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**The Ethics of Conception and the Concept of Harm:  
A Defense of a Child-Centered Ethical Appeal**

by

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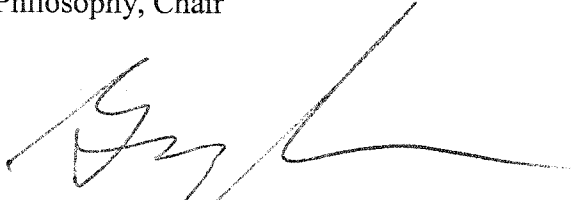
**Doctor of Philosophy**

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## ABSTRACT

The Concept of Harm and the Decision to Conceive:

A Defense of a Child-Centered Ethical Appeal

by

Janet Malek

Ethicists have discussed many different aspects of the difficult decisions parents face concerning when and how to conceive children. However, the perspective of those who will be most dramatically affected by conception decisions, namely, the children who will be brought into existence because of those decisions, has been underrepresented in the ethical dialogue.

The scarcity of scholarship that takes the possible child's perspective into account is largely due to the work of philosopher Derek Parfit. Parfit has argued that it is impossible for a child to be negatively affected by the decision to conceive her as long as her life is worth living because if a different conception decision had been made, the child never would have existed at all. This unintuitive conclusion has deterred many philosophers from exploring the implications of conception decisions for possible children in any significant way. However, in my dissertation I show that Parfit's conclusions can be avoided and the effect of conception decisions on a possible child's well-being can and should be taken into account.

My purpose was to define and defend a child-centered ethical appeal to be taken into account in the consideration of conception decisions. The dissertation has three

specific objectives: 1) To develop a view of what parents owe their children from a moral standpoint. I propose accounts of the interests of children and of the obligations of parents; 2) To demonstrate that this account of parental obligations applies to the decision to conceive a child in spite of Derek Parfit's objections. I show where Parfit's arguments are problematic and demonstrate that his conclusions are therefore unwarranted. I suggest that a slightly modified understanding of the concept of harm can make the idea of conception as a harm philosophically coherent; and 3) To demonstrate how the inclusion of a child-centered appeal yields more satisfactory ethical analyses for cases involving the decision to conceive.

In essence, the arguments laid out in this dissertation open conceptual space for the inclusion of a child-affecting perspective in ethical analyses of conception decisions. The appeal I propose is a step toward filling this new space.



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## Introduction

Advances in biomedical technology are continually widening the array of reproductive options available to individuals and couples who are considering conceiving a child. The availability of new and improved birth control methods, various assisted reproduction techniques, and genetic technologies can require potential parents to make difficult decisions about when and how to conceive. Although ethicists have discussed such choices from many different angles, the perspective of those who will be most dramatically affected by conception decisions, namely, the children who will be brought into existence because of those decisions, has been underrepresented in the ethical dialogue.

One reason for the scarcity of scholarship that takes the future child's perspective into account is the work of philosopher Derek Parfit. Parfit has argued that it is impossible for a child to be negatively affected by the decision to conceive her as long as her life is worth living. He claims that this is the case because if a different conception decision had been made, the child never would have existed at all. If the potential parents had instead chosen not to conceive, or to conceive at a different time or in a different way, this child would never have been and so is no worse off as a consequence of her own conception. If one accepts Parfit's argument, then, it makes no sense to talk about any negative effect that a conception decision would have on a child as long as the child's life is worth living. This unintuitive conclusion has deterred many philosophers from exploring the implications of conception decisions for possible children.

However, in this dissertation I show that Parfit's arguments are incomplete and rest upon some disputable assumptions. As a result, I argue, his conclusions can be avoided and the effect of conception decisions on a future child's well-being can be taken into account.

### **Purpose and Objectives**

My purpose is to develop and defend a child-centered ethical appeal to be included in ethical deliberation about human conception. That is, I identify a moral consideration based upon the well-being of the possible child that should be taken into account when considering conception decisions. The dissertation has three specific objectives:

1. To create a positive account of the moral obligations that parents have to their future children in making conception decisions. I do this by a) characterizing the interests of children, proposing and defending a specific set of those interests, and showing how individual interests combine to determine a child's overall interest level; b) by demonstrating that a parent has obligations to her child to protect his interests to a minimal degree and to promote his interests to the extent possible when she can do so at a reasonable cost, and c) by showing how the nature of the relation between duties and harms makes it possible for a parent to harm her child when she fails to fulfill her obligations to him.

2. To refute Derek Parfit's objection by showing where he has made incomplete claims and disputable assumptions. I identify indefensible parts of Parfit's arguments that concern both same number problems and different number problems and show how

his conclusions are therefore unwarranted. I then suggest that a proper understanding of the harm that a parent can cause his future child in conceiving her is predicated upon a slightly modified understanding of the subject of the harm but constitutes a harm nonetheless.

3. To demonstrate how the inclusion of a child-centered appeal yields more satisfactory results to ethical questions about decisions to conceive. I apply the appeal to cases that involve such decisions and show how its addition produces more complete analyses.

Essentially, the arguments I lay out in the following eight chapters open conceptual space for the inclusion of a child-affecting perspective in ethical analyses of conception decisions. The moral appeal I propose and defend is a step toward filling this new space.

## **Chapter Summaries**

The specifics of how I accomplish the above-cited objectives are best described by briefly summarizing each of the dissertation's eight chapters. In Chapters 1, 2 and 3, I develop a positive account of the obligations that parents have to their children and of how a child is negatively affected when a parent fails to fulfill those obligations. In Chapter 4, I describe how Derek Parfit's arguments cause difficulty for my account in the context of reproduction. I then show how Parfit's conclusions can be avoided in Chapters 5 and 6. Chapter 7 explores a possible consequence of my arguments in previous chapters for the concept of harm in

reproductive ethics. In the final chapter, I show how the moral appeal I have identified should be incorporated into reproductive decision-making and illustrate its value by using case studies. More specifically:

*Chapter 1 - The interests of children.* I explore the form that an account of the interests of children should take and conclude that a list of objective goods is most appropriate structure for such an account. I then propose a specific list of children's interests that is based upon a qualitative analysis of existing accounts of human goods, giving content to the ethical appeal I later argue for.

*Chapter 2 - The obligations of parents.* I investigate the source and content of parental obligations. These obligations, I claim, are generated when an individual or couple voluntarily accepts responsibility for a child's vulnerability to harm. Parents have at least two obligations: to ensure that the interests of their children are met to a minimal degree and to promote the interests of their children when they can do so at reasonable cost.

*Chapter 3 - Wrongs, harms, and obligations.* I explore the relationships between harms, wrongs, and obligations. Using Joel Feinberg's definition of harm, I show how wrongs differ from harms and demonstrate that in most cases a failure to fulfill an obligation constitutes both a wrong and a harm. I also claim that in many cases an individual has both an obligation to refrain from causing harm and an obligation to prevent future harm.

*Chapter 4 – Parfit's problem.* I describe the intuitive position that a parent negatively affects her child when she fails to fulfill her parental obligations in making decisions about that child's conception. I then review Derek Parfit's argument that a

child whose life is worth living cannot have been made worse off by her parent's conception decisions because if her parent had made different decisions, a different child would have been conceived and, as a result, that child never would have come into being. I also clarify a number of concepts for use in the next two chapters.

*Chapter 5 – Parfit's problem resolved: Different number problems.* I look at the parental obligations to protect and promote a future child's interests in the context of different number problems – that is, in situations in which a parent is choosing between conceiving a child and not conceiving one. I show that by looking at the child's future, rather than current interests, it is possible to coherently claim that a parent makes his child worse off by failing to fulfill these obligations.

*Chapter 6 - Parfit's problem resolved: Same number problems.* I explore the implications of the two parental obligations in cases in which a parent is deciding when or how to conceive a child. In these cases (same number cases), a child will be brought into existence in each possible situation. I argue that if the future child is conceptualized nonrigidly rather than rigidly, the claim that a parent makes that future child worse off by making particular conception decisions can be defended.

*Chapter 7 - A new kind of harm.* Building upon the conclusions of Chapters 5 and 6, I consider the sense in which it can be said that a parent *harms* her future children when she fails to fulfill her parental obligations. I argue that my conclusions indicate that there is an as-yet unrecognized sense of harm in which the agent and the subject of the harm are not bound together in the same time and possible world and that it is this kind of harm that does the moral work in cases involving reproduction.



*Chapter 8 - The appeal applied.* I explain how the moral appeal I have identified should be used in conception decision-making. I then illustrate the value of this appeal by analyzing cases that involve the decision to conceive a child. In each case, the resulting ethical judgements are more intuitively acceptable when the child-affecting appeal is included than when it is not.

# 1 The interests of children

The goal of this project is to define a child-centered ethical appeal that is relevant to conception decisions. By a 'child-centered ethical appeal', I mean an ethical consideration based upon the impact that a decision has upon a child. In the context of making decisions about conception, the child in question is the one that may result from that conception decision. Such an appeal, I believe, should be taken into account when making decisions about conceiving children. The child-centered appeal that I defend in this project consists of two claims, both of which include the idea of 'a child's interest'. More specifically, I argue that a parent has an obligation to protect a future child's interests to a minimal degree and to promote that future child's interests when it is possible for the parent to do so at reasonable cost. The concept of children's interests is therefore central to my arguments and conclusions.

If the appeal I am proposing is to be valuable in analyzing actual conception decisions, it must be specific in its content. That is, it must be defined substantially enough to give concrete guidance. Setting an ethical standard requiring a decision-maker to protect or promote the interests of his future child is no standard at all unless that decision-maker knows what the interests of his future child are and how they can be protected and promoted. It is therefore not sufficient, for the purposes of this project, to talk about this idea in the abstract. Some specific account of what is in a child's interest and of how her interests can be affected is needed in order to understand the implications that the proposed child-centered appeal has for conception decisions.

Surprisingly, there is little to be found in the bioethics literature on this topic. Much has been written about the strengths and weaknesses of using the best interest standard in making decisions about medical treatment and participation in medical research for minors. This work, however, concerns the *implementation* of this standard, and not its *definition*. There seems to be no clear, well-accepted account of what, exactly, is in the interest of a child. From the perspective of a decision-maker, then, it currently uncertain what an imperative to protect or promote the interests of a child would require. In this first chapter, I will give content to the child-centered appeal that I later defend by proposing an account of the interests of a child.

### **Characteristics of an account of the interests of a child**

An individual's interests are closely related to his well-being. Joel Feinberg claims that "interests, or perhaps more accurately, the things these interests are *in*, are distinguishable components of a person's well-being: he flourishes or languishes as they flourish or languish" (34). The greater the extent to which one's interests are fulfilled, the better off he is, by Feinberg's account. As I will show later in this chapter, the relation between one's interests and his overall well-being is more complex than Feinberg's definition indicates. His simplistic account is sufficient, however, for my purposes in this section. In the following paragraphs, I use Feinberg's idea that interests are the components of a person's well-being in determining some of the properties that an account of the interests of a child should have.

Children have at least two different kinds of interests: current interests and future-oriented interests (Buchanan and Brock, 247). A child's current interests are those things

that affect his well-being at the present time, such as pleasure and the absence of pain.

These are goods in themselves at the time at which the child has them fulfilled. In contrast, future-oriented interests are those things that are important for a child's later well-being, such as education and structure. These are instrumental goods, that is, goods that are useful in promoting other interests. Future-oriented interests are therefore goods that are instrumental in furthering the interests that a child will have later in his life.

Together, current interests and future-oriented interests make up the set of the interests of a child. This set of interests, however, cannot be divided into distinct sets of current interests and future-oriented interests. There are many interests that are included in both sets. For example, health is important for one's current well-being, but also makes possible the achievement of future goods. Similarly, having relationships with others makes one better off at the present time, but also lays the foundation for the fulfillment of future interests. Despite the fact that the sets of current and future-oriented interests overlap significantly, this is a noteworthy conceptual distinction. Any account of the interests of a child must account for both of these types of interests.

A third set of interests that should be distinguished from the two just noted is the set of interests that the child will have in the future. These are those things that will not be goods for that child until later in life. These future interests are the child's later current and future-oriented interests and are also those interests that his future-oriented interests are instrumental in protecting and promoting. They are therefore distinct from, but related to, the current and future-oriented interests of a child. The set of a child's future interests may include some of the same items that are in the sets of that child's current interests and future interests, such as good health and relationships with others.

However, other future interests can *only* be found in the set of a child's future interests. Sexual satisfaction and reproductive freedom are examples of this kind of interest. A child, particularly a young child, does not have a current interest in either of these things. Even so, *later* in her life they may be a current interest for her. In addition, as a child, she has some future-oriented interests, such as protection from sexual abuse, that may protect or promote those possible future interests. A child's current interests, future-oriented interests, and future interests, then, are related to each other. It is worth noting, however, that future interests are *not* interests of a child in childhood. They therefore should not be included in an account of the interests of a child.

An account of the interests of a child must be grounded in some conception of a good life for human beings. As noted above, a child's interests are very closely related to her well-being. It is therefore not possible to know what is meant by 'the interest of a child' without knowing what it is to "be well." The conception of the good for a child should determine the structure that such an account should have. The properties of an account of the interests of a child depend greatly upon the theory of the good that it is based upon. There are three kinds of theories of well-being that have initial plausibility: mental state theories, preference satisfaction theories and objective list theories (Buchanan and Brock, 31-34). An in-depth discussion of the many strengths and weaknesses of each of these theories is not appropriate here. However, looking at these theories in light of the distinctions between a child's current, future-oriented, and future interests will be helpful in determining which type of theory of the good is appropriate

for children and therefore which should serve as a foundation for an account of the interests of a child.

One possible kind of theory of the good is a mental state theory. Such a theory suggests that what is good for humans is being in some particular state of mind or in one of a set of states of mind. The most plausible mental state theory is one that defines the good for humans as experiencing desirable mental states (Griffin, 8-10). An account of the interests of children based upon this theory would hold that what makes a child better off is experiencing a desirable mental state. The set of a child's interests would therefore be the set of desirable mental states that could be experienced by the child.

A mental state theory may initially seem to be a good description of well-being for children. We *do* think that it is good for children to have desirable mental states. We entertain them, try to make them smile, and console them when they cry. Certainly, then, such mental states contribute to a child's well-being. However, there seem to be things other than mental states that make a child better off when he has them. We don't feed a child candy alone, let him play in the street, or allow him to stay up all night, no matter how desirable of a mental state such actions might produce in him. These activities are curtailed, despite the undesirable mental states they induce, in order to promote other current goods that are not mental states, such as health and safety. So it seems that a mental state theory cannot adequately capture the whole of what we intuitively believe to be the current interests of children.

A mental state theory is an even less plausible foundation for the set of a child's future-oriented interests. Again, experiencing desirable mental states may in some ways further a child's future well-being. However, many other goods that cause neutral or

undesirable states of mind are also generally considered related to a child's future flourishing. Parents provide structure and expectations for their children, give them responsibility, and educate them with the hope of making them better off later in life, even though the mental states produced by such actions are often not desirable ones. The full range of future-oriented interests therefore cannot be accounted for by a mental state theory of the good.

Finally, the same argument can be made with respect to a child's future interests. Although in many cases it is good for an adult to have desirable mental states, she has other interests as well. We tend to think that it is good for an adult to form relationships, reflect upon morality, and have challenging experiences despite the fact that such actions may bring about painful, stressful, or otherwise undesirable states of mind.

A further problem with mental state theories of the good has famously been made by Robert Nozick, illustrated by his "experience machine" (Nozick, 42-45). Nozick argues that if an individual were able to have the experience of a particular good, without actually having the good itself, our intuition is that she is not as well off as she would be if she *actually* had the good itself. For example, imagine a philosophy doctoral student who hooks herself up to a machine that causes her to experience all of the mental states brought about by finishing her dissertation. Most people would claim that this student is not as well off as she would have been if she had actually finished the work. This important objection severely undermines any mental state theory of the good, making such a theory an unlikely candidate for a defensible account of the good for human beings. Therefore, because a mental state theory cannot adequately account for what

seem to be a child's current, future-oriented and future interests, such a theory is not a good foundation on which to build an account of the interests of a child.

A second plausible kind of theory of the good is an objective list theory. An objective list theory maintains that there is a set of things such that when a human has them, he is better off than when he does not. "When [these things] appear in a person's life, then whatever his tastes, attitudes, or interests, his life is better," according to Griffin (54). Having these goods, then, makes a person better off whether or not he experiences or desires them. An account of the interests of a child that is based upon an objective list theory of the good would consist of a list of things that "just are" good for that child. She would have an interest that corresponds to each item on the list. The child is better or worse off depending upon the extent to which each of those interests is fulfilled.

An objective list theory of interests can easily capture the current interests, future-oriented interests, and future interests of a child. In principle, such a list can accurately and completely account for the child's current and future interests at any given point in her life. The only restriction on the list of goods is that each of the things on it must make the child better off when she has them.

Using an objective list theory as a basis for an account of the interests of a child avoids the two major difficulties of mental state theories. An objective list can consist of many different kinds of goods, not simply mental states. It can therefore include a variety of goods that a mental state theory is unable to account for. This kind of account is also not vulnerable to Nozick's "experience machine" objection because it does not require that a person be aware that she has the goods on the list.



The primary drawback of this kind of theory is that it does not specify, or give any method of specifying, what the objective list of goods is comprised of. How do we know what things should make the list? What, objectively, is required in order for one to "be well"? The answers to these questions are not simple or obvious. Infinitely many different goods could be combined into infinitely many different lists. How can we know which one or ones completely and accurately capture the good for human beings? There is no clear or simple answer to this epistemic question.

A third kind of theory of the good is based upon preference satisfaction. The most plausible form of this kind of theory is a "corrected" preference satisfaction theory. A corrected preference satisfaction theory of the good suggests that it is good for people to have their preferences satisfied, as long as those preferences are informed and rational. That is, what is good is not necessarily the satisfaction of a person's actual preferences, but the satisfaction of what a person's preferences would be were she informed and rational. Only the satisfaction of preferences that meet these criteria contributes to an individual's well-being (Griffin, 10-17). An account of the interests of a child that is based upon this kind of theory would consist of the satisfaction of children's informed and rational preferences as the members of its set of interests. Because preferences often vary from person to person, different people would have different interests, according to such a theory. The set of the interests of a particular child would therefore not be the set of interests of all children.

There is, however, a significant problem with using this theory as a foundation for an account of a child's interests. First, children, especially young children, do not have

many preferences. Because their cognitive ability is underdeveloped, children are not yet able to form preferences, or can do so only to a limited extent. They may smile as a sign of pleasure or cry as a sign of pain, but these seem to be only reactions to stimuli rather than indications of the satisfaction or violation of previously held preferences. Without conscious thought, a child cannot have preferences in the substantial sense that is needed in order for these preferences to form a basis for defining their well-being. This is a problem for both children's current and future-oriented interests. Because young children have so few preferences, the vast majority of the work done in creating an account of the interests of such children would be done by the correction of those preferences. That is, most of the substance of the account would come in when determining what the rational and informed preferences of a young child would be. And the process of making those determinations quickly begins to look a lot like the process of determining what the objective goods of a young child would be. As a result, the corrected preference satisfaction theory seems to smuggle in an objective concept of the good and essentially collapses into an objective list theory for very young children.

A similar problem with using a corrected preference satisfaction theory in developing an account of the interests of a child arises in considering older children (those approximately ages 3-8). An older child may have some preferences in the required sense. As soon as children begin to talk, they express their likes and dislikes, their desires and aversions. Even so, we often do not respect such preferences as actually being reflective of the interests of that child. Caregivers often do not believe that what their children prefer is actually in their interests. This is true for both a child's current and future-oriented interests. Proper nutrition is important for a child's current well-

being, although he may express a preference for candy. It is in a child's current interest to have a serious wound sutured, despite his preference to not be poked by a needle. Children's preferences are often overridden by caregivers attempting to further those children's interests. It is highly likely that many of these overridden preferences do not meet the criteria of a corrected preference theory of the good; that is, that these preferences are not rational and informed. The result is a situation similar to the one described above concerning very young children. If only a few of a child's preferences meet the criteria for contributing to the child's good when they are satisfied, then an account of the good that is based upon preferences must rely heavily on the content of the corrected preferences. Therefore, as noted above, the account would closely approximate an objective list theory of the good because it would have to rely upon such a theory for its content.

A corrected preference satisfaction theory, however, does not run into such problems with the *future interests* of a child. Most adults are able to form preferences that are rational and informed. Further, we generally see the satisfaction of those preferences as being good for the individual who has them. Although we may not value the satisfaction of some of adults' preferences, such as those that involve harm to oneself or to others, such preferences are not generally rational or informed and so need not be respected under a corrected preference satisfaction theory. This type of theory, therefore, seems appropriate for those interests that a child will have in the future, but not for those they have during childhood.

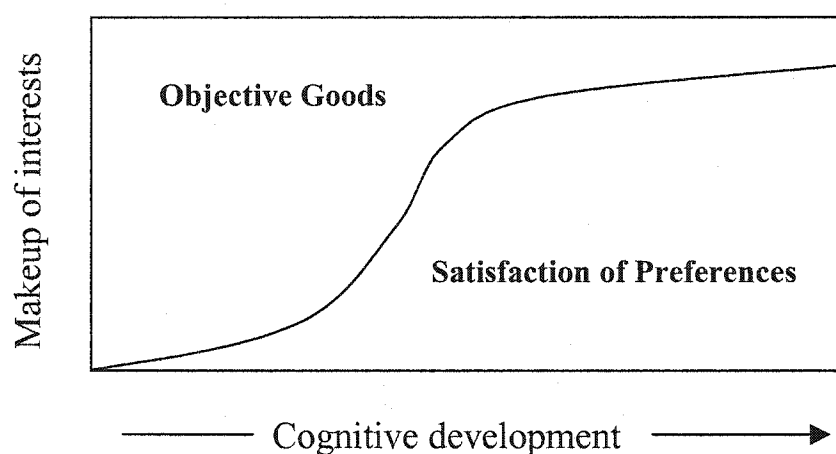
Of the three kinds of theories discussed here, then, an objective list theory seems to be the most plausible kind of theory of the good on which to base a theory of the interests of children during childhood. Its sole serious difficulty is a practical, epistemic challenge rather than a theoretical one. Given the devastating objections to using mental state and preference satisfaction theories of the good in determining the current and future-oriented interests of a child, an objective list theory is the most appropriate theory to use in this context. The task of proposing and defending a specific set of goods for a child is a challenge I will undertake later in this chapter.

The analysis of the three types of theories of the good is different for a child's future interests than for current and future-oriented interests. While the objections to a mental state theory are just as convincing for a child's future interests as they are for her current and future-oriented interests, the same cannot be said for a preference satisfaction theory of the good. The difficulty with using a preference satisfaction theory as a foundation for an account of the interests of a child is generated by the inability of children to have rational and informed preferences. Adults (and maturing children), in contrast, are generally thought to be able (or to be developing the ability) to have such preferences. So the objections to a preference satisfaction theory are not applicable to a child's future interests while the epistemic problem with an objective list theory remains. This suggests that a preference satisfaction theory may be the most plausible kind of theory of the good to use in understanding a child's *future* interests.

So although a preference satisfaction theory does not seem to be an adequate theory of the good upon which to base an account of the interests of children, it may be a good foundation for an account of the interests of adults. Presumably, the transition to

having the satisfaction of one's preferences count toward his well-being does not occur instantaneously. We do not discount a person's preferences until age 18 and then suddenly make the satisfaction of those preferences the primary measure of his well-being. Figure 1.1 illustrates this shift more accurately.

**Figure 1.1**



As stated earlier, the formation of rational and informed preferences requires cognitive abilities that very young children do not have at all and that have been substantially developed in most adults. Just as these cognitive abilities are usually acquired gradually as a child matures to become an adult, the ability to form rational and informed preferences is gradually acquired. The satisfaction of such preferences makes an individual better off whenever that individual has them. Preference satisfaction therefore makes up a larger and larger portion of a person's set of interests as he acquires the cognitive ability to form preferences that are rational and informed.

It seems, therefore, that the current and future-oriented interests of a child must be objective goods and her future interests must be the satisfaction of preferences. When a child is very young, her interests are made up entirely of objective goods. As she matures cognitively, satisfying of her rational and informed preferences becomes a good for her. As an adult, the set of her interests is made up almost entirely of the satisfaction of such preferences. Although the goal of this chapter is to define an account of the *current and future-oriented* interests of a child, it is useful to keep in mind the importance of preference satisfaction to the child's *future* interests.

I suggest that the interests of a child can be neatly conceptualized as something like the kinds of goods that John Rawls calls "primary goods". Primary goods, according to Rawls, are those "things which it is supposed a rational man wants whatever else he wants" (92). Similarly, the interests of a child, I propose, are those "things which it is supposed a child *needs* whatever else he *will* want." My idea of primary goods therefore differs from Rawls' in two important ways. First, the interests of a child are things that he needs rather than things that he wants; that is, they are objective goods and not the objects of the child's preferences. This change reflects the objective character that a child's current and future-oriented interests must have, as suggested earlier. Secondly, these goods are things that a child needs whatever he will want in the future, rather than what he wants at the present time. This reflects the conclusion above that a child's future interests are best grounded in a preference satisfaction theory. The interests of a child are therefore primary goods in the modified sense that they are what a child needs no matter what he will later want.

In order for an ethical appeal to be applicable in all cases in which conception decisions are made, it must be based upon an account of the interests of a child that can be applied universally to children. Characterizing the interests of a child as primary goods in the sense proposed above means that the items on the list of objective goods are good for every child. This universality is not a necessary result of an objective list account, because different things could be objectively good for different children. However, if the objective list is considered to be a set of primary goods, universality follows. The account of the interests of a child that I will develop is therefore meant to be applicable to all children.

### **An account of the interests of a child**

The set of a child's interests consists of her current and future-oriented interests. The arguments above suggest that an account of these two kinds of interests must take the form of an objective list of goods. As noted earlier, however, one difficulty with using an objective list theory is figuring out what, exactly, should be on the list of objective goods. Surprisingly, I was unable to find a single list of children's interests in the existing philosophical literature. I therefore turned to other sources and found two promising leads. I located two lists that could be taken to be an account of the objective goods for children. One, the UN "Convention on the Rights of the Child" was written in a sociopolitical context for the purpose of creating international policy. The second, Berry Brazelton and Stanley Greenspan's "The Irreducible Needs of Children" I found in the medical literature. A third relevant list is the account of human goods proposed by

Martha Nussbaum. Her account consists of a set of capabilities that all people, not specifically children, must have.

I chose these three lists for two reasons. First, and probably most importantly, they were the only three lists I could find, even after an exhaustive, interdisciplinary search. Despite the fairly prevalent use of the *concept* of children's interests, there has been little work done on the *content* of those interests. A second reason I decided upon these three lists is the array of perspectives that they represent. Together, the lists cover the sociopolitical perspective, the medical perspective, and the philosophical perspective. The advantage of this diversity will become evident below. First, however, the three lists need to be described in greater detail.

*A. From a sociopolitical perspective: UN Convention on the Rights of the Child*

The United Nations' "Convention on the Rights of the Child" was adopted by the General Assembly of the UN in 1989 to replace the 1959 "Declaration of the Rights of the Child." It has since been ratified or acceded to by all of the 189 members of the UN except the United States (which has signed the document) and Somalia (which has taken no action on the document) and by four non-UN members. The Convention contains a long list of the rights of children, claiming that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind." (A2) As a result, this candidate account has some distinctive features. The Convention was formulated within a sociopolitical perspective and is intended for use as a standard that states "shall undertake all appropriate legislative, administrative, and other measures" (A4) to implement. It is meant to apply specifically



and universally to children, defining a child as “every human being below the age of eighteen years” (A1) whom has not attained majority. Finally, the Convention is a listing of children’s *rights*, that is, those things that children are entitled to.

One advantage of the Convention as a possible account of the interests of children is that specifically concerns *children*. It includes items that are unique to children and excludes those that would only be applicable to adults. Further, the account is intended to be *universally* applicable to children and so would be useful in any situation in which a child’s interests are in question. The Convention has some limitations as an account of children’s interests, however. First, it talks about children’s *rights*, which are not necessarily coextensive with their *interests*. There are some things, such as having friendship or good genes, that a child does not have a right to even though they may contribute to her well-being. The list in the Convention is therefore likely to be incomplete as a list of the interests of children. Secondly, the Convention is intended for use by governments rather than by individual caretakers. As a result, some of the interests that a child can only have filled by their caretakers are left off the list. Structure, limits, forming a sense of self and developing a conception of the good are examples of interests that cannot be protected by governments and therefore do not appear on the Convention’s list of the rights of a child.

Nonetheless, this document has implications for an account of the interests of children. The Convention is a list of things that are considered to be rights of a child. The fact that the United Nations holds all children are entitled to the items included in the document suggests that there is at least some reason to believe that it is good for every child to have those things. Further, the Convention has been ratified, acceded to, or

signed by many nations, indicating that there is widespread agreement that children should have the goods listed there. It is therefore not a large leap to claim that the goods named in the Convention make a child better off when she has them; that is, to understand these rights as interests of a child.

*B. From a medical perspective: The Irreducible Needs of Children*

A second possible account of the interests of a child is the list of children's needs developed by Berry Brazelton and Stanley Greenspan in their "The Irreducible Needs of Children". As a pediatrician and a child psychiatrist, respectively, their conclusions "are based upon a synthesis of [their] clinical and research experience." (XI) Brazelton and Greenspan intend to "identify the very most basic needs, the kinds of care without which children cannot grow, learn, and thrive" (IX) and to point out the implications of those needs for parents, other caretakers, educators, and those involved with social services and health systems. It is worth noting that this account is based upon a medical perspective, proposed by two doctors concerned with the physical and mental health of all children. It concerns children in particular and seeks to identify what they need in order to flourish. The list is meant to be informative for anyone interested in children's well-being, and is especially aimed at those who have direct responsibility for caring for children.

