

Chapter 1

The Intractability of the Nonidentity Problem

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Abstract The author, in this paper and elsewhere, defends a person-affecting approach to morality, according to which an act that harms *no one* cannot be wrong, together with the argument from the nonidentity problem that any act that adversely affects only those future persons who owe their existence to that act's being performed cannot properly be said to harm those future persons. Extending the logic of the nonidentity problem to cases involving not just strict numerical identity but "biographical identity" as well, the author argues that agents do nothing wrong when they raise a child under, or return a child to, a particular biographical identity, since a new biographical identity, even if more advantageous, would not make the one child better off but instead replace the one child with another child—a biographically nonidentical child—altogether.

Keywords Biographical identity · Person-affecting approach · Nonidentity problem.

1.1 The Logical and Metaphysical Dimensions of the Problem

Ethics and metaphysics have always been bound together in a philosophically problematic way. From the first chapter of Genesis and in many of the pre-modern metaphysical systems, the very existence of the world and its inner order were explained in terms of some ultimate good. No less prevalent was the attempt to explicate the concepts of the good life and moral virtue, justice and rights, in terms of human essential nature. But with the loss of confidence in, and consensus on, an overall metaphysical picture of the world, philosophers tried to articulate moral theories with no metaphysical foundations. Moral and political constructivism, of the kind articulated by Kant and Rawls, aimed at severing the classical bond of ethics and metaphysics. But it is far from certain that even constructivism can succeed

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in such complete separation. For even if a system of rights and duties, principles of justice and concepts of the good can be purely constructed by reason, some metaphysical assumptions cannot be avoided. For example, both Kant and Rawls are committed to metaphysical individualism, i.e. the non-arbitrary consideration of individuals as the basic building blocks of the normative system. The concept of the individual person cannot itself be constructed.

One sphere in which metaphysics forces itself on moral theory is what I have referred to in the past as “genethics,” namely the cluster of problems relating to the creation of new people: the determination of their very existence, their number and their identity. These problems can be divided into two categories or levels: the species and the individual. Questions such as the value of the existence of human beings (think of God’s ante-diluvian and post-diluvian reflections) or the ethics of shaping the human genome (of the kind Jürgen Habermas is concerned with in his *The Future of Human Nature*)¹ belong to the first category. The issues of family planning, sex selection and demographic policies, which decide which individuals will exist and how many, belong to the second. But on both levels of discussion, some metaphysical questions cannot be avoided: in the case of the species, what are the contours of human nature (if there is any such essential nature)? In the case of individuals, how is a human being identified as a particular person and to what extent is such individuation relevant to the morality of procreation?

The nonidentity problem is one of the most succinct metaphysical challenges to moral theory. In retrospect, it seems surprising that it was not addressed by philosophers till the 1970s. The obvious explanation is that the numerical identity of those to whom moral judgment applies was naturally taken for granted and that only once humanity has acquired far-reaching control over procreation (by means of birth control, demographic planning and genetic screening) did the problem of nonidentity impose itself on moral theory. It is to the immense credit of Derek Parfit that he was the first to take up the challenge and not only articulate the problem but also show how fundamental and inescapable it was. Unlike the identity problem of the kind Locke was thinking of in the context of his discussion of responsibility and punishment, the *nonidentity* problem raises the question of the general limits of moral judgment.

The nonidentity problem can be mapped on a two-tier structure. On the first level lies the question whether the identity of persons is at all a relevant issue to moral judgments concerning the good, the right and the just. If the answer to this question is positive, a second-level question must be addressed, namely what kind of identity is presupposed by such judgments? The first question is conceptual, relating to the logic and conditions of moral judgment. The second is metaphysical and concerns the nature of those entities that are considered the carriers of value and rights. The first, preliminary question is the focus of the deep debate between the “impersonalist” and the “person-affecting” approaches to the nature of value in general. But then, once this debate is decided, the metaphysical question of what are the objects of value judgments and who are their subjects arises. More specifically, if we adopt a person-affecting view of morality, who are the relevant “persons” (affected)? I will first discuss the first question (in Section 1.2) and then proceed to make some comments on the second (in Section 1.3).²

1.2 Four Strategies for Responding to the Nonidentity Problem

The nonidentity problem presents ethical theory with a major challenge: if the consequences of our “genetical” choices are such that the affected future people are different in number or in identity from those who would have been affected had our choice been different, can we apply our moral principles (whether utilitarian or deontological, right-based or duty-based) to these choices? Although most of our moral choices remain unaffected by the nonidentity problem,³ modern science and technology have created a long list of important decisions in which nonidentity is an intriguing theoretical obstacle. Wrongful life cases, demographic policies, intergenerational justice, genetic engineering, sex selection through PGD are all concerned with future people under problematic identity. And, as philosophers have lately noted, there are also backward-looking cases like affirmative action or compensation and apology for past crimes which raise the problem of nonidentity.⁴ Should we compensate someone for wrongs done to her ancestors when it can be proved that *she* would not have existed had the wrong not taken place?

There are four principal ways to deal with the challenge of nonidentity:

1. Denying it is a problem to begin with.
2. Aspiring to solve it in some (yet unknown) integrative moral theory in the future.
3. Attenuating it so as to make it more palatable to our moral intuitions and theories.
4. Biting the bullet, i.e. accepting all the implications of the nonidentity problem.

The first strategy characterizes the view called “impersonalism,” which holds that value is not human-dependent but an attribute of the world. The second response is associated with Parfit’s own approach and his search for “Theory X,” combining person-affecting and impersonal intuitions, both of which are impossible to give up. The third way tries to adhere to a person-affecting view by interpreting it in a wide sense or by supplementing it with impersonal features. The fourth reply to the challenge consists of embracing all the consequences and ramifications of the nonidentity problem, including those which may be less appealing to our common intuitions, and doing so by adhering to a strict person-affecting view.

I will try in Sections 1.2.1, 1.2.2 and 1.2.3 below to examine in some detail the flaws of the first three responses and discuss in Section 1.2.4 the inescapable superiority of the fourth, thus demonstrating that nonidentity matters and makes genetical choices categorically different from choices regarding present or actual people. This discussion belongs to the conceptual analysis of the nonidentity problem. In Section 1.3, I will address the metaphysical question of the kind and scope of a person’s identity and explore the way in which this can serve to support the person-affecting approach.

A preliminary methodological comment might be worth making. The nonidentity problem is *sui generis*. It is unique in the sense that analogies from other contexts of moral judgment can be of little help. Since it relates to the sphere of the very creation of subjects and objects of moral values and rights, applying theories of value and rights to the act of their creation is logically puzzling like any bootstrapping feat.

Our established notions of legal harm and benefit cannot serve as guides in the genetical sphere, since the whole point of the challenge of the nonidentity problem is to show that they *presuppose* the existence of identifiable persons.⁵ We may nevertheless think of two possible analogies from which we might derive some insight on the matter—*divine* creation and *self*-creation, which are both “genetical” in their nature. The former, which is not discussed here, is an abstract and pure theological test case which has some interesting results with which I have dealt elsewhere.⁶ The latter has to do with the unique human capacity to control one’s own identity to some degree and in that respect create oneself. It will turn out below (1.3) to be a useful analogy in the discussion of the nonidentity problem.

