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A Chance of an Open Future:

Parental Obligations to Possible Children

~

En sjanse til en åpen fremtid:

Foreldres forpliktelser overfor mulige barn

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English abstract

Antinatalism has challenged some of our deepest convictions that having children is a personal matter, and not something that can be restricted on moral grounds. Although the conclusion that reproduction is wrong and something that should cease may not be very convincing, it does not follow that antinatalism's underlying ethical purpose of critically evaluating one's reproductive actions is not important. Reproduction has strong moral undertones, not least because it leads to the creation of a being whose future depends on certain conditions being met for its life to be a good life. Some would argue that parents only have a moral duty to ensure that their children's lives are worth living, but this is far from sufficient. Parents owe their children considerably more than just that. What I will argue for in this thesis is that parents owe their children a chance of an open future. This duty will be expressed in the form of a moral principle by which all expectant parents are bound. I will then present three ethical questions where this principle can be applied. These will respectively concern prenatal diagnosis and selective abortion, preimplantation genetic diagnosis, and lastly parental licensing.

Norsk sammendrag

Antinatalismen har utfordret noen av våre dypeste overbevisninger om at det å få barn er et personlig anliggende, og ikke noe som kan ilegges moralsk begrensning. Selv om konklusjonen at reproduksjon er galt og noe som burde stanses kanskje ikke er særlig overbevisende, medfører ikke dette at antinatalismens underliggende etiske formål om å kritisk evaluere ens reproduktive handlinger ikke er av betydning. Reproduksjon har sterke moralske undertoner, ikke minst fordi det fører til skapelsen av et vesen hvis fremtid er avhengig av at visse vilkår er oppfylt for at dets liv skal kunne være et godt liv. Noen vil argumentere for at foreldre bare har en moralsk plikt til å sørge for at deres barns liv er verdt å leve, men dette er langt fra å være tilstrekkelig. Foreldre skylder sine barn betraktelig mer enn bare det. Det jeg vil argumentere for i denne oppgaven er at foreldre skylder sine barn en sjanse til en åpen fremtid. Denne plikten vil komme til uttrykk i form av et moralsk prinsipp som alle vordende foreldre er bundet av. Jeg vil så presentere tre etiske spørsmål hvor dette prinsippet kommer til anvendelse. Disse vil henholdsvis dreie seg om fosterdiagnostikk og selektiv abort, preimplantasjonsdiagnostikk, og til slutt foreldre lisensiering.

Introduction



“[...] we as individuals ought to engage in moral reasoning to make the parenting decision, as parenting has paramount significance to our potential children”¹

1.1 Encouraging Procreation and the Challenge of Antinatalism

In her new year’s speech of 2019, the then prime minister of Norway, Erna Solberg, declared that “Norway needs more children!”² In order to maintain the country's welfare model in the future, each woman would have to birth a little over two children. At the time of the prime minister's speech, the number of children each woman had was statistically at 1,6. Setting aside the concerning use of child-bearing as a way of saving society from decline – a blatant violation of Kant's second formulation of the categorical imperative – and the fact that the number of children born has been rising and falling fairly steadily in Norway for the past 40 years according to statistics from the SSB³, this reverence for the family and family-making, and a general attempt at encouraging people to have children is not new. It has even become increasingly common that people who choose to not have children are questioned by their peers on the motivation for their decision, as if deciding against having children is the most unheard-of thing to do and therefore in need of a good explanation. Not forgetting that it is also often the case that many people *do* want to have children, but are unable to due to a variety of reasons. In such cases, asking someone about their lack of children can be a very touchy subject. On the opposite end, those who do have children are never questioned on the motivation for *their* decision. It is what is expected of them, and no further explanation seems to be required. All the same, as Christine Overall writes, “the choice to have children calls for more careful justification and thought than the choice not to have children because procreation creates a dependent, needy, and vulnerable human being whose future may be at risk.”⁴ So while the question “why do you have children?” should become just as socially acceptable to ask as “why do you not have children?”, perhaps a much more important question to ask is “should you have children?”

The reason this question is important is because a decision to procreate is one of the most significant decisions a person can make, and while we believe this to be true for the parents as

1 Lisa Cassidy, “That Many of Us Should Not Parent”, *Hypatia* 21, no. 4 (Autumn 2006): 44, DOI: 10.1353/hyp.2006.0044.

2 Christian Laland, “Statsministerens nyttårstale 2019”, *Høyre*, January 2, 2019, retrieved May 2, 2023. <https://hoyre.no/arkiv/statsministerens-nyttarstale/>

3 Statistisk sentralbyrå, “Enkeltfødsler og flerfødsler 1946-2022”, retrieved February 15, 2023. <https://www.ssb.no/statbank/table/05532/tableViewLayout1/>

4 Christine Overall, “Think Before You Breed”, *The New York Times*, June 17, 2012, retrieved April 9, 2023. <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2012/06/17/think-before-you-breed/>

procreation drastically changes *their* life, “humans are presumably unique in bearing moral responsibilities regarding their procreative choices.”⁵ Unlike other lifeforms that procreate without any apparent regard for their future offspring, humans can reflect on their decisions and refrain from making choices that can possibly bring harm to others. Expanding on this theme, arguably one of the most tremendous challenges facing the morality of procreation today is *antinatalism*. This is disputable, of course. But the reason I find antinatalism to be the greatest challenge is how it positions itself in stark contrast to the orthodox belief that procreation should be encouraged by claiming the exact opposite: that procreation should stop—in part because life has no inherent good to offer.

Since the publication of his first article on the subject in 1997,⁶ David Benatar has offered exceedingly thought provoking, enlightening and sometimes outrageous claims for why bringing people into existence is simply not good and should preferably not be undertaken at all. While his arguments have chartered into debates about the harm people cause to the environment and other species, and how bringing more people into the world would only exacerbate these issues, his main concern is for those being brought into existence. Not counting the so-called *misanthropic* argument just mentioned, there are two arguments he proposes for why it is better never to come into existence: an *asymmetry* argument and a *quality of life* argument.

Benatar believes that most people are widely mistaken in their assessment of the quality of their own lives. Life is far worse than we seem to think it is and there is furthermore a crucial asymmetry between life's good and bad:

Consider pleasures and pains. Most lives contain both (to varying degrees), but there is an unfortunate asymmetry between these that seems to apply to even the best of lives. The upshot of this is that there is much more pain than pleasure. For example, whereas the most intense pleasures (such as sexual or gustatory ones) are short-lived, the worst pains have the capacity to be much more enduring. Indeed, pleasures in general *tend* to be shorter-lived than pains. Chronic pain is common, whereas there is no such thing as chronic pleasure. Moreover, the worst pains seem to be worse than the best pleasures are good.⁷

Despite many nevertheless claiming that they enjoy their lives and are glad they were born, Benatar does not believe that makes coming into existence better than not coming into existence, as not coming into existence would be no harm because there would be no one there to suffer the harm of not existing.⁸ This creates another asymmetry where not coming into existence yields no bad outcomes and coming into existence yields both bad and good outcomes. Obviously, in the scenario

⁵ David DeGrazia, “Procreative Responsibility in View of What Parents Owe Their Children”, in *The Oxford Handbook of Reproductive Ethics*, ed. Leslie Francis (Oxford: Oxford University Press, 2017), 641.

⁶ Benatar is not the first to hold an antinatalist position, but his own work on the subject came to fruition with his 1997 article, and much of the current literature on antinatalism is in response to this article and his later writings.

⁷ David Benatar, “Life Is Not Good”, in *The Evolution of Morality*, ed. Todd K. Shackelford and Randal D. Hansen (Springer Switzerland: Springer International Publishing, 2016), 138.

⁸ David Benatar, “Why It Is Better Never to Come into Existence”, *American Philosophical Quarterly* 34, no. 3 (July 1997): 350, DOI: 10.2307/20009904.

where no one would come into existence there would also be no good, but this too would not be bad as there would be no one there to suffer this lack of good.

Benatar further explains that some common intuitions people hold can be explained by this asymmetry. First, we normally think we have a duty to avoid bringing unhappy people into existence, but no corresponding duty to bring happy people into existence. Second, claiming that one had a child for the benefit of the child seems absurd, but claiming that one did not have a child because one could expect that the child would not have a life worth living is not. Third, it is possible to regret bringing a child into existence for the sake of the child, but one cannot regret not bringing a child into existence (for the sake of the child, though one could regret it for one's own sake). Fourth, we can feel sad for unhappy people whom we do not know living far away from us, but we do not feel sad that there are no happy people living on Mars, for example.

It is likely the case that Benatar's work will never find its way into school curriculum and he does not himself believe that his arguments will have any impact on baby-making.⁹ Although his ultimate conclusion that all procreation should stop might not give him many supporters, it is still unfortunate that his views will mostly go unnoticed. This is not necessarily because his conclusions about the ethics of procreation are correct, but because the underlying assumption that procreation is a deeply moral issue and something one should not take lightly is valuable insight for everyone. Aside from public schools offering education on birth control and sexually transmitted diseases for students in their early to mid-teens, one will not come across any education directly meant to discourage people from having children. We are also rarely taught to think more critically about having children or given examples of circumstances where having children could in fact be wrong. One could of course argue that providing people with such education would be too invasive as having children is believed to be a most private matter. But it really is not that different from the state, as exemplified by Erna Solberg's speech, encouraging people to have children or encouraging the use of contraception—they are all attempts at modifying behaviour to achieve a specific goal. It is only that having children – or having them at a later time which is what the education on contraception is really aimed at – is the more orthodox view and thus easier to defend.

Another objection to educating people on the more negative sides of having children could be the fear that by doing so, fewer people would want to have children. However, this does not hold up to further scrutiny. If it were the case that a higher degree of ethical reasoning would lead to fewer people having children, that would only lend further support to Benatar's claim that our previous belief in creating life as a good thing is deeply flawed. Urging people to think more critically on childbearing would no doubt have its merits, too, seeing that child neglect and people having children they do not want or is unable to take care of is far from uncommon.¹⁰ In fact, in the

⁹ David Benatar, *Better Never to Have Been: The Harm of Coming into Existence* (Oxford: Oxford University Press, 2006), VII.

¹⁰ Mark C. Vopat, *Children's Rights and Moral Parenting*, (London: Lexington Books, 2015), 125-126.

United States, among other countries, it has even become an increasing problem of unwanted children literally being thrown away in the garbage mere moments after they are born.¹¹ In an attempt to accommodate this problem, some US states have recently started to make use of “baby boxes” located at public service offices like police stations and hospitals where unwanted children younger than 30 days can anonymously be dropped off and left to the care of the state.¹²

Prospective parents owe their possible children to reflect on the moral implications of their reproductive decisions. Prior to, during and after gestation there are several ethical questions that can and possibly will come up. Being aware of these and being able to reflect on them represents a vitally important skill that any prospective parent should have with respect to their possible child's right to an open future.

1.2 Thesis Overview

We can start by identifying a basic premise saying that having children is not an amoral decision. Although prospective parents rarely, if ever, contemplate the moral implications of their procreative acts, bringing someone into existence is not for that reason morally neutral. Any act where the well-being of someone else is a relevant factor has moral significance. However, that having children is not an amoral decision tells us nothing about when it would be morally acceptable and when it would be morally unacceptable to have children. But if we take the challenge posed by antinatalism seriously, we will instead have to concede that having children is never morally acceptable. While such a view does have its ardent defenders, I find myself agreeing with Rivka Weinberg when she writes that: “I am very sympathetic to the intuitions that inspire these arguments and I think the conclusion is probably right. But I have yet to find an argument to support it.”¹³

I nevertheless intend to take the challenge of antinatalism seriously and attempt to see if by developing a principle aimed at controlling, to some degree, what children one brings into existence, and by giving one's own ability to parent a more critical thought before deciding to raise children, we can argue for a moral permissibility of having children. The very idea of controlling procreation in this manner might give eerie associations to the Nazi eugenics programme of the 1930s and 1940s. However, what we want to achieve is not eugenics, but rather a higher degree of ethical reasoning on matters related to procreation and childrearing. The final aim would (hopefully) be the reduction of preventable suffering, not the creation of a better race (unless, of course, one thinks of people living with fewer diseases and a better overall quality of life as an example of a better race). The best way to do this is to find some middle ground between the two

¹¹ Vicky Baker, “Drop-off baby boxes: Can they help save lives in the US?”, *BBC*, January 23, 2019, retrieved April 23, 2023. <https://www.bbc.com/news/world-us-canada-46801838>

¹² Rebekah Riess, “Kentucky sees its 1st infant anonymously surrendered at a fire station “baby box””, *CNN*, February 12, 2023, retrieved February 15, 2023. <https://edition.cnn.com/2023/02/12/us/kentucky-baby-box-infant-surrendered/index.html>

¹³ Rivka Weinberg, “Is Having Children Always Wrong?”, *South African Journal of Philosophy* 31, no. 2 (2012): 26. DOI: 10.1080/02580136.2012.10751765

extremes previously outlined. On the one end we have the belief that childbearing should be encouraged, and nothing can or should count in its disfavour. On the other end we find the view that procreation should be discouraged entirely. My proposal is to say that procreation can be morally permissible, but that the permissibility is constrained by some obligations which prospective parents must fulfil in order to be eligible for parenthood. A blueprint for how such moral obligations can be framed has previously been given by Bonnie Steinbock and Ron McClamrock in the form of a *principle of parental responsibility*, based in part on Joel Feinberg's analysis of prenatal harm and wrongful life in his book, *Harm to Others*. Its basic content can be explained like this:

A principle of parental responsibility should require of individuals that they attempt to refrain from having children unless certain minimal conditions can be satisfied. This principle maintains that in deciding whether to have children, people should not be concerned only with their own interests in reproducing. They must think also, and perhaps primarily, of the welfare of the children they will bear. They should ask themselves, "What kind of life is my child likely to have?" Individuals who will make good parents—that is, loving, concerned parents—will want their children to have lives well worth living and will strive to give them such lives. But what if the parents cannot give their children even a decent chance at a good life? The principle of parental responsibility maintains that under such conditions, it is better not to have children, and that it is in fact unfair to children to bring them into the world with "the deck stacked against them."¹⁴

Steinbock and McClamrock's principle lends itself well to marking when procreation is morally unacceptable. The terms "minimal conditions", "lives well worth living" and "a decent chance at a good life" can furthermore all be good, albeit vague, indicators for deciding when having children could be permissible. But their principle mostly describes the destination we want to arrive at, and what we should look for to know if we are on the right track. It does not say much about how we get to the destination. Asking "what kind of life is my child likely to have?" is a good place to start, but it does not provide sufficient guidance beyond simply reflecting on the question. Steinbock and McClamrock further specifies that they do not think that people should refrain from having children unless certain conditions are ideal, but only when there is good reason to think that their lives would be terrible.¹⁵ However, I think this is much too weak. I believe it is necessary to set the bar higher than that. Only refraining from having children when it is foreseeable that the child's life would be terrible is barely doing half the job. Parents owe their children more than just a life that is not terrible.

What I will argue for in this paper is that, in addition to a life worth living (or a life that is not terrible), prospective parents owe their possible child a *chance of an open future*. Like with Steinbock and McClamrock, this obligation will be expressed in the form of a principle, but unlike theirs it will be an action-based principle. Moreover, it will not detail what parents should do, but

¹⁴ Bonnie Steinbock and Ron McClamrock, "When Is Birth Unfair to the Child?", *Hastings Center Report* 24, no. 6 (1994): 17, DOI: 10.2307/3563460.

¹⁵ Steinbock and McClamrock, "When Is Birth Unfair to the Child?", 20.

rather what they should *not* do to assure there is a fair chance of an open future for their possible child. I will call this *the non-impediment principle*, and shall explain thoroughly what it is and what its influences are in the next chapter, in addition to how the various terms are to be understood. But the principle is formulated as follows: *Prospective parents should not create a child whose chance of an open future is impeded, foreclosed or otherwise negatively limited; or make reproductive decisions that may impede, foreclose or otherwise negatively limit their possible child's chance of an open future.* Deducing from this, it would be morally wrong of prospective parents to conceive, or proceed with a pregnancy, if they are in foreseeable danger of violating the principle.

The non-impediment principle and many like it will necessarily be revisionary to varying degrees and I naturally do not seek to claim that it is in any way a novel idea.¹⁶ It is only given a new name in an attempt to cover the various terms, phrases and arguments put forth by other philosophers when defending a similar kind of parental obligation, but one that has not been more narrowly defined or put under a singular heading as of yet.

