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Questioning the Significance of the Non-identity Problem in Applied Ethics

Introduction

In this paper, I object to the way in which some authors appeal to the non-identity problem in order to defend particular positions in applied ethics. First, I argue that these authors should not claim that their arguments are based on the non-identity problem. Instead, I suggest they should appeal to the non-identity effect or the non-identity argument. This, in itself, may not look like a significant objection. Those who have appealed to the non-identity problem in their arguments may complain that this is merely pedantry about using the correct terms. I will argue, however, that making a clear distinction between the non-identity effect and the non-identity problem will help us to appreciate the more substantive point that there is something deeply problematic with the way in which some authors appeal to the non-identity problem, especially in the context of writing for an audience of non-philosophers.

The non-identity problem

The non-identity problem is a philosophical problem most commonly associated with Derek Parfit, who discussed the problem in his *Reasons and Persons*.¹ One example that he gives to explain the problem is *The 14-Year-Old Girl*:

This girl chooses to have a child. Because she is so young, she gives her child a bad start in life. Though this will have bad effects throughout this child's life, his life will, predictably, be worth living. If this girl had waited for several years, she would have had a different child, to whom she would have given a better start in life.²

Parfit imagines what we might say to try to persuade the girl to wait before having a child:

“This is not entirely your affair. You should think not only of yourself, but also of your child. It will be worse for him if you have him now. If you have him later, you will give him a better start in life.”³

Parfit, however, explains that this argument is problematic. According to Parfit, the girl's decision cannot be said to harm the child who is born, if she has the child at 14 because, if she has a child later, it will be a different child. Yet Parfit does not want to resist the claim that the child ought to wait:

Do we cease to believe that it would have been better if this girl had waited, so that she could give to her first child a better start? *I continue to have this belief...* But we cannot defend this belief in the natural way I suggested. We cannot claim that this girl's decision was worse for her child.⁴

Parfit still wants to claim that it would be better to wait. If you do not share Parfit's intuitions about this case, consider a more radical case. Joel Feinberg, for example, focuses on a case in which “a couple deliberately conceive a child, knowing that it will be born with a serious and permanent impairment” despite knowing that they could have conceived a healthy child, simply by delaying conception for a month.⁵ If the parents delay conception, it will not be a better start for the same individual. It will be a different individual who is born. Yet, many want

to resist the claim that there is nothing wrong with refusing to wait. This is what leads to the *problem*.

More generally, M.A. Roberts characterises the non-identity problem as follows:

If the existence is worth having and no one else's interests are at stake, it is unclear on what ground morality would insist that the choice to bring the one person into the flawed existence is morally wrong. And yet at the same time... it seems that in some cases *that choice clearly is morally wrong*. The nonidentity problem *is the problem of resolving this apparent paradox*.⁶

Parfit suggests that the way to resolve the apparent paradox is to find a *new principle* that might be able to justify our intuition that the girl *ought* to have waited. Parfit suggests that, "The objection must in part appeal to the effects on the possible people who, if we had chosen differently, would have lived... We must appeal to a claim... that compares two different sets of possible lives."⁷ Parfit considers what principle we might appeal to and – tentatively – suggests that we might appeal to something like principle Q:

If in either of two possible outcomes the same number of people would ever live, it will be worse if those who live are worse off, or have a lower quality of life, than those who would have lived.⁸

If we are not convinced that Q is the best justification for the claim that the girl ought to wait, this simply supports the idea that we have a problem. If we are not happy with Q, we will need to solve the non-identity problem in some other way. Either way, it is clear that the aim, for Parfit, is not to highlight the non-identity *effect* in order to conclude that we must resist the claim that the girl has done something wrong. It is clear, therefore, that Parfit himself does *not* take the

non-identity problem to give us a compelling reason to change our judgement about particular cases.

The non-identity problem in applied ethics

Despite this, it is relatively common for authors to appeal to Parfit's non-identity problem, presenting it as if it is a strong, or even decisive, consideration in favour of their conclusions.

