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## Parfit on the Non-identity Problem, Again

**Abstract:** In his recent work, Parfit returns to the examination of the non-identity problem, but this time not in the context of a theory of value but as part of a Scanlonian theory of reasons for action. His project is to find a middle ground between pure impersonalism and the narrow person-affecting view so as to do justice to some of our fundamental intuitions regarding procreative choices. The aim of this article is to show that despite the sophisticated and challenging thought experiments and conceptual suggestions (mainly that of a “general person”), Parfit’s project fails and that we are left with the stark choice between personalism and impersonalism.

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### Framing the Non-identity Problem in Scanlon’s Terms

Derek Parfit has almost single-handedly created the new field of the ethics regarding future people, which has had in the last three decades a tremendous impact on all the debates on population policies, reproductive ethics, climate change, and wrongful life cases in the law – to name just a few of the issues in this field. Based on a series of articles in the 1970s, Parfit offered his systematic analysis of the uniqueness of ethics for future people in his 1984 book *Reasons and Persons*.<sup>1</sup> Since then, his pioneering work has drawn much critical attention and gave rise to an immense literature. One of the most fruitful concepts that Parfit coined in the new field is “the non-identity problem” (NIP), which seems to capture in the most essential way the unique difficulty involved in the ethics concerning future people whose existence, number, and identity are the objects

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1 Derek Parfit, *Reasons And Persons* part IV, 351 (1984).

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of our current choices. Like some great paradoxes in the history of philosophy, NIP has served as a theoretical power engine in the development of the ethics of procreation. It is a challenge to moral principles and ethical guidelines for regulating reprobogenetic technologies or environmental policies. Philosophers have offered numerous solutions to NIP but have not reached anything close to consensus. Three decades later, in his latest colossal book *On What Matters*, Parfit himself re-joined the debate and devoted a short chapter to the non-identity problem in the context of his critical discussion of Scanlon's contractualism.<sup>2</sup> I have developed my own views about the moral standing of future people in the 1990s under Parfit's direct inspiration but his new, sophisticated analysis is an opportunity for a fresh critical look.<sup>3</sup> My critique of Parfit is strangely Parfitian in its essence: I find his original formulation of the non-identity problem and the person-affecting view so compelling that I cannot accept his forceful attempts to overcome their radical challenge to the ethics for future people. In that respect, my critique appeals mostly to conceptual resources originating in Parfit himself.

Although the non-identity problem turns out to be extremely difficult to solve, its description is quite straightforward. Most decisions we make relate to actions that affect the same people, that is to say, respect or violate *their* rights, or increase or decrease *their* welfare. But there are some choices that we make that affect the very existence, the number, and the identity of future people. In these choices, people are created who would not have existed had we taken an alternative choice. The philosophical problem raised by these cases is whether goodness (and badness) can be ascribed to actions that do not strictly speaking better (or worsen) the condition of particular individuals because the actions cause the existence of these individuals; or whether people can complain for having been born in an inferior condition to that of *other* people who could have been born in their stead had we acted differently.

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**2** DEREK PARFIT, *ON WHAT MATTERS* ch. 22 (2011). Parfit, as we will presently see, admires Scanlon's theory of reasons for action according to which such reasons are ways of justifying our actions to each other. If an action is based on a principle that no one can reasonably reject, then that suffices as justification. Unlike reasons for belief, which refer to epistemological or metaphysical facts about the world, reasons for action (as in moral and political discourse) are dependent only on the reasonable discourse between human beings and their acceptance or rejection of the principles on which particular judgments are based. Hence, Scanlon refers to his method of moral justification as "contractualist." T.M. SCANLON, *WHAT WE OWE TO EACH OTHER* (1998).

**3** DAVID HEYD, *GENETHICS: MORAL ISSUES IN THE CREATION OF PEOPLE* (1992). See also David Heyd, *The Intractability of the Nonidentity Problem*, in *HARMING FUTURE PERSONS* 3–25 (Melinda Roberts & David Wasserman eds., 2009).

Now it should be emphasized that NIP arises only if we adopt what Parfit has called “the person-affecting view of value.” This is a fundamental view of the nature of value: Value always assumes the existence of humans (valuers) for whom it is a value; or in other words, good is always good *for* someone. Since this “someone” must be an identifiable individual, once we face moral choices regarding people who do not exist (i.e. who are just possible), any talk about value gets us entangled in the paradox of NIP. However, there is an alternative to the person-affecting view of value, “the impersonal view”: Value is not ascribed to human beings (or valuers) but *to the world*. Thus, according to impersonalism, we should choose a world in which there is more overall happiness, rather than a world in which there is less, irrespective of the identity of the individuals composing it. This is the view of classical utilitarianism since Bentham that strives to maximize overall happiness in the world. For example, a world of 2 billion people is better than a world of 1 billion people (assuming that the average happiness of these two worlds is the same). Moral judgments that are made from the impersonal perspective are not sensitive to NIP. But Parfit does not adopt impersonalism and hence takes NIP seriously.

