

Impossible obligations and the non-identity problem

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Abstract In a common example of the non-identity problem (NIP), a person (call her Wilma) deliberately conceives a child (call her Pebbles) who she knows will have incurable blindness but a life well worth living. Although Wilma’s decision seems wrong, it is difficult to say why. This paper develops and defends a version of the “indirect strategy” for solving the NIP. This strategy rests on the idea that it is wrong to deliberately make it impossible to fulfill an obligation; consequently, it is wrong for Wilma to create Pebbles because doing so makes it impossible to fulfill her obligation to protect her child from harms like blindness. A challenge for the indirect strategy is the well-known “rights waiver problem”: Since Pebbles’s very existence depends on Wilma’s having made herself unable to fulfill an obligation to Pebbles, Pebbles is likely to waive that obligation. I address this problem by recasting the indirect strategy in terms of a non-grievance evil. I argue that deliberately making it impossible to fulfill a moral obligation manifests a defective attitude toward morality—an attitude which sees moral obligations as things to be dodged whenever they are inconvenient. Next, I argue that acting on this attitude is a wrong-making feature that is independent of any wrong that might be done to Pebbles. I conclude that Wilma’s decision remains wrong even if Pebbles waives any objection to it.

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1 The problem

Once upon a time, two gametes met and formed the embryo that became *you*. Had different gametes met, someone else would exist instead of you. Anything that changes the time when conception occurs will almost certainly change which gametes meet—and thus who exists. These facts generate the Non-Identity Problem (NIP). Here is an example of one version of the NIP, borrowed from David Boonin (2014, p. 2):

Wilma: Wilma has a condition which will cause any child she conceives to have incurable blindness. However, taking an inexpensive medicine for two months will cure this condition, so that any child she conceives thereafter will have typical eyesight. Disregarding her doctor's advice, Wilma forgoes the medication and soon conceives a daughter named Pebbles. Pebbles has incurable blindness, but her life is well worth living. Wilma bears the costs of all necessary accommodations for Pebbles's blindness.

Most people believe that Wilma acted immorally. But notice that Wilma's following her doctor's advice would not have helped *Pebbles*, since the resulting child without blindness would not be Pebbles, since that child would have been created from different gametes. Pebbles herself would not exist at all. Since the decision that left Pebbles with blindness was also the decision on which her existence depended, and her life is well worth living, it is difficult to see how Wilma has harmed Pebbles. Indeed, it is difficult to see how Wilma has done anything wrong *to Pebbles* at all. And if Wilma did nothing wrong *to Pebbles*, then how could her action be wrong?¹

2 Some proposals rejected

A few philosophers, most notably David Boonin and David Heyd, argue that Wilma's choice was not wrong, initial intuitions notwithstanding (Boonin 2014; Heyd 2009). However, this view would permit deliberately producing children with lives just barely worth living, so long as we employ methods that ensure that these same children could not have existed otherwise. This is a hard bullet to bite.

Some approaches to the NIP adopt non-comparative accounts of harm, which characterize harms as conditions which impair normal functioning, create suffering, etc., regardless of whether the harmed person would have been even worse off had the harm not occurred (Harman 2004; Shiffrin 1999). Such accounts allow us to say that blindness harms Pebbles, even though the alternative to her having blindness was not existing at all. However, even if we can say that Wilma's decision harms Pebbles, this harm only constitutes a *wrong* that Wilma does *to Pebbles* if Wilma had an *obligation* to Pebbles to prevent it. But once Pebbles exists, it is impossible to prevent her from having blindness. Hence, by Kant's *Ought Implies Can* principle

¹ A different version of the NIP (not discussed here) arises when a society decides among NIP policies which both affect the well-being of future people *and* change their identities.

(“OIC” hereafter), Wilma cannot be obligated to prevent Pebbles from having blindness once Pebbles exists. Consequently, her failure to protect Pebbles from blindness (once she exists) cannot wrong Pebbles.²

Perhaps we might claim that Wilma wrongs Pebbles simply by creating her. However, this view faces problems.³ If Wilma wronged Pebbles by creating her, then Wilma must have had—and violated—an obligation to Pebbles at the time when she decided to ignore the doctor’s advice. But at that time, not only did Pebbles not exist, but it was not even settled whether Pebbles ever would exist. So, if Wilma wronged Pebbles by deciding to ignore the doctor’s advice, then she must have had an obligation to someone who was nothing more than a possible person at the time she acted. It is not clear that it is coherent to posit an obligation to a possible person, i.e., a person who does not exist and who may never exist. If two strangers on a train meet up and procreate, they might produce Little Johnny. If that happens, then once Little Johnny comes into existence, he will be the kind of entity to whom obligations can be owed. But it seems implausible to say that anyone has any obligations to Little Johnny when it is still up in the air whether the two strangers will even meet, much less bring him into existence. As metaphysically tenuous as Little Johnny is before the strangers meet, the status of Pebbles at the time of Wilma’s decision is arguably even more tenuous. For her existence is not merely contingent on events that may nor may not happen; rather, it is contingent on the very decision that Wilma is about to make—the decision that may both create her and leave her with incurable blindness.⁴ It is difficult to see any good reason (other than our desire to solve the NIP) for thinking that we can have obligations to possible persons, especially when their existence is contingent on the very actions that would also violate these putative obligations.

A version of the same problem arises for rights-based approaches to the NIP, which claim that Wilma wrongs Pebbles by violating her rights, even if doing so does not harm her (Archard 2004; Markie 2005). Claiming that Pebbles has a *right* not to be brought into the world in an impaired condition entails claiming that Wilma has an *obligation* to refrain from bringing Pebbles into existence in an impaired condition. But now we face the same dilemma as before: We cannot say that Wilma violates an obligation to Pebbles before she exists, since at that point Pebbles is merely a possible person, and there is no good reason to posit obligations to possible persons. But we cannot say that Wilma violates an obligation to protect Pebbles from blindness after she exists, since the impossibility of doing so, together with OIC, prevents her from having such an obligation.

