

Review

Rights, Virtue, and David Boonin's Defense of the Implausible Conclusion of the Non-Identity Problem

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David Boonin is one of, if not the, most important applied ethicist in the world today. His books on race, punishment, and abortion are the gold standards in their respective fields.¹ His most recent book, *The Non-Identity Problem & the Ethics of Future People* (New York: Oxford University Press, 2014), is again the best work on the topic and required reading for anyone who wants to think seriously about the topic.

Boonin addresses the issue of the moral status of creation ethics. Consider his two central cases (3-4, 5-6):

Wilma: Wilma decides to have a baby. The doctor tells her and it is true that if Wilma takes pills once a day for two months before conceiving her child, the child will be perfectly healthy. If she doesn't take the pills, her child will be born with a significant and permanent disability. Because the pills are inconvenient, Wilma doesn't take them. As a result, she conceives Pebbles, who is blind. Had she taken the pills a different sperm and egg would have combined and she would have had a different child, Rocks. He would not be blind. Pebbles and Rocks both have lives worth living, but Pebbles' life is worse.

Toxic Waste: A wealthy society is running out of fossil fuel. It can use one source of fuel that will enable its citizens to continue to enjoy a high standard of living and would have no neg-

ative impact on future generations. Alternatively, it can use a different source of energy that will enable current citizens to have a slightly higher standard of living, but would generate a significant amount of toxic waste. Five hundred years later, the waste would leak out and, as a result, tens of thousands would be painlessly killed at age forty. The different energy sources over time result in completely different people existing five hundred years later.

Here is Boonin's argument (p. 27):

- (P1) Wilma's act of conceiving now rather than taking a pill once a day for two months before conceiving does not make Pebbles worse off than she would otherwise have been.
- (P2) If A's act harms B, then A's act makes B worse off than B would otherwise have been.
- (P3) Wilma's act of conceiving now rather than taking a pill once a day for two months before conceiving does not harm anyone other than Pebbles.
- (P4) If an act does not harm anyone, then it does not wrong anyone.
- (P5) If an act does not wrong anyone, then the act is not morally wrong.
- (C1) Hence, Wilma's act of conceiving Pebbles is not morally wrong.

Conclusion (C1) is the Implausible Conclusion.

Boonin further argues that an objection to the argument is successful only if it has the following features. (1) The objection rests on something other than the fact that it justifies rejecting the argument's conclusion [Independence Requirement]. (2) The objection succeeds even if one or more of the premises are weakened [Robustness Requirement]. This is possible because some of Boonin's premises are stronger than they need to be. (3) The objection does not generate implications more implausible than the Implausible Conclusion [Modesty Requirement].

Boonin points out that the solution, or lack thereof, to the Non-Identity Problem has practical importance because there are a number of reproductive decisions that couples make that affect how well a created person's life goes (pp. 14-19). He notes that, on some accounts, cloning, failing to undergo genetic screening, having a child out of wedlock, having a child as a teenager, having a child later in life, and having a child through incest produce, on average, children with subpar lives.

The solution, or lack thereof, to the Non-Identity Problem has implications for policy decisions, such as whether a country should favor the free market or wealth redistribution, promote family planning, admit millions of third world immigrants, and cooperate in reducing greenhouse gas emission. If these programs result in different people being created, then the solution to the Non-Identity Problem should help guide our decisions on these policies. If, for example, the free market harms the poor in the short run but reduces poverty in the long run, but also affects reproduction and thus who is alive in the long run, this is relevant in assessing whether we should have such a system.

Boonin's book consists of a first chapter that lays out the argument for the Implausible Conclusion, five chapters each of which responds to objections to one of the premises, and a conclusion that argues that there are independent reasons to think the Implausible Conclusion is true. Each premise faces a number of objections. Boonin's discussion of the many and varied objections is systematic, exhaustive, and in-depth. Here I mention a few of the most challenging ones to the first two premises.

The second chapter addresses objections to premise (P1) [Wilma's act of conceiving now rather than taking a pill once a day for two months before conceiv-

ing does not make Pebbles worse off than she would otherwise have been]. Boonin considers several objections. The most interesting one is an Epicurus-inspired objection that the premise makes no sense because it requires us to compare how well someone's life goes when she exists and when she doesn't. The second objection is that in conceiving Pebbles, Wilma's makes her child, whomever she turns out to be, worse than she would otherwise be and thus harms her.

