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Contractualism and the Non-Identity Problem¹

T.M. Scanlon's contractualism has received widespread attention, but discussions of how it might apply intergenerationally are limited.² According to contractualism, if we do not relate to another person in a way that respects her value as a person by taking her interests into account in our moral deliberations, we have wronged her. Specifically, contractualism requires us to justify principles to others using reasons that they could not reasonably reject. This means that both the reasons offered in favour of a principle and the reasons offered in rejection must be acceptable ones.

There is a variety of reasons that could be offered to support or reject a principle, but one point that will become important in what follows is that although being made worse off *can* be a grounds for reasonable rejection, it is not *necessary* to have made a person worse off in order for it to have wronged them. This is because a person can reasonably reject a principle even if it did not make them worse off for other reasons such as discrimination or unfairness.³

In the case of intergenerational morality, the 'others' to whom we must justify our actions are the future people who would be affected by the principles we are trying to justify. Tim Mulgan argues that in the intergenerational context contractualism is prone to "all the usual difficulties facing any person-affecting theory" and challenges philosophers sympathetic to the view to show how it could deal with the non-identity problem in particular (Mulgan,

¹ Versions of this paper were presented at the Universities of Oxford, Pavia, and Manchester. I am grateful to audiences in all of these places. I am also very grateful to Simon Caney and David Miller, Tim Campbell and the anonymous reviewers for *Ethical Theory and Moral Practice* for extremely helpful written comments on earlier drafts. This work was undertaken with the financial support of the Swedish Research Council and the Social Sciences and Humanities Research Council of Canada.

² Two notable exceptions that I will address in this paper are (Kumar, 2009, 2015) and (Parfit, 2011)

³ A prominent example of the distinction between harming and wronging can be found in (Woodward, 1986).

2006, p. 357). In this paper I take up Mulgan's challenge and try to show how contractualism can accommodate future generations, and in particular, how it deals with the non-identity problem.

However, before delving into the latter, I would like to briefly address the former by way of an anticipated objection to the use of contractualism intergenerationally. This is the argument that it is just not plausible to think of people who do not exist at the same point in time as 'contracting' to determine moral principles at all.

I believe this objection can be dismissed by appealing to the hypothetical rather than actual nature of contractualist agreement. Scanlon intends contractualism to apply to all beings who a) have a good; b) are conscious and capable of feeling pain; and c) are capable of judging things as better or worse, and more generally, capable of holding judgement-sensitive attitudes. What he dismisses is the possibility that a fourth criterion might be necessary: actual cooperation. Importantly, he does *not* believe that morality needs to be mutually advantageous in order for it to apply between people:

If the aim of morality lay in securing the benefits of cooperation, then there might be reason to confine its scope to [those beings with whom it is advantageous for us to enter into a system of mutual restraint and cooperation], thereby excluding, for example, those who are incapable of being restrained by moral principles and those who could not harm or benefit us in any event and so have nothing to offer us by their restraint or cooperation. But this is not the aim I have described, and those who would be excluded...are still people to whom we have reason to want our actions to be justifiable (Scanlon, 1998, p. 180).

The basis of moral motivation for the contractualist, then, is not cooperation or advantage, but the reason we all have to justify our actions to others in ways that recognize their value as persons and to have them justify their own actions in kind. Every human's capacity—regardless of where or when they live—for reasoning and rational self-direction entitles them to the kind of respect that entails treating them in ways they could not reasonably reject, whether or not it is in another party's interest to do so (Scanlon, 1998, p. 159). This mutual recognition is valuable for its own sake (not to secure benefits of cooperation) and morality therefore extends to all those people who have reason to want to stand in this relation. For this reason, contractualism does not require the parties to be those who are able to make and keep agreements or offer each other benefits in return for cooperation.

What this means for the application of the theory to future generations is that there is no *prima facie* reason why future people should not be included among those to whom we owe justification. In fact, Scanlon explicitly says as much:

any actual human being...whether existing now or only at some past or future time, constitutes a point of view relative to which the question of justifiability makes sense, and we have reason to value the justifiability of our actions to these people—that is to say, to those who are already dead, or are not yet born, as well as to our contemporaries (Scanlon, 1998, p. 186).