Imogen Goold and Julian Savulescu argue in favour of allowing egg freezing, writing:

In the extreme case, even if IVF of older women results in physical damage to the child produced, that child has not been harmed by being conceived by social IVF (except if its life is so bad that it is not worth living). If the couple had used another means of conception at a different time, a different child would have been born. This is the non-identity problem and it reduces much of the force of the so called "child welfare" arguments against reproductive technologies, including social IVF.⁹

Discussing the case of parents who wish to use genetic testing to select an embryo with the "deafness gene", and the case of a woman choosing to have children at the age of 59,¹⁰ Tony Hope states that the conclusion that no individual is harmed in "identity affecting decision" seems to go "against normal intuition", but claims, confidently:

In this case, it seems to me, normal intuition is wrong: it is based on a false metaphysics.¹¹

Similarly, although they do not appeal to the non-identity problem, explicitly, it seems to me that Tony Hope, Gill Lockwood and Michael Lockwood have the non-identity problem¹² in mind when they consider the question “Should older women be offered in in vitro fertilisation?”, writing:

The possibility of “this” potential child being born to any other (possibly better) parents does not arise.¹³

Similarly, John Broome puts a lot of weight on what he calls the non-identity *effect*¹⁴ in his discussions of climate change.¹⁵

The non-identity problem, the non-identity effect, and the non-identity argument

To highlight the problem it is useful to make a distinction between the non-identity *problem*, the non-identity *effect*, and the non-identity *argument*.

The non-identity problem was described earlier in this paper. In contrast, the phenomenon that John Broome calls the non-identity effect is only a part of what leads to the problem.¹⁶ To use Parfit’s example again, if the girl delays having a child until she is older, this will not result in the same child being born later. Rather, a different child will be born. *This* is the non-identity *effect*. Almost no one challenges this claim – it is essentially an empirical claim about human biology. There is, however, disagreement about what follows from this claim.

Many agree with Parfit, and believe that the non-identity effect leads to a puzzle, and many authors have written on the non-identity problem, suggesting different solutions.

The non-identity *argument* is much less commonly discussed in philosophy. It is one particular solution to the non-identity problem – suggested by David Boonin.¹⁷ Essentially, the solution is a simple one. We simply deny the claim that there is a problem. We take the non-identity effect to give us reason to reject our normal intuitions. We do not insist that there must be another explanation, which we will discover and which will justify our intuition, but instead we give up our normal intuition.

Thus, Boonin would suggest that, because of the non-identity effect, we should simply reject the claim that the 14 year old girl ought to wait until she is older before getting pregnant. And, in Feinberg's example, we should reject the claim that the couple ought to delay conception by a month, in order to avoid having a child who will have "a serious and permanent impairment".

Having emphasised these distinctions, I can summarise my objection as follows. Savulescu and Hope give the impression that Derek Parfit presented the non-identity *argument*, and also that most philosophers accept the non-identity argument, and that the non-identity argument is uncontroversial.

Parfit

Of course, just because the arguments originally come from Parfit, it does not follow that Parfit should be immune from criticism. Boonin may, in fact, be right.¹⁸ However, the arguments of Savulescu and Hope are objectionable for two reasons which do not apply to Boonin.

First, they do not *defend* their opposition to Parfit. Boonin defends his position at length. Savulescu and Hope do not. This leads to the second problem.

They do not even acknowledge their opposition to Parfit. On the contrary, they implicitly present Parfit (and the philosophical community as a whole) as being in support of their approach. As I have argued, this is not true. They could legitimately appeal to Boonin to support their approach, but Boonin explicitly recognises that he is disagreeing with Parfit, and he also recognises the fact that he is presenting a *very controversial solution* to the non-identity problem. This is clear from his blunt characterisation of the problem:

The argument rests on premises that most people seem to accept, yet produces a conclusion that *virtually everyone* rejects. This is what gives rise to the non-identity problem.¹⁹

Other Responses to Non-Identity Cases

Boonin's approach is only one possible solution to Parfit's non-identity *problem*, and certainly not one that is embraced by the majority of philosophers interested in the problem.

