2

In Defence of Genethical Parity

TIM BAYNE

I

Job, so the story goes, cursed the day of his birth and the night of his conception. While Job's resentment at having been brought into existence was directed at God, in contemporary life such attitudes are directed at one's parents or the medical establishment and are often played out in court. In what is known as a wrongful life case, an individual with a serious genetic disorder argues that her life is not worth living, and that she was wrongly brought into existence. Understandably, the courts have not welcomed such cases. As one court complained, 'whether it is better never to have been born at all than to have been born with even gross deficiencies is a mystery more properly to be left to the philosophers and the theologians'.[1]

I cannot speak for the theologians, but philosophers certainly have not known what to do with these questions. Following David Heyd, I will call questions that concern the nature and basis of ethical attitudes that are directed towards our coming into existence 'genethical questions'.[2] Genethical questions take a number of forms. Some focus on the *event* of a person's coming into existence; others focus on the *act* of bring a person into existence. Some

[1] New York Court of Appeals *Becker* v. *Schwartz* 413 NYS 2d, 895, 900 (1978).
[2] See Heyd, 1992.

genethical questions are asked by individuals about the lives of other individuals; some are asked by individuals about their own lives. And some genethical questions take a prospective form and focus on lives that have not yet been created; others take a retrospective form and concern lives that have already begun (and indeed may already have ended). My concern here is not with the differences between various genethical questions, but with the task of developing a framework that might inform genethical theorizing whatever its orientation.

We can divide genethical models into three broad groups: *no-faults* models, *parity* models, and *dual-benchmark* models. No-faults genethicists claim that coming into existence is not properly subject to moral evaluation, at least so far as the interests of the person that is brought into existence are concerned. No-faults genethicists do not deny that it can be wrong to bring someone into existence to the extent that procreation can have adverse effects on the interests of third parties, but they hold that procreation cannot be wrong on account of the well-being of the person who is brought into existence. A no-faults genethicist denies that it can be reasonable to have any evaluative attitude—either regret or satisfaction—towards having come into existence. Parity theorists and dual-benchmark theorists share the view that it can be wrong to bring someone into existence on account of their well-being, and that it can be reasonable to regret having been created. The two positions are distinguished by where they put the genethical benchmark. To a first approximation, parity theorists insist that the level of well-being that determines whether or not a life is worth starting is identical to that which determines whether or not it is worth continuing. Dual-benchmark theorists reject parity. They hold that our genethical judgements need not—and in fact *should not*—be brought into line with our judgements about the kinds of lives that are worth sustaining. The dual-benchmark theorist posits one benchmark for starting lives and another for continuing them.

How might we decide between competing approaches to genethics? I take there to be three main sources of constraint. First, any

acceptable account of genethics must have some intuitive plausibility. It is a pro tanto advantage of a genethical theory that its implications are intuitively plausible, and a pro tanto disadvantage of a theory if its implications offend our genethical commonsense. Secondly, an acceptable genethical account ought to comport with our intuitions in neighbouring ethical domains. Genethical judgements cannot 'float free', but must be consistent with more general ethical and metaphysical considerations. Again, it is a pro tanto advantage for a genethical theory that it is consistent with such claims, and a pro tanto disadvantage that it is inconsistent with such claims. And thirdly, a genethical model ought to be internally consistent. As far as possible, the answers that an account of genethics gives to one type of genethical question ought to 'hang together' with the answers that it gives to another type of genethical question. With these three constraints in mind, let us consider the relative merits of the three accounts outlined above.

II

I begin with no-faults genethicism. One of the leading proponents of the no-faults position is David Heyd. In *Genethics* Heyd argues that coming into existence can be neither a harm nor a benefit. 'It is equally meaningless to resent our parents for having been born unhappy as it is to be grateful for having been born happy.'[3] Heyd thinks there is something logically problematic with the idea that one could harm or benefit someone by bringing them into existence. How could it be possible to be better off in a world in which one does not exist than one is in a world in which one does exist?[4] Indeed, how could one have any level of well-being—any level of 'offness'—in worlds from which one is absent? There might be an impersonal sense of goodness in which worlds

[3] Ibid. 109.
[4] Ibid. 122.

containing Job might be better than worlds that lack him, but, Heyd suggests, it makes no sense to say that such worlds are better *for Job*. For a world to be good or bad for one, one must exist within it. Heyd concludes: 'to be cannot in itself be either good or bad, a subject of duty or prohibition, a right or wrong'.[5]

No-faults genethics flies in the face of certain robust intuitions. Whether or not we think Job was justified in cursing the day of his birth, his attitude certainly seems to have been *coherent*. It seems to be possible for someone to rationally regret—or, indeed, celebrate—having come into existence. No-faults genethics also appears to be counter-intuitive when it comes to genethical actions. Consider someone who intentionally creates a child knowing that she has an extremely high chance of having a short life that consists of little more than unremitting pain. Ordinary intuition suggests that such a person has done something wrong, and that the wrongness of the act has something to do with the quality of the child's life. In short, common-sense morality strongly suggests that bringing people into existence can indeed be bad, the subject of prohibition, and a wrong.

