
NOËSIS XVIII

NON-IDENTITY AND THE CONCEPT OF
HARM
A CRITIQUE OF HARTZELL-NICHOLS'S MODEL OF HARM

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Derek Parfit re-introduces what has been called the Non-Identity Problem. As he posits, certain decisions made in the present will not only affect the state of affairs future generations find themselves in, but also will impact the circumstances of conceptions such that the particular people that exist in the future will be different than those who would have existed had the harming decision not been made. For Parfit, the problem lies in the fact that there are some decisions with harmful effects on future generations that are also the very decisions that cause future persons to exist as the particular persons they do. Unpalatably, the benefit granted by causing persons to exist is thought to outweigh the detriment done by the harmfulness of the decision. This paper begins by briefly reviewing Parfit's characterization of the problem and Lauren Hartzell-Nichols's solution to it. The author argues that her view, by insisting on a distinction between harmful and harmed conditions, cannot accommodate the intuition that the makers of such harming decisions are blameworthy. The author further considers a way in which her view might be amended to accommodate this problem, though concluding that this amendment cannot be successful.

Key Words: Non-Identity Problem, Derek Parfit, Lauren Hartzell-Nichols

INTRODUCTION

Parfit (1983) considers the moral ramifications of present decisions that concern future people. As he posits, certain decisions made in the present will not only affect the state of affairs future generations find themselves in, but will

impact the circumstances and times of conceptions, such that the *particular people* who exist in the future will be different as well.¹ These instances will hereafter be referred to as cases of “non-identity” and the problem they create as the “non-identity problem.”² In this paper, I will briefly review Parfit’s characterization of the problem and [Hartzell-Nichols \(2012\)](#)’s solution to it. I will argue that her view cannot accommodate the intuition that perpetrators of harm are fitting subjects of blame for their *harming* future people, contrary to [Harman \(2009\)](#)’s criterion for a satisfactory solution to the non-identity problem. I will conclude by considering a way in which her view might be amended in order to account for this intuition. However, if Hartzell-Nichols remains committed to the harmful/harmed distinction, this amendment cannot be successful.

1 THE CONCEPT OF HARM

Borrowing a definition of harm from [Feinberg \(1987\)](#), Parfit defines “harm” as “making someone worse off.”³ Making someone worse off, Parfit acknowledges, requires that they would have been better off had the harming decision not been made. This condition [Feinberg \(1990\)](#) calls the “counterfactual test for harming”⁴ and is necessary for harm. An example of harm of interest to the present paper is the harm we might do to future generations were we to adopt risky climate policies that would have disastrous effects on the environment in several hundred years.

To borrow another notion from Feinberg, Parfit holds that in causing someone to exist, we *benefit* them. For Feinberg, this benefit arises because of a satisfaction we grant to the person’s “supreme welfare interest” of being alive.⁵ A “welfare interest,” according to Feinberg, is a fundamental requirement for well-being (e.g., sufficient food, safety, health, etc.).⁶ In other words, a welfare interest is a necessary condition for a good life, though perhaps not a sufficient one. This is all, of course, assuming that the newly created person has a life that is worth living. Parfit contends that this is a reasonable assumption to make: To assert that a life is bad enough that it would have been of more benefit to the potential liver had it never been created is extreme. Indeed, it is hard to think of a suitably compelling argument for the thesis that the moral patients of non-identity cases have lives so abhorrent that they would have been better off never being alive at all. Absent such an argument, Parfit concludes that our causing new persons to exist counts as a benefit for them.⁷ Of note, Parfit also adopts in this same paper the principle that wrongs (and harms) from an

¹Parfit 113.

²Harman (2009), 137.

³Feinberg (1987), 1.

⁴Feinberg (1990), 26.

⁵Feinberg (1987), 5.

⁶Feinberg 4.

⁷Parfit 114.

action apply only to the particular person they affect or are directed towards. However, if we accept that harm can only apply to the particular people it is directed towards and consider the non-identity nature of this case (*viz.*, the particular people that we affect in the future are different, in virtue of our decision), then we are left with the unpalatable consequence that we do not harm future persons, despite the appearance of leaving them worse off.

