

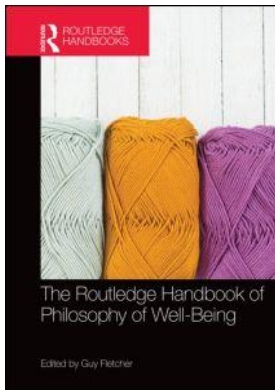
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WELL-BEING AND THE NON-IDENTITY PROBLEM

Molly Gardner

Introduction

What has come to be known as the *non-identity problem*¹ raises some puzzling questions about the relationship between the well-being of others and our reasons for action. The non-identity problem arises in what I will call a *non-identity case*: a case in which an action that is the condition of an individual's worthwhile existence also imposes certain constraints on the individual's prospects for well-being.² For example, consider a case in which some prospective parents use *in vitro* fertilization and select an embryo for implantation on the basis of a gene that will result in a particular disease. If the resultant child has a life worth living, then she is made no worse off in any respect by her parents' action of selecting for disease than she would have been, had they not performed that action. After all, if they had not selected for disease, the embryo with the gene for the disease would have been discarded, and the resultant child would not have existed: she is *non-identical* to anyone who would have existed, had her parents not acted as they did. Nevertheless, many people have the intuition that there is a moral reason against the kind of action that the parents performed. A solution to the non-identity problem must either justify the intuition that there is a moral reason against the very action that brings someone into existence in a non-identity case or explain that intuition away.

This chapter will consider two different strategies for trying to justify the intuition that there is a moral reason against the action in a non-identity case. One strategy attempts to show that, when an action results in constraints upon an individual's prospects for well-being, it harms her, *even if* it fails to make her worse off than she would otherwise have been. Call this strategy the *harm-based approach* to the non-identity problem. The other strategy attempts to show that, although the resultant individual is not harmed by the action, the reason against the action is at least partly grounded in the value of her well-being from an impersonal perspective. Call this strategy the *impersonal value approach*. Since both approaches appeal to either the personal or the impersonal value of an individual's well-being, I will call these approaches the *well-being approaches* to the non-identity problem. Well-being approaches can be contrasted with a number of other proposed solutions to the problem, such as those that attempt to show that the action violates the individual's rights even though it does not harm him or her (Woodward 1986; Smolkin 1994), those that focus on the defective attitudes or motives of the agent (Heyd 1992; Kumar 2005), those that locate the wrongness in a form of

exploitation (Liberto 2014), and those that reject the intuition that the action is in any way morally objectionable (Schwartz 1978; Boonin 2008, 2015).

The main advantages of the well-being approaches are that they affirm the intuitions that (1) there is a wrong-making feature of the action in a non-identity case and (2) such a feature is fundamentally connected to the value of the individual's well-being. Nevertheless, both of the well-being approaches face some serious challenges. In what follows, I will discuss the harm-based approach and the impersonal value approach in more detail, and I will outline some of what I take to be the main challenges for each approach.

The harm-based approach

Recall the non-identity case that I mentioned at the outset. In that case, a set of prospective parents select an embryo on the basis of a gene for a disease, and the embryo then grows into a child who has the disease. One of the intuitions that gives rise to the non-identity problem is that the child has not been harmed by her parents' action because it does not make her worse off in any respect than she otherwise would have been. Let us formulate this intuition as a general principle about harming:

The counterfactually worse-off condition on harming: An action harms an individual only if it makes her worse off in some respect than she would have been, had the action not been performed.

This necessary condition on harming has a great deal of intuitive support. In paradigmatic cases of harming, an individual *is* made worse off in at least some respect: Smith pushes Jones off the balcony, and now Jones has a broken arm. More importantly, the counterfactually worse-off condition on harming seems to be the best explanation for the intuition that harming is morally objectionable: if harming necessarily makes someone worse off, then we have a straightforward explanation for the claim that there is a moral reason against it.

