

Dissecting the Non-Identity Problem

Disecionando el problema de la no-identidad

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Abstract

The non-identity problem is the problem of explaining why some “existence-inducing acts” are morally wrong. Many philosophers have tried to find a solution to this problem. In this article, I explore a different approach. My aim is not to offer a novel solution to the non-identity problem, but rather a different method for addressing it. The non-identity problem looks intractable when we assume that there is a single problem and a single solution to it. Thus, I dissect this problem into three different problems: the “non-comparative harm problem”, the “non-deprivation problem”, and the “creator harm problem”. I discuss these problems separately and explore possible solutions.

Keywords

Boonin, de dicto, harm, non-identity problem, Parfit.

Resumen

El problema de la no-identidad es el problema de explicar por qué algunos “actos de creación” son moralmente incorrectos. Muchos filósofos han intentado encontrar una solución a este problema. En este artículo, exploro un enfoque diferente. Mi objetivo no es ofrecer una solución novedosa al problema de la no-identidad, sino más bien un método diferente para abordarlo. El problema de la no-identidad parece irresoluble cuando asumimos que existe un único problema y una única solución. Por lo tanto, divido este problema en tres problemas diferentes: el “problema del daño no comparativo”, el “problema de la no privación” y el “problema del daño al creador”. Analizo estos problemas por separado y exploro posibles soluciones.

Palabras clave

Boonin, daño, de dicto, Parfit, Problema de la no-identidad.

Introduction

The non-identity problem is the problem of explaining why some “existence-inducing acts” are morally wrong. An existence-inducing act is an act that brings a particular person into existence. The first example that comes to mind is conception. However, previous acts can also be existence-inducing. Since the existence of a *particular* person depends on *who* the genetic parents are, and on the *exact* timing and manner of conception, almost any act can affect the causal chain and bring a different person into existence (Kavka 1982: 93).

Some existence-inducing acts seem morally wrong because they bring into existence people whose lives will be flawed. However, these people could never have existed in the absence of those acts. Assuming that their lives will still be worth living (that their existence *will not be worse* than never existing), on what grounds can we claim that those existence-inducing acts are wrong? Consider the “impaired child / healthy child example”. A couple wants to have a child, but the doctor tells them that if they have a child now, he or she will be born with a severe disorder. Yet the doctor lets them also know that, if they undergo a simple treatment, they will be able to have a healthy child in thirty days. Imagine that the couple decides to have a child named Jessica without the previous treatment. As anticipated, Jessica is born with a severe disorder but her life is worth living (her existence is *not worse* than never existing). In addition, had the couple undergone the treatment, the timing and manner of conception would have changed. They would have had a healthy child, but he or she would have been a different child. Therefore, it is difficult to think that the couple harmed Jessica. Still, we have the intuition that there is something morally wrong with the couple’s behavior (Parfit 2017: 121-125).

Consider now the “depletion / preservation example”. Citizens decide to deplete the available resources, as a result of which future

generations will have a very low quality of life. Thus, it seems that depleting the resources is wrong: current citizens should have protected future generations by preserving the resources. However, if citizens had chosen to preserve the resources, the timing and manner of conceptions would have changed, leading to different people being born. Suppose that the people who will be born as a result of the depletion act will still have lives worth living (that their existence will not be worse than never existing). In this case, it is hard to explain why the depletion act harmed *them*, which means that it is unclear why depleting the resources is morally wrong (Parfit 1987: 362-363).

Thus, we can briefly state the non-identity problem as follows. First, it seems that some existence-inducing acts are morally wrong. Second, it is puzzling how those acts can be morally wrong if they cannot harm the people who thereby come into existence. As Derek Parfit puts it, the “bad” act must be “bad for” someone (Parfit 1987: 363).

In response to the non-identity problem, philosophers have followed different strategies. Some philosophers have adopted the “biting the bullet” strategy; they have claimed that we should accept that existence-inducing acts cannot morally wrong (Boonin, 2014, 2019; and Heyd, 2009). Other authors have offered consequentialist solutions (Temkin, 1993; Singer, 2011; Broome, 2015). Finally, others have proposed non-consequentialist solutions; for example, Kantian accounts (Kavka, 1982), right-based accounts (Woodward, 1986; Cohen, 2009), contractualist accounts (Reiman, 2007; Kumar, 2018), and non-comparative accounts of harm (Shiffrin, 1999; Parfit, 2017), among others.

In this article, I explore a different approach. My aim is not to offer a novel solution to the non-identity problem, but rather a different method for addressing it. I dissect “the non-identity problem” into three different problems and submit that we should address these problems separately.¹ The non-identity problem looks intrac-

¹ M. Roberts (2007: 271-272) also divides the non-identity problem into different problems, but her division is based on a different criterion: whether it would have been possible to conceive the same people by doing something different. In this paper, I leave aside this distinction.

table when we assume that there is a single problem and a single solution to it. Thus, I defend a pluralistic method. I suggest that there are plausible approaches to the three dissected problems and reformulate some of the accounts offered for the non-identity problem as specific solutions to one of the three problems.

This paper is organized as follows. First, I lay out the three problems. Second, I address these problems separately and discuss some proposed solutions. These accounts have been offered as solutions to the “non-identity problem”, but I claim that they are different *kinds* of accounts that should be understood as addressing one of the three, more specific, problems. Although I sympathize with these accounts (and, in fact, I refine and defend some of them), my point is mainly methodological: by discussing these accounts as possible solutions to different problems, I try to illustrate a new method for addressing what many philosophers think of as “the non-identity problem”. Finally, I offer concluding remarks.

Three “non-identity” problems

We can disentangle the three problems once we identify three different interpretations of a claim central to the non-identity problem: “Existence-inducing acts do not harm the people who thereby come into existence”.