In the course of this paper, I will consider three particularly difficult questions in reproductive ethics where the non-impediment principle can be applied. Each question will have a separate chapter devoted to it, and each will detail one (or more) ethical issue(s) prospective parents must consider at that particular stage of, or prior to, gestation. The questions are by far not exhaustive and only represent topics that I believe covers some basic but important themes within reproductive ethics where the non-impediment principle can be applicable. Each chapter will be an overview of the current state of a particular debate in question, a description of their most prominent arguments, and how the non-impediment principle can contribute.

The questions that will be considered are the following:

- *Could there ever be reasons to abort a pregnancy?*
- *If or where possible, should I opt for the best genetic quality for my child?*
- *Would I be a good parent?*

Although each question could advantageously be asked long before conception, the paper's main narrative is that the first question deals with the ethical surroundings during gestation and after a foetus has started to develop. The question to consider is whether to continue or abort a pregnancy when it is conceivable that the child born will either not have a life worth living or be born with some form of disability. The second question asks prospective parents to consider the ethics of selecting for and against certain traits through the use of preimplantation genetic diagnosis. Some questions that will come up is when certain forms of selection could be advantageous to the child, and if doing so would be a requirement. And lastly, the third question addresses the need for

¹⁶ Importantly, Stephen Wilkinson has defended a very similar principle with similar influences called “the Open Future Principle”, in his article ““Designer babies”, Instrumentalisation, and the Child’s Right to an Open Future” in *Philosophical Reflections on Medical Ethics*, ed. Nafsika Athanassoulis (London: Palgrave MacMillan, 2005), 44-69.

prospective parents to evaluate their capabilities in raising a child and will be a discussion on parental licensing, including how such a practice would compare to already existing practices of state licensed parenting in the form of adoption policies.

1.3 A Brief Reader's Guide

Chapter 2: What do parents owe their children?

In this chapter I develop the non-impediment principle and explain how a focus on parental duties could also make the non-identity problem irrelevant for grounding moral obligations to possible people. The non-impediment principle will furthermore be based on a prenatal, negative conception of the child's right to an open future

Chapter 3: Could there ever be reasons to abort a pregnancy?

What if one could be fairly certain that the foetus one is carrying will be born with some form of apparent disadvantage, such as blindness, an incurable disease, or perhaps a kind of cognitive disability? Should one opt to abort the foetus or carry on with the pregnancy? What would the non-impediment principle urge prospective parents to do? Some views on this will be the topic for this chapter.

Chapter 4: If or where possible, should I opt for the best genetic quality for my child?

What if, instead of discovering through prenatal diagnosis that a foetus one is carrying has a genetic abnormality – and perhaps having to carry out an abortion – one could, with the help of genetic interventions, look for and select away the different genes that predisposes one to develop these abnormalities beforehand? By doing this, one could be sure that one's child be born free of any diseases or disabilities and would avoid the burdens of possibly having an abortion. This chapter will deal with forms of genetic manipulation and genetic control, primarily in the form of assisted reproduction and preimplantation genetic diagnosis. While some form of “genetic engineering” is possible to do already, we are still a few years away from being able to fully “design” our own babies. Nevertheless, the ethics of doing so can and should still be considered, and that is what this chapter will be about.

Chapter 5: Would I be a good parent?

This chapter is perhaps the most dynamic one as it deals with an ethical question prospective parents can consider at multiple stages of gestation—even prior to conception. The chapter will be about parental licensing and will also include a section on the Norwegian legislation with regards to adoption. The main point of entry is that there are some activities we think should only be handled by professionals, and parenting seems to fit such a description of a “hazardous activity”. Furthermore, some fairly strict regulations on who can adopt a child exist, while no similar regulations on who can obtain custody for their own biological children exist. Looking at the

different arguments for the licensing of parents, prospective parents should consider and compare their own lifestyle in light of these and determine if they are in fact fit to raise children themselves.

Chapter 6: Conclusion

This chapter will sum up the findings of the paper and offer some possible objections to the principle.

What do parents owe their children?

The non-identity problem, parental responsibility, and the child's right to an open future: Defining the non-impediment principle.

2.1 Chapter Overview

It is generally accepted that parents enjoy a certain level of autonomy on matters related to their own children. For starters, it would be agreeable to most that a right to reproductive freedom is a fundamental human right, and few, if any, limitations can be put on this right. In times where this right has indeed been infringed, such as with enforced sterilization or where abortion or the use of contraception have been prohibited or unavailable, public condemnation have rightfully ensued. One need not look any further than to the current situation unfolding in the USA, where, on the 24th of June 2022, the Supreme Court decided to overturn the case of *Roe v. Wade* leaving the decision to grant abortions up to the discretion of each state.¹⁷ This has led to public outcry due to some states having very strong conservative views on reproduction, leading to the implementation of undue restrictions on the right to self-determined abortion, with Louisiana being one of the strictest with the limit set at the 6th week of gestation.¹⁸

Secondly, parents retain the right to raise their child in (almost) however way they want and transmit whatever values and knowledge they find appropriate. In fact, even if parental values have clashed with values transmitted in public schools, parents have usually been given approval, as exemplified with the case of *Wisconsin v. Yoder* where the U.S. Supreme Court voted in favour of allowing an Amish family to take their children out of school after reaching a certain age so that they instead could be educated in the Amish way of life.¹⁹

As important as these rights are, most would also agree that they cannot be unrestricted and that “the more risky and harmful procreation is, the less favourable the view we should take of it and the less tolerant we need be.”²⁰ The questions to consider, then, is where the line should be drawn and what conditions can restrict the rights to reproductive freedom and parental autonomy. As we saw earlier, *Steinbock* and *McClamrock* have set the threshold at being able to give one’s

¹⁷ Vanessa Parra, “Amnesty International USA statement on Supreme Court decision to overturn *Roe v. Wade*”, *Amnesty International USA*, June 24, 2022, retrieved May 9, 2023. <https://www.amnestyusa.org/press-releases/amnesty-international-usa-statement-on-supreme-court-decision-to-overturn-roe-v-wade/>

¹⁸ Elizabeth Nash, “A Surge in Bans on Abortion as Early as Six Weeks, Before Most People Know They Are Pregnant”, *Guttmacher Institute*, March 22, 2019, updated May 30, 2019, retrieved May 9, 2023. <https://www.guttmacher.org/article/2019/03/surge-bans-abortion-early-six-weeks-most-people-know-they-are-pregnant>

¹⁹ R. D. Mawdsley, “*Wisconsin v. Yoder*.” *Encyclopedia Britannica*, May 8, 2022, retrieved April 15, 2023. <https://www.britannica.com/topic/Wisconsin-v-Yoder>.

²⁰ David Benatar, “The Limits of Reproductive Freedom”, in *Procreation and Parenthood: The Ethics of Bearing and Rearing Children*, ed. David Archard and David Benatar (New York: Oxford University Press, 2010), 99.

child a decent chance at a good life and preferably a life well worth living, and further that one should refrain from having children if their lives would be terrible. But surely every willing parent would likely want to give their child the best life possible, so this does not offer much guidance. And exactly what would a decent chance at a good life be? And when is a life worth living? Can anyone really determine the possibility of a life being worth living for someone else?

With questions like these, philosophers invariably must deal with Derek Parfit's *non-identity problem*.²¹ Its main concern is how to deal with what obligations we think we have to future generations who, by our own acts, will either exist or not exist at a specific time. It is no doubt a pressing issue anyone questioning their obligations to future generations must contemplate. It is also pressing for anyone wishing to put forth ethical views about procreation. The problem with the problem, so to speak, is that it is essentially a metaphysical conundrum, and this makes it hard to make any room for ethical discussion. I will not make any attempt at solving the problem here, but will instead, in the next section, propose a different route where ethical reflection on our responsibilities to possible people can still be viable despite the existence of the non-identity problem. But before doing that, it would be useful to get some understanding of what the problem actually is.

2.2 The Non-Identity Problem

Although the non-identity problem is usually treated as a single problem, there is in essence two claims inherent in it: one *ontological* and one *consequentialist*. I will deal with the two of them separately as I believe they are dissimilar enough to do so.

2.2.1 The ontological claim

In his major work, *Reasons and Persons*, Parfit advances what he calls the “time-dependance claim”²² where it is in fact true that *you* coming into existence depends wholly on when you were conceived. Had you been conceived even only a few seconds earlier or later, Parfit writes, it is quite certain that it would not have been “you” that were conceived, but a different child—a non-identical child—grown from a different spermatozoon. We will not concern ourselves with the questions that Parfit then considers on whether we can say that the child being conceived a few seconds later, having some of the same genes that you would have, could in fact still be said to be *you*. The important conclusion we shall draw from his time-dependance claim is that our identity—who we are—is dependent on when we were conceived. Any further questions on identity over time and so on will not be considered.

Accepting the time-dependance claim leads to the complications that is at the core of the

21 Derek Parfit, *Reasons and Persons*, (New York: Oxford University Press, 1984), 359.

22 Parfit, *Reasons and Persons*, (New York: Oxford University Press, 1984), 351.

non-identity problem. If a person coming into existence can do so only at a specific time, how can acts done to prevent said person from coming into existence, for instance if it is foreseeable that they will suffer greatly, actually benefit that person when they in no way could have existed otherwise? On the flip side of this, how can bringing this person into existence, knowing they would suffer greatly, actually harm that person when, again, they in no way could have existed otherwise? Additionally, can one really harm or benefit a person if the alternative to their existence would simply be non-existence? Is it not so that to benefit or harm a person requires that the person in question needs to be made better or worse off, and this in turn is predicated on the person already being existent? Let me give an illustration.

Say that a couple, Olav and Sophia, wants to have a child, but after running a series of tests while visiting the doctor it is revealed that Sophia is suffering from a viral infection that, if she decides to bring a child into existence now, the child she has will have to endure severe physical pain for the first seven years of their life until they eventually die. The doctor reassures them, however, that in only two month's time the infection will be completely gone from Sophia's body and they can safely have a child then. Should Olav and Sophia wait two months before trying to conceive a child? Keep in mind that the child does not at this stage exist in any way whatsoever. The question is not whether they should abort an ongoing pregnancy, but if they instead should refrain from trying to conceive.

A common response is to answer the question in the affirmative: Olav and Sophia should wait until the infection is gone before they try to conceive of a child. After all, there is no downside to waiting just a few more months and thus ensure that whichever child comes into existence has good prospects for a good life. The problem with such an intuitive response is that of non-identity. If they do decide to wait before conceiving, whichever child they get will be a completely different child from the one they could have had had they conceived while Sophia was ill with the infection. This may seem like irrelevant bickering, but the problem is genuine. We think that Olav and Sophia are benefitting the possible child conceived during the infection – call her Lisa – by not conceiving her at that time, but, remembering the time-dependence claim, the only possible way for Lisa to exist is if she is conceived exactly when she is conceived, in this case, during Sophia's viral infection stage. Any child conceived later will not be Lisa, but someone different. They are not postponing the creation of Lisa but is instead replacing her. Additionally, Lisa does not at the stage of Olav and Sophia's decision to refrain from conceiving currently exist in any way whatsoever. It is thus not possible to benefit her as there is no one, or even no thing at all, to benefit. For there to be a benefit one must be made better off than one otherwise would be, but it is an ontological error to assume that trading existence for non-existence can be a benefit, as non-existence is not a condition anyone can *be* in.

We can also turn this situation to its opposite end with the problem reappearing. Say Olav

and Sophia *does* decide to bring Lisa into existence. How could we condemn them for it? In this scenario, like the first one, Lisa can only exist if she is conceived when she is conceived. She might be brought into existence to live in great pain, but that is the only way she can ever exist.

Additionally, similar to a benefit; to harm someone is to make that person worse off than they otherwise would have been, and to trade non-existence for existence cannot be a harm as the only alternative to Lisa's painful existence is non-existence, which, again, is not a condition anyone can be in.

2.2.2 The consequentialist claim

The example I used of the viral infection causing great suffering in a possible child is quite extreme. Cases where the non-identity problem surfaces need not be that severe. In fact, in many cases it is much harder to see what the right course of action could look like. Our intuitions usually offer good guidelines on what the right decision is in cases similar to my first example; it is often easy to see that *not* bringing a child into existence until one can adequately predict that doing so will not cause any harm to the child is the right decision. This intuition might not be logically or ontologically sound, but it nevertheless generates few practical problems for the average person. This perhaps ringing true to most, the non-identity problem will still assume a strong position in cases similar to my following example.

Assume again that Olav and Sophia want to have a child. After taking a few tests at the doctor, it is revealed that any child they decide to conceive within the next month will be born with a minor disability. This disability will not greatly impair the quality of the person's life, but there will nevertheless be areas of their life where the disability will be felt as a moderate disadvantage. While this disadvantage is primarily judged by the person having the disability, it could nevertheless be judged in advance by their parents that the disability would indeed be a disadvantage in certain valuable areas. When asked if they think their life is worth living, the person with the disability still answers affirmative. The question then becomes much more difficult. Should Olav and Sophia have brought this person into existence?

This idea of a "*life-worth-living*" makes up the second part of the non-identity problem and is perhaps much more difficult to overcome. If someone who has been brought into existence to live a life that, from someone else's view, might be considered disadvantageous, but is nevertheless happy to be alive, how can anyone suggest that they should not have come into existence? It is hard to argue for any kind of wrongness having taken place in such cases. However, it is my impression that to *only* consider the idea of a "*life-worth-living*" from the perspective of the person having to live the life is not enough to establish if some wrong has been committed. Surely, a person shot in the back having to live the rest of their life in a wheelchair will rightly still deem their life worth living, in part because of adaptive preferences. But this does not make the act of shooting them in

the back acceptable. One cannot *only* rely on what the victim has to say about their situation when trying to determine a wrong. In many instances this principle is probably true, but in the case of a person being brought into existence to live with a disability it is less clear how this can be true. Surely, if someone living with a disability thinks their life is wonderful, how is anyone to judge otherwise?

One problem is that we obviously do not know in advance if someone will find their life worth living since “the sheer unpredictability of children, the limits on our capacities as parents, and the instability of social conditions make it unwise to take for granted that our progeny will have good lives.”²³ Someone with a serious illness might think their life is a beautiful thing, while someone who on the outside appears to “have it all” might nevertheless wish they never had been born. This makes using the “life-worth-living” view as a defence for bringing someone into existence flawed. After all, from the perspective of the parents one could always use it as a rationalization for bringing a possible unhappy person into existence, for instance by suggesting that one’s child might suffer greatly, but would nonetheless be glad to having been born if asked. Notably, Benatar has made a response to this view by arguing that people often confuse two claims that both can be used as a basis for a “life-worth-living”, and stresses the importance of distinguishing a “life-worth-continuing” from a “life-worth-bringing-about”²⁴ The idea is that despite answering affirmative on whether one think one’s life is worth continuing, one does not have to think one’s life was worth starting. This is a valuable distinction to make, but I do not think it does much good in this instance, because if one tried opposing the “life-worth-continuing” view by using “life-worth-bringing-about” one would face the same problem as before. It too could be used as a rationalization for bringing a possible unhappy person into existence by suggesting that one’s child might not have consented to being born, but would nonetheless be glad to having been so if asked at a later time.

2.3 Parental Duties and the Child's Right to an Open Future

Given the uncompromising nature of the non-identity problem, what we need is a way to ground our responsibilities to possible people despite the existence of the problem. If we simply accept the non-identity problem as it is now, it would be futile to try and think ethically about mere possible people and future generations. They do not exist yet and therefore have no rights that we need to respect. And even if they did have morally relevant rights, nothing can ever speak against bringing all kinds of people into existence as long as their life would be worth living. And, as I have already made explicit above with the person being shot in the back, very little is needed to suggest that

²³ Christine Overall, “Think Before You Breed”, *The New York Times*, June 17, 2012, retrieved April 9, 2023. <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2012/06/17/think-before-you-breed/>.

²⁴ David Benatar, “The Wrong of Wrongful Life”, *American Philosophical Quarterly* 37, no. 2 (April 2000): 176, DOI: 10.2307/20009995.

someone's life is worth living. This is not to suggest that people are mistaken in the assessment of the quality of their own lives, as Benatar has argued. It is only that the bar for what parents owe their children should be set higher than just that of giving them a life worth living.

