

# Contents

<i>Acknowledgements</i>	vii
<i>Notes on the Contributors</i>	viii
<b>Introduction</b>	1
<i>Nafsika Athanassoulis</i>	
<b>1 Benefit, Disability and the Non-Identity Problem</b>	24
<i>Hallvard Lillehammer</i>	
<b>2 ‘Designer Babies’, Instrumentalisation and the Child’s Right to an Open Future</b>	44
<i>Stephen Wilkinson</i>	
<b>3 Why There is no Right to Know One’s Genetic Origins</b>	70
<i>Heather Draper</i>	
<b>4 Compromise and Moral Complicity in the Embryonic Stem Cell Debate</b>	88
<i>Katrien Devolder and John Harris</i>	
<b>5 Towards a Natural Law Critique of Genetic Engineering</b>	109
<i>David S. Oderberg</i>	
<b>6 Autonomy Inducements and Organ Sales</b>	135
<i>James Stacey Taylor</i>	
<b>7 The Role of Conscience in Medical Ethics</b>	160
<i>Piers Benn</i>	
<b>8 The Treatment that Leaves Something to Luck</b>	180
<i>Nafsika Athanassoulis</i>	
<b>9 Passive Death</b>	198
<i>Ray Frey</i>	
<i>Index</i>	208

# 1

## Benefit, Disability and the Non-Identity Problem

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### **Preconception and identity**

It is natural to think the evaluation of reproductive decisions is subject to the same ethical standards that apply to relations between existing persons. If so, prospective parents should be able to extrapolate from the latter to the former when thinking about whether to have children, how to have children, what sort of children to have, and so on. Yet there are well-known features of certain reproductive decisions that make it hard to grasp how some of the most basic ethical standards that apply to relations between persons also apply to them. These features obtain in scenarios where reproductive decisions are made in the absence of any distinct or identifiable person who fills the role of primary beneficiary or victim. I call such scenarios *pre-conception scenarios*, and any scenario where the causing to exist of an entity is at stake a *non-identity scenario*. The problem of how to evaluate decisions ethically where the identity of the entity affected is itself determined by those decisions is sometimes called the *non-identity problem*.<sup>1</sup> I shall follow this usage. Pre-conception scenarios form a subset of non-identity scenarios. This chapter is primarily about the non-identity problem as applied to pre-conception scenarios, although I also discuss a number of other non-identity scenarios. I shall not attempt to solve the non-identity problem here, either as it applies to pre-conception scenarios or elsewhere. What I do hope to achieve, however, is to shed some light on pre-conception scenarios by locating them with respect to other non-identity scenarios where the distinctive features of human reproduction are absent. For agents also face non-identity scenarios where the entities created are not even potential holders of the interests or rights that ethically constrain our behaviour towards

future or potential persons. By locating pre-conception scenarios in this wider context, I will suggest that traditional discussions of the non-identity problem have taken an overly narrow view of the ethical concerns that govern decisions in pre-conception scenarios. In doing so, I shall make use of a contrast between two distinctions, namely the distinction between person-involving and non-person-involving considerations on the one hand, and between partial and impartial considerations on the other.<sup>2</sup> In the penultimate section, I apply this contrast to the case of human disabilities. I shall argue that the traditional approach to the non-identity problem generates a questionable view of the ethics of causing disabled people to exist.

Pre-conception scenarios have been subject to much recent philosophical controversy.<sup>3</sup> One explanation for this is the intimate connection between thoughts about benefit and thoughts about effects on identifiable individuals. It is natural to think that if benefit is produced, there is some distinct and identifiable individual who is benefited. This thought is sometimes called the *person-involving principle*.<sup>4</sup> The person-involving principle entails that where no distinct individual is identifiable as the recipient of benefit, no benefit can be produced.<sup>5</sup> The person-involving principle may be thought to suggest that only the interests of already existing persons are ethically relevant in pre-conception scenarios. Such scenarios include cases of in vitro fertilisation (IVF), where fertilisation of eggs by sperm takes place in a laboratory and embryos are implanted in the womb for gestation. They also include less controversial cases of reproductive choice, such as choices of reproductive partner or the time and frequency of conception, where in each case the decision made will affect the identity of any future persons caused to exist. Pre-conception scenarios are therefore sometimes proposed as an ethically more secure context than pre-natal scenarios in which to screen out harmful or non-beneficial characteristics of future individuals, precisely on the grounds that in such scenarios no person is either directly harmed or benefited by the decision to not conceive.<sup>6</sup>

While prior to conception there is no distinct and identifiable individual to benefit from conception, it remains true that were a child to be conceived, it would have been made to exist and its existence would take a certain form. Thus, if conception takes place between biological parents all of whose ancestors have blue eyes, any resulting child is likely to have blue eyes. Even if prospective parents were unable to discuss coherently whether it would be a benefit to any child of theirs to be conceived, they could still coherently discuss whether it would be

a benefit to any child of theirs to have one type of life rather than another. Thus, any child would arguably benefit from living a highly pleasurable life rather than an intensely painful one. Such evaluations form an uncontroversial part of ethical thought and give content to the idea that it is possible for a person to have a life that is better or worse in some respect or other. Such evaluations are non-controversially available in reproductive scenarios to guide prospective parents in their choice of future offspring.

In light of this, one proposed solution to the non-identity problem is to use impartial, non-person-involving thoughts about better and worse lives to decide whether or not to conceive. Thus, in his discussion of the non-identity problem, Parfit considers the thought that in cases where no individuals are antecedently identifiable as the holders of rights and interests affected by our action, our thinking should be guided by what I call *the beneficence principle*.<sup>7</sup> According to the beneficence principle, where we can choose between producing more benefit rather than less, we should produce more. Thus, in pre-conception cases, prospective parents should act so as to produce as much benefit for any prospective children as possible.<sup>8</sup>

Parfit rejects this proposal because he thinks it entails what he calls *the repugnant conclusion*: 'For any possible population ... all with a very high quality of life, there must be some much larger imaginable population, whose existence, if other things are equal, would be better, even though its members have lives that are barely worth living.'<sup>9</sup> The repugnant conclusion is repugnant because it ignores the separateness of persons and the intimate relation between benefits and the individual lives in which these benefits are realised. Thus, if producing benefit is all that matters, it does not matter how that benefit is distributed within or between lives.

