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Source: *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, Vol. 137, No. 1, Selected Papers from the American Philosophical Association, Pacific Division, 2007 Meeting (Jan., 2008), pp. 3-18

Published by: Springer

Stable URL: <https://www.jstor.org/stable/40208776>

Accessed: 05-09-2019 19:30 UTC

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Identifying and Dissolving the Non-Identity Problem

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Published online: 19 October 2007
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Abstract Philosophers concerned with procreative ethics have long been puzzled by Parfit's Non-Identity Problem (NIP). Various solutions have been proposed, but I argue that we have not solved the problem on its own narrow person-affecting terms, i.e., in terms of the identified individuals affected by procreative decisions and acts, especially future children. Thus, the core problem remains unsolved. This is a nagging concern for all who hold the common intuition that actions that harm no one are permissible. I argue against Harmon's and Woodward's direct, narrow person-affecting solutions, and in favor of a new solution to the NIP. My solution, or, rather, dissolution, is based on the argument that merely possible people, i.e., hypothetical people who could possibly, but will not actually, exist, are morally irrelevant. I show that the NIP only arises when we concern ourselves with merely possible people. Once we are careful to restrict our concerns to only those that do or will exist, the NIP is dissolved.

Keywords Non-identity · Non-Identity Problem · Procreation · Reproduction · Future people · Children · Parfit

Philosophers concerned with procreative ethics have long been puzzled by Parfit's Non-Identity Problem (NIP).¹ Various solutions have been proposed, but we have yet to solve the problem directly on its own narrow person-affecting terms, i.e., in terms of the identified future individuals affected by procreative acts. Thus, the most counterintuitive, paradoxical aspect of the problem is a challenge more often

¹ Parfit (1984, pp. 351–374).

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circumvented than directly met.² This is an embarrassing situation for people who care about future children to be in, forcing us to stealthily run circles around the NIP, and I'd like to get us out of it.

I will clarify the problem and address the direct, narrow person-affecting solutions offered by Harman and Woodward. I will argue against these solutions and suggest an alternative, direct, narrow person-affecting dissolution of the NIP. I will argue that the NIP relies on existence *per se* to outweigh detriments to future persons' life interests, but future persons don't have an interest in existence *per se*. Using existence itself to outweigh life detriments reveals a mistaken concern for merely possible people, i.e., hypothetical people who could possibly, but will not actually, exist. People who can possibly, and will actually, exist are simply future people; i.e., people who will exist in the future but do not exist now. Future people matter a great deal, but merely possible people don't matter at all.

The term "possible people" can refer to the broader category encompassing both merely possible and future people. But, when we consider possible people without further distinguishing between merely possible people (who will never exist) and future people (who will exist), we may end up granting moral consideration to merely possible people. Yet, only those who do or will exist merit moral consideration. When considering procreating, we ought to imagine, as best we can, creating the person who will result (hypothetically) in order to determine whether that procreative act accords with our moral principles. I will argue that this differs from considering a merely possible person. Parfit is wrong to think that person-affecting intuitions lead us morally astray, and into the Non-Identity abyss. To the contrary, we are right to keep our eye on how principles and practices affect individual persons and I will argue that, when we do, the NIP does not arise.

1 The NIP

The NIP usually arises from the fact that, because sperm lead short lives,³ our identities depend on when we are conceived. Therefore, virtually anything we do affects the identity of whoever is conceived just by taking time (or not taking time), thereby affecting which sperm fertilizes the (month's) egg. Therefore, each person's set of conception circumstances are the only ones possible for her; her existence depends on them. And, since a life worth living is no worse than non-existence, the only procreative wrong is to voluntarily procreate people whose lives are *not* likely to be worth living.

The NIP: Identifying the person who is harmed⁴ by procreative decisions which seem to set back their life interests, given that their existence is worthwhile and dependent on that very same decision.

² See Feinberg (1986, pp. 145–179), Brock (1995, pp. 269–275), and Weinberg (2002, pp. 405–425).

³ If we froze sperm for later use, thereby affecting the identity of the person conceived, we would also generate the NIP.

⁴ I use the term "harm" to mean "set someone's interests back," which, I take it, is a fairly standard conception of harm and a conception consistent with Parfit's use of the term in his discussion of the NIP.

E.g., if Becky conceives while knowingly taking medication that will cause her future child to have deformed limbs, who is harmed by that act? One wants to say, the child with the deformed limbs, of course. But, because *that* child could not exist without the deformity,⁵ and has a worthwhile life, we seem unable to say that.

Because our procreative decisions affect who will exist, some policies which seem to protect future people—e.g., no negligently inflicted disabilities, no adolescent procreation—don't, because there's no future person harmed by their violation. Therefore, if we want to restrict harmful or negligent procreation, we seem forced into the Non-Identity Principle:

The Non-Identity Principle: Procreation is morally permissible so long as the future person's life is likely to be worth living (barring countervailing third-party interests).

Hence, the Non-Identity Paradox:

The Non-Identity Paradox: our concern for the interests of future people (e.g., that they have adult parents or are free of negligently inflicted disabilities) leads to conclusions that seem contrary to the interests of future people (since we seem forced to permit adolescent procreation and negligently inflicted disabilities, etc.).