I want to propose that by angling the view from consequentialist ethics to deontological ethics, and develop an action-based principle, with reference to Feinberg's conception of the child's right to an open future, we can do just that. Of course, by referencing rights one supposedly would still not be able to circumvent the ontological claim. However, the principle will be focused on duties that prospective parents have in virtue of being prospective parents, rather than on their possible children's rights, *per se*.

Consider an analogy. Say you are managing a pool. It is your job to ensure that the water is clean before each use and of the correct temperature. You have no idea who will use the pool next. It could be a man, a woman or a child; old or young; many or few. There might be someone there the next day, and there might not be anyone there until the next month. There might even be no one using the pool ever again as the building housing the pool could suddenly burn to the ground. But if you have not cleaned the pool or ensured the correct temperature before someone is going to use it, you have violated your duties. It would thus be a duty in the same way one has a duty to hold the speed limit. One does not hold the speed limit because other drivers have a right that you are infringing by not holding it. If you were caught speeding one day by another driver, and he were to say: "You are not allowed to drive this fast! I have my rights!", we would correctly think he is mistaken about some of the facts regarding the speed limit. Instead, it is simply your duty to not go over the limit when driving—mainly to protect other beings whom you do not, and likely never will, know.

These duties are not conditional on a specific kind of people. The duty to hold the speed limit will continue to exist in 50 years from now (admitting there might be a different upper and lower limit) whose drivers the limit is set to protect might not yet exist. Moreover, people who are not even born yet will too be constrained by the speed limit *when or if* they themselves become drivers. So even if you do not presently have a car and a driver's license, or even if you do not presently exist, when or if you do come to exist and come to have a car and a driver's license, you too will be constrained by this duty to hold the speed limit. It would be perfectly logical to say that in 25 years I will have a child, and 20 years later they will come to have a duty to hold the speed limit when they are out driving. The duty is thus ubiquitous within the realm of driving. The same way, when or if one decides to parent, one will be constrained by certain duties towards one's children.

2.3.1 Why a focus on parental duties could sidestep the non-identity problem

Both the non-identity problem's ontological and consequentialist claim could be discarded on the basis of parental duties. As I mentioned earlier, I do not believe it can solve the problem, and perhaps nothing can, but the important thing is not so much solving the problem as it is making ethical reflection on our responsibilities to possible people viable despite of it. What a focus on parental duties can do is to identify a wrong even when no apparent bad consequences have come about, and even if we grant that possible people do not presently have any rights. Bringing a person with severe disabilities into existence, for example, could by an account of parental duties still be considered morally wrong even if the disabled person themselves greatly enjoys their life and would wish nothing to have been different. The reason this could still count as a moral wrong is because by knowingly creating a person with severe disabilities, one would be violating a putative duty not to bring children into the world with an unfair disadvantage as one would be closing the door on certain interests, preferences and ways of life that the child could come to have in the future. Importantly, by only focusing on parental duties, creating a person with the best chance of the best life that still ends up finding their life miserable would not be a moral wrong because no duties are violated. It would simply be a case of bad luck that it turned out that way and not something that could be foreseen.

In the section that follows I will go over the main inspirations for the duties I intend to develop and how I will ultimately derive the non-impediment principle from them.

2.3.2 The child's right to an open future

The child's right to an open future is the idea, coined by Joel Feinberg in his essay of the same name, that there is a certain type of right, or class of rights, that all children have to grow up without some important interests and preferences being impossible to actualize. In the essay Feinberg first distinguishes between two subclasses of rights that he believes are peculiar to children only (though admitting that the first class would also be applicable to adults in special circumstances). He clarifies that the protection of these rights is the responsibility of the child's parents (and the state as *parens patriae*) as the child is not yet ready to exercise these rights for himself. The first class of these rights are so-called *dependancy rights* and are “those rights that derive from the child's dependance upon others for the basic instrumental goods of life—food, shelter, protection.”²⁵ The second class of rights he calls *rights-in-trust* and these are rights that are to be saved for the child until he is an adult, but which can be violated in advance: “The violating conduct guarantees now that when the child is an autonomous adult, certain key options will already be closed to him. His right while he is still a child is to have these future options kept open until he is a fully formed self-

25 Joel Feinberg, “The Child's Right to an Open Future”, in his *Freedom and Fulfillment: Philosophical Essays* (Princeton: Princeton University Press, 1992), 76.

determining adult capable of deciding among them.”²⁶ These “anticipatory autonomy rights” are rights that, as a child, one does not yet have the autonomy to exercise. All the same, the child will, if nothing unforeseen happens, *become* an adult at some point in time, and the child's right to an open future is the child's right to not have certain opportunities closed to him by the time he reaches adulthood and is able to make decisions for himself. Feinberg makes use of the example of the case of *Wisconsin v. Yoder* mentioned earlier, and maintains that the ruling allowing for an exemption for Amish communities from the requirement that all children be sent to state-accredited schools violated the child's right to an open future:

An education that renders a child fit for only one way of life forecloses irrevocably his other options. He may become a pious Amish farmer, but it will be difficult to the point of practical impossibility for him to become an engineer, a physician, a research scientist, a lawyer, or a business executive.²⁷

What exactly an open future is and how open it should be has been a matter of debate. J. R. Garrett has suggested that there are at least three interpretations of how an open future can be understood; the *maximal quantity* view, the *minimal threshold* view, and the *vital quality* view.²⁸

The maximal quantity view emphasizes that the primary responsibility of parents is to ensure that their child's future is maximally open with as many varied options available to him as possible. The minimal threshold view insists that the importance is not so much to maximize the available options, but instead to ensure that a minimally sufficient number of possible options must remain open until the child is a fully formed autonomous adult. Lastly, the vital quality view is less concerned with focusing on the quantity of options, be it in terms of an ideal maximum or a basic minimum, but instead on the quality of the options available “as they pertain to self-determination and self-fulfilment for one’s adult life.”²⁹

Which of the three views one favours will determine much of the overall view one takes of the permissibility of having children. If one favours the minimal threshold view, the bar for acceptable procreation would be lower than if one favoured the maximal quantity view as assuring a maximal quantity of options would be more demanding. In comparison, ensuring a minimal threshold could in practice be the same thing as ensuring only the basics, which then would only count as a life worth living as I alluded to in the introduction. However, *not* ensuring some basic options would seem to be a violation of the child's right to an open future. Moreover, ensuring some vital quality options could also set the bar fairly low as one could argue that a minimal threshold of options and a vital quality of options are essentially one and the same. Some vitally important options would naturally count as some basic minimum of options. Assuring that one's child is of

²⁶ Feinberg, “The Child's Right to an Open Future”, 77.

²⁷ Feinberg, “The Child's Right to an Open Future”, 82.

²⁸ J. R. Garrett, “The Child's Right to an Open Future: Philosophical Foundations and Bioethical Applications”, in *Pediatric Ethics: Theory and Practice*, ed. Nico Nortjé and Johan C. Bester (Springer Nature Switzerland: Springer International Publishing, 2022), 43.

²⁹ Garrett, “The Child's Right to an Open Future”, 43.

optimal health, for instance, could both be vital *and* basic for the child's future. However, Garret argues that what makes certain options “vital” is their importance for self-determination and self-fulfilment.³⁰ This idea is taken from Feinberg who writes that “[...] the two distinct ideals of sovereign autonomy (self-determination) and personal well-being (self-fulfilment) are both likely to enter, indeed to dominate, the discussion of the grounding of the child’s right to an open future.”³¹

We need not fully commit ourselves to just one of these views. I believe the best thing to do is to try and find a way to combine all three. First, instead of a maximal quantity of options, we can think of a fair distribution of options. Second, we can think of this fair distribution of options as being a fair distribution between basic options, that is, those options that are necessary and sufficient for a life worth living—the minimal threshold view; and those options that are important for self-determination and self-fulfilment—the vital quality view. “Fair” furthermore denotes the extent to which the distribution does not favour the assurance of some options over other options, for instance a decent amount of basic options, but few vital options. In that case it would still be a life worth living, but it would not be an open future, as an open future would require a fair distribution of both. Therefore, an open future must be understood as a fair distribution of options between those that are necessary and sufficient for a life worth living, and those that concern opportunities for self-determination and self-fulfilment.

But one problem still remains. What the three views have in common is that they are all a form of *positive* assurance of options. Be it a maximal quantity, a minimal threshold, or a vital quality, they are all committed to parents actively assuring a number of options—hence a positive duty. Below, I will look at the shortcomings of thinking about the child's right to an open future this way, and show how by thinking about it in terms of a *negative* duty instead, we can overcome this shortcoming. Although I will particularly be looking at an objection to the maximal quantity view, the turn from a positive duty to a negative duty is applicable to all three views.

2.3.3 A positive or a negative duty?

Many have viewed the child's right to an open future as providing grounds for a positive duty parents have towards their children, and have rightfully identified some issues with thinking of it in this manner. In what she labels the “smorgasbord approach” – which is essentially based on the maximum quantity view, though not explicitly stated – Claudia Mills contends that it would not be possible to “expose the child to as many activities and experiences as possible, and then let him see where his own interests and aptitudes lie.”³² If parents were obligated to maximise their children's options for the future, they would have to be enrolling them in as many activities as possible, skipping from violin lessons to football practice to learning about geology, history and botany.

30 Garrett, “The Child's Right to an Open Future”, 44.

31 Feinberg, “The Child's Right to an Open Future”, 92.

32 Claudia Mills, “The Child's Right to an Open Future?”, *Journal of Social Philosophy* 34, no. 4 (Winter 2003): 50, DOI: 10.1111/1467-9833.00197.

What would happen is that they would not practice anything long enough to become particularly good at – or even get a chance to like – any of it:

[...] the drive to amass as many experiences as possible can never be complete: Precisely what will be missing from the list is experiences that require *time* to assimilate and absorb, experiences that are slow and deep, rather than easily scheduled in *[sic]* a escalating spiral of extracurricular activities.³³

In addition to being virtually impossible, Mills also thinks that the smorgasbord approach is not particularly desirable. By putting too much effort into respecting the child's possible interests in the future, one forgets to respect the child as she is now along with her current interests. For instance, if the child does not wish to practice her violin but would rather like to play outside with her friends, the parents would only think in terms of her possible future interests by forcing her to practice the violin regardless. Additionally, the keyword here is “possible”. Her interests in playing with her friends are present, while the interest in becoming a concert violinist in the future might only be a possible interest. Perhaps as of right now, the child might not have the slightest interest in it at all. Moreover, if being forced to play the violin or perform other activities one presently does not wish to do, that possible interest might become even less possible due to the hatred towards the activity it might generate. The possible interest would then fade and the parents' insistence on encouraging it would have been to no avail.

Although this shortcoming could be causing a heavy blow to the parental duty to uphold the child's right to an open future, it appears that it is mostly present when it is viewed as a *positive* duty. But perhaps the duty is not so much encouraging an open future for the child by driving them to football practice, violin lessons and so on, but instead to not hinder an open future by cutting off the child's legs and fingers or *not* driving them to football practice and violin lessons if that is the only way for them to get there. Parents should not be committed to creating options for their children, be it a maximal quantity, a minimal threshold, or a vital quality, but should rather focus on not stymying the availability of options. So, if we instead take the duty to be a negative duty, and aim our focus at minimizing the hindrance of options, one would naturally see an increase in options, too. The child's right to an open future would thus still be respected and the issues identified above would seem less pressing.

It is important to clarify that by minimizing the hindrance of options, one is not then ensuring a basic minimum of options as per the minimal threshold view. As was stated above, I take the minimal threshold view, along with the vital quality view, to also be a form of positive interference. The difference between the minimal threshold view and the maximal quantity view simply lies in the quantity of options available. But they are still both committed to “creating options” and are thus both essentially positive.

³³ Mills, “The Child's Right to an Open Future?”, 506.

2.3.4 A duty for prospective parents, too?

So far, we have recognized that parents have a responsibility to keep their child's future open in the form of not prematurely closing the door on possible future interests and preferences. We should thus think of this primarily as a negative duty and not a positive duty, and from now on I take this duty to be evident after the child is born. The question to consider now, then, is why not also before the child is born? If we can agree on a premise that parents should keep their child's options open until they are able to make decisions concerning their own future themselves, could we not extend this responsibility to include acts undertaken before and during gestation as well? After all, what use is there for keeping a child's future open if their chance of an open future is already drastically limited either due to neglect during pregnancy or by their prospective parents making decisions prior to conception that effectively narrows the kinds of future their child can have? Think about it this way. The advice given to pregnant women not to smoke, drink or use any drugs during pregnancy is essentially based on the child's right to an open future, even if not exactly stated in those words. Because if the child were to be harmed during gestation, certain options or ways of life would already be closed to him when he is born. Dena S. Davis has made a similar claim when writing about the immorality of prospective parents choosing for disability: "A decision made before a child is born that confines him forever to a narrow group of people and a limited choice of careers [...] violates the child's right to an open future [...]." ³⁴ She further gives an illuminating account of a negative kind of parental responsibility when she argues that: "Parents ought not deliberately to substantively constrain the ability of their children to make a wide variety of life choices when they become adults." ³⁵ Concluding from this, we have good reason to think that the duty I so far have outlined is not only conditional on the existence of an actual child. It is also conditional on a possible child since the possibility of violating their right to an open future is present even prior to them coming into existence.

2.3.5 The non-impediment principle

To sum up the points I have now made: Prospective parents have a negative duty to uphold their possible child's right to an open future. The last question to consider, then, is how this can be done in practice and, furthermore, how we can formulate a principle that avoids the talk of rights. What I shall call the *non-impediment principle* can be formulated like this:

Prospective parents should not create a child whose chance of an open future is impeded, foreclosed or otherwise negatively limited; or make reproductive decisions that may impede, foreclose or otherwise negatively limit their possible child's chance of an open future.

The word *impede* seems the most apt for the purposes the principle seeks to convey—which is why

³⁴ Dena S. Davis, *Genetic Dilemmas: Reproductive Technology, Parental Choices, and Children's Futures*, 2nd ed. (Oxford: Oxford University Press, 2010), 82.

³⁵ Davis, *Genetic Dilemmas* (Oxford: Oxford University Press, 2010), 84.

it is also chosen as the principle's name. In the Cambridge dictionary *impede* is defined as “to make it more difficult for something to happen or more difficult for someone to do something.”³⁶ The word comes from the Latin word *impedire* and literally means “to shackle the feet.”³⁷

Both “impede” and “foreclose” seem to have negative connotations—though they need not. But it is less evident that “limit” is something purely negative, which is why the word “negatively” is added to it. Some element of limiting an open future will necessarily take place. But this need not always be negative. Someone born into an extremely wealthy family might have a harder time realizing a future in extreme poverty than someone who is born into it. But this would not be setting a negative limitation on an open future, just a limitation (or a positive limitation, even).

Moreover, the words “may” and “negatively” are deliberately chosen to sound vague. This way prospective parents can evaluate their situation on a case-by-case basis. A one-size-fits-all moral requirement will necessarily be too strict and either exclude or include cases that are unsuitable for the principle to comment on. Furthermore, context will always be an important factor. For instance, when considering certain disabilities, Julian Savulescu has argued that they may not be purely bad within particular contexts, but can even be a benefit: “The atopic tendency that leads to asthma in the developed world protects against worm infestations in the undeveloped world. Deafness would be a positive advantage in an environment of extremely loud and distracting noise.”³⁸ By giving prospective parents some discretion to evaluate whether their possible child will in fact have their chance of an open future impeded, based on their own assessment of present competence and resources, their reproductive autonomy would be respected.

Lastly, by switching from “the child's *right* to an open future” to “the child's *chance* of an open future”, we avoid any “rights-talk” and metaphysical speculations about those not yet born.

2.4 Chapter Summary

In this chapter I have argued for the following two conclusions:

1. Ethical reflection on procreation is possible despite the non-identity problem constraining some of the language and methods of enquiry we can use. Instead of thinking about the welfare of children in terms of their rights, we can angle our focus over to parental duties instead. This way, metaphysical speculation on the rights of possible people is avoided and we can ground ethical obligations to possible people despite the existence of the non-identity problem. Additionally, by focusing on duties, the consequences of an action becomes less important for concluding when an unethical decision has been made.

³⁶ Cambridge Dictionary, “Impede”, retrieved April 21, 2023.