These appeals to intuition are far from decisive, for it is arguable that any account of genethics will flout some genethical intuitions. But these worries can be buttressed by noting that the no-faults theorist appears to be committed to an Epicurean view of death. Epicureans hold that it is irrational to attach any moral or prudential value to one's own death on the grounds that one can be neither harmed nor benefited by death. Because death brings non-existence, the states of being dead and alive are incommensurable with respect to levels of welfare. The dead are neither better nor worse off than the living—they lack any degree of 'offness'. This suggests that Heyd's account of coming into existence goes hand-in-glove with an Epicurean account of going out of existence. If the transition from existence to non-existence can be subject to moral

[5] See Heyd, 1992: 124.

evaluation why can't the transition from non-existence to existence also be subject to moral evaluation?

Heyd rejects the Epicurean view of death, and argues that there are two important differences between coming into existence and going out of existence. The first difference is that death has a subject, 'an identifiable individual whose life is cut short contrary to his or her interests',[6] whereas there is no identifiable individual who is brought from non-existence into existence: identity is always subsequent to existence. We can say of someone who died that she was deprived of her future, but we cannot say of a possible person who was not brought into existence that she was deprived of existence, for only in the former case do we have an actual subject of harm.

It is of course true that death necessarily involves a subject who is harmed. And it is also true that possible people who are not brought into existence are not deprived of existence. No one is (directly) harmed by the decision not to instantiate a good life; and, correlatively, no one is (directly) benefited by the decision not to instantiate a bad life. So there is *an* asymmetry between coming into existence and going out of existence: with respect to death, someone is (directly) affected no matter what we decide to do, whereas whether or not someone is (directly) affected by our decisions concerning birth depends on what we decide to do. Nonetheless, Heyd's response leaves open the possibility that genethical judgements concerning people who *have been* (or will be) born are coherent, for in such cases we do have an actual subject to which harms and benefits can be ascribed. If one can be harmed or benefited by going out of existence then one can also be harmed or benefited by being created. But to say this is to depart from the no-faults view.

Heyd's second putative contrast between coming into existence and going out of existence invokes a desire-based account of the

[6] Ibid. 123.

badness of death. '[Categorical] desires make us not only wish to go on living (not to commit suicide), but also to be happy that we did not die two years ago. But they cannot make us happy to have been born at all, since had we not been born there would not have been any such categorical desires.'[7] We can afford to ignore objections to the claim that the harm of death can be accounted for by appeal to frustrated desire, for Heyd's argument fails even if we assume a desire-based account of death's badness. If frustrated desire is able to explain death's badness then it can also explain that of birth. It is true that I wouldn't have had any categorical desires had I not been born, but it is also true that I wouldn't have had any categorical desires now had I died two years ago. Heyd seems to confuse the claim that an actual person might wish to not have been born with the claim that a non-actual person might have had wishes.[8] The latter claim is indeed incoherent, but the former claim is not. If it is coherent to prefer one possible future over another on account of the fact that in the former fewer of one's categorical desires are left unsatisfied, then it is also coherent to regret that the actual world is one in which one has many unsatisfied categorical desires (and few satisfied ones), rather than a world in which one doesn't (and didn't) exist and thus has no unsatisfied categorical desires (or, of course, satisfied ones).

Rather than tackle the no-faults model of genethicism 'head-on', I have instead argued against it by suggesting that no-faults genethicists are committed to an Epicurean view of death. Epicureans, no doubt, will be nonplussed by this result, but true Epicureans are few on the ground. Coupled with its intrinsic counter-intuitiveness, it seems to me that this result gives us reason to look elsewhere for an acceptable genethical model.

[7] See Heyd, 1992.
[8] See Holtug, 2001.

III

Unlike no-faults genethicists, dual-benchmark genethicists allow that individuals can be harmed and benefited by coming into existence. Dual-benchmark genethicists also accept that it can be reasonable for a person doomed to a truly miserable life to regret having been born and for a person blessed with a happy life to celebrate their having come into existence. The dual-benchmark theorist departs from the proponent of the no-faults model in holding that there is a 'life worth living' benchmark. Roughly speaking, it is this benchmark that determines both whether or not it is pro tanto rational for the person in question to regret having come into existence and whether it was permissible for the person in question to have been brought into existence.

In principle, there are two ways of being a dual-benchmark theorist. On the one hand, one could hold that the life-worth-starting threshold is lower than the life-worth-continuing threshold. Although this version of the view is coherent, it is deeply implausible. To the best of my knowledge, dual-benchmark theorists are united in insisting that the life-worth-starting benchmark is *higher* than the life-worth-continuing benchmark. (As we will see, some dual-benchmark theorists hold that the life-worth-starting benchmark is so high as to be practically unobtainable.)