In response to the repugnant conclusion, some writers<sup>10</sup> restrict the beneficence principle to what I call *same number scenarios* in accordance with what Parfit calls the principle Q: 'If in either of two outcomes the same number of people would ever live, it would be bad if those who live are worse off, or have a lower quality of life, than those who would have lived.'<sup>11</sup> According to Q, the distribution of benefit is restricted to equivalence classes of individuals. It thereby rules out cases where one scenario is judged better than another by including a higher total sum of benefit shared out among a much larger group of individuals. At the same time, Q allows prospective parents to think they should maximise benefit when they bring individuals onto existence. Parfit argues that Q may be extensionally adequate. Yet he stops

short of endorsing it because he thinks an account of the non-identity problem should entail Q as a special case of a more general principle.<sup>12</sup> Having also rejected the unrestricted version of the beneficence principle, Parfit concedes temporary defeat in his search for a general principle to solve the non-identity problem (his 'Theory X').

Even if extensionally adequate, same number principles like Q are of limited use. Standard non-identity scenarios include that of a couple who for reasons of the burdens involved would only have one child if their first child suffered from a severe handicap, but who would have several children if their first child were healthy. They include the case of a couple virtually certain to have a disabled child however they conceive and whose only alternative is not to have any children. They also include the case of any couple using IVF and risking multiple births because more than one embryo is implanted in the womb.<sup>13</sup> Given the plethora of cases where we cannot assume that numbers are the same, the practical scope of principles like Q is limited. It is also unclear what illumination is gained by simply replacing the unrestricted beneficence principle with a restricted, and arguably *ad hoc*, principle like Q.

Like the beneficence principle, Q is an impartial, maximising and non-person-involving principle. Thus, in any same number scenario, Q is blind to the distribution of benefit across individuals. The only legitimate ground of ethical criticism is failure to maximise benefit within the relevant equivalence class. Even if it avoids the repugnant conclusion, Q is therefore problematic for the same basic reasons that the unrestricted beneficence principle is problematic. On these grounds, McMahan rejects Parfit's optimistic statement that although 'I failed to discover X, I believe that, if they tried, others could succeed'.<sup>14</sup> According to McMahan, Parfit's mistake is to assume the solution must take a purely non-person-involving form. Instead, McMahan proposes a mixed view that he calls *the encompassing account*. On the encompassing account, both person-affecting and non-person-affecting considerations apply in reproductive scenarios, but in a non-additive way. In cases where person-involving principles apply, only they are ethically relevant. Thus, in pre-natal scenarios where there is a distinct individual to play the role of primary recipient of benefit or harm, non-person-involving principles like Q or the beneficence principle are inapplicable. In these cases, ethical decisions must be guided by considerations of individual rights and benefits. Thus, McMahan can say that it is wrong to cause disability in an existing foetus. In cases where only non-person-involving principles apply, only they are ethically relevant. Thus, in pre-conception scenarios where there is no distinct and

identifiable individual to play the role of recipient of benefit or harm, ethical thought should be guided by impartial, non-person-involving principles like Q or the beneficence principle. Thus, McMahan can say that it is wrong to select for disease or disability using IVF.

It is unclear whether McMahan's account is a significant improvement on Parfit's approach. First, we should be suspicious of the claim that non-person-involving considerations are ethically irrelevant in scenarios where person-involving principles apply. McMahan gives no argument to rule out the conflicting view that non-person-involving considerations are ethically relevant everywhere, even if in some cases they are not overriding. This conflicting view is consistent with McMahan's reasons for moving beyond Parfit's purely non-person-involving approach. Second, the encompassing account entails a purely impartial treatment of non-identity scenarios. Even if some impartial and non-person-involving principles like Q avoid the repugnant conclusion, the encompassing account remains vulnerable to problems about the distribution of benefit across individuals within an equivalence class. Any impartial principle focused on maximising benefit, whether person-involving or not, will conflict with partial ethical concerns involved in non-identity scenarios and elsewhere. Thus, many prospective parents would not be happy to constrain their reproductive decisions by maximising benefit impartially within an equivalence class. True, some parents might base their objections on an incoherent belief in the existence of a distinct and identifiable individual at preconception stage. As I shall argue in the next section, however, this is not necessarily the case. The apparently exclusive choice between person involving principles on the one hand, and impartial, non-person-involving principles like Q or the beneficence principle on the other is an illusion. Just as with person-involving considerations, some non-person-involving ethical considerations are essentially partial. Standard treatments of the non-identity problem have failed to pay sufficient attention these considerations.

### **Creation and value**

Impartial and non-person-involving principles like Q or the beneficence principle are based on a plausible thought. It matters ethically whether our actions make things better or worse. But what exactly does this mean in any particular case? How does it apply in pre-conception scenarios? Is it the only thing that matters? In the present section, I argue that an exclusive focus on impartial ethical considerations

encourages a misleading picture of non-identity scenarios. An adequate understanding of these scenarios requires a greater sensitivity to contextually specific and partial values. It is a corollary of my argument that different non-identity scenarios call for different treatment. Thus, in Parfit's original discussion, one of his main concerns was justice between generations.<sup>15</sup> The problem there is how ethically to evaluate the actions of the earth's present inhabitants given their effects on the identity and lives of the earth's future inhabitants. Elsewhere, Parfit is concerned with preconception scenarios.<sup>16</sup> The problem there is how to evaluate ethically the actions of prospective parents with respect to their future children. While closely related, these contexts of evaluation are also ethically quite different. The future generations case is an iterated problem of social policy faced by entire populations. In such cases, there is a strong argument for maintaining a highly impartial evaluative perspective (even if it remains unclear exactly what this means). Standard pre-conception scenarios are different in at least three respects. First, they do not necessarily iterate. Second, the alternative possible populations are too small to generate the repugnant conclusion. Third, prospective parents inevitably have a highly partial evaluative perspective on their predicament. It is therefore doubtful whether non-identity scenarios present the same kind of issues in standard preconception cases as it does in standard inter-generational justice cases. In what follows, I discuss a series of different non-identity scenarios in order to bring out the partial values that characterise the choices they present.