<https://dictionary.cambridge.org/dictionary/english/impede>

³⁷ Online Etymology Dictionary, “Impede”, retrieved April 21, 2023. <https://www.etymonline.com/word/impede>

³⁸ Julian Savulescu, “Procreative Beneficence: reasons to not have disabled children”, in *The Sorting Society: The Ethics of Genetic Screening and Therapy*, ed. Loane Skene and Janna Thompson (Cambridge: Cambridge University Press, 2008) 55-56.

Therefore, both the ontological and the consequentialist claim of the non-identity problem are made irrelevant for an ethical discussion about possible people.

2. Feinberg's idea of the child's right to an open future is an effective starting point for developing a duty-based approach to our responsibilities towards our children. After establishing that parents primarily have a negative duty to uphold their child's right to an open future, I concluded that we also have good reason to believe that this duty is not only conditional on the existence of an actual child. Instead, since the possibility of impeding the child's chance of an open future is present long before the child is even born, we can conclude that this duty exists already from the moment one decides that one wishes to bear children. This duty is the basis for the non-impediment principle.

In the following three chapters I will consider the non-impediment principle within the context of three difficult questions in reproductive ethics and determine its strength and weaknesses with applying it on those questions. I will start in the next chapter with the ethics of prenatal diagnosis and selective abortion.

Could there ever be reasons to abort a pregnancy?

3.1 Chapter Overview

Beginning in 2022, The Storting (*Stortinget*) decided that all pregnant women be offered early ultrasound in the first trimester of pregnancy.³⁹ Moreover, it was decided that all those aged 35 and older at the due date be offered noninvasive prenatal testing (NIPT) through the public health service.⁴⁰ This is a simple blood test the mother can take to uncover the existence of trisomy 13, 18 and 21 – the latter more commonly known as Down syndrome – in the developing foetus. While so far primarily permitted for just these predictive tests, it's possible uses extends far beyond detecting only those three trisomies.⁴¹ The procedure is also practically risk free in comparison to other forms of prenatal diagnosis like amniocentesis where its use is associated with a 0,5 % chance of a miscarriage.⁴² NIPT has from 2022 furthermore been made accessible to all pregnant women, though not through public funding.⁴³

The accessibility of these predictive and diagnostic tests has long been sought after. An informal study done by *Aftenposten* in 2011 concluded that as many as 53 % of those asked were positive to the state introducing early ultrasound for all pregnant women in the first trimester.⁴⁴ But its newfound availability have also been strongly opposed for some time.⁴⁵ As these options are now provided around the 12th week of pregnancy, it would be around the same time the right to self-determined abortion passes, which is at the end of the 12th week. Concerns have been raised about how it will become easier to abort pregnancies where a foetus is found to have a genetic abnormality. Statistics also seem to support such a worry, as about 9 out of 10 chooses to have an abortion if the foetus turns out to have Down syndrome.⁴⁶ The main worriment is that this will soon culminate in a so-called “sorting society” where certain unwanted characteristics and genetic differences are continuously being sorted away to the point of being eradicated. As of today, there

39 Innst. 296 L (2019-2020), 28.

40 Innst. 296 L (2019-2020), 30.

41 Ketil Slagstad and Bjørn Hofmann, “Ny fostertest ble svaret, men hva var spørsmålet?”, *Nytt Norsk Tidsskrift* 34, no. 2 (2017): 157, DOI: 10.18261/issn.1504-3053-2017-02-04

42 Helsenorge, “Fosterdiagnostikk”, retrieved May 5, 2023. <https://www.helsenorge.no/undersokelse-og-behandling/fosterdiagnostikk/#ultral lyd-i-uke-11-til-14>

43 Helsedirektoratet, “Forslag til organisering og innføring av tilbud om NIPT og ultralydundersøkelser i første trimester”, *Helsedirektoratet*, November 18, 2020, retrieved April 9, 2023. <https://www.helsedirektoratet.no/rapporter/forslag-til-organisering-og-innforing-av-tilbud-om-nipt-og-ultral ydundersokelser-i-forste-trimester>

44 Tine Dommerud, “Slik er fosteret i uke 12”, *Aftenposten*, April 9, 2011, retrieved May 3, 2023. <https://www.aftenposten.no/norge/i/1ng2M/slik-er-fosteret-i-uke-12>

45 Magne Lerø, “Sortering etter ultralyd”, *Dagens Perspektiv*, December 13, 2011, retrieved May 1, 2023. https://dagensperspektiv.no/meninger/redaktorens_mening/sortering-etter-ultral yd

46 Marit Melhuus, “Hva slags mening gir sorteringssamfunnet? En hendelse og noen refleksjoner omkring kunnskap, likhet, valg, individ og samfunn i Norge”, *Norsk antropologisk tidsskrift* 23, no. 1 (February 2012): 39, <https://doi.org/10.18261/ISSN1504-2898-2012-01-06>.

are two ways this type of society could come to fruition. One is through prenatal diagnosis and selective abortion. The other is through preimplantation genetic diagnosis (PGD).⁴⁷ The topic for this chapter will be the former approaches, whereas PGD will be a topic for the next chapter. The following chapter will be an overview of the most prominent arguments advanced in the debate about the ethics of prenatal diagnosis and selective abortion, and also how the non-impediment principle places itself in relation to these. Put simply, we can say that there are three competing interests we need to consider: (1) women's right to abortion and information about the foetus, (2) the fear of facilitating a sorting society, and (3) the welfare of the possible child.

At the outset we should not forget that there are many reasons why someone would want to (or perhaps need to) abort a pregnancy. Up until the 12th week, no particular reason need be provided for why a woman wishes to terminate her pregnancy. From then on and up until the 22nd week the woman has to be granted special permission from a selected panel (*abortnemnda*) with the reasons given in defence needing to be weightier the more time has passed.⁴⁸ An abortion is furthermore not permitted after the 22nd week as the foetus is then believed to be capable of living on its own (likely with medical assistance) outside the womb.⁴⁹ Whether an abortion in general can ever be ethically justified will not be treated as of importance in this chapter.

I begin in the first section by commenting on some infamous legal proceedings known as “wrongful birth” and “wrongful life” while deducing what I believe is an implicit assumption in these cases that there are some diseases, disorders or disabilities that reduces the quality of human life to such an extent that it would be best if these lives are not started. I then conclude that in most cases of severe diseases it is easy to maintain that having an abortion is an ethical requirement on account of the non-impediment principle. However, with some cases of disabilities it is harder to conclude that an abortion would be an ethical requirement.

This conclusion brings me into the second section and a discussion of the badness of disability. The purpose of this discussion is to delineate which, if any, disabilities can impede a chance of an open future, and when, if ever, that is a good reason to think that those lives are best not started. This is naturally a much bigger discussion than what a paper of this format can treat in its entirety. I will therefore only consider two disabilities: one type of intellectual and developmental disability—in this case Down syndrome, and one type of physical disability—in this case deafness. Moreover, I will only detail what the non-impediment principle would require.

In the third section I discuss the often-emphasized fear about how such selective abortion discussed in the preceding sections could eventually culminate in a type of “sorting society”. This section will primarily detail the most prominent arguments in that debate and issues about women's

47 Melhuus, “Hva slags mening gir sorteringssamfunnet?” 35.

48 Lov 13. juni 1975 nr. 50 om svangerskapsavbrudd (abortloven), § 2, femte ledd.
<https://lovdata.no/pro/#dokument/NL/lov/1975-06-13-50>

49 Forskrift 15. juni 2001 nr. 635 om svangerskapsavbrudd (abortforskriften), § 18.
<https://lovdata.no/dokument/SF/forskrift/2001-06-15-635?q=abortforskriften>

right to abortion and information about the foetus.

In the last section I provide a summary of the chapter.

3.2 Wrongful Birth and Wrongful Life

In 2013, the Supreme Court of Norway rejected a woman's appeal for compensation for what she described as psychological damages from having given birth to a child with Down syndrome.⁵⁰ She had previously conceived three children through in vitro fertilisation (IVF), the first two being twin boys born prematurely leading to a heightened need for care. The third child, a girl, was described as being of “normal health”. The woman later became pregnant by natural means without this being planned and, due to her already having a heavy care load, decided that she would terminate the pregnancy if it was found through prenatal diagnosis that the child would have some kind of disability requiring extensive care. The woman was not offered any prenatal diagnosis and the child she subsequently birthed was soon after found to have Down syndrome. The hospital admitted that they had acted negligently by (presumably) forgetting to offer her genetic counselling and that she was entitled to compensation. She then filed a tort claim for the psychological damages she had suffered due to not having been given the opportunity to terminate her pregnancy. However, the Norwegian System of Patient Injury Compensation (NPE) (*Norsk pasientskadeerstatning*) rejected her claim, and she later decided to take the case to court.

In her testimony she referenced the case of *R.R. v. Poland* where a woman was denied access to prenatal genetic diagnosis which resulted in an inability to have an abortion which she would likely have requested on grounds of foetal abnormality.⁵¹ In this case, it was found that the woman's lack of access to prenatal diagnosis and the following denial of the right to carry out an abortion violated article 3 (right to respect for privacy and family life) and article 8 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. In the case of the Norwegian woman, however, it was found that article 3 and article 8 was not violated, though she was nonetheless given the court's approval in all judicial instances except for the Supreme Court where three votes to two voted against compensating her (the reason the case went all the way to the Supreme Court was naturally because the NPE appealed the lower judicial instances rulings).

It is important to note that in this particular case, the damages the mother sought compensated was not the birth of the child itself, but the psychological damages she claimed she suffered by not being offered prenatal diagnosis. Had she been offered such, she would have aborted the pregnancy since she and her partner had decided that the family would not be able to cope with the additional burden of caring for another child with disabilities. However, a main reason the tort claim failed was that a lack of genetic counselling was not deemed to be the actual

⁵⁰ HR-2013-02640-A

⁵¹ *R.R. v. Poland*, no. 27617/04, ECHR 2011/15

cause of her psychological distress, but rather the existence of the child itself, and the Court was not willing to consider this a legitimate cause for compensation. This being said, the claim that one is legally entitled to some form of compensation for the birth of a child that one otherwise would have decided not to bring forth had it not been for the physician or health-care provider's negligence are part of a larger group of ethical conundrums known as “wrongful birth” and “wrongful life”.⁵² These are claims brought by, or on behalf of, a child alleging that they would have aborted the pregnancy had they known that the child would be born with some form of disease or disability.

Few of these tort claims have succeeded, and much of the reason for this stems from the non-identity problem discussed in the previous chapter and how courts have usually been reluctant to make comparisons between a disabled life and nonexistence. This is not to say that courts have actually made use of Parfit's ideas to defend their rulings. But rather that the intuition judges have about nonexistence not being a state anyone can be in, and that it therefore would make no sense to compensate anyone for coming into existence, is essentially “Parfitian”. Another reason why few of these tort claims have succeeded is because compensating the existence of a newborn child seems to undermine the value of that child's life. However, in the aforementioned case from 2013, second voter judge Indrebø, who were in favour of granting compensation, denied that this undermining would necessarily follow.⁵³

An implicit assumption in these proceedings is that some lives seem to be taken to be of such poor quality that it is best that they are not started. This can be argued for on two grounds. For starters it can be said that it is better for the parents that they are not given the burden a child with a disease or disability will bring them. The other is that it would better for the child that they do not have to live with the disease or disability, perhaps because their life would be significantly short or permeated with long-term suffering. The first of these will be discussed later in the section on the “sorting society”.

With reference to whether it can be better for a child that they do not have to live with a disease or disability, David Archard believes that there can be both medical and non-medical grounds on which we could reasonably expect a created life to be of very poor quality.⁵⁴ An example he gives of a non-medical ground is a child born to desperate social and economic circumstances, like extreme poverty. With regard to space, I will only consider medical grounds here. To put it simply, we can think of lives falling into one of two categories; lives worth living and lives not worth living. Lives worth living can furthermore be separated into two subcategories; a life worth living, but one where opportunities for self-determination and self-fulfilment are impeded, and a life worth living where opportunities for self-determination and self-fulfilment are not impeded (this last being the definition of an open future).

⁵² These two are usually treated as distinct concepts. However, what they have in common is that a person that should not have existed has come to exist, the difference being who is affected by it.

⁵³ HR-2013-02640-A, 8.

⁵⁴ David Archard, “Wrongful Life”, *Philosophy* 79 no. 3 (2004): 404, DOI: 10.1017/S0031819104000348.

It seems obvious that a life not worth living would also be a life not worth starting, and that there would therefore be good reasons for terminating a pregnancy if there are reliable indicators that the child's life will be short and painful. In cases of lives worth living, however, it is difficult to conclude whether a life worth living with opportunities for self-determination and self-fulfilment impeded is a life so bad that it would also be a life not worth starting. To answer this, we first need to determine how bad having one's opportunities for self-determination and self-fulfilment impeded really is.

Although there could be many reasons for why someone could lack opportunities for self-determination and self-fulfilment, I will here only focus on congenital disabilities. First I will make an outline of the most common views on the badness of disability. After that I will see how the non-impediment principle can contribute to that debate and test its applicability on two kinds of disabilities; deafness and Down syndrome, respectively.

3.3 The Badness of Disability

The attempt at defining disability has proved more difficult than what one might have expected. On the one hand we face the issue of how to determine what conditions can properly be labelled a disability. On the other hand, and what has probably proven to be more difficult to settle, is what view we should adopt towards disabilities as a whole. Are they *intrinsically* bad, or are they perhaps just *instrumentally* bad? Or are they, as Elizabeth Barnes has argued, just “*mere differences*”?⁵⁵

What conditions can be labelled a disability and what general view we should adopt towards them will necessarily be closely linked. If, for instance, disabilities are something to be considered bad, what conditions could qualify as a disability would have to depend on whether the condition in question could be considered bad. If, on the other hand, a particular condition is not considered bad, but disabilities are also not considered bad, the condition in question could be considered a disability—depending, in turn, on what other characteristics is needed for something to be labelled a disability. Though there is no consensus on how to settle any of these questions, two models seem to figure more promptly than others: the Medical Model and the Social Model. These two are not directly opposed, as there are elements in both of them that captures some essential property of what disabilities are. However, the main difference lies in their attitude towards disabilities, and in this manner they are quite different. I will take a closer look at these two models below.

3.3.1 The Medical and Social Models of disability

The Medical Model of disability has for a long time been at the fore as the most common view people adopt towards disabilities.⁵⁶ According to this model, disability is a deviation from the

⁵⁵ Elizabeth Barnes, “Valuing Disability, Causing Disability”, *Ethics* 125, no. 1 (October 2014): 88, DOI: 10.1086/677021.

⁵⁶ Guy Kahane, “Disability”, in *Ethics and the Contemporary World*, ed. David Edmonds (London and New York:

normal functioning of the human being and is thus primarily regarded as being something harmful (or at least bad). Take blindness as an example. On the Medical Model, blindness is defined by its relation to the ability to see. To see is a basic human function, and indeed a valuable function needed to perform many daily tasks. The lack of sight (blindness) is therefore a deviation that makes one worse off as it diminishes someone's ability to lead a normal life.

Disability rights activists have remained sceptical at the belief that a disability is something that makes a person worse off and something that should ultimately be “cured” if possible. In their view disability is merely a difference in being—just one way out of many different ways a person can be. Their status as a minority is no different from that of other minorities. We would not think that the Sami people are in any way worse off than other people simply in virtue of being Sami (though their historical treatment can certainly qualify as a way for them to be considered worse off). Instead, disability rights activists have sought to defend a Social Model of disability. This model does not deny that disabilities can make a person worse off, but this is not due to the condition itself, but rather due to discrimination, prejudice and how society is essentially designed so as to exclude these people. A supermarket with a narrow entrance and groceries placed at high shelves are poorly suited for people in wheelchairs. However, if people in wheelchairs were properly accommodated in the supermarket, the restaurant, the workplace and all other relevant areas of society, their apparent disadvantage would not be a “bad-difference”, just a “mere-difference” or a neutral difference. What makes the disabled person worse off is thus because he is treated as if unwelcome in society, and the way to improve their predicament is by changing the workings of society and its attitude towards people with disabilities.