Here is Benatar's statement of the dual-benchmark position (which he endorses):

> The judgment that a disability is so bad that it makes life not worth continuing is usually made at a much higher threshold than the judgment that a disability is sufficiently bad to make life not worth beginning. That is to say, if a life is not worth continuing, *a fortiori* it is not worth beginning. It does not follow, however, 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. For instance, while most people think that living life without a limb does not make life so bad that it is worth ending, most (of the same) people also think that it is better not to bring into

existence somebody who will lack a limb. We require stronger justification for ending a life than for not starting one.[9]

The dual-benchmark view has some intuitive plausibility. Although one could certainly take issue with the details of Benatar's discussion (see below), his general point is well taken: the judgement that a disability is so bad that it makes life not worth continuing is usually made at a much higher threshold than the judgement that a disability is sufficiently bad to make life not worth beginning.[10]

But for all its intuitive plausibility the dual-benchmark approach struggles to find adequate theoretical grounding, and common attempts to ground the 'life-worth-starting' benchmark run the risk of undermining the intuitive appeal of the model. We can see this by noting that the kinds of answers that dual-benchmark theorists typically give to the question of where the 'life-worth-starting' benchmark ought to be located.

> Since we ought to try to provide every child with at least a normal opportunity for a good life, and since we do not harm possible people if we prevent them from existing, we ought to try to prevent the birth of those with a significant risk of living worse than normal lives.[11]

> I assume ... that there is a strong moral obligation to prevent preventable harm and suffering and that this obligation applies equally to curing disease and injury and to preventing the avoidable creation of people who will have disease or injury.[12]

These claims are startling. Purdy appeals to an unanalysed notion of normality. Depending on exactly how this notion is cashed out, her comments may well imply that a significant number of the world's children should not have been brought into existence. Harris's remarks lead in the same direction, for most of us will meet with

[9] Benatar, 2000: 176–7.

[10] For other genethical discussions that are sympathetic to the dual-benchmark approach see Archard, 2004; Cohen, 1997; Harman, 2004; Peters, 1989.

[11] Purdy, 1995: 302.

[12] Harris, 2000: 31.

some form of disease or injury during our lives. Dual-benchmark accounts are motivated by the common-sense intuition that it can be wrong to create someone with a severe handicap, but in their attempt to preserve this intuition they run the danger of flouting what is arguably an equally (if not more) robust intuition, namely, that the vast majority of children are *not* wronged by being brought into existence.

Some dual-benchmark theorists are quite happy to reject this intuition. As we will see, David Benatar holds that no life that contains any pain meets the 'life-worth-starting' threshold. Few dual-benchmark theorists will want to follow Benatar's lead, but those who want to set the life-worth-starting threshold lower—that is, at a point that actual human beings might actually meet—need to motivate their position. Purdy states that the interest we have in being free from disease or special limitation 'is sufficiently compelling in some cases to justify the judgment that reproducing would be wrong'.[13] But *when* are such interests 'sufficiently compelling', and what makes them sufficiently compelling in those cases and not others?

The dual-benchmark theorist might be tempted to appeal to species norms in setting the life-worth-starting benchmark, but it seems to me that this temptation should be resisted. Species norms change over time; certainly average levels of human well-being have increased significantly over the centuries. Relational properties such as 'being above (or below) the norm of well-being for one's species' might have an indirect bearing on genethical issues, for one's level of well-being is not unrelated to one's conception of how well one is doing relative to certain norms, but it seems implausible to suppose that they should play a direct role in determining whether or not one has been wronged by being brought into existence.

It might be argued that the parity account fares no better in providing a motivated account of where to locate the life-worth-

[13] Purdy, 1995: 307.

living benchmark. Not so. Although the parity account is not committed to any particular conception of where to draw the life-worth-starting benchmark, she can appeal to the sorts of reasons we invoke in evaluating the rationality of suicide or euthanasia—roughly, a life is worth living (starting or continuing) if there is reason to think that its goods will defeat its harms. We might call this the baseline (or neutrality) intuition. Obviously, fleshing this thought out would require an account of goods and harms, not to mention an account of how goods might defeat (or outweigh, counterbalance) harms. My point here is simply that the parity theorist has a principled account of where to place the life-worth-starting benchmark, even if developing that account requires a great deal of work.[14]

IV

Notwithstanding the problems facing the dual-benchmark theorist in locating the life-worth-starting benchmark, there is something to the thought that there is a gap between the kinds of lives that are worth starting and those that are worth continuing. As Benatar points out, there are people who we are inclined to regard as having been wrongly brought into existence, but we do not think that they would be better off dead. Call this the *marginal-life intuition*—'marginal' on account of the fact that it suggests that there is a margin (or 'gap') between the life-worth-starting and the life-worth-continuing benchmarks. The marginal-life *argument* builds on the marginal-life intuition by arguing that the dual-benchmark model

[14] Although the parity thesis and the baseline intuition hang together very nicely, the proponent of the parity account is not committed to endorsing the baseline intuition. A parity theorist could reject the idea that the life-worth-starting/continuing benchmark should be set at the level of neutral well-being, and hold that the only kinds of lives that are worth starting and continuing are ones in which life's goods *exceed* its bads. I'm not myself much drawn to this view, but perhaps it is defensible.

must be adopted on the grounds that it alone can account for and justify the marginal-life intuition.

Although I am inclined to think that there is something to the marginal-life intuition, I doubt that it is as robust as proponents of the dual-benchmark account have assumed. There is certainly some variability in our third-person genethical intuitions. While some people share Benatar's view that it is wrong to knowingly create a person who will lack a limb, others do not. Similarly, although some people think that it is wrong to knowingly bring a deaf child into existence, others regard such an act as ethically unproblematic. Not only do people differ in their views of supposedly marginal-life cases, it is relatively easy to shift people's responses to such cases by altering the contextual frame within which they are presented. (Would the deliberate creation of a person without a limb be wrong in a world in which *everyone* lacked a limb?)