Consequently, any attempt to solve the NIP by claiming that Wilma violates an obligation to Pebbles faces this dilemma: Wilma cannot wrong Pebbles before she exists, because it is implausible to posit obligations to a possible person. But Wilma

² This problem only arises if we claim that Wilma’s imposing a non-comparative harm on Pebbles violates an obligation to Pebbles. Harman avoids making this claim, and thus avoids this problem.

³ This paragraph draws on ideas found in Boonin (2014), p. 111–113.

⁴ This point was raised by an anonymous reviewer.

cannot wrong Pebbles after she exists, because OIC prevents her from being obligated to protect Pebbles from unpreventable blindness.

Even if we could make sense of Wilma having an obligation to Pebbles before it is even settled whether Pebbles will ever exist, the claim that Wilma's decision is wrong because it violates an obligation to Pebbles faces another problem. Known as the rights waiver objection, this problem arises from the plausible idea that a person can waive her rights, and that doing so makes permissible conduct that would otherwise violate those rights. For example, performing surgery without patient consent violates the patient's right to bodily integrity. But if an unconscious accident victim needs immediate surgery to survive, we can expect that, once he regains consciousness, he will forgo any complaint about having his rights violated. That is, we can think of him as retroactively waiving the rights that the surgeon would otherwise violate, and that his issuing this "rights-waiver" renders the surgeon's conduct morally legitimate. Similarly, if Pebbles waives whatever right we might think Wilma violated, then this would render Wilma's conduct not wrong. And given that her very existence depends on Wilma violating that right, it seems likely that Pebbles would waive it.

Derek Parfit first introduced this problem as an objection to rights-based approaches to the NIP (Parfit 1984, p. 364). However, there is no reason to think that a person can waive only those obligations that derive from her rights. Rather, it seems more plausible to hold that *any* obligation can be waived by the person to whom it is owed, regardless of whether the obligation is based on that person's rights. Assuming that Pebbles prefers existence to non-existence, we can expect her to waive *any* obligation to her that we might imagine Wilma violating when she decides to forego the physician's advice.

3 Non-grievance evils

The claim that Wilma's decision was wrong because it violates an obligation to Pebbles faces such daunting challenges that it makes sense to explore approaches to the NIP that abandon the claim that Wilma violates an obligation *to Pebbles*. Such approaches often characterize Wilma's action as an instance of what Joel Feinberg calls a "non-grievance evil," that is, a form of wrongdoing "lacking determinate victims who can complain that their rights have been violated" (Feinberg 1984, p. 32). The challenge for this approach is to provide a compelling account of why Wilma's action is wrong without saying that she violated an obligation to Pebbles.⁵

One way to do this would be to adopt a broadly consequentialist moral perspective and claim that Wilma acted wrongly because she created a child whose existence contributes less value to the world than would a different, sighted child whom she could have conceived instead (Singer 2011, pp. 107–119). This claim has implausible implications, however. As both Heyd and Boonin observe, the same

⁵ As an anonymous reviewer observes, some readers may regard this approach as avoiding rather than solving the NIP. Such readers are welcome to substitute "avoid" for "solve" in what follows.

consequentialism that prohibits Wilma from *adding* a child with blindness to the world when she could have added a sighted child entails that someone choosing between *saving* either a child with blindness or an otherwise similar sighted child is morally prohibited from saving the child with blindness (Heyd 2009, pp. 9–11; Boonin 2014, pp. 169–171). This consequence is not only implausible, but deeply repugnant.

To avoid such consequences, some philosophers have proposed scope-restricted consequentialist principles, which apply only to decisions about procreation. For example, Dan Brock proposes a principle which requires us not to let “any possible child or other dependent person” experience suffering or other harms if we could easily create a different person who would not experience comparable suffering or harm (Brock 1995, p. 273). Because they apply only to choices about which possible persons to create, such principles lack the repugnant consequences of a more thoroughgoing consequentialism. But they purchase this immunity at the price of being ad hoc: the scope restrictions resemble gerrymandering, with no rationale independent of their ability to yield our preferred answer to the NIP (Boonin 2014, pp. 178ff).

Given these difficulties, perhaps we might do better to look for a non-consequentialist explanation for why Wilma’s action is wrong when it violates no obligation to Pebbles. The balance of this paper seeks to develop such an explanation. However, it draws on ideas first developed within a variant of the rights-based approach to the NIP, so I will discuss that approach next.

4 The indirect strategy

In the 1980s, Michael Tooley and James Woodward independently proposed what has come to be known as the “Indirect Strategy.” For brevity, I will focus on Woodward’s version.

Woodward asserts a principle which I will call **W**: “It can be wrong to adopt a course of action which will both bring certain obligations into existence and make failure to meet them unavoidable” (Woodward 1986, p. 813; compare Tooley 1983, p. 271f. and Tooley 1998, p. 120). Woodward applies **W** to the case of 14-year-old Alma, who decides to conceive a child who will, owing to Alma’s youth, have a difficult (but worth-living) life. Woodward writes:

Alma knows that if she has a child she will incur...obligations which...she is very unlikely to meet adequately. I contend that the likely failure to fulfill these...obligations constitutes an important reason...for Alma not to have a child. If Alma has her child and fails to meet the duties and obligations she owes to her child, the child has a complaint against her, based on a wrong done to the child (Woodward 1986, p. 815).

Woodward uses the following example to defend **W**: Xavier promises Penelope that Xavier will do both A and B, knowing that he cannot keep this promise because his doing A will make it impossible for him to do B. Clearly, Xavier acted wrongly in making this promise to do both A and B. Woodward claims that this supports **W**:

Xavier's promise was wrong because it created an obligation—to do both A and B—that Xavier could not fulfill (Woodward 1986, p. 810; Tooley 1998 appeals to a very similar example).

Boonin denies that Woodward's example establishes **W**. His objection targets the fact that **W** prohibits creating a *new* obligation that is impossible to fulfill. Boonin argues that Woodward's example only supports **W** if my deliberately making an impossible-to-keep promise to you "is wrong because it generates a right in you that will later be violated. Only if this is why my act is wrong will the reason carry over to the case of acts that involve creating a *new* person with a right that will subsequently be violated" (Boonin 2014, p. 115). However, Boonin contends, the most straightforward explanation for the wrongness of Xavier's promise does *not* involve Xavier creating *new* obligations that he cannot fulfill. Rather, it is wrong for someone to make a promise he cannot keep simply because doing so "violates a right that you *already* have: the right not to have someone make a false promise to you" (Boonin 2014, p. 115, emphasis added). Since **W** applies to the creation of a *new* obligation, and since we can explain why Xavier's promise was wrong *without* saying that Xavier created a *new* obligation, Boonin concludes that the promising example does not support **W**.