Some features of Brazelton and Greenspan's account make it a good candidate for an objective list of goods for children. Like the Convention on the Rights of the Child, it is particularly concerned with the needs of children. The account therefore includes children's special needs and excludes needs that are unique to adults. Further, it is intended to be applicable to all children, which gives it universality. One disadvantage of

this account is its focus on the individual caretaker. Some needs of a child that are principally the responsibility of government, such as the protection of various freedoms, are not included by Brazelton and Greenspan. Secondly, the list is derived from the limited perspective of two (albeit well-respected) individuals in the medical profession. Their account therefore lacks the validation that the Convention has received through its ratification processes.

Despite these disadvantages, this set of the needs of children clearly has implications for an account of the interests of a child. Relying upon years of expertise in trying to improve children's lives, Brazelton and Greenspan propose a list of things allow a child to grow, learn and thrive. A child's ability to flourish in these three ways is closely related to her well-being. So the items on the list, according to Brazelton and Greenspan, are things that a child must have in order to be well. The needs outlined in their account are therefore also interests of a child.

### *C. From a philosophical perspective: The Capabilities Approach*

The "capabilities approach" is a philosophical account of human goods defined by Martha Nussbaum. Nussbaum's aim is to "provide the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires...[and to] argue that the best approach to this idea of a basic social minimum is provided by an approach that focuses on human capabilities" (5). In other words, she attempts to create a foundation upon which claims about a society's minimum responsibility to its members can be based. This account has several noteworthy features.

Nussbaum approaches the project from a philosophical standpoint, using reason and experience to generate a list of capabilities that all people must have if their life is to be “truly human”, that is, worthy of a human being” (72). The list is designed to serve as a foundation upon which governments can build laws and policies. It is meant to be universally applicable, that is, relevant to all people in all nations.

Nussbaum's capabilities approach, unlike the two accounts above, has the significant drawback that it is not specific to children. Because it is intended to be an account that applies to all people, it ignores the special needs that children have, such as the need for caregivers and nurturing relationships. Further, it includes some elements, such as sexual satisfaction and the right to seek employment, that are inappropriate for young children. For these reasons, there are limitations to the usefulness of the capabilities approach in developing an account of the interests of a child. However, children and adults clearly have many interests in common. When, the capabilities that are relevant only to adults are removed from Nussbaum's list, the resulting set of goods is informative about the interests of children.

### **A new account**

I have identified three different lists of objective goods that have implications for an account of the interests of a child. The lists have many similarities but also some noteworthy differences. Each has some important strengths as well as some significant disadvantages. It would therefore be a difficult task to select one of these candidate accounts as the most accurate list of the interests of a child. Upon what basis could such a choice be made or defended? Rather than stepping out onto this shaky ground, I have

chosen an alternate route. I have created a new and improved objective list of goods for children that is based upon all three of the candidate lists. Using qualitative analysis, I have combined these three accounts in a way that focuses on their strengths and compensates for their weaknesses.

In order to construct the new list, I first listed each right included in the Convention, each need mentioned by Brazelton and Greenspan, and each capability listed by Nussbaum. I then combined the items that were common to the three accounts, keeping track of which accounts contained each item. I then grouped the items on the list, putting conceptually similar items together. Fourteen different groups emerged naturally from this inductive qualitative analysis. The resulting list is presented in Table 1.1. It consists of all of the various items that were put forward by the candidate accounts, clustered by group. The gray lines separate one group of items from another. Each of the fourteen groups is labeled by a term that conceptualizes that group's contents.

**TABLE 1.1: It is in a Child's Interest to:****Convention Brazelton Nussbaum**

<b>Life</b>			
Have life	•		•
Have a life of normal length			•
Survive and develop to the extent possible	•		
<b>Health</b>			
Have good health			•
Have the highest level of health possible	•		
Have access to health care services	•	•	
Have prenatal care and well-baby care		•	
Be protected from illness and injury		•	
Have physical safety		•	
<b>Mobility</b>			
Be able to move freely from place to place			•
Develop motor skills		•	
<b>Standard of Living</b>			
Have a standard of living adequate for development	•		
Have nourishment and shelter	•	•	•
Have clothing	•		
<b>Protection</b>			
Be secure against assault			•
Be protected from abuse	•	•	
Be secure against sexual abuse	•		•
Be secure against domestic violence		•	•
Be protected from physical or mental violence	•	•	
Be protected from neglect or negligent treatment	•	•	
Be protected from exploitation, including sexual exploitation	•		
Be protected from maltreatment	•		
Be protected from corporal punishment		•	
Be protected from attacks on his or her honor or reputation	•		
Be protected from emotional or social stresses and chaotic environments		•	
Be protected from exposure to toxic substances		•	
Freedom from unwarranted search and seizure			•
Not be sold, abducted, or illicitly transferred abroad	•		
Not use illicit substances	•		
Not be involved in the production or trafficking of illicit substances	•		
<b>Nurturing</b>			
Have nurturing relationships		•	
Have secure and consistent relationships		•	
Have attention from a caregiver		•	
Be cared for by his parents	•		
Have as close a relationship with his parents as is in his best interests	•		
Have limits set		•	
Have structure imposed		•	
Have expectations of her		•	
<b>Security</b>			
Have a sense of security		•	
Have the benefits of social security or social insurance	•		
<b>Pleasure</b>			
Be able to have pleasurable experiences and to avoid pain		•	•
Be able to laugh, play, enjoy recreation	•	•	•

## Convention Brazelton Nussbaum

<b>Experiences</b>			
Use the senses		•	•
Think, imagine and reason		•	•
Learn		•	
Have an education	•	•	•
Have access to information about the world	•		
Have experiences tailored to individual differences		•	
Have special care for the disabled	•		
Have the right to seek employment on an equal basis with others			•
Work, exercise practical reason and work meaningfully with others			•
Have protection from work that is likely to be harmful to development	•		
<b>Emotions</b>			
Experience emotions such as love, grief, gratitude, anger		•	•
Not have emotional development blighted by fear, abuse or neglect			•
Control their emotions, moods and behaviors		•	
Communicate their feelings		•	
<b>Relationships</b>			
Be able to interact with others		•	•
Be able to have attachments to things and people		•	•
Interact with others emotionally		•	
Have care and compassion for others		•	•
Be capable of justice and friendship		•	•
Have intimacy		•	
Be able to trust others		•	
Be able to interact with and be concerned for other species and nature			•
Have opportunities for sexual satisfaction and reproductive choice			•
<b>Self</b>			
Have a sense of self		•	
Have privacy	•		
Have individual responsibility		•	
Have self-respect and non-humiliation and to be treated with dignity			•
Have and preserve an identity, including a name, nationality, and family	•		
Enjoy his own culture with members of his own group	•	•	
Participate in cultural life and the arts	•	•	
Be protected from discrimination	•		•
<b>Reflection</b>			
Be able to search for the meaning of life			•
Be able to form a conception of the good			•
Engage in critical reflection about one's life		•	•
Participate in choices that govern one's life	•		•
Be able to have a moral sense of right and wrong		•	
<b>Freedoms</b>			
Experience and produce self expressive works and events			•
Have freedom of expression	•		•
Have freedom of religion	•		•
Have freedom of thought	•		
Have liberty of conscience	•		•
Have freedoms of association, assembly and speech	•		•
Have property rights on a basis equal with others			•

**TABLE 1.2: Interests of a Child****Convention Brazelton Nussbaum**

	Convention	Brazelton	Nussbaum
<b>Life</b>	•		•
<b>Health</b>	•	•	•
<b>Mobility</b>		•	•
<b>Standard of Living</b>	•	•	•
<b>Protection</b>	•	•	•
<b>Nurturing</b>	•	•	
<b>Security</b>	•	•	
<b>Pleasure</b>	•	•	•
<b>Experiences</b>	•	•	•
<b>Emotions</b>		•	•
<b>Relationships</b>		•	•
<b>Self</b>	•	•	•
<b>Reflection</b>	•	•	•
<b>Freedom</b>	•		•



As Table 1.2 illustrates, the three accounts have many similarities. Seven of the groups of interests contain items from all three of the accounts: Health, Standard of Living, Protection, Pleasure, Experiences, Self, and Reflection. Further, each of the fourteen groups contain items from at least two of the accounts. Table 1.2 also shows where the lists differ. The Convention does not include the concepts of Mobility, Emotions or Relationships. Brazelton and Greenspan make no mention of a need for Life or for Freedoms. And Nussbaum's account does not include the goods of nurturing and security.

There are two different things that can be said in explanation of these differences. First, the fact that an account does not explicitly include a given concept does not necessarily mean that the authors of that account would disagree that that concept ought to be included. Consider the fact that Life is not mentioned by Brazelton and Greenspan or that the Convention does not contain the idea of Mobility. It is more likely that these omissions were oversights than that they were intended to mean that children do not need life and that they have no right to mobility.

Secondly, most of the accounts' differences can be attributed to the individual perspective and purpose of each of the lists as discussed above. It seems likely that the Convention does not identify Emotions and Relationships as rights of a child because these are things that would be difficult to legislate. Because the purpose of their account is to serve as a basis for policy-making, the inclusion of these interests would there make little sense. Brazelton and Greenspan may have left Freedoms off of their list of needs either because some freedoms, such as the freedom to have property rights, are generally not afforded to children. Or perhaps it was not included because their account is meant to

be a tool for individual caretakers, who can do little to effect freedoms in a child's life. Nurturing and Security, the two items not cited by Nussbaum that are included in the other accounts, are interests particularly relevant to children. Because Nussbaum's account is not adapted to the special needs of children, it is not surprising that these items do not show up on her list. Further, since Nurturing and Security are not properly described as *capabilities* of an individual, but rather are things that must be *provided for* an individual, they would not belong in Nussbaum's account.

This analysis shows that the variations between the three accounts can be explained by practical differences in the accounts rather than by ideological ones. Each of the discrepancies has been shown to be a result of the idiosyncratic character of the perspective from which the account was created. This suggests that the account's conceptual substance is sound. The set of conceptual categories corresponds to a set of interests of a child. I therefore propose a new account of the interests of a child, derived from these three lists through qualitative analysis. The account is an objective list of fourteen different interests:

1. **Life:** to live a life of normal length
2. **Health:** to have good health. To be protected from illness, to have physical safety and access to health care.
3. **Mobility:** to have the ability and freedom to manipulate one's body and to move from place to place.
4. **Standard of Living:** to have a standard of living sufficient for development, including food, shelter, and clothing.
5. **Protection:** to be protected from all forms of abuse, neglect, maltreatment, physical and mental violence, exploitation, and from attacks on one's honor and reputation.

6. **Nurturing:** to have a consistent, nurturing relationship with a caregiver. To receive attention, limits, structure, and expectations from a caregiver.
7. **Security:** to feel secure in having one's needs met.
8. **Pleasure:** to laugh, play, enjoy recreation, and experience pleasure.
9. **Experiences:** to think, imagine, reason, learn and to use one's senses,. To have education and access to information about the world.
10. **Emotions:** to develop, experience, control and communicate one's emotions.
11. **Relationships:** to interact with others. To have friendship, care for others, and have intimate and trusting relationships with others.
12. **Self:** to have a sense of self and individual responsibility. To have an identity and a culture and to not be discriminated against.
13. **Reflection:** to be able to reflect upon the meaning of life and to develop a conception of the good. To participate in choices about one's life and morality.
14. **Freedoms:** to have freedom of expression, thought, assembly, speech, and religion.

At least two different arguments demonstrate the accuracy and completeness of this particular list of the objective goods of children. First, the new account reflects the current wisdom about the interests of children of experts from three different perspectives. Because this account is based upon a collection of the thoughts of experts, there is at least some reason to believe that the goods they cite are, in fact, interests of children. This attests to the accuracy of the new account. The fact that the new account is the union of lists from very different sources – politics, medicine, and philosophy – suggests that the list is reasonably complete.

Secondly, this particular list could be argued for from the perspective of intuition. It would be a repetitive and uninteresting task to rehearse in detail an intuitive argument for the inclusion of each of the fourteen interests in the account. The form of the

argument would be essentially the same for each one. I noted above that the interests of a child are primary goods in the sense that every child needs them regardless of whatever else she will want. Each of these goods either makes that child better off in childhood or will make her better off in the future. Intuition says that for any item on the list, the greater the degree to which these interests are fulfilled, the higher her level of well-being, all other things being equal. So it seems, from this perspective, that the list is accurate. There is no simple argument from intuition for the completeness of this account. However, the fact that it is difficult to think of anything else that should be included on the list suggests that the account is, actually, complete.

This account is open to revision. Further empirical evidence or other additional information could give reason to make alterations to the list. However, because this list is comprised of expert opinions from different disciplines and fits with our intuitions, it seems to be a defensible account of what the interests of a child might be. If one were to object that these arguments are not convincing, she could view this list as representative of the form that an account of the interests of a child would take.

To reiterate, this is an objective list of a child's current and future-oriented interests. These are primary goods in the modified sense described above; that is, they are things that a child must have in order to satisfy his preferences later in life. They are goods for all children. I would also like to emphasize that, unlike Rawls, I do not necessarily understand these primary goods as *rights* of a child, nor do I want to make any arguments about the role of society in providing them. I simply want to say that

these various goods come together to create an account of what is meant by 'the interests of a child'.

### **The overall interest level**

Feinberg differentiates between a person's interests "in the plural" and her interest "in the singular"; that is, between the collection of individual interests that one may have and her overall well-being. He claims that "one's interest in the singular...consists in the harmonious advancement of all one's interests in the plural" (34). These two concepts, then, although similar and importantly related, are distinct. The set of things that contribute to a person's well-being is the set of her *interests* and her general state of being is reflected in her overall *interest* level.

How, more specifically, are a person's individual interests related to her overall interest level? According to Feinberg, the extent to which one is well off depends upon the extent to which her interests are fulfilled. He holds that "these interests, or perhaps more accurately, the things these interests are *in*, are distinguishable components of a person's well-being: he flourishes or languishes as they flourish or languish." (34). That is, one's individual interests make up his overall interest level. A change in his overall interest level is related directly to a change in his individual interests. This account implies a very strong, perhaps even necessary connection between one's individual interests and his overall interest level.

As discussed in the beginning of the chapter, the set of a child's interests consists of current interests and future-oriented interests. Both his current and future-oriented interests therefore contribute to his overall interest level at any given time. The

relationship between each of these kinds of interests and a child's well-being should be looked at individually. Feinberg's account of the connection between individual interests and overall well-being seems adequate for a child's *current* interests. According to an objective list theory of the good, what is good for that child is to have the items on the chosen objective list. A child's overall interest level at any given time, then, is partially dependent upon the extent to which he has his individual current interests fulfilled.

When those current interests are fulfilled to a large extent, the individual's overall interest level must improve, all other things being equal. So the direct and necessary connection between the overall flourishing of a person and the flourishing of his individual interests makes sense in describing the effect that having or lacking current interests has on the overall interest level.

Future-oriented interests, however, are different from current interests in that they have as their goal the furthering of future interests. Although they are items on the objective list of a child's interests, the way that they affect a person's overall interest level is only observable later in life. What is good for a child in the future is, for the most part, the satisfaction of his corrected preferences, as noted earlier. Future-oriented interests therefore contribute to one's overall well-being to the extent that they make possible future preference satisfaction. A person is better off overall if he will be able to satisfy the preferences he will develop later in his life. The extent to which he will later be able to do so contributes to his overall interest level as a child.

Feinberg's definition of the relationship between individual interests and the overall interest level is problematic for a child's future-oriented interests because of the necessary, or at least very strong, relationship between an individual's interests and his

well-being that it implies. This connection does not seem to be defensible for future-oriented interests. It is possible that a person could have many of her future-oriented interests fulfilled to a great extent, but still be unable to satisfy her actual future preferences. Many other factors come into play in the pursuit of preference satisfaction, such as actions of others, environmental events, and blind luck. A man who has his future-oriented interests fulfilled to a great extent may develop cancer just as a woman who lacks many future-oriented interests could win the lottery, so that the ability of these two individuals to satisfy their preferences would be much more comparable than the extent to which they had their future-oriented interests fulfilled.

The relationship between a child's future-oriented interests and his overall well-being must therefore be different than the relationship between his current interests and his overall well-being. It must have a probabilistic character, so that the child's interests and his future well-being are correlated but not related in the strong way suggested by Feinberg. That is, the greater the extent to which a child's future-oriented interests are fulfilled, the more *likely* it is that he will have a higher level of well-being. This makes the understanding of a child's well-being more complex than Feinberg implies.

So both a child's current interests and her future-oriented interests contribute to that child's overall interest level, but do so in different ways. The relationship between a child's current interests and her overall interest level is direct, while the connection between her future-oriented interests and her overall interest level is probabilistic. Even without this complication, however, it would be difficult to predict how one should promote a child's individual interests in order to maximize her overall well-being because

of the complexity of the relation between individual interests and the overall interest level is a complex one. Individual interests could be promoted in many different combinations to many different extents. Further, different contexts, different patterns of interest promotion may improve one's overall well-being to a greater or lesser extent. Nonetheless, there are several things that can be said about the way that child's current and future-oriented interests affect her overall interest level.

1. The complete lack of any individual interest is likely to have a very detrimental effect on the child's overall interest level. A child's ability to survive childhood and to satisfy her later preferences and interests successfully would be severely diminished by an absence of any one of these interests. For example, if a child completely lacks nourishment or physical safety, it is impossible for her to be well in the present or future, no matter how many experiences or nurturing relationships he is provided with. Similarly, a want of nurturing will probably have a severe negative effect on both her childhood and her future well-being. Therefore, a child who has each of her individual interests protected to at least some degree should, all other things being equal, have a higher overall interest level than one who does not.

2. The extreme promotion of any individual interest can compromise the overall interest level. If a child has any one of these interests in excess, at least some of her other interests are likely to be negatively affected by that excess. For example, if a child's physical safety is protected to an extreme, she is unlikely to be able to get the variety of experiences she needs at various times in her life. This may not, however, preclude the possibility that the promotion of one interest more than others would raise the child's



overall interest level. It is only at the extreme level that the other interests begin to be sacrificed.

One possible exception to this relation is the case of a child with special abilities. It is possible that in such a case, the promotion of one interest to the exclusion of others increases the child's overall interest level more than having an even fulfillment of interests would. Imagine that early on it is clear that a child has an unusual talent for playing the piano. Perhaps sacrificing her other interests in order to ensure that she practices enough will make it possible for her to achieve a higher level of well-being. It seems, however, that such cases would be quite rare, and that more often the balancing approach is more appropriate.

3. Additional amounts of some of the above interests tend to have diminishing utility. Having a minimal amount of an interest rather than none at all causes a significant improvement in one's overall interest level. Doubling that minimal amount, however, is likely to have a lesser affect on the overall level; doubling it yet again would cause an even smaller proportionate benefit. For example, a child who is provided with the minimal amount of food needed to survive has a nearly infinitely better interest level than one who is not. His interests are advanced, but to a lesser extent, by additional nutrition. There comes a point, however, that being provided with additional food is of no value at all to that child.

4. Various combinations of the above interests can create different overall interest levels. For example, consider man who is quite intelligent and who can express himself well. All other things being equal, this man seems to be able to satisfy more of his rational and informed preferences than a man who has intelligence but can only express

himself in a minimal way or one who can express himself eloquently but has nothing of value to say. There are many different possible combinations of interests, each contributing to the level of well-being in a different way.

It seems that here is little else that can be said about the relation between a child's individual interests and his overall interest level. I am not aware of any formula that could capture the complexity of that relation. Determining how one should provide a child's individual interests in order to protect and promote her overall interest level must therefore be a matter of judgment. It seems clear that no interest should be entirely neglected and that none should be provided to an excessive extent. The combinations of individual interests should be taken into account. Finding the set of individual interests that best promotes a child's overall interest level is left up to our best judgment about what will fulfill her current interests and promote her future ability to satisfy preferences.

### **Two claims about a child's interest level**

There are two further claims that I want to make about the interests of children. First, there seems to be some threshold level at which one's interests are met such that at that interest level she is judged to have a successful human life. The definition of that interest level must have two parts: one corresponding to one's current interests and the other corresponding to one's future-oriented interests. First, a child's current interests must be fulfilled to the extent that she can do most of the range of things that a normal child at her stage of development would be able to do. Secondly, a child's future-oriented interests must be fulfilled to the extent that she will later be able to pursue, with some chance of success, the satisfaction of most of the range of preferences that people

can have. This standard is general enough to apply to every child and seems to fit with our intuitions about a good human life. A child need not be able to do *everything* that children her age can normally do in order to have a good childhood. A person need not be able to successfully pursue each and every possible preference in order to have a successful life. None of us would have a successful life if that were the case. However, a child must be able to have a substantial number of current opportunities and satisfy a significant proportion of her later preferences in order for her life to be a good one.

A person's overall interest level varies throughout her life. The extent to which her individual interests are fulfilled is continually shifting, causing changes in her overall interest level. It is not necessary for that interest level to remain continuously above the standard just described in order for her life to be successful. There may be times at which (say, because of a broken leg) she is unable to do many activities people can do or to pursue with some success the range of preferences that human beings can have. This does not mean that she does not have, on the whole, a good human life. What matters is that she is able to meet this threshold *on average* throughout her life.

It is important to note that the threshold interest level at which a child has a good human life is not the same as the threshold level at which that child's life is worth living. This is a more stringent standard. One may only be able to do some of the activities that humans can do or satisfy some of the preferences that humans can have and still have a life that is worth living. But such a life does not meet the threshold for what we think of as a truly successful human life. One must be able to pursue more goals more successfully to achieve this standard. If a life meets this threshold, it is a life worth living. But a life worth living may not be one that is successful by the above standard.

The fact that these are two distinct standards will become very important later in this project.

Secondly, I want to explicitly claim, although it seems obvious, that an individual is better off having a higher overall interest level than a lower one. If an interest level reflects the extent to which a child will be able to have a successful human life, she is better off the higher her overall interest level is. This is a minor, nearly tautological point. It will, however, be useful in the later stages of my argument.

## 2 The obligations of parents

Commonsense morality holds that parents have obligations to their children. Unless there are extenuating circumstances, we find a mother who neglects her child to be morally blameworthy. We generally consider a father who protects and promotes his child's interests to be worthy of moral approbation. These are reasonably stable intuitions that are shared by most people. A thorough philosophical defense of the existence of parental obligations, however, would be a significant task that is far beyond the scope of this project. I will therefore take the fact that parents have obligations to their children as a fundamental assumption of this chapter. If, however, a defensible theory of the cause and content of parental obligations can be found, this will lend support to the notion that these duties do, in fact, exist.

There are at least two different methods by which an individual can acquire parental obligations. First, he can act in a way that results the creation of a new human being. This is the most common way of generating parental duties. Secondly, an individual can obtain these duties by acquiring responsibility for a human being that already exists. Adoption is a typical example of this second method. Although people generally agree that parents can and do acquire obligations through these methods, there is no such consensus about the cause or the content of those duties. I therefore focus on these two issues in order to better understand the duties that parents have regarding their children. What actions or states of affairs generate parental obligations? What do those obligations consist of? In this chapter, I analyze several theories of parental obligations and offer some answers to these two questions based upon that analysis

## Characteristics of Parental Obligations

There are at least six characteristics of parental obligations that a theory of such obligations must both allow and explain. A parent's duties are (1) not easily overridden. They require (2) partiality to the parent's own child. These obligations sometimes (3) may be voluntarily accepted. They can (4) rarely be revoked, but (5) are temporally finite. Finally, parental duties are (6) nearly always preventable. In this section, I will give examples illustrating that these six things seem to be true of parental duties.

This set of features can then be used as a tool for comparing and critiquing theories of the cause of these duties. There are two different standards that can be set using these characteristics. First, the candidate theory must *allow* for each characteristic. That is, assuming that the candidate theory is correct, it must be possible for parental obligations to have each of the characteristics that they do. Second, the candidate theory must explain why each characteristic is a feature of parental obligations. In other words, the theory must account for the structure that these obligations have. The more of the six characteristics a theory allows for and the more of these characteristics that the theory can substantively explain, the more plausible that theory of parental obligations is.

1. *Seriousness.* An obligation can be quite serious or not very serious; that is, some obligations are very compelling and are not easily overridden, while others are less compelling and are more easily overridden. For example, the duty that a person has to refrain from killing another person is a very serious duty. It is an obligation that must be fulfilled in nearly all circumstances, and can only be overridden under extreme circumstances, such as those of war or self-defense. In contrast, the obligation that one has to pick up a piece of litter she sees lying on the sidewalk is not a serious one. This

kind of obligation can be overridden by almost any other consideration. There is a spectrum of the seriousness of obligations, with the seriousness level of most duties falling between these two extremes. The duty to return a favor to a friend, for example, may be of moderate seriousness. Such an obligation morally may be overridden in some, but not all, circumstances.

Parental obligations are very serious ones. There are few instances in which these obligations can be overridden. A parent's overall obligation to care for her children holds in nearly all cases. Parents are often asked to make significant sacrifices for the good of their children. They are expected to dedicate large amounts of time, money, and energy to their upbringing. It is only when the cost to the parents becomes extraordinarily high that that cost overcomes the overall obligation. For example, if the fulfillment of the parental duty would require the parent's death, the obligation might be (but is not necessarily) overridden.

This is not to say, however, that the parent's duty is as serious in individual *instances* as it is *overall*. A parent can choose the way in which he fulfills his overall duties. He can choose to go out to a movie rather than reading to his child one evening, as long as he reads to her often enough. He can decide to give in to his child when she throws a tantrum occasionally, as long as he teaches her discipline in the long run. These are examples of instances in which a parent's duty can be overridden provided he ensures that his overall obligation is fulfilled. It therefore seems that a parent's overall obligation is a very serious one, but in many individual instances, it can be overridden.

2. *Partiality*. Parents' obligations are partial; that is, parents have obligations to their own children that they do not have to children that are not theirs. A parent is not

only permitted, but at times is morally required, to favor the interests of his own child over the interests of the children of others. James Rachels observes, "Parental love is partial through and through. And we think there is nothing wrong with this; in fact, we normally think there is something wrong with the parent who is *not* deeply partial where his own children are concerned" (47). For example, a mother is morally permitted to rescue her own daughter first from a burning building. A father who regularly gives his children's dinner to the orphans down the street acts wrongly despite the good he does for the orphans. A theory of parental obligations must allow for the partiality of those obligations and should explain why this is the case.

3. *Voluntary Acceptability.* It is possible for an individual to take on the duties of a parent voluntarily. The most common example of acceptability is adoption. A person can adopt a child, and thereby accept parental obligations, when another person gives up her own parental duties. An individual can also adopt a child without the other parent relinquishing her duties, as happens in the case of a stepparent who takes his spouse's children as his own. In other situations, an individual can choose to temporarily assume parental obligations, as a foster parent or legal guardian does.

This feature of acceptability is not symmetrical. That is, once an individual has voluntarily taken on parental responsibilities, she cannot simply choose to revoke that acceptance. Morally, an adoptive parent must either fulfill her obligations or transfer them to someone else. She cannot just decide to nullify those duties in the same way that she decided to acquire them. One possible exception to this asymmetry may be the case of foster parents. Foster parents often take on parental obligations for a brief period, with



the understanding that they will have those duties only temporarily. In most cases, however, the acceptance of parental obligations is a one-way proposition.

Further, the actual creation of parental responsibility is not entailed merely by a person's willingness to voluntarily accept that responsibility. It is also necessary for there to be a child to whom a would-be parent has those obligations. A couple waiting to adopt a child may be *willing* to accept parental obligations, but does not actually *have* those obligations until there is a child for them to adopt. Both the willingness of an individual to accept parental obligations and a child to be the object of those obligations are necessary in order for parental duties to be created in this way.

4. *Irrevocability.* Another feature of parental obligations is that they can rarely be revoked or abandoned. As will be discussed later, these duties may be transferred to another person if a willing acceptor can be found. However, a parent cannot nullify his obligations simply by deciding that he no longer wants them. A parent who fails to either fulfill or transfer these obligations is generally the subject of moral and legal sanctions. This feature is illustrated by cases in which a parent, even one who has given up legal custody of his children, can be required to help finance that child's upbringing through child support. Child neglect is another instance that shows the irrevocability of parental obligations. When a mother is found to have neglected her children, she is not asked whether or not she had decided to nullify her duties, but instead is assumed to have breached her obligations. It therefore seems that once a parent has obligations to a child, she cannot simply annul those duties, but must instead fulfill or transfer them.

5. *Finitude.* Generally, parental obligations are finite. There comes a point at which a parent is no longer morally responsible for the well-being of his offspring.

Legally, this cutoff is at age 18, when a person achieves majority. The moral delineation of the end of a parent's obligation is less clear, however. It is approximately the point at which a child becomes able to protect and promote her own interests that the parent is no longer obligated to do so. This point occurs at different ages for different children, so parental obligations end for different parents at different times. In nearly all cases, however, those obligations do cease to exist at some point.

There are a few cases in which parental duties may not be finite. Children who are significantly mentally or physically disabled may never achieve the ability to serve their own interests. In such circumstances, parents' obligations continue to exist for the duration of their children's lives. Many parents in these cases provide the resources needed for others to take day-to-day responsibility for their child. Even so, the obligation to protect and promote the child's interests is ultimately theirs, and lasts beyond the standard 18-20 years.

6. *Preventability and Voluntariness.* Finally, the generation of parental obligations can always be prevented. If an individual does not want to have parental duties, it is possible for her to act in a way so as to avoid the creation of those duties. One cannot be forced to take responsibility for an existing child. Adoption is an act of voluntary acceptance. One can avoid acquiring obligations to a new child by choosing not to participate in any activity that would result in the creation of a child. In the rare instance that one is somehow forced to conceive a child, such as in the case of rape, abortion is generally an ethically acceptable method of preventing any duty that would be generated by deciding to have the child. The prevalence of the belief that abortion is

morally permissible in the case of rape suggests that these duties *should* be preventable even if they are somehow forced on someone in fact.

