

Prenatal Harm and Theory of Identity: A Reply to Łukasz Dominiak

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Political Dialogues

The paper I will endeavour to comment on has an undeniable intuitive appeal¹. On the face of it, the arguments are robust and logic impeccable. However, when it is subjected to some closer scrutiny, problems start to emerge. That rejoinder shall be divided into two main sections; that is a negative one (specifying what is possibly wrong with the author's edifice of arguments) and a positive one (in which a positive suggestion as to how to avoid resorting to theories of identity shall be put forward). So, let us start with the investigations into what might be wrong with the author's account.

A Negative Answer

My counterarguments shall be organized in the ascending order of importance. Thus,

1. In the middle of the paper, the author embarks on the enterprise of evoking the distinction between Preconception Case and Prenatal Case, which is all meant to shed some light on the idea of *harm*. Here comes the corresponding passage: "Since we believe that life with

moderate disability is worth living and undoubtedly better than non-existence, the child in the Preconception Case by definition could have not been harmed since the concept of harm presupposes making somebody worse off than he would have been"².

Resorting to the terminology employed by the author, it is equal to saying that the actual life of a moderately disabled child is better than it is for *that child* not to exist. But the phrase "for that child not to exist" is a contradiction. "That child" is a meaningful phrase only if there is a referent of the demonstrative pronoun. Non-existence cannot be worse for any child because there is no child yet. Complaining of one's own non-existence is a logical impossibility. To demonstrate its incongruity further, we can imagine and then compare two Preconception cases:

a) One mother takes the pill and then conceives a child (Stan) with a moderate disability; let's say Stan is deaf;

b) The other mother takes the pill and then conceives a child (Josh) who in his future will be both deaf and extremely short-sighted.

1 Łukasz Dominiak, "Prenatal Harm and Theory of Identity," *Political Dialogues. Journal of Biopolitics and Contemporary Political Theories*, 1(2014).

2 *Ibidem*, 6.

The author would have to claim that there is no harm because simply there is no Stan and no Josh without their respective disabilities. Their congenital disabilities are their *constitutive* properties. The conclusion of no harm must again rest on the following comparison. Therefore, Stan's and Joshua's tolerable condition makes them better off than Stan's and Joshua's non-existence. And now: are Stan's and Joshua's non-existence somehow qualitatively different?

Probably that should be the proper conclusion. Joshua's non-existence is tantamount to how bad it is for *Joshua* not to exist and the same reasoning applies to Stan. The absurdity of it is highly conspicuous. Nothingness is nothingness. It cannot be somebody's nothingness because there is not anybody yet.

2. Then the author proceeds to claim that the idea of harm applies only in the Prenatal Case: "The Prenatal Case in turn involves harm to the child because inflicting disability on somebody is making him worse off, other things being equal".

In consequence, the author takes pains to explain what tests are to be employed to determine whether X (the actual line of life) and X* (the counterfactual line of life) are the lines of the same person. So, let's follow the author and make use of his framework of possible worlds. Then, deductively speaking, according to the author, to decide whether we deal with that very same Mark (from his original thought experiment of a Prenatal Case) we have to compare the actual life of Mark – the one with moderate disability and some other life (to put it non-question-beggingly) without the disability. Let's bear in mind that the two worlds (the one actual and the other merely counterfactual) split at the moment when Mark is 4 months old of ges-

tational age. The only factor differentiating our two worlds at t_1 (when Mark is 4 months old) is taking the pill by the mother, everything else being equal. But probably not much is equal at t_2 – when Mark is, say, 6 years old in both W (the actual world) and W* (the counterfactual one). Mark in W is a normally developing child having utterly different dispositions, aspirations, tastes and probably environment (that is friends, colleagues, teachers etc.). By dint of what kind of test can we establish whether those two children are identical?

One useful analogy to think of that problem would be to conceive of the Earth as being devoid of carbon (of course, it is question-beginning but I referred to such a planet as Earth because it is similar to actual Earth in most respects). The actual Earth and that very planet would probably differ dramatically. What, if not a linguistic convention, can make it *true* that these two planets are the same or distinct? It is easily imaginable that two people – both fully informed – still argue about the correct description of the relation between these two planets. However, the disagreement might only reflect their slightly different linguistic intuitions. Furthermore, I claim that the question *Is the relation between two planets that of identity* is a purely linguistic question. By analogy: the relation of identity between Mark and Mark* (the counterfactual child without disability) is not discovered; it is *stipulated*.