5 The principle of deliberate impossibility

Boonin's objection turns on the fact that **W** prohibits creating *new* obligations that cannot be fulfilled. We can avoid this objection by reformulating—and, of course, *defending*—a principle like **W**, but one which is not limited to cases involving the creation of a *new* obligation that cannot be fulfilled. This reformulated principle would forbid deliberately making *any* obligation—regardless of its time of inception—impossible to fulfill. Consider what I will call the Principle of Deliberate Impossibility (PDI):

PDI: It is morally wrong for S to deliberately Φ at t_1 if S expects her Φ -ing to make it impossible for S to Ψ at t_2 , where S's Ψ -ing at t_2 would have been obligatory had S's Φ -ing not made it impossible for S to Ψ , and where the impossibility of S's Ψ -ing is the direct cause of its being non-obligatory.⁶

Suppose that Boonin is correct that Xavier violates an *existing* obligation to avoid making false promises. What explains why it is wrong to make a false promise of this sort—namely, one that cannot be kept? The most plausible answer seems to be that the wrongness of Xavier's action consists in his making himself unable to

⁶ The final clause addresses cases like this one (which was posed by an anonymous reviewer): I expect you to ask me to drive you to the airport on Tuesday. I do not want to do this, but I know that when you ask me, I will nevertheless agree unless I have a prior commitment. So, before you ask, I schedule a root canal for Tuesday. When you ask for a ride, I decline, citing the root canal. Without the final clause, PDI would implausibly condemn scheduling the root canal, since doing so makes it impossible to do what I would have otherwise been obligated to do. *With* the final clause, PDI does not condemn my scheduling the root canal, since it is my declining to agree to drive you to the airport that makes doing so non-obligatory rather than my making it impossible by scheduling the root canal.

comply with the existing obligation to keep one's promises. Consequently, even on Boonin's "existing obligation" analysis of why Xavier was wrong to make the promise he cannot keep, the example still supports PDI. Nevertheless, it would be desirable to have additional support. Consider, then, this example:

Slippery Pete: Due to limited classroom space, the faculty in Pete's department take turns teaching a class during the dreaded 8:00 a.m. slot. Next semester, it is Pete's turn. The only practical way for Pete to get to campus by 8:00 a.m. is by driving. Knowing all this, Pete gives away his car and then announces that he cannot be obligated to teach the 8:00 a.m. class he has been assigned, since it is now impossible for him to get to campus that early.

According to PDI, it is irrelevant whether Pete makes it impossible to fulfill a pre-existing obligation (a standing obligation to teach at 8:00 a.m. whenever it is his turn) or one that he expects to come into being later (teaching a specific course at 8:00 a.m. next semester). Either way, Pete attempts to escape from an obligation that he expects to be in force by making himself unable to fulfill it. Here is another case that supports PDI:

Weaselly Wally is a competent philosophy professor, but he barely passed high school calculus. The math department needs someone to teach an advanced calculus class scheduled at a desirable time. Wally volunteers to teach the class, and thus avoids teaching the dreaded 8:00 a.m. Business Ethics course. Predictably, he teaches calculus poorly. When confronted by his Dean, Wally pleads that he is incapable of teaching calculus effectively, and should not be faulted for failing to do what he cannot do.

Of course, the Dean will rightly reply that Wally should never have volunteered for a class he could not teach effectively. Wally's wrongdoing was not his failing to teach calculus effectively—for that was impossible. Rather, it was taking on an obligation he knew he could not fulfill. PDI captures these plausible judgements.

One might object that while Wally's conduct is wrong, this is not because it violates PDI, but rather because it harms the students. If so, then we cannot appeal to this example to support PDI.⁷ So, let us amend the case as follows: Wally's students obtain assistance from the Math Department's tutoring program. The tutors get paid whether anyone shows up or not, and they are happy to gain experience helping Wally's students. Consequently, Wally's students do at least as well as they would have under a competent instructor. These amendments might make Wally's conduct less bad than it would have been had the students been left twisting in the wind. Nevertheless, it still seems that Wally acted wrongly. Consider a final case:

The Reluctant Exploiter: Department Chairperson Claire wants to develop a new elective course in her specialty. However, she knows that if she develops the course, her Dean will order her to staff it with contingent faculty who will earn exploitatively low compensation. Nevertheless, many unemployed instructors would gladly accept the job.

⁷ David Boonin raised this objection in comments on an earlier version of this paper.

It is not obvious (to me, at least) what Claire should do. But this much seems clear: *If* it is wrong for Claire to participate in these exploitative employment practices, then it would also be wrong to create the course knowing that doing so will make it impossible to avoid participating in such exploitative employment. To put it another way, if Claire accepts a moral principle forbidding participation in exploitative employment practices, then she should not develop the course, since that will make her unable to avoid violating this principle. Notice that, since the eventual hires willingly accept this poorly compensated employment, and since it is implausible to think that Claire's decision will significantly affect the trend toward adjunctification in academia, it is difficult to account for the wrongness of creating the course in terms of harms.

In each of these examples, it would be wrong to do something that makes it impossible to avoid violating some obligation—regardless of when that obligation comes into existence, and even if no one is thereby harmed. Consequently, I take these examples to support PDI.