#### **A. The tool case**

Consider a hammer. I want to put down some floorboards in my boathouse in the spring after the ice has broken up the floor during the winter. I make a hammer out of a piece of rectangular steel and a bent piece of wood I find in the shed. The piece of wood is heavy and large, and poorly suited to lie in the hand. The action of the hammer is imprecise. With lots of effort I get the work done. Had I chosen the other piece of wood in the shed I would have made a better hammer. The other piece is leaner, straight and not so heavy. Its action would have been precise. Had I chosen the other piece of wood I would not have made the hammer I made. The hammer I made owes its existence to my choosing the piece of wood I did. Was I wrong to make the hammer I made?

If asked for advice, any sensible person would say I should have used the other piece of wood and made a better hammer. It would have

been better had my hammer never existed, even if it got the job done. Unlike a person, the hammer has no rights or interests, either in existing or being treated a certain way. My relation to the hammer is purely instrumental. While a hammer could in principle become a locus of intrinsic value for sentimental or other reasons, my hammer is just a bad hammer. It can be justifiably discarded if it is no longer needed and no harm is caused in the process.

To the extent that hammers exist for our benefit, their creation may seem like a perfect candidate for purely impartial evaluation. If so, that should raise our suspicion regarding the application of such principles to individuals with rights and interests like persons. Yet even with a hammer it is not obvious that I am subject to justified criticism for not maximising benefit impartially. It is my hammer. It is made from materials I found in my shed. Its existence is understandable primarily in terms of the essentially partial project of an individual fixing their boathouse. It does not follow that impartial considerations are completely irrelevant. A good hammer no longer needed is a good candidate for sharing with others or giving to charity. Even so, my reasons for making a different hammer in this case are not plausibly exhausted by the fact that by doing so I would produce more benefit impartially and non-personally considered.

### **B. The gift case**

Consider Salvador, an accomplished surrealist painter. For the birthday of his friend and admirer Pablo, Salvador paints a realistic depiction of Pablo's favourite scene, the Grand Canal of Venice. The picture is a competently painted imitation in the style of Canaletto. Pablo is delighted. Yet the painting is not a prime example of Salvador's art. It will never have as much worth as his surrealist work. The original Canaletto is a better representation of the Grand Canal. Had Salvador produced a surrealist piece, the Canaletto imitation would never have existed. Was Salvador wrong to produce the Canaletto imitation for Pablo's birthday?

In this case, it is not clear that every sensible person would say that Salvador should have made a different painting. While neither the gift case nor the tool case involves the creation of an individual with rights or interests, the evaluation of their creation is distinct. Thus, while gifts, like works of art, may in some sense exist purely for our benefit, our relation to them transcends the purely instrumental relation in which we stand to mechanical tools such as hammers. Gifts carry an



expressive value that characterises a partial relationship of respect among specific individuals. Gifts are valued intrinsically and not just for the instrumental benefits they offer. Thus, gifts, relics and other personal or culturally significant items are often among the objects that persons hold onto with the greatest effort in times of crisis and trauma.

The creation of gifts is an implausible candidate for purely impartial evaluation. The Canaletto imitation might be suboptimal in virtue of not being as good a work of art as possible. It may also be suboptimal in virtue of not producing as much benefit as possible impartially considered. It does not follow that either Pablo or anyone else is justified in complaining that a surrealist original would have been a better gift than the Canaletto imitation. Of course, Salvador could be criticised if he thought that the imitation would provide his friend with a better investment. He could be criticised if he made the imitation to frustrate Pablo's expectations or to deliberately waste his own talent. Yet none of these possibilities is an essential feature of Salvador's making the Canaletto imitation. It is therefore not obvious that Salvador was wrong to make the painting he did.

### C. The pet case

Consider Eric, a black and white puppy. Eric was bred from a father and mother of pure lineage. Like many pets, Eric is not well equipped to survive in an unprotected environment. He is prone to pick up diseases, a bad hunter and afraid of things large, noisy and threatening. In spite of his idiosyncrasies, Eric is an object of great affection. He is also happy. Had the breeders made Eric's mother mate with a different dog, they could have bred a more resistant pet. In that case, Eric would never have existed. Were the breeders wrong to create Eric?

As with the gift case, it is not clear that every sensible person would respond negatively to the pet case. Unlike a hammer or a painting, a dog is a sentient being. Even if sentient beings are not holders of rights, they are plausible objects of benefit and harm. To this extent, the evaluation of their creation transcends the limits of our thinking about intrinsically valuable non-sentient objects like paintings. Pets are not merely valued intrinsically for the experience they offer. The non-instrumental relations we stand to them are partly determined by what is in their interest.<sup>17</sup>

The creation of pets is another implausible candidate for purely impartial evaluation. From an impartial perspective, the creation of a

dog like Eric who is disabled relative to a wide range of environments is arguably suboptimal. Breeding a stronger and more resistant dog might have produced more benefit impartially considered. Had the breeders created Eric for a life in the wild, they would have exposed him to probable harm. But Eric is a perfectly normal pet. If it were wrong to create Eric, it was probably wrong to create most of the pets that actually exist. Yet for many humanly bred animals there is no such thing as their natural, as opposed to their original, environment. What matters to the evaluation of Eric's creation is not whether he is disabled relative to some arbitrary range of natural environments, but whether his existence is compatible with a good life in the environment into which he will actually be born and in which he is likely to live. It also matters what reasons the people who breed him and rear him have for wanting a dog of this kind. These reasons are likely to be as partial as the reasons people have for choosing a particular gift for a friend. It is not obvious that such reasons can be captured in purely impartial and non-person involving terms. It is therefore not obvious that his breeders were wrong to create Eric.

#### **D. The marriage case**

Javi and Pilar are each looking for a spouse. They meet on a singles cruise and fall in love. After twelve months of courtship they marry. Within three years they have bought their own house and are thinking of having children. While Javi and Pilar remain completely devoted to each other, the differences between their social backgrounds are a constant source of tension. Javier works with his four brothers in the local dockyards. Pilar is the third generation among her family to teach at university. Had Javi and Pilar not met they could each have found another partner whose background would have been a lesser source of tension. If so, their marriage would never have existed. Were Javi and Pilar wrong to get married?

