

## Can it Ever Be Better Never to Have Existed At All? Person-Based Consequentialism and a New Repugnant Conclusion

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**ABSTRACT** *Broome and others have argued that it makes no sense, or at least that it cannot be true, to say that it is better for a given person that he or she exist than not. That argument can be understood to suggest that, likewise, it makes no sense, or at least that it cannot be true, to say that it is worse for a given person that he or she exist than that he or she never have existed at all.*

*This argument is of critical importance to the question of whether consequentialist theory should take a traditional, aggregative form or a less conventional, person-affecting, or person-based, form. I believe that, potentially, the argument represents a far more serious threat to the person-based approach than does, for example, Parfit's two medical programmes example. Parfit's example nicely illustrates the distinction between aggregative and person-based approaches and raises important questions. But the example — though not, I think, by Parfit — is sometimes pressed into service as a full-fledged counterexample against the person-based approach. As such, I argue, the example is not persuasive. In contrast, the Broomeian argument, if correct, is definitive. For that argument relies on certain metaphysical assumptions and various uncontroversial normative claims — and hence nicely avoids putting into play the controversial normative claims that lie at the very heart of the debate.*

*The purpose of the present paper, then, is to evaluate the Broomeian argument. I argue that this potentially definitive challenge to a person-based approach does not in fact succeed.*

### 1. Introduction

It is plausible to suppose that in rare cases a person's existence may of necessity — perhaps as a result of an untreatable, unmitigatable genetic disease or disorder — involve so much anguish and so little of what makes life worth living that we will want to say that the choice to bring that person into existence to begin with was morally impermissible, or wrong [1]. An issue that arises is whether such a choice is wrong in virtue of the fact that it *wrongs the anguished person*. It is awkward and implausible to say that the choice *wrongs the person* in the case in which the person's lot *could not* somehow have been *improved* — in the case, that is, in which agents *could not* have made things better for the person than they in fact are. But if the person lives in anguish as a matter of *necessity*, then the only alternative to the person's living in anguish is for the person never to have been brought into existence at all. But can *that* alternative really ever be one that constitutes an *improvement* in one's lot? Can it really ever have been better for an existing person that that person never have existed at all?

The traditional, impersonal, aggregative form of consequentialism — what I will call *aggregative consequentialism*, or *AC* — will not have any particular need to answer this question. According to AC, whether a given choice is morally permissible does not depend on whether some person or another has been wronged. If an *alternative* choice would have created additional good, or *wellbeing*, on an aggregate basis, AC is quite capable of deeming the one choice impermissible even if it wrongs no one [2].

In contrast, a nonaggregative, or “person-affecting,” form of consequentialism — which I will call *person-based consequentialism*, or *PBC* — considers the permissibility of a given choice to depend *critically* on whether that choice wrongs some person or another [3]. Moreover, the person-based approach can be understood to contain, just as AC does, stringent maximizing elements. Indeed, a centerpiece of PBC is the principle that, for each person, agents must, with exceptions, do the *best* that they can, that is, create the *most wellbeing* that they can, for that person. Of course, exceptions to this principle must be made, and other principles introduced, to address tradeoff situations in which one person’s wellbeing can be increased only by decreasing another’s. Nonetheless, the upshot is that PBC accepts that whether a person has been wronged depends on whether that person’s lot could somehow have been improved. If there was nothing that agents could have done to make things better for a person — if wellbeing for that person has been *maximized* — then that person has not been wronged. Applied to the case of the person whose options are limited to an anguished life and none at all, this idea means that that person — the anguished person — has not been wronged *unless* it is also true that the “none at all” option would have been better for that person. For if that is not the case, then wellbeing *has* been maximized for the anguished person. Thus the question of whether it can ever have been better for an existing person that that person never have existed at all attains significance under PBC.

Suppose it is true, then, that it *cannot* ever have been better for a person that that person never have existed at all. In those admittedly rare cases in which no one else suffers or can be said to have been wronged as a consequence of the anguished person’s having been brought into existence, PBC implies that the choice to bring the anguished person into existence is morally permissible — that is, is as good as any other choice, and not wrong at all [4]. But this is an unacceptable result. If PBC in fact has that result, then we probably should all of us become aggregationists [5].

The issue of whether never having existed at all can ever be better than existence will thus be the focus of the present paper. My conclusion will be that it is plausible to think that never having existed at all can indeed sometimes constitute the better alternative. Thus, the much larger issue of whether normative theory should take an impersonal and aggregative form or a person-based and nonaggregative form will have to be decided on some distinct basis.

I begin the discussion in part 2 below with one of Parfit’s most provocative “nonidentity” cases. As part 2 makes plain, PBC does not manage to avoid what some consider a troubling result — that it is indeed permissible to bring into existence a person whose life as a matter of necessity will be flawed, *though not anguished*, in identifiable ways. I argue, however, that it is not correct to accept that case as a bona fide *counterexample* to PBC. That assessment of the original case gains force, I believe, when we compare, in part 3, the original case to a revised case in which the choice is made to bring into existence a person whose life will be not merely *flawed* but rather

*anguished*. If PBC does indeed imply that it is morally permissible to bring into existence the anguished person *regardless of the depth of the anguish* that person will suffer, then PBC must be rejected. Thus the revised case, in contrast to the original, would, potentially, represent a bona fide counterexample to PBC.

Part 4 details how and when PBC relies on the idea that it can sometimes be better never to have existed at all. Just how critical that idea is for PBC is made clear by the introduction of a new version of Parfit's "repugnant conclusion" case. That new version of the case, unlike Parfit's, takes aim at the person-based rather than the aggregative approach [6]. What it shows is that — if indeed it cannot ever have been better never to have existed at all — PBC is forced to condone the choice of an alternative in which vast armies of persons have anguished lives, lives far less than any worth living, in preference to some other alternative that contains a distinct, large and wellbeing-rich population.

It is also noted in part 4 that, just as PBC relies on the idea that it can sometimes be better never to have existed at all, so does the legal claim of *wrongful life*. Such claims are brought by or on behalf of a child against those medical professionals whose negligence has ultimately resulted in that child's anguished existence. However, since the specific negligence claimed gives rise, not to the genetic or chromosomal *defect*, but rather to the child's *existence*, and given the general suspicion whether it really can ever be better never to have existed at all, claims for wrongful life have generally not been recognized by courts in the United States. The issue, then, of whether it can ever be better never to have existed at all has not just normative but legal implications as well.

Much depends, then, on the idea that it can be better never to have existed at all. But this idea has been challenged. An argument against it, which I will call the *attribution argument*, is introduced in part 5. Roughly, according to the attribution argument, it cannot ever be correct to say that never existing at all is better since saying that attributes a property to a never-existing person, and never-existing persons cannot have properties. The heart of my reply is that the claim at issue can be construed as a claim about an existing person, and not about a never-existing person. Along the way, a distinct issue regarding *reference* is also addressed. Conclusions are stated in part 6.

A few terminological points and a brief statement of some of the basic principles of PBC are in order. A given possible world, or future, is *accessible* to agents, or an *alternative* for agents, at a time if that future is one that agents, acting either as individuals or in concert with existing or future agents, have at that time the practical capability to effect. Thus, a future at which a philanthropist donates money to a researcher who uses that money to make genetic therapy for Huntington's disease a reality in two years may be one that is accessible to, or an alternative for, the philanthropist and the donor now. In contrast, a future at which a person who in fact suffers from Huntington's disease is *this afternoon* completely cured is a future that is not now accessible to, or an alternative for, agents. It is important that the accessibility notion not be construed too narrowly. Thus, the fact that agents in many instances *would* decline to take steps to cause a given future to obtain — that they *would* decline to offer expensive gene therapy to a given person at such time as that therapy becomes a reality — does not imply that that future is not an alternative. It is, rather, an alternative, accessible future that agents have simply chosen not to effect. Nor does the fact that a given future is improbable imply that that future is not an alternative. In point of fact,

at the moment of choice, the effecting by agents of any *particular* future — in all its specificity — is highly, highly improbable. Some futures are, nonetheless, *alternatives*.

Person-based consequentialism, or PBC, depends on the idea that comparisons can be made between the specific level of *wellbeing* that a given person has at a given alternative and the level of wellbeing that that person has at other alternatives. At certain points, it is also assumed that interpersonal comparisons of levels of wellbeing at the same and at distinct alternatives can be made. Thus, where  $X$  and  $Y$  are alternatives and  $p$  and  $q$  are persons, AC employs the two-place relation, “ $X$  contains more aggregate wellbeing than  $Y$ ,” whereas PBC employs the distinct four-place relation, “ $p$  has more wellbeing in  $X$  than  $q$  has in  $Y$ .”

References to levels of wellbeing are understood to be references to overall, lifetime levels of wellbeing. Some rudimentary assumptions are introduced about wellbeing in part 4 below. However, for purposes of the present paper, it is not necessary to define “wellbeing” or to decide whether wellbeing consists of pleasure, happiness, preference-satisfaction, resources, the capability to achieve functionings or something else entirely [7].

Thus, according to PBC, for each person  $p$  at a given alternative  $X$ , agents at  $X$  must, with exceptions to address tradeoffs, do the best that they can, that is, create the most wellbeing that they can, for  $p$ . It is important to clarify two points. First, “each person  $p$  at  $X$ ” sweeps in, not only existing persons but also future persons — those who do not now, but will, exist at  $X$ . This is an important point in view of the fact that other so-called “person-affecting” approaches take a far narrower view, excluding those, for example, whose future existence is not “inevitable” [8]. In addition, it is not intended that the term “person” be limited to the biologically human. While I do not attempt to define that term here, I do note that it seems plausible that orangoutans, but not the early human embryo, are properly considered “persons.”

Thus, the interpretation of the person-based approach that I shall rely on in the present paper includes, but is not limited to, the following four principles [9]. Where  $p$  and  $q$  are persons and  $X$  and  $Y$  are possible worlds, or futures, that are accessible to, or alternatives for, agents at time  $t$ :

Basic person-affecting, or person-based, intuition. An alternative  $X$  is impermissible at  $t$  *if and only if* a person who exists (will exist) at  $t$  and at  $X$  is (will be) wronged at  $X$ .  $X$  is otherwise permissible.

Maximizing principle I. A person  $p$  is not wronged at  $X$  *if* it is not the case that there is a  $Y$  such that  $p$  exists at  $Y$  and  $p$  has more wellbeing at  $Y$  than at  $X$ .