6 A partial solution to the NIP

We can now construct a partial solution to the NIP. To begin, I will assume that a parent is obligated to protect her children from blindness. To avoid begging the question at issue in the NIP, and to avoid positing obligations to merely possible persons, we must construe this as an obligation to protect any actual child one has from blindness.⁸ This assumption in hand, we can construct the following partial solution to the NIP:

1. Wilma is obligated to protect any actual child she has from blindness (Assumption).
2. It is morally wrong for Wilma to deliberately Φ at t_1 , if Wilma expects her Φ -ing to make it impossible to Ψ at t_2 , where Wilma's Ψ -ing at t_2 would have been obligatory had Wilma's Φ -ing at t_1 not made it impossible for Wilma to Ψ at t_2 , and the impossibility of her Ψ -ing is the direct cause of its being non-obligatory (PDI).
3. Wilma expects her forgoing the medicine and conceiving at t_1 to make it the case that, at t_2 , it is impossible for her to protect an actual child of hers from blindness.
4. Protecting this actual child from blindness would have been obligatory for Wilma at t_2 if her act (at t_1) of conceiving a child with incurable blindness had not made it impossible (and its impossibility is the direct cause of its being non-obligatory).
5. Therefore, it is wrong for Wilma to deliberately forgo the medication and conceive Pebbles.

⁸ More precisely: Anyone who has a child is obligated to protect that child from blindness; consequently, a childless person does not violate this obligation (no one is obligated to have a child in order to fulfill the obligation to protect a child from blindness).

Steps 1 and 2 are assumptions. Step 3 simply restates the facts of the case. The time indices make it clear that no obligation to a merely possible person is being asserted. Step 4 follows from the assumption in Step 1 and the facts of the case (as restated in Step 3). The conclusion follows from the application of PDI (Step 2) to Step 4.

One might object that the examples used to support PDI do not establish a principle strong enough to do the work required of it in the argument above.⁹ Consider once again Weaselly Wally, who undertook the calculus class that he cannot properly teach. Just as Boonin suggested that we do not need to claim that it is wrong to create a new obligation that is impossible to fulfill in order to explain why it is wrong to make a false promise, so too perhaps we can explain the wrongness of Wally's behavior in terms of obligations that *already* exist at the time that Wally acts. Rather than saying that Wally makes it impossible to fulfill an obligation that he will *later* be under, why not say that he makes it impossible to fulfill an obligation that he is *already* under, namely the obligation to teach his students properly?¹⁰ If Wally is *already* under an obligation to teach his students properly *before* any particular student signs up for Wally's class, then it appears that PDI is not justified by the Wally example: PDI prohibits making it impossible to fulfill an obligation that *does not yet exist* at the time of action, but the example—so the objection goes—only shows that it is wrong to make it impossible to fulfill an obligation that *already exists* at the time of action. But since we have already seen that it is implausible to posit an obligation *to Pebbles* before she exists, unless we can justify a principle that forbids making it impossible to fulfill an *obligation that does not yet exist* at the time of action, it appears that the proposed solution to the NIP will not work.

This objection turns on subtle questions about how we individuate obligations, the answers to which will often determine when an obligation comes into existence. We can distinguish a wider and a narrower approach to individuating obligations. On a narrow approach, Wally's obligation only comes into existence when it becomes true that he owes effective teaching *to a specific person*. Suppose that Cal will take Wally's calculus class if Wally teaches it, but otherwise will take none of Wally's classes. On the narrow way of individuating obligations, Wally acquires an obligation *to Cal* to teach effectively only when Cal signs up for the calculus class—something that happens only *after* Wally decides to teach it. On this way of individuating obligations, the example clearly supports PDI, since Wally's wrongdoing consists in making himself unable to fulfill an obligation that does not yet exist (i.e., the obligation *to Cal* to teach effectively) at the time when Wally decides to teach the calculus class.

The objection, however, assumes a wider approach to individuating obligations. On this approach, Wally's obligation to teach his students effectively exists *before* Wally decides what to teach and thus before it is owed to any particular student. Thus, we would attribute to Wally an obligation to effectively teach any student

⁹ An anonymous reviewer raised this objection.

¹⁰ As an anonymous reviewer observes, this obligation is likely to exist as part of the obligation that Wally owes to the university.

who takes his classes. More precisely, we would attribute to Wally an obligation that prohibits Wally from the conjunction of having a student in one of his classes and failing to teach that student effectively. There is nothing incoherent about attributing this obligation to Wally, and there is nothing incoherent about claiming that it exists before it is settled who will be students in Wally's classes (and thus to whom Wally will owe effective teaching). Moreover, on this approach to individuating obligations, Wally's wrongdoing consists in his making himself unable to fulfill an *existing* obligation, and so the example would not support the claim that it is wrong to make oneself unable to fulfill an obligation that *does not yet exist*.

This objection would be fatal to the argument developed here, except for one important thing. If we attribute to Wally an obligation to refrain from teaching his students ineffectively, and claim that this obligation exists before it is owed to any particular student, then by parity of reasoning we should also attribute to Wilma an obligation to protect any child she has from blindness, and claim that this obligation exists before it is owed to any particular child. On the narrow way of individuating obligations, we would imagine this obligation coming into existence once Wilma has a child. But if we adopt the wider way of individuating obligations, we would say that Wilma is under a more general obligation, namely the obligation to refrain from the conjunction of having a child and failing to protect that child from blindness. Thus specified, the obligation applies to everyone, and pre-exists the existence of any actual child. Indeed, one way to avoid violating it is simply to remain childless.

Interestingly, if we consistently adopt the wider way of individuating obligations, the obligation we can attribute to Wilma closely resembles the obligation we can attribute to Wally: Wally is prohibited from the conjunction of having a student and failing to teach that student effectively, and Wilma is prohibited from the conjunction of having a child and failing to protect that child from blindness. If this obligation of Wally's can exist before it is owed to Cal, then it seems reasonable to say that Wilma's parallel obligation can exist before it is owed to Pebbles. And if we decide to say that Wally's action is wrong because it makes it impossible for Wally to comply with an obligation that exists before it is owed to Cal, then we are also free to say that Wilma's action is wrong because it makes it impossible for Wilma to comply with an obligation that exists before it is owed to Pebbles.

Thus, the objection that the Wally case does not support PDI because Wally violates an existing obligation involves a certain approach to individuating obligations. But if we apply that same approach to individuating obligations to the case of Wilma, then it turns out that the Wally case supports a principle sufficiently strong to support the claim that Wilma's action is wrong.

