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## THE EXTENDED NONIDENTITY PROBLEM\*

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Current debates about obligations to future generations have reached a deadlock. The source of the stoppage is the generally accepted analysis of intergenerational morality first articulated by Derek Parfit more than a decade ago.<sup>1</sup> Parfit's analysis appears to bring the result that no currently favored moral theory is able to support our intuitive judgments regarding obligations to future generations. Adopted by numerous philosophers,<sup>2</sup> the conceptual framework Parfit advances is becoming commonplace in philosophy texts addressing contemporary moral problems generally and obligations to future generations in particular.<sup>3</sup> Moreover, Parfit's

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<sup>1</sup>Parfit's development of this approach spans several articles and culminates in his most recent work, *Reasons and Persons* (New York: Oxford Univ. Press, 1984). The articles preceding this text include the following (listed in chronological order): "Rights Interests and Possible People" in Samuel Gorovitz ed., *Moral Problems in Medicine* (Englewood Cliffs: Prentice-Hall, 1976); "Future Generations: Further Problems" *Philosophy and Public Affairs* 11 (Spring 1982); "Energy Policy and the Further Future: The Identity Problem" in Douglas MacLean and Peter Brown, eds., *Energy Policy and the Future* (Totowa: Rowman and Littlefield, 1983); "Energy Policy and the Further Future: The Social Discount Rate" in MacLean and Brown, eds., *Energy Policy and the Future*.

<sup>2</sup>Philosophers who adopt the nonidentity problem as a starting point for discussing obligations to future generations include (but are not limited to) the following: George Annas, Annette Baier, Michael Bayles, Richard DeGeorge, Trudy Govier, Hardy Jones, Gregory Kavka, Douglas MacLean, Jan Narveson, Thomas Schwartz, and James Sterba.

<sup>3</sup>For instance, the following texts discuss a number of contemporary moral problems and invoke Parfit's approach in connection with the issue of obligations to future generations: Samuel Gorovitz ed., *Moral Problems in Medicine*; Jan Narveson ed., *Moral Issues* (Oxford: Oxford Univ. Press, 1985); Richard L. Purtill ed., *Moral Dilemmas* (Belmont: Wadsworth

*Auslegung*, Vol. XIV, No. 2

approach is beginning to exercise considerable influence outside philosophical circles—in legal,<sup>4</sup> medical,<sup>5</sup> and public policy debates.<sup>6</sup>

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Publishing Co., 1985); Tom Regan ed., *Earthbound* (Philadelphia: Temple Univ. Press, 1984); James Sterba ed., *Morality in Practice* (Belmont: Wadsworth Publishing Co., 1984), Richard A. Wasserstrom ed., *Today's Moral Problems 2nd ed.* (New York: Macmillan Publishing Co., Inc., 1979). Works dealing exclusively with the topic of obligations to future generations include R. I. Sikora and Brian Barry eds., *Obligations to Future Generations* (Philadelphia: Temple Univ. Press, 1978) and Ernest Partridge ed., *Responsibilities to Future Generations* (Buffalo: Prometheus Books, 1981); both of these works include detailed discussions of the nonidentity problem.

<sup>4</sup>The recent proliferation of tort claims alleging wrongful life, wrongful birth, wrongful pregnancy and dissatisfied life are illustrative of current trends in the law. For a good overview of these cases and the philosophical issues they raise, see Thomas Foutz, "Wrongful Life: The Right Not To Be Born," *Tulane Law Review* 54 (1980). My article, "The Ascription of Rights in Wrongful Life Suits" *Law and Philosophy* 6 (1987), explores in detail the basis for granting recovery to plaintiffs in wrongful life suits.