One unusual kind of case in which parental obligations are prevented is sperm donation. In these types of cases, a man donates his sperm for the purpose of creating a child. Despite this involvement in the procreative process, however, the donor does not generally acquire any of the obligations of parenthood. Most sperm banks have either anonymous donation policies or confidentiality clauses that make it impossible to connect a sperm donor to any possible offspring. This common practice clearly sets the precedent that the act of sperm donation does not cause the father to acquire parental duties. There is one sperm bank, The Sperm Bank of California, that does have an identity-release program, meaning that when a child conceived using donated sperm turns 18, she may be informed of her father's identity. However, because participation in the identity-release program is voluntary and because the father's identity cannot be released until the child turns 18, this program does not contradict the claim that sperm donation does not generate parental obligations. The fact that parental duties can be prevented under these kinds of circumstances will be important in the analysis in the next section.

A consequence of this feature of parental duties is important to note. Because these obligations are preventable, their generation is almost always voluntary, as long as the potential parent is competent and informed about the possible consequences of particular types of actions. That is, a parent can decide whether or not she wants to acquire parental obligations. She can make this choice explicitly, by taking responsibility for a child through adoption, for example. She can also make this choice implicitly, by knowingly acting in a way that could result in the creation of parental obligations. If an

individual chooses not to act in a way that prevents the generation of these duties, she may be indirectly but voluntarily bringing them about.

One could claim that the generation of parental obligations is not voluntary in a case in which a woman who does not believe that abortion is a morally acceptable option becomes pregnant as a result of rape. In such a case, these obligations may be put upon her without any choice of her own. However, it could be argued that because the woman makes the decision not to have an abortion, she does voluntarily accept the obligations that follow from that decision. It is true that, because of another's wrongdoing, she is put in a very difficult position, having to choose between doing something she considers immoral and accepting parental obligations. However, unless she is somehow coerced into having the child, her choice to give birth remains voluntary. Even in this exceptional case, then, the acquisition of parental obligations is in some way a choice.

### **Existing Theories of Parental Obligations**

The various theories of parental obligations can be divided into two groups: natural theories and social theories. Natural theories suggest that these obligations have a natural source, such as the biological relation or the causal connection between a parent and her child. According to these models, there are certain kinds of facts about the world that impose duties on certain individuals. That is, particular states of affairs can entail the creation of obligations when they obtain. Such theories rely on there being some kinds of natural law.

Social theories propose that parental obligations are socially grounded, that is, based upon social constructs such as consent, hypothetical contracts, or proximity. These

models hold that duties are generated by choices that individuals or society make rather than by facts about the world. There is nothing inherent about the state of the world that causes these obligations to occur. Instead, we choose to take on or to allocate these obligations as we deem appropriate. Social theories have some advantages over natural theories, but also have some problems of their own. In this section, I will summarize five theories of parental obligations and evaluate the ability of each to allow and account for the six features of those obligations identified above.

### **Natural Theories**

*Biological Model.* According to this theory of parental duties, “each person ought specially to care for any child who is his or her genetic offspring” (Abegg, 129). It is the unique biological connection between a parent and a child that brings about the unique obligations a parent has regarding his child. The biological model holds that “one acquires a parental responsibility when one is the progenitor of an offspring: i.e. whenever one’s own genetic material combines with that of another to form a fertilized ovum or conceptus.” (Winston, 40) The model focuses particularly on the *genetic* link between parents and their children because this is the only biological factor that is common between mothers and fathers. Other biological facts, such as the fact that the fetus grows within its mother’s womb, cannot be the basis of parental obligations since a father does not have that kind of connection to the child.

Initially, this seems like a plausible description of the source of these obligations. It fits neatly with the most common way of acquiring parental obligations – when a man and a woman conceive a child using their own genetic material and bring that child into

the world. The biological model explains why, in these cases, a child's parents have a duty to care for her. This explanation for the source of these obligations therefore has intuitive appeal.

Looking at how well the biological model meets the two standards identified above – that is, looking at how well it allows and accounts for the six features of parental obligations, will make it possible to evaluate the plausibility of this theory. The first feature of parental obligations identified above, their seriousness, is not well explained by this model. The biological connection between a parent and his child does not have any implications for the seriousness of the obligation that that connection generates. There is no reason inherent in this relation that prevents parental duties from being easily overridden. The biological theory therefore allows parental obligations to be serious, but inadequately explains this characteristic.

This theory, however, can account for the partiality of parental obligations. If the source of these duties is the genetic relation between a parent and his child, then a parent only has these duties to those children that he has that specific biological relation to. He does not have responsibility for children who are not genetically related to him because he does not have the requisite relation to those children. Therefore, a parent may, and in fact *should*, be partial to those children who are his genetic offspring, according to the biological model of parental obligations. This feature, then, is nicely explained by this theory.

Voluntary acceptability is a significant problem for the biological model. If parental obligations were only coextensive with the genetic relation – if they could only be generated by that relation – it would be impossible for anyone to voluntarily take on

parental obligations to a child who is not biologically her own. Yet this acceptance of parental duties occurs often, as in instances of adoption and foster parenthood. “Hence,” according to Onora O’Neill, “the basis of parents’ obligations and rights cannot lie solely or necessarily in a biological relationship between child and parents” (26). Because the biological model alone does not explain how one can voluntarily accept parental obligations, it is insufficient to explain the common practice of adoption. It is worth noting, however, that the model does not preclude the possibility that an additional source of parental obligations that covers such cases exists.

The inalterability of the genetic relation does entail the irrevocability of parental obligations under the biological theory. Because the biological connection between a parent and his child cannot be revoked, neither can the obligation of a parent to his child. Further, this perspective aligns neatly with the idea of revocability through abortion. The obligations of parenthood can only be severed by eliminating the genetic connection between parent and child, which occurs in the case of abortion.

This model fails to explain the finitude of parental duties. As noted earlier, parental obligations generally cease to exist when the child becomes an adult. In contrast, the genetic relation between a child and parent does not end. Nothing in the biological model, therefore, accounts for the finitude of parental obligations. If parental obligations were derived solely from this relation, those obligations also would not end. Because parental obligations are, in most cases, finite, the biological model must be, at best, an incomplete account.

Finally, the biological model explains many, but not all, instances of the preventability of parental duties. One can avoid acquiring parental obligations by not

bringing about the existence of biological offspring. The biological model, then, allows for preventability and voluntariness. However, this theory does not explain the special case of preventability described above: that of sperm donation. If it were the biological connection between parents and children that generates parental obligations, sperm donors would not be able to prevent the generation of obligations for their genetic offspring. We do not tend to think, however, that this is the case. The biological theory, then, only partially explains this feature of parental obligations.

*Causal Model.* Another natural theory of parental responsibility is the causal model. According to this model, a parent has an obligation to care for a child because he is the efficient cause of that child's vulnerability. As Nelson explains, "those causally responsible for the child's existence – and hence, her existence as a morally considerable being at serious risk of death, suffering and other harms – have a particular obligation to attempt to preserve their children from such risks" (50-1). In other words, because the child's vulnerability to harm can be causally linked to the parent's act in bringing the child into the world, the parent is obligated to prevent that harm by caring for the child. This argument relies upon the intuitive notion that causal responsibility and moral obligation are closely connected (Nelson and Nelson, 93). It seems true that "one can incur special obligations to another by actions which place the other party at risk" (Nelson, 57). For example, if I persuade a friend who has never been camping before to come along on a backpacking trip, it seems that I have an obligation to act to prevent her from entering harm's way if it is possible to do so. Similarly, a parent must act to prevent harm to his child if it is possible to do so.



The causal relationship between the individual and the child must be of a certain kind in order to bring about parental obligations under this model. Without this qualification, everyone with any causal role, no matter how small, in the creation of a child would acquire an obligation to that child (Winston, 48), which would clearly be a fundamental problem of the theory. It is possible to avoid this difficulty by specifying that one must have a *particular* causal relationship to the child's vulnerability in order to have parental responsibility for that child. In order to avoid entering into an in depth discussion of theories of causality, I will simply say that one must have an *immediate* causal role in creating that vulnerability in order to gain parental obligations. She must be "driving force" behind the creation of that child's vulnerable state. The inclusion of this constraint means that under the causal model of parental obligations, a couple who uses assisted reproductive technologies to get pregnant has duties to the resulting child, whereas the mutual friend who introduced them and the IVF doctor performing the procedures do not despite their causal roles in the child's existence.

Jeffrey Blustein argues against the causal theory. He suggests that proponents of this model hold that parents are to blame for the harm that would come upon their child if neglected because they are in the best position to "make a difference between this harm's occurring and its not occurring" (144). Blustein objects to this version of the causal model by arguing that this theory is actually based upon sociological convention. The only reason that parents are in this position, he suggests, is because they traditionally are expected to do so. This objection, however, does not really seem to directly address the causal theory. In fact, it seems to respond to an entirely distinct argument, one concerned with proximity rather than causality, that he attributes incorrectly to proponents of the

causal theory. I will discuss Blustein's view and his proximity argument later in this section.

The seriousness of parental obligations is accounted for by the causal model. This theory bases a parent's duties on the causal connection between a parent and her child's vulnerability. Generally, when one person acts in a way that has the potential to cause harm to another person, she has a responsibility to do what she can to prevent harm to him and to compensate him for any harm that does occur. This obligation, intuitively, is a serious one. Legally and ethically, we tend to think that this duty must be fulfilled in all but the most exceptional circumstances. Although the obligation may be overridden in individual instances, one must overall find a way to protect the person that she could harm and to make amends for any harm that is done, just as a parent must overall be responsible for the well-being of her child.

The causal model, like the biological model, accounts for the partiality of parental duties. If it is the causal connection between the needs of a child and the actions of the parent that creates the obligation, then parents have obligations to those children whose needs they have caused that they don't have to children whose needs they have not caused. Further, this model not only *allows* parents to be partial to their own children, but, by saying nothing about obligations to other children, implies that parents *should* be partial. This feature of parental duties therefore makes good sense under the causal model.

Again like the biological model, this theory does not provide any mechanism by which an individual can voluntarily choose to accept the responsibilities of parenthood. The parental obligation, according to the causal theory, is tied to the causation of

vulnerability. Unless one is the cause of a child's vulnerability, that is, unless he creates a situation in which a child needs care, a person does not acquire this kind of obligation under this theory. However, as noted above, voluntary acceptability is a feature that parental duties seem to have. The causal theory, then, does not explain why parental obligations have this characteristic.

Like the biological theory, the causal theory of parental obligations can fully explain the irrevocability of those obligations. Once an individual has caused the existence of a vulnerable child, the duties generated by that action cannot be annulled because that causal connection cannot be removed. If the causal relation between a parent and his child creates parental duties, the obligations generated by that relation cannot be abandoned unless that relation is changed. These obligations, then, under the causal model, are irrevocable.

The feature of finitude can be accounted for by this model. When a child is able to serve his own interests, he is no longer vulnerable to harm in the same way he was when he was a child, so the parent no longer has an obligation to prevent harm from coming to him. One could object that people are vulnerable all through their lives and in every case those individuals' parents play a causal role in that vulnerability because they caused them to exist. For example, if a twenty-six year old philosophy graduate student is in danger of suffering severe malnutrition, she is vulnerable to harm, and her parents had some role in that being the case. However, as noted above, a parent must be the *immediate* cause of her child's vulnerability in order to be obligated to compensate for that vulnerability. In this case, it is more likely that the student herself, not her parents, is the driving force behind her vulnerable situation. According to the causal theory, then,

her parents have no obligation to give her money for food. The finitude of these duties is therefore explicable by this model.

Under a causal model, it is possible for an individual to prevent the acquisition of parental obligations by preventing the creation of a child in need of care. The causal model therefore allows these obligations to be preventable – one must only act to ensure that she does not bring a child into the world. This model also has the advantage over the biological model that it can explain the special instance of sperm donation. Although the gamete donors in such cases are a part of the causal chain that leads to the creation of a vulnerable child, these donors are not *immediate* causes. It is the individuals seeking to create a child using these technologies who are the driving force behind bringing the child into the world and therefore of that child's vulnerability. As a result, it is they who acquire parental duties through their causal role.

The biological and causal models have many similarities, perhaps because they are both natural theories. Both are able to explain adequately why parental obligations are partial and irrevocable. Both also have difficulty accounting for the fact that these obligations can be voluntarily accepted and that they are intentionally acquired. Even so, the causal model has three significant advantages over the biological model. First, it makes better sense of the seriousness of parental obligations, explaining why these duties are not easily overridden. Secondly, it explains why these obligations are finite. Thirdly, the causal theory more accurately reflects our intuitions about sperm donation. It allows men who use reproductive technologies to take on parental obligations rather than applying them to sperm donors. Of these two natural theories, then, the causal model

seems more plausible. I will now turn to three social theories of the source of parental responsibility.

### **Social Theories**

*Proximity Model.* The proximity theory of parental obligations holds parents have a duty to care for their offspring because they are in a better place than anyone else to do so. If neglected, a child experiences harm. Given the way that our society is structured, the child's parent has an obligation to prevent that harm because she is in the best position to affect whether or not the harm occurs. As noted above, Blustein unintentionally proposes this argument in his critique of the causal theory (144). He claims that the proximity of children to their parents is a social convention. It is because of this convention that parents have so much influence over their children's well-being and therefore that parents have the obligations that they do.

There are several possible meanings for 'proximity' in this context. It could refer to the physical closeness of a parent and his biological child. This definition would certainly be applicable at the child's birth, but would not be useful after that time: there are many instances in which a child is not, in fact, physically near his biological parent. The parental obligation is not broken at such times. 'Proximity' more plausibly, then, refers to the social relationship between parents and children. In our society, children generally live with their parents and have a close relationship with them. It is because of this conventional relationship that parents are in the best position to care for their own children and therefore why they have the obligation to do so, according to the proximity theory.

One potential difficulty for this theory is that it often is *not* the case that parents are actually best able to care for their children. There may be some things, such as food and shelter, that parents can almost always provide effectively. However, there are other things, such as emotional support, discipline, and the opportunity for experiences for which this is not clearly true. For these kinds of goods, there may be others who are not proximate to the child who could, in fact, do a better job providing them (Rachels, 53). Some people just are naturally better parents than others, having a special ability to influence and connect with young people. It is likely that someone who is naturally a good parent could do a better job promoting the interests of a child even without the closeness a parent and child traditionally share.

The proximity model only partially explains the seriousness of parental obligations. Essentially, the theory holds that a parent's duty is based upon the general duty to prevent harm. The duty to prevent harm is typically held to be a relatively serious one, but it can be overridden when the cost to the agent becomes too high (Feinberg, 128-9). For example, if I see a child walking onto a busy street, I have a rather serious obligation to prevent that harm if I am the individual nearest to that child, that is, the individual in the best position to do so. However, if stopping the child from running into the street would require me to injure myself, the obligation to prevent that harm can be overridden. As noted above, parents can be required to make extreme sacrifices for their children – their obligations are very serious. Those parental obligations are harder to override, it seems, than the proximity model would suggest.

This model also only somewhat accounts for the fact that parents can, and in some cases should, be partial to their own children. A parent generally only has the special

proximate relationship described above with her own biological offspring. Because it is this relationship that causes the existence of parental obligations, she only has these obligations to her own offspring. She therefore can be justified in acting partially toward them. What the proximity model does not explain, however, is why social relationships are structured so that parents are put in the requisite proximal relationship with their own offspring rather than the biological offspring of others. There is no inherent reason, according to this theory, that parents and children should be paired in this way (Blustein, 144).

One strength of this model is that it is able to explain why parental obligations can be voluntarily accepted. If these obligations come from the proximity of a parent and a child, an individual can situate herself in this proximal relationship and thereby acquire those duties. This nicely reflects what seems to happen in the case of adoption or foster parenthood. An individual can voluntarily bring a child into her home and form a relationship with it, resulting in the creation of a parental obligation. The fact noted above that a child must be available to voluntarily accept responsibility for is also understandable under this theory. If there is no child for a potential parent to achieve a proximate relationship with, no obligations are generated.

The irrevocable nature of parental obligations, however, cannot be explained by the proximity model. If it were the proximate relationship between parent and child that generates these obligations, the termination of that relationship would result in the termination of that obligation. A parent would simply be able to distance herself from her child and therefore be able to revoke her duty. As noted above, this is not a

characteristic that we think parental obligations should have. Under most circumstances, these duties are irrevocable, a feature that the proximity theory cannot account for.

The proximity model both allows for and explains the finitude of parental obligations. Although the proximate relationship between a parent and child may continue long past the point at which the child achieves majority, the parent may cease to be the individual best situated to promote that child's interests. As the child becomes older, she achieves the ability to serve her own interests. As a result, she probably becomes the individual best able to do so. The obligations of the parent are therefore finite, ending around the time the child becomes able to care for herself. The proximity model successfully explains why this is the case.

Preventability and voluntariness can be accounted for by this theory. All one would need to do in order to prevent taking on parental obligations is to prevent the creation of the special proximate relationship with a child. Any instance of the creation of these duties would therefore be a voluntary one. This could be problematic, however, in that it would make parental obligations *too* preventable. That is, under this theory, there is no imperative for a parent to form this relationship with her biological child. We tend to think that a parent cannot avoid parental obligations simply by choosing to not have a proximate relation to her children, unless she transfers them to someone else. The proximity model cannot support this intuition.

*Contractual Model.* According to this model, parental obligations are generated when an individual enters into a contract that consists of those obligations. In other words, an individual acquires these duties when she agrees to take on the responsibility of



caring for that child. At some point in the process of conceiving or adopting a child, a parent makes a contract that results in these obligations. Once the individual has entered into such a contract, he is obligated to abide by it – that is, to care for the child. This is a social theory because it is based upon a human convention – the convention of making a parental contract – rather than upon some kind of natural law.

A complicating factor of this theory is that the contract it rests upon is almost always an implicit one. Parents do not take an oath or sign a written document that confers parental duties on them. Instead, the contract just seems to appear. Because it not made explicitly, a several ambiguities about the contract itself exist. One obvious issue is that of the identity of the contracting parties (Nelson and Nelson, 190). As Virginia Held points out, “it stretches credulity even further than most philosophers can tolerate to imagine babies as little rational calculators contracting with their mothers for care” (120). Even if those babies were understood to be *hypothetical* contractors, she suggests, the idea is unintuitive. Alternatively, one could argue that a parent makes the contract to care for his children with some interested third party, such as society. Although this view does not have the disadvantage of requiring hypothetical baby contractors, it has other problems. When a parent agrees to care for his child, it doesn’t really seem that he makes that commitment to society, but rather to the child herself. Further, it is unclear why a third party would have an interest in parents caring for their children or how the contract for them to do so would be made in absence of that third party (such as on a desert island, for example).

Several additional questions surround the contractual model. When is the parental contract made? (O’Neill, 28) How is it made? How do we know that it is made? The

implicit nature of the contract means that these questions are difficult to answer. The most plausible way to think about these issues is to correlate the making of the parental contract with the decision to conceive or adopt a child. That is, when an individual makes the choice to conceive or to adopt, he agrees to a contract that requires him to take on parental obligations. At the point at which a child is actually conceived or a child is adopted, that contract comes into existence and parental obligations are generated. If not child is conceived or a child does not come available for adoption, the individual does not acquire parental obligations, despite his willingness to do so.

The contractual model explains easily the seriousness of parental obligations. When an individual agrees to a contract, an obligation is formed. Unless the individual is released from the obligation by the other contractor, the individual must fulfill the terms of the contract. That duty is almost never overridden. There may be some cases in which there are extenuating circumstances such that a contractor may be morally justified in failing to fulfill her end of the contract. In such cases, however, she is then responsible for adequately compensating the other contractor for her failure. Her duty was not overridden overall, then, just outweighed at a particular time. The contractual model, then, makes sense of this feature of parental obligations.

This model allows for, but does not fully explain, the partiality of parental obligations. Once a contract is made, the parent has contracted for the care of one particular child, necessitating partial treatment of that child. In this sense, the contractual theory allows a parent to be partial to her own children. What the model is unable to account for, however, is how an individual decides which child she contracts to care for. There is no apparent reason why the contract is made to care for one's biologically

related children or for a particular adopted child. How does a parent defend her choice to contract for some children and not for others? This aspect of partiality is not explicable by the contractual model.

The voluntary acceptance of parental obligation is adequately explained by a contractual theory. This model seems true to what goes on in prototypical cases of acceptance of parental obligation – an individual's choice to adopt a child could easily be understood as an agreement to care for that child. The contractual model also fits well with the fact that in order for one to voluntarily accept these duties, one must have a child to accept them for. If the child being cared for is considered to be a second contractor, there are two parties involved in the contract just as there are two parties involved in parental obligations. This model, then, nicely accounts for this feature.

Contracts generally imply irrevocability, unless the terms of revoking the contract are stated explicitly in the contract itself. The contractual model therefore can explain this feature of parental obligations. Once a parent agrees to the contract to care for a child, she does something morally wrong if she fails to fulfill her end of the contract. However, because it is unclear under the contractual model who it is *who* actually contracts with the parent, it is ambiguous whose responsibility it is to enforce the contract. A hypothetical child contractor has no power to require her parent to fulfill his end of the contract, making it easy for that parent to revoke the contract. If, instead, society is the other contractor, it may have some ability to enforce the parent's contract. This model therefore explains why parental obligations should not be revoked, but may not account for how they are enforced.

The contractual model allows for, but does not truly explain, the finitude of parental obligations. Here, again, the ambiguity of the contract in question creates difficulty for this model. The contract the parent agrees to could feasibly be a time-limited one. However, there is nothing built into the model that explains *why* the parental contract lasts approximately 18 years. Further, it does not require that it do so. Under this theory, then, the contract to care that the parent agrees to could just as easily be 18 months.

The prevention of parental obligations is clearly possible under the contractual model. All one would need to do in order to avoid these duties would be to refuse to agree to the contract. If it is the decisions to conceive or adopt that is associated with the parent's implicit agreement, then the parent need only prevent conception or adoption in order to prevent the acquisition of parental obligations. This model, however, may have too permissive a standard of prevention. It does not preclude the possibility that a parent could conceive a child but explicitly refuse to agree to a parental contract. As a result, a parent could choose to bring a child into the world, but avoid taking on the obligations associated with that choice. Intuition says that the prevention of these duties should not be that easy.

*Voluntary Undertaking Model.* Blustein argues that parents have obligations to their children because they choose to accept the duty to care for them. It is a voluntary choice on the part of the parent that generates parental obligations. Blustein claims that "it is typically the decision to undertake parental duties that is entailed by the decision to procreate" that results in the existence of those duties (145). That is, an individual

voluntarily undertakes the obligations of parenthood when they choose to become a parent. This theory as stated by Blustein applies to cases of procreation. However, it could easily be extended to include instances in which an individual decides to take on parental obligations through adoption.

This model differs from the contractual model in that it does not require a second party with whom the parent makes an agreement. Under the contractual model, a parent contracts with either the child or society to care for a particular child. In contrast, under the voluntary undertaking model the parent simply chooses to do so. Although an obligation to protect the interests of a child is generated by both theories, the voluntary undertaking model demands only a decision of the parent and does not involve agreement with another party. This is an advantage of this model since, as noted above, there is no intuitive second party for the parent to contract with.

Despite this difference, the voluntary undertaking model has several problems analogous to those of the contractual model. As Onora O'Neill has pointed out, "it is difficult to know when one has, in fact, undertaken those obligations" (28). Further, it is unclear how the undertaking occurs and how others can know it has occurred. Finally, it cannot account for cases, such as those in which contraception fails, in which no decision to procreate is made. As suggested for the contractual theory, the choice to have a child is a plausible signal for the undertaking of these duties. However, if the choice to conceive is not explicitly made, it is unclear how and when the undertaking of parental obligations takes place.

This model allows for, but does not really explain, the seriousness of parental obligations. When a parent chooses to take on these duties, he makes a commitment to

fulfill them. However, there is nothing inherent in the voluntary undertaking model as defined above that requires this commitment to be a serious one. An individual could take on obligations, but stipulate that they be easily overridable. In response, it could be argued that parental obligations are of a kind that can *only* be undertaken if they are undertaken seriously. If one fails to take the obligations seriously, he has not truly taken on this special kind of duty. Under this understanding of parental obligations, although there may be individual instances in which they may be overridden, these obligations must be fulfilled overall.

Partiality is allowed by the voluntary undertaking model. Like the contract theory, this theory accounts for this feature of parental obligations once those obligations are undertaken. A parent only agrees to take on those duties for certain children – most often those who are biologically her own. She is therefore justified in treating those children partially. What the model fails to account for, however, is why a parent agrees to take responsibility for the well-being of some children and not others. There is nothing in the idea of voluntary undertaking that explains why parents generally choose their own biological offspring as the subjects of their parental obligations.

Voluntary acceptability is, of course, well accounted for by a voluntary undertaking model. A parent can choose to accept parental obligation as in cases of adoption, by voluntarily undertaking them. This is the classic use of a voluntary undertaking model. It has the additional advantage that the agreement is explicit. Because it is given at a certain time in a way recognizable by observers, agreements that have this characteristic avoid many of the ambiguities that the voluntary undertaking

model has. It is necessary to fall back on an implicit acceptance of parental obligations in order to explain cases in which parents acquire these obligations through procreation.

The voluntary undertaking model adequately accounts for the irrevocability of parental obligations. In most cases, when one chooses to take on an obligation, he cannot simply choose to abandon that obligation in an analogous way. It is something about the nature of obligations that causes this asymmetry. This characteristic seems to be true of any kind of voluntary undertaking, and so would also be true of parental obligations under this theory.

The finitude of these obligations is allowed but not really explained by the voluntary undertaking model, just as it is by the contractual model. The voluntary undertaking model *allows* a parent to agree to take responsibility for a child's well-being for a finite amount of time. The parent could simply make the agreement under those terms. However, nothing about this model ties the length of parental obligations to the amount of time for which a child needs the assistance of others, as was suggested above. The voluntary undertaking theory therefore cannot fully justify the finitude of parental obligations.

This model also treats preventability in a way similar to the contractual model. Parental obligations, according to the voluntary undertaking theory, are always preventable, because an individual can always choose not to undertake them by neither explicitly or implicitly agreeing to them. As is true of the contract model, however, the voluntary undertaking model makes the prevention of parental obligations too simple. By allowing anyone, including those who have chosen to bring a child into the world, to choose not to undertake these duties, the model is intuitively too permissive.

As was true of the two natural models, these three social theories have strong similarities. The proximity model is problematic in that it cannot account for the partiality, irrevocability, or finitude of parental obligations. Both the contractual and voluntary undertaking models allow for each of the six features identified in the first section. Both, however, fail to fully explain *why* these features are true of this special kind of duty and make parental duties too easy to prevent. Although it is very similar to the contract model, the voluntary undertaking theory avoids the unintuitive notion of a hypothetical baby or third-party contractor. While not a complete explanation of the cause of parental obligations, the voluntary undertaking model therefore seems to be the best of the three social theories.

### **A hybrid theory**

Of the five models of parental obligations initially identified, two seem more plausible than the others: the causal model and the voluntary undertaking model. The causal model nicely accounts for the seriousness, partiality, irrevocability, and finitude of these duties. It has the significant drawback, however, that it is unable to explain why it is possible for an individual to accept parental obligations for a child whose vulnerability she did not cause, and does not capture the voluntary nature of these obligations. The voluntary undertaking model, in contrast, makes sense of the acceptability and voluntariness of parental obligations. However, it does not explain why these obligations are partial, irrevocable, finite, and preventable.

Essentially, the causal model truly explains many of the characteristics of parental obligations that the voluntary undertaking model allows but does not require. It demands



that the obligation be serious and irrevocable. It does not set an absurdly easy preventability standard. It also allows for a parent to defend her choice of which child she should treat partially. What this model lacks, however, is a way for people to voluntarily accept obligations through adoption, and an explanation of the intentional aspect of doing so in the “normal” way. These features are a significant part of the generation of parental duties.

On the other hand, the voluntary undertaking model includes the elements that are left out of the causal model. It obviously explains the voluntary acceptance of parental obligations and accounts for the intentional character of the decision to have children. It is unable, however, to explain why the obligations have the structure they do. That is, it does not put any constraints on the characteristics that parental obligations should have. It allows, but does not require, these obligations to be serious, partial, and finite. The voluntary undertaking model fails to account for the shape of parental duties because it puts few restrictions on the obligation a parent chooses to undertake.

So, despite the strengths of these two models, neither is sufficient alone. Neither can completely justify the six features of parental obligations. It seems, therefore, that a blending of the two models is needed to arrive at a satisfactory theory of these obligations. As I stated at the beginning of this chapter, there are two ways in which an individual acquires parental obligations. He can act in a way that brings a new child into existence or he can take responsibility for an existing child. By taking the strengths of the causal model and the voluntary undertaking model, it is possible to arrive at a satisfactory theory of the source of parental obligations for each of these two methods of acquiring those obligations.

I will call this hybrid model the *Voluntary Causal* model of parental obligations. This model holds that an individual chooses to accept parental duties when she acts in a way that results in the creation of a vulnerable life. That is, by voluntarily acting in a way that causes a child to be vulnerable to harm, she takes on an obligation to prevent that harm. Recall that this is not an argument for the existence of parental obligations, but rather is an attempt to characterize these obligations in a way that both allows for and explains the features we generally take these obligations to have. The voluntary causal model of parental obligations accounts for these features better than either the causal model and the voluntary undertaking model alone.

This hybrid theory has the advantage over the causal model that it captures the intentional nature of parental obligations. It accounts for the fact that these obligations are not simply consequences of particular actions, but rather result from choices that individuals make. The voluntary causal model is also more defensible than the voluntary undertaking model, but for different reasons. This new model grounds parental obligations in causal responsibility for a child's vulnerability, thereby giving structure to and imposing constraints on those obligations. It sets contentful guidelines for what it is that a parent voluntarily agrees to in a way that the voluntary undertaking model is unable to do.

