to that which the retarded child has against the Negligent Physician in the Preconception Case. In practice this means that a couple that chose to have a child with a restricted life would be morally required to make sacrifices for the child that would not be part of the normal

burden of child-rearing. This, however, seems entirely plausible. Whether such parents would owe as much as the Negligent Physician depends on whether the fact that he is at fault compounds his liability.

The appeal to the notion of a restricted life thus has a certain promise. But it nevertheless faces serious objections. It may be objected, for example, that the killing of people judged to have restricted lives could be justified as euthanasia. This, however, is not a serious concern. For the morality of killing is not governed solely by considerations of harm and benefit. Even though there is a sense in which it would be better for a person with a restricted life to die rather than continue to live, it certainly does not follow that it would be permissible to kill that person against his or her will. It has to be conceded, however, that the notion of a restricted life is an exceedingly dangerous one; for it asserts the possibility that others could know that one's life was not worth living even if one were oneself convinced that it was worth living. As a matter of principle this in fact seems to be right: it is possible to believe that one's life is worth living when in fact it is not. But surely this occurs very rarely and in most cases one's judgement about whether one's own life is worth living is, if not authoritative, then at least so nearly infallible that it would be the height of presumption for another person to dispute it.

This observation reveals the central weakness of the appeal to the notion of a restricted life - that there are scarcely any plausible instances of lives of this sort.<sup>xxvii</sup> Perhaps the most plausible examples are of people whose lives, while enjoyable, are utterly morally debased. But these cases are largely irrelevant to the morality of causing people to exist because of the impossibility, at least at present, of predicting before a life begins that it will be morally degraded. Among predictable conditions, it is difficult to identify any that clearly make a life objectively not worth living without making it subjectively not worth living as well. Perhaps the most plausible candidate is severe congenital cognitive incapacity. Loren Lomasky contends that, "were one condemned ...

to remain a child throughout one's existence, or to grow in bulk without simultaneously growing in the capacity to conceptualize ends and to act for their sake, it would be a personal misfortune of the utmost gravity."<sup>xxviii</sup> The idea that the severely retarded are appropriately viewed as permanently infantile suggests that a life in this condition may be objectively degraded or unworthy, even if it is subjectively tolerable. It is, however, difficult to reconcile this judgement with the commonly accepted assumption that the lives of nonhuman animals with comparable cognitive capacities may be worth living and are certainly not objectively degraded simply because they are not guided by the exercise of our higher cognitive capacities.<sup>xxix</sup>

The Non-Identity Problem arises in a large number of cases. Since it is difficult to think of a single case in which a predictable condition causes a person to have a restricted life, it is safe to conclude that the notion of a restricted life cannot help us solve this problem.<sup>xxx</sup>

#### **IV The Impersonal Comparative Approach**

Other writers have discussed cases with the same structure as the Preconception Case under the heading of "wrongful life." Some have contended that the fundamental objection in these cases to causing a child to exist with a disability is that this gratuitously increases the amount of evil, or that which is bad, that the world contains. Joel Feinberg, for example, claims that the agent in a case such as the Preconception Case "must be blamed for wantonly introducing a certain evil into the world, not for harming, or for violating the rights of, a person." He then goes on to elucidate the nature of the evil when he observes that one could make the willful creation of a disabled child a criminal act on the ground that "the prevention of unnecessary suffering is a legitimate reason for a criminal prohibition."<sup>xxxi</sup> These remarks are echoed by John Harris, who writes: "What then is the wrong of wrongful life? It can be wrong to create an individual in a harmed condition even where the individual is benefited thereby. The wrong will be

the wrong of bringing avoidable suffering into the world, of choosing deliberately to increase unnecessarily the amount of harm or suffering in the world.”<sup>xxxii</sup>

To say that some instance of suffering is “unnecessary” or “avoidable” is to imply that it is wrong to cause that suffering. But what exactly does it mean to say that suffering is unnecessary or avoidable? In one sense, it means simply that the suffering could have been avoided. But that is true of all human suffering, since it has always been possible for people simply to stop procreating. Thus those unguarded forms of Negative Utilitarianism that call simply for the minimization of suffering have notoriously been accused of implying that it is wrong ever to cause a sentient being to exist. But this is surely not the sense of “unnecessary” intended by Feinberg and Harris. The normal implication of the claim that some instance of suffering is unnecessary is that the suffering is not instrumental to or a necessary accompaniment of some greater good for the person who experiences the suffering. Thus suffering that is not unnecessary is suffering that has to occur if certain compensating goods are to be had by the sufferer. In this sense, the foreseeable suffering that any life that is worth living will inevitably contain is not unnecessary. But then this applies equally to the foreseeable suffering within the lives of the congenitally disabled, provided that their lives would be worth living. Their suffering is not unnecessary in this second sense.

Feinberg and Harris must therefore be invoking a third sense in which suffering may be unnecessary. Consider again the Preconception Case. Whatever suffering the child experiences as a result of the retardation is not unnecessary for the compensating goods of that life. But it is unnecessary for goods of the same type - indeed a greater quantity of those goods - within a different life that might have been caused to occur instead. The objection urged by Feinberg and Harris therefore takes an impersonal, comparative form. For it is not concerned with effects for better or worse on any particular individual but with the comparison between the possible effects on one possible individual with those on another. The objection to causing the retarded child to

exist is that it was possible to cause a different child to exist whose life would have contained at least as much good but less of what is bad - in particular, less overall suffering. It is in this impersonal sense that the retarded child's suffering is unnecessary.

A more precise articulation of this sort of approach has been formulated by Parfit in the following principle: "If in either of two possible outcomes the same number of people would ever live, it would be worse if those who live are worse off, or have a lower quality of life, than those who would have lived."<sup>xxxiii</sup> Call this the Impersonal Comparative Principle. Notice that it is explicitly restricted to what Parfit calls "Same-Number Choices" - that is, cases in which the same number of people would exist in all the possible outcomes of a choice between acts. Note furthermore that, being impersonal, the Impersonal Comparative Principle is consistent with the No-Difference View, which asserts, in effect, that the correct principle of beneficence must take a fully impersonal form. Finally, notice that this principle presupposes that possible people count morally and must be taken into account in moral deliberation.