Different people could reasonably disagree about the wisdom of Javi and Pilar's marital union. The issue concerns the value of a plural entity (a family or marriage) and the benefits it confers on its constituents. Plural entities (as opposed to the individuals that compose them) may not be genuine holders of moral (as opposed to legal) rights or interests. Yet plural entities are intelligible objects of intrinsic value and respect. The personal relationships that exist within a family transcend the pragmatic relations of mutual advantage and replaceability that characterise relations between strangers. Failure to respect the

integrity of a marriage is a possible source of hurt and complaint. A partnership of marriage, as opposed to a partnership of convenience, is not reducible to a pure instrument of mutual benefit.

The evaluation of a marriage is also a poor candidate for purely impartial evaluation. From an impartial perspective, it may look as if Javi and Pilar should never have got married. The world is big enough for both of them to have met a different partner whose looks, intelligence, values or prospects were more in tune with their own. Yet Javi and Pilar fell in love. Love does not consist in maximising impartial benefit. Like friendship, love entails that some impartial considerations are screened off from practical deliberation. It is logically possible that the world would be a better place impartially considered if people no longer fell in love. It does not follow that the partial values on which love is based should be rejected. Thus, it is hard to believe that Javi and Pilar were simply wrong to get married, even if their decision to do so was impartially suboptimal. Indeed, some people might consider their union especially admirable in light of the social obstacles they have decided to face together.

#### **E. The superhuman case**

Jack and Jill are trying for a child. Their GP offers Jack a drug which, taken before and during the time of conception, will alter the genetic make-up of his sperm so as to make any child conceived from that sperm enjoy superhuman intelligence. Jack and Jill turn down the offer, conceive normally, and nine months later give birth to a normal, healthy child. Had Jack and Jill accepted the GP's offer they would have had a much more intelligent child. If so, their actual normal child would never have existed. Were Jack and Jill wrong to have a normal, healthy child?<sup>18</sup>

There might be room for considerable uncertainty and disagreement about cases like the superhuman case. Yet even if we were to approve of having a superhuman child, we would not thereby be logically committed to condemn Jack and Jill for having a normal one. In fact, most people would probably think the burden of proof is on those who favour having the superhuman child to justify their decision to deliberately 'breed' a superhuman being. Thus, according to Adams: 'the principle we all confidently endorse is not that it is wrong to bring about ... the procreation of offspring less excellent than could have been procreated, but that it is wrong to bring about ... the procreation of a human offspring which is deficient by comparison with normal human beings'.<sup>19</sup>

In response to Adams, it might be argued that a person of above normal human intelligence is in no way deficient by comparison with normal human beings. On these grounds, it might be considered at least permissible to have the superhuman child. On the other hand, a healthy normal human child is not deficient by comparison with a normal human being either. So by Adams' principle, it is consistent with Jack and Jill being beyond ethical criticism that they decide to have a normal child. The situation might conceivably change, of course, if everyone else were suddenly deciding to have superhuman children. Like all prospective parents, Jack and Jill are making their reproductive choices in a particular socio-historical context. This context, and the ways in which other prospective parents decide to cope with it, is bound to influence what counts as an ethically defensible decision about what sort of children to have. (Thus, it might be a relevant consideration whether a superhuman child would feel alienated from his or her 'lesser' peers, for example.)

Partly for these reasons, Jack and Jill's decision to have a normal child is in tension with impartial principles like Q and the beneficence principle. From the perspective of such principles, it might seem obvious that normal, healthy children should never be conceived if superhuman children could be caused to exist instead. Yet even if there are values that can be promoted by having superhuman children, there are equally values that the selecting away of normal human beings will undermine. Thus, the very existence of many of the aspects of their social world that Jack and Jill value most is premised on the fact that in their contingent historical circumstances most normal parents are happy to have normal children. To respect these aspects of the social world does not amount to fetishising normality for its own sake. As shown in the gift case and the pet case, it is possible to reasonably maintain an attitude of intrinsic valuation toward objects which fall short of perceived perfection in an indefinite number of ways. Likewise, it is possible to reasonably maintain an attitude of respect towards similarly imperfect objects valued by others. It is therefore not clear that Jack and Jill were wrong to have the child they did.

#### **F. The deaf case**

Consider Sharon and Candace, a deaf couple unable to conceive naturally. Both being successful health professionals, Sharon and Candace have access to expensive private IVF treatment. Using a sperm donor with five generations of deafness in his family, Sharon and Candace successfully conceive and bring to term two congeni-

tally deaf children. If Sharon and Candace had chosen a normal sperm donor, they could have had a hearing child. But then their actual children would not have existed. While both children are congenitally deaf, they are otherwise healthy. Were Sharon and Candace wrong to have deaf children?<sup>20</sup>

Many people would say (and do say) that the decision of Sharon and Candace is wrong. Children are paradigm holders of interests, and the act of causing someone to be disabled might appear to constitute a paradigm example of harming someone's interests. As persons, the children of Sharon and Candace are also paradigm objects of the kind of non-instrumental valuation which gives rise to the Kantian dictum that one should never treat another only as a means, but always also as an end in itself.<sup>21</sup> Deaf people selecting for deafness might appear to constitute an obvious breach of this widely accepted moral principle. On the other hand, a contrary decision on the part of Sharon and Candace would entail that two worthwhile lives would never have been. While deafness is a serious disability, there is reason to believe that the children of Sharon and Candace would rather be deaf than not have existed at all. The case is therefore not as clear-cut as it may first seem.

Candace and Sharon's decision to have deaf children is in tension with purely impartial principles like Q and the beneficence principle. From an impartial perspective, it might seem obvious that disabled children should never be conceived if this could be avoided without causing harm to others (for some parents, the choice is one between a disabled child and no child at all). The denial of this claim would seem to imply that it is at least as good to be disabled as to be not disabled. Given the costs involved in meeting the special needs of the disabled, many people would find this claim hard to accept. Yet the impartial framework on which this argument is based is open to challenge. Like all prospective parents, Sharon and Candace make their choice in a particular personal and historical context. Like all prospective parents, they make that choice partly in light of partial ethical concerns. Thus, Sharon and Candace would like their children to grow up and flourish as members of their own community. If the only reason for having a deaf child were that it would make their parents feel exciting or original, that would be open to criticism.<sup>22</sup> Yet while Sharon and Candace are pleased that their children are deaf, their reasons are not superficial. Thus, they are concerned that their children grow up in an environment where they are able to communicate with their peers without