The fact that future people do not co-exist with us therefore does not prevent us from hypothetically contracting with them by considering them among those to whom we have reason to justify principles. Indeed, it seems to be an integral part of what Scanlon intended his theory to do. What this means is that when determining the moral permissibility of a

particular principle, we must also consider the interests and standpoints of future people (and past, though that is not the focus of this paper).

The rest of the paper will proceed as follows. Section I briefly sets out the non-identity problem which will be familiar to most readers. Next, in Section II I will frame it in contractualist terms and analyze one way in which contractualism has been proposed as a solution. I will also defend the claim that possible people are not rightfully included in the scope of those to whom we owe justification. I use this claim as the basis for arguments in Sections III and IV that contractualism provides a promising way of responding to the non-identity problem.

I. The Non-Identity Problem

Often when we think about what we owe to future people, we assume that these people will in fact exist at some point in the future. We take it for granted that it would be wrong to perform actions that would harm them. However, as most philosophers are aware, the ‘non-identity problem’ (Parfit, 1984) forces us to explain how a negligent action can harm a future person at all.

According to the biological view of personal identity, because the genetic identity of a person is determined by the particular egg and sperm combination used to conceive them, if a different combination of gametes had been used, an entirely different person would have been created. On an alternative, psychological, view, a number of different factors (including genetic makeup) affect personal identity.⁴ In both cases this means that seemingly random actions can affect who in particular is born, or even if anyone is born at all. And even if the

⁴ Imagine gene therapy is done on an existing embryo to remove a genetic disability. On the psychological view, the person who results after the therapy is a different person from the one that would have resulted without the therapy because each will have different experiences that affect their psychological state and therefore their identity (Belshaw, 2000).

action that caused a person to exist with a worth living life also caused them some sort of disadvantage, the action cannot be said to have harmed that person or made them worse off since if it were not for the action, that person would never have existed.

To illustrate, imagine a bomb is dropped on a city, wreaking havoc. Some people are killed, but others are forced to flee to safer areas. Suppose also that anyone who was in the city when the bomb was dropped was exposed to DNA-altering radiation which will cause serious disabilities (but not so serious that it renders their lives not worth living) in any children they subsequently have. The people who fled the city will end up living in different places, meeting and procreating with people they otherwise would not have, and giving their children a differing upbringing. This means that while the bomb is the reason for the resulting children's disabilities, it is also a cause of their personal existence since *they* would not have existed if not for the bomb. Can the children plausibly say 'dropping that bomb harmed me' when their personal existence and identities are contingent on it and *ex hypothesi* they have lives that are worth living?

The non-identity problem is a challenge to accounts of intergenerational moral obligations because it suggests that we cannot harm people in the future unless it is the case that the persons who are created would have existed regardless of what actions were taken. Since such surety is generally only possible in very specific circumstances, the implication is that in many cases the actions we perform cannot harm future people because they will not make them worse off, even if they have lives that are only barely worth living.

However, at the same time, there is a generally-shared intuitive objection to actions that knowingly cause people to have lives that are only barely worth living, especially when the burdens that make them so could have (sometimes very easily) been avoided. There are some who are willing to bite the bullet and accept that seemingly wrong acts are in fact permissible, but many believe that we should care about the burdens our actions have on those

in the future and therefore look for ways ‘around’ the non-identity problem. Indeed it has almost become a requirement of any theory of intergenerational ethics that it must be able to explain our obligations without being undermined by this problem.

Scanlon very briefly acknowledges the non-identity problem, saying that it is not a question of who it is possible to wrong, but rather a substantive question of when a person has been wronged (Scanlon 1998: 186). While this is true, the two questions are related and if contractualism cannot produce an example of when a future person could be wronged, it is difficult to see how it could be possible to wrong future people at all. So the contractualist cannot ignore the non-identity problem on the basis of this distinction alone.

