The Non-Identity Problem

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You have an option; to conceive a child today who will have a significant birth defect, or to conceive a child in two months that will be healthy. Is it wrong to conceive the child with the birth defect?

I seem to be one of the few who thinks that her act is not wrong. I hold to the view of wrong action that states:

> *An act is wrong if and only if it is the act that a person with good desires, and lacking bad desires, would not have performed in the given circumstances.*

On this view, it is possible for a good person – a person who has only good motives and who lacks bad motives – would conceive such a child. I will make my case by arguing that the person who judges such an act to be wrong at the start is making an unwarranted assumption as to the character – the motives – of the person in question.

To make my case, I will begin with a version of the "intuitively wrong" case that David Boonin presents:

> *Wilma has decided to have a baby. She goes to her doctor for a checkup and the doctor tells her that there is some good news and some bad news. The bad news is that as things now stand, if Wilma conceives, her child will have a disability. . . . [W]hile the disability will be considerably far from trivial, the child's life will nonetheless clearly be worth living. [Furthermore], there will be no way to eliminate it or to mitigate its effects. The good news is that . . . [if] she takes a tiny pill once a day for two months before conceiving, her child will be perfectly healthy. The pill is easy to take, has no side effects, and will be paid for by her health insurance. Fully understanding all of the facts about the situation, Wilma decides that having to take a pill once a day for two months before conceiving is a bit too inconvenient and so chooses to throw the pills away and conceive at once. As a result of this choice, her child is born with a significant and irreversible disability.*[1]

Boonin assumes that Pebbles would be blind. However, the reader is invited to imagine any type of defect that will make Pebbles' life worse than that of a normal, healthy, child, but not so bad that it would make a reasonable person prefer death to a life with that condition.

To many people – quite a few people, apparently - Wilma would be acting immorally if she refused to take the pill and, instead, conceived a child right away. Boonin challenges his audience to explain why, exactly, this is wrong.

We are to assume that her decision harms nobody else in the community. Furthermore, Pebbles has no reason to complain since, if Wilma had decided to follow the doctor's prescription, Pebbles would not have existed at all. The child that Wilma would have conceived in two months has no valid moral claim to make against Wilma, since she could freely choose to have no child at all.

Specifically, Boonin gives the argument the following form:

[1] David Boonin, "Chapter 1: Five Plausible Premises and One Implausible Conclusion", excerpt from *Ethics and the Non-Identity Problem*, (2014), Oxford, Oxford University Press.

P1: Wilma's act does not make Pebbles worse off than she would have otherwise been.
P2: If A's act harms B, then it makes B worse off than B would have otherwise been.
C1: Wilma's act of conceiving Pebbles does not harm Pebbles (from P1 and P2).
P3: Wilma's act of conceiving Pebbles does not harm anyone else.
C2: Wilma's act of conceiving Pebbles does not harm anyone (from C1 and P3).
P4: If A's act does not harm anyone, then A's act does not wrong anyone.
C3: Wilma's act of conceiving Pebbles does not wrong anyone (from C2 and P4)
P5: If A's act does not wrong anyone, then A's act is not wrong.
C4: Wilma's act of conceiving Pebbles is not wrong.[2]

And yet, many are inclined to say that the conclusion is false. They are so strongly convinced that Wilma's act is wrong that they devote a great deal of energy into trying to discover where the argument goes wrong.

A Problem with P4

For the record, I do hold that there is a problem with this argument. P4 is false. However, the problem that I find with P4 will not be of a type that shows that Wilma's act is wrong.

Recall that P4 states:

P4: If A's act does not harm anyone, then A's act does not wrong anyone.

I will be employing the standard logical principle of *modus tollens.* According to this principle, if "not harm" implies "not wrong" then "wrong" implies "harm". However, I wish to argue that it is possible to wrong a person even though one does not harm that person – even though, as it turns out, one prevents the agent from being harmed.

Objection from the Possibility of Self-Sacrifice

If we assume that P4 as true, then it seems to follow that a person cannot perform an act of self-sacrifice.

What I have in mind here is the standard case of, for example, the parent who makes a sacrifice for the sake of a child, or a person who suffers harm in defense of their country or a principle. We accept that the person who makes such a sacrifice suffers a harm as a result of his or her choice. The parent who is injured in protecting a child from harm, or the soldier killed in the line of duty, or the civil rights protestor who is arrested and imprisoned, have all accepted a harm in the name of some other good.