feeling alienated. The deaf community, where the standard form of communication is sign language, arguably constitutes such an environment. An obvious precondition of this claim is the fact that the socio-economic position of the deaf community is a strong one. In fact, the children of Sharon and Candace enjoy educational and career opportunities that are above average for people in their society.<sup>23</sup> Sharon and Candace do not claim it would have been better for their children to be deaf in the jungle. Like all parents they are planning a family in a specific environment characterised by specific risks and uncertainties. Thus, it is ethically relevant whether their children's interests are likely to be seriously threatened by deafness. This will depend on the long-term stability of their community, the likelihood that they will find themselves unprotected outside that community, the likelihood that they will ever want to live outside that community, the extent of discrimination against the disabled in society at large, and so on. Analogous risks apply to all children, whether disabled or not. While all ethically serious parents have a responsible attitude to risk, they also have a critical perspective on the contingent physical and social circumstances that generate these risks. Thus, there is an ethically relevant difference between risks due to natural accident and risks due to social prejudice, for example. It is at least arguable that Sharon and Candace have adopted such a critical perspective. Consequently, it is not so obvious that they were wrong to select for deaf children. But even if they were, the explanation would not be exhausted by the consideration that they failed to maximise benefit impartially. Their failure would also consist in their inability to realise the essentially partial project of creating a flourishing family for themselves in their highly peculiar historical circumstances.

Candace and Sharon's defence does not generalise to all forms of disability. Human deafness is an unusual disability in several respects. First, it is a moderate disability compatible with living a very good life of its kind. Second, the existence of special forms of communication like sign language and lip reading enables deaf people to participate in a valuable form of social life without removing their particular disability. These facts have enabled a strong deaf culture to develop in many countries. Although similar considerations might apply to other disabilities like blindness, it does not apply to all disabilities. Thus, it is not so obvious that there is a distinctive Down's syndrome culture.<sup>24</sup> Nor is the absence of a disability culture confined to serious disabilities or impairments. There is no distinctive asthma culture either. Yet Down's syndrome and asthma also present pre-conception scenarios where

choosing to conceive a child with the relevant condition is compatible with that child enjoying a good life of its kind. Whether it would always be wrong to deliberately conceive children with Down's syndrome or asthma will depend on the extent to which the reproductive context in question includes alternative compensatory features of the kind exhibited by the deaf case. Either way, it is an ethical distortion to assume that cases like these are all decidable exclusively by appeal to impartial principles like Q and the beneficence principle.

### **Non-identity and disabilities**

The conventional view on disabilities has been clearly stated by Jonathan Glover: 'Consider the theoretical possibility of screening to ensure that only a disabled child would be conceived. This would surely be monstrous. And we think it would be monstrous because we do not believe it is just as good to be born with a disability.'<sup>25</sup> One explanation for the prevalence of the conventional view of disabilities is the widespread acceptance of what Parfit calls the *no difference view*.<sup>26</sup> On this view, it is wrong both to cause a disability in an existing person and to cause the existence of a disabled person, and for the same reason – namely, that the outcome is worse in terms of non-person-involving and impartial considerations. It makes no ethical difference that in one case the outcome is worse for an individual and the other not. If the arguments of the previous sections are sound, we have reasons to reject the no difference view. First, the reasons it would be wrong to cause disability in an existing person are not exhausted by the fact that the outcome would be worse in terms of non-person-involving considerations. Second, the reasons it would be wrong to cause disabled persons to exist are not exhausted by the consideration that the outcome would be worse impartially considered. Third, it is not obviously wrong to cause disabled persons to exist. Fourth, the reasons it might not be wrong to cause disabled persons to exist are not exhausted by the thought that the outcome would not be worse impartially considered. In so far as it rests on the no difference view, the conventional view of disabilities is based on an overly simplified picture of the ethics of reproduction.<sup>27</sup>

Several writers in the recent literature have rejected the no difference view, but continue to handle preconception scenarios impartially. Thus, McMahan claims that while causing disability through pre-natal choice is wrong because the effect is worse for an individual, to choose disability in a pre-conception scenario is wrong because the effect is worse non-personally and impartially considered. McMahan appears to

endorse the conventional view of disabilities when he writes: '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.'<sup>28</sup> Later in the same paper, when he discusses Kavka's account of disability as 'restricted life', McMahan considers how the conventional view might be doubted.<sup>29</sup> Yet he apparently ends up defending it:

Assuming ... that the desire to have a child has a certain normative force ... 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 life instead ... 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.<sup>30</sup>

Once we give up the no difference view, it is no longer clear that only the production of benefit impartially considered is ethically relevant in non-identity scenarios involving potential disability (perhaps this is what McMahan means by there having to be 'some *other* reason'). In both the superhuman and deaf cases, contextual considerations involving the partial concerns of the prospective parents pose a direct challenge to McMahan's implicit assumptions about what he calls 'the ordinary circumstances of life'. A parallel criticism can be made of Buchanan et al., who apply the conventional view of disabilities directly to the case of deafness:

It may be possible to imagine a world in which a reasonable person, confronted with such a choice, would choose deafness, but this is not our world. To make such a choice reasonable for most people would require an enormous reallocation of social resources, indeed a radical restructuring of our modes of production and social institutions, in order to make it true that for most people who are deaf, the benefits of membership in the deaf community outweigh the limitations on opportunity that deafness brings.<sup>31</sup>

Candace and Sharon are not choosing for most people who are deaf. Nor is it clear that Buchanan et al.'s model of reasonably hypothetical



choice is well suited or even coherently applied to preconception scenarios.<sup>32</sup> In any case, the relevant choice faced by a reasonable person in the deaf case is not whether to choose deafness in any arbitrary circumstances characteristic of our world, but whether to choose deafness in the particular context of a socio-economically privileged deaf community in early twenty-first-century California. Part of what draws Buchanan et al. to their negative conclusion about deafness is their theoretical concern with social justice and global considerations of equality of opportunity. These concerns might conceivably argue against the use of public funds to promote the incidence of disability in society at large on grounds of its foreseeable implications for the distribution of public resources. It does not follow that individual deaf parents are acting impermissibly by deliberately having deaf children and bringing them up by their own means. If the latter claim is entailed by the conventional view of disabilities, that view should be reconsidered.