<sup>5</sup>See, for example, Robert Baker, "Protecting the Unconceived" in Barry Hoffmaster, John Davis, and Sarah Shorten, eds., *Contemporary Issues In Biomedical Ethics* (Clifton: The Humana Press, Inc., 1978); Michael Bayles, "Comments on 'Protecting the Unconceived': Butchers, Bakers, and Candlestick Makers" in Hoffmaster, Davis, and Shorten, eds., *Contemporary Issues In Biomedical Ethics*; Paul Camenisch, "Abortion: for the fetus's own sake?" *Hastings Center Report* 6 (April 1976); Hardy Jones, "Genetic Endowment and Obligations to Future Generations" in Ernest Partridge ed., *Responsibilities To Future Generations*; Burton M. Leiser, "The New Genetics and Lives Not Worth Living" in John J. Buckley ed., *Genetics Now: Ethical Issues In Genetics Research* (Washington D.C.: University Press of America, 1978); L.M. Purdy, "Genetic Diseases: Can Having Children Be Immoral?" in Buckley ed., *Genetics Now* Paul Ramsey, "Shall We Reproduce?" *Journal of the American Medical Association* 200 (June 1972); and John Robertson, "In Vitro Conception and Harm to the Unborn" in Ronald Munson ed., *Intervention And Reflection, Basic Issues in Medical Ethics*, 2nd ed. (Belmont: Wadsworth Publishing Co., 1983).

<sup>6</sup>Several articles that point to the relevance of the nonidentity problem to matters of public policy can be found in Michael Bayles ed., *Ethics and Population Policy* (Cambridge: Schenkman Publishing Co., 1976); Michael Bayles, *Reproductive Ethics* (Englewood Cliffs: Prentice-Hall, 1984); Michael Bayles, *Morality and Population Policy* (University: The Univ. of Alabama Press, 1980); and Douglas MacLean and Peter Brown, eds., *Energy Policy and the Future*.

## NONIDENTITY PROBLEM

187

The task of the present study is twofold. I begin by briefly reviewing the central reasons for thinking that Parfit's thesis is correct. This sets the stage for arguments that extend Parfit's analysis to intragenerational morality. I then offer a critical evaluation of both analyses, and in so doing work toward a resolution of the current deadlock. In closing, I suggest that certain problems remain unresolved.

## I

One of the most intriguing aspects of recent discussions concerning obligations to future generations is what is sometimes called "the nonidentity problem." This problem arises in virtue of the fact that many of the choices confronting present persons will change the membership of future generations: those future persons who would exist as a result of our choosing one course of action are often nonidentical with those future persons who would exist as a result of our choosing some other course of action. Because of this, present persons can apparently justify a wide range of actions by appealing to the fact that no particular future persons are made worse off than they otherwise would be. The result is a striking mismatch between our considered judgments about obligations to future persons, on the one hand, and the philosophical support for these judgments, on the other hand. The following example bears this out.<sup>7</sup>

Imagine the situation of a woman who is trying to decide whether to conceive a child now or several months from now. Because of a certain medication she is taking, if she opts to conceive a child now, the child she conceives will suffer terrible birth defects and have a life that is barely worth living. If, on the other hand, she stops taking medication and waits three months before getting pregnant, she will almost certainly have a normal child. Suppose the woman decides not to wait. She gives birth to a defective child. In a situation of this kind, we are inclined to judge that the woman should have waited, in order to give her child a better start in life. However, we apparently lack a justification for this intuitive view. After all, if the prospective mother had waited, then the normal child she would thereby conceive would be nonidentical to the unhealthy child she does conceive. It is misleading, then, to suppose that she has made the defective child worse off *than it otherwise would be*, since if she had the normal child, the defective child *would not be*. Nor does it seem that the woman has violated the rights of her defective child: if the child has a right—e.g., to a minimally decent start in life, presumably she would prefer not to exercise it. After all, the child's choosing to exercise this right is tantamount to her choosing never to have existed. So, provided that the

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<sup>7</sup>An analogue of this case is discussed by Derek Parfit in *Reasons and Persons*, pp. 358 ff and by James Sterba in Sterba ed., *Morality in Practice*, introduction to section II.

life she lives will be better than not existing, the child would prefer not to exercise the right.

This example illustrates the following general points. First, our choices sometimes alter the identities of persons who exist at future times. I refer to choices of this kind as "different person choices." Although reproductive choices are an obvious example of how the choices we make in the present alter the identities of future individuals, there are also a large number of non-reproductive decisions that change the membership of future generations. For many choices present persons make will affect the timing of conceptions and therefore the identities of future people. Thus different person choices are by no means limited to straightforward reproductive decisions. A second point that the above example serves to illustrate is that different person choices pose a *prima facie* problem for attempts to justify intuitive judgments about obligations to future persons. I shall refer to this, and to the related problems of justification that I shall describe momentarily, as "nonidentity problems."