If the agent is harmed by these acts of self-sacrifice, then it seems to follow that, by preventing the individual from making an act of self-sacrifice, we are protecting the agent from harm. We still wrong an individual by preventing them from making an act of self-sacrifice. However, we do not harm them. Instead, we prevent them from being harmed.

Somebody may want to insist that, even though we prevent the self-sacrificing individual from suffering some harm, we still also (at the same time) harm that individual. However, even in the best case we are either going to have to say that we are substituting a lesser harm for a greater harm, or the individual was not, in fact, performing a genuine act of self-sacrifice. If we say that what we were saving the agent

[2] Boonin presented this version of the argument in a Centers for Value and Social Policy talk, December 8, 2017.

from is the greater harm, then the agent herself is simply choosing a lesser harm to a greater harm in performing the so-called act of self-sacrifice. This is not a genuine act of self-sacrifice at all.

If, instead, we allow that this is a genuine act of self-sacrifice, then we must conclude that the agent is choosing a greater harm for herself for the sake of some other good. If this is the case, then preventing the agent from performing such an act makes the agent better off than she otherwise would have been. She may still be harmed but we, in this case, did not harm the agent. We prevented harm.

If I were to push a person out of the path of a runaway trolley (which seems to be a growing problem around philosophy departments these days), and he falls and skins his knew, there may be a sense in which I "harmed" the individual in that I caused the skinned knee. However, in the broader sense, I saved the individual by creating a situation in which the individual suffered the lesser harm.

If we apply this same principle to the case of preventing a person from performing an act of genuine self-sacrifice, then that is also a case in which I create a situation in which the individual suffered the lesser harm. In that case, I have wronged the individual, but not in virtue of the harm done. The wrongness of my action comes from some other source.

Recall that my earlier description is that an act is wrong if and only if it is an act that a person with good desires and lacking bad desires would not have done. Such an agent would have an aversion to harming people – and even an aversion to letting them suffer harm. However, this is not the only aversion that such an agent would have. An agent would have an aversion to forcing his will on another person – to preventing such a person from making her own choices and acting on those choices. Even though I can protect the agent from harm by forcing my will upon her, I would also be forcing my will upon her – preventing her from realizing (what she perceives to be) a good that is more important than her own well-being. This is the way in which I will be wronging her.

However, Wilma is not setting back an interest that Pebbles has that is more important to her than her own harm. That is to say, Wilma is not preventing Pebbles from performing a genuine act of self-sacrifice. Consequently, even though this is a way of wronging somebody without harming them, Wilma is not guilty of this type of wronging.

Objection from Action on Principle

I ought not to lie to you. In fact, I would wrong you if I were to lie to you – under most circumstances.

This prohibition on lying to you does not ask that I first consider whether you would be harmed or obtain a benefit from the lie. I can wrong you by lying to you even if by lying I could provide you with a benefit. I could like to you and say that your ex will not be at the party I am taking you to – even though I know that he will be there and I know that you two will reconcile and live happily ever after. I have not harmed you. In fact, I provided you with a benefit. However, I still wronged you.

One could argue that by lying to you I am, by that fact alone, harming you. However, if we go that direction, then P4 becomes a tautology. Every act of wronging a person becomes, by that fact alone, an act of harming that person. This is an easy way to avoid a lot of potential counter-examples, but it leaves the premise empty of substantive content. A substantive version of P4 has to at least hold open the possibility of wronging without harming; and lying to a person who would benefit from the lie is an example of this.

To explain the possibility of harmless wronging, I would argue that this happens when a person acts in a way that a person with good desires and lacking bad desires would not have acted, when the act violates a desire other than the aversion to causing harm. In this case, it is the aversion to lying itself that should

motivate the agent to tell the truth, not the aversion to causing harm. The same principle applies to the aversion to taking another person's property without consent, or to breaking a promise. These aversions that people generally have reason to promote universally generate the possibility of wronging an individual without harming her.

Yet, here, too, Wilma does not wrong Pebbles in this way. Wilma does lie to Pebbles, or take her property without her consent, or violate any aversion that people generally have many and strong reasons to promote universally. Thus, Wilma does not do what a person with good desires and lacking bad desires would not have done. We have, here, a way of wronging a person without harming her, but not a way in which Wilma harms Pebbles without wronging her.

Summary

For these reasons, I argue that P4 is false – one agent can wrong another without harming her. However, this possibility does not support the conclusion that Wilma's act is wrong. Wilma does not wrong Pebbles, but neither does she perform any type of harmless wrongdoing.

Even though I deny that Wilma does anything wrong, I think that I can explain why people feel that her action is wrong. What I want to turn to next is explaining the intuition.