One response to my criticism of Buchanan et al. is that it leaves public institutions like the legal system unable to decide when decisions in pre-conception scenarios require formal regulation or censure. While serious, this worry should not be exaggerated. The ethics of individual reproductive choice is not equivalent to its legality. Regardless of the merits of the deaf case, there are non-controversial cases of ethically unacceptable reproductive activity involving the disabled, such as the industrial production of severely retarded children for live experiments. Such activities are non-controversial candidates for formal regulation or censure. If the legality of selecting for disability through IVF were inevitably to cause non-controversially unacceptable reproductive activity, this would provide the basis for a slippery slope argument for its prohibition (analogous arguments are sometimes made about abortion and euthanasia). While this would be hard on some naturally infertile disabled couples, it could also be an ethical burden a state would have to impose in order to prevent even more serious ethical wrongdoing. On the issue of human reproduction, as in many other areas of public concern, ethics and the law are imperfect bedfellows.<sup>33</sup>

## **Conclusion**

Agents are capable of making reasonable ethical evaluations in at least some non-identity scenarios. Such evaluations include, but are not exhausted by, non-person-involving and impartial considerations of benefit. Evaluations of non-identity scenarios also involve considera-

tion of partial values peculiar to the individual case. While these partial values may partly define what counts as beneficial in a given scenario, they also partly determine the evaluative perspective from which these benefits can reasonably be evaluated. Like the notions of non-person-involving and impartial benefit, the interpretation of partial values is a source of conflict among reasonable people. It is therefore unsurprising that in the deaf case, for example, philosophers concerned with social justice have naturally adopted a different evaluative perspective than some deaf couples wanting to start a family. There is no immediate prospect of a resolution of these disputes. The evaluation of preconception scenarios is likely to remain a topic of ethical controversy.

While not obviously incoherent, the idea that one form of life is better than another impartially considered is a dangerous one. As often as not, the appeal to impartial benefit amounts to little more than the generalisation of one set of partial values to every conceivable case of a given type. In this way, a seemingly innocent commitment to impartial considerations like Q or the beneficence principle as constitutive of 'the morality of beneficence' can lead to a dehumanised picture of ethical thought, both in non-identity scenarios and elsewhere. Reflection on the different values at work in particular cases can sometimes produce a corrective to such tendencies.

## Notes

- 1 D. Parfit (1984) *Reasons and Persons* (Oxford: Oxford University Press); and J. Woodward (1986) 'The Non-Identity Problem', *Ethics*, 96.
- 2 The distinctions cut across each other. Impartial person involving, impartial non-person-involving, partial person involving and partial non-person-involving considerations are all found in actual ethical discussion.
- 3 A. Buchanan, D. W. Brock, N. Daniels and D. Wikler (2000) *From Chance to Choice* (Cambridge: Cambridge University Press).
- 4 Given the ethical controversy about abortion, this label is potentially misleading. I shall nevertheless use it to minimise the use of philosophical jargon.
- 5 Parallel conclusions follow for the concept of harm. I shall take this as read in what follows.
- 6 J. Glover (2001) 'Future People, Disability and Screening', in J. Harris (ed.), *Bioethics* (Oxford: Oxford University Press).
- 7 Parfit, *Reasons and Persons*.
- 8 The beneficence principle is sometimes characterised in the literature as defining 'the morality of beneficence' (cf. Parfit, (1982) 'Future Generations: Further Problems', *Philosophy and Public Affairs* II, pp. 127–8; Woodward, 'The Non-Identity Problem'). While this term is officially intended to pick out a proper subset of ethical concerns, those who use it sometimes discuss

the non-identity problem as if the domain of beneficence and the domain of ethical concern were coextensive. While this appearance may be deceptive, it has arguably been a factor encouraging an overly narrow view of the values involved in non-identity scenarios.

- 9 Parfit, *Reasons and Persons*, p. 388.
- 10 Parfit, *Reasons and Persons*; Buchanan et al., *From Chance to Choice*; J. McMahan (2001), 'Wrongful Life: Paradoxes in the Morality of Causing People to Exist', in J. Harris, *Bioethics* (Oxford: Oxford University Press).
- 11 Parfit, *Reasons and Persons*, p. 360. McMahan discusses and rejects this principle under the label 'the impersonal comparative principle' in McMahan, 'Wrongful Life', p. 461. Buchanan et al. discuss and endorse what could be interpreted as a more elaborate version of the same principle, and which they call N: 'Individuals are morally required not to let any child or dependent person for whose welfare they are responsible experience serious suffering or limited opportunity or serious loss of happiness or good, if they can act so that, without affecting the number of persons who will exist and without imposing substantial burdens or costs or loss of benefits on themselves or others, no child or other dependent person for whose welfare they are responsible will experience serious suffering or limited opportunity or serious loss of happiness or good' (Buchanan et al., *From Chance to Choice Genetics & Justice*, p. 249).
- 12 Parfit, *Reasons and Persons*, p. 361.
- 13 Cf. Buchanan et al., *From Chance to Choice*; McMahan, 'Wrongful Life'.
- 14 Parfit, *Reasons and Persons*, p. 433; quoted in McMahan, 'Wrongful Life', p. 466.
- 15 Parfit, *Reasons and Persons*.
- 16 D. Parfit (1986) 'Comments', *Ethics*, 96, pp. 854–62.
- 17 Pets are peculiar animals in this respect because, unlike other animals such as farm animals, many are bred for no other purpose than the enjoyment they give to their owners.
- 18 This example is adapted from Case C in R. M. Adams (1972) 'Must God Create the Best?' *Philosophical Review* 81, pp. 329ff. Adams uses this case to argue against a principle he formulates as follows: 'It is wrong to bring into existence, knowingly, a being less excellent than one could have brought into existence' (p. 329). A similar case is criticized in D. Parfit (1982) 'Future Generations: Further Problems', *Philosophy and Public Affairs* 11, pp. 127–8.
- 19 Adams, 'Must God Create the Best?', p. 330. Adams calls this principle R. He goes on to claim that principle R is 'rooted in our obligation to God, as his creatures, to respect his purposes for human life' (pp. 330ff). While I am sympathetic to many of Adams' ethical conclusions, I am not committed to his theological premises.
- 20 The deaf case is an actual case from recent history (L. Mundy (2002) 'A World of Their Own', *Washington Post*, 31 March, p. W22; and H. Lillehammer (2003) 'Who Needs Bioethicists?', *Studies in the History and Philosophy of Biological and Biomedical Sciences*, pp. 131–44). The case provoked substantial controversy, although not necessarily for the right reasons. One reason for the controversy was the ethical status of the IVF technique. Another reason was the gender of Sharon and Candace, a lesbian couple from California. We can ignore these sources of controversy