We must distinguish between attempts at improving a disabled person's chances for social participation and improving their actual condition. A wheelchair is arguably a way of improving the condition of a person with paraplegia by making it possible for them to move around despite not having functional legs. Improving their chances for social participation, on the other hand, would depend on how well society accommodates wheelchairs. One could also improve a disabling condition to such a degree that no social accommodation would be needed at all. This is best exemplified with the invention of glasses, contact lenses and particularly laser eye surgery as a way to improve the condition of people with poor eyesight. In this case, the improvements have been so successful that poor eyesight is not a condition that needs any social accommodation. But had these not been invented, reduced eyesight would no doubt present many people with great challenges as society is arguably not properly designed for this disability.

In response to the Social Model, some have argued that a disability has to be something that makes a person worse off because otherwise it would be permissible to cause disability (and impermissible to cure it), which is clearly false. John Harris uses the example of someone

accidentally deafening someone else's child and believing this to be just fine (as long as it was painless) as there is no harm in being deaf.⁵⁷ If disabilities are just differences, and being deaf is not in any way worse than being able to hear, causing a hearing person to be deaf cannot be wrong.

Elizabeth Barnes have criticised these kinds of objections and argues that it is possible to believe that disabilities are mere differences while also believing that causing someone to be disabled is wrong. This can be argued for on two grounds. For starters, causing a non-disabled person to become disabled brings with it great transition costs as adjusting to a newly acquired disability is a difficult and painful process—even if one comes out at the end as a “perfectly happy, well-adjusted disabled person.”⁵⁸ Second, we normally believe that unjustified interferences with another person’s life without their consent (even if those changes do not make them worse off) is wrong. Cutting someones hair without their consent, for example, would be an unjustified interference in another person's life, even if the new look would be an improvement on the former and the person whose hair was cut came to like the new look.

In terms of the non-impediment principle, the badness of disability must lie in the extent to which it has the prospect of impeding the chance of an open future (for someone). As such, it could be consistent with both the Medical Model and the Social Model. Some disabilities may impede the chance of an open future in virtue of being a physical or mental impairment stymieing a fair distribution of options. But this unfair distribution of options could in turn lie in society's poor attempts at accommodating people with these impairments.

To look at how both of these models can be consistent with the non-impediment principle, I will examine two kinds of disabilities below. One physical (deafness) and one intellectual (Down syndrome). Beginning first with deafness.

3.3.2 The non-impediment principle vs. physical disabilities

Since an open future is defined as a fair distribution of options between those that that are necessary and sufficient for a life worth living, and those that concern opportunities for self-determination and self-fulfilment, we need to be clear on what the key designation “self” is referring to. I do not mean to ask this in a metaphysical way. What I mean is that self-determination (or autonomy) and self-fulfilment are personal projects. A person with deafness might not have the chance of becoming a concert violinist. But she might not be interested in it either. Of course, her chances are impeded (likely closed off entirely)—there is no doubt about that. But her interests might lie somewhere else. She may still be able to thrive and actualize her own life as she desires. We would not believe that she is lacking opportunities for self-determination and self-fulfilment. It is only that the her options for such things are slightly narrowed.

⁵⁷ John Harris, “One principle and three fallacies of disability studies”, *Journal of Medical Ethics* 27, no. 6 (2001): 384, DOI: 10.2307/27718796

⁵⁸ Barnes, “Valuing Disability, Causing Disability”, 96.

Although we should not undermine the reasons people give for making their own decisions, it will always be the case that a deaf person's decision not to become a concert violinist, although taken by her (thus being autonomous) is essentially not her decision—at least not hers alone. It is thus an expression of heteronomy. The Social Model of disability will perhaps insist that her foreclosed chance of becoming a concert violinist is due to society's poor attempt at giving deaf people a chance at becoming professional musicians. But this would be nonsensical. A person without the ability to hear cannot have a profession where the ability to hear is a most vital component of that profession. One could of course improve the condition, for instance with cochlear implants, but no social accommodation would change the possibilities for becoming a musician for a deaf person.

Moreover, it is not only some job opportunities that are closed off. Many social activities would also be difficult for her to participate in. This adds to the options that are outnumbered, and the less fair the distribution seems to be.

We must conclude that being deaf is impeding one's chance of an open future, because there would not be a fair distribution of options. Some options that relate to one's opportunities for self-determination and self-fulfilment would be unfairly outnumbered. What we need to determine further is if that alone is bad enough to conclude that such a life is not worth starting. I will, as mentioned, only confine myself to what the non-impediment principle would require, as it is determining that principle's strengths and weaknesses that is our purpose here. The principle states that parents should not create a child whose chance of an open future is impeded. If we take the logical extension of that to be that a child whose chance of an open future *is* impeded should not be created, it would be counterintuitive to suggest otherwise. Therefore, if it is foreseeable that a child will be born with congenital deafness, the pregnancy should be terminated according to the non-impediment principle. This is a strong claim to make. But I believe that it is also the morally correct one.

To reiterate, congenital deafness impedes a child's chance of an open future. By following the non-impediment principle to its logical conclusion, these lives should not be started. I contend that this is a strong claim, but nevertheless one I am willing to accept.

3.3.3 The non-impediment principle vs. intellectual and developmental disabilities

The non-impediment principle, and the child's right to an open future in general, seem to be ill-adjusted with a view to saying something concrete about intellectual and developmental disabilities like Down syndrome. I will suggest two possible ways one can try to do this while maintaining that one is not particularly more convincing than the other.

As we saw in the previous chapter, the child's right to an open future is synonymous with the

child's anticipatory autonomy rights. It is therefore dependant on the child eventually developing into an autonomous adult, as it is this person's right one is looking to protect. But someone who “mentally remains a child their entire lives”⁵⁹ cannot be said to have the proclivity for developing sovereign autonomy. He therefore cannot be said to have anticipatory autonomy rights either, at least not the way we normally think autonomy should be exercised. Bringing a child with Down syndrome into existence would thus not be a violation of the non-impediment principle.

However, this can also be argued in the opposite direction. If we agree on a premise that some people with intellectual and developmental disabilities can never achieve sovereign autonomy, and the child's right to an open future is dependent on this, bringing a child that will never develop sovereign autonomy into existence could also be wrong, as there is never any way for them to become autonomous adults. You are thus bringing a person into existence that can never reach the kind of potential we believe all humans have a right to. They can never have a chance at an open future. However, as have been pointed out, they may not be aware of this themselves. But does the child's right to an open future require the child to be aware of the options that are foreclosed to him? It is the possible child's future interests and preferences we are protecting, but in the case of people with intellectual and developmental disabilities, it can be argued that they do not have the interest and preference for autonomy, and that they may not know what this would entail. So, we are not precluding these options for him as he would not have an interest in them to begin with. But this might not be very convincing. We can argue that all humans have an interest in, and perhaps even a right to, exercise autonomy, and creating someone we know can never achieve this is wrong on account of the non-impediment principle. But it is harder to see how creating a person with Down syndrome is wrong in the same way as creating a person with deafness could be wrong. With deafness, we can imagine what it would be like for that person to be exactly as they are now, but without the deafness. With Down syndrome, on the other hand, it is hard to imagine them as being anything else than what they currently are. As a hypothetical example we can think of deafness, blindness and paraplegia as being conditions that can be cured while still somewhat maintaining the same person. But with conditions as characteristic and all-encompassing as Down syndrome, “curing” them would alter their being completely. They would no longer be the same person. One could argue that this would be the same with curing a paraplegic person, as well, as their “being-in-the-world” would be significantly altered. But it is easier to see this person as keeping some of their traits intact to such a degree that seeing them as being the same person as not controversial. With Down syndrome, this would be harder to do, as much of their being is shaped by their condition. More so, I would argue, than a paraplegic person, or someone with blindness or deafness. In this sense, the ontological claim of the non-identity problem becomes particularly pressing: There is no way the person with Down syndrome could have existed in any other way

⁵⁹ Espen Gamlund, “Vi må slutte å snakke om sorteringsabort”, *Religioner*, June 9, 2017, retrieved April 28, 2023. <https://religioner.no/meninger/vi-ma-slutte-snakke-om-sorteringsabort/>

than the way that they do.

To reiterate, the non-impediment principle is set to protect the chance of an open future for a possible child. A main component of an open future is the ability to someday exercise sovereign autonomy. With cases of Down syndrome, it becomes difficult to determine if bringing them into existence would be wrong, as it is their very condition that precludes them from exercising sovereign autonomy, and they may not be aware of what futures are foreclosed to them. As such, the non-impediment principle is silent on what would be the morally correct decision concerning if their life is worth starting.

3.4 The "Sorting Society" and Its Discontents

The term "sorting society" has frequently come up in the public debate about the uses of prenatal diagnosis. It exemplifies the general fear many have with the increasing availability of procedures that can detect the presence of genetic abnormalities in a foetus, and the worry that by being given this option, more people will want to abort the pregnancy if the foetus has any such abnormalities. This way, certain diseases, disabilities and disorders would be sorted away, perhaps to the point of being eradicated. In the words of former Norwegian health minister, Dagfinn Høybråten, these concerns need to be taken seriously unless we wish to facilitate a society where:

[...] people sort out and select away what is not in line with what society perceives as 'normal' or 'desirable'. With the help of techniques such as preimplantation diagnosis, fertilized eggs that do not have the desired genetic characteristics can be sorted out. And through the development of increasingly better techniques for ultrasound examinations and better and simpler methods for genetic foetal diagnosis, knowledge about the foetus increases, which can give greater opportunity for sorting out those who are 'different'. Such sorting is ethically problematic. This means that we get a society that signals that there is not room for everyone.⁶⁰

In Norway, the debate has particularly centred on Down syndrome and the uses of diagnostics aimed at detecting this condition. Down syndrome is a somewhat special case compared to other conditions, as we have seen. With Down syndrome, and other intellectual and developmental disabilities, the person living with the condition may be less aware of the extent of their condition and how it shapes their being. A person with physical disabilities, but no impairment in their cognitive abilities, will arguably be more aware of how their condition impacts their options in life. In the case of Down syndrome, it is therefore more how we should weigh the woman's right to abortion against the fear of enabling a sorting society. This would include questions about how far the right to information should go.

⁶⁰ Melhuus, "Hva slags mening gir sorteringssamfunnet?", 37.

3.4.1 The right to abortion and the value of information

The desire not to have a child with Down syndrome need not be, and probably never is, an expression of distaste for people with Down syndrome or a wish that these people did not exist. The most frequently stated reasons women give for wanting to have an abortion are that they are either not ready for having a child, that they already have all the children they want, or that they cannot afford, or have the necessary time and resources available, to raise a child at the present time.⁶¹ A child with Down syndrome is arguably a child in need of greater, lifelong care from their parents (and/or public bodies). Believing that one is not ready or fit to take on this kind of responsibility is no less a validly cited reason than when citing it as a reason for not wanting a child at all. That being said, as was mentioned, studies show that as many as 9 out of 10 chooses to have an abortion if the foetus turns out to have Down syndrome. And moreover, the detection of Down syndrome prior to the availability of NIPT was often after the 12th week: “It is therefore a child that the woman would have brought into the world in the absence of this characteristic, but who is chosen because of the features of the future child. The abortion thus says something about such children being unwanted in a completely different way to other abortions.”⁶²

It might be an unfortunate fact that, if possible, fewer people would want to continue a pregnancy if Down syndrome is involved. But restricting women’s access to abortion to mitigate such occurrences would not be consistent with the Abortion Act's provisions. In Section 2, fourth paragraph, concerning a request for an abortion after the 12th week, it is specified that: “account must be taken of the woman's overall situation, including her opportunities to provide satisfactory care for the child. *Considerable emphasis must be placed on how the woman herself assesses her situation.*”⁶³(emphasis added) Seeing that any child brought into existence is first and foremost the responsibility of the parents, medical professionals should at all times consider their (the prospective parents) capacity and competence in raising a child, and how they themselves assess these, when processing applications for abortion, the same way they evaluate parents that apply for assisted reproduction and adoption. Moreover, the decision to abort and continue a pregnancy are both momentous decisions—even if the foetus is perfectly healthy. If we want people to make good, informed decisions about their procreative acts, it would be inconsistent to withhold information that can help the couple come to an informed decision. If someone does not deem themselves capable of raising a child with intellectual and developmental disabilities, it would be consistent with the Act to treat this as a valid reason for aborting a pregnancy. It should not be necessary for the woman seeking an abortion, as was pointed out in the preparations to the revised Act of 1978, to “feel that she has to overdramatize her situation in order to make an impression. This in itself is

⁶¹ Aksel Braanen Sterri, “Et forsvar for sorteringssamfunnet”, *Morgenbladet*, October 9, 2014, retrieved April 28, 2023. https://www.morgenbladet.no/ideer/2014/10/10/et-forsvar-for-sorteringssamfunnet/#.VISoxKSG_wM

⁶² Sterri, “Et forsvar for sorteringssamfunnet”, *Morgenbladet*, October 9, 2014, retrieved April 28, 2023. https://www.morgenbladet.no/ideer/2014/10/10/et-forsvar-for-sorteringssamfunnet/#.VISoxKSG_wM

⁶³ Lov 13. juni 1975 nr. 50 om svangerskapsavbrudd (abortloven), § 2, fjerde ledd. <https://lovdata.no/pro/#dokument/NL/lov/1975-06-13-50>

undignified, and in such circumstances many will not get the guidance they need to take a stand.”⁶⁴ It would be different if someone requested an abortion on grounds that her child would have blond hair as opposed to brown – which the parents would rather prefer – as a child with blond hair is not a child requiring a greater level of care than a child with brown hair. Of course, in a culture where being blond might be considered a grave disadvantage the situation would be different. But this is not the case in a Norwegian society.

To reiterate, the possibilities for facilitating a “sorting society” are real, but the fear of this happening cannot outweigh a woman's right to an abortion. Believing that one is not ready or fit to take on the responsibility of raising a child with a disability is not qualitatively different from giving the same reason for not wanting to raise a child at all. As such, it would be consistent with the Abortion Act to grant it as a valid reason for wanting to terminate the pregnancy.

3.5 Chapter Summary

In this chapter I have looked at the ethics of prenatal diagnosis and selective abortion.

I concluded that with some severe diseases, the non-impediment principle would require one to terminate a pregnancy. With cases of less severe disabilities, however, the conclusion was harder to come by, so I first needed to determine how bad being born with a disability really is.

I concluded that some physical disabilities (in this case deafness), was bad enough to impede the chance of an open future. I furthermore concluded that the logical implication of the non-impediment principle was that such lives should not be started. I contend that this is a strong claim to make, but one

With intellectual disabilities, on the other hand (in this case Down syndrome), it was harder to conclude that an open future was impeded. The reason for this rests on the fact that an open future requires an autonomous agent, and it is conceivable that people with intellectual disabilities lacks the proclivity for this. Therefore, the non-impediment principle remains silent on what would be the morally correct decision.

⁶⁴ Ot.prp. nr. 53 (1977-1978), 15.

If or where possible, should I opt for the best genetic quality for my child?

4.1 Chapter Overview

In the previous chapter I looked at the ethics of prenatal diagnosis and selective abortion. In this chapter I will look at possibilities for selecting for and against certain traits with the use of preimplantation diagnosis. Some might find this procedure ethically superior to prenatal diagnosis since it does not lead to selective abortion. However, many of the same concerns people have with the eradication of certain traits deemed inferior are present also with preimplantation diagnosis.

In the first section I provide some background information on the accepted uses of in vitro fertilisation and preimplantation genetic diagnosis by detailing an imaginary encounter between a physician and a couple who wishes to use assisted reproduction.

In the next section I give an account of the permissibility of preimplantation genetic diagnosis in Norway and how this has changed since it was first made legal in the early 2000s.

In the third and fourth section I deal with the advantages and disadvantages of negative and positive selection, respectively.

In the last section I provide a summary of the chapter.