The first interpretation is that existence-inducing acts make these people better off, even if their existence is flawed, because a flawed existence is better (or at least not worse) than never existing, so a flawed existence is still worth having. Therefore, it seems that we cannot say that those acts harm the people who thereby come into existence. However, we intuitively believe that bringing a person into a flawed existence is wrong, even if his or her existence is worth having. I call this problem “the non-comparative harm problem”.

The second interpretation is that existence-inducing acts do not deprive those people of a better life. For instance, in the depletion / preservation example, if current citizens choose to deplete the resources, future citizens will have a very low quality of life. However,

current citizens do not deprive *those* citizens of a higher quality of life. This is so because, if current citizens choose to preserve the resources, future generations will be composed of different people. It is *these* people who will enjoy a higher quality of life. Therefore, we should conclude that the depletion act does not deprive the resulting people of a better life. Nevertheless, we tend to think that this act is wrong. I call this problem “the non-deprivation problem”.

Note that the non-deprivation problem starts from a comparison. However, the comparison is not between existing and never existing (like in the non-comparative harm problem), but between different *possible* persons; for example, the life of future people in the depletion scenario and the life of future people in the conservation scenario. Depleting resources seems wrong because future people would have a very low quality of life. However, this act would not deprive these people of a better life. For, in the conservation scenario, future generations would be better, but they would be composed of different people.

The third interpretation is that never existing is not a *condition* and therefore cannot be better or worse than a condition. In consequence, it does not make sense to evaluate whether existence-inducing acts harm the people who thereby come into existence. Simply, this question does not arise. Those acts neither benefit nor harm these people. Existence-inducing acts lack these properties. Thus, we are led to conclude that existence-inducing acts cannot harm the people who thereby come into existence, even if we think that some of these acts are morally objectionable. The concept of harm is inapplicable. I call this problem “the creator harm problem”.

Note that the creator harm problem is wholly focused on the person who comes into existence, regardless of other possible persons. For example, it is irrelevant whether the couple could have chosen to conceive a different, healthier child. The creator harm problem would have arisen even if the couple had just had one chance to have a child and the handicap had been unavoidable. The creator harm problem is the problem of explaining how the concept of harm can be applied to situations in which the “harm” constitutes the existence of the person.

In a nutshell, the “non-identity problem” encompasses three different problems: the non-comparative harm problem, the non-deprivation problem, and the creator harm problem.

Addressing the three problems

❖ The non-comparative harm problem

The non-comparative harm problem is the problem of explaining how an existence-inducing act that makes the resulting person better off can *harm* this person. Arguably, this act could not *harm* this person even if his or her life is flawed, provided that this existence is better (or at least not worse) than never existing (that is, provided that this existence is worth having). The problem arises because we tend to think that bringing a person into a flawed existence is wrong, even if this existence is better than never existing.

The non-comparative harm problem assumes that existing and never existing are two *conditions* (more precisely, two situations connected with *someone* that can be compared with each other). The problem is that if the existence is better (or, at least, not worse) than never existing, it is not clear how the existence-inducing act could possibly harm the person brought into existence.

However, the non-comparative harm problem is not related to personal identity. Instead, it is the question of how an action that makes a person better off can harm this person. But this question arises in many other situations. It is a question worth discussing as an instance of a more general problem. The problem of labor exploitation, for example, has the same structure. Some laborers work long hours and are paid miserable wages. We tend to think that this exploitative employment harms these workers, even if exploitation is their best alternative (i.e., better anyway than starvation). But if being exploited is better than starving or being unemployed, it is challenging to explain why exploitation harms workers.²

² H. Liberto (2014, 76), for example, offers an “exploitation solution” to the non-identity problem (more precisely, to what I call “the non-comparative harm problem”).

J. Feinberg seems to have the non-comparative harm problem in mind when he discusses the case of a mother who causes a child to come into existence in a handicapped condition (a condition that is, however, better than never existing):

To hold her liable anyway, would be (at least with respect to the harm element) something like holding a rescuer liable for injuries he caused an endangered person that were necessary to his saving that person's life. He may have caused the imperiled party's arm to be broken in the rescue effort, but the alternative, let us suppose, was to let him die. So the broken-armed plaintiff suffered a harmful condition with respect to his arm, but the rescuer-defendant did not cause a condition that was harmful on balance, offset as it was by the overriding benefit of the rescue, and he cannot be said, therefore, to have harmed the plaintiff... (Feinberg, 1992: 27).

Feinberg assumes that, when the mother conceives this child, she is causing that handicap, but he claims that there is no harm because the mother is saving the child from a worse situation (i.e., never existing). However, his reasoning is plausible only if existing and never existing are two conditions connected with *someone* and comparable with each other. Understood in this way, the problem is part of a different debate: can an action that makes a person better off harm this person?

S. Shiffrin (1999: 120-35) also considers the non-comparative harm problem when she offers a counterexample to Feinberg's argument. According to her, if one is hit on the head by a cube of gold dropped from the sky, then one has been harmed even if one has been more than compensated for that harm (that is, even if one can keep the cube of gold). Based on this reasoning, one may argue that bringing people into a flawed existence harms these people, even if their lives are still worth living (i.e., even though their existence is better than never existing). But both situations are analogous only if never existing is considered an alternative that can be compared

with existing. Otherwise, the cub of gold example (which relies on such a comparison) would be irrelevant.

Similarly, according to J. Woodward (1986: 810-811), the ticket agent who refuses to sell an airline ticket to a person because of his race violates his rights even if this act of discrimination ends up making the victim better off (because the plane subsequently “crashes, killing all aboard”). Using this example, he tries to show that bringing people into a flawed existence violates their rights, even if their existence is better than never existing. In addition, Woodward claims that these violations harm those people under what he calls a “non-consequentialist” approach to harm (Woodward, 1986: 818). But note that his example is relevant only if never existing is a condition that can be compared with existence.