Elizabeth Harman, for example, rejects the claim that "An action harms a person *only* if it makes the person worse off than she would otherwise have been if the action had not been performed."²⁰ Instead, Harman defends the following *sufficient* condition for harm: "An action harms a person if the action causes pain, early death, bodily damage, or deformity to her, even if she would not have existed if the action had not been performed."²¹

Thus, Harman rejects Hope's assertion that "normal intuition is wrong: it is based on a false metaphysics."²² If Harman is right, there is no paradox to be

explained, and the non-identity problem does not arise, and Savulescu, Hope and others cannot appeal to the non-identity effect to support their arguments.

Admittedly, Harman is probably in the minority. Even if we reject Harman's position, though, this does *not* decide the matter in favour of Savulescu and Hope.

Like Parfit, Joel Feinberg also rejects the view that we should reject our normal intuitions. According to Feinberg's liberalism, the state is only justified in restricting people's liberty where this is necessary *to prevent harm* to others. As stated earlier, Feinberg focuses on a case in which a couple could avoid having a child with a serious and permanent impairment by delaying conception by a month. The problem for Feinberg is that, according to his version of liberalism, if the child cannot be harmed in this case – because of the non-identity effect – the state would not be justified in intervening.

Feinberg is keen to *resist* the conclusion that the parents have not done anything wrong, or that the state could not intervene in such cases. Instead, even though he does not seem to be entirely happy with his own solution, Feinberg believes that he has to amend his theory. He suggests that the best option for a liberal is to “allow the Parfit baby case to carve out a clear categorical exception to one's liberalism.”²³ Therefore, he restricts his liberal principles (which focus on harm) to the postnatal world.²⁴

More radically, in his discussion of the non-identity problem, Tim Mulgan goes further and uses these cases as a method for *testing* moral theories. He considers a number of cases in which he takes it for granted that certain decisions would be wrong, even though the person involved would not exist at all if a different decision had been made. For Mulgan, the question is not, are these acts permissible? The impermissibility of the choice is taken for granted. The question

is, what moral theory can capture our intuition that these choices would be impermissible? If a moral theory is not consistent with stating that these acts are impermissible, that is a reason to reject the theory, not a reason to think that, in these cases, we must conclude that there was nothing wrong with the decision in the first place.²⁵

Given that this is the philosophical context, it is rather odd to see authors appeal to the non-identity effect as if there is a clear consensus in philosophy. If there is anything close to a consensus, it is probably that there is, indeed, a problem that has not yet been solved.²⁶

Clarification

At this point, however, I should acknowledge that neither Hope nor Savulescu state, simply, that – because these decisions do not harm the child conceived – these decisions must be okay. Both acknowledge that there might be other considerations that could make certain reproductive choices impermissible. Tony Hope appeals to “maximising overall welfare”²⁷, and Savulescu defends what he calls the Principle of Procreative Beneficence, which states that:

couples (or single reproducers) should select the child, of the possible children they could have, who is expected to have the best life, or at least as good a life as the others, based on the relevant, available information.²⁸

Nevertheless, there remains a significant difference between Parfit’s discussion of the non-identity problem, and Savulescu and Hope’s. Parfit does not suggest that the alternative explanation that we appeal to would have less force than an appeal to person-affecting considerations of harm to the person conceived.

In general, Parfit is keen to find a principle that can do justice to our normal intuitions in the sorts of cases that he considers.