Nevertheless, the counterfactually worse-off condition on harming does not seem to get the right results in every case. Take, for example, a standard preemption case:

Preempted shooting: Andy is attempting to collect a debt for his boss, Stanley. As Stanley watches, Andy shoots Vincent in the knees. If Andy had not shot Vincent in the knees, Stanley would have, and Vincent would have suffered exactly the same injury.³

In this case, Andy's action does not make Vincent any worse off than he would otherwise have been, for if Andy had *not* shot Vincent in the knees, then Stanley would have. Nevertheless, it is intuitively clear that Andy has harmed Vincent.

Non-identity cases are a second class of cases in which the counterfactually worse-off condition is not satisfied. After the prospective parents select for the disease, the resultant child is not any worse off than she would otherwise have been, but many people still have the intuition that by causing her to suffer from the symptoms of the disease, her parents have harmed her.

If we take preemption cases and non-identity cases to be counterexamples to the counterfactually worse-off condition on harming, then we will need to find an alternative. One such alternative appeals to a *non-comparative account* of harm, according to which harm is a state of affairs that is bad for an individual, such that the badness of the state does not derive from its being worse for the individual than some other state that the individual was or would have been

in (Shiffrin 1999; Harman 2004, 2009; Woollard 2012). We can conjoin the non-comparative account of harm to a *causal account of harming*, according to which harming an individual is causing that individual to suffer a harm (Harman 2004, 2009; Thomson 2011). The combination of these two accounts yields the following:

(H) Harming an individual is causing a state of affairs that is non-comparatively bad for that individual.

H seems to justify the claim that, in *preempted shooting*, Andy harms Vincent. After all, Andy causes the state of affairs in which Vincent has injured knees, and having injured knees seems to be a good candidate for a non-comparatively bad state of affairs for Vincent. H also seems to justify people's intuitions about harm in non-identity cases. For example, by selecting the embryo with the genetic disease, the prospective parents cause their child not only to exist, but also to suffer from all the effects of the disease. Suffering from the effects of a disease also seems to be a paradigmatic example of a non-comparatively bad state of affairs. If so, then H implies that the parents harm their child.

Despite the promise that it holds as a harm-based solution to the non-identity problem, H faces a number of challenges. First, there appear to be cases in which an action or event causes an individual to be in a state that is bad for her without harming her. Second, there appear to be cases in which an action or event harms an individual without causing her to be in a state that is bad for her. Third, it is difficult to determine just what it is that makes a state of affairs non-comparatively bad for *some individual*, especially in cases where a similar state of affairs would not be bad for another individual.

The first problem is motivated by cases like the following:

Dim vision. Jones has been blind for many years as a result of retinal damage. Recently, Dr. Smith has developed a surgical operation that can repair some, but not all, of the damage. Dr. Smith operates on Jones and improves his vision from a state of blindness to a state in which Jones can see, but not very well: Jones now has what we will call *dim vision*.⁴

It seems that Jones's having dim vision is a state of affairs that is bad for Jones. Dr. Smith causes that state of affairs. Thus, it would seem that if H is true, then Dr. Smith harms Jones by performing the operation. However, it is intuitively clear that Dr. Smith does not harm Jones.⁵

The second problem for H is illustrated by the following:

Death. Sam, a healthy and happy 25-year-old, is attempting to cross the train tracks when his foot gets stuck. A train hits him and he dies instantly.⁶

The event that consists of the train's hitting Sam does not appear to cause a state of affairs that is bad for Sam. That is because the state of affairs that the accident brings about is one in which Sam no longer exists, and it is difficult to see how a state of affairs can be bad for an individual who no longer exists. However, it is intuitively clear that the train accident harms Sam.

One might think that if we had a more precise account of what it is for a state to be non-comparatively bad for someone, we could explain away the apparent counterexamples and somehow rescue H. However, a dilemma arises when we attempt to make the account of non-comparative badness more precise. Non-comparative badness for an individual must either be

absolute or relative. But the most plausible account of badness as an *absolute* notion still renders H susceptible to apparent counterexamples, and the most plausible accounts of badness as a *relative* notion either undercut the original motivation for H, or else, like the absolute account, they render H susceptible to apparent counterexamples.