The Impersonal Comparative Principle has a distinct advantage. It does seem, intuitively, that the morality of causing a disabled child to exist is affected by whether or not it would be possible to cause a normal child to exist instead. The Impersonal Comparative Principle captures this. Thus it condemns the Negligent Physician's action in the Preconception Case because the normal child who might have existed would have been better off than the retarded child is. But it does not condemn a couple for having a child with the same disability provided that the child's life is worth living and that any child they might have would also have that disability. It does not condemn such a couple because it has no implications for their choice. Their choice is between having a disabled child and having no child. It is therefore not a Same-Number Choice but what Parfit calls a "Different-Number Choice" - that is, a case in which different numbers of people would exist in some of the possible outcomes of a choice between acts.



Does the Impersonal Comparative Principle support the intuition that the Negligent Physician in the Preconception Case owes compensation to the retarded child? Here is an argument for the claim that it does. According to the Impersonal Comparative Principle, the Physician has a moral reason ex ante to ensure that a normal child exists rather than a disabled child. Indeed, his general reason to bring about the better outcome is strengthened in this case by his professional commitment. Presumably he would even have been required, if necessary, to accept certain costs in order to ensure the conception of a normal child rather than a retarded child. (The extent of the cost he should accept in order to ensure the better outcome is of course limited. If, for example, the cost to him of ensuring the conception of a normal child rather than a disabled child would be as great as the cost to a couple of being unable to have a child, then it might be permissible for him to allow the conception of a disabled child. But it is hard to imagine circumstances in which personal costs this great would be required from a physician in order to ensure the conception of a normal rather than a disabled child.) Let us stipulate that the Negligent Physician in the Preconception Case would have been required to accept costs up to amount  $\underline{x}$  in order to ensure that the couple would conceive a normal rather than a disabled child. If that is true, then it seems reasonable to suppose that, since his negligence has brought about the worse outcome, he should be required ex post to pay costs at least up to amount  $\underline{x}$  in order to repair the result of his fault. In particular, he should be required to pay up to amount  $x$ , if necessary, to try to make the disabled child's life as good as the normal child's life would have been. If the compensation could succeed in benefiting the disabled child to that extent, this would cancel the bad effect of his previous action.

This argument is vulnerable to several objections. First, it is not plausible to suppose that there are grounds for liability whenever the Impersonal Comparative Principle implies that it was worse to cause some person to exist. For the Impersonal Comparative Principle implies that it is worse, other things being equal, to cause a person

to exist whenever it would be possible to cause a different, better-off person to exist instead. Thus it implies that it would be worse to cause a normal person to exist if it would be possible to cause a person with an unusually high capacity for well-being to exist instead. But if, in these circumstances, one were to cause the normal person to exist, it is implausible to suppose that this would make one liable to compensate that person for being worse off than some extraordinary possible person might otherwise have been.

Second, the case for compensation depends on the availability of a better alternative. The Impersonal Comparative Principle does not imply that there is a reason not to cause a disabled child to exist when there is no possibility of causing a better-off child to exist instead. Hence there is no reason in these circumstances for an agent to accept costs ex ante to avoid causing a disabled child to exist and no basis for a claim to compensation ex post. But now imagine two equally disabled children, only one of whom was caused to exist in conditions in which a normal child could have been caused to exist instead. Although both have the same disability, only this child can claim compensation. But it may seem unfair to deny the other compensation just because there was no possibility of causing a normal child to exist in his place.

Finally, and most importantly, recall that the reason that the Impersonal Comparative Principle holds that the Negligent Physician's action was worse is not that it harmed or wronged the retarded child. His offense was instead impersonal. But, if the original action was objectionable for impersonal reasons, then the reason to redress the situation should be impersonal as well. There is, in other words, no reason why the remedy - that is, the action aimed at cancelling the bad effect - should benefit the disabled child. After all, that child is not, according to the Impersonal Comparative Principle, a victim of the Negligent Physician's action.

Suppose that, if the Negligent Physician were to pay costs up to amount  $\underline{x}$  to the disabled child, this would be insufficient to raise the child's level of well-being anywhere

near to the level that the normal child would have enjoyed had it existed instead. But suppose that there were some other child whose level of well-being was as low as that of the disabled child and who could be raised to the level that the normal child would have enjoyed if he or she were to receive amount  $x$  of the Negligent Physician's resources. Insofar as there is an impersonal reason for the Negligent Physician to repair the effects of his negligence, he should devote his resources to benefiting this other child rather than to "compensating" the disabled child. It is of course true that, in cases like the Preconception Case, the Negligent Physician might have a moral reason to pay damages to the disabled child, but only if, contingently, this were the most efficient way to repair the impersonally bad effects of his previous negligence.

Despite initial appearances, therefore, the Impersonal Comparative Principle provides no basis for liability on the part of the Negligent Physician to compensate the disabled child. This may or may not constitute an objection to the principle. For it is unclear whether, in the Preconception Case, the child in fact deserves compensation. The child may deserve special compensation through relevant mechanisms of social redistribution simply for being badly off - either in absolute terms or relative to the norms of the society. In this respect the child is on a par with others who are badly off through no fault of their own. There is no reason why the Negligent Physician in particular should be required to do more than anyone else to help the child.

But, while it is not clear whether the disabled child in the Preconception Case deserves compensation, it is clear that the disabled child in the Prenatal Case deserves compensation and that it is the Negligent Physician who is morally (and legally) liable to pay it. Recall, however, that according to the No-Difference View, the objection in the Prenatal Case to the Negligent Physician's causing the child to be disabled rather than normal is the same as the objection in the Preconception Case to the Negligent Physician's causing a disabled child to exist rather than a normal child. The objection in the Preconception Case is impersonal in character; therefore the objection in the Prenatal

Case must also be impersonal - which, of course, is exactly what the Impersonal Comparative Principle implies, since it treats the two cases in exactly the same way. Indeed, according to the generalized No-Difference View, the whole of the morality of beneficence is to be explained in impersonal terms. Person-affecting principles may often yield the right answers but they never provide the correct explanation, which is always impersonal. If it is worse to perform some act, it is not because the act is bad or worse for somebody; there are never any victims in the relevant sense. Notice, however, what this implies. If the objection to the Negligent Physician's action in the Prenatal Case is impersonal, then there can be no more basis for liability here than there is in the Preconception Case. Indeed, if the generalized No-Difference View is correct, then there can never be any basis for liability to compensate an individual for harm that one has done to that individual. Or at least this is true within the area of morality concerned with beneficence, or well-being. Parfit leaves it open that there may be areas of morality governed by respect for rights, or other considerations beyond the scope of beneficence. But if, as Parfit assumes, such cases as the Prenatal Case, in which one person's negligence causes another to suffer a serious disability, come within the morality of beneficence, then it seems that the areas governed by rights cannot be more than tiny provinces at the periphery.