Maximizing principle II. A person  $p$  is wronged at  $X$  *if* (i)  $p$  exists at  $X$ , (ii) there is a  $Y$  such that  $p$  has more wellbeing at  $Y$  than at  $X$ , (iii) there is no  $q$  who exists (will exist) at  $Y$  who has more (will have more) wellbeing at  $X$  than at  $Y$ , and (iv) for each  $q$  who exists (will exist) at  $Y$ ,  $q$  exists at some time at  $X$ .

Never existent/never wronged principle. A person  $p$  is never wronged at  $X$  *if*  $p$  never exists at  $X$ .

The last three principles all provide sufficient but not necessary conditions. Of course, agents do not necessarily wrong someone just by failing to maximize that person’s

wellbeing; a complete statement of PBC would need to include principles that would address the tradeoff situations that frequently arise. But those principles will not be at issue in the present paper.

## 2. The Current State of the Nonidentity Debate

### A. A Parfitian Case Pair

There exists one category of nonidentity cases with respect to which PBC implies that a course of action deemed at least questionable by a number of theorists is, in point of fact, morally permissible. The question this part 2 addresses is whether cases that fall into that category count as *counterexamples* to PBC. I want to argue here that plausibly they do not [10].

This particular category is represented especially well by Parfit's "Two Medical Programmes" example. The following pair of cases is derived from that example.

*"Don't need flaw to exist" case.* A woman, Ms. Dontneed, has already conceived a child. Ms. Dontneed knows in advance that if she does not begin taking medicine promptly for a certain minor but easily treatable condition the child she has conceived is significantly likely to be born with a particular disease. Though the disease is very serious and has life-long repercussions, the child's life will hardly be an anguished one and will indeed be unambiguously worth living. It does not matter to Ms. Dontneed or to anyone else, in any morally significant way, whether or not Ms. Dontneed begins the medication or whether the child Ms. Dontneed produces will be afflicted with the disease or not. Ms. Dontneed chooses not to take the medicine, and she gives birth to a child, Dodie, who is in fact born with the disease [11].

*"Need flaw to exist" case.* A woman, Ms. Needflaw, is considering whether to have a child. Ms. Needflaw knows in advance that any child she conceives *this* month will have a significant risk of having a particular disease as a result of a minor but untreatable condition that Ms. Needflaw has. She also knows that the same will not be true of any child she conceives *next* month since the minor condition Ms. Needflaw now has is self-limiting and sure to have run its course in a week or so. Though the disease is very serious and has life-long repercussions, the child's life will hardly be anguished and will indeed be unambiguously worth living. It does not matter to Ms. Needflaw or to anyone else, in any morally significant way, whether Ms. Needflaw conceives a child this month or next month or whether Ms. Needflaw produces a child who is afflicted with the disease or a distinct child who is not. Ms. Needflaw chooses not to delay conception, and she conceives and gives birth to a child, Nellie, who is in fact born with the disease [12].

For all practical purposes, Ms. Dontneed imposes a burden on Dodie that is perfectly avoidable. Dodie Dontneed *need not* have been born with, and suffered her whole life as a result of, the disease that Ms. Dontneed could have avoided imposing on Dodie by simply taking her medicine. In contrast, Ms. Needflaw imposes a burden on Nellie that is unavoidable if Nellie is to exist at all. To exist at all, Nellie *must* suffer the

disease, since the only way Ms. Needflaw could have avoided producing a diseased child would have been for Ms. Needflaw to have had some distinct (“nonidentical”) child in Nellie’s place [13].

### *B. Person-Based Treatment of the Case*

Whatever we think about the issue of whether never having existed at all can ever be better than existence, it is clear that in the case of Dodie there existed for agents at the critical time *two* alternatives to that at which Dodie in fact finds herself — first, the alternative at which Dodie exists *sans* disease and, second, the alternative at which Dodie never exists at all. In virtue of the former, it is plain that there existed for agents at the critical time an alternative that was *better for Dodie* — an alternative, that is, in which Dodie has *more wellbeing* than she in fact has.

In contrast, in the case of Nellie there existed only *one* alternative to that at which Nellie finds herself — the alternative of never having existed at all. Now we know that existence *sans* disease cannot be a *better* alternative for Nellie since it is not an *alternative* for Nellie. But in order to apply PBC we need to know not just that much but, more generally, whether there existed *any* better alternative for Nellie. We must therefore determine whether the alternative of Nellie’s never having existed at all would have been better for Nellie.

Whether it can ever be better never to have existed at all is, of course, the main topic of this present paper. Notably, however, with respect to this particular case, we do not need to have reached any decision regarding that issue in order to complete the person-based analysis. Let’s divide the cases. *If* we think that never having existed at all is the *better* alternative in some cases for some persons, then we must determine whether *never have existed at all* was in fact an alternative that was *better for Nellie*. Suppose, then, that we *do* think that never having existed at all is in some cases for some persons the better alternative. Would never having existed at all have been better *for Nellie*?

However we ultimately decide to weigh the alternative of never existing at all against the alternative of a flawed existence, it is plausible that the answer to this question will easily be no. By hypothesis, Nellie’s existence is merely flawed and not anguished; it is unambiguously worth having; the level of wellbeing, with adjustments for the burdens that she suffers, that existence assigns to her will be clearly in the positive range [14]. In contrast, the level of wellbeing assigned to Nellie at any alternative at which she never exists will surely be no wellbeing at all, that is, zero. Never existing at all would therefore not have been better for Nellie. Thus, if we do think that never having existed at all can sometimes be a better alternative, we are nonetheless in a position to conclude that, in the case of Nellie, there existed *no better alternative* than the flawed existence Nellie in fact has. Her actual situation is, thus, her best situation.

Now suppose that we do *not* think that never having existed at all can ever be a better alternative. If never existing at all cannot be a better alternative for anyone under any circumstances, then it cannot have been a better alternative *for Nellie*. But this means that, as before, Nellie’s actual situation is her best situation.

The upshot is that, whether or not we think that never having existed at all can ever be a better alternative, there existed at the critical time no better alternative for Nellie

than her own existence. In contrast, as we have said, in the case of Dodie, there was a better alternative, existence *sans* disease.

These facts are critical to PBC's assessment of the case. Since Ms. Dontneed could have taken her medicine and produced a healthy Dodie, there existed an alternative at which, first, Dodie has more wellbeing than she in fact has and, second, no one else — given the facts of the case — has any less. But not so for Nellie, whose wellbeing has been *maximized*. On these facts, PBC's maximizing principles imply that Dodie is wronged and that Nellie is not [15]. But PBC also contains the basic person-affecting, or person-based, intuition, to the effect that whether a given alternative is permissible depends on whether any person at that alternative has been wronged [16]. Thus, the alternative at which Dodie exists and suffers is impermissible. But not so for the alternative at which Nellie exists and suffers.

*(c) Aggregative, Impersonal Treatment of the Case*

According to PBC, the alternatives chosen by Ms. Needflaw and Ms. Dontneed have distinct normative statuses. According to AC, just the opposite is true. For AC, the issue of whether there exists an alternative at the critical time that is *better for the person* who we think may have been wronged has no significance. Rather, for AC, the critical issue is whether there exists an alternative that contains more *aggregate* wellbeing. In this connection, what is relevant is that Ms. Dontneed could have taken her medicine and produced a healthy Dodie, and Ms. Needflaw could have delayed conception for a month and produced a healthy child distinct from (“nonidentical” to) Nellie.

In both cases, in other words, there exists an alternative that contains more aggregate wellbeing than the alternative in fact chosen. AC thus implies in each case that the alternative in fact chosen is impermissible.

*(d) The Case as Counterexample to PBC?*

The discussion up to now shows only that there is a distinction in how AC and PBC analyze the cases of Dodie and Nellie. A further question is whether the example also gives us a basis on which to *reject* one of the two normative approaches.

Parfit suggests that it might. *Surely* we all agree that what Ms. Dontneed has done is wrong [17]. But what Ms. Needflaw has done appears to Parfit to be just as bad — despite the fact that, in contrast to Ms. Dontneed, the *only way* that Ms. Needflaw could have avoided producing a diseased child would have been to produce a child distinct from — or “nonidentical” to — Nellie. But if what Ms. Dontneed has done is wrong, then what Ms. Needflaw has done is surely wrong as well.

This thinking leads Parfit to the conclusion that the two choices should be considered normatively on par and that there is “no difference” between them. “I know of some people who do not accept this claim,” writes Parfit, “but know of more who do” [18]. Thus Parfit “predict[s] that Theory X will not take a person-affecting form” [19].

According to PBC, of course, the two choices are not on par, and there does exist a significant normative distinction between them. One choice is morally permissible and one is not. However, despite Parfit's endorsement of the “no difference” view, he notably does *not* conclude that PBC has been *demonstrated* false, or that it has been

effectively *counterexamined* [20]. Parfit is not, I think, at this juncture simply being modest. His reasons for hedging his bets are quite sound. For he is uniquely positioned to see lying in wait in the subsequent sections of his important treatise the problems that are created for AC by the so-called “repugnant conclusion” [21]. Sensible, certainly, not to declare the demise of one strategy when one knows full well that the primary competing strategy might itself at the end of the day turn out to have a fatal defect.

My own view is that intuition is just not sufficiently clear to justify the conclusion that there is, in fact, no significant normative difference between the two choices. Indeed, it seems to me that it is at least as likely that there *does* exist a rather important normative difference. After all, by hypothesis Nellie could not have existed and not had the disease, and her life, despite its flaws, remains one that is unambiguously worth living. In contrast, the injury, the harm, that Dodie suffers has been gratuitously imposed since Ms. Dontneed could have just as easily taken the medicine as not.

I do not mean to suggest that we should turn around and accept the case as a counterexample to AC. But that is where, in my opinion, we at the present time should let matters rest. Adventures in theory-making may eventually resolve the status of the case as *counterexample* to one approach or the other. At the very least, if we decide on other grounds that the person-based approach cannot be correct, or that the aggregative approach surely must be correct, then we will have good reason to consider PBC’s treatment of the case as an instance of the deficiencies inherent in that person-based approach. But that hasn’t happened yet. For now, as a provisional matter, we should take the view that the case serves to counterexample *neither* view. As a tool for the furtherance of a public, reasoned debate, the pair therefore should be used, at the present time, simply to *illustrate the difference* between the two views rather than to *decide between them*.