The most plausible account of non-comparative badness as an *absolute* notion holds that a state of affairs is non-comparatively bad for an individual if and only if it would be bad for *anyone*. What it is to be *bad for anyone* is defined extensionally: states that involve pain, suffering, disease, disability, and so on are bad for anyone. The problem with this account is that there appear to be cases in which an event harms someone by causing him to be in a state that would *not* be bad for just anyone. Consider the following:

Loss of fortune. Jeeves was once a world-renowned physicist with extraordinary intellectual abilities. He then had a stroke and suffered brain damage. The brain damage left him with average intellectual abilities.⁷

It seems that having average intellectual abilities would not be a bad state for just anyone. Nevertheless, the stroke *harmed Jeeves*.

An alternative way to explain what it is for a state to be non-comparatively bad for an individual is to relativize the badness to something about the individual. However, it is difficult to determine what it is about the individual that the badness should be relativized to. Although Elizabeth Harman (2009) suggests that badness should be relativized to the norm for the individual's species, *loss of fortune* illustrates the problem with that approach. Jeeves is a member of the human species, and it does not *seem* to be bad for a human to have average intellectual abilities, even though coming to have average intellectual abilities is a harm for Jeeves.⁸

Could non-comparative badness be relativized to the individual's will or desires?⁹ Neither choice is promising. A dog with cancer has neither the will nor the desire to be cancer-free, for she does not have the concept of cancer that is a necessary condition for having such a will or a desire. Nevertheless, when she gets cancer, she is harmed.

How about interests?¹⁰ If we hold that a state is non-comparatively bad for someone if and only if it is contrary to one of her interests, we are only pushing the problem back a step. For we must now decide whether to take an absolute or relativistic approach to deciding *which* interests an individual has. If we attribute the same interests to all sentient individuals, then we face the kind of problem that arose for making the concept of non-comparative badness absolute: the set of universal interests will inevitably be too broad or too narrow. Either we will say that blindness is contrary to the interests of a bat, and thus, that a bat's mother harms him when she conceives him (and thereby causes him to exist in a state of blindness), or we will say that having average intellectual abilities is *not* contrary to Jeeves's interests, so the stroke that causes Jeeves to have average intellectual abilities does *not* harm him.

On the other hand, if we relativize interests, we must decide what to relativize them to. If we relativize interests to species membership, desires, or will, we will again have trouble explaining why Jeeves or the dog with cancer is harmed. Suppose we relativize interests to the level of well-being that individuals *previously* had, or to the level of well-being that individuals *would have had* if some event had not occurred: we say that Jeeves has an interest in having extraordinary intellectual abilities because having such abilities would restore his well-being to pre-stroke levels, or because having such abilities would boost his well-being to the level at which it *would* have been if he had not had the stroke. If we take this option, we undermine one of our original motives for accepting H, which was to vindicate the notion that individuals in non-identity cases can be

harmful by actions that restrict their lifetime prospects of well-being even if such individuals *never had* or *would not have had* unrestricted prospects.

Jeff McMahan suggests that whether an individual is “unfortunate” can be relativized to her “native potential” for having a certain level of well-being, where native potential has something to do with “the physical constitution of the individual” (1996: 22). Let us attempt to formulate this idea as an account of a non-comparatively bad state:

The native potential account of non-comparative badness: A state of affairs is non-comparatively bad for someone when it is worse for her than some other state of affairs that could have obtained, given her native potential.

This suggestion is again at odds with the motivation for H. In the selecting for disease case, the child’s disease is a consequence of her physical constitution; she is genetically predisposed to develop it. Since she does not have the potential *not* to have the disease, the native potential account implies that her having the disease is not bad for her.

H is in trouble. H says that harming an individual is causing a state of affairs that is non-comparatively bad for that individual. But it seems that, however we define what it is for a state to be *non-comparatively bad* for someone, either we undercut the original motivation for H, or else we invite apparent counterexamples. And if H is in trouble, then so is the harm-based response to the non-identity problem, for without something like H, the harm-based response lacks a solid theoretical grounding.