Contractualism asks us to justify principles on grounds no one could reasonably reject. This points to two aspects of contractualism, which are, essentially, two sides of the same coin. The first is to think about how a person could justify a principle to another person—that is, what reasons can they present in favour of a particular principle and are those reasons acceptable?⁵ The second is to ask whether another person has acceptable reasons for objecting to the principle in question. The latter is what has become known as the Complaint Model of contractualism. Although he has disagreed with the ways some philosophers have interpreted the Complaint Model, Scanlon broadly agrees that one way to think about justifiability is to look at various individuals’ reasons for objecting to (‘complaining about’) principles and weigh them against other people’s reasons (Scanlon 1998: 229). The aim of this paper is to show that both aspects of contractualism (reasons presented in favour of and in objection to principles) can help us avoid the non-identity problem.

It seems likely that any contractualist solution will appeal to the distinction between harming and wronging. Rahul Kumar, for one, argues that within the contractualist framework of wronging rather than harming the non-identity problem cannot even get started. Since,

⁵ Scanlon writes, for instance: “When we judge a person to have acted in a way that was morally wrong, we take her or him to have acted on a reason that is morally disallowed...or to have failed to see the relevance or weight of some countervailing reason which, morally, must take precedence” (Scanlon, 1998, p. 201).

according to contractualism, it is not required that an action harm (understood as making a person worse off) a person in order to be wrong, the fact that future people were not *harmed* by an action that also causes their existence does not entail that they might nonetheless not have been *wronged* by the action. This seems to be a fruitful starting point. If we agree that thinking about future people in terms of wronging instead of harming is the right way to start to approach the problem, we need to think about what would constitute an instance of wronging a future person. However, this is not as straightforward as it seems since some of the people to whom we are hypothetically justifying our actions will not come to exist if we perform that action.

Therefore we have two questions to answer that broadly reflect the two aspects of contractualism I laid out above. First, as Kumar puts it, “if the existence of the wronged is not independent of the wrongdoing, whose standing as a person was it exactly that the wrongdoer failed to appropriately take account of in her deliberations?” (Kumar 2009: 257). To whom do we owe justification for moral principles, and what reasons can we offer to/for them? Second, what (if any) bearing on the reasonable rejectability of a principle does the fact that that principle caused a particular person to exist have?

II. Kumar’s Solution

Rahul Kumar chooses to formulate his solution to the problem in the first way—by asking how current people could justify actions to future people despite the fact that the latter do not exist and their identities will be dependent on the principle in question.

Kumar believes that the best response to the problem is to appeal to ‘types.’ A ‘type’ of person is “a way of referring to a cluster of normatively significant characteristics (and relevant interests) that may aptly characterize certain actual particular individuals in actual situations” (Kumar 2009: 261). When we are deciding what we owe to others, we are not

thinking about individuals with particular personal identities, but about standpoints characterized by person types. He gives the example of the consideration an employer has to give to its employees with regards to dismissal. A principle will not specify what is owed to a particular employee with a token identity; rather, it specifies what is owed to people who satisfy a particular type description—being an employee at risk of termination. Every individual will simultaneously be a part of many different type descriptions—student, employee, mother, and so on. The identity of a person is irrelevant when determining what is owed in a particular situation—any individual fitting the relevant type description in that situation will be owed the same.

For this reason, Kumar thinks contractualism is immune to the non-identity problem. This is because in the same way that the employer developing office policies does not give consideration to a particular employee with a particular identity, current people do not give consideration to particular future people. Kumar's argument is that if a person comes into existence with a cluster of interests characteristic of a standpoint, and we take that standpoint into consideration in our deliberations about a principle, we have fulfilled the requirements of contractualist justification, regardless of whether or not it was also that principle that caused the person to exist. If we do not, we have wronged them.

There is a lot to like in Kumar's view. Whilst I agree with his strategy and ultimate conclusion, I think there is an objection that he has overlooked. In what follows, I will present and respond to this objection. In so doing, I will expand upon and hopefully strengthen Kumar's argument, and also discover a reason that is not admissible in the contractualist framework which has several implications relevant to the non-identity problem.

The first is that the fact that a principle would bring a particular future person into existence is not a reason to which a current person could appeal when justifying a principle. The second is that the fact that a principle leads to the creation of a particular person does not

preclude that person rejecting the principle. Finally, it means that the fact that a principle would result in a particular person not existing is not a reason that that (possible) person could invoke to reject that principle.