Intuitively Condemning Wilma

In the case under consideration, most people think that Wilma acted wrongly in conceiving Pebbles. Why is this the case?

I would argue that we are led to believe that Wilma decided against taking the pills merely because doing so would be too inconvenient and for no other reason. Boonin specifically tells us, "Wilma decides that having to take a pill once a day for two months before conceiving is a bit too inconvenient and so chooses to throw the pills away and conceive at once."

Under this description, she is certainly presented as a person lacking good motives. In fact, given her motives, we may suspect that if she were told that her toddler would go blind unless she gives the child these tiny pills over the next two months, she would also find that too inconvenient and let her child go blind.

We may stipulate that this is not the case – that she would take care of her child once born. However, we must ask, "Why would a person find it too inconvenient to take the pills in the first case, but not too inconvenient in the second?" Making this stipulation will not dismiss the sense that she is not the type of person who could be trusted to give the toddler the pills. Getting her to do so may require that we coerce her by threatening charges of negligence or community condemnation.

If it is the case that anybody who would give their toddler tiny pills to prevent blindness – which is morally obligatory - would also take the tiny pills and postpone pregnancy, then Wilma's decision not to take the pills would be morally wrong on the account given above. It is an act that a person with good motives and lacking bad motives would not have performed.

This is where I think the intuition that her action is wrong comes from.

Ultimately, my reason for rejecting the account that Wilma acted wrongly is because I reject the assumption that "anybody who would give their toddler tiny pills to prevent blindness – which is morally obligatory - would also take the tiny pills and postpone pregnancy." In other words, it is not the case that only a person either lacking good motives or having bad motives would have conceived Pebbles.

To show this, I would like to compare Wilma's case to a relevantly similar case where we can deny this assumption.

The Comparison Case

My comparison case concerns Steve.

Steve, who is white, lives in a racist society. In that society, he has two options.

On the first option, Steve could marry a black woman and have a mixed-race child. However, the white citizens in Steve's society would reject and ostracize a mixed-race child. The black community will as well.[3] As a result, the child can be expected to grow up alone and bullied by both communities. Not only will this be unpleasant in itself, we can expect that the child will be at risk of suffering psychological harm. We may assume, for the sake I'd argument, that Steve's parents, who are particularly wealthy, have announced that they would disown Steve if the has a mixed-race child. There would be no inheritance. In addition, the child and later adult will suffer from explicit and implicit biases that will adversely affect the quality of life, particularly if the person "looks black". However, in spite the of these challenges, the child will still have a life that is worth living.

The other option would be for Steve to marry a white woman and have a white child. This child will be fully accepted into the white community and be able to harvest the benefits of "white privilege" – not to mention the grandparents' inheritance. She will get a higher quality education, find it easier to get a job, to get promotions, expect better treatment from others and generally enjoy a higher quality of life.

Steve's choice, like Wilma's, is a choice between having a child with a lower quality of life, or having a different child with a higher quality of life.

I am assuming that there are at least some readers who will hold that it would not be immoral for Steve to marry a black person and have a mixed-race child even if these conditions exist. The fact that we can expect that the mixed-race child will have a lower quality of life than a different child that Steve could have otherwise conceived may be relevant to our moral judgment of the society, but not to our moral judgment of Steve's choice.

To judge Wilma harshly, but not Steve, we need to discover a morally relevant difference between the two cases.

Ease of Avoidance

Wilma is described as somebody who can easily avoid having a blind child. She only needs to take a "tiny pill" for two months, which her insurance would pay for. Steve, on the other hand, is deciding on who to marry and have a family with. Preventing him from marrying the person he loves is a much more serious sacrifice.

However, the case does not require Steve to make such a sacrifice. Steve could simply judge interracial relationships to be immoral from the start – like incest - and refuse to even consider starting such a relationship, as white people did for centuries.

It may actually be easier for Steve to marry a white woman and have a white child. In choosing this option, he avoids the burdens of social censure and ostracism himself. The situation described is one in which Steve would be taking on a burden in order to have the mixed-race child. By comparison, we can imagine Wilma being told that she has an illness where any child she conceived this year will likely be healthy, but any child conceived later would be blind. She decides to postpone pregnancy and have a

[3] A relevant account of the type of situation I am describing is depicted in the song "Half Breed" by Cher.

blind child. If one's intuitive moral alarm bells were going off against Wilma in the original case, they are likely much louder here. Yet, it is this case that more closely matches the intuitively acceptable case of having a mixed-race child, where those alarms do not seem to sound.