This model works whether one is taking on parental obligations via procreation or adoption. That is, it can explain why parental obligations are as they are regardless of which of these two ways they are generated. When an individual acts in a way that results in conception, she makes a choice to cause and to be responsible for a child's vulnerability to harm. That choice may be implicit, but occurs nonetheless. In cases of

adoption, the choice to take responsibility for a child's vulnerability is generally explicit. When taking on parental obligations for a child who already exists, an individual is creating obligations that must take a pre-established form. Those obligations must take the same form as the obligations of the individual who brought the child into the world, because the individual who is adopting essentially takes over the obligations of the biological parent. The adopting parent's duties should therefore be analogous to those of a natural parent. Those obligations therefore have the same structure and are subject to the same constraints as the obligations of a natural parent. As a result, both the structure and the intentional nature of parental obligations are captured by this hybrid theory for adoption as well as for procreation.

This hybrid theory, then, captures the best elements of the causal and voluntary undertaking models of parental obligations. It explains the two different methods of acquiring these duties in slightly different ways. However, both explanations involve the *voluntary undertaking of parental obligations in a way that is constrained by the causal relationship* between a parent and her child.

### **Transferability**

In order for it to be possible for a would-be parent to accept responsibility for a child who already exists in the way described above, parental obligations must be transferable from one person to another. In this section, I will explore the transferability of these obligations and discuss the circumstances in which such transfers are ethically defensible.

There are a number of kinds of cases in which parental duties are transferred from one person to another. Adoption is the prototypical example of this kind of case. In giving a child up for adoption, a parent transfers her obligation to the adoptive parent. She therefore no longer has the obligation. This feature of transferability can also be illustrated by a notion of community child rearing like that proposed in Plato's *Republic*. In Book V, Plato describes "rearing pens", isolated from the rest of the city, in which wet nurses would be responsible for caring for young children. Individual parents would have no obligation to care for their own offspring under such an arrangement. Laws recently passed in some states concerning child abandonment suggest another type of obligation transfer. These laws have decriminalized child abandonment at hospitals and are intended to encourage women to leave their unwanted children somewhere they can be cared for rather than in dumpsters or on doorsteps. In such a case, a woman transfers her parental duties to society at large.

In order for a parent to transfer his obligations, there must be someone *to whom* those duties are transferred. In the case of adoption, the adoptive parent takes on the obligations. In the case of Plato's rearing pens, parental duties would be transferred to the wet nurses who would work in these pens. And in the case of child abandonment, it is the government, representing society at large, who takes responsibility for the abandoned child. Further, the recipient of these obligations must accept them willingly. A parent cannot forcibly transfer his obligations to someone who does not want them. No matter how many children need adoptive parents, the responsibility of caring for those children cannot be thrust upon unwilling individuals. State governments have chosen to

willingly (if reluctantly) take on the obligation to care for unwanted children to prevent their death.

One additional issue is that of residual obligations. It seems true that although a parent can transfer her obligations, some small duty to that child may remain. A woman can put her child up for adoption and give up the responsibility for caring for him, but she may have a moral obligation to acknowledge that she is that child's biological mother years later when he searches for her. A man who takes on his new wife's children as his own, even without officially adopting them, may still have some duty to those children if he later divorces her. These residual obligations are very limited, but seem to exist in some cases.

There are at least two different ways of viewing the transfer of parental obligations. First, transferring one's obligations could be conceptualized as surrendering or giving up those obligations. Understood this way, the transfer is an abandonment of one's parental duties. Secondly, the transfer of parental obligations could be seen as the fulfillment of those duties. Bestowing one's obligations on another individual may be one of many possible methods of discharging them. Sometimes, the transfer of obligations is more like the former understanding: a morally problematic failure to fulfill one's duties. For example, consider a stable, nurturing 30 year-old who leaves her child at the local hospital. Unless the community in which she does so is set up to welcome such children, this kind of act seems like an abandonment of parental obligations. In contrast, in some cases, transferring parental obligations is more like the latter interpretation: a morally praiseworthy way of fulfilling one's obligations. Take, for

instance, a 14 year-old who brings a child into the world without a source of financial or emotional support. It seems that transferring parental duties through adoption is more like discharging those duties in this case.

So under what circumstances is the transfer of parental obligations abandonment of those duties and under what circumstances is such a transfer a method of fulfilling them? In other words, when is it ethical for a parent to transfer her obligations? I suggest that a parent should transfer her obligations when doing so promotes her child's interests at a reasonable cost. If a parent is aware that others will be able to better care for her child, morally she should transfer her obligation to them as long as they are willing to accept it and the cost to the original parent is not unreasonable. In contrast, a parent who is able to best promote the interests of her child by caring for him herself has an obligation to take on that responsibility if she can do so at a reasonable cost. In such a case it would be unethical for her to transfer her parental duties. Finally, if the child's interests would be promoted equally by the parent keeping or transferring her parental obligations, it seems that transferring those duties would be morally permissible, but not required.

As discussed in Chapter 1, there are many different factors that affect the extent to which a child has his interests protected and promoted. All of these factors must be taken into account when considering the impact that a particular decision could have on that child. Also, there are many different possible costs of transferring or of not transferring parental obligations in any given circumstance. Raising a child requires time, energy, money, and other resources that a parent could otherwise allocate elsewhere. There are emotional costs associated with adoption and abandonment that are difficult to estimate.

One could also argue that there are costs associated with *not* having a child. Forfeiting the joys of raising a young person and the resulting relationship could be for some a significant cost. All of these costs must be taken into account and weighed against the interests of the child. However, it is important to note that because a parent's obligations are very serious, as was argued above, these costs must be quite significant in order for them to outweigh those obligations.

### **The content of parental obligations**

Thus far in my account of parental obligations, I have talked about the *source* of parental obligations. I have, however, avoided any discussion of the *content* of those obligations. In this final section, I will draw some conclusions from the above analysis about what a parent's obligations consist of.

First, *a parent has the obligation to protect the interests of her child to a minimal degree*. Although a parent voluntarily undertakes parental duties, the terms of that undertaking are constrained by the causal relation between a parent and her child's vulnerability. As a result, those obligations are grounded in the child's vulnerability to harm. A parent has the obligation to protect the child from experiencing that harm. That is, a parent must ensure that the child's interests are protected to a level at which he does not experience the harm he is vulnerable to. I described this level – a “minimal degree” – at the end of Chapter 1. When a child has his interests protected to a minimal degree, he is able to have a successful childhood. That is, he should have a childhood in which he is able to do many of the things that fall within the range of normal childhood activities and in which his future-oriented interests are protected to the extent that makes it likely that

he will be able to pursue with some chance of success many of the range of preferences that a person may have in later life. By protecting a child's interest to this minimal degree, a parent is preventing that child from experiencing harm. Most people would agree that a parent has an obligation to at least protect the interests of her child to such a minimal degree.

Second, *a parent has the obligation to promote the interests of his child when he can do so at reasonable cost*. As indicated in the previous section, a parent may be ethically required to transfer his obligations to a willing acceptor who can better promote the well-being of her child if the cost of doing so is reasonable. Further, she is ethically required *not* to do so if by retaining those duties she furthers his interests. Together, these two conclusions indicate that a parent has a duty to make her child better off if it is possible for her to do so. That is, she has an obligation to promote the interests of her child, as long as the cost of doing so is reasonable. It is worth noting that this obligation applies not only to cases in which a parent could transfer her parental duties, but also to cases in which she makes other kinds of choices that may affect the child's well-being. The idea that parents must promote the interests of their children when it is reasonable for them to do so fits with our intuitions about parental obligations.

Together, these two obligations create an intuitive account of parental obligations. People generally agree that parents are supposed to provide their children with at least the things that they really need to have the opportunity to have a successful human life. Further, parents should provide their children with whatever else they can without significant hardship. The parental obligation to protect a child's interests establishes a lower limit on the extent to which the child's interests must be protected and the



obligation to promote a child's interests can require those interests to be advanced beyond that level. Therefore, if a parent fulfills her obligations, then, the child is guaranteed to have a minimal level of well-being and could be even better off than that.

As stated above, these two obligations define the content of parental duties only to a certain extent. They tell a parent generally what she must do for her child, but do not give specific details about how to fulfill her obligations. In Chapter 1, I discussed at length the interests of a child and proposed a contentful definition of those interests. Together with that definition, these two imperatives give substantive guidance to parents about the obligations they have to their children.

Parents, therefore, have obligations to protect and to promote the interests of their children. In the following chapters, I will show what the existence of these obligations entails for individuals or couples who are making decisions about conceiving a child. I will also demonstrate how they can be used as a foundation for creating an ethical appeal based upon the perspective of a future child that is relevant to the complicated ethical issues surrounding reproduction.

### 3 Wrongs, harms and obligations

The concept of harm has been clarified and fleshed out most thoroughly in contemporary philosophy by Joel Feinberg. In his well-known book *Harm to Others*, Feinberg defines harm and explores in detail the circumstances under which one person does harm to another. It is worth noting that Feinberg employs the concept of harm primarily as a tool to define when it is legitimate to limit the liberty of society's members. That is, his discussion concerns the defensibility of government interference in its citizens' private lives. Even so, the idea can easily be (and often is) taken out of that context and used instead as a moral claim. In this project I use the concept of harm in the moral rather than in the political sense. My conclusions, therefore, concern the *morality* of conception decisions, not the legitimacy of their *legislation*.

Feinberg defends a definition of harm that consists of two independently necessary and jointly sufficient conditions. An action causes harm if and only if both of these conditions are met. First, an individual's action must set back another's interest in order to harm him. According to Feinberg, an action sets back an individual's interest if "that interest is in a worse condition than it would otherwise have been in had the [action] not occurred at all" (34). As discussed in Chapter 1, a person has many different interests, each of which is at a particular level at any given time. Together, a person's various interests make up his overall interest level. The higher this overall interest level, the better off the person is and the lower this level, the worse off he is. An individual's interest level can be raised or lowered by another person's actions (and omissions). If one's action causes a decrease in the interest level of another, she causes a setback to his

interests. Such a setback is necessary for harm to occur according to Feinberg's definition.

The second necessary condition for harm is wrongdoing. An individual must act *wrongly* in setting back the other's interests in order to cause her harm. Feinberg claims that "one person *wrongs* another when his indefensible (unjustifiable and inexcusable) conduct violates another's right" (34). The focus on rights in this definition reflects the political orientation of Feinberg's claims. It is easy, however, to reframe this idea in moral terms by defining wrongdoing as a violation of moral principles. That is, when a person acts outside the constraints of established moral rules, he acts wrongly. Feinberg argues that "only setbacks of interests that are wrongs, and wrongs that are setbacks to interests, are to count as harms in the appropriate sense" (36). That is, one must not only set back the interests of another in order to harm her, but must do so wrongly. Causing a setback of interests and being done wrongly are the two independently necessary and jointly sufficient features that an action or omission must have in order for that action or omission to be a harm.

Not all setbacks of interests are wrongs. In some cases, one person compromises the interests of another without acting wrongly. A would-be philosophy professor who applies for a tenure-track position sets back the interests of the candidate who would have been hired had she not applied. However, the successful applicant has not harmed the other candidate in the relevant moral sense. This is because she did not wrongly but rather competed fairly. Both of the necessary conditions of harm are not met. Similarly, not all wrongs are setbacks of interests. Cases in which a wrong is not a setback of interests are more rare than cases in which setbacks of interests are not wrongs, but they

still exist. Take, for example, a standard case of exploitation. A mechanic living in rural New Mexico is the only person around for miles who can fix cars that break down in the surrounding desert. He charges \$300 per hour for his time. Those bringing their cars to this mechanic are better off when they leave his shop, since they have a working vehicle and, therefore, a way out of the desert. Although this mechanic acts wrongly by charging such exorbitant fees, his action is not a harm by Feinberg's definition. Cases such as these illustrate why harm is only done when both of Feinberg's conditions are met.

Before moving on, I would like to make a few observations about the concept of harm. First, this concept does not belong exclusively to any one ethical theory. It plays a role in consequentialist theories, deontological theories, and virtue theories. Further, it seems likely that any plausible ethical theory would have to take the notion of harm into account in one way or another. In this project, I use this concept without reference to any particular ethical theory. As a result, my arguments and conclusions should be relevant regardless of which theory the reader subscribes to.

Second, plausible moral theories hold that harm is something to be disvalued or avoided. It would be difficult if not impossible to find a defensible theory that does not maintain that, all other things being equal, the lack of harm is preferable to the presence of harm. That is, without morally relevant extenuating circumstances it is better for a person to not cause harm than to cause it. As a result, if an action is likely to cause harm, there is a *prima facie* reason not to take that action. In many contexts, the idea that harm is something that should be disvalued is wrapped up in the concept of harm itself.

Third, I want to emphasize that the concept of harm is based in *person-affecting* considerations. That is, the good of not doing harm derives its moral force from the effect that harmful actions have on people (or other morally relevant beings). As explained above, harm can only be done when someone's interests are set back. The idea that someone is affected by the actions of another is therefore inherent to the definition of harm. The aim of not causing harm therefore *must* be a person-affecting appeal.

Finally, harm is a *serious* ethical concept. In general, ethical theories take harm seriously. If a given action causes harm, there is a significant moral reason not to take that action. The more significant the harm in question is, the more serious the ethical reason to refrain from taking that action. Even so, the value of avoiding harm is not an absolute appeal. There may be some circumstances in which the harm-based reason for *not* taking a particular action is overridden by other moral reason *to* do so. Such overriding appeals, however, would have to be very compelling because of the seriousness of the notion of harm.

In this chapter, I defend three premises about the relationships between wrongs, harms, and obligations that I will need in later argument. First, I demonstrate that one person harms another when he fails to fulfill an obligation regarding that individual. Secondly, I argue that this harm occurs even when the individual would actually be better off if the obligation were not fulfilled. Finally, I show that the moral imperative to not cause harm also requires one to *prevent* the occurrence of harm, and that one way to do

so is by acting to avoid bringing about a later situation in which it is foreseeable that he, himself, will do harm.

### **Obligations and Wrongs**

Inherent in the concept of an obligation is the notion that obligations should be fulfilled. That is, under most circumstances, an individual is morally required to fulfill any obligations she may have. If the individual *fails* to fulfill her obligations, then, she fails to do what is morally required of her and therefore acts wrongly.

Cases exist in which there are extenuating circumstances such that one is morally required to do something other than discharge a particular obligation. For example, she may have two conflicting obligations and be unable to fulfill them both. In such a case, the individual may be morally required to fulfill one of the obligations although in doing so she is unable to fulfill the other. Alternatively, unforeseeable circumstances could arise that create moral demands that outweigh an individual's requirement to discharge an obligation. The individual may not act wrongly in this kind of situation even though she fails to fulfill her duty. There may be numerous special cases like these. Nonetheless, it is at least *prima facie* true that a person who fails to fulfill her obligations acts wrongly.

Consider Owen, who promises to take his friend Laura, a graduate student without a car, to the airport. He assures her that he will pick her up and get her to her flight on time. Owen clearly acts wrongly if he fails to do so. Or suppose Owen borrows \$100 from Laura, vowing to pay her back, but never returns the money. By failing to fulfill his obligation to repay Laura, Owen does something wrong. This uncontroversial conclusion will be important to my arguments in the next chapter.

## Obligations and Harms

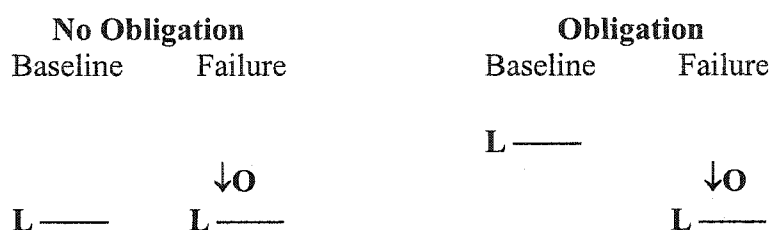
In most cases, the failure to fulfill an obligation is not only a wrong but is also a harm. That is, an individual who has made an obligation that affects the interests of another person harms that person if he does not fulfill his obligation. This is not immediately obvious, but can be shown using Feinberg's definition of harm. In order for an action to be a harm, the action must be a *wrongful* setback of someone's interests. As argued in the previous section, a person is, *prima facie*, required to fulfill obligations and acts wrongly when he fails to do so. One of the necessary conditions of harm is therefore present.

The demonstration that the failure to fulfill an obligation is also a setback of someone's interests is slightly more complex. At first glance, it seems that such an omission could be a *failure to benefit* the individual to whom one is obliged, but not actually a *setback* to her interests. It appears that Owen only fails to help Laura, rather than making her worse off, if he doesn't show up to take her to the airport. Feinberg, however, has constructed the philosophical framework to claim that this kind of failure actually does, at least in many instances, cause a setback to interests. He introduces the concept of an interest *baseline*, which represents the state of an individual's interests at any given time. The effect that others' actions of others have on the individual can be measured using this baseline. An act that causes an individual's baseline to be lowered sets back her interests. On the other hand, when an individual's interest baseline is raised, her interests are promoted.

Feinberg claims that "when there is no duty to aid, we use a different baseline to measure benefits and harms [than when there is a duty to aid]" (138). In other words, a

person's interest baseline reflects the obligations that others have to her. This means that, all other things being equal, a person to whom another has an obligation is better off than one to whom no one has such an obligation. Consider the following two cases, the first in which Owen has *no* obligation to drive Laura to the airport, the second in which Owen *has* an obligation to Laura:

**Figure 3.1**



In the case in which Owen has *no* obligation to Laura, Owen's failure to act would result in Laura's interest level remaining the same. If, however, Owen decides spontaneously to take Laura to the airport, he would benefit her and would therefore raise her interest level. In the No Obligation case, then, Owen's decision to not give Laura a ride would only be a failure to benefit her. In contrast, in the case in which Owen *has* a duty to take Laura to the airport, her interest baseline is at a higher point (relative to the No Obligation case). Owen's failure to act in this case would lower Laura's interest level and, in doing so, would set back her interests. If he instead fulfills his duty, he simply maintains her interest level. This explains why Owen merely forgoes benefiting Laura when he chooses not to drive her to the airport in a case in which he has no duty to do so, but actually sets back her interests by making that choice when he has promised her he



will give her a ride (Feinberg, 142-3). The failure to fulfill an obligation, then, can be a setback of someone's interests.

This is more clear in the case in which Owen owes Laura \$100. If Laura gives Owen the money with no expectation that he will return it, she is \$100 worse off than she was before. If Owen does not repay Laura in this case, her interests are not affected. And if he does, she benefits from his choice. However, when Laura lends the money to Owen on the assumption that she will be paid back, her interest level does not decrease significantly. Her financial state is the same as it was before she loaned the \$100 (unless she needs it in the short term) because Owen owes her that money. But if he fails to repay her, her interest baseline suffers. In the case in which Owen has an obligation, then, he can set back Laura's interests if he does not discharge that obligation. The second of the two necessary and sufficient conditions of harm can therefore present when one person fails to fulfill her obligations regarding another.

It is worth noting that there are some cases in which an individual does not cause harm if he fails to fulfill his obligations. The connection between obligations and harms is dependent upon whether the obligation in question is an obligation *regarding someone* or is a free-floating obligation. If the obligation is free-floating, that is, if it does not have a subject, the failure to fulfill that obligation cannot be a harm. When there is no one who is the subject of an obligation, there is no one whose interest baseline reflects that obligation. As a result, there is no one whose interests are set back by the failure to fulfill it. For example, consider a case in which I have a free-floating moral obligation to help those who are less fortunate than I am, but do not have that obligation regarding any *particular* less fortunate individual. I have not harmed anyone if I do not provide that

service, because there is no one whose interest baseline will be lowered. Although the omission may be wrong, there is no one whose interests it sets back and therefore no one can be harmed by my failure.

The previous paragraphs have shown that a person can both wrong another and cause a setback of her interests by not fulfilling his obligations. Such a failure can therefore be a harm by Feinberg's definition. As a result, a person who has made an obligation to another can harm that person if he does not fulfill his obligation.

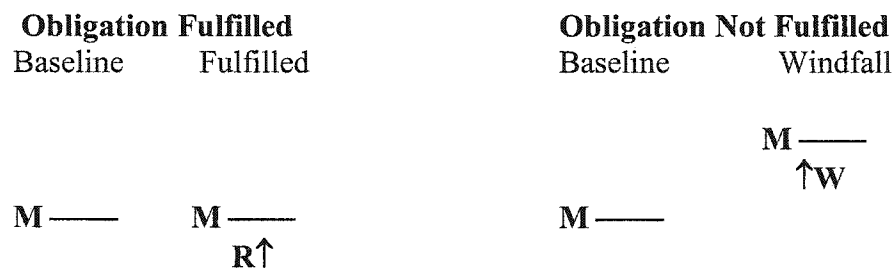
### **Windfall Cases**

So it seems that failing to fulfill one's obligations is normally a wrongful setback of interests and therefore is a harm to that individual. But what about the exceptional cases in which an individual's interests appear to be promoted rather than set back by another's failure? Perhaps that failure causes a windfall of good fortune for the individual in question, making her better off than if the person *had* fulfilled his obligation. For example, imagine that Owen is somehow aware that by failing to pick Laura up at the airport as he promised he would, he will cause her to meet the love of her life on the airport shuttle. His failure would therefore make her better off overall. Or consider Robbie, an omniscient thief, who knows that stealing most of multi-millionaire Millie's millions will result in Millie learning to appreciate life's simple pleasures and therefore in her leading a much happier existence. If Robbie steals from Millie, her interests are promoted despite the fact that he fails to respect his obligation to not rob her. In cases

like these, an individual receives a windfall of good fortune because another fails to fulfill his obligations to her. Is his failure a harm under such circumstances?

At first glance, it appears that harm is not done in windfall cases. One could argue that the failure is clearly a wrong – since failing to fulfill an obligation is *prima facie* wrong – but that it is not a harm because a setback of interest must occur in order for an action to be a harm. And in the example above, it looks like Millie's interests are promoted, not set back, as the following diagram illustrates:

**Figure 3.2**

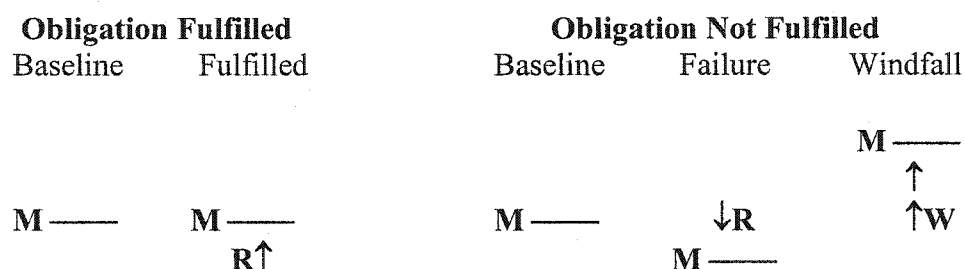


In the case in which Robbie respects his duty to not steal from Millie, her interest level remains the same (as argued in the last section). If Robbie fails to fulfill his obligation, however, Millie's interest level is higher due to the windfall associated with Robbie's failure. One could argue that because Millie's interests are promoted and not set back in this situation, she is not harmed by Robbie's decision to rob her rather than fulfill his obligation.

This analysis of windfall cases, however, is superficial. It fails to discern what is really going on with Millie's interest levels when Robbie fails to fulfill his obligation. In actuality, there are two different effects of Robbie's choice to steal from Millie. One is

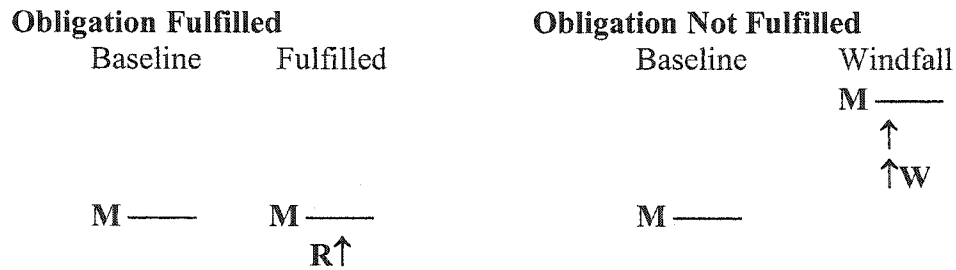
the effect that results directly from his failure to fulfill his obligation. Millie's interest level is compromised when Robbie steals from her because she is significantly worse off financially. The other effect occurs indirectly but simultaneously as a result of Robbie's decision. Because Millie's preferences change, they are more often satisfied and her interests are therefore promoted. So a more accurate depiction of what is going on in this kind of case is this:

**Figure 3.3**



This more detailed analysis reveals that rather than simply increasing, Millie's interest level both decreases and increases when Robbie steals her millions. Even though Millie experiences a net promotion of her interests, her interests are affected negatively by Robbie's failure to fulfill his obligation. That negative effect is simply overshadowed by a distinct positive effect. The difference between the two above analyses of the windfall case can be seen more clearly by considering what would happen if the windfall takes place even if Robbie *does* fulfill his obligation:

Figure 3.4



Without the setback of interests caused by Robbie's failure, the windfall would promote Millie's net interests to an even greater extent. This fact reinforces the idea that Robbie's action does not have a single, positive effect on Millie's interests, but rather has *two* effects on her interests; one positive and the other negative. This double-effect model more accurately portrays what happens to a subject's interests in the windfall-type case. Although these two distinct effects of the action are inextricably connected (assuming that Millie will achieve her happier existence if and only if Robbie steals from her), they are theoretically distinguishable.

These two effects should be considered separately in moral evaluation. This is because, in most cases, the positive effect does not simply "cancel out" the negative effect, resulting in a single positive effect. Instead, there is a negative effect and a positive effect such that the setback of interests and the windfall are incommensurate. Generally, the good from the positive effect *cannot* therefore erase the bad from the negative effect. So even if Millie is significantly happier after she is robbed, she is still minus her millions. And even if her happiness outweighs her financial loss, that loss still exists. There are a few exceptions to this case in which the loss and the windfall *are*, in fact commensurate goods. So if Robbie steals one million dollars from Millie but then

returns it instantly with interest, Millie may be better off for the transaction. But, I would argue, cases that meet the commensurability condition are rare. As a result, in most windfall cases, both effects exist and must be taken into account morally.

As a result, a wrongful set back of interests occurs in windfall cases like those described above, despite the fact that a promotion of interests occurs simultaneously. So even though Millie may be better off if Robbie does not fulfill his obligation, he still causes her some harm by failing to do so. This model of the windfall case makes it possible to show that there is *at least one reason* to believe that in some cases, an individual should fulfill his obligation to another even when she would be better off overall if he did not. I therefore hold that even if one is better off if I don't fulfill my obligation, I still should act to fulfill it. It is still a harm, and a harm that I often have a duty not to do.

This position could be strengthened by the acceptance of an additional premise that prioritizes the avoidance of harm over the promotion of good. It is not implausible to argue that, in many cases, there is a greater obligation for one to act to avoid doing harm than there is for that individual to do the same amount of good. I have an obligation not to break a stranger's leg, but I generally do not have the duty to take a stranger I encounter with a broken leg to the hospital. This common asymmetry supports the idea that a person may act wrongly by bringing about a windfall-type case.

### **The obligation to prevent harm**

A second relevant claim concerning the connection between obligations and harms is that one can be obligated to prevent harm from occurring. It seems plausible

that an ethical appeal disvaluing harm requires not only that an individual refrain from *doing* harm, but also that he act to *prevent* harm under some circumstances. In other words, one could be morally obligated to take an action that keeps another person from being harmed. Feinberg supports this claim, noting that refraining from causing harm and preventing harm from happening have the same purpose, namely, to avoid the occurrence of harm (129). He argues that there is no reason to believe that *acting to prevent harm* is different from *not causing harm* in any way that would make one obligated to do the latter but not the former (127-86). As a result, both not doing harm and preventing harm can be morally required by an ethical appeal based upon the disvalue of harm.

There is one method of preventing harm that is particularly noteworthy for the purposes of this project: acting to avoid bringing about a situation in which one will later *do* harm oneself. If I can foresee that I am likely to do harm in a given situation in the future, it may be possible for me to prevent that harm by acting to ensure that that situation will not come about. Acting to prevent *oneself* from doing harm at a later time, then, is one way of preventing harm. An ethical appeal holding that the absence of harm is preferable to the existence of harm therefore supports the claim that one can be morally required to take preventative measures like these. As a result, an individual can have an obligation avoid bringing about a later set of circumstances in which she can foresee that she will do harm.

This claim is a plausible and intuitive one. Imagine, for example, that I am a werewolf, and that whenever there is a full moon I grow hair and fangs and spend the evening feeding on my next-door neighbors. Furthermore, I am aware that this change

occurs in me and that I do these terrible deeds. It seems clear that, in such an (unlikely) instance, I have an obligation to lock myself in my basement or take some other action on that evening to prevent myself from preying on my neighbors. Or, consider a more mundane scenario in which I am aware that when I am in social situations I usually drink too much and choose to drive home in my inebriated state. Again, it seems obvious that I have an obligation to take a cab to the party or to give my keys to a sober friend so as not to endanger other drivers during my drunken drive home. In both of these situations, intuition says that I have an obligation to those whom I will harm to avoid knowingly bringing about the situation in which I will harm them.

These examples show that, at least in some instances, there is an obligation for an individual to avoid bringing about a circumstance in which she knows he will do harm. This duty, however, does not seem to exist in *all* situations. For example, a person clearly is not morally required to seriously injure himself in order to avoid bringing about a circumstance in which there is a slight possibility that he will step on someone's toe. The obligation must therefore be a *prima facie* duty: one that may be overridden under some circumstances. The question is then: Under what circumstances is one morally required to act to avoid bringing about a situation in which she will do harm?