4.1.1 The medical consultation

Olav and Sophia are a couple in their early to mid-thirties who have been trying to conceive for some time. After several failed attempts they decide that using some form of assisted reproduction is the best way for them to move forward if they wish to have a genetically related child. They pay a visit to their primary physician and asks for the possibility of them using in vitro fertilisation (IVF). Their physician tells them that it is the Biotechnology Act (*lov 5. desember 2003 nr. 100 om humanmedisinsk bruk av bioteknologi m.m. (bioteknologiloven)*) that regulates the legality and methods of assisted reproduction, prenatal diagnosis, preimplantation genetic diagnosis, gene therapy, and biomedical research. It also enacts a ban on the cloning of humans. When asked about the availability, the physician tells them that being granted permission to use IVF is not as easy as one might think. Much like the situation is with adoption, there are certain requirements all those wishing to use assisted reproduction need to meet. One can find the rationale for this in the preparations to the Act, Ot.prp. nr. 64 (2002-2003), saying that “when society contributes to the conception of a child through assisted fertilization, it is natural that it also has a responsibility to ensure that an assessment is made of the couple's ability to care and a consideration for the child's

best interests”.⁶⁵ It is further specified in the Act's Section 2-6 that it is the physician – in conjunction with other public bodies, if necessary – that grants a couple's⁶⁶ permission to use IVF. When making the decision, the physician should assess the applicant's ability to care, their health, their finances, their living arrangement, and how long they have been together for. These are all accepted indicators for determining capabilities in parenting – as we will also see later is the case with the Adoption Act, too – according to the state. Also, similar with adoption, the couple must submit a clean police record.

Sophia discloses to her physician about some concerns she has with her child being born with a kind of disability due to a genetic defect she has inherited from her parents. If so, can something be done to prevent this from happening, since they are after all using IVF? The physician advises her that using pre-implantation genetic diagnosis (PGD) would be the most reliable way for her and Olav to conceive a child without the chance of it developing a disability, because one with that method can verify prior to implantation some of the genetic traits the child will have. The most common method of PGD is performed by first extracting several eggs from the woman. In order to mature the eggs for extraction, the woman must undergo a hormonal treatment. The extracted eggs are later fertilised with the man's sperm, and after given some time to grow (around 3 days), a small number of cells (usually 1-2 of the 8-10 cells that the fertilised egg is made up of at that point) are extracted from the eggs to test which of them have the potential for developing the genetic defect. The fertilised egg(s) that does not have the potential for the defect is then inserted back into the woman's uterus. Fertilised eggs that are not used can on the couple's discretion either be frozen down for later use in research or destroyed. The Biotechnology Act, Section 3-2 specifies that possible research must be undertaken within 14 days after fertilisation – not counting the time they were frozen down – and that the eggs either way has to be destroyed after that time.

The physician further tells the couple that there is no guarantee that a fertilised egg without the genetic defect can be discovered under the examination, and there is further no guarantee that a child will be conceived if a possible egg without the defect is found and implanted. With traditional IVF it is believed that there is a 25 % chance of a child being conceived, and the chances are believed to be a little lower with PGD seeing that there are likely fewer eggs to choose from.⁶⁷ Despite this, Sophia is optimistic and asks the physician to give them more information about the legality and ethics of the procedure.

65 Ot.prp. nr. 64 (2002-2003), 40.

66 It is specified in Section 2-2 that also single women can apply for IVF.

67 Ot.prp. nr. 26 (2006-2007), 39.

4.2 The Legal Aspect

The permissiveness of PGD is fairly new. In Ot.prp. nr. 64 (2002–2003) the Bondevik government proposed an outright ban on all its uses,⁶⁸ but it was later changed to allow for under special conditions of serious sex-based diseases without treatment options.⁶⁹ In effect this meant that only diseases that are sex-based can be sorted out by specifically checking for the embryo's sex. Additionally, though legal, the procedure would have to be performed outside the country.⁷⁰ In today's Biotechnology Act, officially entered into force on January 1st 2008 – with major changes implemented on July 1st 2020 saying that it is now the physician and not a selected panel that process applications – PGD can be offered to couples or singles under the condition that one or both are carriers of a serious monogenic or chromosomal hereditary disease and there is a great risk that the disease can be transmitted to a future child.⁷¹

The Act does not further specify which diseases are severe enough to allow for the uses of PGD, and this ambiguity can make it a matter of great debate. Is hereditary blindness or deafness severe enough? What about having the genetic disposition to develop severe illness like cancer or dementia later in life? These diseases are indeed quite severe, but they are not yet present and may never be. How would one be separating the severe ones from the less severe ones?

In a 2015 evaluative report by the Norwegian Biotechnology Advisory Board (*Bioteknologirådet*), a three-part defence was given for why no narrower definition of “severe hereditary disease” should be provided:⁷² (1) a more open definition gives the physicians greater room to evaluate applications concretely, (2) the seriousness of a disease changes with time, primarily as treatment options are bettered, and (3) a list of specific diseases that are severe enough to allow for treatment could be stigmatizing for people already living with these diseases. When assessing applicants wish to undergo PGD, physicians are asked to consider the “severity of the disease on a case-by-case basis, based on criteria such as reduced life expectancy, including the pain and strain the disease brings with it.”⁷³ It is also specified that:

The possibilities for treating the disease will be closely linked to how serious the disease should be considered. If there is satisfactory treatment, the disease will no longer be considered serious. The assessment will therefore have to be seen in the context of what the health service can offer in terms of preventive, palliative and life-prolonging treatment.⁷⁴

While an often voiced concern with PGD has been that it over time could be granted to couples at

68 Ot.prp. nr. 64 (2002-2003), 130.

69 Innst. O. nr. 16 (2003-2004), 47.

70 Innst. 296 L (2019-2020), 26.

71 Lov 5. desember 2003 nr. 100 om humanmedisinsk bruk av bioteknologi m.m. (bioteknologiloven) § 2A-1. <https://lovdata.no/dokument/NL/lov/2003-12-05-100?q=biotl>

72 Bioteknologirådet, “Preimplantasjonsdiagnostikk (PGD): Evaluering av bioteknologiloven, kapittel 2A” May 27, 2015, retrieved March 4, 2023. <https://www.bioteknologiradet.no/filarkiv/2015/06/Preimplantasjonsdiagnostikk.pdf>

73 Ot.prp. nr. 26 (2006-2007), 68.

74 Ot.prp. nr. 26 (2006-2007), 51.

risk of developing less serious diseases or to couples where the likelihood of their child developing a disease in question is fairly slim, it is not inconceivable that PGD, if its accepted uses and purposes remain as they are in today's Act, would actually become *less* permitted in the future as successful methods of treating a wide variety of diseases are rapidly progressing. The now defunct PGD-panel (*PGD-nemnda*) that was previously in charge of processing applications rejected many appeals for quite serious diseases due to them having satisfactory treatment, even if the treatment would require significant interventions on the patient, like removing breasts and ovaries in cases of (adult-onset) breast and ovarian cancer.⁷⁵ What is important to keep in mind is that many medical interventions are not undertaken to cure diseases – perhaps because there is no cure yet – but only to alleviate their symptoms. And the problem is that the Act treats these methods of care as somewhat equally good. In cases of treatment for breast cancer, Laura Purdy writes that while some women get high-quality treatment that is not too painful, for many others, the situation is quite different: “Some drug regimens cause great suffering, and do leave permanent damage (both mental and physical); some women also suffer early refractory recurrences that kill them quite quickly.”⁷⁶

Palliative and life-prolonging treatment are not necessarily goods in themselves. It is, for instance, hard to see what good life-prolonging treatment could do if the person living with an incurable disease is confined to a hospital bed and heavily medicated, incapable of responding to the environment. An exaggerated but disturbing example could be the image of an infant hurriedly taken to the emergency room moments after they are born to receive life sustaining treatment. All because the people in charge of processing applications did not deem their condition severe enough to allow for PGD. Is the state justified in restricting the use of PGD for diseases that, while there is acceptable treatment, are nevertheless quite severe?

In addition to allowing couples with the chance of transmitting a severe hereditary disease to their offspring to use PGD for conceiving a healthy child, the procedure can also be used to conceive a child whose stem cells can be used to cure a sick sibling. This method, called PGD/HLA, is often referred to as creating a “saviour sibling” because by using the method one is specifically looking for a fertilised egg that does not have a specific disease X, as well as checking the egg's tissue type to see if its stem cells can be used to cure an already existing sibling that has disease X. The stem cells are either taken from the blood of the newborn child's umbilical cord or from their spine marrow when they are about a year old. In this regard, the newborn child saves the life of their sibling. Importantly, the method is not allowed in cases where a sibling suffers from a severe disease, but not one that is hereditary. This means that a couple applying for the use of PGD/HLA to cure a child (a sibling) with severe cancer would not as of now be given permission.

75 Bioteknologirådet, “Preimplantasjonsdiagnostikk (PGD): Evaluering av bioteknologiloven, kapittel 2A” May 27, 2015, retrieved March 4, 2023. <https://www.bioteknologiradet.no/filarkiv/2015/06/Preimplantasjonsdiagnostikk.pdf>

76 Laura M. Purdy, “Too Late to Matter? Preventing the Birth of Infants at Risk for Adult-Onset Disease or Disability”, in *Philosophical Reflections on Disability*, ed. D. Christopher Ralston and Justin Ho (Springer Switzerland: Springer International Publishing, 2010), 113.

The legality of PGD/HLA was hurriedly entered into force on September 8th, 2004, due to the so-called “Mehmet-case” which got heightened media attention.⁷⁷

4.3 The Ethical Aspect: Negative Selection

Some people might be inclined to view PGD as ethically superior to other, more invasive forms of prenatal testing like amniocentesis, mainly due to how the latter can lead to couple's deciding to abort the foetus if it is found to have a genetic abnormality. However, what counts as ethically superior will also have to depend on one's view of the moral status of embryos and foetuses.⁷⁸ If, as some believe, life starts at conception, there would be no difference between aborting a foetus and throwing away an embryo. If, on the other hand, life starts some time later in the womb when the foetus is more developed, an embryo would have a lesser moral status than a foetus.

The difference between the tests discussed in the previous chapter and PGD is that procedures like ultrasound, NIPT, amniocentesis and chorion biopsy can all be used to varying degrees to detect genetic abnormalities in a *foetus*, whereas PGD is used on an *embryo* before it is put back into the woman's uterus. As such, fewer abortions would take place with PGD as its diagnostics are performed prior to implantation. Also, while the necessary hormonal treatment the woman has to undergo to mature the eggs for extraction, and all the other relevant costs of IVF and PGD, are no doubt demanding, prenatal diagnosis and a possible termination of a pregnancy – if it is found that the foetus has a genetic abnormality – is likely to be more physically and psychologically demanding.

4.3.1 Merits and demerits of negative selection

The merits of negative selection are many. The possibility of screening for and selecting away embryos that could potentially have led to the birth of a child whose life would be permeated with prolonged suffering does not need much defence. A life permeated with prolonged suffering cannot be said to be a life worth living, and as such it would not satisfy the criteria of a fair distribution of options needed for there to be a chance of an open future. As such, the non-impediment principle would be strongly in favour of doing this kind of selection the same way it would be strongly in favour of aborting a foetus with the same prospects.

An otherwise immediate ethical objection to PGD can be directed at an apparent inconsistency between the Biotechnology Act's legislative intent and how it is actually practiced. In Section 1 it is specified that:

The purpose of the Act is to ensure that the medical use of biotechnology is utilized for the

⁷⁷ Johan Henrik Frøstrup, “Erfaringer med dagens lovverk for preimplantasjonsdiagnostikk (PGD)”, *Lov og Rett* 45, no. 5 (May 2006): 264, <https://doi.org/10.18261/ISSN1504-3061-2006-05-02>.

⁷⁸ Bonnie Steinbock, “Preimplantation Genetic Diagnosis and Embryo Selection”, in *A Companion to Genethics*, ed. Justine Burley and John Harris (Malden: Blackwell Publishing, 2004), 175.

good of people in a society *where there is room for everyone*. This must be done in accordance with principles of respect for human dignity, human rights and personal integrity and *without discrimination on the basis of hereditary characteristics [...]*” (emphasis added).

The purpose of the Act is thus to use whatever technology available for the good of the people in a society where there is room for everyone. But the technology is presently used to select away certain traits that are deemed unwanted. Of course, as of now it is only traits that conceivably would lead a possible child to suffer greatly in life without any possibility of treatment, but an often-emphasized fear is that such a selective approach would eventually enable the kind of sorting society discussed in the previous chapter by gradually allowing for the negative selection of less serious diseases and disabilities. Philosophers like Rebecca Bennett has commented on this concern by saying that society in principle will be devaluing people with disabilities by giving prospective parents the option of selecting away a child with some form of disability in favour of a child without. While choosing what is best for our children is good, one would not be doing so in these cases, but would instead choose which children it would be best to bring to birth.⁷⁹

Bennett's concern highlights an otherwise common worry that by allowing people to select away certain genetic traits one will end up with a homogeneous society where everyone is similar to each other and no genetic variety exist. While this could be true if one stretched the genetic selection very far, it is not immediately clear how this would in fact be all that problematic—especially when only selecting on the basis of diseases. After all, as Steinbock writes, “if it is desirable that people live their lives without health problems or diminished human capacities, it is hard to see what is wrong with a technique that selects healthy and normal embryos for implantation [...]”⁸⁰ For society it would perhaps in retrospect be considered a great loss that someone like van Gogh be selected away because one might some day be able to screen for and select away genetic traits that makes one predisposed to develop bipolar depression—something van Gogh was likely suffering from. And though van Gogh surely has contributed profoundly to western culture, we forget to ask the relevant question: what about van Gogh himself? The man was tremendously unhappy and suffered from delusions and poverty throughout most of his life. At the end his troubles become so great that he, at the age of 37, took his own life. It seems to be a radically debased claim to suggest that we should opt for birthing people like van Gogh because such people contribute much to society, when clearly their own experience of life is that of prolonged misery. Many might retort by saying that despite all this, his life was still worth living considering the fame he has experienced later in life, but that would be missing the point. His own life was horrible, and he never got to experience that fame. For what he was concerned, it never happened. The morally relevant consideration should be directed at the person being brought into existence and not at those

⁷⁹ Rebecca Bennett, “There Can Be No Moral Obligation to Eradicate All Disability”, *Cambridge Quarterly of Healthcare Ethics* 23, no. 1 (2014): 30, DOI: 10.1017/S0963180113000418.

⁸⁰ Steinbock, “Preimplantation Genetic Diagnosis and Embryo Selection”, 182.

others affected, now or later, by that person's existence. Surely a parent will love her child unconditionally regardless of any disease or disorder it might have, but the child herself might suffer greatly from having to live with the disease, and their wellbeing should be considered as well.

A typical objection to any kind of selection, even for disease traits, often rests on the appeal to an apparent wrong of trying to control nature. This “playing God” objection and appeals to the “unnaturalness” of using new technologies are but two of many fallacious arguments often used in bioethics. Of course, they both face one significant problem. If we should stop trying to control nature, what can justify our uses of medicine and other technologies to cure or alleviate diseases and disorders that already exist? In fact, even something as simple as washing your hands should probably stop if we think it wrong to try and control nature. There is nothing “natural” about washing our hands or genetically modifying our food or using alleviating treatment for nasal congestion. These are all added for our benefit. And a sure benefit they have given us, too. If someone develops cancer, we will deem it rightful to give him medical assistance in the form of medicine, surgery and so on. It would be morally reprehensible to tell him that we should not interfere with nature by trying to stop the spreading of the cancer or remove it completely, and that he is just going to have to learn how to live with it. In order to be consistent with a view that we should not control nature, we should have to abandon all health care and programs aimed at preventing diseases. That means “vaccinations, dental care, antibiotics, cancer care and far more would simply cease to be priorities. [...] If these values were longstanding, smallpox, polio, and dozens of other diseases would be widespread, and surgeries and drugs to treat and alleviate health problems that we now take for granted would never have been developed.”⁸¹

Though we should not be too quick to endorse new technologies simply because they may be beneficial, we should also not categorically outlaw them simply because they are not considered “natural” or because by using them, one would infringe on the workings of nature.

4.4 The Ethical Aspect: Positive Selection

So far we have been concerned with the ethical challenges of selecting *against* certain traits with the underlying purpose being to prevent the possibility of transferring severe genetic diseases to a future offspring. But what about possibilities with selecting *for* certain traits, perhaps to enhance well-being? As of today, all uses of PGD that are non-disease related are prohibited in Norway. But if possible, why not allow IVF, PGD and all other relevant genetic interventions to ensure that whatever child one has is as likely as possible to get the best chance at the best life? Are some of the concerns people have with selecting for certain traits actually legitimate?

⁸¹ Purdy, “Too Late to Matter?”, 117.