The Objection to Kumar

The objection to Kumar's view that I have in mind is the following: whilst the appeal to types is a step in the right direction, it could be argued that existence should be considered one of the interests in the cluster of interests that is represented by a particular standpoint or type. The claim would be that people have a strong interest in being alive, so this interest in existing should be part of any future person's standpoint. The result would be that when we consider how a principle would affect a particular type or standpoint, we must also consider the interest in existing as part of that standpoint and consider that any person represented by the standpoint might therefore have reason to reject a principle that prevented their existence. This would work in the same way as any other interest that may be part of the standpoint. For example, if a principle would cause a person bodily harm, and they have an interest in avoiding such harm, the fact that this interest is part of the cluster constituting the standpoint gives them reason to reject the principle.

To see how this would work, imagine Hilary is considering whether or not she should conceive a child in the summer despite knowing that any child she conceived at that time would be born blind. Contractualism requires her to consider whether the resulting child, Ian, could reasonably reject a principle that permits her to conceive in the summer, despite knowing he would be born blind. Ian could potentially reasonably reject the principle on the grounds that he will be burdened with blindness; but if Ian does reject it, *he* will never exist. So upon reflection, Hilary decides that Ian could not reasonably reject a principle allowing her to conceive him, knowing he will be born blind because if he did, he would never exist. He is

therefore not wronged by her choice to conceive him despite the fact that he is blind. This is the same conclusion as the non-identity problem.

However, I will argue that it is not the case that the interest in existing is properly included as part of a 'type' or standpoint. This is because existing is a basic requirement for being in a position to occupy a standpoint at all. Allowing (non-)existence to be the basis for rejecting a principle is tantamount to including possible people in the scope of those to whom we owe justification because the only people who could reject a principle on the grounds that it prevented them in particular from existing are those who could have but do not exist (i.e. possible people). However, whether or not it is appropriate to exclude existence as a component of a standpoint therefore also possible people needs further analysis and fleshing out.

The first argument against the inclusion of existence in a person's standpoint is that it is incoherent since it would require people to justify their actions to unreal standpoints. Non-existence is not a standpoint; by definition no one can occupy it. If it were a standpoint we would have to think of a world full of possible people waiting in the wings whose existence would have been fixed were it not for our performing a certain action which prevented their existence. This seems implausible to me. Scanlon himself admits that conceiving of justification to all possible people is barely coherent at best (Scanlon 1998: 186). He says that we can only wrong a person who has, does, or will exist because wronging involves failing to take another person's interests into account. Even if there is an interest in existence, we cannot take a possible person's interest in existing into account because 'they' do not exist if we follow whatever principle we are proposing. By considering the standpoint of a person in our deliberations we consider the burdens they will have to bear as a result of the principle. However, only people who exist can bear the brunt of a principle, and therefore occupy a standpoint.

Second, but related, existence is not an interest at all and a possible person is not disadvantaged by being caused not to exist. Rather than being an interest itself, existence is a necessary requirement for having interests. Rivka Weinberg describes it as ‘neutral’ because causing a person to exist is to create a subject who can have interests and not is an interest itself. In order to be disadvantaged, there must be some detrimental effect on your interests. However, without existence, a person does not have any interests so they cannot be disadvantaged by being kept out of existence. But, as Weinberg points out, “never having interests itself could not be contrary to people’s interests since without interest bearers, there can be no ‘they’ for it to be bad for” (Weinberg, 2008, p. 13). So a principle that results in some possible people never becoming actual does not impose any costs on those ‘people’ because nobody is disadvantaged by not coming into existence. Since existence is not an interest, it cannot be one of the cluster of interests that constitutes a standpoint.

Finally, and more practically, that a principle bears on whether a particular person exists or not cannot be part of a standpoint and therefore admissible grounds for rejecting or justifying a principle since any principle will cause a set of people to exist and another set not to exist. Allowing existence into the framework would mean that any conceivable principle could in theory be reasonably rejected by someone. Since various actions will lead to different sets of individuals existing, a principle that permitted a certain (otherwise innocuous) action could be reasonably rejected by the people that it prevented from existing. Likewise, its alternative, a principle that prohibited the same action could be reasonably rejected by the people who would have been born if the action had been permitted. Imagine S_A is the set of people who will be created by Principle A (P_A) and S_B is the set of people created by the alternative, Principle B (P_B). S_B could reasonably reject P_A since it would cause them never to exist. Likewise, S_A could reasonably reject P_B since it would cause *them* not to exist. So a situation arises where both principles could be reasonably rejected and we are not permitted to

follow either principle. Principles allowing us to carry out everyday activities like travelling, joining clubs or taking walks could be rejected if they would lead to a course of events that prevents a particular future person from being conceived. Since virtually every action and decision we make influences who in particular will be born, we would essentially be morally paralyzed and even basic, everyday activities would be morally wrong since they prevented certain people from coming to exist.