There are at least three factors that must be considered in answering this question. First, the probability that the harm will occur must be taken into account. If the chance of the harm actually occurring is very small, it seems less likely that it is appropriate to apply this requirement than if the chance of the harm occurring is very high. Secondly, the severity of harm that could come about is relevant. This obligation is more likely to



exist when the harm is a significant one (such as death) than when the harm is minimal (such as stepping on someone's toe). Thirdly, it is necessary to consider the extent of the cost that the individual incurs by acting to avoid bringing about the circumstance in question. When the cost to the individual of doing so is great, it is less likely that taking preventative action is morally required than when the cost is insignificant.

In order to figure out when an individual is morally required to avoid bringing about a set of circumstances in which she will do harm, these three elements must be weighed against each other. A person need not incur great costs in order to avoid bringing out a circumstance in which there is a slight risk that she will do a minor harm. In contrast, from a moral perspective, one must incur a small cost in order to avoid bring about a circumstance in which she is very likely to do a great harm. Developing an exact and detailed formulation of the balance of likelihood, extent of harm, and cost that generates an obligation to prevent harm would be a complex and difficult task that is far beyond the scope of this project. Fortunately, for the purposes of this project it is only necessary to address one context in which this ethical maxim may apply; that is, the situation in which an individual is considering conceiving a child. I will explore this issue in more detail in the next chapter.

### **Reasonable cost**

The claim made in Chapter 2 that a parent must promote the interests of her child includes a caveat: reasonable cost. That is, a parent only has the obligation to further the interests of her child when the cost of doing so is reasonable. So the obligation may be overridden when the cost of promoting those interests is too great relative to the benefit

or when the benefit to the child is too small relative to the cost. In the abstract, this constraint on the parental obligation is neat and intuitive. However, in practice the cost that a parent incurs and the benefit that the child receives are difficult to measure. They are not quantifiable and often are incommensurate. Nonetheless, there are some things that can be said to give content to the idea of “reasonable cost.”

1. The benefit to the child should be weighted at least as much as the cost to the parent. That is, the parent must consider the interests of the child to be of equal if not greater importance than his own interests. He may not discount the interests of the child relative to his own interests. A parent may, however, discount his own interests relative to the interests of the child. The interests of the child must therefore count at least as much as the interests of the parents in any given situation. This would mean, in simplified terms, that if a choice costs a parent 11 units and benefits a child 10 units, the parent could be morally required to make the choice to benefit the child. If, however, the choice costs the parent 10 units and benefits the child 11 units, the parent is obligated to make that choice unless extenuating circumstances are present. It is worth noting that this idea must be applied in general, but does not necessarily have to apply to each and every choice that the parent makes. It is acceptable for a parent to prioritize his own interests in individual instances, but overall his choices must follow this guideline. Effectively, then, this means that a parent must consider the interests of his child at least equally to his own.

2. An understanding of the constraint of reasonable cost should factor in the gravity and the likelihood of the occurrence of the costs to the parents and the benefits to the child. The more likely an outcome, the more it should be weighted in deciding if a

particular cost is reasonable. Further, the more significant the cost or benefit, the greater the emphasis that should be placed on it. This means that if there is only a small possibility that a child will receive a minimal benefit from a choice, the threshold of reasonable cost to the parent is low. Almost any cost to the parent would be enough to override the parental obligation to promote interests. If however, there is a very likely chance of significant benefit to the child, reasonable cost is a high threshold, meaning that the parent may have to promote the child's interests even at great cost to himself.

3. The future effects of current decisions must be taken into account. Particularly in the context of conception, but also when a child is very young, even a minor choice may have a major effect on the child's future interests. For example, consider a woman who is taking a diet drug that causes significant disabilities to fetuses conceived by mothers on the drug. By simply waiting one month to conceive until she gets off the drug, the mother can dramatically improve the well-being of her future child. Or consider an infant who is not properly nourished for even a short amount of time in his infancy. Such negligence, even though it may seem minor, could result in physical or mental damage that the child never recovers from. Therefore, the "amplification effect" of seemingly insignificant choices at such a vital point must be taken into account when establishing what should constitute reasonable cost to the parent.

4. When making decisions involving their children, parents should be risk-averse – they should not gamble with the well-being of their future children. As described in Chapter 1, there is a minimum degree to which a child must have his interests protected in order to have a "successful human life." Falling below that level compromises that child's quality of life significantly. Parents may be required to incur significant costs in

order to ensure that the child's interest levels will not fall below this level. Further, they may be required to make such choices even if a less costly, but less predictable, alternative exists.

In Chapters 1, 2, and 3, I have explained and argued for my fundamental premises and assumptions. In the remaining chapters, I will build a child-centered ethical appeal relevant to conception decision making upon this foundation. Specifically, I will argue that a parent wrongs and can even harm a child 1) when he chooses to conceive it knowing that he will be unable to protect her interests to a minimal degree, and 2) when he fails to make conception decisions that promote her interests when it is possible to do so at reasonable cost.

## 4 Parfit's problem

It may be useful to briefly review the ground covered thus far. In Chapter 1, I laid out an account of the interests of children that consists of a list of fourteen objective goods. I argued in Chapter 2 that parental obligations are generated when an individual voluntarily accepts responsibility for a child's vulnerability to harm. I further concluded that a parent has at least two obligations to her child: 1) to protect his interests to a minimal degree and 2) to promote his interests to the extent possible at reasonable cost. In Chapter 3, I discussed the difference between wrongs and harms and argued that, in many cases, the failure to fulfill an obligation brings about harm. That failure can cause harm even in windfall cases in which the subject of the obligation actually ends up better off than she would have been had the obligation been fulfilled. I further claimed that an individual can be morally required to act to avoid bringing about a later situation in which she foreseeably will do harm. The importance of these arguments and conclusions will become apparent in the upcoming chapters.

Thus far, I have discussed parental obligations only in terms of a parent's responsibility to her existing children, that is, to any children she has already conceived. But how do these obligations come into play in the *decision* to conceive a child? How should the parental obligations to protect and promote a child's interests be understood in the context of bringing him into existence? What moral demands do these obligations put on prospective parents?

The interpretation of parental obligations in the context of conception decision-making is complicated by the fact that the child whose interests are being considered does not yet exist. That is, the object of the obligation is a future child rather than an existing child; necessarily, the child does not exist at the time the conception decision is made. (I will use the short-hand term 'future child' to designate the entity that may or may not be brought into existence as a result of an individual's conception decisions. My choice of terms is not intended to imply any view of the moral status of that entity.) The claim defended above that parents have particular obligations to their existing children does not automatically entail that they have those same obligations to their future children. This is because of a noteworthy difference in the two situations, namely, that in one the child already exists while in the other he does not. It will be necessary to look closer at this difference to see if it is morally relevant.

There are at least two reasons to believe that potential parents *do* have obligations to their future children that are analogous to those that actual parents have to their existing children. First, I argued in Chapter 2 that a special relation between a parent and his child is sufficient to generate parental obligations. Specifically, when a parent voluntarily takes responsibility for a child's vulnerability, he generates these obligations. If this relation is present between a potential parent and his future child, then, parental obligations are generated. An existing child and a future child both experience vulnerability. They are equally susceptible to having their interests compromised or thwarted if they have no one to look out for those interests. Further, regardless of whether the child exists now or in the future, the parent voluntarily accepted responsibility (or will accept responsibility) for that vulnerability by conceiving her. So

the defining elements of the special relation that is sufficient to generate parental obligations are present in both the case of an existing child and the case of a future child. As a result, parental obligations exist in both cases. A potential parent therefore has an obligation to protect and promote the interests of a future child just as a parent does for an existing child.

A second reason to believe that parents have the same obligations regarding their future children that they have regarding their existing children is that there are similar situations in which it seems that such obligations exist. For example, imagine that I work for the United States Secret Service. The President of the United States has a two-year-old daughter and I am assigned to protect her. Before taking on that responsibility, however, I am required to complete a special training program about protecting young children. I clearly have an obligation to learn the material in the course in order to ensure the safety of the President's daughter. Now, imagine instead that the President and his wife announce that they are *planning to conceive* a child. I am told that I will be assigned to protect that child and that I must complete the training program before the child is conceived. In this second scenario, it seems that I have the same obligation to learn the course material, even though the child does not yet exist. My obligation is identical in these two cases, despite the fact that one concerns an existing entity while the other concerns a future entity. The fact that in one case the child does not yet exist does not alter the intuition that I have an obligation to that future child. It therefore seems that a potential parent has obligations to a future child that are analogous to those that a parent has to an existing child.

If a parent has an obligation to protect and promote the interests of her future child in the same way that she has that obligation to her existing child, it appears that parental obligations set some moral constraints on the decision to conceive a child. The application of these obligations in the context of conception at first seems straightforward. A prospective parent should make conception choices that: 1) ensure that the interests of her future child will be protected to a minimal degree, and 2) promote the interests of the future child when she can do so at reasonable cost. Further, as argued in Chapter 3, the failure to fulfill an obligation wrongly sets back the interests of the subject of the obligation, and so the potential parent's failure would seemingly be a harm to the future child.

For example, consider a real-life case from Bethesda, Maryland. A lesbian couple, both members of which are deaf, intentionally chose to use the sperm of a deaf man to conceive a daughter through artificial insemination. They did so to ensure that the child would be a member of the deaf community. Five years later, they used sperm from the same donor in conceiving a son. Both children are profoundly deaf. In making the decision to conceive their children in the way that they did, these parents failed to fulfill their obligations to promote and protect the interests of their children. If a potential parent does not fulfill her parental obligations in making conception decisions, the future child appears to be wrongly affected for the worse. That is, it seems that the future child has been harmed by those decisions. Intuitively, we want to claim that the two Maryland women harmed their children by choosing that particular sperm donor.

Despite the intuitive appeal of the idea that the children born in these cases are negatively affected by their parents' choices, Derek Parfit has persuasively argued that



this position is philosophically untenable. He claims that a child cannot be harmed by being brought into existence as long as her life is worth living; his argument has shaped much of the recent philosophical discussion of population and reproductive ethics. In the remainder of this fourth chapter I will lay out Parfit's argument and the conclusions that can purportedly be drawn from it. I will then make some distinctions about conception decision-making that will serve as a foundation for a rebuttal of Parfit's claims.

### **Parfit's Position**

Parfit reasons that a child who has a life worth living, even if that life is just barely worth living, is not made worse off by being conceived. He draws this conclusion from the fact that if a child had not been conceived under the exact circumstances that she was, she would not have existed. The child in question only exists if her conception occurs at a certain time and in a certain way. Because having a life worth living is better than having no life at all, Parfit argues that the parent of such a child does not negatively impact that child by conceiving her. That is, she is better off living, even if her life is just barely worth living, than she otherwise would have been.

From this, Parfit concludes that there is no person-affecting moral principle that can be used to show that a parent who conceives a child under such conditions is morally wrong. He illustrates his argument with the example of the 14 year-old girl who decides to conceive a child. "Because she is so young, she gives her child a bad start in life. Though this will have bad effects throughout this child's life, his life will, predictably, be worth living." (Parfit 1984; 358) It *seems* that in this case the girl acts wrongly because her choice not to wait negatively affects her child. However, Parfit claims, this child has

only two possibilities: to be conceived by a 14 year-old girl or not to be conceived at all. Because his life is worth living, he is better off being conceived under these circumstances than never being conceived. As a result, according to Parfit, the girl's child "is not affected for the worse. So – as far as the child is concerned – we are not told by any "person-affecting" principle that his mother acted wrongly" (Parfit, 1976; 101). According to this argument, then, the two Maryland women did not make their children worse off by ensuring that they would be deaf because those particular children would not have existed had the women chosen a hearing donor. Because the children's lives are likely to be worth living despite their disability, they are not negatively affected by their parents' decision.

Person-affecting principles are those moral appeals that are based upon the idea that "it will be worse if people are affected for the worse" (Parfit 1984; 370). They derive their moral force from the effect that actions can have on others. An action is at least *prima facie* wrong from a person-affecting viewpoint if it affects a person negatively. The idea that harm should be avoided is perhaps the most common example of a person-affecting appeal. When an individual is harmed, his interests are affected, and an act is judged *prima facie* wrong because of that effect.

Parfit's claim, then, is not that it is impossible to coherently argue that a fourteen year-old girl acts wrongly in bringing a child into the world and that the mothers in Maryland were wrong to choose a deaf sperm donor, but rather that these actions cannot be wrong from a person-affecting perspective. That is, these decisions cannot be wrong because of the effect that they have on the children that result. Parfit allows that there are other grounds upon which such choices could be considered morally wrong (in fact, he

uses the example of the 14 year-old girl to argue for non-person-affecting moral principles). However, our intuition is that the mothers' choices in these cases are wrong *because* of the effect that those decisions have upon the children conceived, not in spite of that effect. There is no identifiable general principle to which our intuitions seem to be appealing; no categorical imperative like "keep promises" that seems to be violated by the mothers' choices. Instead, we feel regret for the condition of the children. It is consideration of the children's situations rather than the violation of non-person-affecting principles that drives our moral judgments in these cases. These intuitions are in direct opposition to Parfit's conclusions.

Parfit divides decisions about future people into three different categories: different number choices, same number choices, and same person choices. *Different Number choices* happen when a potential parent chooses between having a child and not having a child. In these cases, a different number of people will be brought into the world depending upon the choice the potential parent makes. The second kind of choices, *Same Number choices*, occur when a parent chooses between having a child now and having a child later. The same number of people will be brought into the world regardless of the choice the potential parent makes, but the child could have various genetic identities. Finally, *Same Person choices* are those in which the exact same person will be conceived regardless of the choice the parent makes.

The application of Parfit's argument to different number problems is straightforward. In a different number problem, a child either will be brought into the world or will not be brought into the world. She either will exist or will not exist. In

which case would she be better off? Parfit holds that if a child has a life worth living, she must be better off than if she did not exist. A child is therefore better off living a life that is barely worth living than not existing at all. As a result, Parfit argues, a parent cannot be said to wrong a child from a person-affecting perspective even if he conceives her under conditions in which her life will be severely compromised because that action makes her no worse off.

In *Reasons and Persons*, Parfit claims that he can find no moral principle that demonstrates why the fourteen-year-old girl acts wrongly in this situation. Even after broadening his search to non-person-affecting principles, he argues that there is no philosophical justification for our intuitions about this case. Nevertheless, the intuition remains.

The application of this argument to Same Number choices is similar, but requires an additional step. As noted above, the existence of any particular person is dependent upon the time at and the circumstances under which that that person was conceived. That is, if a person had *not* been conceived when and how he was actually conceived he would not have existed at all. If the conception occurred at a different time or in a different way, a different individual would have come into being. The consequence of this observation is called the “non-identity problem.” The individual to be conceived in one case is not identical to the one who would be conceived in another. Parfit argues about the 14 year-old girl that “if she had waited, this particular child would never have existed. And, despite its bad start, his life is worth living... We should ask, ‘If someone lives a life that is worth living, is this worse for this person than if he had never existed?’ Our answer must be No... We cannot claim that this girl’s decision was worse for her

child...[I]n the different outcomes, different people would be born.” This particular child has only two possibilities, to get a difficult start to a life worth living and to not exist at all. Because having a life worth living is not worse than never living at all, the child is not worse off for being born under difficult circumstances. The fact that another child would have lived a better life is irrelevant from the perspective of the child actually born. Consequentially, the child is not harmed by the young mother’s decision.

Unlike the different number problem, Parfit suggests a solution to the same number problem. His solution is what he calls Principle Q:

Q: 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.

That is, when a given number of people will come into existence, it is better for people who will have a relatively higher quality of life to live rather than people who will have a relatively lower quality of life. Principle Q can explain why it would be wrong for a 14-year-old girl to give birth when she could simply wait to have a child who will have a better life. However, Principle Q is not person-affecting. It claims that although no one is worse off by the girl’s choice, her action is still wrong. This solution, however, does not truly capture our intuitions about the case at hand. Many people want to be able to say that the child himself has been affected by her mother’s choice.

Some person choices are not vulnerable to Parfit’s argument. Because the same individual comes into being regardless of the decision the prospective parent makes, that decision affects the well-being of that individual. Imagine a mother who chooses to take a drug that stimulates weight loss. She takes a pill every morning with her vitamins (so

that each day is exactly the same as it would have been had she not taken the pill). The drug has been proven to cause significant birth defects in the children of women who are actively taking this drug. If the woman continues to take the drug while trying to conceive, she acts wrongly from a person-affecting perspective. Because her choice whether to take the drug does not affect the identity of the child who will be conceived (assuming that taking the pill does not affect the timing or method of conception), the same child will be born whether she takes it or chooses not to. As a result, she negatively affects the child if she does continue to take it.

Conception decisions, then, can be different number choices, same number choices, or same person choices. Parfit's argument affects only the first two of these, so that, according to Parfit, when a parent makes a same number choice or a different number choice his action cannot be person-affecting. This means that person-affecting moral appeals are still available for the analysis of same person conception choices. However, cases containing such decisions are few and far between. Real-life cases analogous to the one described above with the diet drug are rare. Almost all conception decisions fall into one of the other two categories. That is because most conception decisions change either the number of children conceived or their identities. In most cases, those decisions mean that the child is conceived at a time or in a way different enough to result in the conception of a genetically different child. So it seems that although person-affecting principles can be used coherently in making same number decisions, such decisions are rare. As a result, very few conception decisions can be analyzed using person-affecting principles if Parfit's conclusions are defensible.

Parfit's arguments undermine most person-affecting moral claims that we would want to make about conception decisions, including moral claims about parental obligations. This means that, if we are persuaded by his arguments, it is not possible for a parent to make conception choices that protect a given child's interests to a minimal degree or that promote the child's interests. Because making different conception decisions generally causes a different child to come into existence, any attempt to protect or promote the interests of a particular child cannot be successful because in attempting to do so the parent causes that child not to exist. So although a parent has obligations to protect and promote her child's interests, she does not make her child worse off if she fails to fulfill those obligations. Parfit maintains this conclusion in spite of the widespread intuition to the contrary that a parent who fails to fulfill these obligations in making conception decisions negatively affects the child in question.

An additional consequence of Parfit's conclusion, if he is correct, is that it is always incoherent to talk about conception as a harm to a child, unless the child's life is not worth living. Recall the two necessary conditions for the occurrence of harm: an act must both wrong someone and set back his interests. If different number and same number conception decisions cannot have an effect on the child conceived as a result of those choices, those choices cannot cause a setback of the child's interests. As a result, those choices cannot cause harm to that child. According to Parfit, then, a parent does not harm her child if she fails to fulfill her parental obligations in making conception decisions as long as his life is worth living.

Many philosophers have been convinced by Parfit's arguments. As a consequence, discussions of reproductive ethics do not include much analysis of the

effects that conception decisions can have on children or of the obligations that parents have with respect to those effects. This is because if one buys Parfit's argument, those effects cannot be negative. For example, in their well-known book *From Chance to Choice*, Brock et al. conclude that "there is no wrong to [a] disabled child nor any violation of its right that our moral principles must account for...No person-affecting moral principles will correctly fit wrongful disability cases" (Buchanan et al., 2000; 252-3). David Heyd also argues that traditional ethical theories are not able to show that any wrong is done to children leading compromised but worthwhile lives. He proposes a new "genethics" consisting of non-person-affecting principles to deal with such cases (Heyd, 1992). I believe, however, that Parfit's conclusions can be avoided and that traditional moral principles can show that in some cases children can be made worse off by being conceived. In Chapters 5 and 6 I will demonstrate that it is, in fact, possible to make person-affecting claims about the morality of conception decisions.

### **My Conceptual Toolbox**

Ethical analysis of decision-making about conception is a messy endeavor. It requires consideration of current and future times, various possible worlds, causality, and moral responsibility. Such analysis is made even more difficult by the fact that there is really no act that is similar to the creation of a person. As a result, reasoning about these issues by analogy is rarely possible. The remainder of this chapter will be devoted to making a number of observations, distinctions, and arguments that will be useful in navigating this minefield of philosophical considerations.



1. *One's future interests can be affected by another's act in the present time.* As discussed in Chapter 1, an individual's set of interests can be divided into three different types: his current interests, his future-oriented interests, and his future interests. Together, the individual's current interests and his future-oriented interests determine his overall interest level, or extent of well-being, at the present time. Future-oriented interests further give an indication about the individual's well-being at a future time. They are informative about the state of the individual's future interests, which will determine the extent of his well-being later in his life. Future interests are those that are not current interests at the present time, but will become current interests at a later date. All three of these types of interests can be affected for better or for worse, and all three must be considered in determining the effect that another's action has on the interest level of that individual.

Relatedly, an act and its effect need not occur simultaneously. That is, the effect of an act can be felt at a time well after the act takes place. As a result, it is possible for an act that causes a setback of interests to actually set back those interests at some point after the act is taken. Even though the setback of interests occurs in the future, however, it seems that the act is wrong at the point it is committed. It is not necessary for the effect to be felt before the act can be deemed wrong. For example, consider Feinberg's example of a kindergarten bomber, who plants a bomb in a classroom but sets the device to go off six years later. (1984; 97) The bomb remains undetected for those six years, after which it detonates and injures several school children. In this case, the act that caused the injuries to those children is separated from the effect of the act by six years. Nonetheless, it does not seem true that the bomber's act remained morally acceptable

until the children's interests were set back. The example therefore indicates that an act can be judged to be wrong at the time it occurs, even if its effect is not felt for quite some time.

If an action's effect can occur well after the act is taken, it is possible that an act taken at one time can affect an individual's future interests. Although there may be no change in an individual's present interests at the time at which an act takes place, that individual's future interest level can be changed. As a result, an act can make an individual worse off at one time although his interest level will not actually be set back until a future time. It is also interesting to note, if we look more closely at Feinberg's example, that the individual need not even be in existence at the time of the act in order to have her interests set back by it. The kindergartners in his scenario were not conceived at the time at which the bomb was set. The idea that one's future interests can be affected by an act in the present time even if he hasn't yet been conceived will be useful in chapters 5 and 6.

2. *Mediated and unmediated causal paths.* There are at least two different causal paths that can connect an act to a setback of interests. The act can be either mediated by another, later act or can directly cause the setback. For example, consider a parent who conceives a child knowing that the child will inherit a severe but late-onset genetic disorder, such as Huntington's Disease. The choice the parent makes at the time of conception in part determines the future interest level of the child. No other action or omission is needed to cause this interest level to come about. In contrast, consider an individual who, for whatever reason, knows that he is highly likely to inflict physical or emotional abuse on his future child. In such a case, there are two distinct links in the

causal chain: the choice to conceive the child knowing that the abuse is likely to take place and the abusive act itself. The future interests of the child are clearly affected under these circumstances, but there are two different actions that together cause that effect. The conception decision is mediated by another later act by the parent.

A foreseeable setback of the child's future interests occurs whether the causal chain that leads to it is mediated by future action or not. However, the two different causal paths cover different contexts. Unmediated choices tend to involve biologic variables such as the child's genetic traits. In contrast, choices that are mediated by other choices or actions tend to involve sociologic factors such as providing for a child's basic needs such as food, shelter, and attention. By noting that both kinds of causation generate set backs of interest, I am ensuring that my arguments cover a wider variety of possible conception choices.

3. *One can be morally responsible for not doing the impossible.* That 'ought implies can' is a commonly held philosophical maxim. It says that if one *ought* to take an action, it must follow that he *can* take that action. The result is that one cannot be obligated to do something that is impossible for him to do. If 'ought implies can' is true, then an individual can never be morally responsible for not doing something that he is truly unable to do, even if he would otherwise be obligated to do it. This principle is often, but not always, true. There is at least one kind of case in which one *can* have an obligation that it is impossible for him to fulfill and that he can be held morally responsible for failing to fulfill that obligation. For the purposes of this project, then, it will therefore be useful to determine when it is *possible* to protect and promote a future child's interests and when it is not. Further, it is worth assessing whether or not the

'ought implies can' maxim is valid in cases where it is *impossible* for the parent to fulfill his obligations.

The parental obligation to ensure the protection of a child's interests to a minimal degree may seem to be impossible to fulfill under some circumstances. There may be cases in which, at the point of conception, it seems likely that a parent's maximum ability to protect her future child's interests will not meet the minimal standard. If ought does imply can, the parent cannot have an obligation to do what is impossible and therefore cannot be held morally responsible for her failure. However, when parent can foresee that she will be unable to protect her future child's interests to a minimal degree, it is still possible for her to avoid violating that obligation. In other words, she can always ensure that her child's future interests are *not* protected to *less than* a minimal degree because she can choose to not conceive the child if she can foresee that this will be the case. By deciding against conceiving a child that she will be unable to provide for, the parent is indirectly fulfilling her obligation to protect the interests of any future children she may have. In cases like these, then, a parent can be held morally responsible for her failure even though ought does not imply can. A potential parent can therefore be morally required to choose not to have a child in some cases in order to fulfill her parental obligations. Ought does seem to imply can in this case, but only indirectly.

There are also cases in which it is not possible for a parent to fulfill her second obligation: to promote a future child's interests at the point of conception. There may be situations in which there is no action that a parent could take to make her future child better off. The time and circumstances of conception could be those at which the child's projected future interests are optimized. In such cases, it seems that because there is

nothing the parent can do to improve her child's future well-being, she is not morally blameworthy for not doing so. This kind of situation is accounted for in the description of the parental obligation: a parent should promote her future child's interests *when it is possible for her to do so at reasonable cost*. If a child's future interests are already optimized, this condition is not met – it is not possible for her to promote the child's interests. In the cases involving the parent's obligation to promote her child's interests, then, the 'ought implies can' maxim seems to hold and a parent is not blameworthy for failing to do something that she is unable to do.

The previous two paragraphs have focused on the possibility of fulfilling parental obligations for unmediated acts: acts that have a direct causal path between the act and its effect. The existence of mediated acts adds another layer of complexity to this issue. In the context of having children, mediated causality consists of two distinct steps: the conception decision and the acts that occur later in the child's life. There may be cases in which it is impossible for a parent to protect or promote a child's interests through those later actions. For example, consider a parent who does not have the means to adequately feed and clothe his child and who, despite his best attempts, is unable to change his situation so that he is able to do so. The 'ought implies can' maxim suggests that in this case a parent should not be held morally responsible for his inability to protect his child's interests to a minimal degree because it is not possible for him to do so. However, this is not always the case. If one's inability to fulfill his obligation was foreseeable and was brought about by some act of his own, he should still have the obligation. One should not be able to nullify an obligation simply by making choices that make it impossible for him to fulfill that obligation. For instance, if Owen does not have the \$100 to give to Laura

because he spent it at the bar over the weekend, his obligation to repay her loan still exists and he is morally responsible if he fails to do so. Similarly, if a parent conceives a child knowing that he will be unable to adequately feed and clothe his child, he is blameworthy for not fulfilling his obligation despite the fact that it is impossible for him to do so.

4. *The parental obligation to protect a child's interests can rarely be overridden whereas the obligation to promote a child's interests is, relatively, easier to override.* As discussed in Chapter 3, a parent's obligations can be overridden when the ratio of the likely benefit to the child and the likely cost to the parent is small enough. That is, in cases in which the benefits to the child are insignificant and unlikely enough and the costs to the parent are significant and likely enough, the parent may not have the obligation to ensure that the child's interests are protected or promoted. Also, as I argued earlier, the requisite ratio for overriding the parental obligation is not simply anything less than one (where the child's interests are the numerator and the parent's interests are the denominator). Parental interests and the interests of children are not necessarily weighted equally. A child's interests must count at least as much as the interests of a parent in choices that affect both their interests. As a result, there may be cases in which the ratio of the benefit to the child to the cost to the parent is less than one, but the parent still has the obligation to take that action. It will be important to keep these ideas in mind as I make arguments about parental obligations in Chapter 5.

In general, the parental obligation to protect a child's interests to a minimal degree is difficult to override. This is because a child whose interests are not protected to such a degree is affected greatly by his parent's failure to do so. He is very likely to

experience great difficulty in leading a “successful human life” in the sense described in Chapter 1. Because of the significant impact that a parent’s failure to fulfill this obligation is likely to have on the child’s life, it is a very serious obligation in that it is very rarely overridden. The cost to the parent would have to be very high in order for it to outweigh the likely and significant cost to the child. As a result, ethically, this obligation must almost always be met.

In contrast, the obligation to promote a child’s interests can be overridden more easily. The effect that the fulfillment of this obligation can have on the child is extremely variable. It is possible to cause a minor promotion of a child’s interests as well as to promote her interests greatly. Under some circumstances, promoting a child’s interests will significantly improve her interest level while in other cases her interest level will only be slightly changed. Take, for example, a parent who feeds her child three modest but balanced meals rather than giving her oatmeal three times a day. The benefit that child experiences will be much greater than that of a child whose parent switches her from a modest but balanced diet to an optimally nutritional diet. Nonetheless, both changes constitute a promotion of the child’s interests. There are many other possible examples of this kind of differential because many goods have diminishing marginal utilities. In cases in which the benefit to the child is small, the obligation is more easily overridden. That is, the cost to the parent need not be very high in such cases to override the parental obligation.

As a result, a parent’s obligation to promote the interests of her child is more easily overridden than her obligation to protect his interests to a minimal degree. This makes sense because having one’s interests protected to a minimal level is vital for the

opportunity to lead a “successful human life”. Promoting his interests beyond this minimal level may make him better off, but not to the extent that meeting that level in the first place does. The obligation to promote a child’s interests is generally a more demanding standard than the obligation to protect her interests. It can make demands on a parent even after her child’s interests have been met to a minimal level, requiring her to do what she can to improve his interests level even further.