In what follows, I argue that two different versions of the nonidentity problem can be distinguished. The version of the nonidentity problem to which Parfit has called our attention arises only in the context of different person choices. I shall refer to this version as the strong version and abbreviate it  $NIP_s$ . More precisely, what Parfit has shown is that  $NIP_s$  applies to future generations in situations where

an act or policy that changes the identities of future persons does not make those persons worse off than they otherwise would be, because if the act (or policy) had not been selected, those very persons would never have existed.

The extent of application of  $NIP_s$  is broader than Parfit and others have heretofore supposed. As I shall show momentarily,  $NIP_s$  bears on intragenerational as well as intergenerational moral problems. First, however, consider the following plausible tale which provides an illustration of how the nonidentity problem arises in present person contexts. Suppose a practice of racial discrimination against black people prevents the best candidate from being hired for a particular job. Suppose the white person who is hired in his place is shortly afterwards required to go on a business trip to a remote rural village and the plane he flies in crashes, fatally injuring all passengers on board. Moreover, we might imagine that the flight in question is the only one available on this day and the business to be conducted cannot be postponed. Finally, suppose that the sole employee qualified to perform these transactions is the recently hired individual. If this were the case, then one could reasonably suppose that, but for the policy of discrimination, the black individual who would have been hired for this particular job would no longer exist. Or, to put it another way, assuming that the life this black person continues to live is

## NONIDENTITY PROBLEM

189

better than nothing, he cannot prefer, all things considered, that the policy of racial discrimination that cost him his job not have been in force at the time in question, since a non-discriminatory policy would have cost him his life. It should also be noted with respect to this case, that if the news of the white person's death in the plane crash failed to reach the black person, the above points would still hold. In other words, if the jobless man was despondent and depressed he would be foolishly so. Upon hearing and reflecting on the news of the dead employee's misfortune, he would have reason to be thankful and reason to no longer mourn the fact that he had been the victim of invidious discrimination in that particular case.

This case lends credence to the view that

an act or policy that causes the postponement of individuals' deaths does not make those individuals worse off than they otherwise would be, because if the act or policy had not been performed, those very individuals would no longer exist.

The above point suggests that  $NIP_s$  applies to present persons. This new nonidentity problem has considerable force. For many of the choices we actually make at the present time will, unbeknownst to us, affect the timing of peoples' deaths. To feel the force of this point, one need only reflect upon the trivial factors that influence our being in particular places at particular times and, in turn, on the endless number of events that might have occurred and caused the date of one's death to be different than it actually will be.

The framework developed above demonstrates the relevance of the nonidentity problem to choices affecting both future and present persons. Yet this framework can be *further* extended. In particular, I will now proceed to show how the nonidentity problem arises in situations where (1) the very same individuals come into existence and (2) the very same individuals cease to exist at the very same times. I shall refer to these situations as "same person choices" and to the version of the nonidentity problem that arises in connection with same person choices as the weak version (abbreviated  $NIP_w$ ). In order to see how the nonidentity problem can be extended to same person choices, it will be useful to pause for a moment and describe several background conditions relevant to its extension. I shall then offer an example that captures the intuitive idea behind the extended nonidentity problem before giving a precise formulation of it.