Further, there is good reason to suspect that the marginal-life intuition is easily confused with other intuitions—intuitions that are not inconsistent with the parity model. In some situations, potential procreators are confronted by the need to choose between one of two potential persons, *A* and *B*. Now, where *A* is thought to be more likely to have a higher level of well-being than *B*, many have the intuition that the potential procreator ought to create *A* rather than *B*.[15] Perhaps we confuse the thought that *B* has a marginal life—that is, a life not worth starting—with the thought that *S* should have created *A* rather than *B*. But these are two quite different thoughts, and the latter does not entail the former. Another intuition with which the marginal-life intuition might be confused is that someone might be *unfortunate* to have been born with a certain condition. This intuition is also consistent with the parity model. The parity theorist denies that someone born without a limb has been *wronged* by having been brought into existence, but he need not deny that she is *unfortunate* to have been born without a limb. I suspect that in general we regard those born without a

[15] See Parfit, 1984; Savulescu, 2001; for a contrary view see Belshaw, 2003.

limb as unfortunate to have been so born, and not—as Benatar suggests—as unfortunate to have been born at all. Perhaps the marginal-life intuition does not run as deep as dual-benchmark theorists suggest.

Perhaps more importantly, *third-person* marginal-life judgements are not reflected in *first-person* marginal-life judgments. Consider the very example that Benatar uses: it is better not to bring into existence somebody who will lack a limb. Whatever intuitive support this claim might have, I strongly suspect that it has less intuitive support than the claim that someone born without a limb should regret having been born. Indeed, I suspect that most of us think that, *ceteris paribus*, it is unreasonable for those born without limbs to regret having been born. But if cases that generate third-person marginal-life intuitions do not also generate first-person marginal-life intuitions then the dual-benchmark theorist is faced with a problem, for it is highly plausible to suppose that first-person and third-person genethical judgements ought to be aligned. I have suggested that our third-person marginal-life intuitions might not be as strong or robust as dual-benchmark theorists suggest, but the conflict between them and our first-person genethical intuitions gives us reason to downgrade their force even further.

I suspect that proponents of the marginal-life argument will respond by arguing that we ought to resolve any conflict between our genethical intuitions by revising our *first-person* intuitions rather than our *third-person* intuitions. Benatar himself holds that we should *all* regret having been born, for we are all engaged in mass deception as to how wonderful things are for us.[16] I think that Benatar's view deserves serious consideration, but I lack the space to engage with it here. Suffice it to say that, although I am open to the possibility that we are often wrong about how well things are going for us, I find it difficult to believe that we are as fundamentally mistaken as Benatar's position requires. But perhaps the real issue here is that once we have reached this stage it is clear that the

[16] See Benatar, 2006: ch. 3.

marginal-life argument is no longer an argument from intuition but in fact rests on highly counter-intuitive claims.

Are there *any* cases that generate a reasonable first-person marginal-life intuition? Perhaps. Saul Smilansky considers a concentration camp survivor who, reflecting upon his life near its end, may feel that it was worthwhile. 'He might resent anyone implying otherwise. But when remembering the awful years of the war, his physical and psychological suffering, the loss of his first wife and child, and all the other relatives and friends, he may also think that having been spared the suffering, in not having been born, might have been preferable.'[17] What might this individual mean by the thought that his life 'has been worthwhile'? He could mean that he has made the best of it that he could. That seems plausible, but it would not generate a first-person marginal-life intuition, for that thought is consistent with the wish to never have been born. He could also mean that a particular segment of his life—for example, that which he now enjoys—has been good. That thought is also plausible, but it doesn't generate a first-person marginal-life intuition either. The only interpretation of this case that would involve a marginal-life intuition is one on which he both endorses his life as a whole and wishes that he had never been born. I find it difficult to understand how these attitudes could be consistently held. On reflection the marginal-life gap is a lot more tenuous than it might appear to be on first sight.[18]

[17] Smilansky, 1997: 243.

[18] Kamm (1993: 42, 64) points out that death is an insult to an existing entity—it is a manifestation of a person's vulnerability. Total non-existence, on the other hand, is not an insult, for it occurs to no actual entity. This, she suggests, might make it comprehensible why someone might prefer never having come into existence to even a good mortal life. One might regard the insult of death—independently of what it deprives one of—as an intrinsic bad that is best avoided if possible. The attitude that Kamm has outlined does not seem to be what Smilansky has in mind, but that does not detract from its interest. I myself am not convinced that the insult factor of death should be given much weight in this context, but perhaps it should not be dismissed.

V

I turn now to theoretical arguments in favour of the dual-benchmark view. Unlike the argument from marginal lives, these arguments support extreme versions of the dual-benchmark position according to which procreation is generally—if not universally—morally problematic.