The third chapter addresses objections to premise (P2) [If A's act harms B, then A's act makes B worse off than B would otherwise have been]. The premise rests on the counterfactual notion of harm. According to Boonin, this notion has two parts. First, harm involves a comparison between how a person is actually doing and how he does in another scenario. Second, the other scenario depends on what would have happened had the agent not performed the relevant act. The most challenging objection is one involving a non-comparative account of harm. It asserts that harm does not involve a comparison of two scenarios. Rather, there are some states that are intrinsically harmful, regardless of whether they make someone worse off. Boonin responds that even if we accept the non-comparative account, and we shouldn't, it still does not follow that Wilma harms Pebbles or that, even if she did, she wrongs Pebbles.

The fourth chapter discusses premise (P3) [Wilma's act of conceiving now rather than taking a pill once a day for two months before conceiving does not harm anyone other than Pebbles], the fifth discusses (P4) [If an act does not harm anyone, then it does not wrong anyone], and the sixth discusses premise (P5) [If an act does not wrong anyone, then the act is not morally wrong].

In the last chapter, Boonin gives a number of arguments that purport to show that there is independent reason to accept the Implausible Conclusion. The best of these involves a transitivity principle (p. 199).

1. If you must choose between conceiving a blind child and conceiving no child, it is not immoral to choose to conceive a blind child.
2. If you must choose between conceiving no child and conceiving a sighted child, it is not immoral to conceive no child.
3. If it is not immoral to choose A over B when those are the only two options and it is not immoral to

choose B over C when those are the only two options, then it is not immoral to choose A over C when those are the only two options.

4. Hence, if you must choose between conceiving a blind child and conceiving a sighted child, it is not immoral to conceive a blind child.

This argument is plausible and supports the Implausible Conclusion.

One problem with Boonin's argument is that he ignores one candidate for the person harmed and wronged in countries with government programs that provide benefits to disabled children and their families: the taxpayer. In the U.S., the government uses tax dollars to pay for the education of schoolchildren. The average special education child's education is expensive. On one estimate, it costs \$35,346.² Assuming that a blind child, on average, costs significantly more, it might well be that a blind child cost the taxpayers \$50,000 per year. Assuming she goes to school for 17 years (K-12 and college), Wilma's not taking the pills costs taxpayers \$650,000 more than would a non-disabled student.³ If it is okay for Wilma to not take the pills and have Pebbles, then it is likely okay for her to do it three more times. If she does it three more times, thereby creating four blind children, she cost taxpayers \$2.6 million more than if she had four healthy children. Taking \$2.6 million from taxpayers, harms someone, whether it is taxpayers or people who benefit from programs that would have been better funded (for example, prison education programs or gifted programs in K-12).

Boonin might respond that the harm does not wrong anyone because Wilma has not promised fellow taxpayers not to waste their money. To assess this claim, consider the following:

Apartment: Three poor single mothers and their children (they have one each) agree to split the costs of an apartment, utilities, and food for one year. Two of the women keep their utilities low, buy cheaper food, and eat all of the food they buy. The third, Alice, runs up her utility bills, purchases premium cable and internet packages, and buys top-shelf food, such as lobster, oysters, and caviar, much of which she throws out when she discovers that her daughter (whom she nicknamed "princess") doesn't like them. The added cost results in the other two having to take sec-

ond jobs (Alice's job pays slightly more than do their jobs). When confronted by the other two mothers, she responds, "I never promised you I wouldn't be wasteful."

If Alice's act is wrong because of an implicit condition in the contract that Alice not take far more than her share of resources, not waste resources, and so on, then it is reasonable to think that the same thing is true for people who receive large amounts of welfare or other state benefits.

Boonin might respond that the problem is with socialized education rather than what Wilma does. Even if it is wrong to socialize an industry, it does not follow that if an industry is socialized, whatever one does while receiving benefits is permissible. Boonin might instead argue that, intuitively, Wilma wrongs Pebbles and so this account misses the reason most people reject the Implausible Conclusion. He might support this claim by changing the hypothetical so that Wilma is wealthy and doesn't take any government benefits and noting that most people still think she does something wrong. These moves would defuse the objection.

This leads us to the second problem with Boonin's book, namely, the roundabout way he approaches the issue. Here is a simpler rights-based argument for the Implausible Conclusion:

- (P1) If an act is wrong, then it wrongs someone.
- (P2) If an act wrongs someone, then it infringes on her right.
- (P3) Wilma's conceiving Pebbles does not infringe on anyone's right.
- (C1) Hence, Wilma's conceiving Pebbles is not wrong. [(P1)-(P3)]

This argument has several advantages over Boonin's argument. First, unless rights are a function of harm, it avoids the need to discuss harm. There is good reason to believe that rights are not a function of harm in that not every harm is a right-infringement and not every right-infringement is a harm. Consider, for example, the following:

Heartbreak: Al and Bob both love Connie and ask her to marry them. She marries Al and makes him very happy. If she didn't marry him she would marry Bob and make him just as happy.