Note that the Problem applies to theories that deem an action wrong only insofar as it will make things worse for a determinate person (narrow person-affecting theories).⁶ It doesn't apply to theories that deem actions wrong insofar as they make things worse for people in general, regardless of identity (wide person-affecting theories),⁷ e.g., some versions of contractarianism, nor does it apply to theories that deem actions wrong insofar as they negatively affect states of affairs, e.g., consequentialism. Moral theories that aren't narrow person-affecting theories may espouse procreative principles similar to the Non-Identity Principle, but they will not do so on the basis of the NIP. Their principles, so to speak, are their own problem. Let's return to ours, confining our discussion to the narrow person-affecting perspective.

It's important to distinguish among the Problem, the Principle, and the Paradox. Many deem the Problem unsolvable and the Principle, therefore, correct, leaving the Paradox a testament to the folly of human intuition.⁸ Those who don't endorse the Principle usually leap directly to it, attempting to show why it's incorrect, regardless of the Problem. Thus, many seek to avoid the Principle by adopting the parents' perspective, claiming that gratuitously inflicted disabilities aren't contrary to future children's interests, but parents are still morally remiss for following the Principle.

⁵ Melinda Roberts, however, argues that *that* child could exist without the deformity, but it is just very unlikely that they will. See Roberts (1998, pp. 89–108).

⁶ See Parfit, *op. cit.*, pp. 394–395.

⁷ See Parfit, *op. cit.*, pp. 396.

⁸ See Brock et al. (2000) and Robertson (1996).

Yet, when we neglect the Problem, the Principle tends to resurface.⁹ To avoid the Principle, and resolve the Paradox, we'd best do away with the Problem.

Even if focusing on the perspective of those committing procreative acts did enable avoidance of the Non-Identity Principle, it would still leave us with a gnawing intuition that somehow the child's interests have indeed been set back. That's the real puzzle, that's the NIP, and we ought to face it head on.

Harman tries.¹⁰ Although her argument principally concerns wide person-affecting strategies for avoiding the Principle,¹¹ she addresses the Problem by arguing that the person harmed by procreative negligence, etc., is the future child because the child suffers significant damage. Granted, the suffering is outweighed by the benefits of existence, argues Harman, but the suffering is not morally outweighed because, "reasons against harm are serious enough that the mere presence of 'compensating' reasons to benefit those harmed is *insufficient* [ital. hers] to render the harms permissible."¹² Why? No answer is given and it's not obvious, especially since the benefits in question are not compensatory, like the lollipop given to a child just inoculated at the doctor's office. Rather, the benefits, which outweigh the harm, are bound up with the harm and are the only way to deliver the benefits to that person. The benefits are like the inoculation itself (*beneficial*, despite the sting), not like the lollipop you get on the way out. In order to explain why Non-Identity cases harm the future person, Harman must explain why existence does not render the procreative harms to which it is bound ultimately beneficial. The core Problem remains.

2 Getting closer to the problem: wronging without harming?

Woodward argues that even if procreators or formulators of population policy intend the overall benefit that their actions confer on future people, neither their

⁹ Levy and Hanser, among others, adopt this strategy. Levy argues that the child, looking back, cannot think of her parents' negligent procreation as wrong because of the metaphysical whiplash suffered when trying to look back from a worthwhile existence to choices that determined that existence. But, argues Levy the parents, from their perspective at the time of the act, can see that they have not taken their best course of action. See Levy (2002, pp. 357–368). But, of course, even from their forward looking perspective, the parents can predict the likely worthwhile nature of their future child's life and claim that since their action harms no one, it is permissible (even if it's not the best course of action available to them). Hanser argue that we are only responsible for the non-accidental results of our actions and, since many of the decision-makers in NIP cases (but not parents) only accidentally affect future identities, identity cannot be used to excuse their harmful acts. See Hanser (1990, pp. 47–70). But, we are responsible for the *foreseeable* results of our actions and not only the non-accidental results of our actions. Thus, if I shoot at the birds outside my window, ignoring the people standing near them, I am responsible for killing the people, even if their deaths are accidental side-effects of my intended action.

¹⁰ Harman (2004, pp. 89–109).

¹¹ The gist of Harman's argument is that we should not enact Risky Policies, or the like, since we can achieve similar benefits (i.e., lives worth living) while incurring fewer burdens (i.e., suffering caused by the policy). This strategy is wide because it is based on the interests of people, in general, without regard to particular identities. Obviously, we could not incur the same benefits while incurring fewer burdens to the *same* people.