1.2.1 Denying the Problem

The first response on our list to the nonidentity problem is the denial of its relevance. Even if goodness, justice and freedom can be attributed to the world only through the mediation of human beings who are their subjects, there is value in promoting goodness, justice and liberty in the world, independently of human beings. This might sound strange, since goodness, justice and liberty cannot exist without human beings. But this is exactly the genetical challenge to moral theory: is there a value, or even a duty, to create “carriers” of those values, namely human beings, so as to have goodness, justice and liberty in the world? Is a human-less world any worse than a human-populated one? Impersonalists answer the question in the positive. They attribute value “to the world.” A world of million happy people is better than a world with no people at all. And it is also better than a world with half a million equally happy people, even if these are completely different people. The question of the identity of the people in two alternative worlds which are compared for their value does not arise. *Who* is made happier by some beneficent act is unimportant as long as it creates more happiness in the world than any alternative act.

There is no direct way to rebut this view of value. Philosophers have brought up various examples that seem to make this approach unattractive, if not plainly absurd, like the famous “Repugnant Conclusion” or the duty to bring children to the world whenever that serves to increase the “total” happiness. But impersonal utilitarians are unperturbed by the nonidentity problem, since for them, even if the repugnant conclusion is an embarrassment, nonidentity is not; for whenever we have to choose between two options with the same number of people created in each option, we should follow the impersonal balance of utility and ignore the (different) identity of the individuals affected. But even the somewhat less disturbing case of the duty to promote the “average” happiness creates problems for the impersonalist, since it might imply serious restrictions on reproduction and a demand that each generation become more selective in the creation of new people than its predecessors. When it comes to justice, the impersonalist encounters even a harder conflict with commonsense moral thinking. For justice seems to be an ideal *for* human beings rather than some good *tout court*. Thus, when Rawls, in his later writings, argues that the principle of justice to future generations only requires the preservation of

the justice of the basic structure of future society (rather than any particular inter-generational distribution), it is not clear what kind of value justice is. On the one hand, it seems that it is good only if there are human beings for whom it is good. On the other hand, we could shape the interests of our descendants (either by educational or by genetic means) so that they do not appreciate the value of justice (e.g. are not concerned with fairness). Would such a decision be, according to Rawls, morally permissible? And if not, would it not commit him to an impersonal view of justice?

Impersonalism dismisses the charge of nonidentity by simply denying the person-affecting nature of value (rights, justice, equality, etc.). It is the world in general which is made better by good deeds, regardless of who are the carriers or subjects of that value. Indeed, value can be attributed to the natural world independently of human beings, as some advocates of the principle of biodiversity claim, and as long as human beings are around on the planet and exercise control over it, they have a duty to preserve the variety of species and the sustainability of the environment independently of its value for human beings. But these are views which are difficult to defend, and philosophers often appeal to non-moral (aesthetic or religious) notions of shame or loss (“it would be a pity if. . .”) as substitute for the moral grounding of such duties and values.

The impersonalist must identify what makes the world better (impersonally). It could be, as classical utilitarianism suggested, positive states of mind (such as pleasant experiences). But these do not lend themselves to easy individuation (can one answer the question “how many positive experiences did you have today?”). In response, the impersonalist could suggest that rather than aggregate positive and negative psychological states, we should aim to increase the overall happiness in the world by making people happier *and* by creating happy people. But this approach assumes that there is an objective way, independent of first-personal evaluations, to assess the overall balance of the happiness of a single person as well as to compare it to the balance of happiness of another person. This difficulty forces the impersonalist back either to the weighting and aggregation of individual experiences or to the way individual persons assess the happiness of their lives from their point of view. The first possibility raises the above mentioned problem of individuation of depersonalized experiences; the second makes the impersonalist vulnerable to the nonidentity problem. Impersonal utilitarianism tries to avoid both the classical problem of personal identity (the unity behind a series of discrete experiences) and the new problem of nonidentity (the incomparability of utilities of an actual person with those of possible, non-identical alternative persons). But such avoidance comes with a price.

1.2.2 Hoping for Future Solution

Derek Parfit is at pains to salvage his fundamental impersonalist intuitions from the challenge of the nonidentity problem. An action can make the world worse without wronging any actual human being. Unwilling to give up impersonalism but

recognizing the force of the constraints of identity of the persons affected by human action, Parfit tries to do justice to both. But after having meticulously examined various options, he admits that he has failed. All he is left with is a *hope*, an aspiration to find a “Theory X” which would integrate our conflicting intuitions and resolve the tension between the Repugnant Conclusion and the nonidentity problem.⁷ The final section of *Reasons and Persons* expresses a hope (which is reminiscent of the Kantian “dialectic” hope in being only partly grounded in reason) that “non-religious ethics,” which at present is only at an early stage, would make *progress* in the future and develop moral reasoning that would provide us with such Theory X.⁸ But can we even hope for such a theory?

Parfit suggests in that final section that the difference between killing 100% of humanity and killing 99% of it is much larger (i.e. is worse) than that between killing 99% of the humanity and killing no one. This is a very bold impersonalist statement, which Parfit justifies in terms of the loss of overall happiness involved in the cessation of all future human life on the planet and the loss of the potential of progress in art and science *and* (surprisingly!) in moral reasoning. The problem is that although Parfit explicitly dissociates himself from any religious conception of ethics, his approach seems to be committed to some teleological view. For, happiness (as well as justice, artistic beauty and scientific truth) is either good for actual human beings or for the world (a kind of realization of an essential potential which it would be wrong to curtail). But once there are no human beings who can satisfy their desires and perfect their abilities, can we say, without making strong teleological assumptions, that the world would lack something that could be good? It is hard to see how progress in science, art and ethics is valuable independently of human beings for whom such progress is a genuine interest, source of satisfaction or ideal. After all, the world has no interests. Parfit, who follows Sidgwick on that matter, is wrong in arguing that the destruction of humanity is the worst conceivable crime due to “the vast reduction of the possible sum of happiness.”⁹ Voluntary collective suicide of human beings is in my view less of a “crime” (if it is a crime at all) than the deliberate murder of people. Or to put the argument against the impersonalist analysis in person-affecting terms: there are no crimes against humanity; only crimes against humans.

So it seems that the hope for a Theory X is misguided since as Parfit himself has shown pure impersonalism with no regard for person-affecting considerations leads to absurd results but person-affecting considerations involve the insurmountable problem of nonidentity. There seems to be nothing that we don’t know “yet” about the matter and which through progress in moral reasoning we would be able to discover. The nonidentity problem is not a scientific or a mathematical problem which will be solved through further research or reasoning. It seems more likely that it will be dissolved rather than solved, and that this will happen when our notions of identity change and adapt to the new forms of control we can expect to acquire in genetics and in social policy over future human beings. So although this is a matter of speculation, it seems that the “solution” will occur on the level of the metaphysics of the subject of moral judgment rather than on the level of the logic of the ascription of value.