I begin with Shiffrin's position.[19] Shiffrin argues that procreation is not a morally straightforward activity, but one that faces 'difficult justificatory hurdles'. In theory, she holds, *all* children have causes of action for wrongful life suits. Shiffrin's argument turns on the claim that it is impermissible to harm someone without their consent, even when the action that causes the harm brings about benefits that can be expected to outweigh the harms it causes. Since even the best of lives involves serious burdens, harms and risks, and since one cannot secure a person's consent before bringing them into existence, it follows that procreation is almost always morally problematic and procreators may be justifiably held responsible for the procreative harm that they cause. In every case, Shiffrin claims, voluntary procreation 'involves a person imposing a risk upon another where the imposition is not necessitated by the need to avert greater harm'.[20]

Shiffrin's argument is primarily addressed to 'prospective genethics', and it is less clear what her view of 'retrospective genethics' is (or should be). Shiffrin does *not* argue that most of us should regret having been born—indeed, the thrust of her argument is that one can be wronged by an event even when one has no cause to regret it. One might think that this in itself is problematic, but I'll leave that point aside here; instead, I want to focus on Shiffrin's rejection of parity between third-person starting-life and ending-life decisions.[21]

[19] Shiffrin, 1999.

[20] Ibid. 139.

[21] Shiffrin takes no position on how first-person genethical attitudes ought to relate to third-person genethical attitudes, or indeed, on how first-person genethical attitudes ought to relate to first-person attitudes to death.

Suppose that you are deliberating about whether or not to preserve the life of a patient who is temporarily comatose. The patient is suffering a life-threatening illness, but if treated can be expected to make a full recovery. It seems clear that in such a case it is not only permissible to save the patient's life but obligatory. Prima facie, however, Shiffrin's position would seem to entail that we ought to let the patient die. After all, saving the patient's life exposes her to serious future harms and burdens that she would otherwise avoid, and such harms are unconsented. Call this the *comatose patient* case.

Shiffrin might respond by arguing that, although saving the patient's life exposes her to future harms (sickness, suffering, loneliness, etc.), it also saves her from a greater harm, namely death. But on what grounds can Shiffrin argue that death is a harm? (Indeed, on what grounds can she argue that killing someone without their consent is wrong, given that it prevents unconsented harms?) Shiffrin does not provide a full answer to this question, but she does suggest that death is bad because it interferes with the exercise of agency. 'By constraining the duration and possible contents of the person's life, [death] forces a particular end to the person—making her with respect to that significant aspect of her life merely passive.'[22]

At best, this account of death's badness might account for our intuitions concerning the deaths of autonomous, self-conscious individuals. It is harder to see how it might account for the badness of the death of infants, the severely mentally retarded, the senile, and others who lack full agency over their own lives. Yet the fact that comatose patient might happen to be a young child seems not to change our intuitions concerning what we ought to do. We ought to save the comatose patient's life, even if she is only a week old. And in saving her life we impose (or at least allow) roughly the same amount of unconsented harm that was imposed on the child by creating her.

[22] Ibid. 124.

Taking another tack, Shiffrin might supplement her account of the wrongness of death by appeal to the notion of *desert*. Perhaps death—even the death of infants—is bad because it robs its victim of the goods of life that they deserve. The infant has made an 'investment' in her life, and depriving her of a 'return' on that investment would constitute a harm to her. By contrast, potential individuals have made no investment in their life and are thus not owed anything.

There is much that is problematic about the idea that desert might ground the badness of infant death, but I won't pursue those problems here.[23] Even if there are desert-based reasons for thinking that the infant is harmed by death, those reasons must be weighed against the fact that saving the infant's life exposes them to unconsented harms and burdens—'the fairly substantial amount of pain, suffering, difficulty, significant disappointment, distress, and significant loss that occur within the typical life'.[24] Surely *these* features of life are not deserved. It seems entirely possible that the (unconsented) harms that we expose the infant to by saving her life might outweigh the harm of death, especially given the fact that death is never avoided but only postponed. Suppose that the infant is now six months old, and saving them will give them another eighty or so years of life. If Shiffrin is to argue that saving the infant's life is obligatory, she must argue that death at six months is worse than death at eighty years, and worse in such a way as to balance the fact that saving the patient's life incurs eighty years of unconsented harms. There are a number of accounts of why death at six months of age is worse than death at eighty (other things being equal), but many of these accounts turns on the claim that it is a good thing to extend life, even when the subject in question faces significant unconsented harm. If such accounts are acceptable here it is unclear why a similar line of reasoning cannot be used to justify procreation:

[23] See McMahan, 2002: 168.
[24] Shiffrin, 1999: 137.

it is permissible to create life, even when doing so involves unconsented harms.

I suspect that the most plausible response that Shiffrin might make to the comatose patient objection is to invoke the notion of substituted judgement. Perhaps it is permissible to save the comatose patient's life because we think that were we in the comatose patient's position (albeit, of course, not comatose) we too would desire that our life be saved. But if it is permissible to employ substituted judgements here then there can be no objection to employing them in genethical contexts. Would-be parents can justify their decision to have a child on the grounds that were they (or some suitable idealization of them) in the child's position, they would consent to having been brought into existence.

VI

As already noted, David Benatar argues that being brought into existence is not a benefit but *always* a harm, and that each of us should regret having come into existence.[25] Benatar's argument for these claims turns on a putative asymmetry between pains and pleasures: whereas the absence of pain is itself good, the absence of pleasure is not bad (unless there is someone for whom this absence is a deprivation).