¹² Harman, *op. cit.*, p. 107.

intentions nor the beneficial effects of their actions outweigh or negate the wrong done because the violation of specific rights “are not simply aggregable into some more fundamental interest in being as well off as possible, all things considered.”^{13,14} Woodward illustrates this argument with a compelling example: if Victor Frankl feels he ultimately benefited from his torment in the Nazi death camps, that doesn’t make the violation of his rights by the Nazis morally acceptable, nor would the violation of Frankl’s rights be permissible if the Nazis had intended these positive effects.¹⁵ Woodward addresses the Problem by claiming that the future person, although not harmed, is still wronged. That’s why, he implicitly argues, the Principle is incorrect. But, Parfit counters with an equally compelling case: a surgeon who amputates an unconscious person’s arm to save her life doesn’t harm or wrong her patient. Sometimes, Parfit argues, the harm necessary for good is deemed, ultimately, not harmful and therefore not a rights violation because it’s necessary for what the subject of the harm would, overall, want.¹⁶ Woodward replies that the difference between the surgeon and the Nazis (or the parents who confer negligent disabilities) is that the surgeon doesn’t violate her patient’s rights in the first place,¹⁷ but this reply begs the question. For why do we deem the amputee’s rights unscathed but Frankl’s rights unspeakably humiliated? Parfit takes up this issue, rebutting that, just as the alternatives are taken into account in the surgeon example to determine whether the surgeon violated her patient’s rights, they must be taken into account in procreative cases as well, where the alternative is nonexistence.¹⁸ And, on this point, Parfit is right.

However, Parfit’s rebuttal leads to the dissolution of the NIP because, as his reply reveals, the NIP is based on comparing two alternatives for future people: existence and nonexistence.¹⁹ Yet, I will argue that existence *per se* is not an interest that future people have, especially since nonexistence is *not* an alternative for them. Nonexistence is only an alternative for a merely possible person; it has no bearing on the interests (or rights) of any real person (present or future).

3 Dissolving the NIP

Because the NIP relies on the good of existence itself to outweigh actual life detriments, it inadvertently promotes the hypothetical interests of merely possible people at the expense of future people. Once we restrict our concerns only to those who will exist at some point, the NIP dissolves. If we don’t have the Problem, we don’t generate the problematic Principle and perplexing Paradox.

¹³ Woodward (1987, p. 802).

¹⁴ See Hanser, *op. cit.*, pp. 60–61, for a similar argument.

¹⁵ Woodward (1986, pp. 809–810).

¹⁶ Parfit (1986, p. 857).

¹⁷ Woodward (1987, p. 807).

¹⁸ Parfit, *op. cit.*, pp. 855–857.

¹⁹ Throughout this paper, I distinguish between nonexistence, defined as never existing, and death, whose definition I leave to others to debate.

The argument, which I will fill out below, is this:

1. The NIP uses existence itself, and not the goods of a good life, to outweigh specific life detriments.
2. Merely possible people who, some may argue, may have a hypothetical interest in existence itself, are of no moral relevance and do not have any real interests.
 - (a) The NIP, though, can be seen to treat merely possible people as interest bearers.
3. Future people do not have an interest in existence itself.
4. Therefore, the NIP is morally mistaken and cannot serve as an excuse for neglecting the life interests of future people.

1. The NIP uses existence itself, and not the goods of a good life, to outweigh specific life detriments

Contrary to some analyses of the Problem, it is existence itself, and not the goods sometimes found in life, that does the justificatory work of outweighing burdens in Non-Identity cases. Let's take the hypothetical case of the child made blind due to her mother's drinking of good tasting (but unnecessary) juice that she knew would blind her future children. The blind child, Sally, enjoys existence, especially chocolate. Arguably, the chocolate outweighs the blindness, period. No mention of existence at all. However, contrast this case with that of a woman who uses fertility drugs to get pregnant, knowing it will make it likely that she bears twins. She gets pregnant and has twins. The twins enjoy the companionship of twinhood but get annoyed sometimes by having a same age sibling. Overall, though, they like being twins. But still, they challenge their mother to justify her taking fertility drugs that she knew would increase the chances of them being twins and finding some features of twinhood burdensome. Their mother can explain that they like being twins, overall, and twinhood comes along with good and bad features. Since the good outweighs the bad and the goods and bads of twinhood are essentially and inextricably connected, they aren't harmed by being twins. But, this reasoning does not apply to blindness and chocolate, which aren't essentially or inextricably connected. The mother's juice drinking does not cause the chocolate or confer the chocolate (unlike twinhood and its associated benefits); its only connection to the chocolate is its indirect conferral of existence (which, in turn, provides the opportunity for the chocolate). Existence itself is the (alleged) benefit here. The only reason that Sally can't have chocolate without being blind is because she wouldn't exist if she wasn't blind (and if she didn't exist, there goes the chocolate). Existence provides the opportunity for chocolate; blindness just goes along for the ride. The chocolate doesn't justify the blindness because one can have chocolate without blindness. Sally, however, cannot have chocolate without blindness because she can only have chocolate if she has existence, which, in her case, comes along with blindness. Twinhood is itself bound to certain benefits and burdens but blindness is not, in and of itself, bound to chocolate. For Sally, it's only existence that binds blindness to chocolate. It's existence that, supposedly, outweighs Sally's blindness. Another way of putting this point is that when both benefits and harms are weighed against each other, chocolate may outweigh blindness but one is still harmed by blindness unless existence is included in the equation.