This “wait and see” strategy is not so different from the restrained approach that Parfit himself takes. Other theorists have been far bolder. Thus, Buchanan, Brock, Daniels and Wikler seem to regard an analogous Parfitian example as definitively establishing that the two choices are on par — and that both are wrong [22]. Cashing that point out in the practical terms of real life, the authors conclude that (i) a couple’s choice to produce a child whose life will be or will be likely to be burdened by a serious genetic disease and (ii) a couple’s choice of “child abuse and neglect” are likewise on par [23]. At best this startling conclusion seems premature [24].

### 3. A Revised Case

The case of Nellie, though not itself, I have argued, a counterexample to PBC, can be used as a template for the construction of a revised example that potentially challenges PBC in a more effective way. Consider a case just like the original *except* with respect to the identities of the children and the severity of those children’s plights. Thus the moms are the same, and they retain the same abilities to create more wellbeing for their “children” (in an impersonal sense) by taking the medicine or by delaying conception. But the child Ms. Dontneed produces in the revised case, “Dorothea,” and the child Ms. Needflaw produces in the revised case, “Nora,” we now stipulate to have been born with diseases that make their lives not simply flawed but rather *anguished*. Thus, unlike Dodie and Nellie, the children in the revised case possess little or none of

that which gives value to life, and they suffer every physical and emotional form of unremitting pain. If we suddenly ourselves were faced with such a future, we would unequivocally consider a quiet death to be better for us than a continued future. Better, going forward, to accrue no additional wellbeing at all than to accrue a large quantity of *negative* wellbeing.

The aggregative theory treats the revised case precisely as it does the original. Since there exists in each case an alternative future that contains more aggregate wellbeing than the alternative in fact chosen by the agent, AC just as it did before endorses the “no difference” view. For the same reason that it is wrong, according to AC, for Dorothea to exist and suffer, it is also wrong for Nora to exist and suffer.

With respect to the original case, I argued that we were not compelled to take the “no difference” view. However, with respect to the revised case, that view seems clearly correct, and AC seems to get things exactly right. Indeed, the “no difference” view seems so clearly correct in this case that PBC *cannot afford to reject* that view. If PBC implies that what Ms. Needflaw has done is permissible — that it does not wrong Nora and that it is not wrong at all — then I think we will have to accept the revised case as a *counterexample* to PBC. At least, it seems to me — and, as it happens, to everyone I know — that with respect to the revised case the two women’s choices *are* on par and that *both* are clearly wrong.

It is not so bad that PBC rejects AC’s treatment of the original case. However, to retain any credibility going forward, PBC must have the flexibility to change course with respect to the revised case. PBC’s treatment of the revised case is thus critical [25].

As part 4 below makes plain, we will have no reason to decide that PBC lacks the requisite flexibility *unless* we reject the idea that never having existed at all can be better than existence. So long as we are clear that never having existed at all can be better, there is ample reason to think that PBC will have the resources necessary to conclude that imposing the anguished existence on Nora wrongs Nora and is therefore impermissible.

#### 4. A Person-Based Approach to the Revised Case

##### *A. Appeal to Idea that Never Existing At All Can Be Better than Existence*

Plausible normative theories must avoid the result, in the revised case, that either of the two agents’ choices is permissible. PBC easily implies that Ms. Dontneed’s choice in the revised case, just as it is in the original, is wrong. However, PBC can only conclude that Ms. Needflaw’s choice is wrong by appealing to the idea that it can be better, for a person, that that person never have existed at all. According to PBC’s maximizing principles, if there existed no alternative at the critical time that was *better for Nora*, i.e., at which Nora had more wellbeing than she in fact has, then PBC is bound to the conclusion that what Ms. Needflaw has done does not wrong Nora [26]. But the only alternative at which Nora arguably has more wellbeing is one at which she never exists to begin with. Thus, if that alternative is ruled out as one that is indeed better for Nora, then PBC has a problem.

Clearly, Ms. Needflaw had the alternative of never bringing Nora into existence at all. Part of the case is that Ms. Needflaw could have waited a month to conceive, at

which time the condition that she has would have passed and any child she then would have conceived would not have suffered the anguish that Nora in fact suffers. Ms. Needflaw could have, in other words, avoided causing Nora to suffer anguish by avoiding bringing Nora into existence to begin with. This much is incontrovertible. The controversy lies rather in the truth of the idea of the *betterness of never existing at all for Nora*, or *BNB*:

BNB. Any alternative at which Nora never exists at all would have been better for Nora than Nora's anguished existence in fact is.

I think BNB is intuitively plausible. But I also think we can provide some justification for BNB.

One part of the justification for BNB derives from the idea that never having existed at all is not in itself a chamber of horrors. Never having existed at all is not a state at which one accrues a high level of negative wellbeing but rather a state in which one accrues no wellbeing of any variety at all. In this sense, it is a neutral state, not a horrific one. This is not to say that never having existed at all consists of a state through which the nonexistent person simply drifts *feeling neutral feelings*. If one never exists at all, one never *feels* anything [27].

A second part of the justification for BNB derives from the fact that we think it is sensible to say about the revised case that a great deal of *negative* wellbeing, and very little *positive* wellbeing, in fact accrues to Nora, and therefore that her net level of wellbeing falls into the negative range. But what does that mean? Suppose that a neutral, or zero, level of wellbeing accrues, for example, to persons who — assuming they still technically continue to exist as persons at all — are permanently comatose, devoid of sensation, needs, dreams or desires and anything else that we think might give value to life. Part of the revised case is that Nora is much worse off than that. Plausibly, then, to say that Nora's level of wellbeing is in the negative range is just to say that her level of wellbeing falls below a zero level.

These two points are reflected in the following two claims that together, I argue, justify BNB.

P1. At any alternative at which Nora never exists at all, the level of wellbeing that Nora has at that alternative is zero.

And,

P2. The level of wellbeing that Nora in fact has is negative.

But if Nora has no — zero — wellbeing at any alternative at which she never exists at all, and if the level of wellbeing that Nora in fact has is *less than that*, then BNB is surely correct. Surely, for Nora, it would have been better never to have existed at all [28].

### *B. What is Wellbeing?*

In favour of BNB, then, are P1 and P2. But P1, in particular, may seem difficult to assess in the absence of at least a rudimentary account of what *wellbeing* consists of.

As I am conceiving it here, having a specific level of wellbeing — positive, negative or zero — is a matter of having certain properties and lacking others. The properties

that one has at a given alternative, on this view, “add up” in some way to one’s having a specific level of wellbeing at that alternative.

On this conception, P1 and P2 are true in virtue of the fact that at the alternatives specified Nora has certain properties and lacks others. More particularly, P1 is true in virtue of the fact that, first, Nora does not have any properties at all at any alternative at which she does not exist and, second, that, where Nora has no properties at all, all the properties that she does have — that empty set — add up to a zero level of wellbeing [29]. Likewise, P2 is true in virtue of the fact that Nora as a matter of fact has certain properties and lacks others. Thus, Nora has, for example, the property of being constantly anguished, a property that adds up, when taken together with other properties that Nora has, to a negative level of wellbeing.

BNB then — I want to claim — follows from P1 and P2. It would have been better for Nora not to have any wellbeing at all — to have zero wellbeing — than to have the negative level of wellbeing that she in fact has. It would have been for Nora, in other words, never to have existed at all than it is for Nora to exist. PBC thus implies that Nora is wronged and that the alternative at which she exists and suffers is therefore impermissible.

This account of wellbeing in terms of properties is very rudimentary. I have not, for example, tried to say what properties one must have in order to have a specific level of wellbeing [30]. But the rationale that I have just given for P1 and P2 does not require any more detailed account. Thus, whether we ultimately decide that the pertinent properties are necessarily “felt” or, alternatively, are the kinds of properties that we can have (like money in the bank or good health) without knowing that we have them, it will nonetheless be the case that never existing at all strips us of all such properties, with the result that all such properties that we do have — that is, none at all — add up to no wellbeing.

### *C. A New Repugnant Conclusion*

What we ultimately say about BNB will clearly have important implications for PBC and, potentially, for the debate regarding whether a nonaggregative and person-based, or an aggregative and impersonal, approach to normative theory is correct. Without BNB, PBC will not have the resources to provide a plausible analysis of the revised case involving the anguished Nora. I want to point out in this part just how dreadful things could get for PBC if we are indeed forced to reject BNB. Parfit’s own “repugnant conclusion” argument is designed to bring to light an issue for AC — in particular, the issue whether AC is forced to conclude that an alternative *Z* containing vast armies of persons each having a life just barely worth living is superior to an alternative *A* containing a much smaller number of persons each having a life well worth living. Suppose that the aggregate wellbeing contained in *Z* exceeds that contained in *A*. AC then implies that *Z* is better than *A* and, correspondingly, that *Z* is a morally obligatory choice but *A* is not [31].

As Parfit suggests, the conclusion that *Z* is the correct choice does seem “repugnant” [32]. But at least at *Z* each of the vast armies of persons has a life that is, though barely, worth living [33]. But now consider *Z\**, just like *Z* except that each of the vast numbers of persons who exist has a life that is unambiguously *not* worth living, even barely — a life that is, indeed, anguished. And suppose that there exists no alternative

at which any person at  $Z^*$  both exists and has more wellbeing than he or she has at  $Z^*$ . For the persons at  $Z^*$ , then, suffering is the only option if they are to exist at all. *If* it is true that never having existed at all cannot ever be better than even the most anguished existence, then PBC's maximizing principles imply that no one has been wronged at  $Z^*$  and hence that  $Z^*$  itself is a permissible choice [34].

So now we must imagine not vast armies of persons whose lives are just barely worth living but rather vast armies of persons whose lives are thoroughly, brutally, *anguished*. If the one alternative is repugnant, the other is surely — well, beyond repugnant. If PBC indeed implies that such an alternative is permissible, then we must abandon PBC.

#### D. Legal Action for “Wrongful Life”

Our assessment of BNB will have implications, not just for PBC, but also for the legal issue of *wrongful life*.

The term “wrongful life” describes a handful of medical malpractice cases that have badly tested the limits of the tort law system. The traditional legal theory behind the claim of wrongful life is that some genetic diseases are not simply burdensome but rather impose *so much anguish* on those who suffer from them that persons who negligently fail to take the steps necessary to keep the victims of such diseases from coming into existence to begin with must be held liable and pay damages for the harm that those victims have suffered. Thus potential defendants in wrongful life actions include surgeons who perform ineffective tubal ligations, vasectomies or abortions for couples concerned about their own family history of serious genetic-based diseases, as well as the much broader range of medical personnel, including gynaecologists, obstetricians and genetics counsellors who may fail to advise potential parents that they are at risk of passing along such diseases to any offspring they might opt to produce.