4.4.1 Procreative Beneficence

Julian Savulescu (later in frequent collaboration with Guy Kahane) has argued that couples or single reproducers have a moral obligation to choose the child, of the possible children that they could have, who is expected to have the best life, or at least as good a life as the others, based on the relevant, available information. This he calls the principle of procreative beneficence and he substantiates it with the conviction that morality requires us to do what we have most reason to do: “In the absence of some other reason for action, a person who has good reason to have the best child is morally required to have the best child.”⁸² Therefore, if we have no good reason to choose an embryo with a chance of developing a disability over an embryo without a chance of developing a disability, we should always choose the embryo without the chance of developing the disability. Savulescu compares this form of choosing with a wheel of fortune and maintains that in situations where one is given a choice between two competing outcomes, and one of them have a slight favourable outcome over the other, we have no good reason to choose the first one.

Take an example. Say that in some hypothetical future, where genetic selection is more detailed, a couple undergoes IVF and produce 2 embryos. After using PGD their physician tells them that both embryos will likely develop into people with a fairly high IQ, they will both be considered attractive according to the current social standard, they will both be athletic, healthy and emphatic, and the overall chances of them experiencing a high quality of life – where such can be measured – is equally high for the both of them. However, embryo A will likely suffer from seasonal allergies from the beginning of May till the end of July every year. The intensity will vary. Some years it will be moderately difficult to alleviate the symptoms. Other years it will be much easier. Embryo B, on the other hand, will not suffer from seasonal allergies. Given that there is no relevant reason for choosing embryo A over embryo B, but one – albeit very minor – relevant reason for choosing embryo B over embryo A, prospective parents should always choose embryo B. This is the principle of procreative beneficence. The embryo that will develop into the person with seasonal allergies will certainly not view his life as not worth living just because he has mild to moderate allergies a couple of months a year. And as was mentioned, they will both likely experience a high quality of life. But given that embryo B will develop into a person that will not have this minor disadvantage, it will always be common sense⁸³ to choose embryo B over embryo A since there are no downsides – that one is aware of at the time – of doing so. And although having seasonal allergies is hardly a significant downside, it is still better, if given the option and all other things being equal, to birth a child that will not experience this.

Although the principle of procreative beneficence is most often referenced in cases where a couple has the option of choosing between different embryos through the uses of IVF, PGD and

82 Julian Savulescu, “Procreative Beneficence: Why We Should Select the Best Children”, *Bioethics* 15, no. 5/6 (2001): 415, DOI: 10.1111/1467-8519.00251.

83 Julian Savulescu and Guy Kahane, “Understanding Procreative Beneficence” in *The Oxford Handbook of Reproductive Ethics*, ed. Leslie Francis (Oxford: Oxford University Press, 2017), 597.

other reproductive technologies, it is in essence simply a duty to select, where selection is possible, between the possible children one could have. This would also mean that if a couple has the option of choosing to conceive a child now when, for instance, their socioeconomic means are subpar, or wait some time until their situation improves, the principle of procreative beneficence would compel them to wait as the child conceived later when their situation stabilises is more likely to have a better chance at a better life.

Savulescu and Kahane maintains that it cannot be expected that prospective parents spend years researching all the relevant information for selecting a child. This would make “reproductive decision making incredibly complex, time consuming, and rationalistic.”⁸⁴ It would simply not work as there would always be more information available somewhere. At some point one has to decide. In addition, Savulescu appears to be somewhat restrained when defending his views. He believes that “couples who select disabled rather than non-disabled offspring should be allowed to make those choices, even though they may be having a child with worse life prospects.”⁸⁵ Though this claim seem to suggest an inconsistency in Savulescu's views, he gives a further defence of it by stating that the moral obligation of procreative beneficence is a “prima facie” moral obligation.⁸⁶ That is, only a moral obligation if no other overriding obligation exist. As such, he is strongly in favour of people's right to procreative autonomy, even if their reproductive decisions may not lead to the creation of the child with the best chance of the best life.

On the face of it, procreative beneficence and the non-impediment principle seem to have a common goal in mind. Procreative beneficence emphasizes the importance of selecting the child who has the best chance at the best life, whereas the non-impediment principle emphasizes the importance of giving the child a chance of an open future. Both are therefore in favour of giving the child's welfare a greater consideration than the parents' reproductive autonomy. The difference between the two lies in procreative beneficence primarily being a positive duty, emphasizing the active involvement of parents in the child's welfare. The non-impediment principle says nothing about such. It is not committed to positive selection. Being a negative duty, it only requires refraining from creating a child whose chance of an open future is impeded. It says nothing about maximizing the chances of an open future. In one of their many articles on the subject, Savulescu and Kahane advances a supplementary view to procreative beneficence called *the minimal threshold constraint on reproduction*, saying that “if reproducers cannot choose a child whose life will be worth living, then they ought not to have a child at all.”⁸⁷ This could function as a negative formulation of procreative beneficence, and might also be the logical extension of it. It is also essentially a reformulation of the non-impediment principle. Therefore, the underlying goal of the

⁸⁴ Savulescu and Kahane, “Understanding Procreative Beneficence”, 594.

⁸⁵ Julian Savulescu, “Deaf lesbians, “designer disability”, and the future of medicine”, *BMJ* 325, no. 7376 (October 2002): 772, DOI: 10.1136/bmj.325.7367.771.

⁸⁶ Savulescu and Kahane, “Understanding Procreative Beneficence”, 594.

⁸⁷ Julian Savulescu and Guy Kahane, “The Moral Obligation to Create Children with the Best Chance of the Best Life”, *Bioethics* 23, no. 5 (2009): 280, DOI: 10.1111/j.1467-8519.2008.00687.x

two principles is the same, but their means of achieving it are different.

4.4.3 Objections to positive selection

A frequent criticism directed at parents being given the discretion of choosing some of their child's characteristics relates to the so-called “designer babies” debate. Those opposing the possibility of choosing certain traits for one’s children do so on the grounds that a child should be accepted for what they are and not be some project designed by their parents. Michael J. Sandel is one of the most ardent critics of what he labels *genetic engineering*, and has further elaborated that: “To appreciate children as gifts is to accept them as they come, not as objects of our design, or products of our will, or instruments of our ambition. Parental love is not contingent on the talents and attributes the child happens to have.”⁸⁸ No doubt should children be accepted for who they are, but this criticism is misguided. The selection is not undertaken for the sake of the parents. It is undertaken for the sake of the child. The goal is not to allow parents to select a genetic trait that causes the resulting child to excel in math, for example, because that is kind of the child they prefer. The selection is to the child's benefit. To excel at math would, for most people, be a trait leading to a better chance at a better life as career options would surely increase. And what relevant downsides would there be for selecting an embryo that will develop into a person that excels at math over an embryo that will develop into a person that does not excel at math, all else being equal?

Of course, the “all else being equal” qualification does make any argument easier to defend. We do not know what sort of “side effects” genetic selection can produce. Say that by selecting a trait that predisposes one to become good at math, one would also be selecting a trait that predisposes one to develop asthma. Or perhaps by selecting a trait, or a series of traits, that ensures one becomes more attractive within the current social standard of attractiveness, one also becomes less empathic—perhaps because of the trait itself or due to the social response to the attractiveness. Would the positive selection still be acceptable? Furthermore, by performing “genetic engineering”, the changes become part of the genetic makeup of not just the person originally being “engineered”, but also their future offspring and their future offspring and so on. Since we do not know enough about what consequences changing some parts of the human genome can lead to in the long run, a certain amount of caution would be beneficial.

4.6 Chapter Summary

In this chapter I have looked at the legality and ethics of the currently accepted uses of PGD. I furthermore looked at the ethics of negative and positive selection, respectively. I concluded that the non-impediment principle is committed to negative selection for much the same reasons as it is

⁸⁸ Michael J. Sandel, *The Case against Perfection: Ethics in the Age of Genetic Engineering* (Cambridge: Harvard University Press, 2007), 45.

committed to terminating certain pregnancies like the ones discussed in the previous chapter. I lastly concluded that the principle is not committed to positive selection.

Would I be a good parent?

5.1 Chapter Overview

Few, if anyone, are born to parent. It is not something one could possibly know how to do in advance. And even this would presuppose that parenting is a kind of subject where one could accumulate knowledge and develop expertise—something highly unlikely. For most, parenting is a process of constant learning by doing, and yet no one will ever emerge at the end as a perfect parent. In his *Republic*, Plato believed that the rearing of children should be undertaken by the collective and not by the child's biological parents – who themselves would not know whose child was theirs – to ensure that no one would treat anyone differently due to genetic ties. He also believed that everyone was meant for a specific role in society, and children should be reared in view of what role they were supposed to fill when coming of age. Importantly, Plato also advocated a form of eugenics where particularly those of the higher classes should only breed with those of the same or compatible classes, again with the aim of producing the best people suitable for specific roles.

Today, the right to the custody of one's biological children is a widely accepted right and part of a more general right to privacy as found under Article 8 of the European Convention on Human Rights. This right cannot be unconditional, however, and few would disagree that parents who deliberately harm their children physically (and perhaps psychologically) should possibly lose custody of their children. This too is widely accepted and corresponds to Articles 9, 19 and 20 of the United Nations Convention on the Rights of the Child. Still, no present test to determine parental capabilities exist, and it is therefore only when child neglect becomes known that the state intervenes. However, by then much damage, perhaps irreversible, has already been done. What is interesting to note is that most abuse happens to children in families where at least one of the parents is the child's biological parent, and it practically never occurs in foster care families or families where both parents are adoptive parents.⁸⁹ The reason for this is perhaps quite simple. In most Western legislations, including Norwegian, there are strict regulations on who can be approved as adoptive and foster care parents. Those who apply to adopt a child are subjected to a wide variety of tests constructed to determine parental capability. Anything from income to residency is closely investigated, and even if the applicants are approved, the state will nevertheless continue to monitor them for some time after the adoption has gone through.

While it can never be certain that applicants after passing such a test will not harm their adoptive child, it is nevertheless a given that they are more thoroughly “educated”, as part of their

⁸⁹ Vopat, *Children's Rights and Moral Parenting*, (London: Lexington Books, 2015), 128.

testing involves actual courses on parenting. No similar regulations on who can obtain custody for their own biological children exists. It is simply taken for granted that to bear makes one able to rear, regardless of any kind of competence or age. Interestingly, when considering age, in Norway you have to be 25 years old to be able to adopt a child,⁹⁰ while a newly submitted report, NOU 2022: 21, given by the Norwegian Criminal Code Council (*Straffelovrådet*) suggests that the minimum sexual age should be lowered to 15 years from today's 16.⁹¹ This could in practice mean that (more) people as young as 15 years of age could become parents—10 years younger than what would be the legal age to adopt. Of course, having sex does not directly translate to having children, which again does not directly translate to raising children. Many interventions can be made along the way such as contraception, abortion and adoption. But there are no legally enforced regulations for this, meaning a 15-year-old girl could in practice legally become a mother.

Given these national guidelines, are we to presume that one is more fit to raise ones own biological child than a child conceived by someone else? Or is it rather that taking a child away from their biological parents is such a violation of their (the parents) right to autonomy that no law could ever condone it except in cases where there is clear signs of violence or neglect involved? This last point is probably quite weighty, but it is nevertheless interesting to remember that some purpose underlies the strict regulations we have for adoption. If the principles supporting these regulations are sound, why not expand them to biological parenthood as well? Do parents owe their children to be the best parent they can be? And if so, what would such a parent look like?

In this chapter I will look at arguments for parental licensing. There are essentially two views for why the licensing of parents could be desirable. The first is the belief that child-rearing is similar in kind to many hazardous activities that we normally expect to only be handled by practitioners with some degree of proven competence—often in the form of a license of some kind. The second is that, though a seemingly alien idea, the licensing of parents do already take place in liberal societies with the aforementioned screening of potential adoptive and foster care parents. If these policies are legitimate and effective, why not expand their use to biological parents as well?

In the first section I recount the points that Hugh LaFollette gives for why it is desirable that the state should license parents. I also set forth his views on its feasibility. In the next section I present some views for how the existing licensing schemes found in adoption and foster care policies in the Norwegian legislation could just as equally be applied to biological parenthood. In the last section I assess the arguments against the non-impediment principle.

⁹⁰ There are exceptions to this rule, see the adoption Act, Section 8.

⁹¹ Maria T. Pettrém, “Straffelovrådet foreslår: Senk seksuell lavalder til 15 år”, *Aftenposten*, December 19, 2022, retrieved February 12, 2023. <https://www.aftenposten.no/norge/i/Q7rdwx/straffelovraadet-foreslaar-senk-seksuell-lavalder-til-15-aar>

5.2 Parenting as a Potential Hazardous Activity

In his now classic paper, “Licensing Parents”, Hugh LaFollette defends at length a state sanctioned licensing of parents. His approach is fairly straightforward, and one could express its rationale easily by asking some key questions: “What kind of activities do we normally think should be regulated, and what reasons do we have for why these particular activities require such regulations?”

Most of us probably believe that activities that demand a certain amount of competence to execute and where poor conduct can lead to significant harms to others should not readily be available for anyone and everyone at all times, but only to those that have obtained a prior license to carry out such activities. These licenses can be, and often are, actual—such as a driver's license, but they need not be. The principal idea is that acts such as driving a car, performing surgeries, and handle toxic waste are examples of tasks where it is expected that one prior to carrying them out is properly educated in the procedures necessary for safe and correct handling. LaFollette suggests that activities where (1) there is a potential to harm innocent people, (2) certain demonstrated competence is required to perform the activity safely and properly, and (3) we have reliable procedures for determining the presence or absence of such competence beforehand, are all criteria we normally have for deeming something in need of a regulation. The questions we should then consider is this: “Could the rearing of children qualify as a type of activity that requires such a license as the aforementioned activities do?” LaFollette believes parenting is in fact an activity potentially very harmful to children and gives support for why he thinks it fulfils all of these criteria.

First, “the potential for harm is apparent: each year more than half a million children are physically abused or neglected by their parents. Many millions more are psychologically abused or neglected-not given love, respect, or a sense of self-worth.”⁹² The focus is thus primarily on abuse and neglect. Undoubtedly these can be severe harms, and when done to children by those who should tend the most to their needs it becomes an even greater harm. Yet, though he thinks parenting fulfil the second criteria as well, he does not specify what kind of competence is needed besides that:

A parent must be competent if he is to avoid harming his children; even greater competence is required if he is to do the "job" well. But not everyone has this minimal competence. Many people lack the knowledge needed to rear children adequately. Many others lack the requisite energy, temperament, or stability⁹³.

Although one could ask is if this is in fact what LaFollette has in mind, it seems a bit curious to assume that *competence* is what separates child abusers from those that do not abuse their children

⁹² Hugh LaFollette, “Licensing Parents”, *Philosophy & Public Affairs* 9, no. 2 (1980): 184-185, DOI: 10.2307/2265111.

⁹³ LaFollette, “Licensing Parents”, 185.

—if one by competence thinks of a person being properly educated in how to safely and correctly perform a particular task. To put it differently, one would think that “not abusing children” is not something one need to be educated on, but it seems as though this is what LaFollette is suggesting. The risk of abusing a child is always present, so one has to be educated on how to avoid it. And while a screening of potential parents could undoubtedly weed out such people, the concept of competence should be able to account for more features than just “those that do not abuse children”. I will articulate this objection and others more in the next section.

Having fulfilled the first two criteria, LaFollette responds to some objections on why a licensing scheme could not be feasible, and therefore why it would also fulfil the third criteria. First, concerns about the unfairness surrounding some people obtaining a license to parent while others do not is no different from the alleged unfairness taking place when people dreaming of becoming a doctor or a lawyer has their dream shattered by not passing their relevant exams. We would not cease to demand competence from those set to perform certain hazardous tasks just because the requirements would be so high that some passionately interested, but non-competent, applicants would be excluded. However, applicants that do fail will be able to reapply easily and repeatedly. This way, those that fail the test due to a stroke of bad luck would “probably be able to demonstrate in a later test that they would be competent parents.”⁹⁴

Secondly, although there might not be any present tests available for determining the competence of prospective parents, LaFollette believes such tests can easily be developed, for instance by using “existing tests that claim to isolate relevant predictive characteristics-whether a person is violence-prone, easily frustrated, or unduly self-centered⁹⁵” The likelihood that the tests will not be 100% accurate is also not an issue as no test devised to account for competence ever is. We do not abandon any formal testing for competence when we are handing out licenses to drive simply because we can never be 100% sure that those who pass the test will be excellent drivers. Someone who fails the test could have had a bad day and simply be unlucky, while a moderately bad driver could be fortunate to pass. Also, keep in mind that virtually all driving accidents happen with licensed drivers. Accidents with unlicensed drivers are mostly unheard of. Still, it would be ridiculous to abandon the requirement that people obtain a drivers license. Accidents would surely skyrocket if we did.