Of course this point on its own is not enough to show that personal existence should not be included in the contractualist framework. For an objector could claim that the fact that contractualism cannot elicit any non-rejectable principles (assuming existence were allowed as the basis for reasonably rejecting a principle) shows that contractualism cannot cope with intergenerational moral questions at all. However, given that there are at least two other reasons for excluding personal existence from standpoints, it is plausible to see this implication as an argument against allowing someone to reject a principle on the grounds that realizing it would result their nonexistence, rather than as an argument against contractualism itself.

Arguing that the fact that following a given principle affects whether a person is born or not is not an admissible reason for that person is not to discount it as a reason *tout court* or to claim that it is not something that people find important to them. It is simply not a moral reason. By ‘moral reason’ I mean a reason that is deemed to be relevant in the course of moral deliberations. There are also reasons that are not moral in the sense that they are not considered part of what we owe to others. Impersonal reasons may fall into this category, as might reasons of selfishness. We have reason to act selfishly in the sense that it might further our self-interest in some way to do so. But non-moral reasons such as these are considerations which provide “no justification for action in some situations even though they involve elements which, in other contexts, would be relevant” (Scanlon 1998: 156). It is entirely

plausible that existence could be relevant in many different contexts, but not with respect to what we owe to future people.

III. Returning to Kumar's View

So we have seen that a particular person's existence is not properly included in a type or standpoint. What implications does that have for the non-identity problem?

Most attempts to solve the non-identity problem focus on what people in the future (once they exist) would say about what their ancestors chose to do. Would they regret their ancestors' actions even though it was those very actions that caused them to exist? There are good reasons for the dominance of this *ex post* perspective. Future people are the ones affected by our actions. They are the people who bear the burdens of our choices so it makes sense to think about how they might feel about the choices we make. However, rather than only thinking about the problem from the perspective of a person looking backwards reflecting on their actual circumstances, we should also look at it from our perspective looking forward.

One advantage of Scanlonian contractualism is that it is essentially comparative. Benefits and burdens of principles must be weighed against each other. This means that we not only have to look at what reasons others (for our purposes here, in the future) might have to object to principles, but also the reasons offered in favour of principles. We must ask ourselves whether or not the reasons we offer in favour of principles enable us to relate to future people in a way that respects their value as persons.

In this section I will start by continuing Kumar's approach and look at the non-identity problem by considering whether the fact that a principle caused a particular person to exist could be a reason used to justify a principle to a future person's standpoint. Some might argue

that we could justify the principle to that standpoint by saying something along the following lines:

‘Look, if I do not do not A, you will never exist. Since you have an interest in existing, I can therefore justify a principle that permits me to A on the grounds that it will cause you to exist. I have therefore taken your interest into account in my deliberations about the principle and even though my doing A causes you to have a barely worth living life, I have not wronged you.’

This view is mistaken, however, because, as I will show in what follows, claiming that a principle will cause a particular person’s existence is not sufficient to justify the principle to that person.

Being moral, Scanlon says, involves seeing certain reasons as excluded from the realm of moral decision-making and others as included (Scanlon 1998: 157). This means that certain reasons do not qualify as reasons that can be used to justify principles to others (Scanlon 1998: 201). But how do we know when a reason is disallowed or given more weight than is permissible? There are no hard and fast rules and we must make our own judgments, but an initial answer to this question must call upon the source of moral motivation in contractualism. Recall that we are motivated to act morally because of a wish to live in unity with others and to respect their values as persons. A reason is inadmissible if it does not accord with these aims. Imagine I walk past a stranger lying seriously injured on the street because I am simply too lazy to stop and help him. I have acted wrongly not only because he could reasonably reject a principle that allowed me to ignore him, but *also* because I cannot justify my actions (or, more precisely, a principle that would allow my actions) to him with acceptable reasons. I have no acceptable reason for walking past. I am not on my way to help

someone else, I am not injured myself and it would take very little of my own effort to at least call an ambulance for him. I have failed to recognize that his strong interest in being assisted countervails my interest in being lazy. Consequently, I have not related to him in a way that respects his value as a person. I have therefore wronged him. This failing makes it impossible for him to feel unity with me which is why my reasons in this situation are disallowed.