So although Parfit was the first to recognize the acuteness of the nonidentity problem, he aligned himself with the impersonalist position, at least in the sense that he resisted the option of a fully person-affecting view of morality. But unlike the impersonalist denial of the challenge, Parfit believes that moral theory cannot be complete without addressing it.

1.2.3 Accommodating Nonidentity

We turn now to the third response. As is typical of sharp moral dilemmas, philosophers as well as lay people feel the pull of both horns. Most of us shirk the counterintuitive implications of pure impersonalism (like the duty to create a huge number of barely worthwhile human lives as long as the *overall* level of happiness in the world is promoted through their sheer numbers). But limiting moral judgment to actual, identifiable individuals makes us feel equally uneasy. Parfit recognizes this conflict but leaves us only with the hope of some future theoretical solution. But many philosophers in the past two decades have suggested solutions to the nonidentity problem. They may be categorized into two groups: the first, those who believe that we should accept combined personal and impersonal considerations in moral judgment, at least in those rare “genetical” cases; the second, those who deny that such a compromise is coherent and advocate a revised form of person-affecting theory that can accommodate at least most of the difficult challenges of the impersonalist. I shall discuss the two in turn in the following Sections 1.2.3.1 and 1.2.3.2.

1.2.3.1 Combining Person-Affecting with Impersonalist Approaches

The authors of *From Chance to Choice* admit that they do not have a full solution to the nonidentity problem and that it is a very complex issue which can be decided only in the light of a broad spectrum of questions that lie beyond genetics.¹⁰ Nevertheless they do commit themselves to the view that despite the general validity of the person-affecting approach, there are cases in which an appeal to impersonalist principles is inevitable (such as the creation of “wrongful life” in personal reproductive decisions or the so-called “different number choices” in population policies). They accept Parfit’s argument that the child in his famous example of the 14-year-old girl who decides to conceive is not harmed, and they also claim that it is not wronged (even though the mother acts wrongly). They argue, in conclusion, for a principle according to which it is wrong to create *any* child who would suffer from a serious disability if that can be avoided without a high cost to the parents and without affecting the number of future people.¹¹ The adolescent girl should wait till she can conceive *another* child, later on, who will be happier than the one she contemplates conceiving now. They concede that this is a “non-person-affecting” principle.

This, however, is at most an *ad hoc* solution, which might appease our intuitive objections to some implications of the person-affecting view, but is not theoretically

satisfying in the sense that it does not provide a principled way of relating person- and non-person-affecting principles (as the authors admit¹²). Its *ad hoc* nature is manifest in the authors' claim that the impersonalist principle is to be introduced only when the suffering or the defect of the future child is "serious." But nonidentity is not a matter of the *degree* of harm or pain but a conceptual constraint regarding the conditions for making any moral judgment. And hence the authors' evaluation that causing a handicap to an existing child is a *more* serious moral wrong than causing the birth of a similarly handicapped child remains theoretically unexplained and appears more like a compromise which tries to pacify the challenge of nonidentity.

Being similarly committed to the importance of identity in moral judgment but equally reluctant to accept the full implications of the nonidentity problem, David DeGrazia, like the authors of *From Chance to Choice*, opts for a middle way. He takes seriously the nonidentity problem and argues that although intentionally conceiving a handicapped child rather than a healthy one is wrong, it is not a wrong *to* the child.¹³ But then what kind of wrong is it? One way to describe it (which he correctly ascribes to me) is that the parents wrong themselves or society. But since DeGrazia strongly rejects that kind of explanation of the wrong, all he is left with are impersonal considerations which suppress the nonidentity problem. Consequently, like the authors of *From Chance to Choice*, DeGrazia suggests supplementing the person-affecting principles with an impersonal one: in Same People choices, apply person-affecting considerations; in Same Number choices, apply impersonal considerations. But this solution seems again to be *ad hoc*, an attempt to explain our intuitions about the wrongness of the choice of the 14-year-old girl without embracing a fully impersonalist view. DeGrazia himself admits that he does not have a theoretical explanation for the relationship between the person-affecting and the impersonal supplementary principles in ethical theory and that when it comes to Different Number Choices the right way for ethical theory to approach them "remains mysterious."¹⁴ Even if he is right in considering the person-affecting principle as having more moral weight than the impersonal, how, for example, would he compare the one-time wrongness done to an actual individual with the impersonal bad consequences created to a thousand future, non-identifiable people who are going to be born as the result of some social choice we make? Can the two be compared in the first place?

Jeff McMahan is also working within a generally person-affecting view. In the end of his detailed critical examination of Peter Singer's "replaceability argument," he reaches the conclusion that choosing between an existing (suffering) newborn and another future (happy) child can be made on person-affecting grounds. That is to say, Singer's problem of infanticide should be decided in terms of the interests of existing people (weighing the interests of the existing child in going on living and those of the parents and society) rather than on impersonal grounds of the kind Singer appeals to (according to Singer, infanticide can be justified in terms of the overall increase in the impersonal balance of happiness in the world achieved by the "replacement" of the suffering newborn with a future healthy child).¹⁵ But then McMahan is very sensitive to the "notorious" difficulty to defend the asymmetry between the duty to prevent the birth of a suffering child and the absence of a parallel

duty to cause the birth of a happy child. If consistency is sought on this matter, we will be forced to accept that the fact that a person would have a good life serves as a reason to cause that person to exist, even though this reason is weak, weaker than that assumed by Singer.¹⁶ But again, one may wonder why there should be a difference between the weight of the reasons to avoid the conception of a suffering child and those of the reasons for creating a happy child. McMahan himself asserts that he doubts whether the person-affecting and the impersonal intuitions we have can ever be reconciled. I contend that the consistent solution to the asymmetry problem is to deny that there are moral reasons (relating to the rights and interests of the future child) either to create it (happy) or not to create it (suffering).

1.2.3.2 Widening the Scope of the Person-Affecting Approach

It seems then that if pure impersonalism is incompatible with some of our fundamental moral views and if there is no way to incorporate it with person-affecting principles in one integrated theory (either in Parfit's sense of Theory X or in some compromise of the kind examined in the previous section), we are left with the option of the person-affecting approach. But the nonidentity problem presents us with a serious challenge, which threatens to undermine some equally fundamental views in the morality of procreation, demographic planning and environmental policies. Many philosophers have tried to meet the challenge without abandoning the person-affecting view or resorting to impersonalist supplements.

One strategy is to view future possible people *as if* they were all actual, or, in Parfit's terms, to consider "different people choices" as if they were "same people choices." Tim Mulgan believes that such an "as if" approach would lead to overall better reproductive choices from an impersonal point of view, thus avoiding the trap of the nonidentity of possible people which seems to lend us permission to create whomever we want. But Mulgan himself is aware that like any "as if" policy of this kind, this approach can work only if people are not aware of it! So even if this manipulative strategy is pragmatically useful, it obviously cannot serve as a theoretical response to the challenge of nonidentity. In any case Mulgan's idea indirectly proves how strong our person-affecting intuitions are and that the impersonalist consequentialist results of the kind Mulgan wishes to attain are best served by a person-affecting illusion.¹⁷ Like the attempts to integrate person-affecting and impersonalist principles, discussed above, Mulgan wishes to give moral standing to both actual and possible people. But since he believes the former have *more* moral weight than the latter, he recommends that we think "as if" all future people are actual.