7 PDI-violations as non-grievance evils

I characterized the argument in the previous section as a *partial* solution to the NIP. The reason that it is only a partial solution is that it does not answer this vital question: To whom does Wilma owe the obligation not to violate PDI? Woodward

explicitly states that Alma's creation of an impossible-to-fulfill obligation is "*a wrong done to the child*." Tooley is less explicit on this point, but he claims that violating an obligation and creating an identical obligation that will be inevitably violated are on a par, which suggests that they both wrong the person to whom the obligation would have been owed (Tooley 1983, p. 271f., 1998, p. 120). Thus, both Woodward and Tooley appear to regard Wilma's creation of an impossible-to-fulfill obligation as violating an obligation to Pebbles.

Now if we follow Woodward and Tooley in thinking of Wilma's violating of PDI as violating an obligation to Pebbles, we will run afoul of the obligation waiver objection we discussed earlier. (In fact, Parfit first introduced this objection to block Tooley's version of this very argument.) If we hold that Wilma's making herself unable to protect Pebbles from blindness violates an obligation to Pebbles, then presumably Pebbles has the authority to waive it and thus render Wilma's conduct not wrongful.

It seems clear that violating PDI will typically wrong the person to whom the now-impossible obligation would have been owed. If it is wrong to make myself unable to fulfill some obligation to you, then surely part of what makes it wrong is that you have a legitimate complaint against me inasmuch as the obligation I made myself unable to fulfill would have been *owed to you*. No doubt this fact explains why Woodward and Tooley treat their PDI-like obligations as being owed to the person to whom the now-impossible obligation would have been owed.

However, I contend that the wrong done to someone to whom an impossible obligation would otherwise have been owed does not exhaust the wrongfulness of violating PDI. That is, I claim that violating PDI is at least partly a non-grievance evil. It remains wrong even if the person to whom the impossible obligation would have been owed waives that obligation. Why think that Wilma's violation of PDI is wrong even if Pebbles would waive any obligation owed to her by Wilma? I suggest that Wilma's violation of PDI is wrong partly because it embodies a morally defective intention, an intention that it is wrong to act upon, even if Pebbles waives any complaint about that act.

The idea that Wilma's act is wrong because it embodies or expresses a defective mental state—such as an intention, motivation, or character trait—has been suggested by several scholars (e.g., Urbanek 2013; Lotz 2011; McDougall 2007; Wasserman 2005). In fact, this approach is the main alternative to consequentialism for developing the non-grievance evil approach to the NIP. It is often developed in a virtue-theoretic direction: Wilma's action is wrong because it expresses a bad character trait, such as indifference to suffering. Although I have some sympathies for virtue theory, I will not take that approach here, in part because I see no reason to assume that Wilma must necessarily have a bad character, and because I think that her decision is morally wrong even if she does not act from a bad character. Instead, I will develop the thought that Wilma's action is wrong because of the mental state it expresses in a more deontological direction. In particular, I will draw on Kant's insight that the moral status of an action can be affected by the intention behind it. Unlike Kant, I will not argue—and do not believe—that the moral status of an action is *completely* determined by the nature of the intention with which it is

done. But I will claim that the fact that an action is done with a morally defective intention is one important factor affecting its moral status.

The challenge for this approach is to explain why Wilma's intention is morally defective without begging the question by assuming that her action was wrong and then citing the wrongness of her action as evidence of her bad intention. Thus, the explanation for why Wilma's intention is defective must be independent of the intuition that her act was wrong. Moreover, we cannot rig the game by assuming that Wilma's intention embodies especially evil motives, such as a hubristic desire to play God, or a sadistic desire to see people suffer. For we can easily imagine parents who make decisions like the one Wilma makes without such grotesquely evil motives, but presumably we would not want to exonerate them simply because their motives fall short of such obvious evil (Wasserman 2005, p. 146).

These are formidable challenges to the idea that Wilma's intention is morally defective. To meet them, we must inquire about the attitudes on which Wilma's intention would have to rest—attitudes that we can regard as underlying her intention. When I speak of an “attitude” I do not mean to imply a long-term mental state, much less a stable character trait. An attitude may be such a thing, but it may also be a much more temporary thought or assumption—perhaps one that is not fully articulated consciously—upon which an intention rests. So, what attitudes underlie Wilma's intention to forgo the medication and conceive immediately? This question is difficult to answer unless we know the answer to another question: Would Wilma protect her child from blindness if she lacked a way to make doing so impossible?

Suppose that, instead of Pebbles, Wilma had given birth to Schmebbles. Unlike Pebbles, Schmebbles does not have blindness, but she does have a condition that will cause incurable blindness unless Wilma undergoes a stem cell transplant that would be precisely as inconvenient to Wilma as following the doctor's advice would have been in the original scenario. Would Wilma undergo this procedure to prevent Schmebbles from becoming blind in this scenario? There are, of course, two possibilities. I contend that, in either case, Wilma's intention is morally defective in a way that is plausible to regard as a non-grievance evil, which remains wrongful regardless of any obligation waiver that Pebbles might issue.

7.1 Case 1: the depraved intention

Assume first that Wilma would refuse to protect Schmebbles from blindness if Schmebbles had been born instead of Pebbles. In this case, her depravity would be clearly reprehensible. And the attitude that would lead her to fail to protect Schmebbles would be no less reprehensible if, instead of Schmebbles, Wilma conceives Pebbles. For we are assuming that Wilma's attitude *would* have led her to refuse to protect Schmebbles if she had had Schmebbles instead of Pebbles. If the attitude underlying Wilma's intention to create Pebbles *would have* led her to fail to protect Schmebbles from blindness had Schmebbles been created instead, then the fact that Wilma cannot protect Pebbles from blindness (once she exists) doesn't change the depravity of the attitude on which her intention is based.

Of course, demonstrating the depravity of an attitude that would lead Wilma to refuse to protect Schmebbles from blindness does not in itself show that this attitude is a non-grievance evil. To motivate that further claim, consider the following cases, adapted from Shiffrin (1999, p. 128).