As a result, Bob has a much worse life than Al.

Al harms Bob but does not infringe his right. The same is true with regard to third-party effects. Consider, for example, when a farmer fails to deliver his meat to the butcher and thereby harms the butcher's customer, but does not infringe his right. Also, imagine a rich man, David, who has many clothes he doesn't wear (they no longer fit) and wouldn't miss. A thief, Eric, steals a shirt from him. Eric infringes David's right, but does not harm him.

Boonin responds to this argument (pp. 109-123, 257-268) and points out that Wilma doesn't infringe on Pebbles' rights because the act in question, conception, takes place before Pebbles exists and because, even if there were a right against being born blind, Pebbles waives it because she would consent were she to understand the situation or will consent once she later comes to understand what was done. If this is correct, then Boonin's might have sidestepped his multi-chapter discussion of harm.

On a side note, there is good reason to doubt that right-waiver can occur because of hypothetical agreement or retroactive consent. The former is not consent at all, but an argument why someone should consent were he in a position to do so. The latter can waive the right to compensation or an apology, but can't authorize the act itself. Consider, for example, whether a woman can retroactively consent to sex that was rape when it occurred.

This argument would have allowed a focus on more relevant issues, such as what grounds a right and what infringes it. Such issues are morally relevant when discussing the consequentialist override discussed below. It would also have practical implications in that if rights rest on autonomy alone and if rights alone are the sole non-consequentialist determinant of what makes an act right or wrong, then creating a severely developmentally disabled individual is not wrong because there is no one whose right is infringed. The same would be true for the creation of animals who have problems (for example, German Shepherds with hip problems). This would not align well with the literature, but the gain in focusing on what really determines the deontic status of creating lives and its tie-in to more fundamental issues in theories of rights and the right would likely outweigh the loss of alignment. More importantly, we would know why

Boonin thinks the Implausible Conclusion is true in a more direct fashion than his roundabout argument that there is no good reason to reject it.

Third, a right-based argument would also allow for a clearer focus on when rights are overridden. This is particularly relevant in **Toxic Waste**. A consequentialist override is a gain in what makes the world a better place sufficiently large to warrant infringing someone's right. It involves avoiding a sufficiently large harm or generating a sufficiently large benefit.

Consequentialist considerations are not person-affecting. A person-affecting theory of the good holds that if something is good, then it is good for someone. Person-affecting accounts of the good are implausible because they generate intransitive rankings of outcomes.⁴ When combined with consequentialism, they yield paradoxes, such as scenarios in which whatever one does is wrong or whatever one does is right (depending on how one interprets a person-affecting theory).⁵ It also allows vastly implausible scenarios such as one in which a small number of people gain a small amount of happiness and this justifies moving to a world where many people live in hell-like conditions.⁶ If this is correct, then the policy in **Toxic Waste** might be wrong, not because it wrongs anyone, but because the policy conflicts with a consequentialist override. This might even be true in **Wilma** if Wilma's right is weak enough and the gain is strong enough. Here is a parallel case:

Cruel Teenager: Out of convenience, Francine does not stop a cruel, but weak, teenager from blinding a baby, Gerry, who is unrelated to Francine. The baby grows up blind. The effort required of Francine was equal to that of Wilma taking the pills. Gerry's loss in well-being is equal to the difference between Pebbles' and Rocks' well-being levels.

It intuitively seems that it is permissible to infringe Francine's right (perhaps by hypnotizing her to prevent the attack), if doing so would protect Gerry. Here is the resulting argument as applied to Wilma.

1. It is permissible to infringe on Francine's right to prevent a consequentialist loss.
2. Wilma's right not to take the pills has the same stringency as Francine's right not to interfere with the cruel teenager and the consequentialist loss is

the same in **Wilma** and **Cruel Teenager**.

3. If it is permissible to infringe Francine's right to prevent a consequentialist loss, Wilma's right not to take the pills has the same stringency as Francine's right not to interfere with the cruel teenager, and the consequentialist loss is the same in **Wilma** and **Cruel Teenager**, then it is permissible to interfere with Wilma's right not to take the pills.
4. Hence, it is permissible to interfere with Wilma's right not to take the pills.
5. If it is permissible to interfere with Wilma's right not to take the pills, then it is wrong for her not to take the pills.
6. Hence, it is wrong for Wilma not to take the pills.

Boonin would likely reject (1) or (3). He might reject (1) because doesn't think there are consequentialist overrides or, alternatively, the gain is not large enough to override Francine's right in **Cruel Teenager**. Alternatively, he might reject (3) because consequentialist overrides occur with regard to preventing harm, but not providing benefits. Perhaps one of these responses is correct. Still, such overrides merit discussion. This is particularly true with regard to **Toxic Waste**, but also with regard to **Wilma**.