2 THE NON-IDENTITY PROBLEM

Parfit's argument to establish the problem proceeds as follows. From the fact of non-identity, a decision that appears to harm future people (e.g., the adoption of a risky climate policy) is also the *very* thing that causes those particular future people to exist (since it will affect times of conceptions, etc.). Since the harming choice causes these people to exist (and we assume their lives are worth living), the choice greatly benefits these people—so much so that the benefit we bestow by causing them to exist outweighs (or at least neutralizes) the detriment done by putting them at risk. Therefore, these people cannot be said to be *worse off* than they would have been had the decision not been made. Since Parfit also here adopts the principle that “wrongs require victims”—that is, wrongdoing requires that some (particular) people be worse off—in non-identity cases the future people will not be worse off in virtue of our current choices. Thus, he concludes that no wrong is done in non-identity cases.⁸

This constitutes a problem—i.e., the “non-identity problem.”⁹ The conclusion that no wrong is done in non-identity cases contradicts our seemingly uncontroversial moral intuition that making risky decisions that harm future persons is wrong. Moreover, as Harman (2009) claims, our inclinations are such that these decisions seem wrong “*in virtue of harming* the relevant people.”¹⁰ Therefore, she claims, a sufficient answer to the non-identity problem requires not only an account explaining that such decisions are wrong, but also an explanation that accounts for the intuition that they are wrong *because* they do harm.

3 HARTZELL-NICHOLS'S SOLUTION

In the service of solving this problem, Hartzell-Nichols (2012) introduces two distinctions pertaining to the concept of harm. The first, borrowed from Joel Feinberg, is the distinction between “harmed” and “harmful” conditions.¹¹ Putting someone into a harmed state, Hartzell-Nichols claims, requires a harmer: Harmed conditions are a “result of an act of harm.” Conversely, then, harmful conditions are *not* the result of an act of harm. As I will argue, there

⁸Parfit 114.

⁹Harman 1.

¹⁰Harman 137, my emphasis.

¹¹Hartzell-Nichols 101.

are two ways of reading this claim: The first emphasizes the lack of an ‘act’ (yet allows us to say its victims are worse off), while the other emphasizes the lack of ‘harm’ (understood as essentially involving making one worse off).

The former reading is, as I will contend, not available to Hartzell-Nichols. To understand what “harmful conditions” would look like on this reading, it is helpful to consider Hartzell-Nichols’s distinction between the harm done by tornadoes and that done by terrorists. Whereas the terrorists put people into a harmed condition “since [the terrorists] *acted* in ways that caused [people] harm,” the tornado puts people in a harmful condition, since the tornado, unlike the terrorists, is not able to willfully execute actions. In the case of the tornado, then, there is “no *act* [that] made [people] worse off.”¹² Of course, there is an *event* (i.e., the tornado) that leaves people worse off, and thus harmed. However, simply because harm has been done does not mean that *wrong* has been done: *Wrongdoing* requires that there is some particular, morally responsible wrongdoer. Since a tornado is not such a moral actor, it does not make sense to say a tornado *acted* in such a way as to disadvantage these people. Since these sorts of harmful conditions cannot, by definition, be imposed by actors, emphasizing the lack of an *act* is not a move open to Hartzell-Nichols; surely we wish to speak of the risky policy chooser as the imposer. I will address the second reading (that emphasizing the lack of *harm*) in due course. First, though, another distinction of Hartzell-Nichols’s must be explicated.

The second distinction, borrowed from Casper Hare, is that between *de re* and *de dicto* harming. As Hartzell-Nichols outlines, the notion of *de re* (literally, “of the thing”) harm requires that it be perpetrated by a particular harmer and “[attach] to a particular [victim].”¹³ *De dicto* (literally, “about what is said”) harm, in non-identity cases, merely requires that the states of affairs that exist for some particular people are worse than they might have been for whatever other particular people might have existed in their place. Thus, this kind of harm does not require particular victims. Hence, with respect to *de dicto* harm, it is irrelevant that the particular victims that exist in each case are different. Hartzell-Nichols argues that, while present people certainly cannot do *de re* harm to future generations (since *de re* harm “requires [particular] victims”¹⁴), they can do them *de dicto* harm. In addition, she holds that *de dicto* harm does harm by “imposing harmful conditions on future people.”¹⁵ Thus, she concludes, when we make dangerous climate policy decisions, we harm future persons by imposing *de dicto* harmful conditions on future generations.