Cubist I: Beneficent billionaire Ben lives alone on an otherwise uninhabited island because he carries a contagious, often-fatal disease. Across a short but unnavigable strait lies a populated island. Ben wishes to bestow some of his wealth on the inhabitants. To avoid infecting them, he builds a catapult and launches small, sterilized, gold cubes to the other island. To reduce the chance of hitting anyone, he conducts the launches at night. Most cubes land safely, but one hits Unlucky Umberto, breaking his arm. However, Umberto waives his right not to be hit with hard objects once he pockets the gold cube that broke his arm.

Ben's action would normally violate an obligation to avoid harming Umberto. However, Umberto's waiver seems to eliminate the wrongfulness of Ben's action. Now consider this case:

Cubist II: Misanthropic billionaire Missy enjoys seeing people getting hit by hard objects. She entertains herself by chucking small cubes of pure gold at random strangers, correctly predicting that they will waive any moral complaint once they realize that they've been pelted with gold. Most of her victims sustain only minor injuries. Unfortunate Ulric, however, suffers a broken arm. Nevertheless, Ulric waives his right not to be hit with hard objects once he pockets the gold cube that broke his arm.

I concede that Ulric's rights waiver makes Missy's action less wrong than it would otherwise be. But does it remove all of the wrongfulness of Missy's action? It seems to me that it does not. This claim gains plausibility from the contrast between *Cubist I* and *Cubist II*. For it seems clear that, even after the rights are waived, Missy's conduct is worse than Ben's. But this can only be true if some element of the wrongfulness of Missy's conduct remains after the rights waiver. If the rights waiver renders Ben's conduct not wrong at all, and if Missy's conduct, even after the rights waiver, is worse than Ben's, then some of the wrongfulness of Missy's conduct must survive Ulric's rights waiver. Denying this entails that the billionaires' actions in *Cubist I* and *Cubist II* are morally equivalent after the rights waivers. This seems implausible.¹¹ It seems far more plausible to say that Missy's action was wrong, *even though* Ulric waives any objection to it. By contrast, it seems that Ben's conduct was not wrong at all once Umberto waives his objection.

Presumably the reason for this difference lies in the difference in attitudes between Missy and Ben. Ben is much like the surgeon who performs urgent life-saving surgery on the unconscious person. Both have morally sound goals. And both would both prefer to achieve those goals without violating any obligations. The surgeon would prefer to obtain prior consent if she could, and Ben launches his

¹¹ Lotz (2011), pp 115f., draws a similar conclusion about depraved procreative intentions.

cubes at night to minimize the chances of hitting anyone. By contrast, Missy's intention is clearly depraved in that her aim is to harm or at least humiliate her victims. For her, the harm is not an unfortunate side-effect to be eliminated whenever possible, but rather the whole point of her enterprise. This contrast provides a plausible explanation for why the rights-waiver completely eliminates the wrongness of Ben's action but not Missy's: When a person's obligation-violating action expresses a morally depraved attitude, at least some of its wrongness survives any waiver of the violated obligation.

Thus, it seems reasonable to surmise that the reason why Missy's conduct seems wrong even after Ulric's rights waiver is that a component of its wrongfulness is the fact that Missy's intention embodies a morally depraved attitude. When Missy acts on her depraved attitude and injures Ulric, Ulric can let her off the hook for the injury done to him. But it is not up to him whether to let her off the hook for acting on a depraved attitude. Because this wrong-making factor survives Ulric's rights waiver, it is a non-grievance evil.

It appears, then, that acting on an intention that embodies a morally depraved attitude is a non-grievance evil, that is, a wrong-making feature that survives any rights waiver issued by the person who would otherwise be wronged by it. Hence, it is plausible to infer that, if Wilma's intention embodies a similarly depraved attitude—one that would lead her to refuse to protect Schmebbles from blindness—then it too is a wrong-making factor that persists even if Pebbles waives any complaint. If Wilma would not protect Schmebbles from blindness, Wilma's attitude is clearly depraved. Such an attitude seems similar enough to that of Misanthropic Missy that if Missy's conduct remains wrong despite Ulric's waiver, then it seems reasonable to infer that Wilma's conduct would also remain wrong despite Pebbles's waiver. Pebbles can let Wilma off the hook for her blindness, but it is not up to her whether to let her off the hook for acting on a depraved attitude.

7.2 Case 2: the devious intention

Suppose instead that Wilma *would* protect Schmebbles from blindness if Schmebbles had been born instead of Pebbles. On this assumption, Wilma's attitude is more puzzling than it would be on the assumption that she would have refused to protect Schmebbles from blindness. Indeed, her attitude is somewhat paradoxical: She would protect her child from blindness if it were possible, yet she chooses a course of action that she knows will make it impossible.

In some ways, her attitude resembles a Kantian contradiction of the will: She wills to fulfill her obligation (and would do so for Schmebbles), yet she also wills to be unable to fulfill her obligation (and thus she decides to conceive Pebbles). Such a state of mind embodies a lack of commitment to her moral obligation. To see this more clearly, consider Claire once more. If she creates the course—knowing that doing so will make it impossible to avoid violating her principle about exploitation—wouldn't we conclude that she is not *really* committed to her anti-exploitation principle? Similarly, it seems reasonable to conclude that Slippery Pete and Weaselly Wally are trying to shirk their moral obligations, even if they claim that they would comply with them "if only they could." It is difficult to see how one

could be committed to a principle while deliberately choosing to make oneself unable to uphold it.

Human finitude being what it is, it is inevitable that some of our obligations will become impossible to fulfill through no fault of our own. But when a person who takes a moral obligation seriously becomes unable to fulfill it, the appropriate reaction is *regret*. Suppose that Blair is otherwise like Claire, except that Blair does not know that creating the course will render her unable to avoid violating her moral principle about exploitative employment situations. Lacking this knowledge, she creates the course. If she sincerely accepts her anti-exploitation principle, we should expect her to regret having become unable to avoid violating it. If circumstances beyond her control make it impossible for someone to keep an important promise, we expect her to regret her inability to do what she promised. We expect a driver whose passenger is injured in an unavoidable car accident to regret his inability to prevent it. We expect a parent who cannot protect her child from some misfortune to regret her inability to do so. If someone does not regret the inability to comply with an obligation, we would be justified in concluding that she either does not take that obligation seriously, or, that she regards it as an obligation to be gotten out of rather than obeyed.