Tony Hope does not discuss this in detail. However, reading his chapter, “People who don’t exist; at least not yet”, one gets the impression that Hope does expect an appreciation of the non-identity effect to have a significant impact on our judgement about particular cases. In Savulescu’s work, this is more explicit. Goold and Savulescu claim that these “impersonal reasons” are “usually taken to have *less force* than strict, person-affecting considerations of harm to a child.”²⁹

Because they have less force than person affecting considerations, Goold and Savulescu are relatively dismissive of these considerations in their discussion of the permissibility of egg freezing.³⁰ Similarly, in discussing cases in which parents want to select for disability, Savulescu writes:

The only legitimate ground for interference in reproductive decisions would be an important detrimental *social* impact of such choices.³¹

This then is quite different from Parfit’s aim to find an alternative theory that can explain our usual intuitions.

The non-identity problem in an interdisciplinary context

To recognise the significance of my objection here, it is important to recognise the context of many of these arguments. That is, they are presented in the context of interdisciplinary discussions, where many readers are likely to be non-philosophers.

As such, one must appreciate that the reader is likely to take Hope and Savulescu to be representing conclusions that are endorsed by the philosophical community as a whole (or, at least, by the majority of philosophers).

It is particularly likely that a reader may interpret a claim in this way if the claim is presented as follows: “This is the non-identity problem and it reduces much of the force of so-called ‘child-welfare’ arguments.”³² Similarly, the reader can be forgiven for thinking that the account described is endorsed by the majority of philosophers if the claim is that these “impersonal reasons” are “*usually* taken to have less force than strict, person-affecting considerations of harm to a child,”³³ or if the author confidently asserts: “normal intuition is wrong: it is based on a false metaphysics.”³⁴

Some may argue that a reader should be a critical reader, and should consider the arguments critically, and consider whether or not they are persuaded by the argument. I have some sympathy for this view. On the other hand, it should also be acknowledged that it is much harder to be a good, critical reader in a discipline that is not your own than it is to be a critical reader in an area where you have expertise.

Therefore, I suggest that there is reason to think that there is some onus on authors to alert their readers to the fact that there are philosophers – including Parfit himself – who reach very different conclusions, despite considering the same issues.

Conclusion

I have not defended Harman’s response to the non-identity problem in this paper, or anyone else’s. I do not claim to have a solution to the non-identity problem. I have, however, shown that those who appeal to the non-identity effect (or – mistakenly – the non-identity problem), in order to argue that we ought to

revise our judgements about particular cases in applied ethics, seem to be committed to something like Boonin's response to the non-identity problem, reframing the non-identity problem as the non-identity *argument*. Furthermore, I have emphasised that Boonin's solution is only one way to resolve the apparent paradox in the non-identity problem, and it is not the solution endorsed by the majority, contrary to the impression given by some working in applied ethics.

Beyond this, my aim in this paper has been to argue for two conclusions: one for readers, and one for authors.

First, I stress that *readers* ought to be sceptical of arguments that rely heavily on an appeal to the non-identity effect, unless they have considered the various other proposed solutions to the non-identity problem, and have concluded that the correct response *is* to give up your common sense intuitions about which acts are permissible and which are not.

Second, I stress that *authors* ought to acknowledge the level of disagreement in the area, and should avoid giving the impression to a non-specialist audience that philosophers have reached a clear consensus about how to resolve the non-identity problem.

