



## EXISTENCE: WHO NEEDS IT? THE NON-IDENTITY PROBLEM AND MERELY POSSIBLE PEOPLE

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### ABSTRACT

*In formulating procreative principles, it makes sense to begin by thinking about whose interests ought to matter to us. Obviously, we care about those who exist. Less obviously, but still uncontroversially, we care about those who will exist. Ought we to care about those who might possibly, but will not actually, exist?*

*Recently, unusual positions have been taken regarding merely possible people and the non-identity problem. David Velleman argues that what might have happened to you – an existent person – often doesn't merit moral consideration since the alternative person one would have been had what might have happened actually happened is a merely possible person about whom one has no reason to care. He argues that his way of thinking can eliminate the non-identity problem. Caspar Hare argues that merely possible people have interests and are morally relevant. He argues that we can solve the non-identity problem by rejecting the view that merely possible people are morally irrelevant. Both Hare and Velleman argue that focusing on one's de dicto rather than on one's de re children can help us avoid the non-identity problem.*

*I analyze the role that merely possible, nonexistent hypothetical entities ought to play in our moral reasoning, especially with regard to procreation. I refute both Velleman's and Hare's views and demonstrate the difficulties we encounter when we try to apply their views to common non-identity cases. I conclude with the common-sense view regarding who matters, morally: only those who do, did, or will exist.*

Who needs existence? Short answer: no one (because there is no real subject for that need). Interests are contingent upon existence and all those who have interests exist. Once existent, subjects may have an interest in the continuation of a worthwhile life but there is no real subject for the interest in initial existence *per se*. This is a very fortunate thing because it allows us to carry on with our basic and widespread moral intuitions regarding who matters and what is right: only real people merit our moral consideration and it is usually permissible to do that which harms no one. Although Parfit's non-identity problem<sup>1</sup> is often taken to threaten these intuitions, it

has also been argued that maintaining those intuitions and ignoring the so called claims of merely possible people – i.e. hypothetically possible people who will never exist – can prevent us from becoming ensnared in the non-identity problem.<sup>2</sup>

Recently, some philosophers have taken rather unusual positions regarding merely possible people and the non-identity problem. Caspar Hare argues that merely possible people do have interests and are morally relevant. He argues that it is only by rejecting the view that merely possible people are morally irrelevant that we

<sup>1</sup> D. Parfit. 1984. *Reasons and Persons*. New York, NY: Oxford University Press: 351–374.

<sup>2</sup> See R. Weinberg. Identifying and Dissolving the Non-Identity Problem. *Philo Stud* 2008; 137: 3–18.

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can solve the non-identity problem.<sup>3</sup> David Velleman argues that what might have happened to you – a real, existent person – often does not merit moral consideration since the alternative person one would have been had what might have happened actually happened is, according to Velleman, a merely possible person about whom one has no reason to care (first-personally anyway).<sup>4</sup> He argues that this way of thinking can also do away with the non-identity problem.

It may seem surprising that opposite views regarding the moral value of merely possible people lead to any position at all on the non-identity problem since the non-identity problem is, as formulated, a problem about our real treatment of real (albeit future) people. However, as we will see, what may appear both esoteric and hopelessly, perhaps even impossibly, abstract – namely, the *practical* value of *nonexistent, merely hypothetical* ‘people’ – is an issue that practical ethics must address in order to come to real-life conclusions about our treatment of real future people and their real-life interests, especially because it bears on the non-identity problem, which is both a theoretical and practical problem in ethics.

Hare thinks that focusing only on actual people leaves us stuck in the non-identity problem and so he extends the moral ontological spectrum to include merely possible people. Velleman thinks that we must ignore not only all merely possible people but also many real possible alternatives for actual people in order to escape the non-identity problem. That’s why Velleman reduces the moral ontological spectrum only to what did occur to actual people, excluding merely possible people as well as what could have, but did not, happen to actual people. I defend what I take to be a common-sense middle ground: actual possibilities for actual people matter (elsewhere I argue that my moral ontology is the one that can solve the non-identity problem).<sup>5</sup> My moral ontological spectrum includes anyone who did, does, or will exist and all the things that happen to them as well as what could have happened to them instead. As we will see, how one draws the moral ontological landscape may have important practical implications.

The fact that both Hare and Velleman believe, whether rightly or wrongly, that their insights into the value of merely possible people lead to a solution to the non-identity problem gives us reason to analyze their views

regarding the value of merely possible people as well as the connection between those views and a practical approach to the challenge posed by the non-identity problem to our treatment of future persons. Intriguingly, although Hare and Velleman take opposite and extreme positions on the value of merely possible people, they advocate a similar approach to future people *vis-à-vis* the non-identity problem, based on what they take to be an important *de dicto / de re* (or an ‘any child’ versus a ‘particular, identified child’) distinction regarding future persons. It will thus be of both theoretical and practical interest to explore this approach and see whether it indeed does any work toward a solution to the non-identity problem. To clarify, then, the reason I have chosen to analyze Hare’s and Velleman’s views in one paper is because they both argue that their conception of the moral value of the hypothetical interests of merely possible people leads to a solution to the non-identity problem and, even though their views on the value of merely possible people are at odds, their solution to the non-identity problem, at least at the level of application, is quite similar. Yet I maintain that they are both wrong about the value of merely possible people and that their practical solution to the non-identity problem is a mere repackaging of the old problem, and no real solution at all.

I will very briefly review what the non-identity problem is and why we should try to solve it. I will then analyze the proper role merely possible, nonexistent hypothetical entities ought to play in our moral reasoning, especially with regard to procreation and population policy. In the course of so doing, I will argue against Hare’s and Velleman’s views, and show the difficulties we encounter when we try to apply their views to common non-identity cases.

## 1 THE NON-IDENTITY PROBLEM

Because sperm are short-lived, our identities seem to depend on when we were conceived. And since it seems that almost anything we do affects the timeline of conceptions, almost anything we do also affects future identities: each person’s set of conception circumstances are virtually the only ones possible for her; her existence depends on them. *The non-identity problem* is thus the problem of identifying the person who is harmed by procreative decisions which seem to set back her life interests, given that her existence is worthwhile and dependent on that very same decision.

For example, if a 14-year-old girl deliberately creates a child who must suffer the disadvantages that having a child for a mother involves, who has the 14-year-old harmed? Intuitively, she has harmed her child, but because that child could not have been conceived at any

<sup>3</sup> C. Hare. *Voices From Another World: Must We Respect the Interests of People Who Do Not, and Will Never, Exist?* *Ethics* 2007; 117: 498–523.

<sup>4</sup> D. Velleman. *The Identity Problem*. *Philos Public Aff* 2008; 36: 221–244, and D. Velleman. *Love and Non-Existence*. *Philos Public Aff* 2008; 36: 266–288. Note that deeming the person that you would have become had what might have, but did not happen, actually happened, a merely possible person is an ontologically controversial move, which I discuss in Section 5 of this paper.

<sup>5</sup> See Weinberg, *op. cit.* note 2.

other time and has a worthwhile life, we seem unable to say that. Our inability to show how the child's interests are set back by the 14-year-old's procreative act has led many to a procreative principle, which I call *the non-identity principle*, which permits procreation so long as the future child's life is likely to be worth living, overall. This principle seems wrong. It seems that we should require more of procreators, especially when working toward a good life for their future children will cost them little and sometimes, as in the case of the 14-year-old mother, may even benefit them. The non-identity problem seems to get things wrong as well: it seems that the 14-year-old harms or sets back the interests of her child but because that child, whose life is worth living, would not have existed had her mother conceived some other time, it seems that the 14-year-old has not only not harmed her child but might have even benefited her child by deciding to procreate at 14.

