
Legal Actions:
Wrongful conception, wrongful birth: Legal actions brought on behalf of parents who seek damages from a third party for wrongful or negligent actions resulting in the conception or birth of a child who would not have been conceived/born but for the negligent action in question.

Wrongful Life: Legal action brought on behalf of the child, seeking damages for wrongful or negligent actions that resulted in the child’s birth, and which wrongful actions are coincidently responsible for disadvantage or disability suffered by the child.

Three Advantages of Wrongful Life Actions: (117)
1) Parents may not be legally responsible for the care of their children after the children become adults, but the value of Wrongful Birth suits can only include costs that are legally imposed, not those that are ‘voluntarily accepted.’
2) In wrongful birth/conception actions, the parents must claim that having the child was bad for them. “Even if true, once the child exists such allegations could cause the child and her caretakers psychological harm.” (117)
3) Wrongful life actions permit children to sue parents for callous or negligent creation. This feature can be especially important when families fail to protect children’s interests.

When can you successfully sue someone? Must show that the person’s wrongful or negligent action caused harm.

Problem for wrongful life actions: If one’s life is ‘worth living,’ even if it includes disability or disadvantage, can one truly claim to have been harmed by the act of one’s own creation?

The Status Quo:
1) Most US courts reject WL actions altogether. Shiffrin says that WL actions have been successful in California, New Jersey, and Washington. 118)
2) Defenders of WL actions mostly argue that they are appropriate only when they are brought by people whose burdens are so severe as “to make their lives overall not worth living.” (118)
3) Liability has only been found in cases where procreation was aberrant: that is, where it was <negligent, reckless, or malicious> with respect to the interests of the child.

Feinberg: Argues that legal responsibility for WL where the person’s life is ‘worth living’ is like “holding a rescuer liable for injuries he caused an endangered person.”

Example: A breaks B’s arm while she is saving him from drowning.

The View: If life is overall a benefit to the person in question, then he or she cannot claim to have been harmed by an act but for which s/he would not have been born at all.

Feinberg on Harm: A harms B iff
1) A acts
2) A’s action is defective or faulty with respect to the risks it creates to B, that is it is done either with the intention of producing the consequences for B that follow, or similarly adverse ones, or with negligence or recklessness with respect to those consequences.
3) A’s acting in that manner is indefensible, that is, neither excusable nor justifiable.
4) A’s action is the cause of an adverse effect on B’s self-interest.
5) A’s action is also a violation of B’s rights.
6) (Counterfactual Test) B’s personal interest is in a worse condition than it would have been had A acted as s/he should have instead of as s/he did. (Feinberg, p. 6-7)

**Shiffrin: Problems with Feinberg’s View (121)**
1) “[F]ails to accommodate much less explain, some deep asymmetries between benefits and harms.
2) The ‘interest’ view is subject to the arbitrary ‘starting point’ of the victim. (122)
3) The view fails “to identify harm where it occurs. Shiffrin claims that harms are noncomparative and cannot simply be aggregated with benefits.

**The “No-Difference” view:**

**Negligent Physician 1:** Because Alph is concerned about the possibility that the child he might conceive will have avoidable birth defects, he visits a physician for tests. The tests show that if Alph conceives a child during the next month, the child will suffer from a severe birth defect. If he conceives a child after this period has passed, there is every reason to believe that his child will have no such disadvantage. In a state of drunken carelessness, the physician misplaces the results of Alph’s test, but blithely judges that that Alph is unlikely to pass on any defect to his children. As a result of the physician’s reprehensible carelessness, Alph does not wait to conceive Beth, who is born with a serious birth defect for which there is no effective treatment or accommodation. While Beth is seriously disadvantaged by her disability, her life is not so miserable that she regrets having been born. (Wolf 2010)

**Negligent Physician 2:** Because Alph is concerned about the possibility that the child he might conceive will have avoidable birth defects, he visits a physician for tests. The tests show that if Alph conceives a child during the next year, the child will suffer from a severe birth defect. But a cheap pharmaceutical remedy is available, and if Alph takes it there is every reason to believe that his child will have no such disadvantage. In a state of drunken carelessness, the physician misplaces the results of Alph’s test, but blithely judges that that Alph is unlikely to pass on any defect to his children. As a result of the physician’s reprehensible carelessness, Alph does not take the appropriate medicine and conceives Beth, who is born with a serious birth defect for which there is no effective treatment or accommodation. While Beth is seriously disadvantaged by her disability, her life is not so miserable that she regrets having been born.