To begin with, it is reasonable to suppose that what matters to a person who cares about his continued existence is not *merely* the future existence of an individual who is strictly identical with that person's present self, where in individual, *a*, is "strictly identical" with a future person, *b*, if and only if *a* and *b* have all of their (time-indexed) properties in common. Rather, when a person expresses a desire for continued

existence it is natural to think that this includes, for example, a hope and desire that there be a future person who carries on that person's most cherished projects and friendships and who manifests that person's most esteemed and central character traits and who regards the most important features of that person's personal history in the same way as the person in question now does. These aspects of our lives provide, in Bernard Williams's words, "the motive force" that "propels" us into the future and provides us with a reason for living. According to Williams, for a set of projects, values, and relationships to play this role, "...it does not have to be true that if...[these things] were frustrated or in any of various ways...lost...[a person] would have to commit suicide....But he may feel in those circumstances that he might as well have died."<sup>8</sup>

Following Robert Adams, let us say that a future self who manifests these important qualities bears a "self-interest relation" to one's present self.<sup>9</sup> Although the presence of strict identity is necessary for the presence of a self-interest relation, it is clearly not sufficient. Thus, it is conceivable that a future person is strictly identical to my present self, yet bears no self-interest relation to my present self. For instance, we can imagine it being the case that on November 20 of the year 2036, an individual exists who has the property of being the very person who is writing this paper on November 20 of 1986. Such a future person may, however, be rude and boorish and perhaps forgetful of some of the most important features of my present life. Then this person might not bear a self-interest relation to my present self, despite bearing the relation of strict identity.

With these distinctions in mind, consider the following example. Suppose the government decides to store nuclear wastes at a location that is known to be unsafe. We might imagine a political scandal occurring: because it is an election year, representatives from the district where an alternative and safe site is located bribe other representatives to vote in favor of the unsafe location. They believe that the storage of nuclear wastes in their districts would undercut their chances for reelection. Suppose further that as a result of storing nuclear wastes at the unsafe, rather than the safe, site, radiation leaks into the underground reservoir of a nearby town thirty years later. The contaminated water causes a terrible but nonfatal disease to occur in one thousand persons within five years. Intuitively, it seems that the initial decision to store nuclear wastes at an unsafe site when an alternative and safe site was available was wrong. Surely, we do not judge that this decision is justified in virtue of what best suits the career plans of these politicians. Yet, the view that it is wrong to store nuclear wastes at a site where radiation leakage is likely to occur is

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<sup>8</sup>Bernard Williams, "Persons, character, and morality," in Williams, *Moral Luck* (New York: Cambridge Univ. Press, 1981), p. 13.

<sup>9</sup>Robert Adams, "Existence, Self-interest, and the Problem of Evil" *Nous* 13 (1979) pp. 60 ff.

## NONIDENTITY PROBLEM

191

difficult to support, if we suppose that if wastes had been stored at the safe site, then the persons who suffered a terrible disease would not bear a self-interest relation to their present selves. In other words, if we imagine it being the case that the decision to store wastes at the unsafe site affects the details of individuals' lives in such a way that they bear no self-interest relation to the persons they themselves would have become if the alternative policy had been selected instead, then the persons who suffer adversely would not prefer, all things considered, that their suffering never occur.

With this example in mind,  $NIP_w$  can be generated by noting that

an act or policy that sustains the self-interest relation between present persons and their future selves will almost always be preferred to an act or policy that severs this relation.

Applied to the nuclear example,  $NIP_w$  tells us that although the decision to store wastes at an unsafe location harms present persons, in hindsight these persons would prefer this choice to the alternative choice of storing wastes at a safe location. The idea here is that individuals harmed would prefer (1) a situation where individuals exist who are strictly identical to their present selves and who bear a self-interest relation to their present selves but where these individuals are caused to suffer adverse consequences, over (2) a situation where individuals exist who are strictly identical to their present selves but no individuals exist who bear a self-interest relation to their present selves. Or, to put the same point another way: persons can be expected to prefer (in hindsight) that an act that has harmed them occurred, if the harm that has resulted from the act matters less to them now than the contemplated loss these persons associate with their present selves lacking various features and relationships they now value very deeply. The same kind of reasons that motivate  $NIP_s$  apply here as well. For, as Adams notes: "if our lives are good, we have the same sort of reason to be glad we have had them rather than lives that would have been even better but too thoroughly different, as we have to be glad that we exist and not better and happier people instead of us."<sup>10</sup>

As I suggested earlier, the details of the nuclear example could be filled out in such a way that  $NIP_w$  applies to that case. Little reflection is required to make evident that the values we embrace, the projects to which we commit ourselves, the friendships we form and sustain, and the character traits we develop and strengthen are profoundly influenced by large scale policy decisions. After all, large scale policy decisions can affect, e.g., where we live and work; how much salary we command; the educational levels we attain; whether and whom we marry; the amount of leisure time available to us; and how we spend our time, energy, and