That is the non-identity problem. Its counter-intuitive implications have plagued procreative ethics for quite some time. Getting clear on whose interests matter, especially with regard to existence, seems like a promising step toward solving this problem.

## 2 WHO NEEDS EXISTENCE?

In formulating our procreative and population principles and policies, it makes sense to begin by thinking about whose interests ought to matter to us. It seems fairly uncontroversial to say that we care about our own interests as well as the interests of many other existent beings. It is when we think about the interests of future beings that things get more complicated. It may seem natural to think that the interest of all possible future people ought to count for something, especially if we conceive of existence itself as a good for a person. If existence itself is a good for a person, then possible future people may have an interest in securing this good. My view is that existence itself is neutral for people: it is neither good nor bad; instead, it is the stuff of existence, the benefits and burdens of life, its joys and sorrows, that make a life good or bad for the person who lives it. (I take no position here regarding the impersonal value of existence itself to states of affairs).<sup>6</sup> This position is supported by the fact that all

<sup>6</sup> One way to evaluate existence is from a consequentialist, impersonal perspective, focusing on the evaluation of states of affairs. John Broome evaluates existence from this perspective and argues against the intuition that existence itself is value neutral. See Broome. 2004. *Weighing Lives*. New York, NY: Oxford University Press: Chapters 10 and 14. I am not making any claims here about this sort of evaluation. Broome further argues that existence must itself be good, if the life that the person leads is worthwhile, since the good of that life is conditional upon existence and, 'if good is conditional on some condition, then it cannot be neutral about the condition itself' (Broome, *op. cit.* p.156). A

interests are contingent upon existence. If a hypothetically possible person will never exist then there is no real subject for interests at all. Thus it makes little sense to worry about depriving merely possible people of the benefits of life since there is no real subject for that deprivation. Similarly, it makes little sense to wonder whether a possible person would rather exist than not since the preferences of a hypothetical being are only relevant if the being will someday exist. Otherwise, there is no real being to speak of and nobody's interests or preferences to consider.<sup>7</sup> Interests begin with existence in place, providing us with a subject for interests. Thus, we have narrowed our set of interested persons down to the existent, be that existence in the present or the future. (Some argue that past persons have interests but I take no position on that possibility here since that issue has little, if any, bearing on procreative ethics. Melinda Roberts argues for a more complex modal theory of interests wherein merely possible people do have interests but only in worlds in which they exist.<sup>8</sup> An advantage of my view is its simplicity and intuitive appeal: if you do or will exist, you have interests that count, morally; if 'you' are a

good deal of the reason for this rejection of existence as conditionally valuable is based on Broome's view that 'goods have to fit into a coherent betterness ordering' (Ibid). However, if we are not measuring states of affairs and are not constructing an impersonal betterness ordering, we may retain the view that existence itself is value neutral for a person (for the reasons argued above).

<sup>7</sup> The interests of future persons can sometimes count in favor of producing more people rather than fewer, in cases where, say, a very small population would make life difficult or unhappy for some future people.

<sup>8</sup> See M. Roberts. *The Asymmetry: A Solution*. *Theoria*, forthcoming. Roberts argues for 'variabilism,' namely, the view that a merely possible person counts only in worlds in which she exists. Thus, according to variabilism, we don't create a miserable person for the sake of the suffering that the merely possible person would endure in the possible world in which she exists. In contrast, we are not obligated to create a person who would be happy if she existed since that merely possible person only 'suffers' nonexistence in the actual world, where she does not exist, and thus her suffering does not count because all people, on this view, including merely possible people, have moral value only in the worlds in which they exist. Roberts' view enables us to make sense of some of our confusing everyday views about procreative obligation (including the asymmetrical view that tells us we are obligated not to create the miserable but we are not obligated to create a person just because that person would be happy if she existed). I cannot do justice to Roberts' modal view here but I will just note some potential difficulties: First, some may object to the claim that a merely possible person suffers in any meaningful sense in any world; second, some may not accept Roberts' argument for why the suffering of a merely possible person in another possible world should make any moral difference to us, who exist only in this world; and lastly, some may worry about what justifies variabilism other than its usefulness in explaining some intuitions about confusing procreative cases. My view is that it is advantageous for ethics to stick to the actual world, especially since that is the world in which we act and that is the world, if any, that it makes the most sense for us to care about. On the other hand, if our moral views get stuck on non-modal approaches, as Roberts' argues, then we may have no choice but to develop a modal theory of value.

merely possible hypothetical entity you are not real and therefore have neither real interests nor real moral value).

Clearly, we often do not know whether a possible person will turn out to be a future person or a merely possible person. Still, since merely possible people, as argued, have no interests and are therefore of no moral relevance, we ought to consider, as best as we can determine, the interests of future people. Thus, we may reasonably build a playground for children we plan to have even if we don't end up having them but it would be unreasonable to build a playground for hypothetically possible children we know we will never have. When comparing the effects different policies will have on the future people that will exist if the policies are enacted, we ought to consider, as best we can determine, how each policy will affect those who will live under it because we care about the future people that will be affected by our policies. E.g., if policy  $x$  will be good for those who will exist under  $x$  but policy  $y$  will be difficult for those who will exist under policy  $y$ , that counts in favor of us choosing policy  $x$  over policy  $y$ . Hypothetically possible people whom we know will never exist ought to be morally ignored. I take this view to be a fairly commonsensical one. I turn now to opposing views regarding merely possible people and the non-identity problem.

### 3 CASPAR'S NOT SO FRIENDLY GHOSTS ('... THE VOICES FROM ANOTHER WORLD')

Hare labels those who think that merely possible people do not merit moral consideration 'actualists.'<sup>9</sup> What ties actualism in knots, he argues, is a deontological principle (principle 'D') which he argues that actualists can neither accept nor deny. Principle D states: 'If, given alternatives  $(x,y)$ ,  $x$  ought not to be done, then, given alternatives  $(x,y)$ ,  $y$  ought to be done.'<sup>10</sup> This, says Hare, means that if Kate can either create relentlessly miserable Jack or relentlessly miserable Jane, an actualist will have a very hard time explaining what Kate ought to do because, he argues, the only justification for creating either of these miserable children must appeal to the interests of the merely possible miserable child who would be born instead.<sup>11</sup> Hare thinks that D is a fairly plausible principle because, given  $x,y$ , if Kate ought not to do  $x$ , she ought to do  $y$  since 'y is the only something-other-than-x she can do.'<sup>12</sup> But if an actualist accepts D, he argues, in cases where neither  $x$  nor  $y$  ought to be done, she must say that given only alternatives  $x,y$ , 'both [ $x$  and  $y$ ] ought and

ought not to be done.' So the actualist must reject D. But, argues Hare, this leaves the actualist with a suspicious notion of obligation because if someone says, 'given that you can either move or stand still, you shouldn't move,' how can they then also say that 'it's not the case that you ought to stay still?'<sup>13</sup>

In my view, D is a red herring, having nothing to do with the debate between actualism, non-actualism, and the non-identity problem. The argument against actualism lies in the cases which non-actualist think only they can render explicable. I will first remove the red-herring and then proceed to discuss the cases.