5. *Obligations can be fulfilled to a greater or lesser extent.* The parental obligation to protect the interests of a child to a minimal degree has an inherent threshold. The idea “to a minimal degree” establishes that threshold. When a child’s interests are met to a level above that threshold, the parent’s obligation is fulfilled. When the child’s interest level is below that threshold, it is not. This obligation cannot be met “to some degree,” “a little bit,” or “to an extreme extent.” To talk about fulfilling an obligation that has this kind of inherent threshold in terms of degrees is incoherent.

It is possible, however, for a parent to succeed or fail at fulfilling this obligation to varying extents. A parent can barely fail to protect his child’s interests to a minimal degree or can fail miserably to do so. Similarly, she can just reach the requisite threshold or can surpass it significantly. The obligation is met whether the threshold is just achieved or vastly exceeded. However, the moral praiseworthiness of a permissible choice can vary depending upon the degree to which the threshold is exceeded.

In contrast to the obligation to protect a child’s interests, a parent’s obligation to promote her child’s interests can be fulfilled to various degrees. It is possible to promote a child’s interests to a greater or lesser extent. As a result, the obligation to do so can be met to a greater or lesser extent. A parent can make a choice to further the child’s



interests a small amount or a great amount. In either case, the obligation is fulfilled. Nonetheless, a parent who promotes her child's interests more, all other things being equal, is more praiseworthy than one who promotes them less.

The ideas of moral praiseworthiness and blameworthiness in this context are related to the notion of fulfilling and failing to fulfill obligations. They are more descriptive, however, of the ethical goings-on in particular cases and allow a more nuanced analysis.

In this chapter I began applying the ideas laid out in chapters 1-3 in the context of conception decision-making. This connection is not as simple as it seems at first glance, due to the work of Derek Parfit. In what follows, I plan to show the way around Parfit's conclusion and demonstrate that conception decisions can coherently be discussed in person-affecting terms.

The commentaries up to this point may seem ad hoc, but the reason for their inclusion will become obvious in Chapters 5 and 6. I have created a toolbox of concepts that will allow me to tackle the central issues with Different Number choices and Same Number choices without becoming distracted by tangential arguments.

## 5 Parfit's problem resolved: Different number problems

In Chapter 2, I identified two different parental obligations: a parent must protect his child's interests to a minimal degree and promote his child's interests when it is possible to do so at reasonable cost. In Chapter 4, I identified two different types of conception decisions that are vulnerable to Parfit's arguments: different number choices and same number choices. Four different theoretical combinations of these two pairs of concepts are possible. The matrix in Figure 5.1 shows the four ways that these concepts can make moral demands on potential parents:

**Figure 5.1**

		Kind of conception choice	
Parental Obligation		Different number	Same number
	To protect	To protect interests through different number choices	To protect interests through same number choices
	To promote	To promote interests through different number choices	To promote interests through same number choices

A parent could be required to make a different number choice in attempting to fulfill his obligation to ensure that his child's interests are protected to a minimal degree. He could be required to make various same number choices in that same pursuit. Similarly, a

parent could be required to make either same number choices or a different number choice in his attempt to promote the child's interests.

In Chapters 5 and 6, I look at each of these theoretical possibilities in turn and evaluate what each requires of parents with regard to their children. I will further show how parental obligations can make demands of parents in spite of Parfit's arguments to the contrary. Using the tools developed in the first four chapters, I will demonstrate that Parfit's conclusions can be avoided and that these two parental obligations are substantive requirements that a parent is ethically obligated to meet.

### **Protecting interests through different number choices**

The obligation of a parent to protect the interests of her child to a minimal degree can, under some circumstances, require that parent to make a different number choice. That is, a parent may be obligated to choose to not conceive a child in order to fulfill her obligation to protect her child's interests to the requisite minimal degree. As noted above, this is an intuitive idea, but nonetheless one that Parfit has argued against. Parfit's argument can be broken down into two premises:

**A.** A child who has a life worth living, even if she will have a significantly compromised existence, is not worse off being conceived than she otherwise would have been.

**B.** If the child is no worse off, a parent does not act wrongly from a person-affecting perspective by knowingly conceiving such a child.

If both of these premises are true, there can be no person-affecting reason to believe that a parent who brings a child whose life is barely worth living into existence acts wrongly. That is, a parent who fails to ensure that the interests of her child are met to a minimal

degree does nothing wrong from the perspective of the child. If this were true, the intuition that a parent acts wrongly by failing to fulfill her parental obligations would have to be explained by a non-person-affecting principle. However, it seems that both of Parfit's premises are problematic. In fact, there are good reasons to believe that both are false. I will argue against each of these claims individually. If my refutation of either premise is convincing, Parfit's argument fails. The focus of this project is to challenge Parfit's argument by showing that Premise B is wrong. As a result, the majority of this chapter concerns that premise. A thorough refutation of Premise A could alone be the subject of another dissertation (which I am not inclined to write at the moment). Nonetheless, I briefly address the issue here.

#### *Premise A*

It may appear that Premise A is essentially tautological. Obviously, having a life worth living is better than never existing: a life *worth living* is, by definition, one that has enough value to prefer it to not living. It seems that such a life *must* be better than not existing. Upon closer examination, however, it becomes clear that Premise A is not a tautology. It is not necessarily true that a child who has a life worth living is better off than if she had never existed. As David Benatar explains, "the force of this argument...seems to me to rest on a crucial ambiguity in the expression "a life worth living." This expression is ambiguous between "a life worth continuing" – let us call this the present-life sense – and "a life worth bringing about" – let us call this the future-life sense." (2000; 176) Benatar's distinction between a person who presently exists and one that does not yet exist is significant. A life worth living is not the same thing as a life

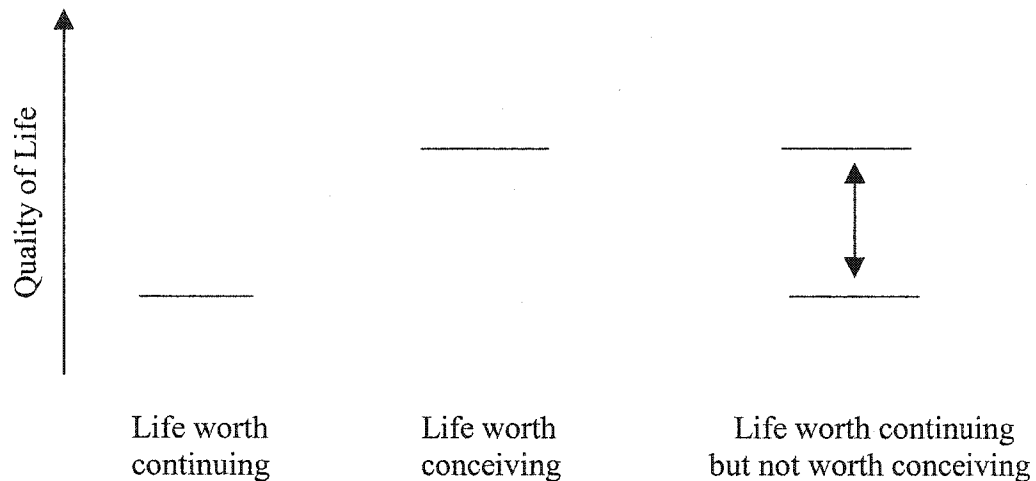
worth conceiving. So Premise A compares not apples and apples, but apples and oranges.

It is logically possible to claim that one is better off not being dead, but would have been better off never having existed. For example, a child who receives a head injury that results in significant mental disability may have a life that is worth continuing: we generally would not argue that such a child would be better off dead. However, it is not inconsistent with this view to hold that a child for whom such a disability is unavoidably foreseeable would be better off not being conceived. It is also logically possible to claim that someone is better off being dead, but would not have been better off never having existed. Consider a 50 year-old woman suffering from cancer. At some point toward the end of her life, she may begin to feel that her life is no longer worth continuing. This in no way means, however, that she wishes that she had never been conceived. These examples demonstrate that a life worth living and a life worth conceiving are not always identical. Premise A is therefore not tautological.

If the threshold that defines a life worth bringing about is not necessarily the same as the threshold that defines a life worth continuing, which, if either, is the higher standard? Intuitively, it seems that a life worth bringing about would have a higher threshold than one that is simply worth continuing. Benatar argues that "It does not follow...that if a life is worth continuing that it is worth beginning or that if it is not worth beginning that it would not be worth continuing...We require stronger justification for ending a life than for not starting one." (2000, 176-7) In the example above, the child with the head injury may have a life that is worth continuing but not worth bringing about. The cancer patient waits until her quality of life drops to a very low level before

deciding she no longer wants to continue living. The standard for a life worth living therefore seems lower than the standard for a life worth conceiving (see Figure 5.2). That is, the threshold at which a life is deemed worth conceiving is higher than the threshold at which a life is deemed worth living. As a result, there are cases in which a child whose life is severely compromised yet worth living would have been better off if he had never existed.

**Figure 5.2**



The area between the two thresholds identifies the qualities of life at which a life is worth living but is not worth conceiving. In this area, Premise A is not true. This result demonstrates that there are cases in which child who has a life worth living would have been better off if he had never existed. If a child will have a life that is barely worth living, it is better if he is not conceived. In cases like these, Parfit's argument does not hold because Premise A is false.

*Premise B*

As I have just argued, Premise A is sometimes false. However, even if I were to grant that Premise A is true, it is possible to deny Parfit's conclusion by showing the falsity of Premise B. In Chapters 3 and 4, I laid the groundwork needed to refute this premise. I will now use those tools to prove that a parent can act wrongly from a person-affecting perspective by conceiving a child whose interests he will be unable to protect to a minimal degree.

As shown in Chapter 3, when one individual has an obligation to another, that second person's interest baseline reflects that obligation. That is, her interest level is higher than it would be if the individual did not have that obligation to her. In the example in which Owen owes Laura \$100, Laura's interest level reflects that \$100. Her interest level is "\$100 higher" than it would otherwise be, despite the fact that the money is not currently in her possession. Similarly, a child's interest level reflects the obligations that her parent has to ensure that her interests are protected to a minimal degree. As a result, when a parent fails to fulfill that obligation regarding an existing child, he brings down her interest level, making her worse off than she otherwise would have been.

Further, it is generally accepted that failing to fulfill an obligation without extenuating circumstances is a wrong. Therefore, the failure of a parent to fulfill her obligation is both wrongful and a setback of the child's interests. By Joel Feinberg's definition of harm, then, the parent's failure constitutes a harm. This means that a parent who fails to fulfill his obligation to ensure that his existing child's interests are protected to a minimal degree harms that child. This harm, however, is not the harm that Parfit's

argument purportedly undermines because it concerns a parent's obligations regarding a child that already exists rather than regarding one he is considering conceiving.

I also argued in Chapter 3 that in some cases an individual can be morally required to act to prevent himself from doing harm later. That is, a person can be obligated to prevent a harm that he can foresee himself causing. If I am a werewolf and know that whenever there is a full moon I prowl around and feed on my neighbors, I am clearly obligated to lock myself in the basement or take equivalent measures to prevent that harm to them whenever a full moon comes around. Analogously, a parent may have an obligation to act now to prevent himself from causing the harm identified in the previous paragraph: the harm of failing to ensure that his child's interests are met to a minimal degree. If a parent knows he will be unable or unwilling to protect those interests to the requisite degree, he can foresee that he will cause that harm if he conceives that child. The only way to avoid doing that foreseeable harm, thereby fulfilling his obligation to prevent it, is to choose to not conceive the child. As a result, a parent may in some cases have an obligation to not conceive a child.

As discussed earlier, the obligation to prevent future harm only exists when significant harm is likely to occur and when the cost of preventing it is small enough. It seems that these three conditions are often met when an individual *does* conceive a child despite the fact that he will be unable to meet her needs. The harm suffered by a child by not having her needs met to a minimal level is a great harm. Many of her future interests may be thwarted or impeded by the parent's failure. In cases in which it is foreseeable that the parent will be unable to meet the needs of the child, the chances of the child



suffering this significant harm are very great. Finally, does the cost to an individual of not conceiving a child outweigh the high probability of bringing about this great harm? It seems to me that in most instances it does not. In many cases, a would-be parent only has to wait months or years until she will be better able to provide for her child, the cost of which would generally be small. In cases in which a parent is deciding between conceiving a child and not conceiving one (rather than between conceiving a child now or later), the cost to the would-be parent may be higher. For some people, choosing to not have a child is in and of itself a significant cost. However, this same choice can have notable benefits for parents as well, in that it allows them to spend their time and resources in other ways. The net cost to a would-be parent who decides not to have a child must therefore be estimated on an individual basis. It varies from individual to individual, but in many cases is less than one might initially think. In weighing the cost of not conceiving a child against the severe and likely harm that that child would suffer, it is likely that in many cases the latter considerations would outweigh the former one, particularly considering that parental interests are often discounted as described in Chapter 3.

There may be some instances in which a parent can almost provide her child's interests to a minimal level and in which she very much wants a child so that the balance of the likelihood, harm and cost indicates that the parent does not have an obligation to prevent the future harm by not conceiving the child. However, these situations are rare. In most cases a would-be parent is morally required to avoid creating a situation in which he will do harm. That is, a parent has an obligation not to conceive a child whose

interests he is aware he will be unable to protect to a minimal degree because by doing so he brings about a circumstance in which he will harm that child.

The above arguments make it possible to demonstrate, contra Premise B, that a parent can act wrongly by conceiving a child whose interests she will be unable to protect. A parent harms her existing child by failing to protect his interests to a minimal degree. In cases in which a parent can foresee that this harm will come about, she has an obligation to prevent it in most cases. Often in such cases the only reliable way to ensure that this harm is prevented is to not conceive the child. As a result, a parent can have an obligation not to conceive a child if she knows she will be unable or unwilling to ensure that his interests are protected to a minimal level. As I noted earlier, a person acts wrongly when she fails to fulfill her obligations. Therefore, a parent acts wrongly in conceiving a child whose interests she knows she will be unable to protect to a minimal degree because in doing so she fails to fulfill her obligation to prevent harm.

This argument applies most neatly to mediated actions. Take, for example, the 14 year-old girl who has no source of income and no support system to help her care for a child she chooses to conceive. In five years, when she is only able to feed her child oatmeal, she will be failing to fulfill her obligation to protect his interests to a minimal degree. In doing so, she causes the child harm. At the current time, however, because it is foreseeable that she will cause this harm, she has an obligation to prevent it from occurring. Even though the causal chain between the choice to conceive and the failure to fulfill the obligation is mediated by the act of feeding the child, the fact that the harm

is foreseeable means that the girl's choice to conceive can be wrong because she had an obligation to prevent that harm.

One could object to his conclusion by claiming that a parent only has the obligation to provide her child with his basic needs if it is possible for her to do so. A parent cannot, one could claim, be held morally responsible for ensuring that her child's interests are protected because, due to her circumstances, she is unable to do so. It may seem that if it is impossible for one to fulfill her obligations, she should not be morally blameworthy for not fulfilling them. However, as noted in Chapter 4, this is often, but not always, true. In a case in which a parent conceives a child whose interests will not be protected to a minimal level, it is the parent's action that creates the situation; that is, the impossibility of meeting the obligation is a result of the parent's choice to bring the child into the world. She is therefore blameworthy for her inability to fulfill her obligation. Because it is her own action that created the situation, the moral responsibility for violating the obligation remains. As a result, a parent's failure to protect the interests of her existing child to a minimal degree is a harm that a potential parent is obligated to prevent.

Thus far, I have shown that a parent can act wrongly by conceiving a child whose interests she cannot ensure will be protected to a minimal degree. Is this enough to refute Parfit's Premise B? Premise B states: "If the child is better off [being conceived than not being conceived], a parent does nothing wrong from a person-affecting perspective by knowingly conceiving such a child." The argument I put forward in this section has demonstrated that a parent can act wrongly in such a case. But is the wrong I have

identified person-affecting? In order to refute Premise B, the act must be wrong from a person-affecting perspective.

In order for an act to be person-affecting, it must have an impact on someone's well-being. A choice is worse from a person-affecting perspective if it is worse for someone. As noted earlier, the harm principle is clearly a person-affecting moral principle. When someone is harmed, they are affected for the worse. However, the wrong that I have identified above is not a harm itself, but rather the failure to fulfill one's obligation to prevent that harm. It is less clear that this kind of wrong is person-affecting. Nonetheless, I believe that it is. The wrong of failing to prevent harm is intimately connected to the harm itself. That failure plays a necessary role in the causal chain that leads to the harm taking place. If the parent fulfills her obligation, the harm does not occur. If she does not fulfill her obligation, the harm does occur. The wrong of failing to prevent a harm, then, is clearly person-affecting because it brings the harm about. And because harms are always person-affecting, the wrong of failing to prevent a harm is person-affecting. Therefore, a parent acts wrongly from a person-affecting perspective when she conceives a child whose interests she knows she will be unable to protect to a minimal degree.

This conclusion contradicts Premise B. If the child is better off being conceived than not being conceived, a parent can still act wrongly from a person-affecting perspective by knowingly conceiving such a child. As a result, Parfit's argument fails for conception decisions that are mediated by a later act. Chapter 7 is devoted to a more thorough analysis of the difference between wrongs and harms in this context and to

supporting the idea that a potential parent's choice is this kind of situation is a person-affecting choice.

The conclusion that Premise B is sometimes false can also be reached using a slightly different approach. The argument laid out above requires two distinct steps. The relevant wrong – of failing to prevent harm to the future child – is derived from another wrong – the harm a parent does to her existing child when she fails to ensure that his interests are protected to a minimal degree. The conclusion that a parent acts wrongly at the point of conception is based upon the future harm to the child. However, it is possible to generate the same conclusion in a single-step argument. The second approach to refuting Premise B combines the two steps into one.

This second argument relies upon the connection between the following three statements:

- 1: A parent has an obligation to protect her child's interests to a minimal degree
- 2: A parent has an obligation to protect her child's future interests to a minimal degree
- 3: A parent has an obligation to protect her future child's future interests to a minimal degree

Statement 1 is simply a restatement of the parental obligation to protect a child's interests to a minimal degree that was identified in Chapter 2. The difference between Statement 1 and Statement 2 is only that 1 addresses interests in general while 2 addresses one particular type of interest: future interests. As noted in Chapter 1, a child has three different types of interests: his current interests, his future-oriented interests, and his future interests. Together all three determine the well-being of a child. Statement 2,

therefore, is simply one instantiation of Statement 1 and is therefore true if Statement 1 is true.

The connection between statements 2 and 3 is slightly less obvious. I argued in Chapter 4 that the relation between a parent and her future child is analogous to the relation between a parent and her existing child because both have features that are sufficient for generating parental obligation. In both cases, a parent voluntarily causes or takes responsibility for the vulnerability of a child. The obligations generated by doing so, then, are the same; that is, parents should have obligations regarding the future child that are analogous to those that they have regarding the existing child. One of those obligations is to protect the child's future interests to a minimal degree. Statement 3, then, is true if Statement 2 is true. A parent has an obligation to ensure that her future child's future interests are protected to a minimal degree.

One further premise is needed in order to demonstrate the falsity of Parfit's Premise B: that in most cases, a person acts wrongly if he takes on an obligation that knows he will be unable to fulfill. Inherent to the nature of an obligation is that an individual who takes it on has a responsibility for doing whatever he agreed to do. He should not agree to take on such responsibility if he knows he will not be able to live up to his obligation. For example, consider a situation in which Owen and Laura both have to travel out of town on consecutive weekends. They agree to trade rides to the airport – Laura will drop Owen off and pick him up this weekend and Owen will do the same for Laura next weekend. In making this agreement, Owen takes on an obligation to give Laura a ride. If, however, he knows that he will be busy at a conference next weekend and so will be unable to fulfill his obligation, he is wrong to take it on in the first place.

It seems clear, then, that it is wrong for one to knowingly take on an obligation that he cannot fulfill.

This premise is very similar the obligation to prevent harm. It is founded on the same basic concept: that one is morally responsible at the current time for avoiding bringing about particular types of future situations. In both cases, one is required to act to prevent the interests of another from being compromised. A person who prevents a harm from occurring prevents the lowering of another individual's interest baseline. Similarly, one who chooses not to take on an obligation he cannot fulfill prevents the decrease in the other's baseline that will occur when he fails to fulfill that obligation. Therefore, although these two obligations are formulated differently, they can be defended on the same moral grounds.

In the context of refuting Parfit's Premise B, the obligation in question is a parent's duty to protect a future child's future interests to a minimal degree. According to the premise just identified, a parent should not take on an obligation unless she is willing and able to fulfill it. As a result, a parent who conceives a child knowing that she will be unable to fulfill the obligations associated with doing so acts wrongly. This is the case even if the child is better off than she would have been had she not been conceived.

This one-step argument covers cases of *unmediated* causation nicely. It circumvents the need for another step in which a harm occurs. Because unmediated acts do not have another clear step, this second version of the argument better describes what goes on in such cases. For example, consider a case in which a potential parent is aware that, as a result of medication she takes, if she conceives a child he will have a life barely worth living. Even so, she chooses to conceive a child. In doing so, she takes on the

obligation to protect her child's interests to a minimal degree. However, due to the condition her child will have, his interests will not be able to be protected to that degree. As a result, when she conceives the child she takes on an obligation that she knows she will be unable to fulfill. She therefore acts wrongly in conceiving that child, suggesting that Parfit's Premise B is false in such cases.

Recall, however, that Premise B is only proven false if the wrong in question is a person-affecting wrong. Has this second approach identified a person-affecting wrong? It seems that it has. As explained above, the wrong of taking on an obligation that one is unable to fulfill has the same basis as the wrong of failing to prevent harm: the lowering of someone's interest level that occurs as a result. If a parent takes on an obligation she cannot fulfill, the child's interest levels will be lowered when the parent fails to fulfill that obligation. Conversely, if the parent does not take on that obligation (by not conceiving the child) no child's interests are lowered. The choice the parent makes determines whether or not the lowering of interests occurs. The wrong of taking on an obligation one can't fulfill, therefore, is a person-affecting wrong. As a result, a parent acts wrongly from a person-affecting perspective in conceiving a child whose interests she will be unable to protect. Premise B is therefore false.

I have shown through two different approaches that Premise B is not defensible. The result is that Parfit's conclusions concerning different number choices can be called into question. It seems that it is, in fact, possible for parental obligations to require a potential parent to make different number choices based on the effect that those choices have on a future child.



Regardless of which of these two ways it is formulated, the wrong I have identified must be distinguished from the harm that people talking about Parfit's problem generally refer to. To clarify: the wrong that I have demonstrated occurs at the point of conception and is a wrong that is based on the effect that an action has upon the child himself, but it is not the same wrong that is typically discussed in treatments of this issue. The essential difference between my claims and the standard claims concerning this issue is the timing of the effect on the child. In my arguments, that effect occurs during the life of a future child. In contrast, the effect Parfit addresses takes place at the point of conception. His claim is that the child's interest level cannot be lowered as she is brought into existence because that same act raises her interest level above the level it would have been if she did not exist. The effect on the child's interest level that I have identified, however, is not vulnerable to that objection because it occurs after conception and so is independent of any purported raising of her interest level that occurs at that point. It is the failure to draw this distinction which has misled Derek Parfit and his many adherents.

The result of this conclusion is the creation of new conceptual space. In this space, it is possible to talk about the effect that some kinds of conception decisions have on the future children they create. As will be demonstrated in Chapter 8, it will now be possible to use the idea of parental obligations in the ethical analysis of conception decisions from the perspective of the future child.

### *An Objection Considered*

One could argue in a Parfitian spirit that despite the wrong that a parent does under these circumstances, the child is still better off living than never having lived at all. The objector could claim, "But the child has a life that is worth living. So he is still better off than he otherwise would have been!" She could grant that the wrong I have identified occurs, but claim that the benefit of having a life worth living outweighs that consideration. As a result, she could argue, a parent never actually acts wrongly overall from a child-centered perspective by choosing to have a child, even if that child's life is barely worth living. There are at least four different ways in which I could rebut this objection:

1. I could deny that the child in this case is better off than she otherwise would have been. The conclusion that having a life worth living is necessarily better than having no life at all is based upon the assumption that a life worth living is a benefit to the person who lives it. Although this may seem like a plausible claim, it has been challenged. David Benatar has argued that because there is an asymmetry in the way we value the presence or absence of pain and the way we value the presence or absence of pleasure, it is, in fact, "better never to come into existence" in nearly all circumstances. (Benatar, 1997; 345-6) He claims that we view the absence of pain and the existence of pleasure both as good, but see the existence of pain as bad while seeing the absence of pleasure as morally neutral. When a person exists, he experiences some pain and some pleasure, which is both good and bad. In contrast, when one never exists, he does not experience any pain or pleasure, which is only good (since the absence of pleasure is morally neutral). Therefore, Benatar argues, a person who never exists is better off

because her non-existence has only good results whereas existence has both good and bad.

Benatar's claim may seem unintuitive to some, but I believe that there are reasons to believe that there is something right in his arguments. Essentially, Benatar rests his argument on the idea that the absence of pain causes more good than the absence of pleasure causes bad. This notion is supported by people's decision-making habits. In general, people are risk-averse. We tend to go to greater lengths to avoid a bad outcome than to achieve a good outcome. Consider a situation in which an individual is given the choice to enter into a lottery in which he has an equal chance to lose something important to him and to gain something equivalently valuable. Most, although not all, people would choose not to enter such a lottery in order to ensure that they do not lose. This kind of risk-averse behavior supports Benatar's conclusions. His argument therefore challenges the assumption that having a life worth living is always a benefit to the one who lives it.

There is a second reason to believe that life, particularly a life that is just barely worth living, is not a benefit. A consequence of holding that life is beneficial to the one who lives it is that conceiving a child becomes a morally praiseworthy act. In most moral systems, benefiting others is a good thing to do, even if it is not morally required. As a result, if life were a benefit to those who live it, most moral systems would encourage individuals to have children in order to benefit them. However, this doesn't seem to be the case. Most moral systems are neutral about the choice to conceive. Working backwards from this conclusion, then, it seems that having a life, in and of itself, is not a benefit.

There are therefore two good reasons to believe that life itself is not a benefit. If it is not, there is nothing to outweigh the wrong done by a parent when she conceives a child whose interests she is unable to protect. As a result, the child cannot be better off than she otherwise would have been, despite the objector's claims to the contrary.

2. A second approach I could take in responding to the objection above is to argue that the objector's reasoning is faulty. Recall the distinction I identified above in responding to Parfit's Premise A. I argued that there is a difference between a life that is worth continuing and a life that is worth conceiving. In making her objection, the objector fails to recognize that distinction. She assumes that any life worth living must be worth conceiving and, as a result, the child is better off being conceived than she otherwise would have been. However, because the minimum quality of a life worth living is lower than the minimum quality of a life worth conceiving, it is possible that a child who has a life worth living would have been better off never having existed at all. As a result, it is not actually true that the child is better off than he otherwise would have been.

3. A third possible response to the above objection takes a slightly different approach. Rather than denying the claim that a child who has a life worth living is better off than he otherwise would have been, I could simply point out that we do not know that this is the case. If we do not know anything about nonexistence, we cannot know if or to what extent the child is better off for having existed. That is, we do not know, nor do we have any way of knowing, whether a life worth living is a benefit to the person who lives it. Further, we are similarly ignorant about whether that possible benefit would be great enough to outweigh the wrong I have identified. We do, however, have *some*

information about that wrong. We should therefore base our judgment about whether or not the child is better off upon the information we do have, namely, that the child is, at least in some way, negatively affected by being conceived.

4. A final possible response to this objection is to concede that the child is, in the end, better off by being conceived than by not being conceived, but to deny that the choice to conceive is therefore morally acceptable from a person-affecting perspective. As suggested in the earlier discussion of windfall cases, one act can have two effects. The fact that one effect outweighs the other does not negate the existence of the other effect. Even when the two effects of the act are codependent, a complete analysis of the act must include both. So a parent who chooses to conceive a child whose interests she will be unable to protect to a minimal degree acts makes a choice that has at least one wrong-making feature. Because her choice has a negative effect on the future child, she does something that is at least in one way wrong from a person-affecting perspective, even if the child ends up better off overall by being conceived. The asymmetry between the value of not doing harm and doing good means that one could act wrongly even if the child is better off in the end because the avoidance of harm is valued more than the promotion of good.

Each of these four responses rebuts the objector's argument that a parent who conceives a child whose life is worth living does nothing wrong from a person-affecting perspective because that child is still better off. I have tried to make a convincing case that a child whose life is worth living is not automatically better off being conceived than she otherwise would have been. However, if the reader is not persuaded by this

approach, I have argued that the act of conception can be wrong under some cases even if the child is, in fact, better off because one of the act's two effects is negative.

Thus far, I have demonstrated that the parental obligation to protect a child's interests to a minimal degree may sometimes require a parent to make a different number choice. That is, under some circumstances a parent may be required to not conceive a child in order to fulfill her parental obligation. In such cases, the parent acts wrongly from a person-affecting perspective if she fails to fulfill that obligation.

It is worth noting that in some cases a parent may be able to avoid this wrong by making a same number choice rather than a different number choice. Her situation could change significantly enough over time such that she will later be able to fulfill her obligation to a child she conceives. Alternatively, the parent could intervene in the act of conception (for example, using reproductive technology) and meet this obligation by changing the genetic identity of the future child, thereby making a same number choice. Cases such as these will be covered in Chapter 6.

### **Promoting interests through different number choices**

Does a parent's obligation to *promote* her child's interests also generate different number problems? That is, can a parent ever be obligated to make a different number choice in order to fulfill her obligation to promote the interests of her child? Recall that the obligation to promote interests is a requirement to promote a child's interests above the minimum threshold when it is possible for the parent to do so at reasonable cost. It makes moral demands of a parent to make conception decisions that make the future

child better off. However, it is not possible for a parent to make a future child better off by making a different number choice. In making a different number choice, a child either is brought into existence who otherwise would not have, or is not conceived when otherwise he would have been. As a result, a potential parent's obligation to promote her future child's interests would not compel her to make a different number conception choice because it would be impossible for the child's interests to be promoted by a different number choice.