According to Benatar, in order to determine the relative advantages and disadvantages of coming into existence and never coming to be we need to compare (1) with (3) and (2) with (4): see Figure 2.1. When we do this, Benatar says, we discover that (3) is better than (1), but (2) is not better than (4): 'the pleasures of existence, although good, are not a real advantage over non-existence, because the absence of pleasures is not bad'.[26] All things considered, non-existence is preferable to existence because there is nothing

[25] See Benatar, 2000, 2006.

[26] Benatar, 1997: 348.

World A X exists	World B X never exists
1) Presence of Pain (Bad)	3) Absence of Pain (Good)
2) Presence of Pleasure (Good)	4) Absence of Pleasure (Not-Bad)

Figure 2.1 AQ1

bad about never coming into existence but there is (invariably) something bad about coming into existence.[27] Let us call this *Benatar's asymmetry*.

There are several puzzling features about this matrix. First, there is something intuitively odd about describing worlds in which S does not exist as 'good for S'. It is difficult to see how anything could be good (or bad, for that matter) for someone in worlds in which they don't exist. (This, of course, is a point that no-faults theorists such as Heyd are at pains to emphasize.) Further, even if worlds in which *S* doesn't exist are good for *S*, it doesn't follow that such worlds will be better for *S* than worlds in which *S* does exist. Goods and bads aggregate; generally speaking, a life with more goods is better than one with fewer goods. But if this is so, then we need to know how *much* 'pain' and 'pleasure' *S* has in *A* in order to know whether or not *A* is worse for *S* than *B* is. But perhaps the most pressing question concerns Benatar's asymmetry itself. Is it true?

Benatar defends it on the grounds that it provides the best explanation of the following four genethical intuitions.[28] First,

[27] Benatar's view is closely akin to 'frustrationism', see Holtug, 2001; Fehige, 1998: 508–43. Frustrationists claim that the value of satisfying a preference equals that of not having it; i.e. it has zero value. By contrast, the frustration of a preference has negative value. On this conception of value, the best that one could possibly hope to get out of life would be to break even—which is the value equivalent to not having been born. But since even the best of lives involves some pain and frustration, one should expect that one will come out of life 'in the red', that is, with negative value. So it is almost certain that everyone is better off not having been born. Benatar differs from the frustrationist in taking the presence of pleasure to be good whereas the frustrationist views it as merely neutral.

[28] Benatar, 2006: 31–6; see also p. 203.

although there is a duty to avoid bringing suffering people into existence there is no duty to bring happy people into being.[29] Secondly, 'whereas it is strange (if not incoherent) to give as a reason for having a child that the child one has will thereby be benefited, it is not strange to cite a potential child's interests as a basis for avoiding bringing a child into existence'.[30] Thirdly, bringing people into existence as well as failing to bring people into existence can be regretted, but only bringing people into existence can be regretted for the sake of the person whose existence was contingent on our decision.[31] Fourthly, whereas we are rightly sad for inhabitants of a foreign land whose lives are characterized by suffering, when we hear that some island is unpopulated we are not similarly sad for the happy people who, had they existed, would have populated this island.[32]

These four claims certainly have some intuitive grip on us, and the ability of Benatar's account to justify them would indeed be a mark in its favour. But these intuitions are by no means our only genethical intuitions. We are also strongly committed to the claim that individuals with normal human lives—not to mention individuals with lives that are vastly superior to the average human life—are not harmed by being created. We would be in something of a genethical pickle were it to turn out that these intuitions are not reconcilable with each other, but it's not obvious that the best way to extricate ourselves from that pickle is to embrace Benatar's asymmetry. As an alternative, we could reject the four genethical intuitions that Benatar appeals to, or even give up on genethical intuition altogether. Of course, each of these moves comes at some cost, but it is not clear that this cost would be higher than that which Benatar's solution incurs. Benatar himself seems to think that his view is not counter-intuitive—'there is nothing implausible either in the view that coming into existence is always a harm or

[29] Ibid. 32.
[30] Ibid. 34.
[31] Ibid.
[32] Ibid. 35.

in the view that we ought not to have children'[33]—but I suspect that the vast majority would disagree with him on that point. Evaluating the weight of intuition is a tricky business, but I am not convinced that the combined weight of the four intuitions that Benatar invokes in support of his view exceeds that of the genethical intuitions that he rejects.[34]

Let us return to Benatar's asymmetry, and the question of whether it provides the best explanation of the four intuitions that he presents. Clearly, the answer to this question depends on the precise content of the intuitions in question. Let us begin with the first intuition. Is it the case that there is a duty to avoid creating suffering people but no duty to create happy people? In large part that depends on just what one means by 'suffering people'. Almost no one thinks that we have a duty to avoid creating people who will experience *some* suffering, but if a 'suffering person' is someone whose entire life on balance involves more pain (broadly construed) than pleasure (broadly construed) then he is right: we do have a strong pre-theoretical commitment to the view that there is a duty to avoid bringing such people into existence. And, equally, we have a strong (albeit, perhaps, less strong) commitment to the view that there is no duty to bring happy people into being. But I'm not convinced that Benatar's asymmetry provides the best explanation of this intuition. An even better explanation would appeal to an asymmetry between good and bad *lives* rather than to an asymmetry between good and bad *experiences*. The best explanation of our intuition is simply that we think it is good to avoid a miserable life but not bad to miss out on a good life. This explanation

[33] Benatar, 2006: 207.