Most of us firmly believe that, in the Prenatal Case, the Negligent Physician owes compensation to the child he has caused to be disabled rather than normal. That the Impersonal Comparative Principle seems incapable of supporting this belief is a serious objection to it, on the assumption that the No-Difference View is true. If the Prenatal Case were outside the proper scope of the Impersonal Comparative Principle, there would be no problem. But the No-Difference View holds that there is no relevant difference between the Prenatal Case and the Preconception Case, that the objection to the Negligent Physician's conduct is therefore the same in each, and that that objection is provided by the Impersonal Comparative Principle.

That the Impersonal Comparative Principle cannot account for the Negligent Physician's liability in the Prenatal Case is only one of many problems it faces. Here is another. As it is stated, the principle refers only to people. But there is no obvious reason why it should not apply to nonpersons as well. But, when extended in this way, it implies that it is worse, and therefore presumptively objectionable, to breed one's dog rather than to have a child, if one cannot do both. For to breed the dog would be to cause a worse-off rather than a better-off individual to exist.<sup>xxxiv</sup> And it would be worse to breed one's dog than to breed one's lizard, if one could not do both. And so on.

These implications are implausible. There are several ways that a defender of the Impersonal Comparative Principle might seek to avoid them. One would be to appeal to side-effects - for example, by arguing that, because of overpopulation, causing a person to exist has such bad side-effects that on balance it would not be worse to breed one's dog instead. But this response is inadequate. It is not because of human overpopulation that it is permissible to breed one's dog. And in any case the principle still implies that it was worse, before overpopulation arose, to breed one's dog rather than to have a child.

A second possible response is to note that the Impersonal Comparative Principle, as stated by Parfit, refers only to what is worse, not to what is wrong - that is, it concerns only the evaluation of outcomes, not what one ought or ought not to do. Therefore, it is only if the principle is conjoined with something like Act Consequentialism that it has implausible implications about procreation and breeding. Again, however, this response is inadequate. For the Impersonal Comparative Principle must be conjoined with some principle that explains how considerations of consequences should guide our action; otherwise its utility will be extremely limited when applied to cases like the Preconception Case. It is fairly obvious in that case that the Negligent Physician brings about the impersonally worse of two possible outcomes. What is important is the further claim that this is what explains why his action was morally objectionable or wrong, other things being equal. And it is reasonable to expect that any action-guiding principle that,

when conjoined with the Impersonal Comparative Principle, implies that it is wrong to bring about the worse of the two outcomes in the Preconception Case will also imply that it is wrong to bring about the worse of the two outcomes when the choice is between having a child and breeding one's dog.

Perhaps the most plausible response to this challenge is to restrict the scope of the Impersonal Comparative Principle so that it applies only to cases involving lives of the same kind. Suitably restricted, it would imply that it is worse to cause the worse-off of two possible people to exist, and worse to cause the worse-off of two possible dogs to exist; but it would have nothing to say about whether it is worse to cause a dog to exist rather than a person. While I am skeptical that a principled rationale for such a restriction could be found, I cannot exclude the possibility.

The deepest problems for the impersonal conception of beneficence that is required by the No-Difference View emerge when we try to extrapolate beyond the Impersonal Comparative Principle to a principle that covers not only Same-Number Choices but also Different-Number Choices. Among those choices in which different people exist in the different possible outcomes, Different-Number Choices are significantly more common than Same-Number Choices. It is therefore essential to have a principle that covers those choices. There is, however, a formidable obstacle to extending the impersonal approach so that it applies in these cases. The extended principle must surely imply, as the Impersonal Comparative Principle does, that an outcome is worse if the people who exist in that outcome are worse off than the people who would exist in an alternative outcome. But when different numbers of people exist in the different outcomes, it becomes very difficult to determine which group is better off than the others. One has to weigh the number of lives, or perhaps the overall quantity of life, against the overall quality of life. And one has to determine how to measure the overall quality of life in a group in which individual lives may vary considerably in overall quality. Is the group with the best overall quality of life the one with the highest average quality of life, the highest

maximum, or perhaps the lowest minimum? Should the measurement of overall quality of life take into account the relative levels of equality in the quality of life within the different groups? And if so, how is equality itself to be measured?<sup>xxxv</sup>

These and other problems are explored with tremendous subtlety and ingenuity in Parfit's book, Reasons and Persons. He assigns the label "Theory X" to the theory that would plausibly extend the Impersonal Comparative Principle so that it would cover Different-Number Choices. While he states a variety of requirements that Theory X would have to satisfy in order to be acceptable, he confesses his own inability to discover the content of the theory. He concludes, however, with an expression of optimism: "Though I failed to discover X, I believe that, if they tried, others could succeed."<sup>xxxvi</sup>

I believe that there is reason to doubt this. Theory X must take an impersonal form: it must presuppose that the fact that an act is bad or worse for someone cannot be part of the fundamental explanation of why its effects are bad or why the act itself is wrong. Because of this, I suspect that any candidate for Theory X will have implications that undermine its credibility. In order to try to substantiate this suspicion, I will indicate what I think some of these implications are. I must acknowledge, however, that I cannot demonstrate that Theory X will have these implications. As yet there is no Theory X; therefore neither I nor anyone else can say what its implications might be. My claim can only be that it is difficult to see how any candidate for Theory X can avoid the implications to which I will call attention.