Thus, the problem of explaining how an action that makes a person better off can harm this person has nothing to do with the notion of personal identity. The same problem arises in many other situations. Understood in this way, there is nothing special about existence-inducing acts.

We can say something similar about the problem of explaining how an action that *does not make a person worse off* can harm this person. Suppose that we claim that a particular flawed existence does not make the person worse off because this existence is *not worse* than never existing. If we assume that never existing is an alternative condition that can be compared with existence, the problem is not about the notion of personal identity. Instead, the problem raises a different question: is it possible to harm a person without making this person worse off? A. Ripstein (2006: 218), for example, discusses an example that raises the same question but is not related to the idea of identity:

Suppose that, as you are reading this in your office or in the library, I let myself into your home, using burglary tools that do not damage to your locks, and take a nap in your bed. I make sure everything is clean. I bring hypoallergenic and lint-free pajamas and a hairnet. I put my own sheets and pillowcase down over yours. I do not weigh very much, so the wear and tear on

your mattress is nonexistent. By any ordinary understanding of harm, I do you no harm...

The harm principle cannot provide an adequate account of either the wrong I commit against you. . . (Ripstein, 2006: 218).

In conclusion, the non-comparative harm problem does not rest on the notion of identity. Instead, it is the problem of explaining how an action that makes a person better off (or does not make a person worse off) can harm this person. For example, when J. Malek criticizes D. Boonin's discussion (2014), she argues that Boonin "address[es] the question of whether a life is worth living, therefore comparing existence and non-existence, which is not the question at the heart of the non-identity problem as described in Wilma's case" (Malek, 2019: 21).³ She presumably means that, in that part of his book, Boonin focuses on the non-comparative harm problem, which does not rest on the idea of identity.

To solve the non-comparative harm problem, we need to show that a course of action that makes a person better off (or does not make a person worse off) can harm this person. Some philosophers, for example, have appealed to non-comparative conceptions of harm. A non-comparative harm is a condition that is bad for someone even if it does not make this person worse off than she would have been in its absence⁴ (Shiffrin, 1999; Harman, 2004; Harman, 2009; and Rivera López, 2009). Non-comparative accounts of harm have the potential to address the non-comparative harm problem because they do not require comparing existing and never existing.⁵ However, in this paper, I do not discuss the merits of this conception of harm. My

3 In this example, Wilma is a woman who brings a child into existence. This child will have a flawed, but worth-having, existence.

4 There are other alternatives. M. Gardner (2015), for instance, have proposed a causal account.

5 Other authors, however, argue that these accounts are not adequate accounts of harm. See, for example, Hanser (2008), Thomson (2010), Bradley (2012), and Gardner (2015). In addition, some philosophers argue that the concept of non-comparative harm cannot solve the non-identity problem. See, for example, Woollard (2012: 678) and Boonin (2014: 71-102).

point is that the non-comparative harm problem is not related to the notion of identity (and, in fact, is not specific to existence-inducing acts). Rather, we face a more general question: can an action that makes a person better off (or does not make a person worse off) harm this person? This question arises in many other contexts.

❖ The non-deprivation problem

The non-deprivation problem rests on a comparison between different possible persons: for example, the life of future people in the depletion scenario and the life of future people in the conservation scenario. In this example, depleting the available resources seems wrong. Conserving the resources and making the life of future people better seems to be the right course of action. However, although the quality of life of future people is very low in the depletion scenario, we cannot say that depleting the resources deprives *these* people of a better life. In the conservation scenario, future generations are better, but they are composed of different people. The same situation arises in the impaired child / healthy child example: the couple could have brought a healthy child into existence, but he or she would have been a different child. Therefore, the couple did not deprive its impaired child of a better life. The non-deprivation problem arises because we have the intuition that those existence-inducing acts are wrong, even when they do not deprive the people brought into existence of a better life.

Nevertheless, when we distinguish the non-deprivation problem from the other two problems, we realize that it is not specific to existence-inducing acts. Although the non-deprivation problem does relate to the notion of identity (because the affected person's identity changes according to the course of action one chooses), this problem does not exclusively affect existence-inducing acts. Consider the "weekend cabin example":

Max wants to build a weekend cabin. He plans to rent it out to guests. It will be the only weekend cabin in the zone. Max has two alternatives: either using high-quality materials or using

low-quality materials. If he uses high-quality materials, the cabin will be safe but modest. If he uses low-quality materials, the cabin will be opulent but unsafe. Suppose that Max's decision will influence who will stay at his cabin. For instance, if he uses low-quality materials, a potential guest, Richard, will decide to stay at the cabin because he likes opulent cabins (and because he will not know the risk of staying at this cabin). But another potential guest, April, will decide to stay at home because she does not like opulent cabins. In contrast, if Max uses high-quality materials, April will be his guest, and Richard will decide to stay at home because he does not like modest cabins. Finally, Max decides to use low-quality materials and his guest, Richard, has an accident: a piece of roof falls on his head.