If we assume that there are no irresolvable moral dilemmas, that one will never be put in a position of being forced to do something wrong, then we may view principle D as a fairly non-controversial principle. If we assume that 'ought implies can,' which some, though far from all, deontologists regard as a fairly reasonable assumption, we may conclude that there are no irresolvable moral dilemmas. If we assume that the same action cannot be both forbidden and obligatory (or even permissible) then, again, there seems to be little room for irresolvable moral dilemmas since any act that one is forced to do (obligatory in some sense) is then not forbidden. I think that there may well be irresolvable moral dilemmas in the sense of being forced, by circumstance, to do what one would ordinarily consider to be wrong (though this may be considered separately from issues of blame, guilt, amends, etc.) but, whether there are irresolvable moral dilemmas or not, non-actualists fare no better than actualists with respect to principle D. This should not be surprising since the problem of moral dilemmas, generally, is neither caused by nor made especially problematic by procreative cases.<sup>14</sup>

If an actualist rejects moral dilemmas then the actualist will accept D. The actualist will then deny that if Kate must create miserable Jack or miserable Jane then Kate ought not to create Jack and ought not to create Jane. If the actualist denies moral dilemmas, the actualist will say that if Kate is forced to create miserable Jack or miserable Jane then it is not the case that, given the forced choice, she ought not to create Jack and ought not to create Jane. After all, that is part of what the denial of moral dilemmas seems to entail: if there are no moral dilemmas then given two terrible choices, it is not the case that one ought not to do either one. To say otherwise would seem to commit oneself to a moral dilemma (since being faced with only two choices and having both of these choices deemed morally impermissible constitutes a moral dilemma).

If a non-actualist rejects moral dilemmas then the non-actualist will also accept D and deny that if Kate must

<sup>9</sup> Hare, *op cit.* note 3.

<sup>10</sup> *Ibid.*: 504.

<sup>11</sup> *Ibid.*: 503–505.

<sup>12</sup> *Ibid.*: 505.

<sup>13</sup> *Ibid.*: 505.

<sup>14</sup> I am grateful to Yuval Avnur for helping me put the point this way.

create miserable Jack or miserable Jane then Kate ought not to create Jack and ought not to create Jane. The reasoning behind this position may be identical to the reasoning, articulated above, that an actualist will have for this view.

If an actualist accepts moral dilemmas then the actualist will reject D. The actualist will then deny that, given two alternatives, if I ought not to do one then I ought to do the other (recall Hare's claim that, given  $x, y$ , if Kate ought not to do  $x$ , she ought to do  $y$  since it is the only thing other than  $x$  that she can do).<sup>15</sup> The moral dilemmas embracing actualist will argue that one may be faced with two things that one ought not to do. That would be a very unfortunate situation. (Technical term: 'stuck'). So, argues the moral dilemmas embracing actualist, if you will cause innocent Milton to die if you move and innocent Michele to die if you stand still then you cannot do what you ought to do but it is not your fault. You are stuck (as is either poor Milton or Michele). That would mean not that the same action, i.e. move, is both morally obligatory and morally forbidden but, rather, that the *one* action that is morally prohibited, namely, do not kill the innocent, is something that your circumstances do not accommodate since you can either move or stand still and in either case you will kill the innocent. (Presumably, in cases such as these, one will generally not be blameworthy).

If a non-actualist accepts moral dilemmas then the non-actualist will also reject D, by the same reasoning that a moral dilemmas accepting actualist does (i.e. by noting that circumstances will not always permit avoidance of actions that ought not to be done). Hare argues that rejecting D will leave the actualist with a suspicious notion of obligation.<sup>16</sup> If that is the case, though, then it is not due to actualism but due to the view that accepting moral dilemmas leaves us with a suspicious notion of obligation.

There is no special get-out-of-the-moral-dilemmas-problem-free card that a non-actualist can play but an actualist cannot. If moral dilemmas pose a problem for the actualist then they pose the very same problem for the non-actualist. There is nothing special about procreative cases *vis-à-vis* moral dilemmas.

Hare argues that an actualist cannot accept D because if she concedes that, given the alternatives, Kate should conceive miserable Jack, then, 'she concedes that this important aspect of its moral status is determined by how alternative actions would have affected people who don't exist,'<sup>17</sup> since it is presumably the fate of merely possible Jane that drives Kate to conclude that she ought to create miserable Jack. The force of Hare's argument does not,

as we just saw, turn on whether an actualist can accept or reject D since she, like the non-actualist, can do either. Rather, the force of the argument can only lie in the claim that by saying that Kate ought to conceive miserable Jack, one must be appealing to the interests of the merely possible Jane. Yet, if, as the case stipulates, Kate must create either of two miserable people<sup>18</sup> then any principle that permits her to create one is unlikely to do so to further the interests of a merely possible being. That would be an exceedingly poor reason to create a real miserable person because a merely possible being does not have interests but a real person does.

If Kate can create either relentlessly miserable Jack or relentlessly miserable Jane, how does attending to the alleged interests of merely possible people help Kate? Non-actualists tend to think that deeming merely possible people interest bearers allows us to make sense of otherwise confounding cases, including Kate's. To understand this line of argument, it may help to look closely at those cases, beginning with the Kate case at hand. Non-actualists seem to think that only on a non-actualist account can we allow Kate to excuse her creation of Jack by appealing to the fact that had she not created miserable Jack, she would have had to create miserable Jane.<sup>19</sup> Since miserable Jane never exists, the reasoning goes, Kate is appealing to the suffering of a merely possible person to justify her actions. An actualist, on the other hand, it is argued, cannot make this sort of appeal because Jane's suffering does not count since she is a merely possible person. I argue that *if* Kate's creation of Jack is justified by the equally awful alternative act available to her (namely, the creation of miserable Jane), an actualist can indeed help herself to that justification because we are responsible for the foreseeable results of our actions and to the foreseeable victims of our wrongdoings.<sup>20</sup> If act  $x$  will result in a real, miserable person this gives the actualist reason to avoid act  $x$ . Not because the actualist is valuing the so-called interests of a merely possible person but, instead, because the actualist is avoiding an act that, if done, will result in a real person's real suffering.

<sup>18</sup> This is a poor case for the illustration of a moral difficulty, let alone a dilemma since it is easy enough to say that if Kate can either conceive miserable Jack or Jane then Kate should conceive no one. That possibility is left open to Kate (if Kate conceives via rape then, arguably, she has not acted at all but, rather, has been acted upon) and closed only by stipulation.

<sup>19</sup> Presumably this justification assumes that there are no moral dilemmas since if there are moral dilemmas then Kate should not create Jack and should not create Jane either (Kate is stuck).

<sup>20</sup> On some views, sometimes we can avoid responsibility for what is foreseeable when we are engaging in an otherwise permissible and important act and there is no better alternative to that act. This view, which dates back to Thomas Aquinas, is known as the Doctrine of Double-Effect, and is an exception to the generally accepted view that we are responsible for the foreseeable results of our actions.

<sup>15</sup> Hare, *op. cit.* note 3, p. 505.

<sup>16</sup> *Ibid.*: 505.

<sup>17</sup> *Ibid.*: 505.

Foreseeability plays a key role in making sense of cases wherein the future person's misery gives us a reason not to procreate that (no longer future) person: one way of putting the non-actualist's objection to actualism is that actualism can make it seem as if the justification of an act can seem to require you to do the act in order to be justified – since, for example, if you don't create the miserable person then they are merely possible and their misery does not count – yet if you do the act then you are not justified since if you do the act you create the miserable person.<sup>21</sup> The fact that we are responsible for the foreseeable results of our actions solves this dilemma: foreseeing that an act will result in a real person's unremitting suffering is a good reason for an actualist not to do that act. (The fact that not doing the act results in the existence of no one does not negate this line of reasoning; it's more like a curious side-effect).