Let us revert to a problem mentioned earlier in section II: the problem of abortion. On the assumption that a new individual of our kind does not begin to exist until some time during the second half of pregnancy, the choice between having and not having an early-term abortion is a Different-Number Choice: the number of people who will ever exist if one has the abortion will be different from the number who will exist if one does not. This is, however, a very simple Different-Number Choice. Consider:

#### The Early-Term Abortion

A woman is in the very early stages of pregnancy. If she continues the pregnancy, the child she has will have a life that is well worth living. It would be better for her and her partner, however, if she has an abortion. But, because the society in which they live is underpopulated, the abortion would also have certain bad effects on other preexisting people. Assume that these various good and bad effects counterbalance one another - that is, they cancel each other out. The couple decide to have the abortion. Overall this is not worse for the people who ever exist.

Suppose we want to know which of the two possible outcomes is better impersonally. The complications mentioned earlier that typically make it so difficult to determine which of two different-sized groups is better off simply do not arise in this case. In the actual outcome, a certain number of people exist. If the abortion had not been performed, exactly those same people would have existed and overall their collective level of well-being would have been the same. The only difference is that in the second outcome there would have been one additional person whose life would, we may assume, have been worth living. (There are instances in which, when one thing that is good when taken by itself is added to a second thing that is also good by itself, the result is a decrease in the degree of goodness of the second thing. Nothing like this would occur if, in the Early-Term Abortion, the abortion were not performed.) But if, from an impersonal point of view, the two outcomes differ only in that one contains an additional life in which the good elements outweigh the bad, then it seems that the outcome with the additional good must be better impersonally.

One might arrive at the same conclusion by a slightly more circuitous route. Let us define three outcomes: having a Happy Child, having a Less Happy Child, and having No Child. According to the Impersonal Comparative Principle, having a Less Happy Child is worse than having a Happy Child, other things being equal. This is not because having the Less Happy Child would be bad in itself; it is just that having a Happy Child



contributes more to making the world better. But if having a Happy Child is better than having a Less Happy Child because it adds more good to the world, then it seems that having a Happy Child must also be better than having No Child, other things being equal, and for the same impersonal reason.

In the Preconception Case, the Negligent Physician causes the couple to have a Less Happy Child rather than a Happy Child. In the Early-Term Abortion, the couple have No Child rather than a Happy Child. From an impersonal point of view, the latter should be as objectionable as the former. If we conclude that the Negligent Physician ought not to have caused the less good outcome rather than the better one, and for reasons that are impersonal, then it may be difficult to avoid the conclusion that the woman in the Early-Term Abortion ought not to have had the abortion. It seems that Theory X, which will extend the claim of the Impersonal Comparative Principle so that it covers Different-Number Choices, may imply that abortion is wrong. The impersonal approach to the Non-Identity Problem thus not only threatens a powerful argument in favor of the permissibility of abortion (as I suggested in Section II) but also supports a strong argument against the permissibility of abortion.

Indeed the problem runs deeper than this. The objection to abortion that seems to be implied by the impersonal approach cannot, of course, be that abortion is murder, that it harms the fetus, or that it is against the fetus's interests. It is simply that abortion prevents the existence of a person whose existence would make the outcome better in impersonal terms. But this is equally true of the use of contraception and indeed of any choice that results in abstention from procreation. To the extent that abortion is objectionable from an impersonal point of view, these other forms of behavior must be objectionable as well, other things being equal, and for the same reason.

I have suggested that it is natural to infer from the claim that it is impersonally worse to have a Less Happy Child rather than a Happy Child that it is also worse to have No Child rather than a Happy Child. One might challenge this by pointing out that,

according to the Impersonal Comparative Principle, the objection in the one case is essentially comparative: the Happy Child would be better off than the Less Happy Child. One is comparing the conditions of two possible people. In the second case, however, this sort of comparison is not possible. If the alternatives are having a Happy Child and having No Child, there is no one whom the Happy Child would be better off than. The problem with this response, however, is that it seems irrelevant from the impersonal point of view. The claim that “the Happy Child is better off than the Less Happy Child” is reducible to “the outcome with the Happy Child contains a greater amount of good than that with the Less Happy Child.” From the impersonal point of view, the references to individuals are eliminable without loss. If the outcome with No Child contains less good than the outcome with a Happy Child, then having No Child is worse than having a Happy Child for the same reason that having a Less Happy Child is worse than having a Happy Child.

The common sense view is of course entirely different. Most of us believe that there is no moral reason to cause a person to exist just because the person’s life would be worth living - that there is no reason, other things being equal, to have a Happy Child rather than No Child. But we also believe that, if one is going to have a child, one has reason, other things being equal, to have a Happy Child rather than a Less Happy Child. The moral reason for having a Happy Child is conditional on a prior determination to have a child. Thus we believe that it is permissible to have No Child rather than a Happy Child even though it is wrong to have a Less Happy Child rather than a Happy Child, other things being equal. I have suggested, however, that it is difficult to see how this set of beliefs could be defensible within an impersonal conception of beneficence.

Parfit has suggested an analogy that might be thought to show how these beliefs could be consistent.<sup>xxxvii</sup> “Suppose,” Parfit writes, “that I have three alternatives:

A: at some great cost to myself, saving a stranger’s right arm;

B: doing nothing;

C: at the same cost to myself, saving both the arms of this stranger.”<sup>xxxviii</sup>

Most of us believe that, if these are the alternatives, it is permissible to do B - that is, to save neither arm. But, if one has decided to help the stranger, it would be wrong to do A - that is, to save one arm rather than two. If one has decided to accept a certain cost to help the stranger, and the cost will be the same whether one saves one arm or both, it would be perverse not to do what would achieve the greater good. In short, while there is no duty to do C rather than B, there is a duty to do C rather than A.

Now alter the values of the variables so that one's alternatives are:

A: having a Less Happy Child;

B: having No Child;

C: having a Happy Child.

Again the common view is that, if these are the alternatives, it is permissible to do B - that is, it is permissible not to have a child. But, if one has decided to have a child, it would be wrong to do A - that is to have a Less Happy Child rather than a Happy Child. As in the first set of alternatives, there is no duty to do C rather than B, though there is a duty to do C rather than A. This is the common sense conception of the morality of procreation. The parallel with the first set of alternatives suggests that this conception is defensible and hence that I was mistaken to claim that, if C is better than A, it must also be better than B.