4 AGAINST HARTZELL-NICHOLS’S SOLUTION

In order for Hartzell-Nichols’s account to be satisfactory in light of Harman’s criterion, she must demonstrate that doing *de dicto* harm to future people via

¹²Hartzell-Nichols 101.

¹³Hartzell-Nichols 102.

¹⁴Parfit 114.

¹⁵Hartzell-Nichols 102.

our present choices is 1) morally wrong and 2) morally wrong because it does *harm* to some future people. I intend to show that, depending on how one reads her definition of harmful conditions (viz., as resulting from “no *act* of harm,” or from “no act of *harm*”), it either (on the first reading) cannot be applied to cases involving wrongdoers or (on the second reading) cannot provide an adequate account of the *wrong* done by the present policy choosers (viz., because they do not *harm* the future persons they cause to exist).

Here is why. Since Hartzell-Nichols needs to allow for a kind of harm that does not require particular victims, she cannot appeal to harmed conditions. Thus, she defines *de dicto* harm as that of imposing harmful conditions.¹⁶ However, once the definition of harmful conditions is considered, it becomes clear that her answer either cannot satisfy condition 2 or is entirely unhelpful.

How might it fail to satisfy condition 2? As discussed, it is confusing how both Feinberg and Hartzell-Nichols assume that harmful conditions can be imposed by particular actors, but cannot be the result of “acts of harm.” However, in *Harmless Wrongdoing*, Feinberg clarifies this. Feinberg states that “harmful states are not the consequences of acts of harming,” and are so “*only* because they do not pass the ‘counterfactual test for harming’.”¹⁷ By passing the “counterfactual test,” Feinberg means that *harm* can only be rightfully claimed if some victim *V* would have been *better off* had some perpetrator *P* not acted as they did. Feinberg defines imposing harmful conditions as setting back *V*’s interests, which is a necessary but not sufficient condition for harming. Without passing the counterfactual test, then, setting back *V*’s interests is not an act of *harm* towards *V*. Importantly, Feinberg takes this form of wrongdoing to be wrong, but “*not [wrong] for harming, or violating the rights of, a person,*” where Feinberg is referring to some *particular V* that is not harmed.¹⁸

This is where the problem for Hartzell-Nichols’s view arises. Reading the definition of harmful conditions as “the result of no act of *harm*,” we have a particular victim who is injured by an act but *not made worse off* and thus not harmed (according to Feinberg’s counterfactual test). Reading the definition of harmful conditions as “the result of no *act* of harm,” we have particular victims who are worse off, but through no *act* (and thus no actor can be said to have done them, which is, *ex hypothesi*, false). While wrongs (as distinct from harms) may not require particular victims, they surely require particular wrongdoers. This is relevant to the former reading (i.e., that where harmful conditions can be imposed, but not leave one worse off). In the case of the risky policy executor, they do *wrong*, but not because they *harm* any people; they execute an act that injures some people, but does not harm them because it does not leave them worse off. If Harman’s criteria are to be taken seriously, then either the perpetrators of the putative harm do no wrong (because, by these criteria, they must do wrong *in virtue of harming*), or it is incoherent to speak of particular actors at all (e.g., in the case of the tornado).

¹⁶Hartzell-Nichols 103.

¹⁷Feinberg (1990), 26, my emphasis.

¹⁸Feinberg 28, my emphasis.

5 AMENDMENT CONSIDERED

This is, however, not sufficient to warrant rejecting her view. To see how the view might be rescued, I propose that Hartzell-Nichols's notion of *de dicto* harm ought to be further probed. Surely, if we wish to be able to speak coherently of harmful conditions being *imposed*, we ought to read Hartzell-Nichols as referring to the sense in which there is no act of *harming*, rather than the sense in which there is no *act* of harming. Hence, we must answer the problem that choosing a risky climate policy does not seem to be wrong in virtue of its harming some future persons, since the advantage we confer on them outweighs the detriment we bring them. In my view, the move she makes in identifying *de dicto* harming and the imposition of harmful conditions does not solve this problem, since the conditions she gives for *de dicto* harming contradict the conditions for harmful conditions.