One might suggest that an argument analogous to the one put forward in the previous section about protecting a child's interests could be advanced about promoting interests. That is, one could claim that a parent's failure to promote the interests of an existing child causes harm to that child in the same way that the parent's failure to protect an existing child's interests to a minimal degree causes him harm. It may seem that in both cases a parent has an obligation to prevent that harm from occurring in the future. The failure to prevent that harm could therefore constitute a wrong to the child. As a result, one could argue, a parent could be forced to make a different number choice in order to avoid the failure to fulfill her obligation to promote her child's interests.

However, this claim loses sight of the mitigating factor discussed in Chapter 3: the cost/benefit ratio. The obligation of a person to act at one time to prevent himself from bringing about a harm at a later time is subject to qualification. Three factors must be balanced in a particular way in order for the obligation to prevent harm to exist: the severity of the harm in question, the likelihood that it will occur, and the cost of preventing it. The harm must be severe and likely enough and the cost to the one preventing the harm must be reasonable. A parent only has an obligation to prevent

future harm to her child if the harm is great enough and likely enough to occur that it outweighs the cost to the parent. Does the parental obligation to prevent a child's conception in order to avoid the later harm of failing to fulfill the obligation to promote the child's interests meet these criteria?

The harm in question varies in severity from situation to situation. In cases in which the child's interests could have been promoted greatly the harm may be substantial. In situations in which the child's interest level would have been raised only slightly the harm that occurs is not very severe. For example, a child whose parent fails to promote her child's interests by refusing to help him with his homework is harmed more significantly than a child whose parent refuses to buy the child a 16<sup>th</sup> toy. So the first criterion varies depending upon the context in which parents have the option of promoting their child's interests and must be evaluated on a case by case basis.

Secondly, it is necessary to assess how likely it is that the harm of failing to promote a child's interests will occur. There may be some cases in which a parent is aware before conception that he will be unwilling to do what may be possible to promote his child's interests. An individual could know himself well enough to be sure that he would refuse to do so in most cases were he to become a parent. But in most cases, it seems that such unwillingness would be hard to foresee at all, let alone predict reliably. The second criterion for the existence of an obligation to prevent future harm, then, would rarely be met.

The primary cost to the prospective parent of upholding this obligation to prevent future harm is to not have a child. This cost may be significant in some cases, but less so in others. If a potential parent can simply wait to have a child for whom she will be able



to meet this obligation, or if having a child is unimportant to her, the cost is small. If, however, this is the only opportunity for an individual to conceive a child, and if becoming a parent is a vital part of her life's plan, the cost may be more significant. The cost to the prospective parent must therefore be evaluated on a case by case basis. This cost must then be compared with the severity and likelihood of the harm that could occur in order to discern whether or not the obligation to prevent that harm exists in each case.

There may be a few cases in which the harm is great enough, the likelihood high enough and the cost to the parent is low enough that a the obligation to prevent harm exists. That is, it is possible to imagine a scenario in which a parent is morally required not to conceive a child because of the later harm that she will cause him. However, it seems that in very few cases of promoting interests would the requisite proportion be found. This is because the future harm in most cases is not predictably likely or particularly severe. In many cases, then, the future harm is not significant enough to tip the scales in favor of requiring a different number choice. It therefore seems that the upper-right quadrant of the above matrix is not well populated.

We have seen in this chapter that the parental obligation to *protect* a child's interests to a minimal degree can require a parent to make a different number choice. That is, if a potential parent can foresee that he will be unable to fulfill his obligation regarding the future child, he may be required to avoid conceiving that child. In contrast, the obligation of a parent to *promote* her child's interests rarely, requires a parent to make a different number choice. This obligation more often requires parents to make same number choices, as I will demonstrate in Chapter 6.

## 6 Parfit's problem resolved: Same number problems

Recall the matrix of the four theoretical ways that parental obligations can make demands on individuals considering conceiving a child:

**Figure 6.1**

		Kind of conception choice	
Parental Obligation		Different number	Same number
	To protect	To protect interests through different number choices	To protect interests through same number choices
	To promote	To promote interests through different number choices	To promote interests through same number choices

In Chapter 5, I dealt with the left half of Figure 6.1 – Different Number choices. In this chapter I look at Same Number problems, and determine if the parental obligations to promote and protect a child's interests can require a parent to make such choices.

In exploring different number choices, I began by assessing whether the parental obligation to *protect* a child's interests to a minimal degree can require such choices. I then considered the same question with respect to the obligation to *promote* a child's interests. In the following analysis of same number choices, I will instead begin with the obligation to *promote* a child's interests. This is the more interesting of the two obligations in the context of making same number choices. It also forms the foundation

for understanding the implications of the parental obligation to protect a child's interests to a minimal degree in terms of such choices.

### **Promoting interests through Same Number Choices**

Cases in which a prospective parent is required to make a same number choice in order to promote her future child's interests seem plentiful. Probably the vast majority of conception decisions involve parents making choices to promote the interests of their future child that are same number choices. For example, Parfit's example of the 14 year-old girl who decides to conceive a child despite her lack of financial and emotional resources and support is a prototypical case of this sort. The Maryland couple who decided upon a deaf sperm donor was also making a same number choice. As I claimed earlier, many people have the intuition that the parents in both of these cases act wrongly because they fail to promote the interests of their children in making those decisions. Further, this intuition seems to be based upon the effect that the parents' choices have on the future children. However, as discussed in Chapter 4, Derek Parfit's work calls this intuition into question.

Parfit argues that it is not possible for a potential parent to promote a child's interests by making a same number choice. If the potential parent has the child at a different time or in a different way, the identity of the child who is conceived changes. And as long as the child who *is* conceived has a life worth living, she is no worse off than she otherwise would have been, because otherwise she would not have been conceived at all. As a result, the parent does nothing wrong from a person-affecting perspective. This argument can be broken down into three premises:

- A. If a parent had conceived her child under different circumstances than she actually did, a different child would have been conceived and this child never would have existed.
- B. A child who has a life worth living is not worse off being conceived than he otherwise would have been.
- C. If the child is not worse off, the parent did not act wrongly from a person-affecting perspective by conceiving the child under the circumstances that she did.

If Parfit's argument is sound, then, it is philosophically incoherent to claim that a parent who fails to make conception choices that promote her child's interests acts wrongly from a person-affecting perspective. I will argue, however, that it is possible to show that the fourteen-year-old girl does make her child worse off by not waiting to have him at a time when she is better able to care for him and that the Maryland couple did make their children worse off by ensuring that they would be deaf. In this chapter, I will show that at least two of the three premises above can be called into doubt. I demonstrate that Parfit's argument relies upon an indefensible assumption and therefore that a parent can make a child worse off if she fails to fulfill her obligation to promote the child's interests.

Premises B and C above closely resemble Premises A and B, respectively, in Chapter 5. I will therefore only discuss them briefly, showing how the arguments from Chapter 5 apply in the relevant context. The discussion of Premise A will be the focus of this chapter, because the majority of the interesting work on this argument relates to this premise.

#### *Premise B*

Although Premise B (that a child who has a life worth living is not worse off being conceived than he otherwise would have been) looks like a nearly tautological

statement, it is not always true. It is possible that a child who has a life worth living would have been better off if he had never been conceived. Benatar's distinction between a life worth continuing and a life worth conceiving shows how this can be the case. As I argued in Chapter 5, we seem to have different threshold qualities of life that constitute these two standards. The standard for a life worth conceiving is higher than the standard for a life worth continuing, as is illustrated in Figure 5.2. That a life is worth continuing does not entail that it is a life that is worth conceiving because of the gap that exists between these two standards. A child who will have a life that is just barely worth living will not have a quality of life that reaches the standard for a life worth conceiving. As a result, that child is worse off being conceived than he otherwise would have been. Premise B therefore is sometimes false.

### *Premise C*

In Chapter 5, I demonstrated that Premise C (that a parent does not act wrongly from a person-affecting perspective by conceiving a child if the child is not worse off) is sometimes false in the context of the obligation to protect a child's interests to a minimal degree. I also demonstrated, however, that the argument put forward about different number choices rarely applies to the obligation to promote interests. It is a parent's failure to prevent future harm that makes it possible to show that a parent acts wrongly from a person-affecting perspective when she does not fulfill her parental obligations. The obligation to prevent future harm, however, only exists under extreme conditions in the context of promoting a child's interests (unlike the context of protecting a child's interests to a minimal degree). The benefit from the potential promotion of interests must

be very likely and very significant and the cost to the parent of promoting those interests must be very small in order for the obligation to exist. As a result, this obligation only exists in a small minority of cases in which a parent can promote the interests of her child. In most relevant cases, then, it will not be possible to show that a parent acts wrongly from a person-affecting perspective if the child is not made worse off by her parent's decision.

This means that Premise C is rarely false in the context of same number choices. This is not a problem for my position, however, because only one of the above premises must be false for Parfit's argument to be judged unsound. I have already demonstrated that Premise B is problematic. In what follows, I will show where Premise A relies upon an erroneous assumption and why it is therefore not true.

#### *Premise A*

Whether or not Premise A (that a different child would have been conceived and this child never would have existed if a parent had conceived her child under different circumstances than she actually did) is true turns on how the term "this child" is understood. There are two different ways in which this term could be used. Which way is more appropriate depends upon the context in which it is used. In refuting Premise A, I show that Parfit refers to the future child in his argument using the less appropriate method of referral. Because the soundness of his argument requires that the future child be referred to in the erroneous way, Parfit's conclusions are not defensible.

Saul Kripke distinguishes between two types of labels for things in the world. Kripke proposes to “call something a *rigid designator* if in every possible world it designates the same object, a *nonrigid* or *accidental designator* if that is not the case.” (Kripke, 1972; p. 48) A rigid designator has the same extension in every possible world. That is, when a term refers to an object rigidly, it picks out the same object no matter what is true in that world. In contrast, a nonrigid designator can have different extensions in different possible worlds, meaning that it would refer to different objects if different things were true in that world. For example, 'George W. Bush' is a rigid designator because it refers to that particular individual regardless of whether he is a cowboy in Texas or the President of the United States. On the other hand, 'President of the United States' is a nonrigid designator because different people could fill that role in different worlds.

In posing his non-identity problem, Parfit uses rigid designation when referring to the future child. His argument assumes that each possible child should be thought of as a separate moral entity. It is only possible to say that a “different child” would have existed instead of “this child” if these entities are referred to rigidly. The analysis Parfit offers relies upon the distinction between different possible children. Its validity therefore depends upon a rigid understanding of future children.

Should future children be referred to rigidly, as Parfit assumes? Or would it be more appropriate to use nonrigid designation in the analysis of conception decisions? Which of these methods is used to designate the future child will determine what moral claims can coherently be made about such choices.

If the future child is rigidly designated, each possible child is considered to be a different moral entity. The term “this child” refers to one unique child, whether or not that particular child exists in any given possible world. Using Parfit’s concept of identity, “this child” rigidly designated picks out a child with a particular combination of genes. Each possible child is a separate, non-identical entity that must be separately identified. Claims made before conception that concern a child who could exist as a result of a conception decision would differentiate among possible future children. Such claims would have to look something like “I will teach whichever child I conceive how to ride a bicycle” or “No matter which child is conceived, I will make sure he has enough to eat.” The fact that the identities of possible children are distinct must be taken into account.

In contrast, designating the future child nonrigidly places emphasis on the role the child will have in the world, regardless of the identity of the specific individual who is conceived. If “this child” were understood as a nonrigid designator, it would refer to any of the possible children who could fill that role and would therefore eliminate the distinction between them. Moral claims about the future child made under this understanding must reflect the fact that the extension of the subject of those claims is uncertain. Under this conception when a parent claims that “I am obliged to send my child to college,” the claim is based upon the role that the entity plays in the world. The fact that different individuals may fill that role is morally irrelevant.

Both rigid designators and nonrigid designators can identify objects of moral obligations. This fact can be easily demonstrated with a few examples. Imagine that I am self-employed as a bodyguard. Tiger Woods hires me to work for him at a golf tournament, assigning me the responsibility of keeping overzealous fans at a distance.



When I agree to do the job, I take on a moral obligation to protect Tiger from his admirers. Now imagine again that I am a secret service agent. I am assigned to the presidential squad, and am specially trained to protect the President from threats to his safety and from scandal-hungry journalists. Under these circumstances, I have a moral obligation regarding the President of the United States. In both of these scenarios, I clearly have an obligation to protect someone. In the former instance, the individual that I am responsible for protecting is referred to in a rigidly designated way. If Tiger Woods hires me to serve as his bodyguard, in any possible world it is he whom I am obliged to protect. In contrast, my obligation to the President in the latter case is formulated in a nonrigid way. In various possible worlds, there may be different particular people whom I must protect. In this case, therefore, although I may actually be protecting one individual, George W. Bush, the fact that I am protecting that particular individual is incidental to the obligation. It is therefore clear that in some contexts, morally significant claims should be formulated using rigid designation and in other contexts, morally significant claims should be formulated using nonrigid designation. In the Tiger Woods context, it is proper to formulate the obligation to protect using rigid designators, while in the Presidential context, nonrigid designation is more accurate. Which kind of designation is appropriate depends upon the context in which the moral claim is made.

Parfit's argument concerns the decisions that a parent makes when conceiving a child. These decisions necessarily take place *before* the child is conceived. The fact that these decisions occur before conception is a defining feature of the context in which moral claims about a future child are made. Which kind of designation should be used to

refer to a future child before the child is conceived? Is rigid or nonrigid designation more appropriate in this context? In the following paragraphs I will give four reasons to believe that a future child should be referred to nonrigidly in moral claims made before the child's conception.

The most compelling argument for this position is that it would be difficult for the term "this child" to pick out a particular child prior to conception. That is, because the identity of the child has not yet been determined, it is unlikely that that term identifies that future child rigidly. For example, if "this child" refers rigidly, a parent could not coherently say, "I plan to give my child piano lessons" before the child is conceived in most cases, because the specific identity of that future child is unknown. She would instead need to say "I plan to give any child that I might conceive piano lessons." In contrast, the term "this child" when used nonrigidly works unforced in these contexts. "This child" refers to the future child regardless of her later future identity. Nonrigid designation is the natural way of referring to the future child in the relevant context. As a result, moral claims about conception decisions clearly are most appropriately made nonrigidly.

There are additional reasons to think that a future child should be referred to using nonrigid designation. First, it is possible to refer to a child nonrigidly both before and after her conception. For example, it is possible to talk about "John and Susie's first child" both before that entity exists and after she is conceived. Rigid designation can pick out a child after her conception, but, as I argued above, is problematic before that moment. As a result, any moral claims that are relevant to a period of time that spans over conception require the use of nonrigid designation. Nonrigid designation therefore

allows moral claims to maintain continuity in a way that rigid designation makes impossible.

Another reason why nonrigid designation is more appropriate in the context of conception decision-making is that it more closely corresponds to the way we think of future children in moral discourse. If the fact that possible children are technically distinct entities were morally relevant to potential parents, those parents' thoughts would reflect that distinction in the way illustrated above. This would include a constant consciousness of the multitude of possible children and the fact that each has its own moral status. Such consciousness does not, however, seem to be reflected in most people's moral thinking about conceiving a child. That is, we do not differentiate morally between possible combinations of genes when considering a future child. Rather, before a child is conceived, it is the place that the child will occupy in the world that is of moral relevance. We are indifferent to which particular child ends up taking that place. As noted above, the parent who says "I hope to be able to send my child to college," uses the phrase "my child" to refer to a single entity whose particular identity is unknown rather than to pick out one of many possible entities. The multitude of possible identities that a child could have is rarely part of a parent's moral thought about that future child. Nonrigid designation therefore seems more consistent with the way that parents think about possible children than does rigid designation.

Finally, nonrigid designation better reflects our common notion of identity than rigid designation. When we think about future children, we think of the role that they will play in our lives rather than about their specific genetic makeup. It is this role that

defines their identity for us, not what genes they happen to have. Nonrigid designation fits better with this conception of identity than rigid designation does.

Parfit acknowledges the possibility of using nonrigid designation rather than rigid designation when pointing to a future child. Referring to his example of the 14-year-old girl, he admits that, "in trying to persuade this girl not to have a child now, we can use the phrase 'her child' and the pronoun 'he' to cover *any* child that she might have...By using these words in this way we can explain why it would be better if this girl waits" (Parfit 1984; 359). Parfit rejects this approach as a solution to the nonidentity problem, however. He argues that, "though we can truly make this claim, it does *not* explain the objection to this girl's decision. This becomes clear after she has had her child. The phrase 'her child' now naturally refers to this particular child. And this girl's decision was *not* worse for *this* child" (1984; 359). These comments demonstrate Parfit's commitment to using rigid designation in referring to a future child. He reiterates that after the child is conceived, the specific identity of the child is determined, implying that rigid designation is the more appropriate way of referring to that child.

My arguments in favor of nonrigid designation of the future child cannot be dismissed quite this easily, however. My claims do not rely on a "verbal trick" (Parfit 1984; 397) of the kind Parfit identifies above. Instead, I am arguing that he chooses the wrong context from which to make moral claims about the future child. Parfit's Premise A states that if a parent *had* conceived her child under different circumstances than she actually *did*, a different child *would have been* conceived and this child *never would have* existed. This premise looks retrospectively upon the decision to conceive *after* the

conception takes place. Further, Parfit clearly states that his argument “becomes clear after [the mother] has had her child” (1984; 359). He approaches conception decisions from the context of hindsight in order to make that argument work, reflecting upon the parent’s choice after the child is conceived. However, actual conception decisions occur, obviously, prospectively. The only context in which such decisions can be made, obviously, is foresight.

As noted above, the kind of designation that is more appropriate to use when making moral claims is dependent upon the context in which those claims are made. Because conception decisions must be made before the child is conceived, moral claims concerning conception decisions should be made within that context. Unlike the post-conception context, nonrigid designation should be used before conception. Parfit chooses the wrong context from which to analyze the morality of conception decisions. As a result, he chooses the wrong kind of designation to use in his arguments. The difference between these two types of referring is therefore more than a game of semantics. It is based upon a morally relevant assumption that Parfit erroneously makes. Parfit’s choice to demonstrate his nonidentity problem from the perspective of hindsight compromises his argument.

It is worth noting that my argument against making moral claims about conception from the perspective of hindsight does not downplay the importance of consequences. My goal, in fact, is to prove that conception decisions *do* have consequences for the children in question that should be taken into account in moral analysis. The claim that foresight is the proper perspective from which to approach this

subject does not mean that consequences should be ignored, but rather that they must be considered from this perspective in order to be assessed correctly.

If nonrigid designation should be used when referring to the future child before the child is conceived, and if conception decisions must be made before the child is conceived, it follows that nonrigid designation should be used when referring to the future child in making conception decisions. As a result, the term “this child” in Premise A refers to the future child regardless of the specific identity he may one day have. Understanding the subject of this premise nonrigidly provides continuity of identity among the various possible future children, rendering the nonidentity problem powerless. The fact that different children could be conceived is true but is not morally relevant.

Parfit’s Premise A is therefore problematic. It is mistakenly phrased from the perspective of hindsight. As a result, Parfit’s argument as it is does not give guidance about conception decision-making, which must take place before conception occurs. Further, if the premise were rephrased from the perspective of foresight, the term “this child” would necessarily refer to the child nonrigidly, making it possible to compare the interests levels of the various possible children that may come into being. Either way, Premise A cannot be used to draw Parfit’s conclusion that the 14 year-old girl does nothing wrong from a person-affecting perspective.

There may be those that are not entirely persuaded by the significance of the objection I have raised to Parfit’s arguments. One could acknowledge that nonrigid designation is a more common and natural way of referring to the future child before conception but still question its use in making claims about the well being of that future

child. In response, I can simply say that the reasons in support of using nonrigid rather than rigid designation are at least as compelling as those in support of using rigid designation in these contexts. As a result, it seems to be a more appropriate method of referring to use.

Thus far, I have used the concept of nonrigid designation to demonstrate a problem in Parfit's argument and to shed doubt on his conclusions. I believe, however, that this idea can be taken a step further. The fact that future children are more appropriately designated nonrigidly is not simply a semantic distinction. It reflects the way that the future child should be conceptualized in moral analysis. That is, it represents a conceptual shift in the way we understand the entity I have been calling the 'future child'. What conclusions can be drawn in light of this shift?

If the set of the many possible future children is understood as a single, nonrigidly designated entity before the time of conception, a parent's same number conception decisions can affect the well-being of that entity. The future child can be made better off or worse off depending upon the choices the parent makes. A potential parent has an obligation to promote her future child's interests when it is possible for her to do so at reasonable cost. It is possible for the future child's well-being to be improved when the parent makes same number conception decisions. A parent can therefore be obligated to make same number choices about conception in order to promote the interests of her child. If she fails to fulfill that obligation, she acts wrongly. As a result, it is possible to claim that the 14 year-old girl does wrong when she does not wait to conceive her future child, nonrigidly understood, because his interest levels will be lower than they otherwise

would have been. The girl could have promoted those interests by waiting several years to conceive. Similarly, the children of the Maryland couple probably have lower interest baselines than they would have had if their mothers had decided to use sperm from a hearing donor. The parents' choice therefore did not promote the interests of their children but, instead, wrongly compromised them.

The wrong described in this section seems to be a person-affecting wrong. The well-being of the future child, nonrigidly understood, is dependent upon the conception decisions the parent makes. If a parent makes the choice not to promote his child's interests by conceiving it under better circumstances, he fails to fulfill his obligation to that child, making her worse off than she otherwise would have been. The wrong of the parent's failure therefore is person-affecting, despite Parfit's claims that such a wrong cannot have that characteristic.

It is worth reiterating the point made in Chapter 4 that this wrong only occurs in cases in which it is *possible* for a parent to promote the interests of his child. The obligation to promote harm has the constraint that it only exists when it is possible for the parent to do so at reasonable cost. So the obligation to promote a child's interests does not exist if it is impossible for the parent to do so. In such cases, the parent is not held morally responsible for his failure.

It is also worth noting that the parental obligation to promote a child's interests can apply to both mediated and unmediated actions. For example, a parent can promote the interests of her child in an unmediated way by taking steps to avoid passing a genetic disease on to him. She can also have a child at a time that will make it possible for her to



promote his interests through mediated choices such as spending more time with him or by having more resources to allocate for his care. In both cases, the parent's choice improves the well-being of the future child. This parental obligation therefore requires a parent to take mediated and unmediated actions in order to promote the child's interests.

### **Protecting interests through same number choices**

In the final quadrant of the matrix of parental obligations and conception choices is the possibility that a parent can be required to make a same number choice in order to fulfill her obligation to protect the interests of her child to a minimal degree. It makes sense to talk about the protection of interests to a minimal degree in terms of same number decisions. A parent could choose to have a child under one set of circumstances rather than another in order to ensure that the child's interests will be protected to the requisite degree. This kind of case is probably common, for example when a potential parent waits to have a child until she is prepared to adequately protect that child's interests. Would-be parents also use various genetic technologies that result in same number choices to improve the chances of having a child whose interest level will reach or exceed the minimum necessary for a successful human life.

However, a case in which a parent makes a same number choice in order to ensure that his child's interests are protected to a minimal degree does not raise any unique issues. The same problems that purportedly plagued idea that a child's interests can be *promoted* through same number choices apply when a parent attempts to *protect* his child's interests through same number choices. Specifically, Parfit would argue that when a parent acts to ensure that his child's interests will be protected to a minimal

degree, he causes a different child to be conceived. As a result, if the parent did not act to protect the future child's interests in this way, the child would not be any worse off because she otherwise would not have existed. Therefore, it does not make sense, if one buys Parfit's argument, to claim that parents have obligations to protect the interests of their children by making same number decisions.

The arguments refuting this conclusion apply in the context of protecting a child's interests to a minimal degree just as they do in the context of promoting a child's interests. If the future child is conceptualized nonrigidly rather than rigidly, as I have argued she should be, all of the possible future children comprise a single entity. There is therefore a continuity of identity that makes it possible for the future child to be made worse off than she otherwise would have been if her interests are not protected to a minimal degree. A parent who fails to fulfill her obligation to protect a future child's interests to a minimal degree, then, acts wrongly from the perspective of the future child.

### **Wrongs versus harms**

In the course of discussing these four quadrants of obligations and parental choices, I have shown that a parent acts wrongly from a person-affecting perspective when she fails to fulfill her parental obligations. I have shown that our common sense intuitions about this case can be defended and that Parfit's conclusions can be avoided. The result is that I have identified a two-part, person-affecting ethical appeal that identifies important ethical considerations relating to conception decisions. I have shown that a parent has an obligation to protect and promote the interests of her future children

when making choices about conception and that she acts wrongly from a person-affecting perspective if she fails to fulfill those obligations.

I have, however, thus far shied away from using the term “harm” for what a parent does when she fails to fulfill her obligations to her children. Harm is one specific type of person-affecting claim. As noted in Chapter 3, it only occurs when certain conditions are met. There are several reasons why it would be advantageous to my argument if I can show that not only wrong, but *harm* occurs when a parent fails to fulfill his parental obligations regarding the future child when making conception decisions. First, because the desire to avoid harm is such a widely accepted moral maxim, it would broaden and strengthen my argument to show that harm is, in fact, done to the future child in these cases. Similarly, the concept of harm is one that is accounted for in one form or another by any plausible moral theory. If I can prove that it is possible for a parent to harm her future child by conceiving him, my conclusions will be relevant to almost any ethical approach. Finally, harm is something that is generally taken seriously. The idea of harm connotes a certain gravity in the possible effects of an action. The claim that a choice causes harm provides a significant reason to avoid that choice if that claim can be substantiated. The importance of the harm claim will become more transparent in the following chapter. I evaluate whether or not it makes sense to say that a parent *harms* her child when she fails to fulfill her parental obligations or whether she only wrongs him in a more general, yet still person-affecting, way.

## 7 A new kind of harm

I argued in Chapters 5 and 6 that a parent acts wrongly if he conceives a child with the knowledge that he will be unable to protect her interests to a minimal degree and if he fails to conceive a child at a time and in a way that promotes her well-being when it is possible for him to do so at reasonable cost. I further argued that both of these claims are defensible using traditional, person-affecting moral principles despite Parfit's arguments to the contrary. These claims show that it is possible to make moral judgments about conception decisions that derive their moral force from the effect that they have on a future child. Even so, these claims prove only that the parent can act wrongly from a person-affecting perspective, not that he can *harm* the child when he conceives her. As suggested earlier, the harm principle is a persuasive moral principle. Something like it can be found in almost any plausible moral theory. If it is possible to show that a parent can harm his future child by making conception choices that fail to protect and promote that child's interests, there is at least one reason to believe that such choices are morally wrong. However, further argument is needed to defend the claim that a future child can be harmed by such decisions.

As discussed in Chapter 3, Joel Feinberg's definition of harm consists of two independently necessary and jointly sufficient conditions. First, one individual's action must set back another's interest in order to harm him. If one's action causes a decrease in the interest level of another, she causes a setback to his interests. Secondly, an individual must act *wrongly* in setting back the other's interests in order to cause harm. That is, harm only occurs if the individual acts outside the constraints of established moral rules.

Feinberg argues that “only setbacks of interests that are wrongs, and wrongs that are setbacks to interests, are to count as harms in the appropriate sense.” That is, one must not only set back the interests of another in order to harm her, but must do so wrongly.

Both of these conditions can be met when one person fails to fulfill an obligation that he has to another. As I argued previously, when a person has an obligation regarding another, the second individual’s interest level reflects that obligation. That person’s interests level is therefore compromised if the first individual fails to fulfill his obligation. Further, in most cases the failure to fulfill an obligation is wrongful. As a result, when one individual fails to fulfill his obligations to another, he usually causes that individual harm because he both wrongs her and sets back her interests.

In Chapter 5, I showed that a prospective parent has an obligation to make conception decisions that prevent her future child from being harmed by not having his interests protected to a minimal degree. In Chapter 6, I argued that a prospective parent has an obligation to make conception decisions that promote his interests when it is possible for her to do so at reasonable cost. It would seem, then, in light of the above-cited connection between obligations and harms, that a parent who fails to fulfill these obligations harms her future child by her failure. Using this argument, the concept of harm can easily be applied to conception decisions.

Although this conclusion seems straightforward, it has received much resistance. Many philosophers have been convinced that a parent cannot harm her child by conceiving it. In the remainder of this chapter I explore the possible sources of opposition to this idea and argue that they are not justified. I then propose a new kind of harm that may help bridge this conceptual gap.

## **Harm and the problem of the subject**

In a typical instance of harm, there are at least two individuals – an agent (who does the harm) and a subject (who experiences it). Through some action or omission, the agent directly and immediately causes an effect on the subject. Both the agent and the subject are specifically identifiable people who exist in the same time. The agent could (if she so chose) identify the individual she has harmed by picking him out in a crowd.

The application of this traditional model of harm is less straightforward in the context of reproduction. At the point at which a potential parent makes decisions about reproduction, it is *not* possible to pick the subject of a possible harm out of the crowd. It is more elusive in reproductive cases than it is in archetypal cases of harm. Specifically, there are at least two characteristics of the subject that seem to undermine the possibility of harm in these cases.

First, at the time at which reproductive choices are made, the potential subject of the harm does not yet exist. So when the agent acts, there appears to be no one whose interests are affected by that action. Instead, it seems that the choices a parent makes can actually determine the starting interest level of the child. If it is those choices that establish the interest level that the child begins with, they cannot alter that interest level for better or for worse. In other words, because the subject in reproductive cases does not exist nor have an interest level until it is conceived, it seems that that subject cannot be made worse off by being conceived. As described above, a setback of interests must occur in order for harm to take place. Therefore, it might seem that harm cannot be done in such cases.