### Curious George

This brings us to a paradigm case for non-actualists. If George procreates, his child will be relentlessly miserable. He ought not to do that so he doesn't but he is curious and wonders: For whose sake has he refrained from procreating? Whose interests has he respected? Who has he refrained from harming? Since George does not have an actual child, a non-actualist may argue that the only person's interests that George could have had in mind when deciding not to procreate the miserable person that his child would have been is the merely possible person who would have existed had George not done the right thing. Thus the moral status of George's act may seem to depend on its effects on merely possible people.<sup>22</sup> But since merely possible people, by definition, will never exist, it is unclear why George should exert himself on their hypothetical behalf. It is also unclear exactly how he can do so. How can he stop himself from creating someone who will never exist? It seems no less reasonable, and I suggest more reasonable, to say that George stops himself from procreating a miserable person because the alternative action, i.e. procreating a miserable person, would violate our duties not to put people in positions of relentless misery. If I were George, that's what I'd be doing. I'd say to myself, 'If I procreate, I will violate the moral prohibition against deliberately putting a person in a position of relentless misery.' The moral prohibition against putting people in positions of relentless misery is justified because, by having this rule, we make it less likely that actual people will be relentlessly miserable and, by having this rule, we show that we respect actual people

enough not to put them in positions that will make their relentless misery likely. We care about actual people, we grant them moral consideration, and have moral rules in place to avoid harming them, disrespecting them, or causing them pain unnecessarily or unjustifiably. That is the actualist justification for the 'don't, *ceteris paribus*, put people in positions of relentless misery.' Creating a person who will live a life of relentless misery is one way of putting a person in a position of relentless misery. George's decision not to procreate would then be justified by the fact that the alternative action would violate our moral duties toward actual persons. Since we are responsible for the foreseeable results of our actions we need not actually undertake an act in order for its foreseeable results to serve as reasons for the actions we do take instead. Just as when we refrain from making a promise that we cannot keep, we do so because making the promise would foreseeably result in our violating duties to the person to whom the promise would have been made,<sup>23</sup> we refrain from procreating the relentlessly miserable because procreating them would foreseeably result in our violating duties to the persons who would exist if we did procreate. Just as I don't make an existing person suffer because that would foreseeably result in my violation of my duties toward that (real) person, I don't create a miserable person because that would foreseeably result in my violation of my duties toward that (real) person.

When we refrain from killing people, we can easily point to the people who are protected and respected by our restraint (though we may have a hard time pointing to the people who were not protected in this way because they are dead and, on many views, nonexistent). In the procreative case, however, we cannot point to the child who was *not* put in a position of relentless misery by her very creation but that is the point of procreative restraint. The point is to have fewer relentlessly miserable actual people to point to; the point is not to protect merely possible entities from anything.

Procreation is, admittedly, a tricky matter with no analogues that I can think of because existence is *sui generis* in terms of creating a subject of interests where none has gone before and where none would be if one did not procreate. There may therefore be no answer to the Curious George case that does not leave us vaguely unsatisfied. One way of looking at this kind of case, then, is to lean toward the interpretation that is less problematic. That is what I advocate here. For example, say a couple has a 100% chance<sup>24</sup> of conceiving a child with Tay

<sup>21</sup> I thank an anonymous reviewer for *Bioethics* for putting the objection this way.

<sup>22</sup> See Hare, *op. cit.* note 3, pp. 498–501; and Weinberg, *op. cit.* note 2, p. 10.

<sup>23</sup> I thank David Boonin and an anonymous reviewer for *Bioethics* for suggesting this analogy.

<sup>24</sup> A couple cannot run a 100% chance of conceiving a child with Tay Sachs disease. I have artificially inflated the risk here to make the example simpler. The point is to think about a couple who know that any child they may conceive will have a life so miserable as to not be worth living.

Sachs disease, a disease which, to their (and most) lights, makes life not worth living, for whose sake does that couple decide to refrain from procreation? The non-actualist tells us that it is for the sake of the merely possible Tay Sachs afflicted hypothetical person. The actualist tells us that it is for the sake of the actual Tay Sachs afflicted real person that would exist if the prospective parents in question did conceive; i.e. for the sake of the actual person with actual interests, and to whom we have various duties, that will foreseeably exist – and whose interests the parents will have unjustly set back – if the procreation occurs. Foreseeing that an act will result in a miserable person is a good reason to refrain from that act, even, as in the case of these prospective parents, at some cost to oneself. The fact that refraining from that act will result in no one's existence at all does not do away with this reason. It seems less reasonable to say that the prospective parents should bear the costs of not proceeding with the procreative activity that they would, in the absence of the Tay Sachs gene they share, undertake for the sake of a merely possible person, i.e. for the sake of no one at all. 'Why should I deprive myself of a child for the sake of a mere possibility that will never exist?' the prospective non-actualist parent might wonder. 'Because if you don't deprive yourself of a child then you will cause the existence of a real person whose life is so utterly miserable as to be not worth living,' the actualist will reply. Even if one remains less than fully convinced by the actualist account of this case, because the non-actualist does not appear to fare any better in this regard (and in my view fares far worse), it should take more than curious George to get us to grant real moral consideration to literally no one.

A variant of the curious George case involves questions of procreative acts or policies that deliberately make things slightly worse for future people in order to avoid making things even worse for those who would exist under an alternative policy. Some even try to structure the case such that many future people exist under both policies and experience slightly worse lives under the policy enacted to avoid causing other people, who never end up existing, extreme agony.<sup>25</sup> This policy change, the argument goes, is a clear case of giving the interests of merely possible people moral weight since it is consideration of their interests that provides us with our only reason, indeed our only excuse, for making things slightly worse for future actual people.<sup>26</sup> (A variant structure of this sort of case requires us to cause a very slight harm to

one existing person in order to avoid creating 'Misericordia,' a relentlessly miserable person).<sup>27</sup>

This case is similar to the George case in that our consideration for future persons' interests seems to preclude their actuality. It is different from the George case in that we take our consideration one step further by going so far as to decrease the well-being of others (who will exist) under the alternative policies we enact. All told, it puts greater pressure on the actualist to explain what we take to be morally appropriate procreative decisions. If we are not taking the interests of merely possible people seriously and according them moral significance, why are we deliberately making things worse for future people?

When we deliberate regarding procreative or population principles, policies, or acts, it makes sense for us to project, as best we can, how the principle, policy, or act will affect those who will exist should that principle, policy, or act be put into effect. We then choose the principle, policy, or act that fulfills (or at least does not violate) what we take our duties to be toward future people. Our policy decision is driven by our responsibility to uphold our duties to future people and to avoid violating our duties toward future people. These duties are driven by our moral concern for future actual people. Presumably, not creating those whose lives would consist only of extreme agony would be part of what most people would accept as a reasonable procreative standard of care (if not then this case does not arise at all).<sup>28</sup> If policy *a* violates our procreative standard of care, e.g. by creating people whose lives would consist of nothing but extreme agony, then we do not enact policy *a*, especially if we can enact policy *b*, which conforms to our procreative standard of care even if it is not the best that can be done for the *b* people. Our procreative standard of care is unlikely to be 'do the absolute best that can be done for each possible future person,' since only those who will be future people matter, and conflicts of interests may occur when we compare how our prospective procreative policies will affect future people. Instead, our procreative standard of care will direct us to meet whatever that standard is, be it the best we can do overall, good enough, decent, a life worth living, etc. for whomever our

<sup>27</sup> I thank an anonymous reviewer for *Bioethics* for this case.