Parfit, who in his original work focused on the issue of value, turns in the more recent book to the question of reasons (whether we have good reasons for adopting a principle that is restricted to taking into account only the interests and rights of existing individuals). This shift in focus is motivated by Parfit’s wish to adopt Scanlon’s contractual framework for moral reasoning: “An act is wrong just when such acts are disallowed by some principle that no one could reasonably reject.”<sup>4</sup> Parfit believes that it is the “greatest contribution to our moral thinking,”<sup>5</sup> but still needs one small though controversial amendment. *Who* is included under the term “no one” in the group of those who may reasonably reject? Scanlon believes that only those who exist or will actually exist; Parfit insists that “no one” should include also future, non-existent people – people who might never exist although they could exist. Scanlon says that only existing people can owe each other something; Parfit argues that we owe future people something even if these people do not owe us anything as is usually the case in contractual situations. This is the trigger to Parfit’s intricate argument that I am going to chart and criticize. Parfit’s arguments and my own polemical responses may sound fantastically remote, like medieval exercises in hair-splitting; but like Parfit, I believe they touch upon philosophically deep questions about the nature of value and the conditions or objects of value judgments.

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4 PARFIT, *supra* note 2, at 213.

5 *Id.* at 241.

Scanlon makes only a short statement regarding the scope of contractualist-based morality. He proposes that “the beings whom it is possible to wrong, are all those who do, have, or will actually exist.”<sup>6</sup> As I argue, this seems to be the correct answer, but it sidesteps the seriousness of the non-identity problem. Scanlon mentions in the same passage Parfit’s example of the depletion policy. Parfit’s idea is that a policy of depletion of natural resources by the current generation cannot be seen as necessarily wrong toward future people, since the implementation of the policy itself gradually affects the way people meet and reproduce. Hence, future people in two centuries’ time will not be able to complain for having been left with insufficient resources since the response to them would be that they would not have existed at all had the depletion policy not been put to practice by their forefathers. Scanlon wrongly treats it as a “substantive question,” rather than a deep conceptual or meta-normative issue about the scope of moral judgment and its relevant objects. We may say that Parfit’s aim is to force Scanlon (and us) to confront the challenge of non-identity, as it is presented in the depletion example.

## Are There “General Persons”?

In the Broken Glass example (I), Parfit suggests that negligently or maliciously planting a broken glass in the yard harms a future child who might tread on it even if the child does not exist when the wrongful deed took place. For example, the child will be able in the future to sue for damages. This is uncontroversial and universally accepted. But the Depletion case (II) is different: Our act or policy affects the identity of future people in a way that those born in the depleted world would not have lived had we not chosen the depletion policy. Does that fact make a difference in the evaluation of the act that led to the depletion? The same question arises on the individual level in Parfit’s example of the 14-Year Old Girl (III) who wants to produce a child and would not listen to the advice to wait another few years and give birth to *another* child who would enjoy a much better life.

Now the question is: can an act be wrong if its outcome does not make any particular person worse off? Parfit, despite being committed to a person-affecting view, believes that it can and that if we reject this proposition we would have no reason to avoid wasting current resources at the expense of future people and no justification for preventing an adolescent child to become pregnant. This, he says, most of us would reject. I belong to the few who believe that within the

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<sup>6</sup> SCANLON, *supra* note 2, at 186–87.

person-affecting view an act cannot be wrong or considered a harm unless there is a particular person who can be – at least in principle – identified as becoming worse off. The first problem with Parfit's view is that when he says "it would be in itself worse if some of the lives that will later be lived will be *less* worth living,"<sup>7</sup> he fails to indicate "less than what?" Is the life of the child of the 14-year-old girl who will be born in nine months' time less worthy than that of the possible child who would be born if she waited another 5 years? Or of that who could be born if the girl had conceived from a different man? Now? Later? For example, even if it is true that the child born to the girl and her current boyfriend will be less happy than the child who will be born to *them* when they become more mature, it could be the case that "he" ("she"?) will be happier than a child born to the more mature girl but from another man. How can Parfit define the group of alternative children to the one considered now that would serve as the relevant point of comparison? Furthermore, as is in the Depletion case (II), Parfit urges us to take a long-term consideration of the future. But this raises the possibility that even if the child of a premature mother would suffer a bad start in life, *its* future offspring may for contingent reasons have a better life than that of the future offspring of the child born to the mother after having matured, thus *increasing* the overall long-term happiness in the world. The difficulty in defining the scope of relevant possibilities is not just a matter of vagueness or lack of knowledge and imagination; it is a conceptual problem.