One might argue that, although existence provides Sally's opportunity to enjoy chocolate, blindness is causally necessary (and no more or less causally sufficient) for Sally's existence and, therefore, causally necessary for her chocolate too. On this view, the blindness is causally necessary for the chocolate, which outweighs its badness; again, no mention of existence at all. But, this misdescribes the situation. Sally's blindness *per se* is not causally necessary for her chocolate (nor is her mother's drinking of the juice that blinds future children). Rather, innumerable circumstances are necessary in order for Sally to enjoy chocolate, one of which (the juice drinking) also happens to have caused Sally to be born blind. If that juice didn't cause blindness, if it was orange juice, it would still have been causally necessary for Sally's chocolate. Thus, it appears that orange juice could have facilitated Sally's chocolate enjoyment opportunities without any associated blindness. The blindness rides causally free of Sally's chocolate. It is a mere side-effect of what is really causally necessary for Sally's chocolate: the *time* it takes to drink the juice, be it juice that blinds future children or juice that only nourishes. The time it takes to drink the juice provides for Sally's opportunity to exist and existence provides her opportunity for chocolate. If the juice happens to cause blindness, it is existence itself that is used to counterfactually justify the blindness: had Sally's mother not downed the juice that caused the blindness, Sally wouldn't *exist* and one must *exist* in order to enjoy chocolate.²⁰

2. *Merely possible people who, some may argue, may have a hypothetical interest in existence itself, are of no moral relevance and do not have any real interests*

All interests are contingent upon existence (at some point), otherwise there is no real²¹ subject for interests. Since only beings that exist at some point have interests, merely possible people don't have interests. Therefore, they cannot have an interest in existence *per se*, no matter how wonderful their existence would be, hypothetically. Consequently, when we seek to protect the interests of future people, existence must be assumed; otherwise, there are no interests to protect.

Although there's no moral reason to consider merely possible people, it may seem like our moral reason to consider future people may force us to consider merely possible people, since we cannot know which particular people will exist in the future.²² But, this is not the case. Say we build ramps to make all buildings wheelchair accessible so that future wheelchair bound people will have access to all buildings. However, unbeknownst to us, future people will have no need for ramps

²⁰ The blind Sally example is not a special case. In many Non-Identity cases, it is changes in the timeline of conceptions and/or in the people that meet and procreate due to the implementation of policies or ingestion of drugs, etc. that cause different people to exist, and not the detrimental effects of the policy, drug, etc. E.g., it is not the fact that a policy will cause a nuclear catastrophe, or that a drug will damage future children that causes different people to exist. Rather, it's the fact that the implementation of the policy or ingestion of a drug causes changes in the timeline of conceptions and/or causes different people to meet and conceive children that causes different people to exist. The negative effects of the policy, drug, etc., are not causally necessary for the future persons' life goods; they are mere side-effects of the timeline changes caused by policies, drugs, etc. that are necessary for the future person's existence.

²¹ I say "real subject" rather than "subject" to allow for possible subjects in possible worlds. These possible subjects in possible worlds may merit extreme consideration in said possible worlds, but they have no rights, interests, or actuality in the actual world. My discussion is confined to the actual world.

²² I am indebted to Jonathan Adler and Jeanine Diller for raising this epistemological issue.

because future wheelchairs will fly over stairs. Who, then, did we build the ramps for? We built them for future people, but, as things turned out, they didn't need them. This doesn't mean that we considered the interests of merely possible people in our ramp building—we didn't build ramps for merely possible people. We built ramps out of consideration for the interests of future people but, given our epistemic limitations regarding future people and events, we erred in how best to serve their interests. Our epistemic limitations may cause us to err in our consideration of future people's interests, but they don't force us to commit the moral mistake of considering the interests of merely possible people. If I skip a bit on my actual child to save money for the second child that I plan to have, but don't end up having, my epistemic limitations have caused me to err in consideration of future people's interests. But, if I skip on my actual child in order to save for the second child that I know I could possibly, but will not actually, have, I have committed the moral absurdity of considering the interests of merely possible people. Similarly, if I deliberately incur the high risk of creating an utterly miserable person, but don't conceive, or if I gratuitously ruin things that I mistakenly think future people will need/want, my actions are wrong due to their reckless disregard for the well-being of real people. It is incoherent to speak of the well-being of merely possible people. Instead, the aforementioned acts are wrong because they risk harming real people. That they turn out not to harm anyone is lucky—like driving drunk but hitting no one. Still, both when driving drunk and when risking the conception of a person who will likely have a miserable life, the interests at stake are those belonging to real people.

Another type of case in which it may seem like our moral reason to consider the interests of future people may force us to consider the interests of merely possible people is the case of deciding not to procreate due to the nature of the life that would result. For whom do we act in such cases? This is an extremely difficult question and I am not sure that it can be answered without an aura of paradox.²³ One may argue that we surely don't act for the sake of the would-be-miserable person because our action precludes their existence; we must therefore be acting for the sake of the merely possible person. However, acting for the sake of a merely possible person makes even less sense. How can we refrain from creating someone who will never exist? And, if we could, why would we? Why bother acting for the sake of a merely hypothetical being that will never exist? I don't think that is who we have in mind when we decide not to procreate in order to avoid creating a miserable person. Instead, it seems more reasonable to say that we avoid creating a miserable person for the sake of the miserable person who, by hypothesis, will exist, even though such action turns out, paradoxically, to preclude their existence. When I refrain from creating a miserable person, I do so out of consideration for the real interests that person would have if I did indeed create them. I stop myself from creating that which I should not create for the sake of that which I should not create, namely, an actual miserable person (though, in so doing, I preclude their actuality).