The same framework can be applied to decisions current people make that will affect future people such as Parfit's *Depletion/Conservation* example (Parfit 1984: s.4).⁶ We must ask whether the reasons current people have for choosing either the *Depletion* or *Conservation* policy are justifiable. The difference between this kind of decision and helping the stranger lying in the street is that *Depletion* will cause certain people to exist and it could be argued that current people could justify choosing *Depletion* on the grounds that it will cause those people in particular to exist. However, the reason for choosing *Depletion* must be our own gain and not to create a particular person or set of persons in the future. Although we may create *somebody* we have no control over the particular people who are created. Therefore the reasons used to justify the principle cannot be the creation of a particular person or set of persons. The reason for our action is self-interest and would be unlikely to outweigh the burdens that would be characteristic of the standpoint of future people living in a resource-depleted world, whomever in particular they may be.

As I argued earlier, personal existence is not a relevant reason in the contractualist framework. Therefore, just as it (or rather, a lack it) cannot be used as a reason to reject a principle, it also cannot be used to justify one's actions to another person. However, even if it were, unless creating that particular person is the reason for action, the action could still not be justified on the basis of creating a particular person. Jeff McMahan agrees, saying that if

⁶ His example asks us to imagine that we can choose a policy of *Conservation* where we save resources for the future and sacrifice a small amount of quality of life ourselves, and at the same time cause a particular group of future people to exist with a high quality of life. The alternative is to choose *Depletion* where we deplete resources in order to increase our own standard of living thereby creating a different group of future people who will enjoy a quite low standard of living.

one chooses to cause an individual to exist, that may be good for the individual who comes to exist, but it cannot be one's reason for acting, to bestow that good on that individual (McMahan, 2009, p. 52). Since we cannot know when we are deciding on a principle now which particular future people will be created and with what identities, the assessment of our reasons in support of a principle cannot be based on these particular individuals and the fact that they either will or will not be created. So creating particular people cannot be a reason in favour of the principle. The principle therefore needs to be justified on the basis of another reason, and our own gain at the expense of others is not an acceptable reason under contractualism as it would be arbitrary, which Scanlon rules out as part of contractualist reasoning. Instead we must "rely on commonly available information about what people have reason to want" (Scanlon 1998: 204). In this example, we can be reasonably certain that people in the future will have reason to want at the very least a decent quantity of resources (for example) in order to work, be productive and live worthwhile lives. Knowingly depleting resources and creating people who would have barely worth living lives shows a fundamental disregard for the value of those people even if the depletion was necessary for their existence.

In this section I have tried to show that the fact that a principle would create a particular person or set of persons cannot be a reason in favour of that principle. In what follows I will consider the other side of the equation and look at what reasons may be offered in objection to principles. In particular, I will argue that the fact that a principle would lead to a particular person's existence does not mean that there is no reason to reject it.

IV. The Complaint Model—What Can Future People Reasonably Reject?

So far we have examined how contractualism might avoid the non-identity problem by excluding personal existence as a reason to justify a principle to others. However, in this

section I wish to argue that even if we just look at what future people could reasonably reject, we can still avoid the problem. Here I will defend the claim that a person can reasonably reject a principle even though it caused them to exist.