<sup>28</sup> Various philosophers have proposed various procreative standards of care. Both Feinberg and Steinbock propose a 'minimal decency' standard (see See J. Feinberg. *Wrongful Life and the Counterfactual Element in Harming*. *Soc Philos Policy* 1986; 4: 145–179 and B. Steinbock. *The Logical Case for Wrongful Life*. *Hastings Cent Rep* 1986; 16: 15–20). Seana Shiffrin sets a strict liability standard (S. Shiffrin. *Wrongful Life, Procreative Responsibility, and the Significance of Harm*. *Legal Theory* 1999; 5: 117–148). John Robertson sets a 'life worth living' standard (see J. Robertson. 1994. *Children of Choice: Freedom and the New Reproductive Technologies*. Princeton, NJ: Princeton University Press). I set a Rawlsian contractualist standard (see R. Weinberg. *Procreative Justice: A Contractualist Account*. *Public Aff Q* 2002; 16: 405–425).

<sup>25</sup> See M. Roberts. 1998. *Child versus Childmaker*. New York, NY: Rowman and Littlefield: 63. I thank Melinda Roberts for bringing this case to my attention. One might argue that the conditions of the non-identity problem make this scenario very unlikely since a change in policy results in widespread changes to future identities. (The reply, in either scenario is the same).

<sup>26</sup> *Ibid.* See also Hare, *op. cit.* note 3, pp. 508–511.

category of future people will include (within the limits of foreseeability, of course). Thus, it is not the interests of nonexistent merely possible people that force us into policy *b* rather than policy *a*. Rather, it is our right minded, common sense concern for the interests of future people that tells us to enact the policy that results in a set of future people toward whom our procreative duties (whatever we take them to be) can be fulfilled. In this case that directs us away from policy *a* and toward policy *b*. Remember that no reasonable procreative standard of care, including the lowest ones set by the non-identity principle, allows us to enact policy *a*. The question at issue is just for whose sake do we enact policy *b* instead. Hare argues that we enact policy *b* for the sake of the merely possible *a* people (just as he would say that we can only justify harming an existing person ever so slightly in order to avoid creating Miserabilia by appealing to the interests of the merely possible Miserabilia). I argue that this is a variant of the curious George case and that, just as in the curious George case, our actions are driven by our commitment to avoid violating our duties toward future people. If avoiding violating these duties justifies harming someone ever so slightly in order to make sure we don't commit a grave violation of this sort then the actualist can harm an existing person ever so slightly in order to avoid violating her duties to future people by creating Miserabilia. As in the curious George case, we refrain from enacting policy *a* to avoid violating our duties toward future people (if we enacted *a*, we would presumably violate our duties toward the *a* people just as if we created Miserabilia we would violate our duties toward her by creating her) and not to further the non-existent interests of nonexistent hypothetical entities. What else might we be required to do for the merely possible? Dedicate fields of grain to them? Reserve them seats at concerts? But more on that later.

Let us try our luck with a different case.

### Jack and Jill

Many of us are familiar with the case of Jack and Jill. They fall down a hill. Things don't end well for Jack. We are left unsure about Jill. If Jack has a short bad life, relentlessly miserable, say, then his mother (Ms. Goose?) should surely procreate happy Jill instead. But if Jill's life would be equally relentlessly miserable, then things are quite different. If Jack's mother procreates him in either case, intuitively she seems more wrong if her alternative to creating miserable Jack is happy Jill than if her alternative to creating miserable Jack is equally miserable Jill. Yet, the non-actualist argues, to make sense of this intuition, what difference can one appeal to between creating miserable Jack when the alternative is happy Jill and creating miserable Jack when the alternative is miserable Jill aside from the merely possible Jill (who is not created

in either case)?<sup>29</sup> This case, like the other cases we have discussed, is intended to show that merely possible people have interests that bear moral weight.

Short of inviting in the ghosts, so to speak, as Hare would have us do, to what difference between the mother of Jack and either miserable or happy Jill can the actualist appeal? To the cost to the agent of avoiding the morally suspect act, I suggest. Relentlessly miserable Jack's mother should have refrained from creating him. If her alternative is to create miserable Jane then she ought not to procreate at all, which may impose upon her a significant cost. If her alternative is to create happy Jane, then the cost to her of not creating miserable Jack is far less severe. That's why it seems worse to us if she creates miserable Jack when her alternative is happy Jane than when her alternative is miserable Jane. It has nothing to do with the supposed interests or moral significance of merely possible Jane. Instead, it is due to the cost to Jack's mother of refraining from creating relentlessly miserable Jack.

One might argue that assessing the blameworthiness of an agent by looking to the cost to the agent of avoiding the morally suspect act, which one calculates in part by looking at the agent's alternatives, is an indirect appeal to mere possibilities, including, in these cases, merely possible people. But, although we appeal to possible alternate courses of action in assessing the actions of Jack's mother, we do not appeal to nor do we attribute interests to the merely possible Jane. Jack's mother's actions are wrong because they violate her duties toward Jack and negatively impact Jack's – a real person – real interests. Her actions are worse when better, or permissible, alternative courses of action are readily available. In other words, it is the alternatives available to the agent that matter in these kinds of cases, not the interests of merely possible people.

## 4 COSTS OF CONSIDERING THE INTERESTS OF MERELY POSSIBLE PEOPLE

It is important to realize that abandoning actualism may leave us with a new unexplored area of moral obligation, namely, the obligation toward merely possible people, which might be unduly burdensome and seem fantastical. Let's look at what we might have to do if we really take seriously the suggestion that merely possible people have interests of moral relevance. If merely possible people have morally relevant interest, perhaps, then, one of their strongest interests is existence itself since if they don't have that, they have little else to enjoy. We may have to re-think our views regarding birth control since

<sup>29</sup> See Hare, *op. cit.* note 3, pp. 505–509.

contraception denies merely possible people their perhaps due chance at existence. We may have to have all the children we can possibly bear or at least many more than we do now. Perhaps we must use fertility enhancing drugs or procedures to help us toward this goal. Maybe ‘not tonight’ will no longer be a morally permissible response to reasonable conception overtures. Not only would this be extremely burdensome to us poor existing creatures – we not only have to bear all these children, we have to raise them as well, of course – it would also rush us headlong into Parfit’s repugnant conclusion: a ridiculously large population of people with lives just barely worth living rather than a more modest population of flourishing people.<sup>30</sup> This is no small change to our moral landscape. It seems that granting moral consideration to merely possible people could radically change the way we ought to live and make the lives of existing people much worse. And for who? Our imaginary friends! There seems to be a rather dark side to this metaphysically and morally absurd scenario.

But wait. The scenario I just presented cannot apply to merely possible people because merely possible people will never exist. It seems there is therefore nothing we can do for them at all no matter how hard we try. It is impossible to create them and incoherent to try; we cannot bring them into existence because merely possible people, by definition, never exist. That is what makes them *merely* possible (rather than possible *simpliciter*).<sup>31</sup> Those who think that some entities have an interest in existence itself that we, as procreators and formulators of population policy ought to consider, can only be referring to *possible* people – to hypothetically possible entities that may or may not exist. But the people that we are supposedly talking about are *merely* possible, meaning that they will never exist, by hypothesis. We therefore cannot decide to further their ‘interests’ by bringing them into existence.<sup>32</sup>

So maybe granting moral consideration to the merely possible is, at least morally, not that bad a deal. We get an

<sup>30</sup> Parfit, *op. cit.* note 1, p. 388.

<sup>31</sup> Possible *simpliciter* includes both merely possible people and future people since they are both categories of possible people. Merely possible people are the possible people that will never, in actuality, exist; future people are the possible people that will, in actuality, eventually exist.