²³ Caspar Hare attempts to do so by arguing that this case (among other concerns) proves that we ought not confine our concerns to all and only actually entities but, as I argue, I think this conclusion creates more problems than it solves. (I also think the argument fails but the reasons it does are not relevant to this paper). See Hare (2007, pp. 498–523).

(a) *The NIP, though, can be seen to treat merely possible people as interest bearers*

One must exist at some point in order to be mistreated, even as far as existence itself is concerned. But if you exist, obviously you haven't been deprived of existence. So we cannot say that it's in merely possible people's interests to have a disability in order to secure the good of existence because, since merely possible people don't have interests, they cannot be said to have an interest in existence *per se*. And we also can't say that it's in the interests of future people to have their disabilities, given that the benefit of existence entails these disabilities, since existence is something that *they* will not lack. Future people will exist.

One might argue that characterizing future persons' existence as guaranteed is erroneously fatalistic. You may insist that your existence isn't guaranteed, that your nonexistence is an alternative: had your parents not procreated when they did, you wouldn't exist. And I agree that your nonexistence is an alternative; it's just not an alternative for *you*. Had your parents not procreated, you wouldn't exist, but *you* wouldn't *not* exist either. Rather, the hypothetically possible person that you theoretically "were" (the twinkle in your mother's eye), the sperm and egg from which you grew, might never have united. Meaning, nonexistence is only an alternative for the merely possible "you"; it's not a real alternative for any real person.

Many recoil at this sort of talk.²⁴ Surely, one might argue, future people may or may not exist. Surely we don't want to say something like, "*x* exists now, therefore she was a future person 1,000 years ago, therefore her existence is necessary." Or, "each future person is such that she must exist at some point; if that person is future person *x* then *x*'s existence is non-contingent. *X* is a necessary being!" I make no such absurd metaphysical claims. Instead, I claim merely that, "*If* *x* is a future person, *then* *x* will exist." The latter claim is true by virtue of what it means to be a future person.

Perhaps some of the confusion is due to a perceived confusion regarding *de dicto* and *de re* claims about future people. For example, one might say, when considering Bob, inventor of the shoelace, that given that someone invented the shoelace, it's impossible that the inventor of the shoelace did not invent the shoelace (*de dicto*) but it is still not impossible that Bob, the actual inventor of the shoelace (*de re*), could not have invented the shoelace. Or maybe the problem is the appearance of epistemically veiled fatalism. E.g., my 4-year old neighbor, Noah, is either a future college graduate or a merely possible college graduate but her future is not merely epistemically open in the sense that we simply don't know which possibility will turn out to be the case. Rather, it is also metaphysically open. These cases may make it seem like it is similarly mistaken to say that each future person will exist. Still, I don't think they do.

In the actual world, Bob could have not invented the shoelace. He could have set his sights on velcro or toilet paper. We would still have no trouble referring to him because we can refer to him in two ways: as Bob or as the inventor of the shoelace.

²⁴ I am indebted to Jonathan Adler, Richard Greene, Elizabeth Harman, Peter Kung, and Charles Young for this set of objections and examples.

Similarly, my neighbor Noah may graduate from college or not. She will either be Noah, the college graduate, or Noah, the non-college graduate. Thirty million years ago, Bob and Noah were future persons. If their mothers had had headaches on the nights that they were, respectively, conceived, they might never have existed. But, if that had been the case, then thirty million years ago neither Bob nor Noah were future persons. Instead, “they” were merely possible people: hypothetical entities that could possibly but will not actually exist. The term “future people” picks out *the very people* who will exist in the future. Bob can invent the shoelace or become a couch potato and my neighbor Noah can graduate from college or not, but if they are future persons we can be sure of one thing about them: they will exist.

Yet, Parfit doesn’t take the existence of future people as the given that it is, and that’s how he ends up promoting hypothetical interests of merely possible people (in existence *per se*) at the expense of real interests of future people (in a good existence). Parfit’s treatment of merely possible people as interest bearers, *qua* the NIP, is perhaps most evident in the principle which he claims solves the NIP for cases in which the number of future children is fixed, i.e., principle *Q*:

If in either of two possible outcomes the same number of people would ever live, it would be worse if those who live are worse off, or have a lower quality of life, than those who would have lived.²⁵

According to *Q*, it’s the merely possible people, who would have lived higher quality lives, *instead* of the actual people who live lower quality lives that may make procreating some of the actual future people wrong.

Note that Principle *Q* only answers the “Wherein lies the *wrong*?” question, and only in cases where the number of future children is fixed rather than flexible. It doesn’t directly answer the “*Who* is harmed?” question, which is the real Problem, and, to whatever extent it might, it can only do so via an appeal to merely possible people. Splitting the Problem into fixed vs. flexible number of future children distracts from the real Problem and looking for wrongs without harms leaves us futilely searching for the crime while insisting that there’s no victim.²⁶ This underscores the importance of getting the Problem right.²⁷

Parfit applies *Q* to his Ruth and Jane example: Ruth and Jane have a congenital disease that will kill them painlessly at 40. Jane knows her children will inherit the disease. She has a child anyway. Ruth knows that only her sons will inherit the

²⁵ Parfit (1984, p. 360).