While the plaintiffs in wrongful *birth* cases are the parents, the plaintiffs in wrongful *life* cases are the offspring themselves [35]. The wrongful *birth* claim is that the *parents* have been harmed by the defendant's failure to prevent them from having a child who has a genetic disease or disorder when they might have had a healthy child instead. In contrast, the wrongful *life* claim is that the *child* has been harmed by having been negligently brought into existence to begin with.

Courts in the United States have been quick to recognize the claim of wrongful birth. Judges can see how the parents might have been harmed when a genetics counsellor fails to advise them that they should undergo genetic testing before proceeding with conception, or when a doctor negligently performs an abortion — leading to the survival of the fetus and subsequent birth of the child — after amniocentesis confirms a serious genetic disease or disorder. Such parents in some cases would have been better off, financially and emotionally, had they had a healthy child instead.

But most of the same courts have declined to recognize claims for wrongful life [36]. Thus, most courts have questioned whether the diseased child has in fact been harmed by a doctor's failure to take steps to avoid bringing that child into existence to begin with. From the child's point of view, such negligence may seem more like fortuitous accident than liability-inducing tort. Of course, there is an easy response to that point. If indeed the accident is fortuitous from the child's own point of view — if indeed the

existence, despite the disease, is from the child's own point of view a good rather than a bad thing — then there should be no finding of liability. The clearer — and much rarer — case for liability is the case where the existence itself is so anguished that it *cannot* plausibly be regarded a fortuitous accident from the child's point of view. However, even when confronted with that clearer set of facts, courts, on the basis of rationales that purport to be founded in logic and metaphysics but that can only be described as abbreviated, have been reluctant to recognize the child's claim as a legal cause of action. The stumbling block for them has consistently been the issue of *harm to the child* — an element essential to any claim of negligence brought by or on behalf of the child [37].

In effect, then, it is not just a few philosophers but many judges as well who have, for one reason or another, concluded that the idea that it is sometimes better never to have existed at all is problematic. A practical consequence of defending BNB and, by implication, PBC is thus to provide a cogent *person-based* account of how it can be that, in rare cases, a child's being brought into existence can harm *that child* — and not just his or her parents. In contrast to an aggregative account, a person-based account of harm would be just the kind of account that judges could live with in view of the pervasively person-based nature of the tort law system as that system is currently structured. Thus, the aggregative approach can easily generate the result that negligent conduct that leads to the truly anguished life is morally impermissible. That's a good thing. But the aggregative approach cannot generate the result that a given person has been harmed, or wronged. And if there is no victim, no plaintiff, no *person* who can make a plausible claim of having been harmed or wronged, then there is no basis for a claim of damages in tort. From the point of view of the tort law system as it exists today, the aggregative approach is thus an irrelevancy.

## 5. The Attribution Argument

### A. Broome's Argument

What I will call the *attribution argument* derives from an argument presented by John Broome in a slightly different context. Broome's argument thus does not directly challenge the idea that never having existed at all can be better than existence but rather the idea that existence can sometimes be better for a person than never having existed at all. He writes:

If it were better for a person that she lives than that she should never have lived at all, then if she had never lived at all, that would have been worse for her than if she had lived. But if she had never lived at all, *there would have been no her* for it to be worse for, so it could not have been worse for her [38].

Therefore, according to Broome, “it makes no sense” or, at least, “cannot ever be *true*” to say that “it is better for the person that she lives than that she should never have lived at all” [39].

The problem for BNB — and thus for PBC — is that if Broome's argument defeats the idea that existence can ever be better for a person than never having existed at all,

then a straightforward adaptation of that argument should likewise defeat the idea that never having existed at all in some cases would have been better for a person than existence.

Rewriting Broome's argument as an argument against BNB, we thus obtain the following.

If it were [worse] for a person that she lives than that she had never lived at all, then if she had never lived at all, that would have been [better] for her than if she had lived. But if she had never lived at all, *there would have been no her* for it to be [better] for, so it could not have been [better] for her. [Therefore,] it makes no sense [or, at least,] cannot ever be *true* that it is better for a person that she [should never have lived at all] than that [she lives].

But if never having existed cannot ever be better than existence, then BNB must be rejected.

### *B. The Question of Reference*

According to the attribution argument, if a given person had never existed at all, "there would have been no her" for nonexistence to have been better for. What I want to note here is that that statement, whatever else we make of it, should *not* be understood to demonstrate a problem with *reference*. This point is critical in view of the fact that any such failure of reference would force us to reject statements like BNB — which itself contains multiple occurrences of the name "Nora" — on the grounds that they fail to express the kind of thing (i.e., a proposition) that can be either true or false.

That "Nora" is consistently secure in its reference throughout BNB may not be completely obvious. Though Broome himself is best understood not to be raising an issue of reference — his focus seems rather to be on whether statements like BNB "can" be true and, hence, on the issue of consistency — the situation with respect to reference is nonetheless worth clarifying. At the very least, clarity on the issue of reference should facilitate the discussion of truth.

The concern about reference arises in its simplest form in connection with P1.

P1. At any alternative at which Nora never exists at all, the level of wellbeing that Nora has at that alternative is zero.

But — given the facts of the case presently under consideration, in particular that Nora in fact *exists* — P1 may itself be understood as a *counterfactual*, that is, as P1\*:

P1\*. If Nora had never existed at all, then Nora's level of wellbeing would have been zero.

Many contemporary analyses of counterfactuals like P1\* provide that their truth depends on the truth of the consequent at particular ("closest") alternatives, or worlds, at which the antecedent is true. Thus, if we reserve  $\alpha$  to designate the actual world — at which Nora is stipulated to exist — and let  $\beta$  designate such a closest a world — any will do — at which Nora never exists at all, then the truth of P1\* at  $\alpha$  depends on the truth of the consequence, C, at  $\beta$ .

C. Nora's level of wellbeing is zero.

But for us to make the determination that C is true at  $\beta$ , S is going to have to make sense to us — express, in other words, the kind of thing that we can evaluate as either true or false at  $\beta$ . This will in turn require that the subject term of C — “Nora” — refers.

It is at this juncture that a question about reference might arise. One might wonder, that is, how it is possible for the subject term “Nora” to refer in C when Nora *does not exist* at  $\beta$ .

In fact, however, I believe that one might wonder this only if one conflates C's being *true* at  $\beta$  with C's being *asserted* at  $\beta$ . C is asserted at  $\alpha$  — as part of P1\* being asserted at  $\alpha$ . And the reference of “Nora” in P1\* asserted at  $\alpha$  is well-established. “Nora” used at  $\alpha$  thus steadfastly refers just to Nora — a fact that is a given of the revised case. That the claim that we make at  $\alpha$  aims to say what things would be like for Nora at a world  $\beta$  at which Nora never exists does not change any of that. That effort does not untether the reference of the name “Nora” to the flesh and blood Nora, who exists at  $\alpha$ .

We can, of course, *imagine* P1\* being asserted at  $\beta$ . And it does seem that a reference problem plausibly arises in that case since it is hard to see how “Nora” in P1\* asserted at  $\beta$  could manage to refer to *our* Nora, who is stipulated to exist at  $\alpha$  but not at  $\beta$ . Anyone at  $\beta$  asserting P1\* at  $\beta$  would have difficulty, on any standard theory of reference, making the necessary cross-world reference to the flesh-and-blood Nora who exists at  $\alpha$  [40]. But that is not our problem. Our problem, rather, is to make enough sense of C — and, correspondingly, P1\* — asserted at  $\alpha$  to determine whether C — and, correspondingly, P1\* — is *true*, i.e., true at  $\alpha$ .

Consider the counterfactual that, if George W. Bush had never existed at all, then George W. Bush would never have been president. Of course, someone *could* design a theory of reference according to which one or both occurrences of “George W. Bush” contained in this counterfactual fail to refer. Such a theory would essentially require us not to be able to see what it would take for the consequent of the counterfactual — that George W. Bush is not president — to be true at  $\beta$ . But it is not plausible that we do not see this. Surely, what it takes for the consequent to be true at  $\beta$  is just for George W. Bush not to have at  $\beta$  the property of being president. On the distinct issue of *truth*, one might take the position that the consequent is *false* in virtue of the fact that even the claim that George W. Bush does *not* have a given property at  $\beta$  implies that George Bush exists at  $\beta$ . Alternatively, one might (I would) take the position that the consequent is true in virtue of the fact that the property of being president does not attach to George W. Bush at  $\beta$ . But either way, tacit in the analysis is the common ground that “George W. Bush” successfully refers to *our* George W. Bush and that the claim is one we can understand and evaluate.

It would be a mistake to think that once-raging debates that sound something like the one at hand — whether, e.g., the statement that “The present King of France is bald,” *made at a world at which there is no present King of France*, is nonsense or (as Russell concluded) merely false — should give us any pause whether reference has been achieved the context of P1\*. Thus, by hypothesis Nora *exists* at the very world with respect to which we want to know whether P1\* is true. In contrast, the whole point of Russell's example was that there was no present King of France. It was that

fact that presented an analytical challenge. In contrast, the analysis of P1\*, at least in so far as any issue of *reference* is concerned, remains routine.

There is an independent point about reference that should be noted. Plausibly, there are possible persons who never do exist. That is, there exist possible futures, or worlds, at which there exist people who never will, in fact, exist (never will exist, that is, at *this* world). Thus plausibly we may engage in the enterprise of thinking that it is better for some such possible persons that they never exist (existed) at all, and of thinking that for other such possible persons that it would be (have been) better, for them, were they to exist (have existed) rather than not. We may even think, applying PBC or some other normative theory, that such persons *would have been wronged* had they been brought into existence rather than not (though we cannot correctly think, at least according to PBC, that such persons can ever be wronged by virtue of *not* having been brought into existence [41]). I want simply to note that such thoughts — which are expressed through ordinary applications of the existential quantifier — do not involve, or require, that we have the wherewithal to *refer* to or *denote* any such possible person as an individual *by proper name or by definite description* — in such a way as to derive the result from PBC that, for example, *that particular person* would have been wronged had he or she in fact existed. That latter enterprise — the *referring* to or *denoting* of persons who never exist at all — may well, unlike the former, perfectly plausible, enterprise, be doomed to fail [42].