<sup>32</sup> It is true, of course, that we don’t know which of our possible people will turn out to be merely possible and that’s why we can, mistakenly, set aside resources on their behalf, e.g. we can save for the third child we never end up having. But our epistemic limitations have no impact on our metaphysical knowledge that merely possible people, by definition, cannot be brought into existence so it makes no sense for us to have more children even if we think that merely possible people are of moral relevance. Even if we should consider them and do as much as we can for them, the one thing we know that we can never do for them is to bring them into existence. I discuss the difference between our epistemic limitations in distinguishing between merely possible and future people and our granting them moral consideration further in Weinberg, *op. cit.* note 2.

answer (though the wrong one) to the curious George puzzle without driving ourselves into the repugnant conclusion. However, we still do not avoid absurdity and, in fact, wrongdoing. For although we cannot really do anything for the merely possible, we may act as if, so to speak, and perhaps set aside resources on their behalf – ‘the merely possible fund.’ This differs from trying to procreate the merely possible because while we can set aside resources for merely possible people, even though we know that they could never use them, it makes no sense to even claim to be trying to save merely possible people from their ontological status since that, by definition, is their status. It is only possible people *simpliciter* who may or may not exist. Since there are innumerable merely possible people, the merely possible fund might have to be enormous. Setting aside even one penny for each merely possible person would bankrupt us and leave few resources for future people. Harming future people for the sake of merely hypothetical entities is wrong because it harms real people for the benefit of no one and for no morally respectable reason. It does not do very much for merely possible people either. In fact there is nothing we can do for ‘them’ because there is no ‘them’ to do anything for.

If we understand the true metaphysical status of the merely possible, we will also understand the moral status that follows. A merely hypothetical entity that did not, does not, and will never exist cannot have any real interests, there being no real subject for said interests, and therefore cannot merit any real moral consideration.

## 5 NO THANKS, NO REGRETS: EXTREME VIEWS REGARDING MERE POSSIBILITIES

Another way of looking at the non-identity problem, alternative possible courses of action, and merely possible people, has been suggested recently by David Velleman.<sup>33</sup> Velleman claims that when assessing harm or benefit, we must assess temporally rather than counterfactually, i.e. we must consider whether we made a person better or worse off than she formerly was rather than whether we made a person better or worse off than she would have otherwise been. This sort of assessment makes it impossible for us to harm or benefit future people, since there is no way that they were prior to our actions. For example, if we decide to save money by disposing of radioactive waste in ways that predictably cause future people to contract fatal cancer in mid-life, the counterfactual assessment of harm asks us to assess whether these cancer afflicted people have been made worse off by our nuclear

<sup>33</sup> See Velleman, *op. cit.* note 4, D. Velleman.

waste disposal policy than they would have otherwise been. Since these people would not exist in the absence of our policy (per the non-identity problem) and their lives are worth living, the counterfactual account of harm tells us that we do not harm future people with our cheap waste disposal. We may even be said to benefit them because their worthwhile lives are goods they would not have had had we not acted as we did. If we assess the same policy using Velleman's temporal standard, we consider whether the cancer afflicted people are better or worse off than they were before we enacted our policy. But, since these people were in no state at all before we enacted the policy (since they did not yet exist), we cannot assess the policy as either harmful or beneficial.<sup>34</sup> Velleman concludes that we must reconceive our relationship to future people.<sup>35</sup> Let us consider Velleman's arguments for this view.

Velleman argues that our merely possible selves, the people we could have been had we made different choices, are not accessible to our first-personal sense of caring about ourselves. He argues that:

... the aspect of psychological connectedness that really counts is the causal relation that establishes an information channel to carry anticipations forward to their anticipated cadences, and to carry future-directed references forward to find their referents, including the future 'me.'<sup>36</sup>

Since the people we would be had we (or others) made different decisions are causally isolated from the people we actually are, our merely possible selves are not people about whom we can (or should) care first-personally. Considering the life he would have lived had he become a writer instead of a philosopher, Velleman says:

Although I am the same person as the David Velleman who became a freelance writer, he is not a self of mine in the sense that calls for me to identify with him, or to identify my interests with his ... After the point of decision [to become a philosopher rather than a writer], however, alternative paths were closed to me not only in practice but also in first-personal thought. Whatever befalls the travelers on these paths is what would have befallen David Velleman, if I had decided differently, but his being David Velleman is, so to speak, nothing to me: it doesn't matter in the same way

as my being the one who might undergo different fates in the future depending on what I now decide.<sup>37</sup>

Thus, we can regret past acts since we are on first-personal terms with the agent who did those acts but the person we would be today had we not done our past acts is inaccessible to self-concern because we cannot think about living that person's life from a first-personal perspective (the best we can do is project ourselves into another point of view).<sup>38</sup> It may seem strange to say that we can regret past actions but cannot regret or bemoan the fact that what would have happened had we not done the regrettable act unfortunately did not happen. Velleman's explanation for this set of claims is based on his conception of the causal relation that provides us with an information channel between our present and future selves which, in turn, preserves self-reference and self-concern: we can regret past acts because we are first-personally related to our past selves (things done by one's past self causally affect one's present self). We can be self-critical about what we have done in the past, being first-personally related to the person who did the acts in question. But we have no similar relevant relation to the person we would have become had we acted differently in the past. That merely possible person is not causally related to us and we therefore have no way to first-personally communicate with and no reason to first-personally care about her. That is why, Velleman argues, he cannot regret not having become a writer. He can regret his *choice* because that choice was made by his past self, to whom he is causally related, but he cannot regret not *being* a writer because that person, i.e. David Velleman the writer, is a merely possible person to whom he is not causally, and therefore not first-personally, related.<sup>39</sup>

Furthermore, Velleman argues, just as regretting 'what might have been' is irrational, being thankful for 'what is' is irrational since:

The merely possible people whose misfortunes I have skirted by making wise decisions are identical with me in some metaphysical sense, but my identity does not give me first-personal access to them.<sup>40</sup>

So, contrary to everyday notions of being grateful for how things are because things could have been worse, Velleman claims that our sense of satisfaction with how things are must be temporally, not counterfactually, comparative.<sup>41</sup>

Therefore, when assessing harm or benefit, Velleman argues, we shouldn't ask whether a person has been made better or worse off than he might have been. We have no

<sup>34</sup> Note that if we use a later time slice to assess our policy, say the time that the cancer caused by the policy occurs, then we do harm the victims, on a temporal account, because we make them worse off than before they had the cancer. I thank an anonymous reviewer for *Bioethics* for noticing this ambiguity in Velleman's temporal account of harm.

<sup>35</sup> Velleman, *op. cit.* note 33.

<sup>36</sup> *Ibid.*: 239.

<sup>37</sup> *Ibid.*: 241.

<sup>38</sup> *Ibid.*: 238–242.

<sup>39</sup> *Ibid.*: 238–242.

<sup>40</sup> *Ibid.*: 242.

<sup>41</sup> *Ibid.*: 242 and Velleman, in comments to author, 2009.

reason to care (first-personally) about what might have been. Instead, harm and benefit should be thought of as ‘making a person better or worse off than he formerly was’<sup>42</sup> – a temporal comparison, not a counterfactual comparison. On this view, we harm a person by damaging his prospects and benefit him by improving them.<sup>43</sup> Regarding the non-identity problem, Velleman notes that depleting resources, for example, will damage the prospects of future persons even though it won’t make their prospects any worse than they formerly were. He concludes that since ‘we cannot harm or benefit future persons via their inheritance,’<sup>44</sup> our moral relation to future people must be reconceived: we can neither be their benefactor nor their malefactor.<sup>45</sup>