Fourth, Boonin's discussion misses the central reaction to the Implausible Conclusion, namely, that there is something problematic about Wilma. She might not do something wrong, but her act indicates that she is less virtuous, perhaps even vicious, than if she took the pills.

Boonin responds that there is no reason to believe that Wilma would make this choice if it harmed Pebbles and there is nothing vicious about harmless creation of people who have lives well worth living (pp. 184-188). Boonin misconstrues how virtue and vice work. Following Thomas Hurka, vice is hatred or indifference toward the good or love or indifference toward evil.⁷ A lesser degree of virtue, or perhaps vice, can also be constituted by love of one good (or hatred of an evil) that is too disproportionate relative to love of another good (or hatred of an evil). For example, a selfish person is less virtuous, and perhaps vicious, if he values a minor gain in his own pleasure more than he hates a significant evil to another. Consider, for example, where Frank goes to get a massage rather than attend to a victim of a car accident who will lose his legs if he isn't promptly brought to the hospital (Frank knows this). Here the person loves the good and hates

evil but the intensity of his attitudes (or his actions in pursuit of them) is disproportionate.

The failure to bring about better results for little or no good reason involves diminished virtue, if not vice. Consider this example:

God: God can create a population of a trillion people who have lives barely worth living. Their well-being is so low that were their lives to go worse to any degree, their lives would be not be preferable to non-existence. Because of their defective genes, these people could not have had better lives. God could have created a different but equally sized population of people whose lives also go as well as possible, but their lives are much longer and have incredibly large amounts of happiness and meaning. God has no good reason for creating the first. It is not explained by freedom, soul-formation, knowledge, or any other solution to the problem of evil. These are the only two populations that God could have created.

Intuitively, it seems that God is not perfectly virtuous, even though he does not infringe anyone's rights or harm someone. If, instead, what explains his decision to create the people who are less well-off is that creating the better off would require slightly more effort (equivalent to Wilma's taking her pills), the intuition is the same. It intuitively seems that God has insufficient love for happiness and this makes him less virtuous than he would otherwise be. This does not change when we move to the second case. The same is true for Wilma.

In summary, Boonin's book is a stunning exploration of the Non-Identity Problem. It is easily the best work on the topic and required reading for anyone who wishes to explore the topic in depth. Such outstanding work is what we have come to expect of Boonin and he doesn't disappoint. That said, the book has some problems. It argues in a roundabout manner rather than focusing on rights. Doing so would make it clear why Boonin thinks the Implausible Conclusion is true and would also allow a more focused discussion on when consequentialist gains override rights. Also, Boonin incorrectly fends off concerns about there being something problematic about what Wilma does, even if she doesn't act wrongly.

[1] See David Boonin, *Should Race Matter? Unusual Answers to the Usual Questions* (New York: Cambridge University Press, 2011), David Boonin, *The Problem of Punishment* (New York: Cambridge University Press, 2008), David Boonin, *A Defense of Abortion* (New York: Cambridge University Press, 2002).

[2] The average special education child cost \$25,580 in 2000 dollars. See Marcus Winters and Jay Greene, “Debunking a Special Education Myth: Don’t blame private options for rising costs,” *Education next* 7 (2007), <http://educationnext.org/debunking-a-special-education-myth/>. Converting for inflation, this is \$35,346 in 2015 dollars. For 17 years of education, this is \$850,000. This likely underestimates given the numerous benefits and tax deductions and credits given to parents of blind children.

[3] In 2011, the average student cost \$11,014 in 2011. See National Center for Education Statistics, “Fast Facts,” Institution of Education Sciences, <https://nces.ed.gov/fastfacts/display.asp?id=66>, accessed 10/30/15. For inflation adjustment, see, Bureau of Labor Statistics, “CPI Inflation Calculator,” <https://nces.ed.gov/fastfacts/display.asp?id=66>.

[4] See Gustaf Arrhenius, “The Person-Affecting Restriction, Comparativism, and the Moral Status of Potential People,” *Ethical Perspectives* 10 (2003): 185-195.

[5] See Caspar Hare, “Voices from Another World: Must We Respect the Interests of People Who Do Not, and Will Never, Exist?” *Ethics*, 117 (2007): 498-523.

[6] See Arrhenius, “The Person-Affecting Restriction, Comparativism, and the Moral Status of Potential People,” 185-195.

[7] See Hurka, T. “The Common Structure of Virtue and Desert,” *Ethics* 112 (2001): 6-31; Thomas Hurka, *Virtue, Value, and Vice* (New York: Oxford University Press, 2001).