²⁶ See Feinberg, *op. cit.*, pp. 145–179, for a failed attempt at just that. Feinberg claims that children born with negligent handicaps are the non-victims of victimless crimes (victimless due to the NIP), who nonetheless are entitled to claim a special resentment of their procreators. But, if the crime is truly victimless, why would the resentment be appropriate? Gratitude for a life worth living would seem to be the more appropriate attitude. Hare makes a similar error by claiming that Mariette, the victim of procreative negligence, can claim that she was harmed by her mother’s disregard for her *de dicto* child and she is her mother’s *de dicto* child. This is a very odd thing for Mariette to say because had her mother showed concern for her *de dicto* child, things would, presumably, have been worse (or, at the very least no better) for Mariette. It seems like, of all people, Mariette should be especially grateful for her mother’s lack of concern for her *de dicto* child. (Hare, *op. cit.*, pp. 522–523).

²⁷ It does not, however, entail that focusing on wrongs rather than harms is not a promising *wide* person-affecting strategy around the Problem.

disease and she can pay for in vitro fertilization (IVF) to select a female child. She doesn't do IVF; instead, she conceives naturally and her son has the disease. It seems that Ruth's choice is worse than Jane's²⁸:

Even if there is an objection to Jane's choice, there is a greater objection to Ruth's choice. This objection cannot appeal only to the effects on Ruth's actual child, since these are just like the effects of Jane's choice on Jane's child. The objection to Ruth's choice must appeal in part to the possible effect on a different child who, by paying for the new technique, she could have had.²⁹

Similarly, Parfit argues that, in his "risky policy"³⁰ example, we condemn the choice of an energy policy that will, predictably, cause a catastrophe in a few hundred years, not because this harms future people, since these people—whose lives are worth living—wouldn't exist had we not instituted the risky policy.³¹ Instead, Parfit argues, we condemn the choice because the *merely possible* people, who would have lived had we instituted a different policy, would have had better lives than the actual people who live under the risky policy:

This objection must in part appeal to the effects on the possible people who, if we had chosen differently, would have lived.³²

But, the effects of a policy on merely possible people cannot ground a moral objection to anything (since there are no such people and no such effects). Instead, we may deem Ruth's choice more objectionable than Jane's because, although the effect of the choice is the same, Ruth could have avoided this effect more easily (Jane would have to refrain from procreating; Ruth could procreate via IVF). Ruth's and Jane's child are equally made diseased by their mother's procreative activity, but since avoiding the creation of a diseased child would cost Jane more than it would cost Ruth, Ruth's choice is worse than Jane's. And, of course, we object to the risky policy because it imposes undue risk on future persons and/or because it causes future people to undergo a catastrophe.

3. *Future people do not have an interest in existence itself*

Parfit would likely maintain that the NIP isn't generated by hypothetical interests of merely possible people but, instead, by the real interests of future people, including those with negligently inflicted disabilities, who could not (rationally) regret the decisions leading to their procreation since these decisions are in their

²⁸ Parfit, *op. cit.*, p. 375.

²⁹ Parfit, *op. cit.*, p. 376.

³⁰ Parfit, *op. cit.*, p. 371.

³¹ Some might wonder whether adopting one nuclear waste policy over another affects *which* future people exist. That might seem to undercut my claim that *all* future people will exist. But policy decisions that determine future identities do not determine which future people will exist. Instead, a choice between two nuclear waste policies, or the like, presents a choice between *hypothetical sets* of people; i.e., it makes us choose amongst *hypothetically possible people* (under policy *a*, the *a* people will exist; under policy *b*, the *b* people will exist). But only one set of hypothetically possible people will be future people. The other set will turn out to be merely possible people (whom we have no reason to care about).

³² Parfit, *op. cit.*, p. 376.

interests, so long as their lives are not worse than nonexistence.^{33,34} The likelihood of the future child's regret is a criterion Parfit suggests to evaluate procreative acts: "When we cannot ask for someone's consent, we should ask instead whether this person would later regret what we are doing."³⁵ And Parfit maintains that, "if these ['non-identity'] people knew the facts they would not regret that we acted as we did."³⁶ But, we should not ask, as the NIP, in effect, does, "How can future people with worthwhile lives (rationally) regret procreative negligence, given that their existence depends on their birth circumstances being exactly as they were?" Instead, we should ask, "*Given* existence, could future people with worthwhile lives (rationally) regret procreative negligence?" It's reasonable for people to take existence as the baseline of their interests since, without existence, they would never have any interests. And, never having interests itself could not be contrary to people's interests, since, without interest bearers, there can be no "they" for it to be bad for. Since existence is the prerequisite for all our interests, it's appropriate, when assessing our interests, to assume existence and, perhaps, regret some of the circumstance of our (initial) existence. (In fact, we may regret many of the circumstances of our existence without being the victim of procreative wrongdoing.³⁷ I may regret not being taller, smarter, etc. This argues against using the future person's regret as the evaluative criteria for procreative acts. Instead, we may use "reasonably object" or some other standard of procreative care).³⁸

Once a person exists, she can have an interest in incurring a disability rather than losing her life—existent beings can have derivative interests in their *continued* existence (derived from the goods of existence)—but there's no point at which any actual person has an interest in accepting a disability in order to make sure that they exist. Yet, Parfit can argue that one's interest in one's continued worthwhile existence gives one an indirect interest in one's initial existence since initial existence is causally necessary for continued existence. In other words, I need to exist (initially) in order to enjoy my worthwhile continued existence.