I will argue that many alternatives for the real you that have been relegated to mere possibility probably do matter when assessing one’s self-interested reasons for gratitude or regret. One must agree that the real you could not *really* be, or be causally affected by, the merely possible you but it is not altogether clear that this precludes rational gratitude and/or regret. It is even less clear that it precludes our affecting future persons’ interests. David Velleman the philosopher can no longer be David Velleman the writer but, should Velleman regret his career choice, that is precisely what the regret would be about: the content of the regret would be that David Velleman, the philosopher, is not a writer or did not try to become one. Obviously, Velleman the philosopher does not care about the merely possible Velleman writer because no such person exists; it is not the interests of the merely possible writer Velleman that anyone cares about in this case. The actual Velleman cares about himself, the philosopher, who continues to exist (perhaps even with some of the talents and interests that once made becoming a writer a real possibility), and it is because he cares about himself, and not about his merely possible alter ego, that he might regret not having become a writer. It is because we care about ourselves now that we may regret choices we made in the past that affect our lives now, even though, or precisely because, those choices are no longer open to the person we have become. (That is why ‘I coulda’ been a contender’ resonates). Similarly, we may be grateful for what is because of what could have been instead even though, or precisely because, that real possibility has been relegated to mere possibility. Our first-personal concern for who we are is part of what gives rise

to our feelings of regret for whom we might have become instead and/or gratitude for what is. Of course we don’t care about our past decisions in the same way as we care about decisions that will affect our future but that’s simply because we can generally affect our future but not our past: all we can do about the past is regret it; we have already lived it.<sup>46</sup> That’s what makes regret so bitter (yet not irrational). We of course care differently about our future since it is what we are about to live and we would like to do our best to make decisions that we will not regret but, instead, be grateful for.

We are left with our regrets and our feelings of gratitude, with no need and, indeed, no justification for reconceiving our relationship to future people. We can both benefit and harm them in the very same straightforward ways that we can harm people who exist already (recall Joel Feinberg’s example of planting a bomb in a pre-school classroom, set to go off in seven years – the victims don’t exist yet but they will and they will have been harmed by an act that occurred before they existed).<sup>47</sup> We will have to find another way to deal with the non-identity problem.<sup>48</sup>

<sup>46</sup> An exception regarding affecting the past is when we affect someone’s reputation, which may be taken by some to have retroactive effects (though others may well claim that the effects of a changed reputation, even regarding past acts, is still prospective).

<sup>47</sup> Feinberg, *op. cit.* note 28.

<sup>48</sup> The only case where this first-personal path to regret or gratitude is unclear is the case of existence itself since there is no real subject for regret or gratitude over existence. The real me can rue the road not taken but should not bother with regret or gratitude for my very existence since there is no real subject to suffer my nonexistence. We can contrast this with the real subject for my regrets about roads not taken: that subject is me, muddling down the road I took. But, who is flailing about in the primordial vortex of nonexistence, deprived of the wonderful life of a philosopher? No one. This realization gets us out of the non-identity problem in a much more straightforward way by precluding the alleged interest in existence itself upon which the non-identity problem rests, as I have argued elsewhere (see Weinberg, *op. cit.* note 2). I will not defend the view here again but briefly reiterate that the fact that no one has an interest in existence *per se* is one reason why I have argued that we should not be given credit for causing future persons to exist but we can still be held responsible for doing things contrary to the interests of future persons, like depleting resources or inflicting disabilities. Future people are free to take existence as the starting point of their interests and ask themselves, ‘Given existence, what circumstances of my existence do I find regrettable or contrary to my interests?’ Depleted resources or a disability might be on that list. Each person suffering from those sorts of life circumstances can be identified as a person harmed by the act that led to those circumstances (the fact that that same act led to the existence of those persons is of no moral relevance since existence *per se* is not an interest than anyone can have, let alone have unfulfilled).

However, as far as the specific issue of gratitude and regret is concerned, there are many ways to construe gratitude and regret since they are complex emotions that are not easily confined to specific facts or counterfactuals, especially regarding something as mysterious as existence itself. We need not settle this matter here. It is enough to say that it does make sense for us to regret past decisions because they affect who we are now and to be grateful for what is because of who we are now.

<sup>42</sup> Ibid: 242.

<sup>43</sup> Ibid: 242–244.

<sup>44</sup> Ibid: 244.

<sup>45</sup> Velleman makes these arguments in the context of a discussion regarding personal identity and what matters to or constitutes survival. He then applies these views to the non-identity problem. I am interested here only in how Velleman’s view affects the status of merely possible people and the non-identity problem so I confine my discussion to those aspects of the view.

## 6 DE DICTO DODGING OF THE NON-IDENTITY PROBLEM?

In order to bypass the puzzles regarding the moral status of merely possible people and in order to avoid the non-identity principle, both Hare and Velleman look to the distinction between one's *de dicto* and one's *de re* children.<sup>49</sup> Although their reasoning is not explicit on what leads them both to this view, Velleman seems to think that since, on his temporal assessment of harm, we can neither harm nor benefit future people, we will need to abandon the harm standard entirely and look elsewhere for guidance in terms of how we are to properly relate to future people.<sup>50</sup> Hare argues that since actualism is false, we don't need to identify a particular (actual) person harmed in non-identity cases.<sup>51</sup> If we are not looking for a victim of a harm, we will have to find another way to explain our intuitions of wrongdoing in non-identity cases. The *de dicto / de re* distinction, it is suggested, may be this other way. It is a way of thinking about our responsibility and relationship to future people without thinking only of actual people (which Hare takes to be an advantage) and without thinking of any particular possibilities for particular people – be they actual or merely possible – at all (which Velleman takes to be an advantage). The *de dicto / de re* distinction enables us to avoid the non-identity principle without taking a definitive stand on the status of merely possible people or mere possibilities for actual people. It is suggested that if we try to benefit *whomever* turns out to be our child rather than trying to benefit a *particular* candidate for that role, we avoid questions regarding what is worth suffering in order to be the candidate who wins the role (of future person). For example, instead of focusing on the particular child Mary would have if she conceives now, while taking medication that will disable *that* particular child, yet still, ultimately, not harm that particular child (whose life will still be worth living), it is suggested that we think about whichever person turns out to be Mary's child. The best Mary can do by her particular child is to conceive now but the best she can most likely do by whichever person turns out to be her child is to delay conception until she is done with the medication that would disable whichever person turns out to be her child if she conceives while taking it. Hare terms this strategy *de dicto* goodness

<sup>49</sup> Velleman does not use the terms *de dicto / de re*. He refers to 'the child' versus the particular, identified child. However, Velleman himself notes that Hare's distinction is 'more or less the same difference' that Velleman argues for in his discussion regarding how to properly relate to future people. Therefore, for simplicity, I will refer to the *de dicto / de re* distinction when discussing both Hare and Velleman, in this regard. See Velleman, *op. cit.* note 4, Love and Nonexistence, p. 267, introductory note.

<sup>50</sup> Ibid: 243–244.

<sup>51</sup> Hare, *op. cit.* note 3, pp. 513–514.

and he argues that we can solve the non-identity problem by focusing on one's *de dicto* rather than one's *de re* children.<sup>52</sup> Velleman finds this strategy promising as well, arguing that prospective parents should be guided by *de dicto* considerations regarding their future children.<sup>53</sup> Thus, Hare and Velleman share a practical approach to the practical ethical problem posed by the non-identity problem: *Go de dicto* and much of our non-identity difficulties fade, they both say. Let us analyze how that is supposed to work.