Racism

We may think we can find a relevant moral difference in the difference between not wanting a child to be blind versus not wanting a child to be of mixed race. The latter interest seems morally questionable (to say the least).

However, this would be a poor description of the comparison. We are looking at the parent's concern with the quality of life that the child can expect. The two cases combine this concern with the empirical fact that a blind child will have a lower quality of life compared to the child who can see, and the mixed-race child will have a lower quality of life in the situation described than the white child. A person need not be a racist to admit to these facts where they apply.

Still, one can argue that permitting mixed-race children serves a more important moral concern – that of teaching a moral lesson against racism. One permits mixed marriages as a way of standing up for racial justice – as a way of refusing to allow the racists to win.

However, this defense would not provide an argument for the moral permissibility of having a mixed-race child. It would make it a case of moral conflict, where having a mixed-race child is wrong – but a wrong done in the service of a greater good. It would be like the moral permission to break a promise to meet somebody because one needed to help those injured in an accident. The agent still owes an apology to the person she had agreed to meet – a way of acknowledging, "Look, I know that breaking promises is generally wrong, but I had to serve a greater good." Having a mixed-race child to serve the greater good of taking a stand against racism would be comparable to saying, "Hey, I know it's wrong to have a child who will have a lower quality of life, but I needed to in order to take a stand against racism." This is in contrast with saying that it simply is not wrong to have a mixed-race child.

External Cause

Still, it is the case that the harms being done to the mixed-race child are being caused by the wrongful actions of other people. Therefore, one may argue that Steve is not morally responsible for those harms.

However, people can be held responsible for harms that others cause when one can reasonably expect them to happen. If one discovers that a neighbor is disposed to murder children, one is not entirely blameless for having one's child play around his house. This is particularly true when the victims are children, where a failure to take precautions to protect children from predators is widely regarded as not only morally culpable but deserving of civil or criminal penalties. The parent of the mixed-race child can hardly get away with saying, "I knew that others would abuse my mixed-race child, but that does not matter."

The point of this argument is that we cannot find the difference between Wilma's "wrongful" act and Steve's "permissible" act in the fact that other people inflict the harms on Steve's child. If Steve knew that a mixed-race child would suffer this abuse, then he is as much on the hook as Wilma is for the child's lower quality of life, given Wilma's knowledge that her child will be born blind.

Yet, this possibility of abuse by others does not give us a reason to morally object to Steve having a mixed race child – not unless one wants to abolish having children entirely. Everybody who has a child knows that some harm will come to that child. One's has blight ion is to do what one can to protect the child that one has. This is an obligation that Steve is capable of meeting with respect to his mixed-race child, as can Wilma with her blind child.

Indifference

The last objection that I want to consider sees the parent's choice as an expression of indifference towards the happiness of others.

I mentioned earlier that I think that this assumption of indifference explains (but does not justify) the sentiment of moral condemnation targeting Wilma. We may assume that the joys of parenthood are found, in part, in seeing one's child laugh rather than cry, in seeing one's child obtain what she wants rather than struggle, celebrate successes rather than console failures.

Wilma seems not to care how happy her child is. We are told that Wilma is motivated solely by her own convenience (as if having a blind child will not be inconvenient at times). We are given reason to assume that Wilma is uninterested in Pebble's tears and struggles. She is just going to dismiss them as something much less significant than the inconvenience she would have had to endure by taking a tiny pill for two months. We have reason to ask, if Wilma finds taking the pills to be too inconvenient, would also find it too inconvenient to make sure that her child takes the pills under conditions where the doctor says, "Your child has to take these tiny pills for two months or go blind?" The Wilma being described to us seems to be somebody who would say, "That's too much of a bother," and throw the pills out.

In other words, we are told to imagine that Wilma is callously indifferent to the suffering and struggles of others and cares only about her own convenience.

Wilma's callous indifference gives us reason to ask where else this disposition will show up. If she really does not care about the fact that her child will suffer and struggle, how good of a parent can she be? If she shows this same callous disregard for the suffering of others, how good of a neighbor can she be? How good of a friend? How good of a person?

If it is the case that only a person with such a deeply morally flawed character would choose to have Pebbles rather than Rocks, then there is a way in which we can argue that the decision to have Pebbles is immoral. It is, at the very least, something no person of good moral character would do.

The case of Steve tells us that this rush to judgment may be premature. Steve shows us that a properly concerned individual can still choose to have a child who has disadvantages compared to a different child he could conceive.

There is more than one way to express a concern with the happiness of others.