This counterargument fails, for the two sets of alternatives are not in fact parallel. Once parallelism is established, the comparison between them supports rather than refutes my claim. In the first set of alternatives, C is the best outcome, impersonally considered. There is also a strong moral reason to do C rather than B. It is only because there is a great cost to the agent attached to C that it is permissible to do B rather than C.<sup>xxxix</sup> If we subtract the stipulations about costs from the first set of alternatives, so that this set becomes analogous to the second, then one would be required to do C rather than B (which is the conclusion that I assume is implied by the impersonal approach in the

second set of alternatives). Alternatively, if one adds parallel stipulations about cost to the second set of alternatives, common sense intuitions may be upheld but the explanation of why it is permissible to have No Child is no longer that this outcome is not worse than having a Happy Child. The explanation instead appeals to considerations of cost, which are extraneous to the impersonal evaluation of the outcomes.<sup>x1</sup> Indeed, to maintain parallelism with the first set of alternatives, it must be granted that there is a strong moral reason to have a Happy Child rather than No Child. This reason is overridden only by considerations of cost to the agent.

Is there any other way, within an impersonal conception of beneficence, to defend the common sense view that, while it would be worse to have a Less Happy Child rather than a Happy Child, it would not be worse to have No Child rather than a Happy Child? Jonathan Glover has suggested a different analogy. He contends that “a principle that did not tell us to create extra happy people” could nevertheless imply that, “when we are going to add to the population, where the choice arises we must always prefer to add a happier rather than a less happy person. ...A policy of always choosing the best ones when picking apples does not commit us to picking as many as possible” - or, he might have added, to picking any at all.<sup>xii</sup> This further analogy, while suggestive, is still inadequate. If creating new people were like picking apples, then, while there would be a reason to have a Happy Child rather than a Less Happy Child, the reason would be entirely instrumental, having to do with the interests of the parents. Thus, if the interests of preexisting people were not engaged, there would be no reason to have the Happy Child rather than the Less Happy Child - just as there would be no reason to pick better apples if there were no important reason to pick apples in the first place.

So the point still stands: it seems that Theory X will imply that it is better for a Happy Child to exist than for No Child to exist and consequently that there is a moral reason to have a Happy Child rather than No Child. While common sense resists this claim, it is not obviously wrong. But there is worse to come. For, from an impersonal

point of view, there seems to be no fundamental difference between starting a life and extending a life. Provided that each would be worth living, one's reason to create a new life is the same as one's reason to extend an existing life: namely, that doing either makes the outcome better by causing there to be more of what is good, or that which makes life worth living. This suggests that, other things being equal, Theory X will imply that there is as much reason to cause a new person to exist as there is to save a person's life. Indeed, since the outcome of saving a life contains only a part of that life, whereas the outcome of causing a person to exist contains the whole of a life, it will normally be better, other things being equal and from an impersonal point of view, to cause a person to exist than to save a person's life.

This is very hard to believe. But there is more. Accounts of the morality of beneficence that are impersonal in character tend to treat as irrelevant certain aspects of an agent's mode of agency. They tend, for example, to deny that there is any moral significance to the distinction between doing and allowing, or to the distinction between effects that are intended and those that are foreseen but unintended. While there is no necessary incompatibility between an impersonal theory of beneficence and claims about the significance of agency that are essentially deontological in character, it is nevertheless natural that a theory that evaluates outcomes impersonally should also take an impersonal view of agency. If the identity of the beneficiary or victim of an act makes no difference to the morality of the act, then it should not be surprising if neither the identity of the agent nor his or her mode of agency matters either. Thus many writers who accept an impersonal theory of beneficence deny that there is any fundamental or intrinsic difference between failing to save a person and killing a person (i.e., between killing and letting die). But, if this is right, and if there is also no fundamental difference between saving a person and causing a person to exist (or between not saving a person and not causing a person to exist), then it follows that there is no difference, other things being equal, between killing a person and failing to cause a person to exist. From an

impersonal point of view, both are bad for the same reason: the outcome is worse because it contains less good - less good than it would have contained had a person with a life worth living continued to exist or been caused to exist. Indeed, failing to cause of person to exist will, other things being equal, be worse, for the same reason that it is normally impersonally worse than failing to save a person.

It might be argued that, even if Theory X has these implications, this does not show that it is unacceptable. For Theory X is an account of beneficence only, and there is more to the morality of killing than considerations of beneficence. Killing may be specially objectionable, for example, because it involves a violation of rights. But, if this defense works at all, it applies only to the comparison between killing and failing to cause a person to exist. For it is implausible to suppose that the morality of saving lives lies outside the scope of beneficence.

A second response might be to argue that it is compatible with a wholly impersonal conception of beneficence to suppose that there is a moral asymmetry between harms and benefits, or between suffering losses and forgoing gains, or something of the sort. If there is such an asymmetry, then even within the morality of beneficence killing a person is worse than failing to cause a person to exist, since killing involves harm or loss while the failure to cause a person to exist involves only the absence of benefit or gain. This, however, is a mistake. The harm of death consists primarily if not exclusively in the loss of the benefits of continued life. Death and the failure of a person to come into existence involve the same sorts of loss from the impersonal point of view.

Finally, even if there are dimensions to the morality of killing beyond the evaluation of outcomes (and I believe that there are), Theory X seems to get even the evaluation of outcomes wrong. If we compare an act of killing with a failure to cause a person to exist, it seems obvious that the outcome of the killing is worse. It is a worse state of affairs when someone dies (whether from being killed or from natural causes)

than it is when a person fails to come into existence, assuming that in both cases the lives would have been worth living.