If we try to do our best for whoever turns out to be our future child, we may avoid the non-identity principle: we will not be forced to say that procreation is permissible so long as the future child's life is likely to be worth living because we are not focusing on the interests of a particular, identified individual. We may therefore set a higher standard of procreative care, unconstrained by the non-identity problem, based on various other morally important factors. That is not news, or at least it shouldn't be, because the non-identity problem is not a problem for principles or policies that do not determine the permissibility of an action or policy by the way that action or policy impacts a particular, identified individual.<sup>54</sup> However, although we will avoid the procreative principle that follows from the non-identity problem, we will not *solve* the problem: We will not be able to identify the person harmed by cases of procreative malevolence or neglect nor will we be able to explain why or how future people can personally or specially resent these kinds of acts, given that their worthwhile existences depend on them. Both Hare and Velleman seem to think that we can but their examples to illustrate this claim serve instead to illustrate the difficulty of doing so. Hare's case involves Mary, who ignores medical advice not to get pregnant while recovering from German measles, thereby causing her child, Mariette, to have a heart defect:

You may have a feeling, as I do, that Mary's wrongdoing is in a certain way personal – in the way that there's a special kind of relationship between Mary and Mariette. Mariette has special grounds to feel aggrieved by what Mary did. But if Mary does wrong by making the world worse, then this is mysterious. After all, nobody has a special complaint against her. Everybody can complain 'You have made things worse.' Nobody can complain 'You have made things

<sup>52</sup> Hare, *op. cit.* note 3, pp. 515–523.

<sup>53</sup> Velleman, *op. cit.* note 49, pp. 266–288.

<sup>54</sup> For some ways around the NIP that employ a strategy of determining wrongdoing by means other than evaluation of how the act or policy in question treats a particular individual, see E. Harman. Can We Harm and Benefit in Creating? *Philosophical Perspectives* 2004; 18: 89–109; R. Kumar. Who Can Be Wronged? *Philos Public Aff* 2003; 31: 99–118; Weinberg, *op. cit.* note 28; and J. Reiman. Being Fair to Future People: The Non-Identity Problem in the Original Position. *Philos Public Aff* 2007; 35: 69–92; among many others.

worse for me.' The *de dicto* concern account puts a finger on Mariette's special grievance. Mariette alone can say, 'You failed to show appropriate *de dicto* concern for your child, and I am your child.'<sup>55</sup>

The feeling that Mariette has special grounds for grievance against Mary, her mother, can be explained by *solving* the non-identity problem, thereby allowing us to point to Mariette as the person harmed by Mary. But, *avoiding* the non-identity principle by focusing on *de dicto* rather than *de re* goodness does not automatically give us a way to explain Mariette's *special* grievance. Mariette can say both that her mother failed to show *de dicto* concern for her child *and* that she is that child. She can say this to express her special grievance but she would be a fool to mean it because even though both things are true – Mary failed to show appropriate *de dicto* concern for her child and Mariette is that child – it is hard to see why Mariette, of all people, should feel aggrieved by them. So long as the non-identity problem remains in place, it appears that Mariette ought to be grateful that her mother showed little concern for her *de dicto* child since that seems to have benefitted the defective but happy *de re* child, Mariette, whose life is well worth living and who would not have existed had Mary shown proper *de dicto* concern for her future child. Everyone *else* seems to be in a better position to lodge a grievance against Mary: Mary failed to show appropriate *de dicto* concern for her child. This may even burden everyone else with the cost of caring for Mariette's defective heart thereby adding to everyone else's grievance against Mary. But this failure of Mary's seems to benefit Mariette, as per the non-identity problem, thereby putting Mariette in a worse position than anyone else to claim to be aggrieved by Mary's procreative negligence. What we have here is not a special grievance but, if anything, a special exception to the general grievance; the opposite of what we were after.

I am not arguing that, in general, *de dicto* wrongs cannot give rise to *de re* grievances.<sup>56</sup> 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. If Emily opens the letter, has her arm blow right off, and sues Michael for damages, it will not do at all for Michael to say something like, 'I didn't harm *you*; I harmed *whoever* opened the letter. The fact that it was you, Emily, who opened the letter, does not give you any special grievance against me.' What makes *de dicto* procreative wrongs incapable of giving rise to special *de re* grievances is the non-identity problem. 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.

Velleman's case showing the benefits of using the concept of *de dicto* goodness to avoid the non-identity problem involves the child of a 14-year-old mother. He argues that, as Hare maintains, the prospective mother should be guided by *de dicto* considerations regarding her child: 'We are obligated to give our children the best start that we can give to children, whichever children we have; and so we are obligated to have those children to whom we can give the best start.'<sup>57</sup> The child can tell his mother, 'I'm glad that *I* was born, but you were wrong to have a child in my case . . . He will continue to assert his birth-right . . .'<sup>58</sup> A rights-based claim can sometimes work to show what is wrong with having a child at 14 and it may even put the child in a position to put forth a special grievance as one whose rights have been violated.<sup>59</sup> It will not enable us to say that the child was harmed by her mother but it may enable us to say that the child was wronged nevertheless.<sup>60</sup> But what will be doing the work is the nature of the rights claim: how plausible it is, what principle it is based on, and how well it can stand up to non-identity challenges. It is unclear that focusing on *de dicto* goodness will bolster the rights claim in non-identity cases. We would need to hear much more about the rights theory at work here and it is important to notice that it seems like it will be the rights theory and not the *de dicto* / *de re* distinction that will guide us through the non-identity puzzle. To claim rights violations, it is necessary to flesh out the rights and obligations reasonably and convincingly. For example, by putting the mother's wrong in terms of her giving her child a worse start than she could, as Velleman does, we leave open the possibility that it would be permissible to procreate at 14, or at 11, or when one's child has a high risk of severe and unremitting suffering, just so long as one could do no better by one's

<sup>57</sup> Velleman, *op. cit.* note 49, p. 276.

<sup>58</sup> *Ibid.*: 277.

<sup>59</sup> For an example of how this might work, see Weinberg, *op. cit.* note 28.

<sup>60</sup> James Woodward and Parfit go back and forth regarding whether we can establish wrongs without harms in non-identity cases. See J. Woodward. The Non-Identity Problem. *Ethics* 1986; 96: 809–810 and Reply to Parfit's 'Comments on The Non-Identity Problem.' *Ethics* 1987; 97: 802. And see D. Parfit. Comments on the Non-Identity Problem. *Ethics* 1986; 96: 857. For analysis of their debate see Weinberg, *op. cit.* note 2.

<sup>55</sup> Hare, *op. cit.* note 3, p. 523.

<sup>56</sup> I owe this objection and the letter bomb example to Michael Cholbi.

children some other time. We also fail to locate a wrong for 14-year-olds who will not have children later in life. Velleman augments his birthright account with a right to a 'good enough' start in life but we must wonder exactly what that entails and whether it demands the same standard from all, regardless of one's ability to provide adequately, abundantly, or poorly for any children one might have.<sup>61</sup> And, of course, if we are to think that a rights based solution to the non-identity problem is crucially dependent on the concept of *de dicto* goodness, we will need to be provided with some persuasive set of reasons.

## 7 CONCLUSION

The non-identity problem cannot be avoided or solved by adding merely possible people to the list of morally relevant entities. Indeed, that strategy would backfire quite spectacularly and is both metaphysically and morally unwarranted. We have also seen that deeming what might have happened to real people morally irrelevant is problematic as well and is therefore probably not a good strategy for solving the non-identity problem either. We are left with the ordinary, boring, common sense view: real people matter so we care about what happens to them and often make judgments of gratitude or regret in the context of the alternatives, i.e. of what

<sup>61</sup> Velleman, *op. cit.* note 49, p. 275.

could have happened instead. If we are to solve the non-identity problem or even settle for avoiding the non-identity principle, it will have to be by addressing real people and their real alternatives.

Focusing on *de dicto* goodness can help us avoid the non-identity principle – we know that from the formulation of the problem itself, which focuses on how acts affect specific, identified individuals but it will not help us solve the non-identity problem, i.e. it will not identify the special grievance of the children in non-identity cases. A rights-based solution to the non-identity problem has been attempted by many, though with less than fully satisfying degrees of success. It remains an area ripe for further research.

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