One way is to surround oneself with happy people, and to shun and avoid anybody who is unhappy. One can select friends who tend to be happy, who are unlikely to have any troubles or concerns. Those who are more likely to have or who do have troubles or concerns are placed "out of sight, out of mind." In choosing to conceive a later sighted child rather than Pebbles, Wilma would fit this description.

Another way to express a regard in the well-being of others is to find people as they are and see if one can increase their well-being. This is the person who might volunteer to work in a soup kitchen or at a hospital, travel to an impoverished country to provide food and medical care to the sick and starving, or show up to provide comfort for a grieving friend. They do not seek to be surrounded by happy people as much as they seek to be surrounded by people who they can make a little happier.

Are the white parents of interracial children callously indifferent to the happiness of others? These are real people. We can find some, observe them, and report the results. We may know some, or know somebody who does. We get to learn of their character as a matter of fact. I am willing to wager that we

do not tend to find them to be indifferent to the difficulties that their mixed-race children may endure. It pains them deeply – but they do the best they can for their mixed-race children.

Wilma is a fictional character. We cannot observe her to determine if she is callously indifferent to the struggles of others. If the story does not give us our answer, we either fill in the missing information (and pass a moral judgment on Wilma based on our assumptions), or we suspend judgment. I opt to give Wilma the benefit of the doubt.

Let me present an alternative scenario that does not alter the decision or the consequences, but suggests different (good, or at least neutral) motives.

Wilma is very close to her father, who is becoming quite sick. After talking it over with her husband, Fred, they decide to conceive a child such that it would be due shortly after her father's birthday. The plan is to induce labor on her father's birthday. She goes to the doctor two months before trying to conceive this child and is given a clean bill of health. She goes to the doctor again a couple of weeks before trying to conceive this child and is given the bad news. Sometime since her last visit she became infected with the Fetal Blindness Virus (FBV) and the child she was planning to conceive would be born blind – though she could conceive a normal child if she waited for the disease to take its course. Her sick father would likely not live another year.

After some tears and a lot of discussion, as well as doing some research to determine what would be involved in raising a blind child, Fred and Wilma, decide that they do not wish to abandon this child and replace her with a different child, in spite of the fact that it would be easy and convenient to do so. They certainly would not seek to abandon her and replace her with a different child if she became blind after being born.

On Wilma's father's birthday, Wilma induces labor and gives birth to a baby girl as planned. Pebbles is blind, and nothing Wilma and Fred could do will eliminate the challenges that Pebbles will face as a result of this handicap. However, they have used the previous nine months to make what preparations they could.

I would be curious to know if the reader finds Wilma's actions wrong in this case. The relevant difference is that, instead of refusing the inconvenience of taking some tiny pills, Wilma is refusing to abandon her child, even though she will be blind, to replace her with a more convenient future child.

Conclusion

I have argued that Wilma's act of conceiving Pebbles is not wrong because, like having a mixed-race child, it need not be something that a person with good desires and lacking bad desires might decide to do.

However, this verdict comes with an important caveat – that Wilma is not the selfish person described in the original story – concerned only with her own convenience. If we restore that assumption, I can still argue that it is wrong for Wilma to conceive Pebbles. She is not fit to be a parent.

Returning to the model that an action is wrong if it is something that a person with good motives and lacking bad motives would not do under the circumstances, the phrase "under the circumstances" could be understood as "given the fact that Wilma is a selfish and callous individual who thinks only about her own convenience." A person with good desires and lacking bad desires would not give any child – let alone one who is blind – to such a parent.

This highlights one of the challenges that the account that I have provided must face. What would a person with good motives and lacking bad motives do when one of the facts to contend with is the fact

that one might lack certain good motives or possess certain bad motives? How would this account answer the question, “Should I have a child, given the fact that I would be a poor parent?”

This is a situation we are all in to varying degrees. We all have our faults.

I would place these facts within the realm of “under these circumstances” and ask whether a person with good desires and lacking bad desires would conceive a child under these circumstances. I would answer this question by saying, “No.” This implies, after all is said and done, if these assumptions apply, Wilma’s act of conceiving a child under these circumstances would still be wrong. It would be something that a person with good desires and lacking bad desires would not have done *under these circumstances.*

However, I think that this account misses the point of the original problem, the point that explains why it is called the “non-identity problem.” Under the description “non-identity problem” neither Wilma nor Steve did anything wrong in conceiving a child that will have disadvantages compared to a different child that would not have had those disadvantages. If we presume that Wilma’s choice is due to a callous disregard for the happiness of those around her, this may set off judgmental moral intuitions. However, the real-world cases of white parents in mixed-race families tells us that we are not warranted in making that assumption.