Although Max's choice situation has a non-identity nature (because the *possible* guests are *non-identical* to each other, and the identity changes depending on the course of action Max chooses), his decision has nothing to do with bringing people into existence. Did Max do something wrong? The answer seems clear. We tend to think that Max's behavior was wrong and that he should have built a safer cabin for his guests. But we cannot say that Max deprived Richard of a safer cabin. Had he decided to use high-quality materials, the cabin would have been safer, but this safer cabin would have benefited April, not Richard, who would have decided to stay at home.⁶ Max's cabin would be safer for his *guests*, but this group would be composed of different people. However, it seems clear that this is not a reason to condone Max. Since he decided to build a cabin, he took on a responsibility: building a safe place for his *guests*, regardless of who they will be and of whether his act will influence who

6 However, Max did deprive Richard of a different benefit: staying safe at home and not suffering a head injury. But this is not the relevant benefit when discussing the *non-deprivation* problem. The relevant benefit is a safer cabin because this is the benefit that a different person (April) would have gotten. A safer cabin for a *different* guest is analogous to a better life for a *different* child in the impaired child / healthy child example (or for different citizens in the depletion / preservation example). Staying at home is analogous to never existing (because *guest* Richard would not have existed). This benefit would be relevant if we were discussing the non-comparative harm problem.

they will be. In other words, Max should have shown appropriate *de dicto* concern for his *guests* (here, “guests” does not refer to particular persons but is a generic concept that can refer to different people).

This *de dicto* approach may also be applied to existence-inducing acts. Arguably, we have a (*prima facie*)⁷ duty to do our best for future people, regardless of who they will be and of whether our act will influence who they will be. More precisely, we have a duty to generate the best *possible* conditions: both *external* conditions related to the future environment (for example, not depleting resources) and *internal* conditions related to future people’s features (for example, undergoing a simple treatment to have a healthy child). Thus, the *de dicto* approach may solve the non-deprivation problem.⁸

Of course, the weekend cabin example is different from cases involving existence-inducing acts because, in these cases, the *harmful* action brings the person into existence. However, this difference is irrelevant when discussing the *non-deprivation* problem. In this context, both kinds of cases are relevantly similar: in the weekend cabin example, Max did not deprive Richard of a safer cabin; and, in the impaired child / healthy child example, the couple did not deprive its impaired child of a better life (the same applies to other existence-inducing acts, such as depletion). In the weekend cabin example, the harmful action did not bring anyone into existence. However, this property only shows that, unlike cases involving existence-inducing acts, the weekend cabin example does not raise the *creator harm problem*. This is why the creator harm problem is discussed separately

7 Under certain circumstances, this duty can be overridden. In this respect, this duty is not different from other moral duties.

8 In the weekend cabin example, Max chooses between having a healthy guest (April) and having an injured guest (Richard). But imagine that he must choose between a healthy guest and five slightly injured guests. Can the *de dicto* approach account for Max’s duty to choose the first option? In my view, the idea of *de dicto* guest can not only denote different identities but also different numbers of identities. As a result, Max has a duty to build a safe cabin for his guests, regardless of who they will be and *regardless of how many they will be*. Thus, I think that this approach can also be applied to “different-number cases” (including those cases involving existence-inducing acts). However, in this article, I do not address this topic.

in the next section. The *de dicto* approach can only solve the non-deprivation problem.⁹

C. Hare (2007: 518), for example, adopts the *de dicto* account to solve what I call “the non-deprivation problem”. To explain this account, he introduces the “Tess example”: Tess is a state officer whose job is to regulate those features of the automobile that protect its occupants in the event of a collision (airbags, crumple zones, and so on). Since people in her state are not wearing seat belts, she implements new regulations. One result is that the severity of injuries suffered in car accidents is significantly reduced. But another result is that, since the regulations affect various decisions that drivers make, different accidents occur, and different drivers are injured as a result (2007: 516). Hare accepts that the new regulations make things “*de re*” worse for accident victims, that is, worse for those *particular* people (if these regulations had not been implemented, *these* persons would not have been in accidents in the first place). But he argues that this is not what matters (morally speaking). For Hare, what matters is that Tess makes things *de dicto* better for *accident victims*. This is Tess’s duty, and she fulfills it.¹⁰

Parfit (2011: 220) adopts a similar approach to solve the same problem. He does not use the expression “*de dicto*” but appeals to the idea of “general person”: “... a general person is a large group of possible people, one of whom will be actual”.¹¹

9 Wasserman (2008: 530-531) argues that the *de dicto* approach cannot be applied to cases involving existence-inducing acts because in these cases the *harmful* action brings the person into existence. I hold that this characteristic gives rise to the *creator harm problem*, so this characteristic is irrelevant when discussing the *non-deprivation* problem. My thesis is that the *de dicto* account cannot solve the creator harm problem but can solve the non-deprivation problem.

10 I think that Hare’s example is not entirely appropriate because Tess’s duty is best understood as a *consequentialist* duty; namely, implementing a *public policy* that reduces the severity of injuries suffered in car accidents. I think that the weekend cabin example can better illustrate the idea of *de dicto* obligation: Max’s duty toward his guests. For other accounts similar to the *de dicto* approach, see Reiman (2007) and Kumar (2018).

11 In this way, Parfit endorses what he calls “the No Difference View” (1987: 367; 2011: 221). According to this view, it is morally irrelevant whether the impaired person who exists and the healthy person who could have existed are different persons or the same person (in the *de re* sense).

Nevertheless, other authors criticize the *de dicto* approach. Boonin (2014: 31-38), for instance, argues that this strategy fails because it leads to absurd conclusions:

Suppose, for example, that Wilma decided to adopt a blind child when she could instead have adopted a sighted child. This choice would not harm her child in the *de re* sense, since it would not make the particular child that she adopted blind rather than sighted. But her choice would harm her child in the *de dicto* sense, since it would make it the case that the child who is correctly referred to as “her child” is blind rather than sighted. It would clearly be absurd to think that Wilma’s act of adopting a blind child wronged her child in virtue of the fact that it harmed her child in the *de dicto* sense (2014: 32).