The impersonal value approach

As an alternative to the harm-based approach, some philosophers have taken the *impersonal value approach*, which attempts to ground the moral reason against the action in non-identity cases in *impersonal value*, or value from an impersonal perspective. Those who take this approach typically hold that, in addition to having value *for* the individual whose life it is, an individual’s well-being also has impersonal value. Bringing an individual with a life worth living into existence is a way of increasing impersonal value, and the better the individual’s quality of life, the greater the increase in impersonal value.

In order to use this approach to explain why actions in non-identity cases are morally objectionable, philosophers need to formulate a specific principle that relates impersonal value to reasons against actions. Here is a first pass at such a principle:

Maximize value (MV): There is always a reason against failing to maximize impersonal value.

Upon first consideration, MV might seem to solve the non-identity problem. When the prospective parents select for disease, they are bringing into existence someone who, we might expect, would *not* enjoy maximum well-being. Thus, MV explains why there is a reason against their action.

Nevertheless, MV runs into the following problem. Suppose that our only options are to either (a) improve the welfare of existing people or (b) bring into existence a large number of individuals whose lives are only barely worth living. Suppose that, although the lives of the individuals who would exist if we chose (b) are only barely worth living, the sheer number of those individuals makes it true that taking option (b) will maximize impersonal value. Then MV implies that there

is a reason against our choosing (a), when it seems intuitively clear that there is no such reason. Let us call the implication that we have reason against choosing (a) the *more people implication*.¹¹

To avoid difficulties like the more people implication, some philosophers restrict the scope of impersonal value principles to *same-number choices*, or choices in which the same number of individuals will exist no matter which alternative is chosen. This is already a problem for the impersonal value approach, since not all non-identity cases are same-number choices. Suppose, for example, that in the selecting for disease case, the parents were deciding between selecting for disease or having *no child at all*. In that case, theirs was a different-number choice, so an impersonal value principle restricted to same-number choices cannot explain why there was a reason against their action.

Even if we construe all non-identity cases as same-number choices, impersonal value principles that are restricted to such choices face additional problems. One example of a restricted principle is the following:

Same number quality principle (QP): In a same-number choice, there is some ethical reason not to act so that those who live will be worse off, or have a lower quality of life, than those who would have lived.¹²

On first consideration, QP also holds promise for explaining why the action might be wrong in same-number non-identity cases. Suppose that some prospective parents face a choice between selecting for disease or selecting a non-diseased embryo. Selecting for disease makes it true that the resultant child is worse off than the child who would have lived, had the parents not selected for disease. Thus, QP straightforwardly implies that, in that case, there is a reason against the parents' action.

Nevertheless, QP does not imply that this reason against the action is very strong. To see this, consider what QP says about another case:

Goat. A couple can either raise a child or a goat, but they can't raise both. The couple know that whichever individual they raise will have a life worth living, and they also know that neither the child nor the goat will exist unless they agree to raise it. Ultimately, the couple choose to raise the goat.¹³

Goat is also a same-number choice, and it seems plausible that the goat will be worse off, or have a lower quality of life, than the child. After all, we would expect the child to develop sophisticated cognitive abilities, to form deep and meaningful relationships, to appreciate music and art, and so on, but we would not expect the goat's life to have any of these features. Since these features would presumably contribute to the child's having a higher quality of life than the goat, QP implies that there is a reason against raising the goat instead of the child.

Greene and Augello (2011) argue that the goat case is a counterexample to QP. In their view, there is no moral reason against raising the goat instead of the child. Since QP implies that there *is* such a reason, QP is false.

However, it may be that reasons come more cheaply than this. Some philosophers might say that there *is* a reason against raising the goat: in doing so, the couple give up their chance to raise a child who will have a better quality of life. Nevertheless, this does not solve the problem for QP. Even if there is a reason to refrain from raising the goat, such a reason is weak, in the sense that it could be easily overridden by countervailing considerations. For example, the consideration that you would impress your friends might be sufficient to render goat raising permissible. Conversely, the reason against the action that brings an individual into existence in non-identity

cases is stronger. The consideration that you would get lots of sympathy from your friends if you had to raise a sick child would not be sufficient to render selecting for genetic disease permissible. Thus, Greene and Augello are right that the goat case raises a problem for QP even if they are wrong about the nature of the problem. Whether or not there is a reason against raising the goat, QP fails to explain why the reason against the action in a non-identity case is *stronger* than the reason (if there is any) against raising the goat.