Given what has been said above, imposing "harmful" conditions requires particular victims that are both benefited by being caused to exist and injured by the risky climate policy. Now, consider her criteria of *de dicto* badness in the following example: "Dangerous" and "Safe" are the states of affairs that result from the climate policies *D* and *S*, respectively, and *B* and *C* are particular people (if *D* is chosen, *B* will exist, and if *S* is chosen, *C* will exist). "Dangerous" is *de dicto* worse for *B* than "Safe" if *B* is *worse off* in "Dangerous" than *C* is in "Safe."¹⁹ Suppose that some present actor *A* can choose *D* or *S*. *A* can impose harmful conditions on *B* if *A* sets back *B*'s interests by causing "Dangerous," but will also, at the same time, *cause B* to exist. Recall the clarifying work Feinberg's argument does with respect to harmful conditions: If *A* acts in a way that is detrimental to *B*, even if it is outweighed by some benefit *A* confers on *B* (i.e., such that *B* would not be *worse off* and *A* will not have *harmed B*), *A* is imposing harmful conditions on *B*. This is not the case in "Safe": *A* causes *C* to exist, but does not disadvantage *C* in the way that *A* disadvantages *B* in "Dangerous." It is uncertain whether or not imposing harmful conditions on *B* is sufficient to meet Harman's criteria that we wrong *B* in virtue of harming *B*, but there is a more fundamental problem for these criteria of *de dicto* harm: Can *B* meaningfully be compared to *C*?

In order to justify why *D* ought not to be chosen, a comparison must be done with *C*; specifically, it must be (and is explicitly stated by Hartzell-Nichols) that *B* is *worse off* in *B*'s respective state of affairs than *C* would have been in theirs.²⁰ This means, by definition, that an act of harm has been committed against *B* (since leaving one worse off is to commit an act of harm against them). According to Feinberg's definitions both Parfit and Hartzell-Nichols import, acts of harm are identical with the imposition of harmed conditions. This means that *de dicto* harm, as it is currently characterized, involves harmed conditions, where *B* is worse off *with respect to C*, who is non-identical with *B* and cannot co-exist with *B*. This redefinition is, of course, not available

¹⁹Hartzell-Nichols 102.

²⁰Hartzell-Nichols 102.

to her view: If the only way we can harm future people involves attachment to whichever particular person *does* exist (depending on whether *D* or *S* is chosen), it makes no sense to compare *B*'s state to *C*'s; *B* can only be said to be *worse off* than *B* in a different possible world, not compared to some other particular individual. If this is so, then we cannot be said to be making *B* worse off with respect to *C*, and thus cannot be said to be committing an act of harm. Thus, the effort to explain *A*'s action as an act of harm against *B* is unsuccessful.

To elaborate: If *A* has a *de dicto* obligation to protect future people, *whomever they turn out to be*, it cannot be cashed out in terms of imposing harmful conditions (due to the absence of harm, failing to satisfy Harman's criterion for a satisfactory solution to the problem), nor can it be cashed out in terms of harmed conditions (due to the fact of non-identity, as discussed above). Harmful conditions, as currently defined, require making future states of affairs objectively worse, but also require making them worse *for some particular B* to whom both the benefits of being brought into existence and the detriment of a disastrous environment both must attach. If there is to be an adequate conception of harm that both evades this worry and allows us to condemn *A*'s action as wrong *in virtue of* harming some non-particular person, while keeping the *de re/de dicto* distinction, the harmful/harmed distinction must be abandoned.

REFERENCES

- Feinberg, J., *Harm to Others*. Oxford University Press, 1987.
- , *Harmless Wrongdoing: The Moral Limits of the Criminal Law*. Oxford University Press, 1990.
- Harman, E., "Harm as Causing Harm." In M. A. Roberts and D. T. Wasserman (Editors), *Harming Future Persons*, Springer, 2009, pp. 137–154.
- Hartzell-Nichols, L., "How is Climate Change Harmful?" *Ethics & the Environment*, vol. 17, no. 2, (2012), pp. 97–110.
- Parfit, D., "Energy Policy and the Further Future: The Identity Problem." In D. MacLean and P. G. Brown (Editors), *Energy and the Future*, Rowman and Littlefield, 1983, pp. 112–121.