In sum, it is difficult to see how Theory X can avoid implying that, other things being equal, [1] it is better to have a Happy Child rather than No Child; hence [2] there are moral objections to abortion, contraception, and celibacy; [3] the failure of a person to come into existence is at least as bad an outcome than the death of a person; hence [4] the failure to cause a person to exist is at least as bad as the failure to save a person's life and [5] the failure to cause a person to exist is at least as bad as killing a person. These claims, or at any rate the last three, are plainly unacceptable. The only hope for Theory X is that it can avoid having them as implications. Despite my earlier remarks, those who are attracted to the impersonal approach may remain optimistic. They may point out that there are, after all, some familiar candidates for Theory X that do not necessarily have these implications. If, for example, a Happy Child would have a level of well-being at or below the average, then Average Consequentialism would not imply that it is better to have the Happy Child than to have No Child; yet it would imply that, if a child were inevitable that some child was going to exist, then it would be better to have the Happy Child than to have a Less Happy Child. But this is just an accident of the arithmetic. If the Happy Child would be above the average, then it would be better, other things being equal, to have the Happy Child. And if the existing population were quite large and the Happy Child would be well above the average and would live long, then it would be better, according to Average Consequentialism, to have the Happy Child than to save a person whose life was well below the average. It is important to note these facts, since Average Consequentialism is, in effect, concerned exclusively with the quality of life (which it measures in terms of the average) and gives no weight to increasing the number of lives except insofar as this affects the overall quality of life. Among the known impersonal theories of beneficence, therefore, it is the one least likely to have the claims cited above among its implications.<sup>xlii</sup>

## V Conclusion

To be acceptable, Theory X must imply that failing to save a person whose life would be worth living is, other things being equal, not just worse but significantly worse than failing to cause a person to exist. And this implication must not just be a contingent feature of the way the math works out. It must instead flow from the theory in a way that plausibly explains why the death of a person is a worse outcome than failure of a person to come into existence.

I cannot prove that no impersonal theory can satisfy this condition. Yet there is good reason to believe that no impersonal theory can. For it seems essential to the explanation of why the death of a person is worse than the failure of a person to come into existence that the former is worse for someone while the latter is not. Person-affecting considerations seem indispensable.

In many cases involving the Non-Identity Problem, a choice seems to have a bad effect but is nevertheless not worse for anyone. Parfit asks whether, in these cases, the fact that the choice is not worse for anyone makes a moral difference. "There are," he writes, "three views. It might make all the difference, or some difference, or no difference. There might be no objection to our choice, or some objection, or the objection may be just as strong."<sup>xliii</sup> Parfit accepts the third view, the No-Difference View. According to this view, whether or not the choice is worse for anyone is morally irrelevant; impersonal considerations alone matter. I have tried to show why I think this view will prove to be unacceptable. According to the first view, impersonal considerations have no weight; person-affecting considerations alone matter. As Parfit has shown, this first view is untenable. This leaves the second view.

As I understand it, the second view holds that an effect may be bad even if it is not worse for anyone, but not as bad as it would be if it were worse for someone. In short, impersonal considerations matter, but person-affecting considerations matter more. Recall the Medical Programs Case. (And put aside consideration of the effects on the



couples, which, though they occur in different lives, are much the same whichever program is cancelled.) What the second view seems to imply here is that, while the cancellation of Preconception Testing would be bad (because it would be impersonally bad), the cancellation of Pregnancy Testing would be worse. There are two possible explanations of why the cancellation of Pregnancy Testing would be worse. One is that impersonal considerations and person-affecting considerations are additive. According to this understanding, the cancellation of Pregnancy Testing would be worse because it would be bad for the same impersonal reasons that the cancellation of Preconception Testing would be bad but would be additionally bad for person-affecting reasons - that is, it would be bad impersonally and bad because it would be worse for the children who would be born disabled. The second possible explanation is that, while impersonal considerations and person-affecting considerations are distinct and nonadditive, person-affecting considerations matter more. According to this understanding, the cancellation of Preconception Testing would be bad for impersonal reasons, while the cancellation of Pregnancy Testing would be bad for entirely different, person-affecting reasons. And these latter reasons would be stronger. Even though the cancellation of each program would result in the same number of disabled children, this effect is worse if it is worse for people. More generally, an effect E (e.g., a child is born with a disability) may be bad impersonally (e.g., because a better effect might have been caused instead) even if it is not bad for anyone. But, in other conditions, E may be bad for someone. In those instances in which it is bad for someone, E is worse than it is when it is bad only in impersonal terms.

The three options cited by Parfit are not exhaustive. There is another view, which I will call the Encompassing Account, that I believe is more plausible than any of the three views Parfit mentions. It is similar to, but more complex than, the second view cited by Parfit, as interpreted in the second of the two ways sketched above. According to the Encompassing Account, person-affecting considerations and impersonal considerations

are distinct and nonadditive. Neither type of consideration is reducible to the other. Both matter; both provide reasons for action. An effect E, for example, may be worse impersonally or it may be worse in person-affecting terms (that is, worse for someone). If E is worse in person-affecting terms, that fact provides whatever reasons there are to prevent it, mitigate it, suppress it, or whatever. That E is also worse in impersonal terms is, in the circumstances, irrelevant. If, however, E is not worse in person-affecting terms, then whatever reasons there are to prevent, mitigate, or suppress it are impersonal in character.

When E is worse in person-affecting terms, the reason one has to prevent it is always at least as strong as the reason one has to prevent it when it is worse only impersonally. When E is worse only in impersonal terms, the reason one has to prevent it is either as strong as or weaker than the reason one would have to prevent it if it were worse in person-affecting terms. Suppose, for example, that we agree with Parfit that the cancellation of Preconception Testing would be just as bad as the cancellation of Pregnancy Testing. If so, we believe that, in this case, the relevant impersonal considerations are as strong as the corresponding person-affecting considerations. But one might not accept this. One might think that, even here, the relevant person-affecting considerations are stronger. One might reason as follows:

If Pregnancy Testing is cancelled, each disabled child could reasonably have this thought: 'It could have been better for me.' That is a bitter reflection. If Preconception Testing is cancelled, the only thought to which each disabled child would be entitled is: 'A better-off person might have existed instead of me.' This is not a disturbing thought; virtually all of us could reasonably believe this of ourselves. Thus, if we take up the points of view of the various disabled children rather than surveying the possible outcomes from a distance, we have reason to think that the effects of cancelling Pregnancy Testing would be worse. This is not because the children born disabled if Pregnancy

Testing were cancelled would actually have this thought and be made miserable by it. It is, rather, that the accessibility of this thought to them is supposed to reveal something important about the nature of the outcome.

If one were to reason this way, one would conclude that there is an asymmetry in the strengths of the impersonal and person-affecting considerations even in the Medical Programs Case. It is hard to believe, however, that such an asymmetry could be more than very slight.