But I don't need to exist at all.³⁹ Existence is neutral; it's the creation of a subject of interests, not an interest itself. Nonexistence wouldn't deprive *me* of anything. Once I do exist, however, I have many needs, e.g., adequate vision. According to NIP reasoning, the following is the hypothetical dialogue between the two parties in our juice that blinds future children case:

³³ Parfit's written comments to me.

³⁴ An argument against Parfit's view of rational regret can be found in Woodward (1986, p. 823).

³⁵ Parfit (1984, p. 373).

³⁶ Parfit, *op. cit.*, p. 365.

³⁷ I am grateful to Jeff McMahan for pointing this out.

³⁸ Both Feinberg and Steinbock propose a "minimal decency" standard. See Feinberg, *op. cit.*, p. 167 and Steinbock (1986, pp. 15–20). Seana Shiffrin sets a strict liability standard. See Shiffrin (1999, pp. 117–148). John Robertson sets a "life worth living" standard (see Robertson, *op. cit.*). I set a Rawlsian contractualist standard (see Weinberg, *op. cit.*).

³⁹ Shiffrin deems existence a "pure benefit" which we may not impose on anyone, including future persons, without their consent, *op. cit.*, pp. 117–148.

Sally: Mother, you harmed me by drinking that juice.

Mother: Your continued existence is worthwhile despite your blindness, and you could never have enjoyed continued existence had I not drunk that juice, so I did not harm you by drinking it.

I see no reason to be forced into that dialectic. I propose this alternative:

Sally: Mother, you harmed me by drinking that juice.

Mother: But, had I not drunk the juice, you wouldn't exist, and your existence is worthwhile, so I did not harm you by drinking the juice.

Sally: I don't need to exist; nonexistence would not be bad for me. But, since I do exist, I need to see—being blind is bad for me. You harmed me with that juice.⁴⁰

The dialectic I propose has two advantages over its rival, aside from the obvious advantage of avoiding the NIP morass: First, it expresses an important intuitive difference between the *ex ante* and *ex post* procreative perspectives: *Ex ante*, there's no entity with an interest in existence *per se*. That's why we don't procreate *for the sake of* our children.⁴¹ *Ex post*, there's a person with an interest in a good life, and that's why we try to provide well for our children. Second, my dialectic is consistent with the fact that nonexistence is not a deprivation (because there's no real subject of it). But the NIP dialectic makes it seem like nonexistence can be a deprivation because it would deprive the otherwise existent person of the enjoyment of continued existence.

Were Parfit correct (though I don't see how) in attributing to future people an indirect interest in their initial existence, it would still be a very peculiar interest: One would be no worse off without it, no better off for it,⁴² wouldn't miss it if one didn't have it, and couldn't *not* have it (one couldn't not exist even though one need not have ever existed). Although Parfit could claim that, peculiar as one's interest in one's initial existence may be, it is causally necessary for the furthering of all of one's interests and therefore of utmost importance, it's far from clear that it would be in one's interests to have a serious disability in order to further this sort of peculiar interest.

Moreover, even if future persons do have an indirect interest in their initial existence, that still doesn't mean that it is in their interests to have any of their

⁴⁰ This kind of conversation, and the reasoning that supports it, applies to any non-identity case. The child can use the same reasoning to conclude that she was harmed by being conceived by a 14-year old mother, or harmed by the adoption of The Risky Policy, etc. The same reasoning applies: we don't need to exist but, since we do exist, we have many other needs and interests.

⁴¹ Whether existence can be good for people, in general, regardless of particular identities, is irrelevant because the NIP is confined to narrow person-affecting principles, i.e., to principles which evaluate actions on the basis of their effects on particular, identified individuals. (See Parfit, *op. cit.*, pp. 393–397).

⁴² One might argue against using a comparative sense of what may be good or bad for someone, on the grounds that things can be good or bad for someone without the alternative being worse or better. See McMahan, J. "Problems of Population Theory," (1981, pp. 104–105). I will not take up the merits of this claim here since if we refrain from thinking of a person's interests in comparative terms, we will not generate the NIP because we will not be able to say that the victim of procreative negligence is *better off* or *not worse off*, all things considered, with existence and a disability than with neither existence nor a disability, etc.

current or future interests (e.g., in vision) compromised in order to secure the benefit of existence because the benefit of existence is *already* secure; otherwise, who are we talking about? A merely possible person. Only merely possible people could possibly, but will not actually, exist.