But the failure of the latter enterprise does not pose a problem for PBC. While PBC does indeed consider critical whether persons have been wronged, PBC has no need to *refer* to such persons *by name*. The *quantificational* form of the judgement — that there exists a person *p* at an alternative *X* such that *p* is wronged at *X* — is all that is required for PBC to come immediately to the conclusion that *X* is impermissible. Of course, as a practical matter, we may want to apply PBC to cases involving specific individuals — for example, Nora. In such instances, our focus is on the *singular* form of the judgment — the judgment, e.g., whether the person *Nora* is in fact wronged or not. But as we have seen, there is no real issue whether we may successfully refer to *Nora* — we can.

The analogous point may be made regarding future persons — persons who do not yet, but who will, exist. Agents thinking through how the choices open to them today may affect future persons — in particular, whether such choices will in the end *wrong* any such persons — do not need to be able to achieve *reference* to any of those persons today. PBC is thus impersonal in that one sense: it is immaterial to PBC *who* will exist and be wronged at some future date. It is thus enough that there will exist *some person or another* who will be wronged. That agents know in advance that such a *quantificational* judgment is likely to be true if they do one thing but not the other is ample moral reason to choose the other [43].

### C. The Attribution Argument

Let's take it, then, that claims such as BNB — that never having existed at all would have been better for Nora than her anguished existence in fact is — do not give rise to any interesting issue of reference, and turn now to the question of whether such claims can ever be *true*.

The argument that they cannot is, again, as follows.

If it were [worse] for a person that she lives than that she had never lived at all, then if she had never lived at all, that would have been [better] for her than if she had lived. But if she had never lived at all, *there would have been no her* for it to be [better] for, so it could not have been [better] for her. [Therefore,] it makes no sense [or, at least,] cannot ever be *true* that it is better for a person that she [should never have lived at all] than that [she lives].

This passage is susceptible to more than one reading. On the first, rather mechanical reading that we shall consider, the argument directly attacks BNB. On a second, more subtle reading, the argument attempts to pinpoint a problem with the inference from P1 and P2 to BNB. Finally, on a third reading, the argument's focus is P1.

(i) *The attribution argument as critique of BNB.* In order for BNB to be true, it must be the case that, at any alternative  $X$  at which Nora never exists at all, Nora has a certain property, the property of it being better never to have existed at all than to exist. Let  $\beta$  be such a world, and call that property "B." Then, Nora never exists at all at  $\beta$ , and Nora has the property B at  $\beta$ . But if Nora never exists at  $\beta$ , then Nora cannot have the property B at  $\beta$ . Therefore, BNB is false.

We can quickly dispense with this first attribution argument. The problem is that it gives us no reason to think that BNB's truth requires Nora to have any property at all *at those alternatives at which she does not exist*. BNB plausibly does require Nora to have the property B — the property of it being better never to have existed at all than to exist. But where Nora needs to have that property if BNB is to be true is not at  $\beta$  but rather at the actual world,  $\alpha$ , at which BNB is asserted and with respect to which we want to assess its truth. In point of fact, Nora's having the property B at  $\beta$  would not do much to make the claim BNB true in fact — which is to say, make the claim BNB true at  $\alpha$ . Since Nora by hypothesis exists at  $\alpha$ , there is, under the very metaphysics that the argument itself appears to presuppose, no reason to think that she cannot have the property B at  $\alpha$ .

(ii) *The attribution argument as critique of inference to BNB.* The second attribution argument does not attack BNB directly but rather finds an inconsistency between P1, which states that Nora has zero wellbeing at any alternative at which she does not exist, and BNB [44]. Plausibly, BNB is true at  $\alpha$  just in case Nora has the property of it being better never to have existed at all at  $\alpha$ . This means that BNB is true at  $\alpha$  just in case Nora has the property B at  $\alpha$ . It is at this juncture that the second attribution argument enters the fray. According to that argument, B must also be a property that Nora has at  $\beta$ . But we previously have said — in part 4.A above — that BNB is true at  $\alpha$  in part because P1 is true at  $\alpha$ , and that P1 is true at  $\alpha$  in virtue of the fact that *Nora does not have any properties at  $\beta$*  since she does not exist at  $\beta$ . But if Nora has B at  $\beta$ , then Nora has some property at  $\beta$ . And that is a contradiction. Thus, if we accept P1, we will not also want to accept BNB.

Before we can find this argument persuasive, however, we must understand why it is that B must be a property that Nora has not just at  $\alpha$  but at  $\beta$  as well. The second attribution argument does not itself address this question. Perhaps the explanation is something like this. The underlying rationale that suffices to insure that Nora has the property B at  $\alpha$  also suffices to insure that Nora has the property B at  $\beta$  as well. In other words, if at  $\alpha$  things are better for Nora at  $\beta$  than at  $\alpha$ , then it must be the case

at  $\beta$  that things are better for Nora at  $\beta$  than at  $\alpha$ . But for that to be true, it must be the case that Nora does after all have the property B at  $\beta$ .

But there is a problem with this line of thinking. For one thing, it leaves us asking why we are not free to take the view that, since Nora does not exist at  $\beta$ , the rationale that suffices to insure that she has B at  $\alpha$  does not apply with respect to the case of Nora at  $\beta$ .

Moreover, we do not seem bound to accept a universal rule according to which properties like B that involve single-individual, cross-world comparisons must abide by a requirement of dual possession — must, that is, be had by the one individual at each of the two worlds under comparison. Consider, for example, the statement that Sadie has more money on deposit at the bank at  $\alpha$  than she does at  $\beta$ . There is no obvious reason why we cannot say that Sadie can have the corresponding “more money” property — the property of having more money on deposit at the bank at  $\alpha$  than at  $\beta$  — at  $\alpha$  without also having it at  $\beta$ . *If* Sadie happens to exist at  $\beta$ , then, of course, she will also have the “more money” property at  $\beta$ . But perhaps the reason that she has so little money on deposit at the bank at  $\beta$  is that *she does not exist at  $\beta$* . Then, it seems sensible to say that she has the “more money” property at  $\alpha$  but not at  $\beta$ . Likewise, consider the statement that Martha endures more prosecutions at  $\alpha$  than she does at  $\beta$ . Plausibly, if this statement is true, Martha must have at  $\alpha$  the “enduring more prosecutions” property. *If* Martha exists at  $\beta$ , then her having the “enduring more prosecutions” property at  $\alpha$  will indeed imply that she has that property at  $\beta$  as well. But maybe the reason that Martha suffers fewer prosecutions at  $\beta$  is that she suffers no prosecutions at  $\beta$ , and maybe the reason she suffers no prosecutions at  $\beta$  is that she does not exist at  $\beta$ . In that case, it seems sensible to say that, while Martha has the “enduring more prosecutions” property at  $\alpha$ , she does not have it  $\beta$ . Consider, finally, the statement that Dick has more existence in  $\alpha$  than in  $\beta$ . Plausibly, if this statement is true at  $\alpha$ , Dick must have the “exists more” property at  $\alpha$ . But equally plausibly Dick does have that property — at  $\alpha$  but not at  $\beta$  — if in fact Dick exists in  $\alpha$  but not  $\beta$  [45].

These three examples suggest that we are not bound to think that all single-individual, cross-world comparisons must abide by the dual possession requirement. It at least appears that there are plenty of comparative, cross-world properties that need not be possessed by the individual who has them at both of the two worlds that are being compared.

The challenge, then, for the defender of the second attribution argument is to say why B must be understood to fall into the dual possession category — or, alternatively, to show that the dual possession requirement is, in fact, universal.

Admittedly, some comparative properties do, at a conversational level and perhaps in a more technical way, seem to obey the requirement of dual possession. Consider, for example, the statement that Jimmy at  $\alpha$  has a better smile, or is taller than, or is a faster runner than, he has or is at  $\beta$ . For any of these comparisons to be accurate, plausibly Jimmy must have the comparative property at both  $\alpha$  and  $\beta$ . For suppose that we insisted otherwise, and claimed that the comparisons *are* accurate, and that they are accurate because Jimmy does not exist at all at  $\beta$ . Our view would then be that to have *any* smile at  $\alpha$  is to have a better smile than to have no smile at all at  $\beta$ ; to have any height at  $\alpha$  is to have more height than at  $\beta$  and to run at all is to run faster than one does at  $\beta$  and so on. But this view seems odd.

Plausibly, when we say that Jimmy at  $\alpha$  has a better smile than he does at  $\beta$ , we are committing ourselves, at least at a conversational level, to *comparing smile-pertinent properties* that Jimmy in fact has — at  $\alpha$  and at  $\beta$ . We are comparing his good smile at  $\alpha$  to his not-so-good, but not nonexistent, smile at  $\beta$ . Plausibly, then, such comparisons do require dual possession of the “better smile” property, the “taller than” property, and so on.

But in other cases the comparisons do not seem to involve comparisons between specific *properties* that individuals have in each of two alternative scenarios. Thus, for example, when we say that Sadie has more money on deposit at the bank at  $\alpha$  than she has at  $\beta$  in the case where she does not exist at  $\beta$ , we are not comparing the *properties* that Sadie has at  $\alpha$  and at  $\beta$ , respectively, of having \$2,000,000 on deposit at  $\alpha$  and having \$0 on deposit at  $\beta$ . We are rather comparing two *amounts* — the amount of money Sadie in fact has on deposit at the bank and the amount of money Sadie has on deposit at the bank at  $\beta$ .

But if that is what we are doing, then there is no reason to think that a statement that correctly compares the two *amounts* requires that the person *Sadie* must have the “having more money” property at both  $\alpha$  and  $\beta$ . Just the amounts have to exist, not the person. It may well be true that what we are really doing is comparing *properties of those amounts*. But that reality poses no problem at all in view of the fact that we have no reason to think that the amounts themselves do not exist at both  $\alpha$  and  $\beta$  (and, indeed, at each other alternative as well).

Similarly, when we say that Nora has the property B, we should disclaim the idea that what we are doing is comparing a *property* that Nora has at  $\alpha$  with a *property* that Nora has at  $\beta$ . Rather, what we are comparing is the *amount* of wellbeing that Nora’s having certain properties and lacking certain others at  $\alpha$  adds up to at  $\alpha$  with the *amount* of wellbeing that Nora’s *lacking all properties* at  $\beta$  adds up to at  $\beta$ .