[34] At various points in *Better Never to Have Been* Benatar seeks to downplay the force of intuition. 'Intuitions are often profoundly unreliable, the product of mere prejudice. Views that are taken to be deeply counter-intuitive in one time and place are often taken to be obviously true in another' (p. 203). No doubt there is much truth in all of this, but it doesn't follow that genethical intuitions have *any* evidential force at all. Indeed, Benatar's own case for the dual-benchmark view rests heavily on the marginal-life intuition, not to mention the four intuitions just mentioned.

accounts for our intuitions, and it does so without the counter-intuitive consequences of Benatar's view.

The second claim that Benatar invokes to support his account is that 'whereas it is strange (if not incoherent) to give as a reason for having a child that the child one has will thereby be benefited, it is not strange to cite a potential child's interests as a basis for avoiding bringing a child into existence'.[35] Again, we do endorse this judgement, but only up to a point. It doesn't seem strange to cite a potential child's *overall* interests or well-being as a basis for avoiding bringing it into existence; in particular, it doesn't seem strange to think that if the potential child's (expected) pain would be such as to overwhelm its (expected) pleasures, then one should not bring it into existence. But it *does* seem strange to cite a potential child's expected pains as a basis for avoiding bringing it into existence *without at the same time* being prepared to cite its expected pleasures as a basis for bringing it into existence. Here too our common-sensical genethical judgements seem to be grounded in the expected quality of the target's overall life, not in some disembodied calculus involving individual pleasures and pains.

Benatar's third claim is this: 'bringing people into existence as well as failing to bring people into existence can be regretted, but only bringing people into existence can be regretted for the sake of the person whose existence was contingent on our decision'.[36] Again, this judgement does seem to be one that we share, but in order to explain it we need invoke only an asymmetry between good and bad *lives*. Whereas we regret having brought bad lives into existence, we do not regret not having brought good lives into existence. There is an asymmetry here, but it is not one that supports Benatar's asymmetry. The kinds of lives that we regret having brought into existence are not those of normal human beings, but those in which the goods of life are outweighed by its bads.

[35] Ibid. 34.
[36] Ibid.

What about the fourth judgement? Here too the objects of our evaluation appear to be entire lives. We are sad for inhabitants of foreign lands whose lives are so characterized by suffering that we think that they would be better off dead, and we are happy—or at least not sad—for inhabitants of foreign lands whose lives are such that we do not think that they would be better off dead.

The moral of the foregoing is simple: there *is* an asymmetry in our genethical judgements, but we do violence to that asymmetry if we attempt to explain it in terms of pains and pleasures (or bads and goods) in isolation. The best systematization of these four judgements is that there is a deep asymmetry between good lives and bad lives.

Benatar might object that we haven't really *explained* these four genethical judgements by invoking an asymmetry between good and bad lives but have simply redescribed them. One might argue that we need to invoke a further, deeper asymmetry—his asymmetry—between events or states in order to explain my asymmetry (between lives). I'm not persuaded. Not only would taking this extra step add nothing to what we already have, but it would incur costs of its own. It adds nothing, for Benatar provides no explanation of his asymmetry. He has no story to tell as to how it could be a good thing for *S* to avoid pains by failing to exist without it also being a bad thing for *S* to avoid pleasures by failing to exist. And it incurs additional costs, for it is at odds with our judgement that we do not harm normal people by bringing them into existence. Better, I think, to treat the asymmetry between good lives and bad lives as brute.

VII

Although Benatar urges us not to procreate, he does not urge us to commit suicide or to refrain from offering life-saving treatment to those in need of it. I find this fact puzzling. If one could have benefited by not having being born on account of the pain that one

avoids, so too one can benefit from an early death on account of the pain that one avoids.

In response, Benatar claims that his point is not that 'it is better never to exist because one thereby avoids pains, but that it is better never to exist because one avoids pains *without cost*. The same is not true of death. Whereas death does spare one all future pains, it does involve a cost' (personal communication). I certainly agree that death does exact a price—it robs one of the goods that one would have enjoyed had one continued to exist.[37] But there is also a sense in which non-existence comes at a cost—namely, the goods that one would have enjoyed had one come into existence. Of course, *strictly speaking*, this cost is not incurred by anyone, for only the existent can be robbed. But, if we are speaking strictly, then we must also insist that only the existent can *benefit* from having dodged disaster. Insisting on strict speech threatens to undercut the very asymmetry that Benatar is at pains to defend.