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- ¹ Derek Parfit, *Reasons and Persons*, (Oxford University Press, 1984), chapter 16.
- ² Derek Parfit, *Reasons and Persons*, (Oxford University Press, 1984), p. 358.
- ³ Derek Parfit, *Reasons and Persons*, (Oxford University Press, 1984), p. 358.
- ⁴ Parfit, *Reasons and Persons*, p. 359. (My italics.)
- ⁵ Joel Feinberg *Harmless Wrongdoing*, pp. 325.
- ⁶ Roberts, M. A., "The Nonidentity Problem", *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2013/entries/nonidentity-problem/>>. Accessed 13th Jan 2014. My emphasis.
- ⁷ Parfit, *Reasons and Persons*, p. 376.
- ⁸ Parfit, *Reasons and Persons*, p. 369. (And also see p. 377.)
- ⁹ Imogen Goold and Julian Savulescu, "In Favour of Freezing Eggs for Non-medical Reasons", *Bioethics*, volume 23, number 1, 2009, p. 55.
- ¹⁰ Tony Hope, *Medical Ethics: A Very Short Introduction* (Oxford University Press, 2004), pp. 48-54.
- ¹¹ Tony Hope, *Medical Ethics: A Very Short Introduction*, p. 57.
- ¹² Or, more accurately, the non-identity *effect*. This distinction will be discussed later.
- ¹³ Tony Hope, Gill Lockwood and Michael Lockwood, "An Ethical Debate: Should older women be offered in vitro fertilisation", *British Medical Journal*, volume 310, 1995, p. 1456.
- ¹⁴ This distinction will be discussed in more detail later.
- ¹⁵ John Broome, *Climate Matters: Ethics in a Warming World*, (W.W. Norton & Company, 2012), p. 62. (My italics.) On the face it, the ethics of climate change may not seem relevant to medical ethics, but see Rob Lawlor, "Freezing Eggs in a Warming World", forthcoming in *Utilitas*.
- ¹⁶ John Broome, *Climate Matters: Ethics in a Warming World*, (W.W. Norton & Company, 2012), p. 62. (My italics.)
- ¹⁷ David Boonin, "How to Solve the Non-identity Problem", *Public Affairs Quarterly*, volume 22, number 2, 2008.
- ¹⁸ Though, personally, I have concerns about Boonin's arguments. I plan to address these elsewhere.
- ¹⁹ David Boonin, "How to Solve the Non-identity Problem", *Public Affairs Quarterly*, volume 22, number 2, 2008, p. 128. My italics.
- ²⁰ Elizabeth Harman "Can we Harm and Benefit in Creating?", *Philosophical Perspectives*, 18 (1), 2004, p. 107. (My italics)
- ²¹ Harman "Can we Harm and Benefit in Creating?" p. 107.
- ²² Tony Hope, *Medical Ethics: A Very Short Introduction*, p. 57.
- ²³ Joel Feinberg *Harmless Wrongdoing*, (Oxford University Press, 1990) p. 327.
- ²⁴ Joel Feinberg *Harmless Wrongdoing*, pp. 325-7.
- ²⁵ Tim Mulgan, *Future People: A Moderate Consequentialist Account of Our Obligations to Future Generations* (Oxford University Press, 2006), pp. 7-16. For a more general discussion of whether we should have more confidence in our intuitions about different cases or in our commitment to a particular moral theory, see Brad Hooker's "Intuitions and Moral Theorizing" in Philip Stratton-Lake (ed.) *Ethical Intuitionism: Re-evaluations*, (Oxford, 2002).
- ²⁶ For an overview of the non-identity problem, see Roberts, M. A., "The Nonidentity Problem", *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2013/entries/nonidentity-problem/>>. Accessed 13th Jan 2014. My emphasis.
- ²⁷ Tony Hope, *Medical Ethics: A Very Short Introduction*, p. 53. (Also see pp. 46-48.)
- ²⁸ Julian Savulescu, "Procreative Beneficence: why we should select the best children" *Bioethics*, Volume 15 Number 5/6 2001, p. 415.
- ²⁹ Goold and Savulescu, "In Favour of Freezing Eggs for Non-medical Reasons", p. 56.

³⁰ Imogen Goold and Julian Savulescu, "In Favour of Freezing Eggs for Non-medical Reasons", *Bioethics*, volume 23, number 1, 2009, p. 55.

³¹ Julian Savulescu, "Deaf lesbians, 'designer disability,' and the future of medicine", *British Medical Journal*, volume 325, 2002, p. 773. (My italics.)

³² Imogen Goold and Julian Savulescu, "In Favour of Freezing Eggs for Non-medical Reasons", *Bioethics*, volume 23, number 1, 2009, p. 55.

³³ Goold and Savulescu, "In Favour of Freezing Eggs for Non-medical Reasons", p. 56. My italics.

³⁴ Tony Hope, *Medical Ethics: A Very Short Introduction*, p. 57.