Under this analysis, it is perfectly plausible that the zero amount of wellbeing that Nora has at  $\beta$  is greater than the negative amount of wellbeing that Nora has at  $\alpha$  even though Nora herself does not have any properties at all at  $\beta$ , including the property of things being better for Nora at  $\alpha$  than they are at  $\beta$ .

My own conclusion, then, is that the second attribution argument does not demonstrate that BNB cannot be true without Nora having the property B at those alternatives at which she does not exist. Rather, that argument shows us something about how B *conceived in a certain way* might lead us to the dual possession requirement. But we have also seen that B *conceived in another way* does not lead to that requirement. To force the conclusion that B must be construed in the one way rather than the other — must, that is, be excluded from the category to which the “having more money” property belongs — we need a further argument. Perhaps it would be an argument having something to do with the nature of wellbeing — that is, that wellbeing is more like having a certain quality of smile than it is like having a certain amount of money on deposit at the bank. At the same time, a cursory review of the leading candidates for wellbeing — pleasure, happiness, preference-satisfaction, capability — all appear on the surface to be plausibly held at a zero level by any person who never exists at all. But this means that amounts, and not persons, can be the objects of our comparisons, and hence that the dual possession requirement would not be in order [46].

(iii) *Attribution argument as critique of P1*. The third version of the argument targets P1.

P1. At any alternative at which Nora never exists at all, the level of wellbeing that Nora has at that alternative is zero.

As suggested in part 4.B above, we might find P1 plausible because we think that, not existing at  $\beta$ , Nora does not have any properties at  $\beta$  and that therefore the properties that she does have at  $\beta$  add up to a zero level of wellbeing.

The third attribution argument against P1 is a simple one. It is that P1 attributes a property, the property of having zero wellbeing, to Nora at an alternative  $\beta$  at which Nora does not exist. But if Nora at  $\beta$  has that property, then Nora must exist at  $\beta$ . But she doesn't. P1 must therefore be rejected as self-contradictory.

We should be skeptical about this objection starting out. We know, for example, that not every predicate plausibly expresses a genuine property. Consider, for example, where  $x$  is any set, the predicate "x such that x is not a member of x." Plausibly, no property at all, at least no genuine property, is expressed by that predicate.

Moreover, the rule that the third argument suggests seems to prove too much. Consider the assertion that, had George W. Bush never existed, George W. Bush would never have been president. The third argument suggests that such an assertion involves the attribution of a property, the property of never having been president, to the person, George W. Bush, at those worlds at which George W. Bush never exists at all. This view, in turn, requires that we dismiss the original counterfactual as self-contradictory. But that counterfactual in fact seems not self-contradictory at all but rather plausibly to be true.

Suppose, then, that it is true that an individual cannot have a property at an alternative unless that individual exists at that alternative. Suppose that "If George W. Bush had never existed, then George W. Bush would never have been president" is also true. Then, we should deny that the predicate, "never having been president," expresses a genuine *property* that is attributed to George W. Bush at an alternative at which he does not exist. We should say, instead, that the assertion does not affirmatively *attribute* any genuine property to George W. Bush at any such alternative at all but rather that it simply *denies* that he has, at such an alternative, what we do clearly consider to be a genuine property — that of being president [47].

Likewise, when we say that Nora has zero wellbeing at  $\beta$ , we should eschew the idea that we are attributing to her the *property* of having at  $\beta$  some level of wellbeing — a negative, positive or zero level of wellbeing. We are, rather, *denying* that she has at  $\beta$  *any* properties at all. Since Nora has no properties at  $\beta$  at all, all the properties — that empty set — that she does have at  $\beta$  add up a zero level of wellbeing.

Does it follow that we have attributed *to Nora* at  $\beta$  the property of having a zero level of wellbeing? No. We must, perhaps, acknowledge that the properties that Nora has at  $\beta$  — that empty set — does itself have a certain property at  $\beta$ , the property of adding up to zero wellbeing. But that fact does not provide any basis for the argument that we have attributed *to Nora* of the property of having zero wellbeing at  $\beta$  — particularly in view of the fact that the reason that things have added up to zero in her case is just that she never exists at  $\beta$  at all [48].

The three readings of the attribution argument that we have considered each usefully insists that we think carefully about how we need to understand BNB and the claims P1 and P2 that support it. I have argued that BNB stands up to the attribution argument. Since Nora's existence is itself anguished, and since the level of wellbeing

that she in fact has falls below the zero level implied by nonexistence, we can after all say that it would have been better for Nora that she never existed at all. That comparison in hand, and given the facts specified in the example, PBC's maximizing principles both avoid the result that Nora has not been wronged and include the result Nora has been wronged. The basic person-based intuition can then be invoked to obtain the result that the choice that brings Nora into existence is therefore wrong *simpliciter*, that is, impermissible [49].

## 6. Conclusion

If the arguments presented in this paper are correct, then PBC seems well-positioned to provide a theoretical framework for an account of the tort of wrongful life. Thus PBC addresses the most serious of the objections that have been raised against wrongful life as a legally valid cause of action — the issue of whether the defendants' conduct can coherently be said to *harm* the new person. According to PBC, the bringing into existence of a person whose life is likely to be *anguished* is one that can indeed be coherently said to harm the victim, with the precise measure of harm consisting of the difference between the zero level of wellbeing implied by nonexistence and the negative level likely to be suffered. There thus does not seem to be a sound basis for the rejection of wrongful life by courts as somehow incoherent on the question of harm.

More generally, the attribution argument attempts to pinpoint a problem with the nonaggregative, person-based approach that PBC describes. If PBC requires the view that agents have not wronged the anguished Nora, and therefore that they have done nothing wrong at all, then we probably all should become aggregationists. At least, we should acknowledge that the impersonal, aggregative approach, implying as it does that it is impermissible to bring Nora into existence, seems of the two views far more clearly on the path of the straight and narrow. However, as I have argued, I do not think that PBC *does* require that troubling result. The debate whether normative theory should take a nonaggregative and person-based form, or an aggregative and impersonal form, will therefore have to be decided on some distinct basis [50].

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## NOTES

- [1] Steinbock writes that the number of cases that fit into this category is "vanishingly small." See B. STEINBOCK (2001), *Harm and Future Persons*, unpublished manuscript. In her judgment, however, there do exist some genetic diseases that are "torture" for their victims. Persons who suffer such diseases, in Steinbock's view, have in some cases been wronged by having been born. Of course, a different way of calculating the value of a life to the one who lives might generate a more expansive understanding of what sorts of lives are less than those worth living. Steinbock, however, has no theoretical need for such a more expansive understanding since she adopts the further view that those whose lives, though worth living, fall below a "decent minimum" are also wronged by birth.
- [2] AC is likewise quite capable of deeming it *obligatory* for agents to bring an anguished person into existence in the case where that choice is required for the creation of additional aggregate wellbeing. The arguable deficiencies of AC will not, however, be a focus of the present paper. I note that some newer forms of aggregative consequentialism take steps to avoid some of those deficiencies. Those newer

theories take into account, in their ranking of alternative futures, or worlds, factors in addition to aggregate wellbeing, such as justice. See, e.g., Feldman (1995), Justice, desert, and the repugnant conclusion, *Utilitas* 7, pp. 194–204 (arguing that the contribution that the value the life has for the individual makes to total value can vary depending on facts about “desert”).

- [3] I have suggested a person-based approach elsewhere. See Roberts (2002), “A New Way of Doing the Best That We Can: Person-Based Consequentialism and the Equality Problem,” *Ethics* 112, pp. 315–350 and esp. p. 327, and Roberts (1998) *Child Versus Childmaker: Future Persons and Present Duties in Ethics and the Law* (Lanham: Rowman & Littlefield Publishers, Inc.), pp. 62–65.
- [4] See Roberts (2002), op. cit., p. 329.
- [5] DEREK PARFIT has drawn a good deal of attention to the debate whether normative theory should take a person-affecting, or person-based, approach or an impersonal and aggregative approach. See (1984) *Reasons and Persons* (Oxford, Clarendon Press), pp. 351–79.
- [6] Parfit, op. cit., pp. 381–90.
- [7] For a conception of wellbeing as the capability to achieve functionings, including, e.g., social, intellectual and biological functionings, see, e.g., AMARTYA SEN (1995), *Inequality Reexamined* (Cambridge MA, Harvard University Press), pp. 31–55.
- [8] It seems plausible that a future person will not have been wronged *until* he or she exists and suffers a diminution in wellbeing compared to the level of wellbeing that he or she has at a better (maximal) alternative. But it does not follow from that idea that agents today do not today sometimes act in ways that will, tomorrow, wrong persons who do not *now* exist. Thus, according to the person-based approach that I describe, the only persons who never can be wronged at an alternative are those who remain *merely possible* relative to that alternative — i.e., those who do not and never will exist at that alternative. Cf. DAVID HEYD (1992), *Genethics: Moral Issues in the Creation of People* (Berkeley, University of California Press), pp. 99 and 105 (proposing a person-affecting approach that declares normatively insignificant the interests of those future persons whose existence “depends” in any way on choices the agent might make).
- [9] I have described these initial four principles elsewhere. See note 3 above. The version of Maximizing Principle II contained in Roberts (2002) mistakenly omits clause (iv), which is contained here and in Roberts (1998).

As noted in the text below, none of the initial four principles address cases involving tradeoffs, in which one person’s wellbeing can be increased only at a cost to someone else. To address tradeoff situations, I have elsewhere suggested person-based principles that appeal to a concept of “leximin,” according to which agents must first create additional wellbeing for the least well off, second for the next least well off, and so on. I have also elsewhere suggested person-based principles that take into account that, in tradeoff cases involving “merely reversing” changes, *how many* well off and badly off persons who exist at the respective alternatives (though not their *aggregate* level of wellbeing) is important. See Roberts (2002), pp. 326–332 and 347–349.

To simplify the discussion and because it seems likely to be correct though difficult to spell out, the assumption is made that agents, on their own or in concert with other existing and future agents, themselves make choices and take actions that bring about, however unintentionally, specific futures, and thus that the assessment of a given future (as permissible or not) will reflect on the choices and actions of agents at that future. See P. VALLENTYNE (2000), critical review of Roberts (1998), *Nous* 34, pp. 634–647. The discussion here profits from that article but does not address all the concerns raised there.