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<sup>10</sup>"Existence, Self-interest, and the Problem of Evil," p. 60.

money. Think, for example, of how past policies regarding the development and diffusion of technologies, such as the computer, television, and contraceptive pill have impacted individuals' values and lifestyles. The female contraceptive pill has spurred the sexual revolution, increased the presence of women in the work force, impacted the economy, transformed the nature of family life, and made it possible for women to wield greater political power. So, unless one holds the implausible view that fundamental character traits, career choices, values, and the like are immune to the kinds of social factors just adumbrated, it is very plausible to suppose that the decision to store nuclear wastes at an unsafe, rather than a safe site, would result in fundamental changes for individuals. In other words, it is plausible to suppose that if the policy of storing nuclear wastes at a safe location had been chosen, rather than the policy that was actually selected, this could result in persons who do not bear a self-interest relation to persons living now.

The extent of application of  $NIP_w$  is not limited to choices involving present persons. Applied to future persons,  $NIP_w$  arises in virtue of the fact that

an act or policy that sustains the self-interest relation between actual future persons at a given time,  $t$ , and their possible future selves at some time,  $t+n$ , will almost always be preferred to an act or policy that severs this relation.

The reasons cited in connection with the nuclear example apply here as well. Namely, persons will in hindsight prefer to have been harmed if the harm they have suffered matters less to them than the loss they associate with there being no future self who carries on their most important projects and friendships and who manifests their most esteemed character traits.

## II

So far I have distinguished two versions of the nonidentity problem:  $NIP_s$  and  $NIP_w$ . In this section, I do two things. First, I make more clear exactly why it might be thought that  $NIP_s$  undercuts utilitarian and rights-based claims about obligations to present or future persons. Second, I put forward reasons for doubting that  $NIP_s$  actually succeeds in blocking rights-based claims about obligations to present or future persons. The central goal of this section is to alleviate the source of the deadlock in current debates about obligations to future persons; a subsidiary goal is to foreclose the possibility of extended versions of the nonidentity problem creating needless philosophical worries.

To lay bare the reasons why nonidentity problems seemingly undercut obligations to future or present persons, it is instructive to consider the following example. Suppose Jones makes a promise to Smith, but fails to ever fulfill it. In breaking his promise, Jones acts wrongly, for Jones had no



## NONIDENTITY PROBLEM

193

good reason not to keep it. Yet suppose that if Jones had acted properly and kept his promise to Smith, this would in fact be worse for Smith. For example, if the promise had been kept, Smith would have received a large sum of money from Jones and used it to purchase the Lamborghini he had always dreamed of owning. But the local dealer from which Smith would have bought a Lamborghini would have unknowingly sold Smith a car with faulty brakes, and a fatal accident would have resulted. As it turned out, the car with faulty brakes was sold to another customer and that individual was killed in a fatal automobile accident. So, we might reasonably predict that the failure of Jones to keep his promise saved Smith's life.

Justifying the view that promises ought to be kept might involve either (1) appealing to the rights of the promisee or (2) appealing to utilitarian calculations which show that good consequences are maximized in a situation where promises are kept. The nonidentity problem appears to undercut both of these justifications for the judgment in question, however.

First, NIP<sub>s</sub> tells us the act of breaking a promise is not wrong to Smith in virtue of violating Smith's rights. After all, assuming Smith prefers that his death be postponed and values the postponement of his death more than he values the fulfillment of Jones's promise, it follows that Smith would in hindsight be glad that the acts required by his right were not performed. Alternatively, one can imagine a situation where Smith hears of the fatal accident that befell the individual who bought the car he would have bought, but for Jones's breaking his promise, and responds by saying, "I waive my right."<sup>11</sup>