here. The ethical problem of selecting for disabilities would remain had the biological mother procreated with a deaf male in the conventional way. An additional issue that affects the present argument is that the children of Sharon and Candace are educated in a specialised school paid for by public funds. It is a controversial issue whether public funding of specialised schools for deaf children would be a just requirement of non-discrimination or an unjust burden on others if deafness were easily avoidable. As this feature is not essential to the case either, I shall ignore it. Finally, I shall ignore the question whether in avoiding any form of treatment for the deafness of their children, Sharon and Candace thereby committed themselves to the claim that it would be right to produce a disability in an existing normal person. This conclusion would follow only if there were no ethically significant distinction between omitting to treat a disability on the one hand, and acting to produce a disability on the other. Some consequentialists reject this distinction; cf. J. Bennett (1994) *The Act Itself* (Oxford: Oxford University Press). Consequentialists are also the most likely defenders of impartial and non-person-involving considerations like Q and the beneficence principle. It is a moot question how consequentialists should account for the partial values discussed in the present chapter.

- 21 Cf. G. S. Kavka (1982) 'The Paradox of Future Individuals', *Philosophy and Public Affairs* 11, pp. 110–11, who explicitly extends the categorical imperative to 'forbid treating rational beings or *their creation* ... as a means only, rather than as ends in themselves' (my italics).
- 22 In this respect, Sharon and Candace's choice differs from Adams' Case A, where a normal couple 'become so interested in retarded children that they develop a strong desire to have a retarded child of their own – to love it, to help it realize its potentialities (such as they are) to the full, to see that it is as happy as it can be' (Adams, 'Must God Create the Best?', p. 326). Adams takes this example to be a paradigm of prospective parents doing 'something wrong', even though in doing wrong they do not wrong the resulting child. He appeals to his principle R to explain the source of their wrongdoing.
- 23 Cf. Mundy, 'A World of their Own'.
- 24 Cf. Buchanan et al., *From Chance to Choice*, pp. 281–5.
- 25 Glover (2001) 'Future People, Disability and Screening', p. 438.
- 26 Parfit, *Reasons and Persons*.
- 27 See note 8 above.
- 28 McMahan, 'Wrongful Life', p. 456.
- 29 Kavka, 'The Paradox of Future Individuals', pp. 93–112. A restricted life for Kavka is one 'deficient in one or more of the major respects that generally make human lives worth living' (p. 105). While Kavka concedes that a restricted life could be more worthwhile than an unrestricted life, he nevertheless seems to think it is wrong to knowingly produce restricted lives on the grounds that 'on average, restricted lives are less rewarding than unrestricted ones' (p. 105). Because of its reliance on such generalizations, Kavka's claim is vulnerable to the above criticisms of impartial principles like Q and the beneficence principle. Few prospective parents think of themselves as selecting for 'average' lives.

- 30 McMahan, 'Wrongful Life', p. 458.
- 31 Buchanan et al., *From Chance to Choice*, p. 283.
- 32 Cf. R. Kumar (2003) 'Who Can Be Wronged?' *Philosophy and Public Affairs* 31.
- 33 Thus, excellent drivers are not excused from speeding fines merely on the grounds that it is normally safe for them to drive faster than the speed limit.

# Index

- abortion, 46, 56, 91, 122, 160, 169,  
170, 176, 177–8  
pill, 98  
Abortion Act, 169  
acts/omissions distinction, 21–2, 189,  
191–4, 203  
adoption, 9, 70, 72–6, 81, 119–20,  
122  
Advisory Committee on Genetic  
Testing, 51  
*akrasia* *see* weakness of will  
animal rights, 124–5  
Aquinas, Thomas, 161, 163  
argument from coercion, 16–17  
argument from irresistible offers,  
16–17  
Ashcroft, John, 198  
assisted suicide *see* physician assisted  
suicide  
autonomy, 16, 17, 23, 51, 54, 56, 61,  
135–55  
procreative, 51–2, 53, 54, 58
- Bacon, Francis, 115  
Bayne, T., 75, 80  
Benatar, D., 75, 80  
beneficence, 4  
procreative, 53, 54  
beneficence principle, 26, 28, 34,  
37, 40  
Bennett, Jonathan, 174, 177  
best interests, 22, 180–5, 187, 193–5  
Boyle, Robert, 54  
Buchanan Alan, 38–9  
Bush, George W., 95–6, 97, 135
- Capron, Alex, 98  
Clark, Stephen, 123–4  
cloning, 15, 16, 121–2  
Cohen, Lawrence, 135  
commodification *see*  
instrumentalisation  
conception, 4
- consequentialism, 13, 14, 54, 109,  
116–18, 123, 127, 131, 135  
conscience, 18–20, 160–78  
conscientious objection, 18, 160,  
169–78  
consent, 127, 135, 205, 206  
Cottingham, John, 115
- Davies, Dena, 57, 63–5, 66  
deontology, 166, 168, 202  
Desdemona, 139  
'designer-babies', 5–6, 8, 16, 44–69,  
127–30  
disability, 8, 20, 25, 27, 32, 34–9,  
50–1, 61, 63–5, 122, 129–30,  
182–5  
discrimination, 189  
Donogan, A., 193  
double effect, doctrine of, 122, 125,  
194–5, 204  
Duchesneau, Sharon, 50  
duty of rescue, 77  
Dworkin, Gerald, 51, 144, 147–8
- embryos, 7, 11–13, 27, 44, 55, 59–61,  
88–103, 122, 129, 177  
encompassing view, the, 27  
ends-in-themselves, 6  
European Convention on Human  
Rights, 84  
euthanasia, 19, 22–3, 160, 166, 168,  
180–96, 198–207  
active, 20, 22, 190–6, 198, 199–202,  
205, 206  
definition, 190–1  
involuntary, 22, 23, 190, 200  
non-voluntary, 22, 200  
passive, 22, 190–6, 199  
voluntary, 20, 198, 200–2, 205, 206  
*see also* physician-assisted suicide
- Faden, Ruth, 97  
Feinberg, Joel, 57