Another strategy to save the person-affecting approach from the challenge of nonidentity is taking *types* of people rather than individuals as the objects of evaluation in genesis choices. It is usually agreed that harm can be done only to actual people who have undergone some loss due to the harm done *to* them and hence that wrongful conception cases cannot make strict legal sense in tort law.¹⁸ But some philosophers, like Rahul Kumar, argue that a child born in such circumstances can be said to have been *wronged*, even if not harmed. Although the child is not worse off

than he could have been, his or her respect has been violated since wronging (in contrast to harming) is a matter of the agent's character rather than of the consequence for the other party. But why is not wronging subject to the same constraint of the identity of its "victim" in exactly the same way as harming is? Kumar answers that one can be wronged as a *type* of person, so that I have similar duties to my future (unidentified) children as I have to my students (whoever they are). And society in general has such duties towards future generations, when the type of person to which these duties are owed is the rational, autonomous individual of a Scanlonian contract. Such a person-type has a legitimate expectation of respect that should not be violated even if no harm can be identified to any person-token.¹⁹

This is an interesting attempt to preserve the person-affecting view while escaping the paradoxical implications of the nonidentity problem. However, it faces some serious difficulties. First, if wronging (in contrast to harming) has to do exclusively with the character of the *agent*, how can it affect the "receiver" of the action in any way, including the violation of her respect or dignity? And if it does affect her, does it not involve making her "worse off" than she was or could have been? This suggests that we either view wronging as having the same structure as harming in the effects on another party or consider it as a matter of the agent's character and accordingly judge it in terms of the way the agent alone is affected. In both cases the person-affecting view is upheld but only on the basis of assuming the identity of an actual person (agent or victim) who is affected by the action. Secondly, Kumar's contractualist abstraction of actual individual people into idealized types of agents who have some universal properties is indeed a powerful theoretical tool in the device of a hypothetical contract, but it turns out to be based on confusion between a hypothetical contract and a contract between hypothetical people. Teachers and students can form contractual agreements like employers and employees, but the contract is not between types of people but between actual individual people, present or future, known or unknown (albeit of a certain type).

To examine this confusion more closely, consider Jeffrey Reiman's proposal for the solution of the nonidentity problem within a person-affecting view. According to his view, "future people have rights irrespective of which particulars they turn out to be."²⁰ Reiman correctly points out that Rawls' veil of ignorance hides the property of one's temporal position (namely, to which generation one belongs) in the same way as it conceals sex, race and social position. But then he proceeds to argue that in the original position what matters morally speaking are only the *properties* future individuals are going to have rather than their particular, i.e. *numerical identity*.²¹ This, I believe, is a wrong reading of Rawls' idea of the original position, or indeed of any social contract.

The social contract can only be made by *actual* people, who in order to create fair conditions for their bargaining, place themselves under a virtual veil of ignorance. This veil conceals all their particular properties (that might prejudice the way they choose the principles of justice), but *cannot* hide the fact of their very existence (or actuality). Indeed, the contract can (and should) also include future people who do not exist *yet*, but they must be *particular* individuals who are going to live anyway. Or, in other words, the hypothetical contract cannot take place between *possible*

people and cannot include principles for their own creation or the choice of their identity.²² Indeed, Reiman says that the contractors “represent all and only those people who, from this moment on, will ever exist: people who are currently living, and future people who do not yet exist but who one day will,”²³ but according to his own argument he cannot mean by that all numerically identifiable people who will actually live. For his whole point is to show how by deciding to cause the creation of a handicapped child rather than of “an individual” with better properties, we violate the rights of “the individual”. But there is no one “individual” here, whose rights are allegedly violated, but rather two numerically distinct individuals: one who is a healthy individual and *another* who is handicapped. The Rawlsian contractors are not abstract, identity-less place-holders, but particular individuals. We should not confuse the level of the background conditions of the contract (actual people trying to agree on principles of justice) with the level of the procedure of the contract itself (the veil of ignorance as a device of representation). On the first level the motive to “enter” a contract is the wish to promote *my* interests and prospects (not that of a numerically distinct individual even if she is like me in all her properties). Numerical identity is a condition for ascribing not only rights but also the interest in having a normal functioning.²⁴ Thus, in contrast to Reiman’s thesis that according to Rawls *any* future individual has rights against us, I maintain that Rawls’ contract creates rights only for actual people who are either living or are going to live anyway in the future, i.e. whose identity is fixed (in the strong numerical sense). The idea that people have the right to be born healthy or with normal capabilities is incoherent, for no contractor would choose a principle of justice which would lead to the birth of someone else in his or her stead (even if that individual would be better off). Creating children with the good properties might be a noble goal, but it can only be grounded in an impersonal (rather than contractual) conception of justice.

For Parfit, the only way around the nonidentity problem was impersonal, through a principle of beneficence. Rights, unlike overall welfare, seem to be more typically linked to metaphysically identifiable people who are the subjects of the rights. An attempt to save the person-affecting approach and avoid impersonalism lies therefore in showing that the wrongness of conceiving a child at the age of fourteen is connected with rights. James Woodward argues that since the violation of rights (again, unlike harm) does not necessarily involve a decline for the worse in one’s welfare, future people can claim that their rights have been infringed by the act of their “wrongful” creation even if their inborn and foreseeable handicap is offset by an otherwise happy and worthwhile life.²⁵ His main argument for this claim is from analogy: when an air company refuses for racist reasons to sell a ticket to a member of a minority group, the person may claim that his rights were infringed even if it turns out that he benefited from the refusal due to a crash in which all the passengers of the plane were killed. But the analogy does not work since it ignores what we referred to above as the *sui generis* nature of genesis choices. The crucial difference is that the individual discriminated against is a fully identifiable person *at whom* the offensive refusal was directed, while the possible child of the 14-year-old girl is not. The issue of the overall balance of good and bad, or the weighting of the infringement of rights vs. the benefit in welfare, is irrelevant to the logical

question of the conditions that make *any* such ascriptions possible. Similarly, it is wrong to compare the 14-year-old girl's action to that of a person making to another person a promise he cannot fulfill. For in the first case, that of creating a new person, parents do not make any promise to anyone (but only assume a future responsibility). Methodologically, the use of these analogies simply begs the question of the relevance of identity to the ascription of rights.²⁶

Another attempt (similar to Reiman's) to save the person-affecting approach from the quandary of nonidentity is through widening the scope of what is considered "person" so as to include all people affected by our acts "whoever they turn out to be." Melinda Roberts offers a sophisticated version of such a person-affecting theory. She contrasts it to my own narrow person-affecting approach that considers only actual existing people or future individuals who are going to exist "anyway" as objects of our moral duties.²⁷ According to Roberts, planting a piece of broken glass in my garden is wrong in being potentially harmful to future (yet non-existent) children, whether they are my neighbor's children (over whose creation I have no control) or my own (over whose creation I have control), i.e. whether they are (future) actual or merely possible people. But the nonidentity problem is a challenge to the person-affecting view in more specific circumstances, as Roberts seems to concede, namely when the act of planting the broken glass is *itself* the cause of the conception of a *particular* child. In such cases, known as wrongful conception, there is no way in which the particular child who gets injured could have been born without being injured by the glass. Of course, this is a bit far-fetched, but Roberts herself is willing to consider such a possibility,²⁸ and it is exactly the case of Parfit's 14-year-old girl or many of the legal complaints for wrongful conceptions. So I agree that the identity condition does not imply any knowledge of the actual identity of a future person and not even the total lack of control over his or her creation. It only applies to cases in which, in Roberts' language, a world with a particular person existing and without a certain adverse condition affecting him is *not* "accessible," or in simple words, the person would not and could not have existed without that adverse condition taking place.²⁹