Here is another pair of cases in which an asymmetry may be manifest. Suppose that a woman knows that she has a condition such that, if she conceives a child now, it will have a slight cognitive deficit but will still be exceptionally bright. If she waits a few months for the condition to clear, she will then have a different child who will lack the cognitive deficit. The difference is that, if she has a child now, it will have an IQ of 160, whereas if she waits she will have a child with an IQ of 170. Next imagine a case in which a pregnant woman takes a certain drug that damages her fetus, causing the subsequent child to have an IQ of 160 rather than 170. Viewed impersonally, the bad effect in these two cases is the same. But in the second case this effect is also bad in person-affecting terms. It is not absurd to suppose that the effect in the second case is worse.

Again, the difference can only be very slight. We have seen, however, that there may be pairs of cases in which there is a vast asymmetry between impersonal and person-affecting considerations. It seems, for example, that it is bad in impersonal terms if a person whose life would have been well worth living fails to come into existence. Goods that might have existed never in fact occur. But it is clearly significantly worse if there is a corresponding loss that is bad in person-affecting terms - for example, when goods of comparable quality and quantity are lost because a person dies. In this comparison, if E is the nonoccurrence of these goods, then, although E may be bad impersonally, it is far worse when it is bad in person-affecting terms. Hence the impersonal reason one has to

cause a person to exist is not nearly so strong as the person-affecting reason one has to save a person's life.

According to the Encompassing Account, the morality of beneficence is governed by both impersonal and person-affecting considerations. In some instances, the two types of consideration may be of comparable strengths; in others, person-affecting considerations may be far stronger than corresponding impersonal considerations. This raises large questions. Why is the comparative strength of person-affecting considerations greater in some instances than in others? And how are the two types of consideration to be integrated into a unified account of our moral reasons? I cannot answer these questions. My aim here must be the more modest aim of suggesting how one can accept that the Impersonal Comparative Principle provides the correct account of the Preconception Case without committing oneself to the generalized No-Difference View - that is, the view that the whole of the morality of beneficence must be explained in impersonal terms. One can accept that there is a dimension to the Negligent Physician's conduct in the Preconception Case can be criticized only in impersonal terms, that Negligent Physician's conduct in this case is no less bad than his conduct in the Prenatal Case, but that his conduct in the Prenatal Case is objectionable for entirely different reasons. Thus it may be true that in the Prenatal Case the Negligent Physician owes compensation to the disabled child while this is not true in the Preconception Case.<sup>xliv</sup>

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#### <sup>N</sup>OTES

- <sup>i</sup> Derek Parfit, Reasons and Persons (Oxford: Oxford University Press, 1984), ch. 16. Parfit's is the seminal discussion of this problem and remains the best discussion in the literature.
- <sup>ii</sup> The failure to distinguish between events that occur after a subject has begun to exist and those that affect the conditions of the subject's origin casts doubt on Ingmar Persson's argument for the claim that all forms of gene therapy on human conceptuses

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are identity-preserving, even if we begin to exist after the human organism ceases to be a conceptus. See his “Genetic Therapy, Identity, and the Person-Regarding Reasons,” Bioethics 9 (1995), pp. 21-23. Persson does not consider genetic interventions carried out prior to conception.

- iii This view presupposes that we are not identical with our physical organisms. I defend it in “The Metaphysics of Brain Death,” Bioethics 9 (1995): 91-126, and more thoroughly in Killing at the Margins of Life (New York and Oxford: Oxford University Press, forthcoming).
- iv Thus Kripke, with whom the doctrine of the necessity of origin is most closely associated, writes that “I might have been deformed if the fertilized egg from which I originated had been damaged in certain ways, even though I presumably did not yet exist at that time.” (Saul Kripke, Naming and Necessity [Cambridge: Harvard University Press, 1980], p. 115, note 57.)
- v This view was urged, in discussion, by Raziel Abelson and Gertrude Ezorsky.
- vi For further discussion of these issues, see Robert Merrihew Adams, “Existence, Self-Interest, and the Problem of Evil,” Nous 13 (1979).
- vii For a clear instance in which a child’s life is not worth living, see the description of the child born with Dystrophic epidermolysis Bullosa in Jonathan Glover’s “Future People, Disability, and Screening,” in Peter Laslett and James S. Fishkin, eds., Justice between Age Groups and Generations (New Haven: Yale University Press, 1992), pp 129-30.
- viii I discuss this further in “Problems of Population Theory,” Ethics 92 (1981), pp. 104-7.
- ix Reasons and Persons, p. 367.
- x Discussing another pair of acts, both of which have the same bad effect (in impersonal terms) but only one of which is worse for anyone, Parfit writes that “on the view

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presented in my book, [the] objections [to the two acts] are equally strong. This suggests that there is the same objection to each act.” See Derek Parfit, “Comments,” Ethics 96 (1986), p. 858.

<sup>xi</sup> Ibid., pp. 370-71.

<sup>xii</sup> The stipulation that the damage causes only a minor physical disability is intended to preclude the Non-Identity Problem.

<sup>xiii</sup> The cases that Parfit cites to illustrate the Non-Identity Problem are all cases in which an act that affects who will exist has an intuitively bad effect even though the act is worse for no one. An early abortion is also an act that affects who will exist and may be worse for no one.

<sup>xiv</sup> Matthew Hanser, “Harming Future People,” Philosophy and Public Affairs 19 (1990), p. 59.

<sup>xv</sup> Joel Feinberg, “Wrongful Life and the Counterfactual Element in Harming,” in his Freedom and Fulfillment (Princeton, Princeton University Press, 1992), p. 6.

<sup>xvi</sup> There is a question here about the relation of one’s interests to one’s innate capacities. The application of Feinberg’s notion of a harmed condition to the case of the congenitally retarded child appears to assume that the retarded child has interests comparable to those of a cognitively normal child. This, however, is controversial. Consider a nonhuman animal with cognitive and emotional capacities and potentials comparable to those of the retarded child. Are its interests adversely affected by the fact that its cognitive capacities are significantly lower than ours? If not, it is not obvious why one should suppose that the interests of the retarded child are adversely affected by his or her cognitive capacities. One’s interests are shaped by one’s cognitive capacities. See Jeff McMahan, “Cognitive Disability, Misfortune, and Justice,” Philosophy and Public Affairs 25 (1996): 3-34.