- first-order desires, 138–40  
 Fletcher, Joseph, 114  
 flourishing, 15, 36, 115, 124  
 Frankfurt, Harry, 137–40  
 futility, 20–1, 183, 184
- Gage, Fred, 97  
 gamete donation, 8, 72–6  
 Gearhart, John, 97  
 genetic engineering, 13, 109, 110, 114–23  
 genetic screening, 127–130  
 genetically modified crops, 126–7  
 Glover, Jonathan, 37  
 Goyal, Madhav, 150, 151
- Haré, R.M., 164–5, 168  
 Harris, John, 48, 54, 128  
 Harvey, Mary, 92  
 Häyry, Matti, 117  
 Himmler, Heinrich, 174–5  
 Hobbes, Thomas, 138  
 Howe and Feast, 74  
 Huckleberry Finn, 19, 167, 174  
 Human Fertilisation and Embryology Act, 70  
 Human Fertilisation and Embryology Authority (HFEA), 49, 51  
 hypocrisy, 19, 165
- Iago, 139  
 identification, 16, 137–40  
 integrity, 19, 172–5, 178  
 intrinsic value, 31, 32–3, 34, 146–9  
 instrumental value, 4, 33, 146–8, 153  
 instrumentalisation, 5–6, 11, 45–69, 121, 127  
 intentions, 22, 23, 189, 191, 204–5, 207  
 internalism, 19, 164  
 in vitro fertilisation, 25, 26, 28, 39, 46, 56, 88, 89, 91, 92, 95, 98–9, 119, 121, 123
- Jehovah's Witnesses, 175  
 Johnson, Melanie, 70  
 justice, 21, 33, 29, 189
- Kant, Immanuel, 6, 54–5, 57, 135, 164  
 Kass, Leon, 135  
 Kenny, Anthony, 164  
 killing/letting die distinction, 20, 21–2, 181–2, 189–96
- 'letting nature take its course', 111–12, 193  
 Lillehammer, Hallvard, 53, 65  
 Locke, John, 115  
 luck, 21, 22, 185–90, 195–6
- MacIntyre, Alistair, 117  
 Masterton, Alan and Louise, 50  
   National Bioethics Advisory Commission, 90  
 McCullough, Candy, 50  
 McMahan, Jeff, 27–8, 37–8  
 means-to-an end *see*  
   instrumentalisation  
 Miss B, 187, 189  
 moral luck, 188–90  
 moral status,  
   and embryos, 6, 7, 12, 46, 61, 91, 101–3  
 motives, 190–1
- naturalistic fallacy, 115, 116  
 natural law theory, 13–15, 109–31  
 natural/unnatural distinction, 13–14, 109–31  
 no-difference view, 37–9  
 non-actions, 21  
 non-identity problem, 4, 24–8, 29, 37–40, 47  
 normativity, 1
- O'Donovan, K., 72–3, 74  
 open-future principle, 7, 60–5, 66  
 organ sales, 135–55  
 organ transplants, 16–18, 62, 63, 71, 75, 77–8, 135–55  
 Othello, 139
- parental responsibilities, 9, 116–17  
 parenthood, 7, 117–18  
   genetic, 15, 74, 75–6, 80–3, 119–20, 122–3  
   social, 9, 80–3

- Parfit, Derek, 4, 26–8, 29, 37  
 paternalism, 148–9, 155  
 paternity tests, 11  
 person-involving principle, 4, 25–8  
 physician-assisted suicide, 20, 21, 22, 23, 160, 163, 166, 168, 198, 200–2, 205–6  
 Plato, 176  
 ‘postcode lottery’, 186  
 pre-conception, 4, 5  
   scenarios, 24–8, 29, 39  
 Pretty, Diane, 187, 189  
 principle of subsidiarity, 11  
 privacy, 8
- quality of life, 3, 20–1, 22, 180–96, 199
- Rachels, James, 191  
 Radcliffe Richards, Janet, 135  
 refusal of treatment, 21, 23, 201–7  
 Reiss, M.J., 118  
 ‘reproductive tourism’, 92  
 repugnant conclusion, the, 26–8  
 right to an open future, 6, 7, 8, 57–61, 65–6  
 right to genetic information, 8–11, 70–84, 120  
 Robertson, John A., 52  
 Rodriguez, Sue, 188
- sanctity of life, doctrine of, 20, 182–3  
 saviour-siblings, 6, 49, 53, 62–3, 127–8  
 Savulescu, Julian, 50, 52, 54, 64  
 Scheper-Hughes, Nancy, 135  
 self-deception, 19, 165  
 separation principle, 12–13, 94–100  
 sex selection, 6, 8, 16, 46, 53, 61, 127–30  
 Shipman, Harold, 191  
 Singer, Peter, 110–14, 123, 190  
 Sirchia, Girolamo, 88, 92
- slippery slope arguments, 23  
 Socrates, 101  
 Straughan, R., 118  
 stem cells, 11, 88–103  
   adult, 89, 90, 127  
   embryonic, 11–13, 130  
   research, 11–13, 16, 88–103, 127  
 suicide, 21, 23, 188, 202, 206  
 sympathy, 19
- tissue donation *see* organ transplants  
 ‘thick’ and ‘thin’ moral concepts, 166, 167  
 Twain, Mark, 167  
   *see also*, Huckleberry Finn
- UN Convention on the Rights of the Child, 84  
 UN Declaration on Human Rights, 84  
 ‘use-derivation’ distinction, 12, 93–8
- Varki, Ajit, 97  
 virtue, 19, 166, 167, 168, 170
- Ware, Carol, 97  
 Warnock, Mary, 121  
 weakness of will, 101, 142, 144, 164–5  
 welfare, 4, 47–8, 54, 56, 58, 111, 152–5  
 wellbeing, 3, 17–18, 144, 148–52  
 Wells, Diane, 110–14, 119–20, 123  
 Wessels, Ulla, 117  
 whistle-blowing, 170  
 Whitaker, Michelle, Jayson and Charlie, 48–9  
 Wicclair, Mark, 177  
 Wilkinson, Stephen, 144  
 Williams, Bernard, 188  
 Winterson, Jeanette, 50  
 withdrawal/withholding of  
   treatment, 23, 180–96, 198–207  
   *see also* euthanasia