Recall that this objection to QP relies upon the claim that the goat is worse off than the child. Such a claim could be challenged. After all, there is a sense in which the goat is *not* worse off than the child. If the goat is born healthy, it can be expected to fare perfectly well *for a goat*, just as a child who is born healthy can be expected to fare perfectly well *for a human*. Indeed, the goat and the child may in some sense be *equally* well off. In support of this idea, McMahan argues that “we distinguish between an individual’s level of well-being, on the one hand, and whether [an] individual is well off or badly off, or flourishing or unfortunate, on the other” (1996: 9). He uses the term “fortune” as a technical term to “express a relation between an individual’s level of well-being and a standard against which well-being is assessed” (1996, p. 9). I take it that *fortune*, as McMahan understands it, is well-being that is *relativized*.

An advocate of the impersonal value approach can use McMahan’s concept of fortune to formulate a principle that would distinguish the choice between a typical human and a disabled human, on the one hand, from the choice between a typical human and a typical goat, on the other. Here is a schematic for such a principle:

Same-number quality principle relativized (QPR): In a same-number choice, there is some ethical reason not to act so that those who live will be worse off, relative to X, than those who would have lived, relative to Y.

Suppose that we fill in various species norms for X and Y. This version of QPR—call it QPRS—implies that there is reason against bringing into existence one individual who will fare badly relative to the norm for her species rather than another individual who will *not* fare badly relative to the norm for his species.

QPRS seems to get the right results, both for same-number non-identity cases and for *goat*. In the same-number version of the selecting for disease case, the actual child’s well-being is lower than that of a typical human, whereas the well-being of the possible child who the parents would raise, were they not to select for disease, would not be. QPRS thus implies that there is a reason against selecting for disease. In *goat*, the child will be just as well off relative to a typical human being as the goat will be relative to a typical goat. Therefore, QPRS does not imply that there is a reason against raising the goat.

However, there is a problem for QPRS. Species membership is a notion that does not admit of degree: one cannot be a goat to a greater or lesser extent. Conversely, similarities between organisms stretch along a continuum: a human can be more or less goat-like. Imagine, then, an individual who is roughly in the middle of the continuum between humans and goats; perhaps she is a genetically engineered organism whose DNA is half-human, half-goat. There is either an answer to the question of what species she belongs to or there is not. If there is no answer, then QPRS cannot tell us whether there is a reason against bringing such an individual into existence, and is therefore incomplete. If there is an answer, then there must be a distinct cut-off line that distinguishes humans with goat-like qualities from goats with human-like qualities. There will also be two possible individuals, one on either side of the line, who will be almost qualitatively identical in terms of their phenotype and their lifetime level of well-being. One will be badly off for a human, but the other will be well off for a goat. QPRS implies that there

is a reason against bringing the former individual into existence (instead of a typical individual of any species) but no reason against bringing the latter into existence (instead of a typical individual of any species). This implication is objectionably arbitrary.¹⁴

One might try to rescue QPR by assigning to X and Y values other than species membership. But what other values would it make sense to relativize well-being to? As I noted in the previous section, McMahan suggests that fortune may be relative to an individual's "native potential," where native potential has something to do with the "physical constitution of the individual." Once again, however, the appeal to native potential will not vindicate the judgment that there is a reason against selecting for disease. That is because a genetic disease does not prevent a child from reaching her potential; it helps determine her potential.

Like the personal welfare approach, the impersonal value approach is in trouble. The advocate of the impersonal value approach must find a principle that explains why there is a strong reason against selecting for disease but merely a weak reason (if there is any reason at all) against raising a typical goat instead of a typical child. Neither MV, nor QP, nor QPR and its variants seem to be up to the task.