Second, NIP<sub>s</sub> tells us that the breach of promise is not wrong to Smith for utilitarian reasons, because an act that causes the postponement of Smith's death does not make Smith worse off than he otherwise would be. If Jones had not broken his promise to Smith, Smith would no longer exist. This result is nothing new for utilitarian theory. Acts such as the keeping of promises or the harming of innocent persons are not considered intrinsically wrong, according to the utilitarian position, but only wrong if they produce bad consequences. In the case under consideration, Jones's failure to keep his word is not wrong to Smith, in light of the fact that under

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<sup>11</sup>The second account of why Smith waives his right may not seem very plausible to some readers--e.g., it might be thought that Smith would waive his right to be paid at the earlier time, but not waive his right to be paid now. I mention this second interpretation because it represents an extension of Parfit's argument against rights-based approaches to obligations to future persons. See *Reasons and Persons*, pp. 364-366.

the circumstances this produces better consequences than the alternative act.<sup>12</sup>

Despite the apparent plausibility of NIP<sub>s</sub>, a number of serious objections can be raised against it.<sup>13</sup> These objections turn on our understanding of what it means to say that an individual has a right that holds against another individual and what it means to say that a right is in force or has been waived. Reconsider the Smith-Jones example. The force of NIP<sub>s</sub> in this context relies on the fact that (1) Smith is better off in the event that his right is violated or (2) Smith is glad that his right was violated or (3) Smith later says "I waive my right." Yet none of these points is a basis for denying that Jones acted wrongly in breaking his promise to Smith.

(1) The fact that an individual is better off in the event that his rights are violated is not sufficient to show that acts violating his rights are permitted. After all, the determining factor in evaluating the permissibility of rights violations is not utilitarian. I might be better off with surgery than without surgery, yet if I have a right to decide whether surgery is performed on me and I choose not to undergo it, then my rights are violated if surgery is performed on me against my will. Having a right includes having a right to choose the wrong thing. What is foremost when the language of rights is employed is respect for the autonomy of persons, even where showing respect for persons fails to maximize utility.

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<sup>12</sup>Elsewhere, I have evaluated the specific argument Parfit advances in support of the claim that rights-based moral theories are vulnerable to the nonidentity problem (i.e., NIP<sub>s</sub> applied to future persons) and tried to show that these arguments are flawed in certain crucial respects. See my "Reproductive Risk Taking and the Nonidentity Problem" *Social Theory and Practice* 13 (Summer, 1987).

<sup>13</sup>It is unclear how a rule utilitarian strategy for supporting Jones's obligation to keep his promise to Smith would work. On the one hand, a general policy of never keeping promises in situations where NIP<sub>s</sub> applies would produce better consequences than a general policy of keeping promises under those circumstances. Accordingly, the best state of affairs would be realized if we could identify cases falling under NIP<sub>s</sub> and not keep promises in that class of cases; failing that, we can at least say that in hindsight broken promises that maximize consequences for these reasons are vindicated. On the other hand, any version of rule utilitarianism places certain minimal constraints on the kinds of rules that are allowable. For instance, rules are required to be easily accessible and applicable, and they should not contain so many qualifiers that the distinction between rule utilitarianism and act utilitarianism collapses all together. It is hard to see, then, how a plausible version of rule utilitarianism could take NIP<sub>w</sub> and NIP<sub>s</sub> into account. But, at the same time, I find the pragmatic restrictions on rules to be unconvincing, since the subject of ethics involves more complexity than these restrictions permit.

## NONIDENTITY PROBLEM

195

(2) The fact that Smith is in hindsight glad that Jones violated his right is also not sufficient to show that Jones's act is permissible. At best, Smith's gladness suggests that Jones is forgiven or excused or cast in a more favorable light. Smith's gladness does not, however, establish that Jones's failure to keep his promise was not a violation of Smith's rights. If Smith has a right that holds against Jones, and if Jones violated that right, then regardless of how Smith later feels about Jones's actions, Jones acts wrongly. For surely Smith's feelings could have been different--e.g., Jones's failure to keep his word to Smith could have made Smith angry. Our judgment concerning the morality of Smith not keeping his promise does not depend upon how Jones later feels towards Smith, because Smith's feeling will be influenced by a number of facts irrelevant to the morality of Jones's action. To suppose that if Smith is glad then Jones's act is permissible, but if Smith is angry then Jones's act is wrong is to fall into the trap of thinking about rights and their violation in utilitarian terms. We believe that if promise breaking violates Smith's right, then it does so regardless of whether Smith is later glad his right is violated. I may be glad that you assaulted me last week, because if the assault had not occurred I would have boarded a plane that crashed in the ocean. But if I have a right not to be assaulted, then you have still violated my rights: I have a moral (and legal) claim against you. Once again, the notion of rights has considerable force. If we believe there are more or less absolute prohibitions against certain forms of conduct, then these prohibitions stand in the face of utilitarian calculations showing the performance of these acts produces the best consequences.