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- <sup>xvii</sup> There is a possible ambiguity here. The relevant countervailing probability might be [1] the probability, if there is a congenital harmed condition, that the life will also contain compensating goods and thus be worth living. Or it might be [2] the probability that the life will not contain a congenital harmed condition. I am assuming that it is 1 that is relevant. It is hard to see how 2 could weigh against the probability of a harmed condition unless the goods the life would contain in the absence of the harmed condition are taken taken to offset the risk.
- <sup>xviii</sup> For a careful exposition of an approach of this sort, see James Woodward, "The Non-Identity Problem," Ethics 96 (1986): 804-31.
- <sup>xix</sup> One way of dealing with this difficulty is to claim not that the Negligent Physician violates the child's rights but that his action causes the child to exist with rights that cannot be fulfilled. Respect for the potential child's rights therefore required that he refrain from doing what would cause the child (and therefore the rights) to exist. Compare "Problems of Population Theory," p. 125.
- <sup>xx</sup> I owe this response to Frances Kamm.
- <sup>xxi</sup> For the purposes of this example, it does not matter whether the treatment would be identity-determining or identity-preserving with respect to the subsequent person.
- <sup>xxii</sup> For an intricate and detailed critique of the harm-based and rights-based approaches, see Parfit, "Comments," pp. 854-62.
- <sup>xxiii</sup> Gregory S. Kavka, "The Paradox of Future Individuals," Philosophy and Public Affairs 11 (1982): 93-112.
- <sup>xxiv</sup> Ibid., p. 105.
- <sup>xxv</sup> Compare Aristotle's claim, in Ethica Eudemia (1215b25-26, trans. J. Solomon), that "many incidents involving ... pleasure but not of a noble kind are such that, as far as they are concerned, non-existence is preferable."

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<sup>xxvi</sup> A colleague tells me that when, in one of the “Godfather” movies, a character who is the wife of a Mafia leader obtains a clandestine abortion, there is reason to believe that she does this because she fears that the child she might have would also become a Mafia leader. Her concern need not have been for anyone but her child. She might want to prevent the child’s coming into existence on the ground that the life the child would be likely to have would not be one that she would want a child she would love to have. This is perfectly intelligible if she suspects that the child would have a restricted life

<sup>xxvii</sup> The limited applicability of Kavka’s notion of a restricted life to the Non-Identity Problem is noted by Derek Parfit in his reply to Kavka, “Future Generations: Further Problems,” Philosophy and Public Affairs 11 (1982), pp. 120-21.

<sup>xxviii</sup> Loren Lomasky, Persons, Rights, and the Moral Community (New York: Oxford University Press, 1987), p. 202.

<sup>xxix</sup> Cp. “Cognitive Disability, Misfortune, and Justice.”

<sup>xxx</sup> It may be easier to find examples in which a part of a life is restricted. Imagine that a person whose life has hitherto been devoted to intellectual pursuits suffers brain damage and becomes a contented idiot. Her subsequent life may be subjectively tolerable from her present point of view but objectively not worth living in the light of values that she autonomously embraced prior to the loss of her cognitive competence. There is a penetrating discussion of cases of this sort in Ronald Dworkin, Life’s Dominion (New York: Knopf, 1993), chapter 8.

<sup>xxxi</sup> Feinberg, “Wrongful Life and the Counterfactual Element in Harming,” pp. 27 and 28.

<sup>xxxii</sup> John Harris, Wonderwoman and Superman: The Ethics of Human Biotechnology (Oxford: Oxford University Press, 1992), p. 90.



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- <sup>xxxiii</sup> Reasons and Persons, p. 360. Kavka proposed a similar principle but rejected it in “The Paradox of Future Individuals,” pp. 99-100.
- <sup>xxxiv</sup> Here I follow Robert Merrihew Adams, “Must God Create the Best?” Philosophical Review 81 (1972), p. 329.
- <sup>xxxv</sup> Some of these problems arise even in Same-Number Choices. In these choices, the outcome with the highest total good will also have the highest the average good per person. But, among outcomes with the same total good, the one with the highest individual quality of life may also have greater inequality in the distribution of good. Therefore it is not always obvious in which outcome people are better off overall.
- <sup>xxxvi</sup> Reasons and Persons, p. 443.
- <sup>xxxvii</sup> Parfit is discussing his own revised version of a principle suggested but ultimately rejected by Kavka. This revised principle is not actually impersonal in character, though it is closely related to an impersonal maximizing principle in that it requires that, other things being equal, one do what would benefit people most on the assumption that people can be benefited by being caused to exist. Thus Parfit does not himself employ his analogy the way that I do here and my critique of the analogy is not directed against his discussion. See his “Future Generations: Further Problems,” pp. 127-32.
- <sup>xxxviii</sup> Ibid., p. 131.
- <sup>xxxix</sup> Suppose that cost  $\underline{x}$  is sufficient to release the agent from what would otherwise be a duty to do C rather than B. If the cost to the agent of doing C rather than A were also  $\underline{x}$ , then presumably it would also be permissible for the agent to do A rather than C.
- <sup>xl</sup> Parfit’s own discussion of the parallels between the first and second sets of alternatives explicitly appeals to considerations of cost to the agent in order to explain why “most of us ... have no duty to have unwanted children.” Ibid., p. 128.

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- <sup>xli</sup> Jonathan Glover, Causing Death and Saving Lives (Harmondsworth: Penguin, 1977), p. 69.
- <sup>xlii</sup> Average Consequentialism has been extensively criticized. See, e.g., “Problems of Population Theory,” pp. 111-15.
- <sup>xliii</sup> Reasons and Persons, p. 363.
- <sup>xliv</sup> This paper is the second of two descendants of a common ancestor. Some of those from whose comments I have benefited are listed in an initial note to the sibling paper (“Cognitive Disability, Misfortune, and Justice”). In the fall of 1996, I presented an intermediate version of the present paper at New York University and at Bar Ilan University in Israel. I am grateful to those two audiences and especially recall insightful comments from Richard Arneson, Frances Kamm, Arthur Kuflik, Liam Murphy, Peter Unger, and Noam Zohar.