In his discussion of contractualism and future people in *On What Matters* Parfit argues that when we can avoid creating people with bad lives at little cost to ourselves, these acts would be wrong. However, if we act in these ways, certain future people will never exist. He believes that when we apply Scanlon's contractualism in a way that appeals only to personal reasons, we are forced to ignore the fact that if we had acted differently, a different set of people would have existed and been much better off (Parfit 2011: 235). He thinks that in order to appeal to these facts, Scanlon must revise his claims about impersonal reasons as admissible grounds for rejecting principles because in order "to explain why certain acts or policies would be wrong, we must appeal to the better lives that would have been lived by the people who, if we had acted differently, would have later existed" (Parfit 2011: 239). He agrees that being caused not to exist cannot be a reason to reject a principle, but concludes from this fact that we need to appeal to the impersonal reasons that are held by the people who do end up existing. The thought seems to be that if you are caused to exist, you do not have a personal reason to reject the principle that led to your existence but there is still an impersonal reason to create better lives. Because of this, Parfit argues, we need to admit impersonal reasons in order to explain why such principles could be reasonably rejected (Parfit 2011: 239-40).

In making the argument that being caused to exist by a principle necessarily precludes a person rejecting it, Parfit seems to be assuming that existence is the only morally relevant factor (or at least the most important factor) in evaluating principles and negates any other facts about a situation or standpoint. In examining a case in which a particular person (Charles) would not exist if a principle were followed, he says that if we had chosen that

principle, Charles would have no reason to reject it, even though the principle left him with a low quality of life (Parfit 2011: 236). In Parfit's view, if a person is caused to exist with a life worth living because of a principle, they can never have a personal reason to reject it since existence automatically outweighs any other burdens the person may bear as a result of the principle. He believes that in order to avoid the non-identity problem, contractualist objections to a principle must be made on the basis of the fact that a different principle would have led to better lives being lived by other people (an impersonal reason).

I do not agree that contractualism has this implication. Rather, the objections to the principle could be based on any number of other factors relevant to the standpoint of the actual people who exist as a result of it, not on the basis of the impersonal value of other, better lives that could have been lived as a result of an alternative principle. In fact, I will argue that a future person could have personal reasons to reject a principle that caused them to exist with a life worth living, if the principle imposed other costs on them.

Assuming that a person could not reasonably reject a principle that caused them to exist is to prioritize existence over all other things. Imagine a principle that caused a child to exist with a severe disability and a life barely worth living. Assuming that existence outweighs all other considerations is also to argue that it is in the interest of the future person to have a disability if the only way they could have existed is to have that disability. And further, it is also to argue that it is in a possible person's interest to have a disability in order to 'secure the good of existence' since *ex hypothesi*, the person could not exist without the disability (Weinberg 2008). However, it cannot be in a possible person's interest to either exist or have a disability since they do not have interests. Weinberg argues that for that reason we should not ask how future people can rationally object to principles that caused them to exist. Rather, we ought to take existence as a given and ask whether they could reasonably reject the circumstances in which they do exist (Weinberg 2008).

If we take it as a given that a person exists, there are many things that affect their quality of life including health, physical environment, and so on. For example, anybody, regardless of their particular identity, would have reason to want to have adequate resources support themselves. For example, if a policy of *Depletion* is chosen, People A will be created who live very low qualities of life due to the lack of resources. The principle could be reasonably rejected by People A on the grounds that it left them without sufficient resources to ensure a decent quality of life. Since anyone in People A's standpoint would have a generic reason to want to have a good quality of life, they could reasonably reject a principle that allows the policy of *Depletion*.

I have argued that existence is not an interest a person has and is therefore not part of their standpoint. However, one might disagree, and say that a life (even barely) worth living by definition counts as good for the person living it. They wonder, then, how a barely worth living life could itself count as an objection.⁷ Therefore, in this section, let us allow that existence *does* improve a person's well-being and is good for that person. I will argue that even in this case, a person could still reasonably reject a principle that caused them to exist with various elements that constitute a very low quality of life.