Roberts' thesis is that the nonidentity problem applies only to "two-alternative" situations (a child can be either born in defect or not born at all), but not to "three-alternative" situations (a child can be born in defect, not be born at all, or be born healthy). This sounds plausible, even compelling. For example it can demonstrate why giving birth to a child in order to sell him as a slave (Kavka's case) is wrong: the same child could be born without being sold as a slave (such a possible world is "accessible").³⁰ Roberts' original point is that it even can show in person-affecting, non-Parfitian terms why a depletion policy is wrong: for there *is*, at least theoretically, an alternative in which the same child could have been born better off without the depletion policy being implemented. However, it appears that Roberts must view the 14-year-old girl as a "two-alternative" example. For, if the girl waits before conceiving the child, there is logically no way in which the *same* child could have been better off. From the point of view of nonidentity, what is the difference between this case and creating a child with a genetic defect which Roberts concedes belongs to the "two-alternative" category? Since Roberts agrees that "two-alternative" choices

are immune to moral criticism in terms of the wrongness *to* the child due to nonidentity, the disagreement about the response to Parfit's puzzles relates only to the scope of cases which belong to that category. Roberts' argument is convincing in that, due to causal possibilities regarding the coming to be of children and to metaphysical considerations relating to their individuation, the scope of the "two-alternative" choices is not as wide as we might have thought. But she shares the narrow person-affecting view (even though not easy to swallow) that conceiving a handicapped child, even if a healthy sibling could have been created in its place (by PGD), should not be considered as wronging the child.³¹

Impersonalists like Parfit believe that there is no difference between the moral standing of the child claiming damages for having been born in defect as the result of neglect during pregnancy and that of the child who is born as the result of negligent counseling before conception. Person-affecting philosophers tend to judge the cases as different, but feel uneasy about it. One way in which they justify the difference is by appealing to cases in which life is *very* bad or even not worth living. Thus, some of them hold that life as such can be good or bad for a person and that if it is bad on the whole, it would be wrong to create that person. They consider non-existence as having zero value to the person and life with certain serious defects as having negative value.³² Since zero is better than a negative value, non-existence can be said to be better for the person than living in severe handicap. The problem with this analysis is that non-existence is given *a value* (zero), although there is no one to ascribe it to. Non-existence is neither good nor bad nor neutral for anyone, since good and bad can be ascribed only to metaphysically identifiable individuals. But zero is the balance or cutting point on a scale between good and bad. We cannot say that someone who has no bank account can be considered as having a zero balance! For there is no person or bank account to which we can ascribe the value zero.³³ Again, the nonidentity problem is *sui generis* in the sense that the comparison (whatever its merits) between having a bank account with a debit and having no bank account to begin with does not serve as an analogy to the comparison between life with great suffering and no life to begin with. Indeed, we can think of a world in which some actually existing individual (including myself) does not exist. But this person cannot say that such a world would have been better for him, because no value whatsoever can be ascribed to that person.

1.2.4 Embracing the Implications of Nonidentity

We have so far shown why the attempts to either combine impersonalism and person-affecting principles or to re-interpret person-affecting principles in a way which would overcome the nonidentity problem fail. Pure impersonalism cannot be said to fail in a similar way, that is to say, it is a coherent and systematic approach to "genetical" choices and avoids the issue of nonidentity by denying its relevance to the evaluation of people's coming into existence, their numbers and their identity. But the price of impersonalism is high: it leads to the Repugnant Conclusion, it implies a duty to procreate (happy children) and it commits us to the judgment that

the world after the evolution of humanity is a better place than the world preceding it. To many people these are unpalatable consequences. The alternative to impersonalism with which we are thus left is the fourth strategy in the list of responses to the nonidentity problem, namely adhering to a strict person-affecting view.

The advocate of a strict person-affecting view is not indifferent to wrongful life cases and believes that there are moral reasons for avoiding the intentional creation of handicapped children or a reckless population policy. David Wasserman, for example, correctly points out that the moral constraints on the creation of children include the purpose for which the parents decide to have a child. Accordingly, it would be permissible to conceive a retarded child, even when another, healthy child could be created had the parents waited for a while or selected another embryo in a PGD procedure, as long as one of their *reasons* or motives included his own good. That is to say, although prospective parents cannot (logically) create a child “for its own sake”, they are expected to be motivated by the prospect of parental giving and concern for their future child’s good. Lack of sensitivity to the child’s future suffering is morally repugnant since it violates the general expectation of parents.³⁴ For Wasserman, the parents are subject to duties derived from the “role morality of parents.”³⁵ I would put it slightly differently. What counts in our moral judgment is the parents’ moral profile, the kind of people they are, rather than the objective condition of the child (or the world). And it is of course also true that if parents are completely indifferent to the welfare of their planned future child, they are liable to become bad parents and to violate their parental duties *to* the child once she is born.

To reinforce Wasserman’s approach, consider two couples: the first can *only* conceive a seriously ill child due to a permanent genetic condition from which they suffer; the second can conceive *now* a child who will be equally seriously ill, but if they postpone conception for a year, they will have a healthy child. Now, from the point of view of the child, there is no difference between the two cases, since both children are born into an equally painful life. But we do judge the parents’ choice in the two cases differently, harshly condemning the second while approving or at least sympathizing with the first. This difference indicates that the judgment of procreative choices is made with regards to existing people, usually the parents. The first couple’s choice is not merely excusable; it is morally understandable, even noble (if they are committed to take good care of the child once it is born). The second couple’s choice is perverse, even “sick,” and reflects a deformed character of people who are insensitive to pain and suffering or even derive satisfaction from it. The “positive” counterpart of that example is a case in which there are two options for giving birth to a healthy child. Our proverbial 14-year-old girl is offered two options to avoid the plight of her prematurely conceived child: wait another few years (as in Parfit’s example) or let another (more mature) woman give birth to a child “instead of you.” The latter offer sounds of course absurd, though from the point of view of the future child there is no difference between it and the first offer, since both children are going to be different from the originally planned child. The difference between the two options (which is of course significant) relates only to the girl, whose interests of satisfying motherhood can only be fulfilled by the first option.