(3) Finally, suppose that Smith learns that the Lamborghini he would have purchased has faulty brakes and that the individual who purchased it was fatally injured as a result. As I suggested a moment ago, Smith might respond to these facts by asserting "I waive my right that Jones keep his promise to me." Does this undermine a rights based objection to Jones's failure to keep his promise? I think not. If, at the time Jones failed to fulfill his promise, Smith had a right that holds against Jones and Smith had not waived that right, it follows that Jones's failing to fulfill his promise violates Smith's rights. Generally speaking, we can say that the claim that "x will later waive his right that y do z" is not sufficient to establish that "y does not violate x's right by failing to do z now." Whatever Smith accomplishes by stating that he waives his right, his statement does not entail that Jones's past omissions do not violate Smith's rights. What Smith achieves by waiving his right is to void future obligations on the part of Jones to fulfill his promise. So, for example, if Jones does not in the future perform acts required by the original agreement, this is not a violation of Smith's rights, because Smith's right is no longer in force.

The foregoing arguments apply, *mutatis mutandis*, to other versions of the nonidentity problem--i.e., NIP<sub>w</sub> and NIP<sub>s</sub> applied to future persons. For example, an act that sustains the self-interest relation present or

future persons bear to their future selves is wrong if it violates those persons' rights. This is so even if (1) these persons are made better off by acts that violate their rights or (2) the individuals in question are later glad that acts sustaining the self-interest relation were performed (because alternative acts would not sustain that relation) or (3) these individuals later waive their rights.

I conclude that efforts to appeal to nonidentity problems to undermine rights-based obligations are unsuccessful. Unfortunately nonidentity problems are still a problem. The remaining difficulty they pose is that we are unable to explain the wrongness of acts in situations where  $NIP_w$  or  $NIP_s$  apply, if we cannot explain it by appealing to rights. So, unless we think that the wrongness of these kinds of acts can *always* be explained by appealing to rights, we are left without a justification for the wrongness of such acts.<sup>14</sup>

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<sup>14</sup>A number of philosophers have defended the position that present existence is a necessary condition for having any rights at all, and conclude that future persons cannot be the bearers of rights. See, for example, Rolf Sartorius, "Governmental Regulation and Intergenerational Justice" in Tibor Machan and M. Bruce Johnson, eds., *Rights and Regulation* (San Francisco: Pacific Institute for Public Policy, 1983); Ruth Macklin, "Can Future Generations Correctly Be Said to Have Rights?" in Ernest Partridge, ed. *Responsibilities to Future Generations*; Richard DeGeorge, "The Environment, Rights and Future Generations," in K.E. Goodpaster and K.M. Sayre, *Ethics and Problems of the Twenty First Century* (Notre Dame Univ. Press, 1979); Edwin Delattre, "Rights, Responsibility and Future Persons," *Ethics* 82.3 (April 1972). Others have argued that present existence is not a necessary condition for having rights, and that the rights of future persons are just a special case of the ordinary rights that all persons hold. See, for example, Annette Baier, "The Rights of Past and Future Persons," in Partridge ed.; Joel Feinberg, "The Rights of Animals and Unborn Generations," in Partridge ed.; Donald Strole, "Rights, Obligations, and Future Generations," *Auslegung* 9 (1982); and K.S. Shrader-Frechette, "Technology Assessment, Future Generations and the Social Contract," in Sharder-Frechette, *Environmental Ethics* (Pacific Grove: Boxwood Press, 1981).