In this scenario, because existence is assumed to improve well-being, it could be argued that People A would have a reason to accept the principle that allows *Depletion* because without it, they would never have existed. The reasons of existence and the desire to have ample resources conflict. People A therefore have both a reason to reject and a reason to accept the principle and these reasons need to be balanced against each other. Recall however that contractualism is based on what people *could*, not *would*, reasonably reject. A person is not required either to accept a principle that increases her well-being or reject a principle that decreases her well-being (Scanlon 1998: 213-16). A significant decrease in well-being can be

⁷ Many thanks to the anonymous reviewer for *Ethical Theory and Moral Practice* for pressing this objection.

a relevant reason for rejection, but it is not necessary. A principle that increases a person's well-being could be reasonably rejected on other grounds. For example, a principle allowing the enslavement of a particular race may increase the well-being of a person who would own the slaves and benefit from their labour. However, that same person could still reasonably reject the principle on the grounds that it was unfair or discriminatory.⁸ Reasons and judgments about reasons can and do conflict and there is no reason to lament this (Scanlon 1998: 28). It is not for us to speculate about how People A would balance their reason for wanting existence against their reason to want a good environment in which to live. What is important is that the reason for wanting sufficient resources is sufficient to say that People A *could* reasonably reject the principle allowing *Depletion* on that ground.

Here it could be objected that simply having a low quality of life does not give you a claim against the person who created you. It is true that, as David Benatar has famously argued, every life will inevitably include some negative elements and harms (Benatar, 2006). Furthermore, it would seem that if we did agree that any kind of low quality of life gave a person reason to reject their creation, most people who have ever lived, will have been wronged. Living standards in the past were much lower than they are today, and it stands to reason that the low qualities of life lived by people in the past would have given them reason to reject principles leading to their creation. However, it does not seem plausible to say that every person past or present could object to a principle permitting their creation on the grounds that they have some negative elements in their life. The question is, then, how bad must a life be in order for the principle permitting its creation to be non-rejectable? This is an interesting question, and one which I have addressed at length elsewhere.⁹ However, for the purposes of providing a contractualist solution to the non-identity problem, it is not necessary

⁸ Woodward's example of Jones being denied boarding on a doomed airplane due to his race is another example where he could reasonably reject a principle allowing racial discrimination, even though the discrimination resulted in a higher level of well-being compared to what he would have had if he had not been discriminated against.

⁹ Finneron-Burns (2015).

to be able to explain every circumstance in which a future person was wronged in being created. Rather, it is enough simply to show that it is plausible that a person could reasonably reject a principle that led to their creation, which is what I have tried to do above.

V. Conclusion

Putting the arguments together, it is clearer how contractualism copes with the non-identity problem. According to contractualism, we weigh the admissible reasons in favour and against principles, as well as weighing the burdens of permission against the burdens of prohibition in order to determine whether or not they are reasonably rejectable. If a principle permits the creation of a person with a barely worth living life, the person who is created has grounds for rejecting that principle. On the other hand, no one has a reason to reject a principle that would prohibit the creation of a person with a barely worth living life because the only ‘burden’ of prohibition would be ‘felt’ by those who never exist—i.e. the ‘people’ with barely worth living lives who would have been created if it were not morally impermissible.¹⁰ However, as we saw in Section II, possible people are not owed justification so this cannot be a reason to reject a principle. Furthermore, there are no countervailing reasons in favour of permission that would overcome the burdens suffered by people who do come to exist with barely worth living lives since it was shown that the reason in favour of such a principle (that the principle creates particular persons) is not admissible in contractualism.¹¹

The purpose of this paper has been to explore the relationship between contractualism and the non-identity problem. I began by presenting Kumar’s view that argues that contractualism avoids the non-identity problem through an appeal to types and standpoints. I

¹⁰ I put aside the fact that a burden of prohibition might be felt by current people who would wish to create children with barely worth living lives. I think this is a valid consideration in determining the permissibility of procreation, but does not directly bear on the non-identity problem.

¹¹ Some utilitarians might point to another countervailing reason which is the creation of lives with positive utility. I do not have space to fully address this option, but I do not believe this reason would ‘count’ within the contractualist framework as it is not a personal reason.

agreed that this was a good starting point for the discussion, but wondered whether a particular person's existence might constitute part of the standpoint to which we are justifying our actions. The resulting analysis showed that existence should not be so included, which had important consequences for how contractualism deals with the non-identity problem. It means that possible people are not included in the scope of those to whom we owe justification, and as a result, a current person could not justify a principle to a future person simply by appealing to the fact that the principle caused that person to exist. It also means that a person could reasonably reject a principle even though it caused them to exist if there are other grounds for objection—i.e. the fact that a principle caused them to exist does not mean that they must accept it or, more precisely, have no reason to reject it.

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