Advocates of the strict person-affecting view, like myself, must face some consequences which are definitely counter-intuitive. They may nevertheless have reasons to “bite the bullet,” so to speak. This could mean the willingness to take moral responsibility for action (or policy) based on the strict person-affecting view with all its ramifications for future children and future generations. It could alternatively mean a skeptical view regarding the theoretical possibility of a normative justification of procreative (genetical) prohibitions. This skeptical attitude is compatible with leaving the actual moral and political choice to be guided by intuitions and public perceptions even when these are confused and inconsistent. For anyone who is not a stringent impersonalist and who is convinced by the arguments against a diluted or compromised version of the person-affecting view, the strict or narrow person-affecting analysis seems to be the lesser theoretical evil in being both consistent and doing justice to some of our fundamental intuitions.³⁶

It is important to note that conflicts of intuitions on the way to deal with the non-identity problem can arise on two levels. They can refer either to the content of the intuition itself or to the way an agreed upon intuition is explained. Thus, the person-affecting intuition that the world was not made any better by the evolution of human beings stands in direct contrast to the opposite intuition held by the impersonalist (who would also bemoan the painless and voluntary disappearance of humanity). On the other hand, the wrongness of a free and intentional choice of a 14-year-old girl to conceive a child is a shared intuition by personalists and impersonalists alike. They only disagree about the *grounds* or the explanation of that intuition. To the former, the wrongness derives from the way the decision reflects on the mother’s character, the irrationality of her act in terms of her own interests, or the burden it creates for society. For the latter, the wrongness lies in the bad consequences of the decision *tout court* (the world is made a worse place than it could have been). Unlike the direct conflict of intuitions of the first type, these differences in explanation are partly intuitive but partly theoretical. Hence there are better chances of engaging in a theoretical discussion about the second kind of conflicts than about the first.

But the appeal to intuitions in the morality of procreation (population policy, genetic engineering, etc.), although so central in the debate, is problematic. These intuitions are often confused due to the *sui generis* character of this problem and the difficulty in drawing analogies to it. Furthermore, they are not always sharp since the problem is not only theoretically unique but also historically new, and intuitions take time to form. Since much of the debate about remote examples such as Parfit’s takes place among philosophers, it should not come as a surprise that the intuitions appealed to, even if clear, are heavily colored by theoretical considerations.

1.3 Numerical, Biographical and Autobiographical Identity

If moral judgments about the creation of people must be based on person-affecting considerations, the question remains as to the identity of persons. This raises the second-tier question about the *metaphysical* conditions of the relevance of the non-identity problem. What is this “person,” the identity of which is a constraint on the

ascription of right and wrong in genetical choices? Who is the he or the she who counterfactually could have been better off had the choice been different? Logically, the person-affecting approach is not restricted to individualist conceptions of a person (as a carrier or subject of value). A collective, like a tribe or a nation, a family or a kibbutz, can be the object of duties and rights. But the nonidentity problem would equally apply to these entities: it would be incoherent to claim that it would have been better had one of these groups not existed in the first place and an alternative group created in its stead. For the same person-affecting question would arise: good for whom? However, beyond the problems of attributing the status of a moral subject to a collective, empirical circumstances make decisions on the creation or the identity (let alone the number) of future communities or collectives very rare (Moses in Egypt?).³⁷ So in the rest of this article the discussion will be limited to individual persons.

Since human beings are self-conscious and free, their identity is unique in being a combination of some general essential features and some constructed or self-constructed traits. Thus, my genetic makeup is essential to my personal identity, but being loyal to my nation might be essential “to me.” Some theorists view the distinction between sex and gender as illustrating this double nature of identity. A person’s identity begins to be formed at the moment of conception, but continues after birth through the powerful forces of socialization and education and later through the “big” choices the person makes for herself. The geneticist of the future definitely has control over the identity of people, but so do parents of young (or not so young) children, and later the individual adult who is forming and transforming her own personality.

Recent philosophical literature refers to this unique feature of human identity by distinguishing between numerical identity and narrative identity, or between personal identity in the traditional metaphysical sense (as in Leibniz or Kripke³⁸) and biographical identity. (I will use the term “biographical,” since it can refer both to the aspects of identity that are constructed by others and to those constructed by the self; furthermore, the term “narrative” in the description of a person’s life is misleading in assuming that human life is similar in its construction to that of a story or a novel). In his fine discussion of the distinction, David DeGrazia points out that essential, numerical identity (*de re*) must precede and is assumed by “narrative” identity (*de dicto*).³⁹ Numerical identity is fixed by a particular event and at a certain moment (be it conception or some time around it). Biographical identity is gradually formed throughout the person’s life, from childhood to adulthood, by parents, society and the person himself. But there is a point in constructing or self-constructing a biographical identity only *of* a numerically distinct entity (person) whose biography it is. Hence the logical precedence of the numerical over the biographical.

Narrative identity is taken (for example by DeGrazia) to relate to the way an individual forms her own identity as a person. And indeed this is an important constituent in what is important for us in continuing to be what we think we basically *are*. It is a first-person perspective on personal identity, a matter over which the subject has authority. It applies both prospectively (what kind of person I want to be) and retrospectively (how I interpret the kind of person I have been). But biographical

identity is not only first personal and there is an important additional dimension of identity between the natural or essential identity of human beings and their autobiographical or first-person identity. Take, for instance, the dilemma facing charitable gentiles who saved Jewish children during the Holocaust. Should the children be raised as Christians (like their adopting parents)? Should they, after the end of the war, be “returned” to a Jewish environment (assuming that their biological parents died)? There is no question about the numerical identity of the children on the one hand, and they have not yet acquired the power to autonomously decide their own identity on the other. But they are definitely Jewish in some deep sense.

Now the application of the nonidentity problem to this case is not as clear as in pre-conceptive decisions like the 14-year-old girl exactly because it relates to biographical rather than to numerical identity. Consider how we should solve the dilemma if we take the principle of “the best interests of the child” as our decisive guide. There is a sense in which, given the numerical identity of the child, we can say that it would be in this child’s best interest to stick to her Christian lifestyle to which she has been exposed during the war years. It would be definitely easier for her since she only vaguely remembers her Jewish origin or even forgot it altogether. Yet, there is a strong argument for judging the child’s best interests as remaining Jewish since that is the way she was treated in her early phase of life. In other words, the *person* “affected” by the decision might be considered either this (numerically identified) *child* or this (biographically identified) *Jewish* child, in a way leading to two opposite conclusions. In the former case the religious or national identity of the child is created *ex nihilo*, with no moral constraints, like in the standard pre-conceptive “genetical” choices. Due to the “nonidentity” of the pre-war Jewish child and the post-war Christian child, there are no moral constraints on the decision to preserve the Christian lifestyle of the child.

When we move from biographical to *autobiographical* identity (which comes closer to the idea of narrative identity), the application of the nonidentity problem becomes even murkier but equally instructive. For human autonomy, usually exercised in the pursuit of the ends of a person of a certain kind, might, at least in extreme cases, serve to change the kind of people we are. Conversion is a conspicuous example and so is sex (or gender) change. At least from the first-person perspective, people report that they have become different persons, following the transformative change (although they obviously realize that they have not changed “numerically”). Autobiographical identity is a matter of identification, of what I find crucially important in my life, that without which my life would be meaningless or not worth living. Culture, religion and moral character are typical examples of such identity-fixing traits (which are not essential to my numerical identity).