The conclusion that Wilma has a duty to adopt the sighted child rather than the blind child is implausible. However, the *de dicto* approach does not lead to this conclusion. Wilma certainly has a duty to ensure her child’s health in the *de dicto* sense: a duty to make sure that her child has the highest possible level of health (*whoever her child turns out to be*). For instance, if Wilma plans to adopt a child, she has a duty to build a safe room, buy vaccines and healthy food, and so on. Nevertheless, she does not have a duty to adopt a sighted child. This is so because, in that case, Wilma would not be ensuring that her child has the highest possible level of health (*whoever her child turns out to be*); instead, she would be *choosing* the healthier child. Selecting a particular child over others has nothing to do with ensuring a child’s health in the *de dicto* sense. Making sure that *one’s child* has the highest possible level of health (*whoever one’s child turns out to be*) is entirely different from choosing the healthier child.

Boonin discusses other examples, but, in my view, he makes the same mistake. For instance, he argues that, in Hare’s Tess example, the *de dicto* approach would lead to “redirecting the accidents onto healthier people who will ... be better off after the accidents they have...” (2014: 36). Nevertheless, there is a substantial difference between “making sure that the person who is in the accident ends up

having a higher level of health after the accident” (2014: 35) and “re-directing the accidents onto [particular] healthier people...”. (2014: 36). Regulating those features of the automobile that protect its occupants in the event of a collision, whoever these occupants turn out to be, is different from choosing healthy accident victims.

Similarly, in Boonin’s “doctor example”, doing what is best for the health of *patients*, whoever they turn out to be, is entirely different from “choosing the healthier people to accept as patients” (2014: 38). Taking care of patients, whoever they turn out to be, is entirely different from selecting healthy patients. The former involves, for example, acquiring good equipment and hiring good nurses; the latter implies rejecting unhealthy patients.

By the same token, regarding the weekend cabin example, we can plausibly claim that building a safe cabin for guests, whoever they turn out to be, is entirely different from choosing particular guests who, for example, are fit enough to run away from a collapse.

Consider the impaired child / healthy child example again. In this example, a couple wants to have a child. The doctor tells them that, if they have a child now, he or she will be born with a severe disorder, but if they undergo a simple treatment, they will be able to have a healthy child in 30 days. Undergoing the treatment is better understood as doing what is best for the child’s health (whoever it turns out to be) rather than choosing a particular, healthy child. After all, the couple would be taking measures to reduce the likelihood of having an impaired child rather than *selecting* a specific, healthy child. The same seems to be true of the depletion / preservation example: it is not about *choosing particular future persons* who have certain characteristics, but about taking measures to protect future people, whoever they turn out to be.

In some contexts, we may have a *de dicto* obligation to choose the stronger people, whoever they turn out to be (we may have this obligation, for example, if we want to form a competitive football team). But this *de dicto* obligation is different from the *de dicto* obligation that the couple, the state safety officer, and the doctor have. The latter is similar to the team doctor’s duty to do what is best for the players’ health, whoever they turn out to be.

R. Weinberg (2013: 484) makes a different objection to the *de dicto* approach. She argues that it is incorrect because it “fails to locate the wrong” when someone has an impaired child but *could not* have had a healthier child (I describe a similar situation in the next section to discuss the creator harm problem). However, this case does not trigger the non-deprivation problem. This problem rests on a comparison between different possible persons. Therefore, it arises when a person has an impaired child but *could* have had a healthier child (the impaired child / healthy child example). The problem is that the healthier child would have been a different child, so we cannot claim that the person deprived *that* impaired child of a better life. If having a healthier child is impossible, the non-deprivation problem does not appear.

Weinberg gets it right when she says that the *de dicto* approach does not work in this situation. However, she concludes that this approach cannot solve the *non-identity problem*. Since I think that the non-identity problem involves more than one problem, my conclusion is that the *de dicto* strategy does not work in that scenario because it can only solve the non-deprivation problem. In that scenario, we do not face the non-deprivation problem. We only face the creator harm problem, which I will discuss in the next section.

Thus, it seems that the *de dicto* strategy can solve the non-deprivation problem, which arises when the person could have chosen a better alternative. How? We would say that Max did something wrong because he deprived his *de dicto* guests of a safer cabin, and that the couple who had an impaired child did something wrong because it deprived its *de dicto* child of a better life (assuming that the couple could have had a healthier child).

Nevertheless, Weinberg (2013: 482-483) makes a further objection. Let us go back to the impaired child / healthy child example: the couple has an impaired child but could have had a healthy child. Weinberg holds that this approach cannot account for the intuition that the impaired child has “special grounds for grievance” against his or her parents (2013: 483). If this hypothesis is correct, then it turns out that the *de dicto* approach cannot solve the non-deprivation problem because our intuition is not only that the couple did something wrong,

but also that it harmed this *particular* (*de re*) child. According to Weinberg, focusing on *de dicto* people does not work because this strategy prevents us from thinking in terms of particular, *de re*, persons.

Weinberg (2013: 483) clarifies that she does not mean that, in general, *de dicto* harms cannot give rise to *de re* grievances: “If Michael sends a letter bomb to Brooklyn College, intending to injure whoever happens to open the letter, the particular person who opens the letter still has a perfectly legitimate *de re* grievance against Michael”. By the same token, Weinberg would presumably agree that, in the weekend cabin example, the *de dicto* approach can account for Richard’s special grievance. However, she thinks that this strategy does not work in “impaired child / healthy child” situations. But why does it fail in these situations? Weinberg answers as follows:

According to the non-identity problem reasoning, it is the fact that the *de dicto* harm comes along with the inseparable overriding benefits of existence and is the only way to give those benefits to that very same person that makes the procreative case one wherein Mary’s *de dicto* harm cannot provide Mariette with grounds for a special *de re* grievance. That is why the non-identity problem remains even when we avoid its procreative principle by adopting various evasive maneuvers like focusing on *de dicto* goodness. We still are left with the intuition that Mariette does have a special grievance against Mary and, even more fundamentally and problematically, that Mary harmed Mariette. But we have no way to show this. That’s the non-identity problem, and it remains problematic even if we focus on *de dicto* goodness (2013: 483).