- [10] A *second* category of nonidentity cases — involving cases of anguished existence, that is, lives that are *less* than ones worth living — is introduced in part 3 below. In addition, I have argued elsewhere with respect to a *third* category of nonidentity cases that PBC avoids the troubling result. GREGORY KAVKA’s “slave child” case belongs to that third category. See Kavka (1981), The paradox of future individuals, *Philosophy and Public Affairs* 11, 2, pp. 93–112. Since the couple’s signing the contract, accepting the money and producing the child into slavery taken together is, we may suppose, *not* the alternative that maximizes that child’s wellbeing, it is not an alternative that PBC will automatically deem morally permissible. In other words, depending on the assumptions that we make — including assumptions regarding the wellbeing costs to others — PBC’s maximizing principles will imply that the slave child has been wronged and hence that the alternative itself is impermissible. See Roberts (1998), op. cit., pp. 87–126. But this is no criticism of Kavka. Rather, it was Kavka’s presentation of the slave child case that drew attention to the fact any *defensible* person-based approach must set a plausibly stringent standard of

conduct — by including, e.g., strong maximizing elements. Because it includes strong maximizing elements, PBC sets a plausibly stringent standard.

Some formulations of a person-based approach — and of the person-affecting intuition — seem to focus on the plight in which the potential victim *would* have found himself or herself had the questionable choice not been made. Such principles lead us to extremely troubling conclusions. PBC, however, just like AC, does not deny that an agent has done something wrong in the case where, for example, things *would* have been still worse for *p* had the agent not made the choices that he or she in fact did make. Thus, a person *p* may well be wronged at *X* even if, had agents not effected *X*, they *would have* effected some *Y* such that *p* has less wellbeing at *Y* than at *X*. This can happen in a case — like the slave child case — at which there exists some third *Z* at which *p* has still more wellbeing. AC has the same structure and, in this respect, both AC and PBC set a similarly same high standard.

- [11] Parfit, op. cit., pp. 367–71. In contrast to Kavka’s slave child, it is easy to see how the agent, Mrs. Dontneed, could have created additional wellbeing for Dodie.
- [12] We should add the supposition here that the alternative of having the egg collected, cryopreserved for subsequent fertilization and transferred back to Ms. Needflaw’s uterus once her condition passes did not exist (at the relevant time) as a better alternative from the point of view of the child, Nellie, who is eventually born.
- [13] It is important that we specify that the reason that Nellie’s life is burdened has nothing to do with how Nellie is treated by her parents or society at large once she is born, and that the disease that is the root cause of her suffering is not one brought on, pre- or post-conception, by parental drug abuse, corporate environmental policies or the genetic manipulations of a scientist (mad or not). Under any of these other scenarios, there does appear to be an alternative at which agents create additional wellbeing for Nellie. In contrast, in the case under consideration here there exists no such better-for-Nellie alternative.
- [14] I am assuming a conventional idea of what kind of life someone must lead in order for that life to be considered to have, overall, a positive level of wellbeing. Such a life may be highly flawed — though not anguished. For views that challenge this conventional idea, see T. TANNSJO (1997), *Doom soon? Inquiry* 40, pp. 250–251, and T. TANNSJO (1992), Who are the beneficiaries? *Bioethics* 6, pp. 294–95. Also see J. RYBERG (1996), “Is the Repugnant Conclusion repugnant?” *Philosophical Papers*, 25, p. 167.
- [15] PBC’s maximizing principles are set forth at the end of part 1 above.
- [16] The basic “person-affecting,” or “person-based,” intuition, as PBC interprets it, is set forth at the end of part 1 above.
- [17] But see Heyd, op. cit., pp. 99 and 105.
- [18] Parfit, op. cit., pp. 368 and 378 (writing of his Two Medical Programmes case that “I judge the two programmes to be equally worthwhile.”).
- [19] Parfit, op. cit., p. 378.
- [20] As just noted, Parfit himself takes pains to note that some of his peers’ intuitions run in the opposite direction. Parfit, op. cit., pp. 368 and 378.
- [21] Parfit, op. cit., pp. 381–90.
- [22] A. BUCHANAN, D. W. BROCK, N. DANIELS and D. WIKLER (2000) *From Choice To Chance: Genetics and justice* (Cambridge, Cambridge University Press), p. 256 and, generally, pp. 249–256.
- [23] The authors do reserve mild praise for a person-based approach: “Typical cases of harm prevention and rights violations,” they say, “are properly assessed with standard [that is, person-based] principles.” The authors also note that “[o]nly [person-based] principles seem likely to avoid unacceptable implications like [Parfit’s] repugnant conclusion.” Buchanan, op. cit., pp. 250 and 254. This fairminded recognition of the strengths of the person-based approach seems inconsistent with the author’s subsequent conclusion that the choice to bring the unavoidably diseased child into existence is on par with “child abuse and neglect.” See Buchanan, op. cit., p. 256. See also P. SINGER (1993) *Practical Ethics* (Cambridge, Cambridge University Press), pp. 122–125 (finding the Parfitian case to support a “replaceability view” which itself is inconsistent with a person-based approach).
- [24] An application that the authors’ point might be considered to have is that it gives women who might otherwise be hesitant to choose abortion, thinking it “immoral,” a normative reason why they must choose abortion. But the point is useful in that sense only if a woman mistakenly thinks that abortion at an early stage is in fact morally questionable to begin with and hence in need of justification. Rather than condemn *without a sound normative basis* the choice to bring into existence an unavoidably diseased child

though one whose life is unambiguously worth living, better to provide a reasoned basis for the view that the choice to abort is not in itself immoral.

- [25] This discussion of the relationship between PBC and the issue of whether it can ever be better never to have existed at all profited from the comments of one of the anonymous referees for this journal.
- [26] PBC's maximizing principles are set forth at the end of part 1 above.
- [27] Some courts have suggested that the value of never having existed at all is a profound mystery, a matter better left to the philosophers and the theologians. See note 37 below. Putting aside the issue of just who is qualified to say, is there really any huge mystery? Tedeschi, at least, has argued that in the context of wrongful life there is not. According to him, for the one who never exists at all nonexistence is plausibly not a parade of horrors but rather just nothing at all, containing neither benefits nor burdens for the one who never exists. He thus finds it plausible to assign a value of zero to the state of nonexistence. Tedeschi, *op. cit.*, pp. 513–538.
- [28] Analogies with end-of-life issues give additional support to BNB. It is surely correct in rare circumstances to say that, from the individual's own point of view, the neutrality of death would be better than a continued, anguished life. Such a statement should not be construed to imply that one would *experience* more pleasure — say — after death than one would experience if one continued to exist. Nonetheless, death might be better than continued existence in the sense that the fact of death cuts off the continued accrual of *negative* wellbeing. Getting nothing at all, in other words, is better than getting the truly horrible. In this way, an earlier death functions to create additional wellbeing for the subject, at least on a net basis.
- If it is correct in rare circumstances to say that, from the subject's own point of view, death is the better alternative, why is it always problematic to say that it would have been better never to have existed at all than to have lived an anguished life? If the level of wellbeing that in fact accrues to *p* is indeed in the negative range, and if the level of wellbeing that accrues to *p* at any alternative at which *p* does not exist is zero, then plausibly never having existed at all *is* the better of the two alternatives *for that person*.
- In some ways, the issue of why death is a terrible thing is *harder* than the issue of why never having existed at all can sometimes be a better thing. That is because the state that follows the moment of death does not seem itself to be a bad thing from the point of view of the one who has died, but rather a neutral thing; yet we think at the same time that death itself is, normally, a terrible thing. Nonetheless, persuasive analyses of why death is a bad thing have been given. Indeed, some recent discussions have focused, not on *why it is* that death constitutes a harm, but rather *when* the harm of death accrues. See, e.g., W. GREY (1999), Epicurus and the harm of death, *Australasian Journal of Philosophy*, 77, 3, pp. 358–64.
- [29] An alternative justification for P1, which allows Nora to have some properties, though not any that add up to anything other than a zero level of wellbeing, even at worlds at which she does not exist, is suggested at note 46 below.
- [30] Thus, consistent with the present paper, the pertinent properties may be properties, like pleasure or happiness or, on some accounts, preference-satisfaction, that we must be conscious of in order to have at all. Alternatively, they may consist of properties that — like having a specific amount of money in the bank on a certain day — we have no conscious awareness of. Thus, the pertinent properties might be a matter of having various resources or freedoms or capabilities at our disposal. See note 7 above.
- [31] Parfit, *op. cit.*, pp. 381–90.
- [32] Parfit, *op. cit.*, pp. 385 and 388.
- [33] On such grounds, Ng has argued that the repugnant conclusion is not repugnant at all. See Y. Ng (1989), What should we do about future generations? *Economics and Philosophy*, 5, pp. 242–244.
- [34] PBC's maximizing principles and the basic "person-affecting," or "person-based," intuition are set forth at the end of part 1 above.
- [35] In contrast to wrongful life, causes of action for wrongful birth do not rely on a distinction between a life worth living and a life *less* than one worth living. Surprisingly, the few courts that have recognized the claim of wrongful life have not explicitly required a showing that the disease is so burdensome to the child that it is plausible to say that the child should never have been brought into existence to begin with. But it is difficult to understand in such cases how the child has been *harm*ed when the life remains unambiguously worth living. For a recent discussion, see *Moscatello v. University of Medicine and Dentistry of New Jersey*, 342 N.J. Super. 351; 776 A.2d 874; 2001 N.J. Super. LEXIS 255 (App. Div. N.J., 2001).
- [36] It might seem that, so long as the *parents'* cause of action for wrongful birth is legally recognized, there is not much need for the *child's* cause of action for wrongful life to be recognized as well. From a

practical point of view, however, the difference in the two kinds of relief is significant. In the case where the child is deemed the injured party, the court is permitted to award damages that will be held in trust *for the child*. In contrast, if the parents alone are deemed injured, damages will be awarded outright for the benefit of the *parents* even in the case where they have no continuing legal responsibility for the child. Moreover, statutes of limitation, which for purposes of efficiency and fair administration of justice limit the time period during which lawsuits may be brought, include generous “tolling” provisions in the case of lawsuits brought by minors. Because of the tolling provisions, minors may have until they have reached the age of twenty or more before their own lawsuits will be dismissed as untimely. In contrast, depending on the specific state statute, parents may lose their cause of action in medical negligence within two or three years of their child’s birth.