Perhaps these points are most fully appreciated by considering death from the first-person perspective. Let us suppose that you are contemplating suicide, and that other parties will not be greatly affected by your decision. In deliberating about whether or not to commit suicide, it may seem reasonable to adopt a genethical stance towards the remainder of your life. Call the subject of this life-segment 'future-you'. You could bring future-you into being by deciding not to commit suicide, or you could make it the case that future-you never exists by committing suicide. How should you decide? From a certain perspective, it seems reasonable to decide on the basis of what quality of life future-you can be expected to enjoy: if it is good, then deciding in favour of continued existence may be reasonable, if it is bad, then deciding in favour of suicide may be unreasonable. Thinking of oneself as faced with decisions about whether or not to allow a future self to come into existence brings to the surface deep points of contact between coming into existence and staying in existence. Our lives are not given once and for

[37] F. Feldman, 1992; McMahan, 2002.

all. The question of whether to stay in existence always contains within itself a question about whether to bring 'the rest of oneself' into existence.

In thinking about whether or not to remain in existence it seems reasonable to adopt a form of substituted judgement: one adopts the perspective of one's future self. But if this is reasonable, why is it not also reasonable to adopt such a perspective with respect to coming into existence? If, in adopting the perspective of the person who would be brought into existence as the result of the relevant deliberation, one decides that the expected goods outweigh the expected bads, then (*ceteris paribus*) procreation is permissible; if not, then it is not permissible.

VIII

Let me turn finally to the parity account. The basic idea behind the approach is encapsulated in Bernard Williams's claim that 'what [resenting one's existence] requires is that the person should prefer not to have existed, and I take it that this implies thinking that his or her life is not worth living'.[38] 'Implies' might be too strong a term here, but the parity account is built on the idea that there are internal constraints between the ethics of starting lives and the ethics of continuing them. These constraints apply not merely to one's own life but to lives in general: if one thinks that life could never be so bad as to be not worth continuing, then one should also think that life could never be so bad as to be not worth starting, and vice versa. We can—and should—employ intuitions concerning coming into existence to constrain our view about going out of existence and vice versa.

The parity model is rounded in the thought that judgements about coming into existence and judgements about going out of existence ought to be responsive to the same features of the world—namely, the value that the life in question would have to

[38] Williams, 1995: 227.

its subject. If living a life is of no value to its subject then it is pro tanto pointless to begin it and pointless to maintain it. But if the living of a life is (or at least has the potential to be) of benefit to its subject then, again pro tanto, there is some point in both beginning it and maintaining it.

Of course, there are differences between judgements that concern coming into existence and those that concern staying in existence. One difference is that the former concern the subject's *entire life*, whereas the latter typically focus only on certain *segments* of the subject's life—namely, those segments that the subject has not yet enjoyed. Overlooking this point can lead one astray. Consider again Smilansky's case of the concentration camp survivor—call him 'Carl'—whose life contained a period of grotesque suffering. Carl might have the view that his life as a whole was not worth living. Does parity entail that he would *now* be better off dead? Not at all, for Carl has survived the horrors of the concentration camp, and that period of his life that lies in front of him may well be worth living. Parity does *not* entail that if the value of an entire life is below the 'life worth living' threshold then at no point in the living of that life is it worth continuing. Parity says only that the kinds of conditions that make lives not worth creating are just the sorts of conditions that make lives not worth continuing, and it is obviously possible for a life to be characterized by such a condition during some of its temporal segments but not others.

A second difference between judgements that concern coming into existence and those which concern staying in existence lies in their respective intentional objects. Judgements of the latter kind have as their objects token lives—that is, concrete particulars. By contrast, judgements of the former kind take abstract entities as their intentional objects. These judgements are about the merits or otherwise of instantiating certain *kinds* of lives. Arguably, it is this difference that grounds that otherwise puzzling fact that although we have obligations to keep good lives in existence we do not have obligations to start good lives: the difference, of course, is that we have obligations to concrete particulars but not to abstract entities.

IX

My goal here has not been to provide a comprehensive treatment of genethics. Such a task is clearly beyond the means of a single chapter; indeed, I suspect that it is beyond the means of even a decent-sized volume. Rather, I have attempted to provide a framework for thinking about genethics. I have argued that our thinking about starting to lives should be constrained by our thinking about ending lives, and vice versa. In the relevant sense, the 'life-worth-starting' benchmark coincides with the 'life-worth-continuing' benchmark, for each is but a manifestation of the 'life-worth-living' benchmark.

In closing, let me mention one of the many implications of this position. One of the many worries that courts have expressed about wrongful life cases is that a positive verdict would commit the court to the view that the plaintiff not only ought not to have been brought into existence, but would now be better off dead. Although the worry as stated is groundless, there is something important behind it. The reason the conclusion does not strictly follow is that the plaintiff's current quality of life (and, indeed, that which they might be expected to enjoy in the future) might differ in important respects from the quality of their life as a whole. And—as we have just seen—it is possible for the quality of the person's life to improve such that they currently have a life that is worth living, even though their life as a whole is of no benefit to them. Nonetheless, the thought behind the worry is basically sound: the kinds of conditions that prevent life from being worth starting are just those that prevent it from being worth continuing.[39]

[39] Thanks to David Archard, David Benatar, Avery Kolers, and Neil Levy for very helpful comments on earlier drafts of this chapter. Earlier versions were presented to the philosophy departments at the University of Louisville, Charles Sturt University (Wagga Wagga), University College Cork, and the University of Hull. I am grateful to the audiences on those occasions for their comments.

Author Query

AQ1: Please provide Figure 2.1 Caption.