Hence, Wilma ought to regard the prospect of being unable to protect her child from blindness as a regrettable state of affairs—and thus one to be avoided. Instead, she deliberately chooses to bring it about. Thus, Wilma's intention embodies an attitude of *embracing* an inability that she *should* treat as something to be *avoided* if possible and *regretted* if not. In this way, her intention embodies a devious, scheming attitude toward her moral obligations. Although she purports to recognize her obligation to protect any child she has from blindness, when presented with an opportunity to make herself unable to fulfill this obligation, she knowingly and deliberately chooses it. Thus, her attitude is not a depraved rejection of her moral obligation; instead, it is a devious scheming to weasel out of it by making it impossible to fulfill.

Because Wilma's attitude in this case is not as depraved as it would be if she would refuse to protect Schmebbles, we might worry that it is insufficiently defective to constitute a non-grievance evil (in the way that Missy's depraved attitude does). What evidence is there that acting on a "merely" devious attitude is a wrong that survives an obligation waiver? Consider this case:

Responsible Rhoda promises to drive Ann to the airport for her flight to Boston. However, on the way to pick her up, Rhoda's car breaks down (through no fault of Rhoda's), rendering her unable to keep her promise. However, the plane Ann was scheduled to take crashes. Rhoda has saved Ann's life, so she happily waives the obligation that Rhoda became unable to fulfill.

Clearly, Rhoda's conduct is not wrongful at all. By OIC, her inability to keep her promise absolves her from the obligation that Ann is happy to waive anyway. Now consider this case:

Conniving Carl promises to drive Ann to the airport for her flight to Boston. He would prefer to go drinking instead, but he is prepared to grudgingly keep his promise, if he can. However, on the way to Ann's home, he passes his favorite tavern, and notices that a construction crew has left debris in the parking lot. He repeatedly drives through the debris, hoping for a flat tire. Several nails puncture his tires, making it impossible to drive Ann to the airport. Meanwhile, the plane Ann was scheduled to take crashes. Carl has saved Ann's life, so Ann happily waives the obligation that Carl made himself unable to fulfill.

It seems clear that Carl's conduct is worse than Rhoda's. Why? After all, Ann is perfectly happy to waive the obligation that Carl made himself unable to fulfill. Indeed, Ann's continued existence depends on Carl's having made himself unable to fulfill that obligation. Yet Carl's conduct still seems worse than Rhoda's. Given that Rhoda's conduct is not wrong at all, if Carl's conduct is worse, then it must be at least somewhat wrong. Thus, we might say to Carl something like we what we would say to Missy: "Your conduct was wrong, even though Ann waived her complaint about it." I suggest that the reason why Carl's conduct is wrong is that, unlike Rhoda, he deliberately violated PDI. His attitude toward his moral obligation was devious; while Ann can let him off the hook for the missed flight, it is not up to her whether to let him off the hook for acting on his devious intention. Similarly, Pebbles can let Wilma off the hook for her blindness, but it is not up to her whether to let Wilma off the hook for acting on a devious intention.

To say that Wilma's intention is devious, or that it embodies a devious attitude toward her moral obligations, does not require us to say that Wilma is by nature a devious person. We cannot infer a devious character trait on the basis of one devious intention. Moreover, we need not even claim that Wilma recognizes the deviousness of her own intention. We could imagine Wilma becoming convinced (e.g. by reading Boonin's book) that ignoring the doctor's advice and conceiving Pebbles is morally acceptable.¹² If the argument here is correct, Wilma would simply be mistaken about the moral status of her own intention.

It may seem odd to say that Wilma's intention is devious even if she sincerely believes that her action is morally justified. But such situations are quite common. People often fail to recognize the moral status of their own intentions and the attitudes that underlie them. For example, a person—call him Pat—might act paternalistically without realizing that doing so presupposes a morally deficient respect for the other person's autonomy. Pat might sincerely believe that his paternalistic action is justified. This belief might even be based on a philosophical defense of paternalism. Yet if paternalism is bad for the reasons commonly given, then Pat's paternalistic action embodies a defective attitude, namely a lack of respect for the other person's autonomy. The fact that Pat does not recognize the moral defectiveness of the attitude underlying his intention does not prevent it from being morally defective. Similarly, we could imagine Wilma failing to recognize the deviousness of the intention to escape an otherwise binding moral obligation.

¹² This possibility was raised by an anonymous reviewer.

8 PDI as a second-order obligation

Examples like those of Carl and Rhoda indicate that the wrongness of violating PDI is not eliminated by an obligation waiver from the person to whom the now-impossible obligation would have been owed. Thus, these examples indicate that deliberate violations of PDI are, at least in part, non-grievance evils. But why should this be?

The answer, I suggest, lies in the fact that PDI is a second-order obligation. That is, rather than being an obligation directed primarily toward another person, it is an obligation directed toward one's first-order obligations. Since PDI tells us how to act with respect to our moral obligations, an intention to violate PDI embodies a defective attitude toward those obligations. Of course, our first-order moral obligations are generally owed to other persons, so PDI often has another person as its indirect object, so to speak, whereas its direct object is a first-order moral obligation. For this reason, an intention to violate PDI may involve defective attitudes of two sorts—a defective attitude toward one's moral obligation as such, and a defective attitude toward the person to whom the impossible obligation would have been owed.

I suggest that the wrongness of violating PDI that remains after an obligation waiver is issued by the person to whom the impossible obligation would have been owed derives from the fact that the intention to violate PDI embodies a defective attitude toward moral obligation as such. Violating a first-order obligation owed to a specific person often embodies a morally defective attitude toward that person, such as contempt, indifference, malice, etc. But violating PDI expresses contempt directly for a moral obligation (though it may also express contempt indirectly for the person for whom that obligation is owed). This contempt for one's moral obligations, I claim, is not a wrong done to any particular person. Rather, it is, so to speak, a contempt for morality itself, and as such, it is a wrong-making feature of an action that floats free of any wrong that may be done to a specific person to whom a now-impossible obligation would have been owed.