**Status Quo:** Beth has a case against the physician in NP2 but not in NP1.

**No Difference Claim:** There is no morally significant difference between NP1 and NP2, therefore it is inappropriate that our legal system recognizes Beth as having been harmed in NP2 but not in NP1.
**Shiffrin:** “Typically, harm involves the imposition of a state or condition that directly or indirectly obstructs, prevents, frustrates, or undoes an agent’s cognizant interaction with her circumstances and her efforts to fashion a life within them that is distinctively and authentically hers—as more than merely that which must be watched, marked, endured, or undergone.” (123-4)

**Rescue Case:** “As long as it is clear that the rescuer is not to blame, I am not sure what is gained by denying that the rescuer inflicts a lesser harm, whereas the denial seems in tension with recognizing justified harms and harming actions.” (125)

“Although we sometimes speak as though removing someone from harm benefits that person, it does not follow that the beneficial aspect of saving does the moral justificatory work for inflicting the lesser harm. Rather, I believe that the fact that a greater harm is averted performs the justificatory service. A more closely tailored reading of the rescue case is that it illustrates that when a person is unavailable for consent, it can be justified both to inflict a lesser harm upon her to avert a greater harm, and to refrain from providing compensation or apologies for one’s act.” (126)

**Relevance of Consent:** “It seems wrong to perform a procedure on an unconscious patient that will cause her harm but also redound to her greater, pure benefit. At the very least, it is much harder to justify. For example, it seems wrong to break an unconscious patient’s arm even if necessary to endow her with valuable physical benefits, such as supernormal memory, a useful store of encyclopedic knowledge, twenty IQ points worth of extra intellectual ability, or the ability to consume immoderate amounts of alcohol or fat without side effects. At the least, it would be much harder to justify than inflicting similar harms to avert a greater harm, such as death or significant disability.” (127)

(Compare case of “Wealthy” pp. 127-8)

**Procreation as a Harm to the Child:** “…it is both coherent and true that causing a person to exist can benefit and harm the resultant person. Furthermore, I assume that in the vast majority of cases, causing a person to exist does actually provide an overall benefit to the resultant person. Nevertheless, even though procreators may benefit their progeny by creating them, they also impose significant burdens on them. By being caused to exist as persons, children are forced to assume moral agency, to face various demanding and sometimes wrenching moral questions, and to discharge taxing moral duties. They must endure the fairly substantial amount of pain, suffering, difficulty, significant disappointment, distress, and significant loss that occur within the typical life. They must undergo the fear and harm of death. Finally, they must bear the results of imposed risks that their lives may go terribly wrong in a variety of ways.”

**Hypothetical Consent as an Alternative Justification for harms inflicted by procreative actions?**

“…four factors make the appeal to hypothetical consent problematic: (1) the fact that great harm is not at stake if no action is taken, (2) but if action is taken, the harms suffered may be very severe; (3) the imposed condition cannot be escaped without high costs; and (4) the hypothetical consent procedure is not based on features of the individual who will bear the imposed condition.” (133)

**Jan Narveson’s Person Affecting Principle:** It is good to make people happy. But we may be indifferent about making happy people. (Narveson also assumes that it is bad to create people who are doomed to unhappiness.)
“I am not advancing the claim that procreation is all-things-considered wrong. It is consistent with these arguments to regard nonconsensual burden-imposing actions as morally problematic but not always impermissible, or to regard procreation as a special case. All I mean to advance is the claim that because procreation involves a nonconsensual imposition of significant burdens, it is morally problematic and its imposer may justifiably be held responsible for its harmful results.” (139)