- [37] The New Jersey Supreme Court, in dismissing the claim of wrongful life, writes that, “[u]ltimately, the infant’s complaint is that he would be better off not to have been born. Man, who knows nothing of death or nothingness, cannot possibly know whether that is so.” *Gleitman v. Cosgrove*, 49 N.J. 22, 63, 227 A.2d 689, 711 (1967) (Weintraub, J., dissenting in part). The New York Supreme Court fell in line, suggesting that assigning a value to nonexistence was nothing that the court was equipped to do but involves rather a “mystery more properly left to the philosophers and theologians.” *Becker v. Schwartz*, 46 N.Y. 2d 401, 411, 386 N.E.2d 807, 812, 413 N.Y.S.2d 895, 900 (1978).

Hackett observes that the few courts that have recognized claims for wrongful life have used one of four approaches: “1) focusing solely on the child’s present condition and awarding general damages for pain and suffering; 2) collapsing the concept of injury into a consideration of damages and limiting the award to special, but not general, damages; 3) choosing nonexistence by judicial fiat; or 4) dismissing the injury requirement in favor of fairness and deterrence.” KRISTIN HACKETT, *The fragile X men: scientific advances compel a legislative treatment of wrongful life and wrongful birth*, 2 *Jo. Law & Tech.* 249, 253–54 (1987). Only the third approach recognizes the plaintiff’s claim that he or she has been injured in some traditional sense — e.g., that the defendant’s conduct has rendered the plaintiff less well off than he or she would, or could, have been had he or she never existed at all. This approach was adopted by the court in *Continental Casualty Co. v. Empire Casualty Co.*, 713 P.2d 384, 393–94 (Colo. App. 1985) (“we are unwilling to say as a matter of law that life, even with the most severe and debilitating of impairments, is always preferable to non-existence”) (rev’d in part, *Lininger v. Eisenbaum*, 764 P.2d 1202, 1211 (Colo. 1988)).

For an argument favouring the claim of wrongful life, but on a theory rooted in family law rather than the inherently person-based principles of the law of torts, see PHILIP G. PETERS, JR., *Rethinking wrongful life: bridging the boundary between tort and family law*, 67 *Tul. L. Rev.* 397, 398 (1992) (“Traditional tort law embraces an unduly narrow notion of corrective justice that fails to resolve wrongful life disputes satisfactorily.”). Still another theory of wrongful life retains the requirement of personal injury but argues that the injury is not a function of the fact the plaintiff would have been better off never having existed at all but rather a function, under a theory of informed consent, of the parents’ being denied the right to choose, on the child’s behalf, whether the child should be brought into existence to begin with or not. See, e.g., *Procanik v. Cillo*, 478 A.2d 755, 769 (1984) (Handler, J., concurring in part and dissenting in part).

- [38] J. Broome (1999), *Ethics Out Of Economics* (Cambridge, Cambridge University Press), p. 168 (italics added) (citing Parfit, *op. cit.*, p. 489). In presenting the argument that I have quoted, Broome’s purpose is not to undermine PBC but rather to investigate Parfit’s idea of a life that “has value to the person whose life it is,” and of a “life worth living,” and, more broadly, to challenge the notion that “goodness cannot be reduced to bitterness.” Broome, *op. cit.*, pp. 167–70. However, the argument itself has implications that go beyond the stated purpose, including implications that challenge PBC. In addition, in the context of a question-and-answer period Broome mentioned, without necessarily endorsing, the adapted version of the argument as a challenge to a person-based approach. Center for Human Values, Princeton University, Fall 2000. On other grounds, Broome has explicitly argued for the inconsistency of PBC. See, e.g., J. BROOME (1992), *Counting the Cost of Global Warming* (Cambridge, The White Horse Press), pp. 125–30.

Theorists who have questioned that comparisons can sensibly be made between never having existed at all and existence include C. WOLF (1997), *Person-affecting utilitarianism and population policy*; or, Sissy Jupe’s theory of social choice, in N. Fotion and J. C. Heller (eds.) *Contingent Future Persons* (Dordrecht, Kluwer Academic Publishers), pp. 108–109; Heyd, *op. cit.*, pp. 30–33; C. COHEN (1996) “Give me children or I shall die. New reproductive technologies and harm to children,” *Hastings Center*

Report 26, 2, p. 22; and P. DASGUPTA (1993) *An Inquiry Into Well-Being and Destitution* (Oxford, The Clarendon Press), p. 383 (“It makes no sense to attribute a degree of well-being, low or high or nil, to the ‘state of not being born.’ Non-existence is like nothing for us, not even a very long night, because there is no *us* to imagine upon. One can’t be asked what it would be like to experience one’s own nonexistence, for there is no *subject* of experience in non-existence.”).

Theorists who accept that such comparisons can sensibly be made include N. HOLTUG (2001), On the value of coming into existence, *Journal of Ethics*, 5, 4, pp. 361–384; F. FELDMAN (1991), Some puzzles about the evil of death, *The Philosophical Review* 50, 2, p. 210 (“I stipulate that if *s* fails to exist at *w*, then  $V(s,w) = 0$ .”); and Tedeschi, op. cit., pp. 513–538.

- [39] Broome (1999), op. cit., p. 168.
- [40] An interesting question would be on whether less standard views might allow such a reference. After all, the term “Pegasus” used by us might be taken to refer to a possible Pegasus — that is, to an individual who has all the requisite Pegasus features and who exists in some possible world distinct from our own. But claiming any such successful reference to a merely possible Nora might be a much more difficult trick, in view of the fact that she doesn’t come with a story, and residents of hence have no genuine clue as to what the “requisite Nora features” might be. In any event, I will have no need to make any appeal to any such less standard views within the scope of the present paper.
- [41] The “never existent/never wronged” principle, a component of PBC, is set forth at the end of part 1 above. The merely possible, according to that principle, are never wronged.
- [42] Perhaps the claim that such an attempt to refer seems doomed to fail is too strong. If we can refer to Pegasus — and the doctrine of *possibilism* claims that we can — then we likely can refer, as well, to the child we would have had had we had a third child (e.g.) and make claims of various sorts about that child. Possibilism implies that there exist objects, and that we can refer to them, that do not exist as ordinary objects but do nonetheless have real existence as merely possible objects. A possibilist semantics thus includes such merely possible objects in the domain of discourse — not just at remote possible worlds but at the actual world as well. But whether possibilism is plausible or not is not an issue that is material to the present paper. For PBC has no need to refer to merely possible persons. PBC requires that we be able to refer to Nora, who by hypothesis exists, and to say something about what things would be like for her had she never existed at all. But PBC does not require that we be able to refer to the present King of France, or Pegasus, or the anguished sister Nora would have had had Nora been an identical twin.
- [43] See P. Vallentyne, op. cit., pp. 634–647.
- [44] The discussions in both this subpart (ii) and the next (iii) were substantially shaped by the comments of one of the anonymous referees for this journal.
- [45] I owe this example to Alan McMichael.
- [46] There is a second objection to the stated rationale for why Nora must have B at  $\beta$ . I suggested in part 4.B that P1 is plausible because Nora has *no properties at all* at any alternative at which she does not exist. But we might revise that statement. We might say, instead, that P1 is plausible because Nora has *no wellbeing-pertinent* properties at  $\beta$ . She may, in other words, have other properties at  $\beta$ , but she does not have any of the kinds of properties that “add up” to any level of wellbeing other than a zero level of wellbeing. We might say, then, that at  $\beta$  it is not the case that Nora has, e.g., the properties of being pleased or pained, of being happy or unhappy, of having various preferences satisfied or left unsatisfied or of having various capabilities or suffering restrictions on those capabilities. We might then take the view that the claim that Nora has *no properties at all* at  $\beta$  is a different — and bigger — question. Thus, it is consistent with the claim that Nora has no wellbeing-pertinent properties at  $\beta$  — thus that she has a zero level of wellbeing at  $\beta$  — but that at the same time she *does* have B at  $\beta$ . For B itself is plausibly not a wellbeing-pertinent property — the kind of property that helps to determine the level of wellbeing that one has.

This alternative account of wellbeing, which admits that Nora has B at  $\beta$  but still insists that her level of wellbeing is zero, relies on a metaphysical notion that an individual can have a property at an alternative without existing at that alternative. However, while I recognize that there do exist theories according to which *having a property* and *existing* do not necessarily come together (Pegasus on such accounts does not exist in the ordinary sense but nonetheless has wings), I do not particularly want the plausibility of BNB, and in turn of PBC, to rely so completely on our willingness to endorse such an account. In addition to possibilism, other, more routine, theories as well may endorse the idea that individuals can have properties at worlds at which they do not exist. Thus, we can at least appreciate

that, on some theories, if it is, e.g., true that Nora at  $\alpha$  has the property of experiencing pain, then it is likewise true at  $\beta$  that it is true that Nora at  $\alpha$  has the property of experiencing pain. But a metaphysics that would validate an inference such as this one will certainly not require that Nora *exist* at  $\beta$ .

- [47] Such an approach does not require an unduly restrictive account of properties. In other contexts, consistent with this view, we might take the view that the predicate, “never having been president,” does express a genuine property. Thus, we can say that in any alternative in which George W. Bush exists and is not president, George W. Bush has the genuine property of having never been president.
- [48] Suppose one does take the view — regarding, say, the assertion that had George W. Bush never existed at all, he would never have been president — that the predicate “never having been president” expresses a property that is attributed by the assertion at alternatives at which George W. Bush does not exist to the person, George W. Bush. My own guess is that such a generous view of what counts as a property, to be plausible, would have to be accompanied by a further account that explains how it is that one can both have a property at a world  $X$  and not exist at  $X$ . It would certainly be possible to give such an account. We could say, for example, that the Bush assertion does not attribute the property of never having been president to George W. Bush at some world where he does not exist, but rather attributes that property to George W. Bush in fact, that is, at  $\alpha$ . Then we would have to adjust our understanding of what property the predicate expresses in some way. One possibility would be to say that the property expressed is just the property of *never having been president at  $\beta$* . Our talk about alternatives at which George W. Bush does not exist would on this view be reducible to talk about the actual situation and the actual George W. Bush. Despite my own reluctance to go down such a metaphysical path, I think that would be preferable to accepting the idea that the Bush claim itself is either false or incoherent. But, as I have argued, I do not think we are faced with this choice, since we do not seem to have any particular reason to adopt such a generous view of properties to begin with.
- [49] Each of these principles is set forth at the end of part I above.
- [50] I am grateful of Eva Bodanzsky, Ben Eggleston and Alan McMichael and to the anonymous referees of this journal for their acute comments on an earlier version of this paper.