Conclusion

In this chapter, I have explained the non-identity problem and discussed two strategies for solving it: the harm-based approach and the impersonal value approach. Both approaches appeal to the value of an individual's well-being to explain why there is a reason against the action that brings him or her into existence. The harm-based approach focuses on the value of the individual's well-being to the individual, whereas the impersonal value approach focuses on the value of the individual's well-being from an impersonal perspective.

Both approaches face a number of challenges. Since proponents of the harm-based approach deny the counterfactually worse-off condition on harming, their main challenge is to find an alternative principle that determines whether an individual has been harmed. The most plausible candidate—a principle that associates harming with causing non-comparatively bad states—has trouble getting all the cases right, especially when it comes to explaining why certain states are bad for some individuals but not for others. On the other hand, proponents of the impersonal value approach face the task of explaining why not all failures to maximize utility are equally objectionable.

Notes

- 1 The term "non-identity problem" was coined by Derek Parfit (1984), but the fundamental tensions that constitute the problem were identified, somewhat independently, by Parfit (1976), Robert Adams (1972), and Thomas Schwartz (1978).
- 2 There is some disagreement about how, exactly, to define a non-identity case. Some philosophers classify as non-identity cases only those cases in which it appears to be all-things-considered wrong to bring one individual into existence instead of some other individual (see, for example, Harman 2009). However, I think the debate proceeds more fruitfully if we (1) include cases where *no other* individual would have come into existence if the action had not been performed and (2) ask whether there is a *reason* against the action (and not merely whether the action is all-things-considered wrong).
- 3 This kind of case is discussed by Hanser (2008), Bradley (2012), and Woollard (2012).
- 4 This example is an adaptation of cases that appear in Hanser (2009), Harman (2009), and Thomson (2011).
- 5 Harman (2009) responds to this objection by distinguishing between a "particular bad state" and a "general bad state." She claims that causing an individual to be in a *general* bad state is a sufficient condition for harming him or her. If dim vision is a *particular* bad state, it does not follow from Harman's principle and claim that Dr. Smith caused Jones to be in dim vision that Dr. Smith harmed Jones.

- Nevertheless, this response raises some questions about how we are to distinguish between general and particular bad states.
- 6 This case is inspired by Hanser's (2008) argument that, in general, state-based accounts of harm cannot successfully explain why death is a harm. A state-based account of harm is one according to which a harm is a state of affairs; the non-comparative account of harm is one such account. As an alternative to state-based accounts, Hanser favors an event-based account of harm. I do not critique his account here, but see Thomson (2011) for some objections to Hanser's view.
 - 7 This case is modeled upon the Bertrand Russell case in Jeff McMahan (1996) and the case of the Nobel Prize winner in Hanser (2008).
 - 8 This objection to H does not apply to Harman's (2009) view. That is because Harman argues that causing someone "to be in pain, to be in mental discomfort, to be in physical discomfort, to have a disease, to be deformed, to be disabled, or to die" is a *sufficient condition* for harming, not a necessary condition (p. 149). However, Harman's view has the problem that it does not offer a complete analysis of harm, and so cannot explain *why* causing someone to be in pain, discomfort, and so on is sufficient for causing harm.
 - 9 Seana Shiffrin holds that harms are "conditions that generate a significant chasm or conflict between one's will and one's experience, one's life more broadly understood, or one's circumstances" (1999: 123). Similarly, George Pitcher writes, "An event or state of affairs is a misfortune for someone (or harms someone) when it is contrary to one or more of his more important desires or interests" (1984: 184).
 - 10 Joel Feinberg (1984) defends a highly influential account of harm that relativizes harm to an individual's interests. However, he endorses a comparative account of harm.
 - 11 The more people implication is similar to what Derek Parfit (1984) refers to as the "Repugnant Conclusion."
 - 12 This is a principle that Mark Greene and Steven Augello (2011) formulate and then reject. Their formulation is an adaptation of a principle that Derek Parfit calls, "The Same Number Quality Claim, or Q" (1984: 360).
 - 13 This case is an adaptation of "The Good Life" in Greene and Augello (2011).
 - 14 I have adapted this objection from an argument that Greene and Augello (2011) employ against objections to selecting for disability.

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