It may sound odd to speak of an intention as embodying an attitude toward moral obligation as such, without also being an attitude toward a particular person. But a moment's reflection shows it to be quite familiar. Discussions of Kant's doctrine of the Good Will commonly involve examples like this: Kathy detests her aunt, but visits her in the hospital purely out of a sense of moral obligation. Kathy's intention embodies an appropriate attitude toward moral obligation as such, even if it fails to embody an appropriate attitude toward her aunt. Such examples may or may not tell us anything about Kant's notion of the Good Will. But they do show that it is perfectly coherent to speak of an intention as reflecting an attitude toward moral obligation as such, independently of the attitude that it may reflect toward some particular person. To be clear: I am not tying PDI to Kant's doctrine of the Good Will. Rather, I am claiming that there is nothing incoherent about the idea of someone acting on an attitude toward moral obligation as such, or about the claim that the nature of such an attitude can affect the moral status of the resulting action.

Thus, there is nothing particularly mysterious about the idea that the wrongness of violating PDI derives in part from the fact that it embodies a defective attitude toward moral obligation as such. Moreover, the idea that deliberately making oneself unable to comply with a moral obligation embodies an improper attitude toward moral obligation as such seems to be a plausible explanation for the intuitive difference between Rhoda and Carl: Carl's action displays a defective attitude toward his moral obligations which is not present in Rhoda's act, and which is a wrong-making feature that is not eliminated by Ann's obligation waiver. It is up to Ann whether to let Carl off the hook for the missed flight. But it is not up to her whether to let Carl off the hook for his devious attitude toward his moral obligations. Carl's second-order obligation to take his first-order obligations seriously is not owed to Ann. Indeed, it is not owed to anyone in particular. Similarly, Pebbles is in no position to release Wilma from the wrongness of her improper attitude toward moral obligation as such. The fact that Wilma's defective attitude toward her moral obligations is not directed at anyone in particular explains why it is a non-grievance evil.

9 Two objections considered

Before concluding, I want to address two objections. The first was raised by David Boonin and is based on the following case:

Betty is like Wilma except that Betty's condition is incurable: If Betty procreates at all, her child will have incurable blindness no matter what Betty does.

Boonin observes that many attempts to solve the NIP have the "hard to believe" consequence that it would be wrong for Betty to procreate (Boonin 2014, p. 181; p. 198f). At first glance, the view defended here seems to have this same consequence that Betty acts wrongly. After all, Betty seems to be just as guilty of violating PDI as Wilma is.

Although I am not convinced that Betty is blameless, I believe that the view defended here can accommodate the common intuition that Betty's situation is importantly different from Wilma's. It is common to claim that when the cost of complying with a moral obligation is very high, we should modify our judgments about failures to comply. Some people claim that when compliance costs are very high, a moral obligation simply ceases to be binding. Others claim that when compliance costs are very high, the obligation remains in force, but compliance failures become less bad or more excusable. Let us say that, on both versions, high compliance costs "ameliorate" the wrongness of compliance failures. The more stringent the obligation, the higher the cost must be for the wrongness of a compliance failure to be ameliorated.

An obligation to refrain from deliberately creating a child with blindness imposes a much higher cost on Betty than on Wilma. For Betty, the cost of compliance is her freedom to procreate; for Wilma, the cost is mere inconvenience. I suspect that many who believe that Betty is justified in conceiving hold something like the

amelioration view: Betty's act, though *pro tanto* wrong, is ameliorated by the fact that compliance would be very costly for her. This makes it less wrong *on balance* than Wilma's action, and perhaps not wrong at all.

The following case supports this suggestion: Netty is like Betty except that if Netty conceives, her child will have such significant impairments as to make her life just barely worth living. I suspect that most people who think that Betty is justified in conceiving will not think that Netty is justified in conceiving. If that is correct, it suggests that people's intuitions are being driven by a comparison between an obligation's stringency and its compliance cost. Betty and Netty face the same compliance costs, but while they may be high enough to ameliorate the obligation to refrain from deliberately conceiving a child with blindness, they are not high enough to ameliorate the more stringent obligation to refrain from deliberately conceiving a child with extreme impairments. By contrast, the wrongness of Wilma's action is not ameliorated at all, since her compliance costs are very low. Hence, the view on offer here does not have the "hard to believe" consequence that Betty's conduct is just as wrong as Wilma's.

The second objection concerns whether the present argument proves too much.¹³ If it is wrong for Wilma to forgo the medicine and conceive Pebbles immediately, then would it also be wrong to fail to employ every technological means available to ensure that her child will be not only free of impairments, but maximally well-positioned for a happy life?

Unless we are operating within a framework of maximizing consequentialism, the answer is no. Within a deontological framework, there is nothing inconsistent about claiming that respect for an obligation forbids making it impossible to fulfill, while denying that such a commitment also requires doing everything possible to maximize one's ability to (perhaps maximally) fulfill it. To say that Slippery Pete acts wrongly in selling his car does not require us to say that he should not only keep his car but buy another so that he can make it to class if something goes wrong with his original car, or that he is obligated to move closer to school so that car problems cannot make him unable to fulfill his obligation to teach at 8:00 am. Similarly, it is perfectly coherent—at least within a deontological framework—to claim that a morally proper respect for one's duty forbids deliberately choosing to make it impossible to fulfill, but that such respect does not require taking every possible step to protect and enhance one's ability to do one's duty. Thus, the claim that Wilma does wrong by deliberately choosing a course of action that she knows will render her unable to protect her child from a misfortune does not entail that a prospective parent must do everything possible to produce a child with the best possible prospect for happiness.

¹³ This worry was suggested by an anonymous reviewer.

10 Conclusion

The strategy developed here grafts a version of the Indirect Strategy onto the non-grievance evil strategy. The result, I contend, is a composite solution to the NIP that is stronger than either of its parts. We can avoid the Indirect Strategy's susceptibility to the rights waiver objection by treating violations of PDI as non-grievance evils. And we can avoid the non-grievance evil strategy's problem with explaining how an action that wrongs no one can still be wrong by seeing PDI as a second-order principle, the violation of which is wrong in part because it embodies a defective attitude toward morality.

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