Yet, as known, all analogies, similes and metaphors are only partial, which means that the source domain and target domain are similar in most respects but not all of them. Therefore, whereas our readiness to predicate/not predicate identity between the Earth and E* reflects a linguistic convention, the statement of identity between Mark and M*

reflects our ethical judgement/our idea of what matters. The author claims that to distinguish between Prenatal Case and Preconception Case and thus to differentiate between harm and causing life worth living, we must “consult the theory what it means to be the same person”.

Then, I reckon, the reply might be as follows: in Mark Thought Experiment, exhaustive description of both the actual life and the counterfactual life can be given in principle. So, there is nothing to theorise on. It is rather some judgement which is masquerading as metaphysics. When McMahan posits that it is the same embodied mind that guarantees sameness, he does not affirm any fundamental truth about the world. What he does – though implicitly – is making some value judgement; that is that the preservation of the same embodied mind is of utmost importance.

Let me illustrate ethics masquerading as metaphysics with one more example. In metaphysics, if an individual A is of the kind K, then losing property (to put it more controversially, essence) K implies ceasing to be A. Now let’s take an imaginary individual called Brad, being 20 and studying philosophy in Oxford. Now, let’s consider two possible metaphysical (tentatively called so) scenarios:³

I) Brad is essentially a person

II) Brad is essentially a body with the minimal level of integration and functionality

The former predicts that when Brad loses his personhood (e.g. he is cortically dead after a stroke), there is no Brad anymore. After losing its essence, there

is no same individual. The latter predicts that even after the death of the cortex, we still can witness good old Brad but now Brad is irreversibly unconscious. Poor Brad but luckily he is alive!

These two descriptions are *informatively* identical; they just use different wording. So why are we more inclined to accept the first description more readily? The answer is simple: “death” is an expressively charged word and reflects what matters to us. Brad lost a faculty which humans value most and it is a fact independent of any metaphysical deliberations. So, conceiving of individuals as essentially brains, souls, embodied minds is not a matter of fact, but of considered judgements.

3. Another problem encountered during the analysis of the author’s paper is his pondering over R-relation (the one to guarantee identity). The author states that the method of comparing identities *at a given time* across the worlds (one being actual and the other merely hypothetical) is the same as the method of checking whether an individual is the same over time. What makes me the same today and tomorrow when I wake up is usually some sort of psychological continuity and some degree of bodily continuity – unless, of course, one believes in souls. Yet, if we compare Mark and M* across the two worlds at t_3 (when they are both aged 6), we wouldn’t necessarily find any psychological similarity. On the contrary, the differences can be rather dramatic. What they unquestionably share is the genotype but as far as acquired characteristics are concerned, these two may differ drastically. In conclusion, whereas identity over time presupposes some degree of continuity, determining whether two individuals are the same in two worlds at the same time must abstract from temporal dimension

³ I hasten to add that the author assumes a different theory of identity than the one in the paper by Steinbock he is referring to. Yet, my remark has some general application and helps to realize that what is often taken as metaphysics is just ethics in disguise.

and instead employ some different criterion (say – genetic identity) to resolve the issue somehow.

To endorse my intuition, let's look at another example. Let's take Shakespeare after his birth and imagine a counterfactual world which shares with the actual world only the very event of Shakespeare's birth (April, 1564). Then, let's move forward in time (preferably to April 1616, when Shakespeare died in the real world) and from bird's eye view compare Shakespeare and his counterpart (whoever he is) across these world. It can transpire that the individual in W^* has never written a single play, is almost speechless, has never heard of theatre and actually changed his sex (don't let's forget the world is merely counterfactual and so is the technology allowing for changing sex). How then are we to decide whether those two individuals are the same at that moment of time? R-relation contributing to survival over time, which is normally psychological and bodily continuity, is absent here. Shakespeare in 1616 in W does not remember the lifetime of Shakespeare* in W^* in 1616 and the other way round. What they unquestionably share is the genotype but that is not the method we resort to when checking whether or not identity is preserved over time.