The nonidentity problem, accordingly, casts doubt on the logical basis of complaints about biographical (and even autobiographical) identity. My claim here is that wrongful identity complaints are no more coherent than wrongful life suits due to the nonidentity condition. I cannot regret not having been born in the eighteenth century or to different parents because it would not have been (numerically) me. But equally it would not make sense for me to criticize my parents for having been *brought up* as an Israeli, secular Jew rather than as an English Anglican priest, even

though from some abstract, impersonal perspective, the latter identity would have made my life easier or more successful according to some impersonal criterion. The reason is that it simply would not be me in some deep sense which suffices to make that comparison absurd or at least senseless from the point of view of what is good for me. Indeed, my parents could raise me (the numerically identical person) to become a different sort of person, but since the way I evaluate my good is partly informed by my biographical identity, such an alternative cannot be judged as better or worse for me.⁴⁰

In that sense of biographical identity, I am in the position to make genetical choices about my own future in the same way as my parents did for me. A decision, for example, to convert to another religion or to immigrate to another country (and adopt another culture) must be based on person-affecting considerations, namely my *present* actual values rather the good of my “future self.” For even though my numerical self can have alternative biographical identities, those cannot be fully compared to each other. How can Paul compare his life after the conversion on the way to Damascus with that preceding it: in terms of his previous Jewish values or in terms of his new Christian vision? Even if he believes there are objective (impersonal) reasons for preferring the post-conversion life, it is hard to justify that preference on person-affecting grounds. Or, to take a more mundane example, can a person regret having chosen a life-long career as a philosophy professor rather than embarking on that of a politician? After all, his present preferences are to much extent formed by the professional identity he actually formed and to have chosen otherwise cannot be considered as either better or worse for “him.” The limits of our complaint to our past selves are logically similar to those we have towards our parents for having either bequeathed us with their genetic makeup or for having formed in us a particular cultural identity.

Since biographical and “narrative” identity is subjective and a matter of degree, these examples are naturally controversial and from a third-person point of view might be considered overblown. And indeed, from an objective point of view, it would be coherent to criticize even a major choice in another’s life as a mistake in terms of *her* overall interests. Paul could thus argue that his post-conversion life better fitted his true or genuine identity (his character, dispositions, personality). But note that such a criticism would have to relate to some underlying features in one’s identity which are fixed and stable throughout the person’s life. In other words, *if* and to the extent that we take biographical identity seriously, we must concede that the evaluation of individuals’ choices during their lives are susceptible to the challenge of nonidentity in the same way as wrongful life suits are in the case of the creation of numerical identity.

The metaphysical question of the identity of human beings should be clearly distinguished from the question of the beginning of the life of a person. Numerical identity is probably formed some time after conception (for example, after the moment of possible twinning of the fertilized egg), but that does not mean that this is the point in which a human organism becomes a person (which as many philosophers have shown depends on the acquisition of some advanced mental powers, consciousness, or some other traits). Therefore, the issue of wrongful life (or

wrongful identity) should be set apart from that of abortion. It is perfectly consistent to hold that a woman has a right to abort her fetus but is prohibited from harming it. The reason is that the embryo, not being a person (yet) has no rights (including the right to life), but the future existing person will have a cause for complaint for having suffered harm during pregnancy since *he* could have been better off without suffering it.⁴¹ He is definitely numerically the same entity as the embryo from which he developed. Nonidentity does not undermine this kind of grievance. In that respect, “person-affecting” is not restricted to “persons” as human beings with full moral standing.⁴²

1.4 Conclusion

I hope to have shown in this article that the nonidentity problem is *intractable* in both the sense of being “stubborn” or difficult to handle and in the (etymological) sense of being impossible to “draw,” extract or remove. Like most genuine philosophical questions, this is exactly what makes it fascinating and deep, in both theory and practice.

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Notes

1. Habermas (2003).
2. I have dealt in the past more with the first than with the second question, but most of the arguments which I critically examine in this article were raised after my book was published. See Heyd (1992).
3. If we adopt a global consequentialist view, every action in the world can easily be seen as having some effect on the timing of conception of future people, which would mean that the challenge of nonidentity is much more pervasive than we usually think.
4. Thompson (2000), pp. 470–475.
5. Admittedly, this presupposition is not held by impersonalist theories of value. It should also be noted that the argument for the uniqueness of the nonidentity problem in terms of the person-affecting theory of value is circular and that one of the best arguments for that theory itself lies in our intuition about the nonidentity problem. So there is nothing logically inconsistent in impersonalism together with denial of the challenge of nonidentity. But once the person-affecting view is accepted, it becomes clear why for conceptual reasons there are no analogies to the ethics of creation of people.
6. Heyd (1997), pp. 57–70.
7. Parfit (1984), p. 405.
8. Parfit (1984), pp. 453–454.
9. Parfit (1984), p. 454.
10. Buchanan et al. (2000), p. 247. The nonidentity problem is discussed in pp. 245–255.
11. Buchanan et al. (2000), p. 244.
12. Buchanan et al. (2000), p. 250.
13. DeGrazia (2005), p. 274.

14. DeGrazia (2005), pp. 277 and 279. Parfit holds that there is no (moral) difference between not taking certain pre-conceptive measures to ensure the health of a future child and not taking similar measures after the child is born. I contend that there is a radical difference between the two. DeGrazia suggests that there is “a *slight* difference,” thus trying to follow Parfit’s acceptance of impersonalism without denying the grip of the nonidentity problem. However, I don’t see how this kind of difference can be a matter of degree.
15. McMahan (2002), p. 357.
16. McMahan (2002), pp. 353–354.
17. Mulgan (2006), pp. 155–156. Mulgan advocates rule-utilitarianism as a middle position between impersonalism, which absurdly requires the creation of happy children, and the person-affecting view, which equally absurdly leaves us free to create a suffering child even if we can avoid it. But his solution seems to belong to the attempts at combining person-affecting and impersonalist principles of the kind discussed in the previous section. For a similar proposal that the government act *as if* future generations have rights over us, see Marc D. Davidson (forthcoming). Davidson’s reason for his proposal is that most people believe that future people can be wronged, i.e. do not think in terms of the nonidentity problem.
18. For a view according to which the wrongful creation of life can be considered as a direct harm to the individual created, see Shiffrin (1999), pp. 117–148 and Harman (2004), pp. 89–113. Harman’s argument is based on the elaborate moral weighting of reasons regarding the harms and benefits to the future person; but my claim is that any such weighting can take off the ground only once there *is* an identifiable individual as the subject of these benefits and harms. The act of giving life (of whatever quality) to a person is in itself neither a benefit nor a harm and the pain suffered by a person once she is born and throughout her life cannot be considered as caused by the parents’ act of bringing her into the world.
19. Kumar (2003), pp. 99–118. Markie, like Kumar, tries to stick to the person-affecting view, without relinquishing the grounds for wrongful life complaints, by distinguishing between being wronged and being harmed. Unlike Kumar, he appeals to the results (the existence of a handicapped child) rather than to the character of the agent. But Markie is misled by the ambiguity of “result”: the existence of such a child is a bad result “for the world (parents, society)” but not “for the child.” Markie is thus pushed back to impersonal evaluation which is exactly what he wanted to avoid. Markie (2005), pp. 290–305.
20. Reiman (2007), p. 92.
21. Reiman (2007), p. 84.
22. I have elaborated this critical interpretation of Rawls in Heyd (2009, forthcoming). Reiman quotes *A Theory of Justice*, in which Rawls indeed requires real capital accumulation from one generation to the next as part of the duties of justice, but Rawls himself abandoned that view and the intergenerational application of the difference principle in his later writings in favor of a more modest requirement to maintain the institutions of justice. Rawls (2001), p. 159.
23. Rawls (2001), p. 79. Thus, unlike Reiman, I believe it does not make sense “to think that it is in [a person’s] interest to be born with certain properties rather than others” independently of the person’s particular identity. Numerical identity is a condition for any ascription of interests to a person.
24. This is the reason for my disagreement with the recently published solution to the nonidentity problem offered by Caspar Hare, who suggests that there may be harms done to people *de dicto* even if no harm was done to anyone *de re*. Thus, according to Hare, in the same way I can harm the 35th President of the U.S., I can harm “my future child,” even though the identity of the particular person who is going to “fill” the relevant description is not fixed yet. I believe this cannot be the case since types of people (exemplifying some description) cannot have interests or rights (or be better or worse off). Only actual people can have them. One may have rights and interests *in virtue* of being of a certain type (or description), but the rights and interests relate to her *de re*. See Hare (2007), pp. 514–520.
25. Woodward (1986), pp. 804–831. Smolkin similarly believes that future (possible) people have rights, even if they cannot be said to have interests, arguing that rights are not dependent “substantively” on interests. But as he himself acknowledges, my own view is “formal” (or