Existence differs considerably from other kinds of distribution cases, wherein some candidates for receiving a good will get the good and other candidates will not. E.g., if we know that I'll be giving a piece of cake to either Jonathan or Andy (but not both) we would not say that since "the future recipient of the cake" will get the cake anyway, it would not make sense for Jonathan or Andy to give up anything else, even a penny, in order to be the one that gets the cake.⁴³ That's because "the future recipient of the cake" will have the cake, and enjoy eating it too, but that recipient can be either Jonathan or Andy. We don't know to which of these persons the term "future recipient of the cake" refers but we know that it does not refer to both. One will be left longing for cake. Future people differ from possible cake recipients in that the term "future people" refers to them *all*. They will all—every last one of them—exist. None of them will be standing around forlornly with empty existence plates. It therefore does not make sense for them to give up even one penny in order to ensure that they will exist. If they are future people then they will exist.

One could argue that it's only the benefit of a blind existence (to continue our example) that is guaranteed the child made blind by her mother's juice drinking. True. But, whereas not drinking the juice that causes blindness would "deprive" a merely possible person of existence (i.e., set back a hypothetical interest of a merely hypothetical person), drinking the juice that causes blindness will cause a real person to be blind (i.e., set back a real person's real interest). Furthermore, since existence, albeit usually an imperfect existence, is something that all future people will have, it shouldn't be taken as a gift we bestow which outweighs other burdens. Thus, Sally is blind but her existence doesn't outweigh her blindness because her existence isn't something bestowed upon the merely possible Sally, as a benefit, but is instead a precondition of Sally as a bearer of benefits and burdens.⁴⁴ Existence itself, which the NIP relies upon to outweigh other burdens, ought to be taken for granted because it is, in fact, granted to all who merit moral consideration.

⁴³ I owe this example to Elizabeth Harman.

⁴⁴ One might wish to characterize Sally's mother's juice drinking as moving the possible Sally *simpliciter* into the future persons category rather than the merely possible persons category (this characterization was suggested by Richard Greene). Possible person *simpliciter* is a metaphysically plausible status although I do think that it tends to be morally misleading, as argued earlier. But that has no bearing on the present point. The point here is that, morally, even as a possible person *simpliciter*, Sally only has interests *if* she will be a future person, in which case she will exist. If her mother does not drink the juice, the hypothetically possible (*simpliciter*) Sally will be a merely possible person with no interests. Thus, Sally's mother's juice drinking does not benefit Sally, the real person with real interests but the real Sally's interests are set back by being blind. Existence is not bestowed on the possible *simpliciter* Sally who has no interests in existence or anything else unless she will definitely exist, i.e., be a future person. Interests begin with existence already in place (otherwise we have no subject for said interests).

4. *Therefore, the NIP is morally mistaken and cannot serve as an excuse for neglecting the life interests of future people*

According to NIP rhetoric, provided a life worth living, *who* is *harmed* by procreative negligence? No one, because the alternative is nonexistence, which is no better than a life worth living. But, *who* is *helped* by (initial) existence? No one, because nobody needs to exist and every future person will exist. Therefore, an actual person's initial existence should not be taken to outweigh any of her life interests. Thus, we have a non-identity dissolution of the NIP.

Procreative negligence harms the future children who bear its burdens. Existence, which is unnecessary, value neutral, and something all future people will have, does not outweigh anything. This doesn't make all procreative harm impermissible. Often, harm is permissible due to countervailing considerations, e.g., cost to others of avoiding the harm. But, it does dissolve the problem of identifying the future person harmed by procreative negligence: it's the subject of the negligence, even if her life is worth the bother.

This doesn't imply that the end of human procreation wouldn't be regrettable. It only implies that misgivings about human extinction cannot be based on the deprivation of merely possible people who, being merely possible, will never exist. If the extinction of humanity is objectionable, the objection must be based on the interests of those who actually do or will exist, or on some features of states of affairs that, on some views, are preferable.

The way to evaluate the interests of future people is to treat them as the future people they are. If we do that, the NIP is dissolved, and its Principle and Paradox never arise. Thus, we should not take credit for helping hypothetical entities cross some imaginary barrier between existence and nonexistence,⁴⁵ and if we must blind some of them in order to accomplish this vital task, so be it. Instead, we ought to treat future people as the future people they are by doing our best to ensure that they are capable of living high quality lives.

Acknowledgments I am extremely grateful and deeply indebted to Jonathan Adler, Jeanine Diller, Zev Gruman, Paul Hurley, Jeff McMahan, Derek Parfit, Dion Scott-Kakures, and Charles Young for their invaluable insightful comments and suggestions on numerous drafts of this paper. I thank Elizabeth Anderson, Michael Cholbi, Peter Kung, Robert Lurz, and David Velleman for extremely helpful comments and discussions. I thank Richard Greene and Elizabeth Harman for their very helpful comments at the APA session (Pacific 2007) on this paper.

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⁴⁵ What one is entitled to take credit for is different from what might induce gratitude on the part of another. Just as children may or may not feel grateful to parents for fulfilling parental obligations, they may or may not feel grateful to parents for causing them to exist, even though they have no need to exist and wouldn't be in any way deprived if they never existed. Gratitude is a complex emotional response, which may or may not occur for innumerable reasons that need not be relevant to that for which one is or is not entitled to claim credit.

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