A Sketchy Positive Account

Hopefully, by now, it has become quite evident that theories of identity stir more troubles than they solve. The radical solution of getting out of this predicament would be to draw on Parfitian impersonal ethics. Roughly, that ethical theory deems acts wrong/right in abstraction from persons (regardless of the fact whether some persons existed prior to our act or we caused them to exist by our

act). The judgement is based rather on the comparison of what states of affair (in utilitarian terms) our acts brought about and how things might have been had we acted otherwise. My claim is that the above-mentioned theory is *adequate* to account for quite a strong intuition that Prenatal Case (apparently involving harm) and Preconception Case (apparently free from harm) distinction is *morally irrelevant*. However controversial that might be, I hope to design one thought experiment which controls for impersonal/personal factor (everything else being equal), which hopefully can demonstrate – quite independently of any legal solutions – that the two cases are morally equivalent.

Now let me consider one dilemma which Parfitian theory cannot easily solve only to show how impersonal ethics readily deals with Same Number of People Choice regardless of whether they are different or the same. A word of wording is due here: the dilemma involves the case of comparing Different Number of People Choice but in both scenarios *we choose the identity of the resultant people*. Yet, details aside, whenever Same Number of People is at stake, Parfitian theory accounts well for our intuitions whether there is Same People Choice or Different People Choice. The digression aside, the dilemma is this:

A multiple children family

There's a family already endowed with 4 kids and the mother is craving to enlarge her family still. Since she is on the pill for quite a while, there is an increased probability that she can conceive triplets or twins. Because financial resources are scarce already, if she conceives triplets, each of them will get net sum 20 in some utilitarian terms (be it pleasure, interest satisfaction etc.). In-

stead she can wait for some time and conceive just one child who would score net sum 60 since there would be fewer siblings overall.

The total contribution to the overall utility is still 60 in both scenarios; the only difference being the distribution of that good (more or fewer people). Here impersonal ethics would have to employ some rule of just distribution to reach the verdict on this issue.

But now, let's notice that in the Prenatal Case and Preconception Case who was at stake was just *one child* (Same Number of People Choice). So, Parfitian theory proves *adequate* to tackle this problem. Let's consider the following thought experiment:

Perversely Spiteful Mother and Future Mother

There are two women; one (Barbara) is already pregnant and the other (Martha) plans to get pregnant. Both of them have loving husbands who are so responsible and morally elevated that they would take care of whatever kind of child as long as they are theirs. However, the women have perversely evil intentions. Their ultimate goal is to give birth to a child with Down Syndrome, then elope with a lover, thus leaving a child in their respective husbands' custody. So, Barbara takes the pill (when being pregnant) and the future child suffers from Down Syndrome. Martha, on the other hand, takes the pill (bound to cause a genetic mutation in the ovum), then has the last intercourse with the husband and conceives a child. The child is born with Down Syndrome and the scenarios unfold as desired by both women.⁴

⁴ To clarify some possible doubt, I should draw on the concept of harm slightly more. In the Preconception Case (the latter mother, that is Future Mother), *does not harm* the born child

The fact is that both women *intentionally cause* the current miserable state of affairs of both kids. Therefore, there seems to be some strong intuition that that very *intentional causation* is the only morally relevant factor.⁵

Conclusions

A word of concession is due at this point. It would be a gross exaggeration to say that even a few larger-than-life thought experiments prove that impersonal ethics is all which is required to state the rightness or wrongness in Same Number of People Choice (whether with the same identity or not – however problematic that distinction might be). My claim is, in fact, more modest. I strongly believe that any resorts to theories of identity are at best ineffective and rather blur the moral aspects of prenatal harm than clarify them; whereas Parfitian theory of impersonal ethics, by abstracting from persons, tackles the issue more elegantly and more compellingly. Furthermore, I leave the possibility open that perhaps that very issue (whether theories of identity matter or not) is within the remit of theoretical ethics and has little or no bearing in the realm of practical ethics.

in any sense. For harm to take place, there must be a counterfactual world in which that very same child is better off than the actual child in the real world. Thus, in the former case, there is no possibility of *that* child being born healthy; the only alternative being non-existence.

⁵ Then again, I hasten to emphasise that it is only the former case where *harm* takes place. In the latter case, the only possible negligence is done to *general person*. Then, I believe that *harm* does not apply in the latter case because, by definition, one can harm only the already existing person.

Literature:

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