- logical) rather than substantive, denying the ascribability of both interests and rights to possible people, irrespective of the *degree* of suffering or disability. Smolkin (1994), p. 319; and Smolkin (2002), pp. 202ff.
26. For a similar analogy between creating a debt which cannot be repaid and “wrongful life,” see Singer (1998), pp. 383–398.
 27. Roberts (1998), p. 18.
 28. Roberts (1998), p. 24.
 29. It is hard to judge whether the world in which this particular child exists without the broken glass by which it will be injured is “accessible” to us or not since the example is a bit artificial. Surely, the parents could delay the moment of conception by engaging in an alternative, less deleterious activity than that of planting broken glasses. And of course they could, after conception, remove the glass (as the parents in Kavka’s famous example could breach the contract and not give away their child to slavery after birth). But Parfit’s real-life examples and much of the legal history of wrongful conceptions do not suffer from this ambiguity and hence highlight the nonidentity problem more clearly.
 30. See Roberts’ article in this collection, in which she solves the slave-child paradox by first distinguishing between the assessment of the procreative choice on the basis of its *actual* value and such an assessment on the basis of its (probable) *expected* value and then showing that the source of the sense of paradox lies in the fallacious mixing of the two kinds of assessments. In the first kind of assessment, we could think of an alternative in which the same child is born without becoming a slave; and in the second, the chances (at the moment of making the choice) for the coming into being of this particular child are anyway infinitesimally low due to the biology of the procreative act.
 31. Roberts (1998), pp. 28–29.
 32. Roberts (2003), pp. 159–185, particularly p. 168.
 33. Roberts tries to solve the problem of comparability between a world in which a person has an anguished life and a world in which she does not exist by weighing “amounts”: “what we are comparing is the *amount* of well-being that Nora’s having certain properties and lacking certain others at α adds up to at α with the *amount of well-being* that Nora’s *lacking all properties* at β adds up to at β ” (p. 177). The question is, how can Nora be individuated or identified while “lacking *all* properties?” And how can all these absent properties add up to zero, as Roberts suggests, when she admits that zero is not a property of well-being that we can attribute to a non-existent person? Roberts (2003), p. 178.
 34. Wasserman (2005), pp. 132–152. Wasserman, although leaning to the person-affecting approach, offers his solution to the challenge of wrongful life complaints in terms which seem to lie somewhere between the person-affecting and the impersonal.
 35. This leaves Wasserman’s account with some measure of ambiguity. For on the one hand he says that the completely selfish parents can be accused of moral insensitivity, but that their child, born out of this insensitivity, cannot have grounds for complaint for having been born with impairment (pp. 146–147); yet on the other hand he argues that parents who conceive a child for reasons that have nothing to do with the child’s good “make themselves vulnerable to a complaint from the child for the unavoidable hardship in his life” (p. 151). The two statements are inconsistent. A purely person-affecting view, which accepts the relevance of nonidentity, can judge the act of the parents as a moral fault *only* in terms of the way it reflects on *their* character.
 36. In Heyd (1992), I discussed in detail the superiority of the person-affecting view over its impersonalist rival in terms of a “global” assessment of the merits and flaws of both as general theories of value.
 37. A similar argument would apply to animals. If they are considered as moral subjects of any kind, the nonidentity condition must equally constrain judgments about their creation in the same way as it does in the case of human beings.
 38. Parfit’s discussion of personal identity belongs to the former rather than the latter: although it is concerned with human consciousness (psychological continuity), it is not that part of the identity of persons which is constructed or self-constructed.

39. DeGrazia, (2005), pp. 28–29, p. 114 and Chapter 3. The force of DeGrazia’s hierarchy of the two kinds of identity does not depend on the particular substantive details of the metaphysics of human and personal identity on which philosophers have varied views. Hence, I do not have to take a position here on the question whether prenatal genetic interventions in an embryo should be considered as “treatment” of an identifiable individual or as the creation of a new individual. This is a separate metaphysical issue which demonstrates that biographical identity may include also prenatal events in the individual’s life (once it is numerically individuated but not yet having some fundamental features of her biographical identity, such as those which can be genetically molded in her). But I tend to agree with DeGrazia that such genetic manipulation after the third week of embryonic life does not change one’s essential (numeric) identity (pp. 263–264).
40. I want to distinguish my analysis of biographical identity from the mechanism of “adaptive preferences” originally described by Jon Elster. Adaptive preferences are one kind of response to gaps between desires and the chances of their satisfaction, i.e. the re-formation of desires in the light of the conditions which would make them satisfiable. They are considered irrational since they do not reflect the genuine preferences of the person but rather the frustration of her inability to gratify them. In contrast, self-construction of identity (or conversion) is not necessarily an *adaptive* change in one’s set of preferences but an authentic choice which is not tailor-made to fit external circumstances. Adaptive preferences are created *within* the existing biographical identity of a person. Conversions are changes *of* that identity.
41. Jeff McMahan doubts whether the (adult) person born out of a fetus that was harmed can be said to have been wronged, since he might have adapted to his condition and preferred it to not having been born at all or even to having been born without the harmful condition. See McMahan (2002), p. 301. But I think that the question of the preferences or degree of adaptability of the adult person is not what should decide the question of harm. The fact that *this* particular person could have been better off (in terms of opportunities) suffices to view the harm done to the fetus as harm to the ensuing adult person.
42. David DeGrazia eloquently makes this point by carefully distinguishing between persons and human animals and by using the term “individual-regarding” (rather than person-regarding) so as not to prejudice the issue of moral standing. See DeGrazia (2005), p. 263.

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