In other words, according to Weinberg, that strategy does not work in those cases due to what I called “the non-comparative harm problem”: the problem of explaining how an act that makes a person better off can harm this person (or, in other words, how an act that makes a person better off can give rise to this person’s special grievance). Weinberg refers explicitly to the “inseparable overriding benefits of existence”.

Nevertheless, even if she is right, she does not show that the *de dicto* strategy fails to solve the non-deprivation problem. She refers to the non-comparative harm problem, which is different from the non-deprivation problem. The non-comparative harm problem is the problem of explaining how an action that benefits a person can harm this person. In order to discuss this problem, we need to focus on a particular person and compare two situations: in the case of existence-inducing acts, his or her existence and never existing. The comparison between different possible persons becomes irrelevant when discussing the non-comparative harm problem.

Weinberg focuses on the non-comparative harm problem (which focuses on the comparison between existing and never existing) and leaves aside the non-deprivation problem (which focuses on the comparison between different possible persons). Therefore, she does not show why the *de dicto* strategy fails to solve the non-deprivation problem. To be sure, a certain situation can raise both the non-comparative harm problem and the non-deprivation problem (and even the creator harm problem, as I claim in the next section). In a sense, these three problems are different interpretations of “the non-identity problem”. But they are also different problems. The *de dicto* approach¹² should be understood as a possible (and in my view quite plausible) solution to the non-deprivation problem.¹³

❖ The creator harm problem

The creator harm problem arises if we reject the assumption that never existing is a *condition* that can be compared with existing. At first sight, the consequence of this rejection is that it does not make

12 Note that *this de dicto approach* is not utilitarian. For example, as a father, I can have a *de dicto* duty to make sure that my child has the highest possible level of health (*whoever my child turns out to be*) even if this course of action does not maximize general utility.

13 A. Podgorski (2020: 67) also discusses the *de dicto* strategy. However, he does not claim that this strategy fails. According to him, the *de dicto* approach can justify the obligation to have a healthy child rather than an impaired child. However, he claims that this obligation is not *parental* but a *general* obligation to benefit others.

sense to evaluate whether existence-inducing acts harm the people who thereby come into existence. The concept of harm cannot be applied to these cases, so we cannot say that these acts are morally wrong. The creator harm problem is the problem of explaining how the concept of harm can be applied to situations in which the “harm” constitutes the existence of the person.

The creator harm problem is specific to existence-inducing acts; it does not arise in other situations. However, strictly speaking, this problem does not rest on the notion of identity because it does not involve *possible* persons who are non-identical to each other. Instead, the problem is that it seems conceptually impossible that bringing a person into existence constitutes a harm to this person.

The key to addressing this problem may be distinguishing it from the non-deprivation problem. When we discuss the creator harm problem separately, the conclusion that existence-inducing acts cannot harm the people who thereby come into existence may be less problematic. Let me explain.

If we want to address the creator harm problem separately, we should imagine a situation where the creator harm problem arises and the non-deprivation problem does not. The non-deprivation problem rests on a comparison between different *possible* persons. In contrast, the creator harm problem does not. Therefore, if we want to focus on the creator harm problem and leave aside the non-deprivation problem, we should imagine a situation in which all *possible* persons are similar. Consider this example, which I will call “the impaired child / impaired child example”. Suppose that Alice wants to have a child, but knows that any child of hers would have an equally flawed existence. However, this life would be worth living (in the sense that it would be above a minimum threshold of quality of life).¹⁴ Alice cannot choose between a child with a better exis-

14 When I discussed the non-comparative harm problem, “worth living” had a different meaning: it meant “better (or at least not worse) than never existing”. Here, this meaning is misplaced because the creator harm problem is precisely that an in-existent person is not someone who can be better or worse. In this context, I will say that “worth living” means “above a minimum threshold of quality of life”, though I do not need to specify this threshold.

tence and a child with a worse existence. She must decide whether to have an impaired child or no child at all. Imagine that Alice decides to have a child: Cate.

The non-deprivation problem does not arise because having a “healthy but different child” would not have been possible; any child of hers would have had an equally flawed existence. Nevertheless, the creator harm problem persists simply because Alice’s reproductive act is *existence-inducing*: this particular child would never have existed had Alice not performed such act. Thus, if we want to show that Alice *harmed* Cate, we need to explain how the concept of harm can be applied to cases like this.

Parfit, for example, offers a sophisticated non-comparative account of harm based on the *intrinsic goodness or badness* of certain outcomes (Parfit, 2017: 131). He imagines an act that brings a person (Sam) into a bad existence and claims that a comparative account cannot explain why that act harms Sam. Here, he seems to have in mind what I call “the creator harm problem”: “If Sam had never existed, there would not have been a Sam for whom his non-existence would have been better” (Parfit, 2017: 133). Parfit argues that an account based on the intrinsic badness of that existence does not have this problem and can therefore explain why Sam is harmed.¹⁵

Nevertheless, the solution may be much simpler once we discuss the creator harm problem separately. Do we want to show that Alice harmed Cate? Is it clear that Alice did something morally wrong? Of course, we would not praise her. However, the proposition that her existence-inducing act was morally reprehensible is not uncontroversial. It requires justification. First, Cate’s life is worth living, implying that she can enjoy an *acceptable* quality of life. Second, Alice could not have brought a healthier child into existence. Do these aspects not cast doubt on the immorality of Alice’s course of action? I do not claim that Alice’s action was morally right. I claim that it was not *obviously* wrong. As I see it, the fact that Cate’s life is worth living

¹⁵ As I have claimed, non-comparative accounts of harms may also have the potential to address the non-comparative harm problem. In this paper, I do not discuss non-comparative accounts of harm in detail.

and that Alice could not have created a better life can perfectly support this weaker claim. I suspect that the objector who insists on the *undoubtful* immorality of Alice's behavior does not have a life worth living in mind.