However, the fact that the entity does not exist at the point at which reproductive choices are made does not mean that there are not interests that can be affected by the potential parent's choices. The child's *future* interests must be taken into account. Recall that children have three different kinds of interests. They have current and future-oriented interests, which determine their well-being at the present time. They also have future interests that determine their well-being at any given time in the future. The compromising of a child's future interests constitutes a setback of interests just as the compromising of the child's present interests does. As I argued in Chapter 4, a child's future interests can be set back such that the future child is harmed by the action that sets them back. Take, for example, Feinberg's scenario of the Kindergarten bomber (97). The bomber enters a Kindergarten classroom and sets a bomb to go off seven years later. In doing so, he acts in a way that causes harm to numerous future children. The fact that the children do not yet exist does not make his action less harmful. It seems, then, that the current non-existence of future children does not necessarily mean that they are not the kind of things that can be harmed.

One could argue in response that a child's future interests cannot be the foundation of a harm because the existence of that child is only possible. That is, it is unsure whether or not these children will ever exist at all. A future child has more than one possible future. In fact, she has numerous possible futures. In some of them she will come into being and in others she will not. One could argue that if the entity never comes into existence there is no one who is made better or worse off by a potential parent's reproductive choices.

I admit that if a child never exists, she cannot be harmed by a parent's act. In the application of the moral appeal of harm, however, this fact makes little difference for two reasons. First, an ethical appeal founded on the value of not causing harm applies not only to sure instances of harm, but to probable and possible instances as well. Morally, it seems at least as important to avoid acting in a way that is very unlikely to cause a very severe harm as it is to avoid certainly causing an insignificant harm. Secondly, there is also uncertainty about the future possibilities of *existing* people. I, myself, am an entity with more than one possible future. In some of those futures, I exist and in some I do not. I may never be made better or worse off by someone who acts in a way that compromises my future interests. That does not mean, however, that my future interests should be disregarded. The same is true for the future child. In many (although admittedly not all) cases, then, the possible non-existence of the future child does not matter from a moral perspective.

The objector could respond by claiming that it is *not possible* to determine whether an action sets back the interests of the future child. She could claim that, because the state of the child's future interests is unknown, there is no way to tell how they are affected by a parent's conception choice. I disagree. The fact that we do not know the precise state of the future interests does not mean that we have no information about how those interests are affected by actions that occur before conception. Even if we know nothing else about the interest levels of that future child, we can tell *relatively* that some choices are likely to make a child worse off in the future. The result is that it is possible to identify a setback of interests for a future child, even if little is known about the specifics of that child's future interest level.



The second characteristic that differentiates potential subjects of harm in reproductive cases from those in typical cases is the indeterminacy of their identity. In most cases of reproduction, at the time the conception decisions are made it is not yet determined which of numerous possible children will exist. Different children will be brought into being depending upon the choices a parent makes. Unlike in most contexts, where it is possible to point to a subject with a specified identity whose interests will be affected by an agent's harmful action, in the reproductive context that identity will be determined by the agent's action.

This indeterminacy relies upon the mistaken assumption that future children should be understood as individual possible children, each with their own moral status. I have argued, however, that when making choices about conceiving a child the child should, in fact, be conceptualized nonrigidly. When the subject of parental obligations, namely, the future child, is nonrigidly designated, the indeterminacy of that subject's identity becomes irrelevant. The future child is considered to be a single entity and, as such, is the subject of the parental obligations.

As noted above, our traditional account of harm is dependent upon certain constraints that are put on the nature of a subject in moral discourse. First, that account assumes that the moral consideration of the subject's interests must be confined to the time of its existence. Secondly, the account presupposes that the subject must be rigidly designated when making moral claims about it. However, I have argued that neither of these constraints is necessary or justifiable in cases of reproduction and that the traditional way in which such subjects are understood is too limiting. As a consequence,

I have created a new conceptual space into which our idea of proper subjects of obligations can be expanded.

It seems, therefore, that the way that we understand potential subjects of harm must be expanded. Our conceptualization of the subject must become flexible, stretching in a way that provides continuity between the agent and the subject. There are at least two ways in which our understanding of the subject must be elastic: First, the subject must be flexible with respect to time. Her interests can be affected regardless of when she exists. That is, the subject of the harm need not actually be in existence at the time the action causing the harm takes place. Secondly, this new conceptualization of the subject must also be flexible with respect to the various possible identities the subject may have. That is, the subject must be nonrigidly designated so that it is inclusive of the subject as it is in many different possible worlds.

This revised understanding of subjects may sound at first like science fiction; crossing the boundaries of time and identity. However, it approximates the way that we interact with future children morally better than the traditional understanding. Many parents begin considering their future child as a subject of their actions long before the child is conceived, moving into a larger house or beginning to save for her college fund. Women stop smoking or begin eating more healthily before becoming pregnant in order to improve the well-being of their future children. Sometimes they take such actions even before knowing that it will be possible for them to conceive a child at all. Further, when potential parents think about future children, they rarely distinguish between the various possible identities of those children. Parents do not make different plans depending upon which genetic identity the child ends up having. So it seems that this

expanded way of conceptualizing subjects in cases in reproductive ethics actually more accurately reflects the way that we generally think about our future children, and is therefore a more appropriate understanding to use when analyzing the ethics of reproduction.

### **A new kind of harm**

What conclusions can be drawn if subjects are understood in this expanded way? Can the two necessary and sufficient conditions of harm be present in the context of conception decision-making? That is, it is possible for a parent to both wrong and set back the interests of his future child? If so, he can harm his child when he conceives her.

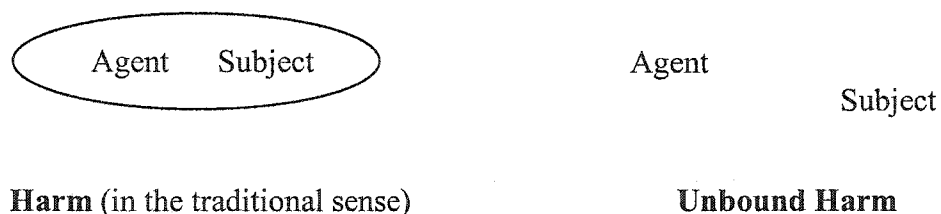
First, it seems clear that it is possible to wrong a subject that is defined in the expanded way described above. I argued in Chapter 4 that a parent has obligations to a future child that are analogous to those that she has to an existing child because the conditions that generate parental obligations are present in both of these cases. In most situations, a person acts wrongly when she fails to fulfill her obligations. So when a parent fails to fulfill her parental obligations in the absence of extenuating circumstances, she wrongs that future child. This means that one of the two conditions for harm is met.

Secondly, it is necessary to determine that a setback of interests is possible in the relevant context. How is it possible to determine whether the interests of a future entity are set back? The fact that a future child does not yet exist means that he has no current interest level. Further, because his identity is not yet determined, the future state of his interests cannot be known. This does not mean, however, that we have no information about how those interests are affected by actions that occur before conception. We know

that if a future child can be the subject of an obligation, that future child's interest levels reflect that obligation. Even if we know nothing else about the interest levels of the future child, we can tell, relatively, that his interests will be compromised if his parent fails to fulfill his parental obligations. This setback occurs and is morally considerable even in windfall cases in which the future child ends up better off overall, as argued in Chapter 3. The result is that it is possible to identify a setback of interests for a future child, even if little is known about the specifics of that child's future interest level.

So it seems that it is possible to harm a future child conceptualized in this way. Both of Feinberg's conditions for the occurrence of harm can be present. This is evidence that in cases involving conception, harm does not stay within the boundaries that it does in typical cases. An agent can take an action that harms a subject that does not yet exist. Further, the agent can do harm to a future child without knowing which of the many possible children will be conceived. This kind of harm can bridge times and possible worlds, and stretches to allow a connection between the agent and the subject. Let's call this kind of harm "unbound harm" to differentiate it from our traditional understanding of harm. This name is descriptive of the fact that the agent and the subject are not bound together in a particular time or a particular possible world, as illustrated in the figure below.

**Figure 7.1**



Unbound harm is a broader sense of harm that is inclusive of but not identical to the traditional sense. It includes a wider array of subjects and therefore a wider array of harms. When the subject can be identified in the typical way and the two conditions for harm are met, the agent harms the subject in the traditional sense. When the subject must be identified in the expanded way described above and the two conditions for harm are met, the agent harms the subject in the new, unbound sense.

Unbound harm has the same weighty moral force that harm in the traditional sense does. Both are caused by a wrongful setback of interests. They are therefore different but equally significant conceptions of harm. Importantly, as a result, unbound harm can serve as a foundation for invoking the concept of harm when making moral claims. This means that the concept of harm can be applied to a wider variety of ethical cases. Most significantly for the purposes of this project, it means that the concept of harm can be applied in the context of conception decision-making.

It seems likely that the idea of unbound harm could be helpful in other ethical situations in which the problem of the subject arises. Cases involving conception are, obviously, important examples. Unbound harm also describes cases of negligence well. Consider a party-goer who is aware of her propensity for driving home drunk. If she fails to give her keys to a sober friend at the beginning of the night, she acts in a way that could compromise the future interests of unknown individuals. This concept may also be able to explain the possibility of posthumous harms. If a harm is not bound to the particular time of the individual's existence, it is possible for an agent to harm a subject even after the subject no longer has interests. Further, cases involving subjects that we do not generally consider to have current interests could also be more effectively

analyzed using unbound harm. First trimester fetuses, patients with dementia, and those in persistent vegetative states are possible examples of such subjects. Because the notion of unbound harm stretches across times and identities, it could be applied to cases like these in which the existence of the subjects interests does not coincide with choices that have to be made concerning those interests. Further work would have to be done to determine whether or not these other puzzling cases can be resolved using the idea of unbound harm.

### **An intuition justified**

Recall the case of the lesbian couple in Maryland who chose a deaf man to serve as a sperm donor to ensure that their children would be members of the deaf community. Most people share the intuition that the mothers in this case made their children worse off by making that choice. The idea of unbound harm justifies this intuition. It enables us to coherently claim that a parent can negatively affect her future child when she fails to fulfill her parental obligations in conceiving him. That is, we can conclude that a parent harms her future child when she acts in this way despite the claims of Parfit and others to the contrary.

The argument for the occurrence of unbound harm in cases like these is analogous to the arguments put forward in showing that a parent does traditional harm to his existing child if he fails to fulfill his obligations to her. A potential parent has obligations regarding his future child, such that the future child, conceptualized in the expanded way described in this chapter, is the subject of the obligation. The child's future interest level therefore reflects those parental obligations. In most cases, if the potential parent fails to

fulfill these obligations, then, the future child's interests are wrongly set back. This wrongful setback of interests constitutes unbound harm. It is different from the traditional sense of harm in that the subject must be understood in an expanded way – without the constraints of time or possible worlds – in order for the setback of interests to occur. Nonetheless, the occurrence of unbound harm is a morally serious consideration.

This possibility of unbound harm must be taken into account by parents in moral decision-making about conceiving children. A parent has the obligation to protect her future child's interests to a minimal degree and generally harms him when she fails to do so. Further, a parent has the obligation to promote her future child's interests when it is possible for her to do so at reasonable cost and generally harms him when she fails to do so. As argued above, if an action causes harm there is at least a *prima facie* reason to believe that the action should be avoided. Parents therefore must consider this ethical appeal when making conception decisions.

In the eighth and final chapter, I will explore further how this ethical appeal should be taken into account in conception decision-making and under what circumstances it can be outweighed. I will also illustrate the value of this appeal with several cases involving conception. For each case, I will demonstrate how the ethical analysis of the case is more complete and intuitive with the inclusion of this appeal than without it.

## 8 The appeal applied

Thus far, I have defined and defended a two-part, person-affecting claim that applies to conception decision-making. Parents are obligated to protect the interests of their future children to a minimal degree and to promote the interests of their children when they can do so at reasonable cost. If they fail to fulfill these obligations when making choices about conceiving children, they harm those children. I have therefore shown that a parent can harm her future child if she fails to make conception decisions that protect and promote his interests.

In this concluding chapter, I demonstrate that this claim can be used in making normative judgments about parents' conception decisions and describe how it interacts with other ethical appeals within the context of the major moral theories. I then use several cases to illustrate that the ethical analyses of conception decisions are more complete and intuitive when this appeal is included. I conclude that this child-centered appeal should be taken into account in discussions of the ethics of reproduction.

### **The Appeal – How it works**

Alone, the fact that a parent can harm her future child if she fails to make conception decisions that protect and promote his interests is not normative. Although the concept of harm clearly has strong negative connotations, the claim that an act causes harm in and of itself does not allow one to make ethical judgments or to differentiate right action from wrong action. Fortunately, the connection between this claim and



normative judgment is straightforward and intuitive. Put into the context of each of the major moral theories, the appeal can give moral guidance.

As I noted earlier, the concept of harm is not captive to any one moral theory but rather can be applied within any defensible moral framework. Consequentialism, deontology, virtue theory, and pluralism can all accommodate this principle in one way or another. Harm (whether of the traditional or unbound variety) must include a setback of interests. That is, when an individual is harmed, she is made worse off by that action. The notion of harm therefore has implications with a consequentialist framework because it brings about a less favorable state of affairs for that individual. Harm also can work within a deontological moral theory to guide normative judgment. In order for an agent to do harm, she must act wrongly. The fact that the notion of wrongdoing is inherent to the concept of harm means that harm is relevant within a deontological theory. Virtue ethics deals less directly with the concept of harm. There is no traditional moral virtue of avoiding or preventing harm. However, it is likely that the expression of some of the virtues, such as compassion, correlate with the disvaluing of harm and some of the vices, such as greed, correlate with the occurrence of harm. Finally, harm can be easily accounted for by pluralistic theories such as those put forward by Tom Beauchamp and James Childress (2001) and Baruch Brody (1988). The concepts of beneficence and nonmaleficence are central to these theories, meaning that the concept of harm can be used in making moral judgements within pluralistic frameworks.

It is vital to the proper understanding of the ethical appeal I have identified, however, that this appeal alone is not the complete story of the ethics of conception decision-making. Rather, it is only one piece of a much larger story. This ethical appeal

is based upon the well-being of the future child. It therefore represents the future child's interests in the ethical analysis of conception decisions. However, there are numerous other factors that must be taken into account simultaneously. Some of these other factors will support the normative judgments indicated by my appeal. Others will contradict those judgments. The form that those other considerations take will depend upon the ethical framework in which the appeal is being used. There may be consequences for other parties involved, such as a future child's siblings, that need to be taken into account in conception decision-making within a consequentialist framework. Other deontological constraints could be relevant within a deontological picture that outweigh the constraints of my ethical appeal. For example, a potential parent could have conflicting obligations that take precedence over the obligations that she has to her future child. Similarly, a course of action that does not express virtue related to the well-being of the future child but that expresses virtue or avoids vice in other ways could be, on the whole, a more virtuous action. In pluralistic theory, there are many different appeals, such as other consequences, rights, virtues, and considerations of justice that could come into play and compete with the good of avoiding harm in any given situation. As a result, all of these factors must be considered in analyzing the ethics of a particular conception decision.

The child-centered appeal that I have described may therefore be overridden by other factors in some cases. Even if a parent harms his child by making a particular conception choice, the moral weight of that harm may be overwhelmed by the weight of the other appeals that must be considered. Nonetheless, this appeal is vital to the proper understanding of the ethics of cases of conception. It is an important and persuasive appeal. Perhaps more importantly, it takes into account the perspective of the being who

will be most significantly affected by the potential parent's choice: the future child. The appeal should be taken seriously because of this fact. It should therefore be a compelling consideration regardless of the moral perspective one ascribes to. Further, the case for this claim has been built upon traditional, commonly accepted moral principles. This suggests that current moral thought is adequate to deal with cases of reproductive ethics from a person-affecting perspective, despite the above-cited claims to the contrary.

In this chapter, I use three case analyses to demonstrate the value of the appeal I have defined. The cases will show that an ethical analysis that includes the child-centered appeal gives more satisfactory results than an analysis that does not. These analyses will help to establish the value and importance of the child-centered ethical appeal.

### **Limitations**

There are some limitations on the application of this ethical appeal. I have identified these limitations throughout the project as has been appropriate. However, it is worth reiterating them here. First, this appeal applies only in the context of *conception* decision-making. There are many other kinds of reproductive choices and questions that raise difficult ethical issues. This appeal as I have argued for it, however, does not have any obvious implications for such choices and questions. Specifically, my arguments do not apply to embryos or fetuses and therefore are not directly informative about the issue of abortion. I do believe that the work I have done lays the groundwork for drawing some further conclusions about this topic, but defending those conclusions philosophically is a project for another year (or two). The scope of this appeal's

application, therefore, is limited to contexts in which decisions are made before conception occurs.

A second limitation worth noting is that the appeal only makes moral demands on potential parents when they *make the decision* to conceive. That is, a woman who conceives a child as a result of being raped cannot be judged by these moral standards because she does not make the choice to be in that situation. Similarly, true cases of ignorance are not covered by this appeal. If an individual honestly is unaware that conception is a possible consequence of his choice (and that ignorance is not willful or negligent), the appeal does not apply. However, I use the term “decision-making” in a very broad sense. It encompasses not only the explicit choice to conceive a child, but also the choice to act in a way that makes conception possible. That is, one is not exempted from the ethical demands that this appeal makes by claiming that conception is not intended, for example, by using birth control methods.

Finally, I want to emphasize that my claims are moral, not legal, in nature. I have argued that a parent can harm her child when she makes decisions about his conception. As a result, as demonstrated above, some conception decisions have a wrong-making feature based upon the perspective of the resulting child. John Stuart Mill and Joel Feinberg employ the concept of harm in developing the harm principle - a liberty-limiting principle. They argue that acts that cause harm to another can be legitimately legislated by the state. However, their claim is not that actions that cause harm *must* be legislated, only that they *may* be legislated. There are other considerations that must be taken into account when evaluating whether or not a given act *should* be legislated. I have not

looked into any of these other considerations here. As a result, my conclusions are limited to the realm of moral evaluation.

### **Case Analyses**

The child-centered appeal that I have defended is relevant in any context in which an individual decides to have a child. It is also relevant to any conception decision that a potential parent might make within such a context. For example, a fourteen year-old girl could decide to wait to have a child until she is in a better position to care for him. An HIV positive woman could choose to begin the drug course to prevent maternal-fetal transmission of the virus before conceiving a child. A low-income family could make the choice not to have a fourth child, recognizing that they do not have the means to provide for it. My child-centered appeal could be used in defense of any of these choices. Some of the most interesting conception decisions, however, are those generated by the expanding possibilities at the nexus of genetic medicine and reproductive technology. It is the ethical analysis of these possibilities that has given new life in recent years to questions surrounding harm and the decision to conceive. The case studies below, then, all relate to the use of genetic and reproductive technology in the conception of a child.

In analyzing these two cases, I use a pluralistic approach. I have chosen this approach because of its inclusiveness. Pluralism includes the considerations of consequentialism, deontology, virtue ethics, and other moral theories in attempting to arrive at moral judgments. Essentially, this theory involves enumerating a variety of moral appeals that are relevant to the case at hand and evaluating the extent to which each of these appeals is important in the ethical analysis. These appeals may include, among

others, the consequences of different choices to the parties involved, the rights of the various parties involved, considerations of justice and the value of expressing virtues such as honesty, compassion, and courage. These numerous appeals must then be considered as a whole and a judgment must be made about what those appeals indicate. There is no simple algorithm underlying such a judgment. The pluralist must simply make her best moral assessment, taking all of the various considerations into account.

**Case 1:** Mr. and Mrs. H have been married for three years and are considering conceiving a child. Mrs. H, however, is a carrier for hemophilia, a sex-linked genetic disorder. This means that she is not affected by the disease, but has the potential to pass it on to her future child. If the couple conceives a girl, she will have a 50% chance of being a carrier and a 0% chance of being affected by the disease. If the couple instead conceives a boy, he will have a 50% chance of being affected. As it is now the year 2013, the couple's obstetrician offers the couple the opportunity to use prefertilization diagnosis to conceive a girl, ensuring that the child will not have hemophilia. Prefertilization is a safe and reliable technique that sorts X-chromosome carrying sperm from Y-chromosome carrying sperm, so that the sex of the fertilized embryo is determinable. The charge for the procedure is significant, but Mr. and Mrs. H would be able to afford it by making some compromises in other areas of their lives. Should the couple undergo the procedure?

The parental obligation to promote the interests of a future child when it is possible to do so at reasonable cost clearly comes into play in this case. It is possible for Mr. and Mrs. H to promote the interests of the future child, nonrigidly designated, by

using prefertilization diagnosis to ensure the child is a girl. Doing so would eliminate a fairly high chance of having a child whose life is significantly compromised. But does the reasonable cost caveat apply? Is the cost of this procedure reasonable? The financial burden of going ahead with the procedure is certain and significant. However, when compared with the alternative, it seems like a reasonable cost to pay. The benefit to the future child of going through the procedure will be significant and is fairly likely. Further, the cost to the parents of having a child with hemophilia is not unimportant and offsets the cost of the procedure to some degree. It therefore seems that the Mr. and Mrs. H have an obligation to undergo the prefertilization diagnostic procedure in order to ensure that their child is not afflicted with a serious disease. As I have argued, if they fail to fulfill this obligation, they harm that future child.

There are several other considerations that are relevant to the ethical analysis of this case. Regardless of the parents' decision, they are facing negative consequences. If they decide to go through the procedure, they have to make compromises in order to be able to afford it. If, on the other hand, they choose to take their chances, they have a fifty-fifty chance of having a child affected by a serious disease. Caring for that child and paying for his treatment could be very costly. The rights of the parents also come into play. They have a right to reproductive autonomy. It is an open question at this point as to whether the future child also has rights that must be respected. My inclination, however, is to say that an entity cannot have rights before it exists, and that therefore rights do not come into play with respect to the future child. A final additional consideration is the claim of justice. It does not seem that the Hs would be acting unjustly by making either decision.

In this case, the ethical appeal that gives the most guidance is the consideration of the consequences for the future child. This appeal clearly suggests that Mr. and Mrs. H should undergo the diagnostic procedure. The other relevant considerations are less helpful. It seems that both decisions have some negative consequences, but no devastating consequences, for Mr. and Mrs. H. They have the liberty to make whichever choice they prefer, and neither of the choices are particularly just or unjust. The result of this pluralistic analysis, therefore, is that Mr. and Mrs. H should undergo the prefertilization diagnosis. This is an intuitively satisfactory result. Many people, I believe, would agree that the couple should use the technology available to them. It is worth noting, however, that without the child-centered ethical appeal, this analysis would not have arrived at this conclusion. In fact, it would give very little guidance at all.

**Case 2:** Mr. C lost his wife and five year-old daughter in a car accident. Although it has been six months since the tragedy, he remains inconsolable and depressed, uninterested in his life as it now is. Mr. C decides to contact Clonaid, the organization run by Rael and his followers, in order to get information about the possibility of cloning his departed daughter. He is encouraged by the organization's recent cloning successes (5 healthy clone babies to date) and begins to contemplate this option. Should Mr. C pursue the possibility creating a clone of his daughter?

At this point in time, the state of biotechnology makes this question moot. Almost all experts agree that Clonaid's claims of producing clones babies are entirely fictitious and that attempting to clone humans for procreative purposes would be



uncertain and unsafe. However, let's assume for the purposes of this thought experiment that human cloning is a safe and effective option for individuals who want to reproduce.

Beginning again with the child-centered ethical appeal, it is necessary to look at what Mr. C's obligations are to his future child. He is deciding between bringing a child into the world, and not bringing the child into the world, so it is a different number decision. The most significant aspect of different number decisions is the determination whether the potential parent will be able to protect the interests of the future child to a minimal degree because, as argued in Chapter 5, it is not possible to promote a future child's interests by making a different number decision. The relevant issue, then is whether or not Mr. C will be able to protect his child's interests to a minimal degree. If so, there is no child-centered reason to believe that he acts wrongly. In contrast, if he can foresee that he will be unable to do so, he harms that future child by bringing her into existence. It is my opinion that Mr. C is unlikely to be able to protect his future child's interests to the requisite minimal level. Although there is no reason to question his ability to put a roof over his future daughter's head or to put food on her table, his ability to protect her emotional, intellectual, and developmental capacities is questionable. It seems likely that Mr. C would be overprotective of his cloned daughter and would not foster her independence. He would also probably have a tendency to limit her self-determination with his expectations for the kind of person she will be that are based upon his daughter who was killed. Without any empirical evidence to back up these suppositions, however, it is difficult to say whether or not Mr. C would be causing harm to his future child by conceiving her.

The consequences of creating a clone of his original daughter would probably be favorable for Mr. C. It is likely that his happiness at having a new daughter would make Mr. C better off overall, although this benefit is not guaranteed. Mr. C's procreative rights also give him the autonomy to make his own decision, whereas the future child does not seem to have any considerable rights before it is conceived.

Taking all of these appeals into account, it is difficult to say what the right thing for Mr. C to do would be. In my opinion, the potential harm to the future child is significant and may outweigh the benefit to Mr. C, even though he may have the right to make the decision to clone his daughter. The most interesting aspect of this analysis, however, is that it would be lacking an important dimension if the child-centered ethical appeal were not included. Without this appeal, there is no reason to believe that Mr. C could be acting wrongly by cloning his deceased daughter. When the child-centered appeal is thrown into the pluralistic mix, the results of the ethical analysis are more complete and intuitive than when it is left out. This gives good reason to believe that the inclusion of a child-centered ethical appeal is needed to come to satisfactory ethical conclusions about reproductive ethics.

## References

- Abegg, Edmund. 1984. "The Moral Significance of the Genetic Relation." *Journal of Bioethics* 5(2): 127-144.
- Beauchamp, Tom L and James F. Childress. 2001. *Principles of Biomedical Ethics*. 5<sup>th</sup> ed. New York: Oxford University Press.
- Benatar, David. 1997. "Why it is Better Never to Come Into Existence." *American Philosophical Quarterly* 33 (4): 345-355.
- Benatar, David. 2000. "The Wrong of Wrongful Life." *American Philosophical Quarterly* 37 (2): 175-183.
- Bayles, Michael. 1976. "Harm to the Unconceived." *Philosophy and Public Affairs* 5(3): 292-304.
- Blustein, Jeffrey. 1982. *Parents and Children*. New York: Oxford University Press.
- Brazelton, T. Berry and Stanley Greenspan. 2000. *The Irreducible Needs of Children: What every child must have to grow, learn, and flourish*. Cambridge, MA: Perseus Publishing.
- Brock, Dan W. 1995. "The Non-Identity Problem and Genetic Harm: The Case of Wrongful Handicaps." *Bioethics* 9(2): 269-76.
- Brody, Baruch. 1988. *Life and Death Decision Making*. New York: Oxford University Press.
- Buchanan, Allen and Dan Brock. 1990. *Deciding for Others: The ethics of surrogate decision making*. New York: Cambridge University Press.
- Buchanan, Allen, Dan Brock, Norman Daniels, and Daniel Wikler. 2000. *From Chance to Choice: Genetics and justice*. New York: Cambridge University Press.
- Feinberg, Joel. 1984. *Harm to Others: The moral limits of the criminal law*. New York: Oxford University Press.
- Griffin, James. 1986. *Well-Being: Its meaning, measurement and moral importance*. Oxford: Clarendon Press.
- Hanser, Matthew. 1990. "Harming Future People." *Philosophy and Public Affairs* 19(1): 47-70.
- Held, Virginia. 1987. "Non-contractual Society: A feminist view." *Canadian Journal of Philosophy*. 31(supp): 111-137.

- Heyd, David. 1992. *Genethics: Moral issues in the creation of people*. Berkeley: University of California Press.
- Kavka, Gregory. 1982. "The Paradox of Future Individuals." *Philosophy and Public Affairs* 11: 93-112.
- Kopelman, Loretta. 1997. "The Best-Interests Standard as Threshold, Ideal, and Standard of Reasonableness." *Journal of Medicine and Philosophy* 22: 271-289.
- Kripke, Saul. 1972. *Naming and Necessity*. Cambridge, MA: Harvard University Press.
- Mill, John Stuart. 1978. *On Liberty*. E. Rapaport, ed. Indianapolis: Hackett Publishing Company.
- Nelson, H and J Nelson. 1989. "Cutting Motherhood in Two: Some suspicions concerning surrogacy." *Hypatia* 4(3): 85-94.
- Nelson, James. 1991. "Parental Obligations and the Ethics of Surrogacy: A causal perspective." *Public Affairs Quarterly* 5(1): 49-61.
- Narveson, Jan. 1978. "Future People and Us." in *Obligations to Future Generations*. R I Sikora and B Barry, eds. Philadelphia: Temple University Press.
- Nozick, Robert. 1974 *Anarchy, State, and Utopia*. New York: Basic Books.
- Nussbaum, Martha. 2000. *Women and Human Development: The capabilities approach*. New York: Cambridge University Press.
- O'Neill, Onora. 1979. "Begetting, Bearing, and Rearing." In *Having Children: Philosophical and legal reflections*. O O'Neill and W Ruddick, eds. New York: Oxford University Press.
- Parfit, Derek. 1984. *Reasons and Persons*. Oxford: Clarendon Press.
- Parfit, Derek. 1976. "On Doing the Best for our Children." In Bayles, MD, *Ethics and Population*. Cambridge, Mass: Schenkman Publishing Company, Inc.
- Plato. *Republic*. Book V, 460c-d.
- Rachels, James. 1989. "Morality, Parents, and Children." In *Person to Person*. G Graham and H LaFollette, eds. Philadelphia: Temple University Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Robertson, John. 1994. *Children of Choice: Freedom and the new reproductive technologies*. Princeton: Princeton University Press.

Savulescu, Julian. "Procreative Beneficence: why we should select the best children." *Bioethics* 15(5/6): 413-426.

United Nations. "Convention on the Rights of the Child."  
<http://www.unhchr.ch/html/menu3/b/k2crc.htm>

Winston, M E. 1986. "Abortion and Parental Responsibility." *Journal of Medical Humanities and Bioethics* 7(1): 33-56.