A third response he gives is to the question on whether parental licensing would violate our putative right to have children. To this he states that this right is not unconditional. In fact no right is unconditional. They can all be limited to protect innocent people. Additionally, he maintains that the state's intrusion on peoples privacy in regards to their right to have children would not be so substantial as one might fear. In fact, the way he envisions the licensing scheme would be much less intrusive than the present encroachment taking place into the lives of people who apply to adopt

94 LaFollette, “Licensing Parents”, 189.

95 LaFollette, “Licensing Parents”, 191.

children.

While this brings us to the second defence of parental licensing – that of comparing it with present licensing policies on adoption – I will first look at some objections to LaFollette's licensing scheme.

5.2.1 Objections to LaFollette's licensing scheme

An immediate objection to LaFollette's arguments can be directed at his analogy with other kinds of licenses. With most licenses, the competence needed for being granted a license is measured after how well one performs the actual task one is seeking a license for. When applying for a license to drive, for instance, applicants are tested on the basis of how well they are able to drive. First they learn the basic functioning of the motor vehicle. Then they start to drive the vehicle at secure places where no one can be harmed if something would go wrong. As one gains more experience, the applicant is finally tested on how well they can drive the vehicle in a common, everyday setting. If they prove that they are capable of driving properly, they are granted a license to drive.

When licensing parents, on the other hand, one would not grant licenses based on capabilities in parenting as those applying for a license have yet to prove their competence in this field. Instead, the license would be based on a belief that one may or may not be fit to parent based on the presence or absence of certain characteristics deemed valuable for parenting. If drawing an analogy with this kind of licensing and a driver's licenses, one would instead be handing out driver's licenses based on how well applicants can handle stress, how good their eyesight is, ensuring that they have not previously been convicted of speeding, and perhaps that they do not have a history of anger issues or anything that can possibly make them a reckless driver. Applicants are likely tested on these characteristics already when applying for a driver's license, but they will not be rejected if they do or do not have some of these traits so long as they pass the actual driving test. A test aimed at proving parental competence should thus be similar and should be based on how well one performs the parenting “profession”.

I furthermore believe LaFollette's analogy between parenting and hazardous activities is more apt than he originally might have intended. Parenting *is* a potentially dangerous activity that could cause harm to children, but not only by those who do so intentionally, which is the only criteria LaFollette has. The purpose of licensing parents should be, as put forth by Christine Overall, “to evaluate and attest to their [the potential parents] competence as parents, to indicate [...] that they have at least some of the appropriate skills and preparation for child-rearing⁹⁶” A minimal licensing program as the one advocated by LaFollette would only weed out the *really* bad parents—which is also what he wishes to do. But it is appropriate to ask if some other features should be

⁹⁶ Christine Overall, “Parental Licensing and Pregnancy as a Form of Education”, in *Procreation, Parenthood, and Educational Rights: Ethical and Philosophical Issues*, ed. Jaime Ahlberg and Michael Chobli (London and New York: Routledge, 2017), 246-247.

assessed to potentially weed out the *moderately* bad parents as well. A child is a very delicate being and susceptible to a wide array of influences. A licensing program should be able to assess child-rearing competence in much the same way and for much the same reasons as existing licensing programs for adoptive and foster care parents do. Assessing qualities such as their socioeconomic status, their physical and mental health and how it can impact their capabilities in parenting, their personal commitment to raising and caring for a child for an indefinite amount time, and, naturally, the requirement that they have not previously been convicted of abusing a child or, perhaps, a requirement that they have not been previously convicted of a criminal offence of any kind are also valid.

5.3 The “Status Quo” on Parental Licensing

So far, the legitimacy and feasibility of parental licensing might seem questionable at best. All the same, the licensing of parents in much the same way as described by LaFollette is not only feasible, but already existent in liberal societies. Those wishing to adopt or foster a child are “subjected to an exacting home study to determine whether they really want to have children and whether they are capable of caring for and rearing them adequately”.⁹⁷ Carolyn McLeod and Andrew Botterell call this the “status quo” on parental licensing, and emphasize that this is where arguments for or against a program on licensing biological parents should start.⁹⁸ Parental licensing is already effectively implemented in society and there is therefore no question about its value or legitimacy. The question is, rather, if we should expand it to the rearing of one’s biological children as well.

If we look at the Norwegian legislation, specifically the “Act relating to adoption” (*lov 16. juni 2017 nr. 48 om adopsjon*) and its “Regulations for adoption” (*forskrift 22. juni 2018 nr. 959 om adopsjon*) we can see that they both (the latter expands on provisions given in the former) give fairly specific and strict guidelines on who can be approved as adoptive parents. I will take a closer look at these below.

5.3.1 The Adoption Act and Regulations

In addition to the previous mentioned requirement that one be 25 years old before being granted permission to adopt, the Adoption Act, Section 5 specifies that “only persons capable of being good care providers for children may adopt or be granted prior consent to adopt”, and that they must further “wish to bring up a child”. The latter requirement is the case for all wishing to adopt and thus not a particularly helpful way of separating good candidates from bad candidates. But extended requirements are found in the Adoption Act’s Regulations, Section 1 where the assessment of who

⁹⁷ LaFollette, “Licensing Parents”, 194.

⁹⁸ Carolyn McLeod and Andrew Botterell, “Parental licensing and discrimination”, in *The Routledge Handbook of the Philosophy of Childhood and Children*, ed. Anca Gheaus, Gideon Calder and Jurgen De Wispelaere (London and New York: Routledge, 2019), 202.

is suitable to adopt should be measured after the applicants personal characteristics and their motivation to adopt, their physical and mental health, their housing standard and living environment, their abilities for coping with care tasks throughout the child's upbringing, and their financial resources.

As for why the lower age limit is set at 25, we find no particular reason for it other than it being a continuation of the requirements found in the earlier Adoption Act of 1917. Interestingly, back then the legal age of maturity was 21. While this was finally lowered to 18 in 1979, the legal age to adopt has never been changed. In the preparations to the current Adoption Act, Prop. 88 L (2016-2017), an attempt at a justification for why the legal age is still 25 is given, suggesting that “adoption is a far-reaching decision that requires special maturity.”⁹⁹ But this is where things become troubling. If it is the case that a special kind of maturity to parent is not reached until age 25, how can we allow people far younger than this to raise their biological offspring while still upholding the age limit for adoption? What qualitative difference is there between raising an adopted child and raising a non-adopted child? Are we to believe that by bearing a child one is automatically competent to rear it as well? Or should maybe people not be allowed to parent until age 25, irrespective of it being their biological child? Is the age simply an arbitrarily chosen age, and only still upheld due to tradition, since it has stayed the same since 1917?

Adoption agencies would be doing something right by being hesitant to allow two 17-year-olds to adopt a child, as few would think that they are mature enough and capable of undertaking such a big responsibility. But if we look at them side-by-side, there really is no difference between that and allowing the same two 17-year-olds to raise their own biological child.

As I mentioned before, the right to rear one's own biological offspring is probably a weighty consideration here, and no legal or ethical principle can justify a restriction on this right (unless there is abuse or neglect involved). Encouraging the use of birth control is probably the only intervention one could ethically pursue, as restricting a right to raise children until one is 25 would seem inconsistent with liberal principles. But as a hypothetical example, let us say that the state did set the right to rear children at 25. What would one do with the “illegal” children, that is, children born of people younger than 25? Would they be put up for adoption? And what about when the child's biological parents turn 25, are they then entitled to have their child returned? Let us say that they had the child when they were 15. The child would then have turned 10 when his biological parents are old enough to raise him. Would he then suddenly have to move out from what has for the past 10 years been his parents to live with some strangers that just happened to have birthed him?

It is hard to see a licensing scheme ever working in a liberal society. But no doubt does the mere existence of the requirement found in the Adoption Act seem to represent an implicit

⁹⁹ Prop. 88 L (2016-2017), 48.

assumption that people below 25 are not fit to parent. Parfit seems to support this assumption, too, when he suggests that a 14 year old girl having a child at such a young age is giving the child a bad start in life¹⁰⁰ (not forgetting that there is naturally a big difference between a 14 year old girl having a child and a 22 year old “girl” having a child). But having a minimum age limit for parenting is not an unreasonable idea. Surely driving cars and drinking alcohol is considered dangerous enough to require a minimum age limit. Why should not parenting have one, too?

5.4 Parental Licensing and the Non-Impediment Principle

What is different with parental licensing from other ethical questions discussed in this paper is that the possible reason for the child's impeded chance of an open future is not due to characteristics of the child, but characteristics of the parents. We therefore first need to know how much the rearing of children can actually impact the child's life.

Parental licensing is surely theoretically desirable since one can be certain that any child will grow up with the best – according to the state – kind of parents. But it is less evident how much the rearing that parents do can determine the quality of the child's life. Perhaps parents overstate the amount of power they have in influencing their children's well-being. Beside feeding, clothing and housing them – which are all important for a child's development – the outcome of a person's life is largely up to the environment outside of the family. Naturally their genetic dispositions and its fit for a given environment plays a significant role, but this falls mostly outside the actual upbringing that parents do. After starting elementary school, the social world the children inhabit and how they conduct themselves within it will likely impact their well-being more than anything else. Although rearing does play a major part in this process, much is up to the organisation of the social world itself. But we could easily think of some situations where children with good prospects for an open future, for instance due to good genetics, could still have their chances impeded by having parents unable or unwilling to support or take care of them. Think of a highly intelligent girl being born to a strict religious family in Afghanistan. Due to unfortunate, primarily social, circumstances, it would be difficult to the point of being impossible for her to have a chance of an open future, even if she initially had the best prospects for one.

Following this line of reasoning, parental licensing can offer a particularly unique opportunity for children with an initial poor chance of an open future. What parental licensing can do is ensure that a child with the initial worst possible prospects for an open future can still achieve one by having parents that are particularly “skilled” at mitigating the significance of impediments. One could for instance think of a deaf child being raised by a very wealthy family with access to technological advancements that could make the child's deafness as significant for the fair distribution of options as near-sightedness would. It would be like if someone with very little talent

¹⁰⁰ Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 358.

in music became a successful musician simply by having parents that knew how and where to push to get someone to succeed in the industry.

In line with arguments given for a greater licensing of parents, it seems apt to suggest that particularly children with disabilities and other disadvantages should be protected from bad parenting. Raising a child with Down syndrome, for example, arguably requires a greater level of “parental competence”, and one would be thinking of the child's best interest by ensuring that their parents are adequately equipped to undertake the responsibility of raising them, with or without public assistance. A developmentally challenged child may not be harmed by being brought into existence. But a developmentally challenged child raised by parents that are not equipped to properly cater to their needs arguably is. As such, a minimal licensing program aimed at securing an open future for children with disabilities could be morally desirable. We can think of a licensing scheme that only comes into play if a couple is expecting a child who is believed to have a poor chance of an open future. If the couple do not pass the licensing test, the resulting child is put up for adoption and handed over to licensed parents that are particularly well suited to address the kind of disability the child has. In this way, what was initially believed to be a child with a poor chance of an open future, becomes a child with far better chances. In terms of a fair distribution of options, we can think that there will be more options (or a fairer distribution) available for the child now than what would have been the case if he was raised by unlicensed parents.

An important shortcoming of this reasoning is that the duty to ensure an open future would then no longer be a negative duty, but a positive duty—and perhaps an overly demanding one, too. Parents would have to go to great lengths to clear away the obstacles impeding their child's chance of an open future. While this may not be bad on its own, it would not be consistent with the non-impediment principle to do so.

To reiterate, a parental licensing scheme can be very beneficial for children born with disabilities or where the chance of an open future seems at first to be foreclosed, or at least impeded, for them. However, while good on its own, it would no longer be a negative duty, and would furthermore be overly demanding.

5.5 Chapter Summary

In this chapter I have looked at two arguments for parental licensing. Both essentially envisaged as a way to reduce the chance of child neglect and child abuse.

The first argument details how parenting is comparable to kinds of hazardous activities that we normally believe should only be handled by professionals. Granting licenses to parent based on proven competence in parenting should therefore follow the same procedures as granting licenses to drive based on proven competence in driving. I argued, however, that the analogy with driving and parenting was not particularly apt.

The second argument reminds us that licensing is already effectively implemented in society in the form of adoption licenses, and expanding the uses of these to biological parenthood as well would be a desirable move. Specifically, the lower age limit for adoption would seem to be a requirement easily transferable to biological parenthood (though one may need to lower it).

The main drawback with parental licensing is its lack of enforceability. There is no question about its theoretical desirability. I would also contend that there is no question about its underlying ethical merits. But seeing that the right to bear and rear children are such deeply treasured values in liberal societies, it would be impossible to implement anything akin to a parental licensing scheme.

Where parental licensing could be particularly desirable is in situations where a child is born with the chance of an open future initially being impeded. By being raised by licensed parents, one could ensure that the child would have better prospects. The drawback of this reasoning in terms of the non-impediment principle is that the duty would no longer be a positive duty, but instead a negative one, and it could thus be too demanding.

Conclusion



I first set out in this paper to defend a middle way between two extreme positions in reproductive ethics—a strong form of pronatalism, and a strong form of antinatalism. The pronatalist position is essentially amoral in that it does not seem to treat procreation as a proper domain for ethics. Antinatalism, on the other hand, thinks procreation has moral significance, but its conclusion is that it is not morally acceptable. I contended that both of these positions were assuming too much. We cannot conclude that having children is always morally acceptable, but we also cannot conclude that having children is never morally acceptable. A suggestion for how we could delineate when having children is morally unacceptable was given by Bonnie Steinbock and Ron McClamrock in the form of a *principle of parental responsibility*. Their principle was able to provide a sketch of what criteria needed to be satisfied in order for it to be permissible to have children. But their principle did not solve everything. Importantly, it set the bar too low, contending that it was only impermissible to bear children if the child's life was going to be terrible.

Feinberg's idea of the child's right to an open future seemed to offer a more promising way for grounding moral obligations to children. Using Feinberg's idea as a starting point, I formulated a principle whose goal was to delineate when procreation could be morally permissible. This permissibility would further depend on the extent to which prospective parents could give their possible child a chance of an open future.

What is likely to be the biggest objection to the non-impediment principle is that it is too demanding and puts an undue amount of pressure on parents. I will propose two ways one can respond to this objection.

The first response is to insist that the claim is simply false—the non-impediment principle is not too demanding, and ensuring that one's child has a chance of an open future is not putting undue pressure on parents. In fact, it is giving just the right amount of pressure. Having children is one of the most significant decisions a person can make. And as the creator of a new life, and responsible for its initial (and perhaps long-term) well-being, it is not unreasonable to suggest that one owes them something more than just a life that is not terrible. Keep in mind that the duty is negative, meaning that parents are not expected to go to great lengths to keep their child's future as open as possible. Their only duty is to not stymie their child's chances.

The second response is to be inclined to agree—the non-impediment principle *is* putting an unreasonable amount of pressure on parents. Instead of a deeply personal and valuable undertaking for its own, parenthood becomes a one-sided endeavour, only concerned with the child's well-being,

forgetting that parents have their own interest in having children, too.

To lessen the burden the non-impediment principle could have on prospective parents, we could say that the moral requirement lies in giving one's child a life worth living. This would be a fundamental obligation and failing to do so is morally unacceptable. Beyond that, giving one's child a chance of an open future is something that one owes, but not something that one is morally bound to do. One's reproductive decision might bear some moral flaw if one fails to do give one's child a chance of an open future, but it is not morally unacceptable.

Of these two responses I am inclined to treat the first as the most sensible one. But I must be quick to insist that a moral obligation, however strict, does not imply a legal obligation. One should not be punished for morally objectionable reproductive decisions. But it should not count as too demanding an undertaking to try and provide something more for one's children than just a life worth living. Having children is far too important a decision to simply leave it up to chance to decide what kind of lives they will have. As Steinbock and McClamrock has alluded to, it would in fact be unfair to children to bring them into the world with “the deck stacked against them”.

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