The so-called "non-identity problem" is the problem of explaining *why* certain acts are wrong. But this problem only arises when we are convinced that these acts are wrong. Otherwise, if we do not have such conviction, the "problem" is no longer a problem because we do not need to explain why those actions are wrong. My point is that, when we address the creator harm problem separately and discuss acts such as Alice's, we cannot say without hesitation that these acts are wrong. When we address this problem separately, the conclusion that these acts are not wrong becomes less implausible, and so the issue becomes less of a problem. Therefore, the "biting the bullet" strategy looks more plausible.

So far, I have imagined cases of existence-inducing acts that bring into existence people who will have lives worth living. I have claimed that the creator harm problem loses much significance in these cases because the conclusion that these existence-inducing acts are wrong is not obvious. But what happens if the life is below a minimum threshold of quality of life and is therefore not worth living? Does the conclusion that the existence-inducing act is wrong become uncontroversial?

Consider the following example, which I will call "the *very* impaired child / *very* impaired child example". Suppose that Amanda wants to have a child, but knows that any child of hers would have an equally flawed existence that *will not be worth having*. Amanda cannot choose between a child with a better existence and a child with a worse existence. She must decide whether to have a *very* impaired child who will have an extremely low quality of life or no child at all. Imagine that Amanda decides to have a child: John. Was Amanda's act morally wrong?

On the one hand, it is plausible to claim it does not make sense to evaluate whether a person was better when he or she did not exist (because never existing is not a condition connected with *someone*). The conclusion would be that the adjective "harmful" cannot be

applied to existence-inducing acts. On the other hand, in the very impaired child / very impaired child example, the intuition that there is something wrong with the mother's behavior becomes much stronger (because the life of the child is not worth living). Thus, the creator harm problem reappears.

Admittedly, the intuition that Amanda's behavior was wrong cannot be accounted for with reference to the idea of harm unless we adopt a non-comparative account of harm. However, I will explore a different alternative. Perhaps we do not need the notion of harm to account for that intuition. Maybe an attitudinal approach can explain what is wrong with that behavior in those particular, uncommon cases. Let me explain.

First of all, it is important to point out that the very impaired child / very impaired child example requires more information than the impaired child / impaired child example. This is so because, at first sight, Amanda's behavior is not understandable: why would someone conceive a person who will live a life full of suffering?¹⁶ In the impaired child / impaired child example, Alice was aware that Cate would have a flawed existence, but she also knew that this existence would be worth having. We tend to imagine a woman who wants to be a loving mother and decides to have a child because she knows that this child will live a life worth living. The situation is different in the very impaired child / very impaired child example because Amanda knows that John will not have an existence worth having. She is aware that John will have an extremely low quality of life. So why would she decide to bring John into existence?

Of course, Amanda's behavior is not understandable if we want to find morally acceptable motives. Finding morally objectionable motives is easier. Perhaps Amanda is obsessed with being a mother and does not care about her child's quality of life. Maybe she needs a kidney and plans to persuade John to donate it to her. Perhaps Amanda wants to have a child because she thinks that a baby can save their struggling marriage from divorce. In these situations, Amanda

¹⁶ We are assuming that the child was not conceived yet. Once the child is conceived, there may be legitimate reasons not to abort (for example, religious reasons).

displays an indifference or insensitivity to John's suffering.¹⁷ Due to the creator harm problem, we cannot say that Amanda *harmed* John by bringing him into existence, because the concept of harm does not apply to these cases. But we can plausibly say that, in these cases, Amanda's attitude reflects her lack of interest in, or concern about, the hardships of John's condition. This attitude is bad in itself.

I suspect that this assumption can explain why many people think Amanda's behavior was wrong: they cannot imagine a morally acceptable motive for conceiving a child with an extremely low quality of life. Therefore, they assume that there is something morally wrong with Amanda's attitude. Of course, we can try to be creative and imagine a morally acceptable motive for having a child like John. If we found this motive, our intuition about Amanda's decision might change. But this kind of motive does not immediately come to mind when we think about these cases.

Amanda's attitude does not affect the deontic status of her action, but this attitude can explain the intuition that her *behavior* is wrong. Imagine a selfish and mean person who is never prepared to help anyone; someone who is always seeking his advantage without regard for others. This person may harm no one, but his attitude is morally objectionable. Or suppose that a father donates a kidney to his sick daughter, but only because he wants to win the "Best Father Award". Of course, the donation is morally permissible. But we will look askance at this father. He displays gross insensitivity to his daughter's hardship. There is something wrong with his attitude. Bad attitudes do not make permissible actions impermissible, but bad

17 Wasserman (2019: 75-81) adopts a similar account to discuss what I called "the impaired child / healthy child example". In this paper, I claimed that this example illustrates the non-deprivation problem and argued that the *de dicto* strategy is a possible solution. In my view, the attitude-based account does not fully work in "impaired child / healthy child" cases, at least if we continue assuming that the impaired child's life is worth living. The insensitivity to the child's condition is particularly vivid when the child's life is *not* worth living. I think that, if the child's life is worth living, the wrongness of the parents' behavior can be better explained by the idea that they deprived their (*de dicto*) child of a better life. *A fortiori*, the attitude-based account cannot solve the non-comparative harm problem either. In these cases, the existence-inducing act benefits the person who comes into existence, so it is not clear why the person who performs this act is displaying an *insensitivity* to a certain handicap.

attitudes can detract from permissible actions. Donating a kidney is permissible, but this action will be more or less valuable depending on the donor's attitude. People who perform the same *permissible* action could deserve moral praise or blame depending on their attitudes. In fact, we can plausibly claim that a bad attitude toward a person can give this person grounds for moral complaint. For example, the young daughter may have a moral complaint against her father, even if he decided to donate a kidney to her. The donation was morally permissible. But his attitude is morally objectionable, so her daughter may have a moral complaint against him.

Let us see how this attitudinal account applies to the very impaired child / very impaired child example. It is not easy to explain why bringing John into existence is impermissible because this action does not harm John. However, suppose Amanda brings John into existence because, for example, she needs a compatible kidney donor. In that case, she displays insensitivity to John's situation and a lack of interest in his hardships. She displays a loathsome attitude that deserves moral disapproval. She does not harm anyone, but her attitude is morally wrong. And her attitude can give John grounds for moral complaint against her.¹⁸

The very impaired child / very impaired child example does not provide information about Amanda's attitude. When authors discuss the non-identity problem and describe this kind of situation, they do not provide this information either. However, since it is challenging to find morally good motives for bringing John into existence, Amanda's attitude is suspicious. This presumption against her attitude may explain why many people think she behaved badly.

Finally, note that this account does not rely on virtue ethics, though it is similar to it. According to virtue ethics, which actions

18 G. Kahane (2009) also endorses an attitude-based account. He argues that wanting to have an impaired child is similar to wanting an *existing* child to *remain* in that condition (2009: 203). Therefore, people who want to have an impaired child have a bad attitude. However, this account only applies to parents who conceive an impaired child *because* the child will be impaired (2009: 209). My account can also be applied to parents who want to conceive an impaired child but do not want the child to remain in this condition; for example, a couple who conceives an impaired child because it is their only way of having a daughter rather than a son.

are morally permissible depends on which character traits are morally good. Thus, an action is permissible if and only if a virtuous person would perform it; and an action is impermissible if and only if a vicious person would perform it.¹⁹ The account I explore here is more modest. It simply assumes that attitudes are morally relevant, which means that bad attitudes can give people grounds for moral complaint (and good attitudes can give people grounds for moral approval). This account is not committed to the stronger claim that the deontic status of actions *always* depends on the moral character of their underlying attitudes. Therefore, this account accepts that a person can display an objectionable attitude by performing morally permissible actions.

Boonin criticizes the virtue ethics approach to the non-identity problem. He makes two objections. The first is that having a bad character trait does not imply acting immorally (Boonin 2014: 185). However, this objection does not affect my attitudinal account. As I said, I acknowledge that having a bad character trait does not imply acting immorally. I just claim that bad attitudes can detract from *permissible* actions. The action will continue being permissible, but it will not be valuable; for example, donating a kidney to one's daughter to win an award. And the underlying bad attitude (the morally objectionable motive and the indifference to her condition) gives her grounds for moral complaint.

The second objection is that being insensitive to a person's suffering does not imply that this person is being harmed. Harmless suffering is possible. Imagine that a doctor amputates your arm to prevent you from dying. In this case, the pain or disability that you suffer is caused by an act that makes you better off (Boonin, 2014: 185). Nevertheless, this objection does not affect my account either. I do not claim that being insensitive to a person's suffering implies that this person is harmed. My claim is that, if one knows that one's child will not have an existence worth having, bringing this child into existence for objectionable motives displays a *reprehensible* insensitivity or indifference. The existence-inducing act is morally

19 For an excellent introduction to virtue ethics, see Timmons (2013: 269-304).

permissible because it does not harm the child. But the underlying attitude is morally reproachable. In turn, this attitude gives the child grounds for moral complaint.

Summing up, if the existence of the child is worth having (impaired child / impaired child example), the conceptual “problem” can be solved because it is far from obvious that the existence-inducing act was wrong; and, if the existence of the child is not worth having (very impaired child / very impaired child example), the creator harm problem can be solved because the intuition that the mother behaved badly can be accounted for without reference to the idea of harm.

Conclusion

In this article, I tried out a new method for addressing the non-identity problem. This method rests on the idea that the so-called “non-identity problem” is not one problem but three different problems that call for different solutions. I called these problems “the non-comparative harm problem”, “the non-deprivation problem”, and “the creator harm problem”. The method is to discuss these problems separately. In this article, I illustrated this method by analyzing some available solutions.

First, I claimed that the non-comparative harm problem is neither related to the idea of personal identity nor specific to existence-inducing acts. Rather, it is the problem of explaining how an action that makes a person better off (or does not make a person worse off) can harm this person. Although I mentioned possible solutions to this problem, I did not explore in detail any of them.

Second, I held that, unlike the non-comparative harm problem, the non-deprivation problem does concern the notion of identity. However, I claimed that this problem is not specific to existence-inducing acts. I explored a possible solution: the *de dicto* approach. I argued that this approach is more plausible when it is understood as addressing the specific non-deprivation problem (*vis-à-vis* addressing the non-identity problem in the abstract).

Finally, I held that the creator harm problem is specific to existence-inducing acts but does not concern the notion of identity. I explored two solutions. If the person's life is worth living, then it is not obvious that the existence-inducing act was morally wrong – I am assuming that the non-deprivation problem does not arise, that is, that having a healthier child would have been impossible. In this scenario, the “biting the bullet” approach gains plausibility. However, suppose the person's life is *not* worth living. In that case, the intuition that the existence-inducing act was wrong is much stronger, even assuming that having a healthier child would have been impossible. I explored an attitudinal account that may accommodate this intuition. The idea is that, in these cases, bringing the person into existence denotes a bad attitude that can give this person grounds for moral complaint.

In short, I offered a different method for addressing the non-identity problem: splitting it up into three distinct problems. If this method works, it could show that the so-called non-identity problem is less of a problem than widely believed.

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