Parfit could retort that the scope of the possible alternative persons whose life would be of *more* worth could be defined in terms of the actual alternatives open to the agent making the reproductive choice and that these alternatives should be epistemologically and practically accessible to her and have only a marginal cost for her. I doubt that such a definition is possible due to the huge number of alternatives that are epistemologically and practically accessible to the agent. But even if it made sense in clear-cut cases such as the 14-year-old girl, once we move to the Depletion case, things become murkier and the characterization of the range of possibilities becomes vacuous. Making comparisons between the quality of life of alternative individuals in 100 years' time over-stretches our imagination. When we have to consider the long-term line of offspring of people who are going to reproduce in 100 years' time, such comparisons become absurd not only because of the sheer number of possibilities but also because possibilities are also dependent on the human free choice of an indefinite number of individuals.

But the deep problem with Parfit's suggestion is conceptual rather than epistemological. It relates to the issue whether there can be a wrong action

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7 PARFIT, *supra* note 2, at 219 (emphasis added D.H.).

when there is no wronged party, or at least, no identifiable wronged party. Here, Parfit's argument becomes subtle. He does not wish to take the theoretically easy way of impersonal utilitarianism according to which what makes an action right or wrong is the overall amount of goodness or badness in the world, irrespective of who and how many people would be created. He does believe that morality has to do with the welfare (and suffering) of individual human beings. He is thus committed to the identification of the future people affected by our choice for better or for worse. His solution is to identify this affected party as "general person."<sup>8</sup> "The first child of the girl" is the general person whom the girl harms by an irresponsibly premature motherhood. Parfit justifies to the girl her duty not to harm this general person by saying, "[i]f you have *this* child later, that would be better for *him*, since you would be able to give him a better start in life."<sup>9</sup> But the whole point is that we cannot even say that it would be better for *him* that his mother delays conception because it could equally be *her*, that is to say a female, born in a later date. Since sex is definitely an identity-fixing characteristic, the later person would surely be a different person. But sex is just one identity-fixing property of a person and even if the later child born to the girl is of the same sex as the one who would be born now, the mere time span will be responsible for the different identity of the two. The term "general person" here becomes too abstract to carry the weight of being the subject of beneficence or harm. General persons do not enjoy this or that quality of life; nor do they have claim rights against us.

To put it in other terms, my contention is that moral subjects must be identified *de re* rather than *de dicto* before their life can be evaluated.<sup>10</sup> Parfit admits that "a general person is not a person"<sup>11</sup> because it is just an abbreviation for the group of possible people one of whom will become actual (i.e. all the possible first children of the girl). But then he immediately proceeds to claim that premature motherhood would go worse for this general person. Parfit is correct in suggesting that the *Average American* is not a person, but just a kind of abbreviation, nevertheless it can be said to benefit or suffer from, let's say, a certain economic policy. But his comparison between general persons and the average American is misleading

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**8** PARFIT, *supra* note 2, at 220.

**9** *Id.* (emphases added D.H.).

**10** The medieval distinction between *de re* and *de dicto* can be illustrated by the following different ways of identification of a person: I can identify the 44th President of the U.S. *de re*, pointing to the actual unique individual, Barack Obama; but I can identify his future successor only *de dicto*, by referring to "the 45th President of the U.S." I can say quite a few things about this latter person (e.g., that he or she is a U.S. citizen, born in the U.S., etc.) but that does not include reference to a particular individual since – unlike the 44th President – it can be many.

**11** PARFIT, *supra* note 2, at 220.

because it begs our question. The average American is an abbreviation of all *actual*, existing Americans; general person is a short form for all *possible* individuals who could exist instead of an actual person whose existence we consider. The whole issue is whether this analogy is not a category mistake. And it seems to be such a mistake because the idea of the average *possible* American does not make sense for the simple reason that it is completely undetermined; it cannot be the object of concern for the American government in selecting an economic policy (unless it is guided by abstract impersonal considerations). Similarly, Rawls is aware that although the idea of an abstracted, general person as the contractor in the original position can be given meaning and be of methodological use in the formation of a system of justice, it must be the abstraction of actual people. Once extended to include abstractions of merely possible persons, the thought experiment leads to paradoxes (like the idea of a trans-generational “general assembly” deciding on demographic policies).<sup>12</sup>

Parfit’s idea of considering the welfare of “general persons” as the method of reasoning about the ethics of creation of new people lies deliberately between complete impersonalism of the Benthamite type and what Parfit calls “the narrow person-affecting view”<sup>13</sup> according to which only actual people count in making comparative judgments about what is good for people. The problem with what we may refer to as the “wide person-affecting view”<sup>14</sup> advocated by Parfit is that it inevitably slides down to impersonalism. For ultimately, the only way to justify the preference of creating the happy child of the mature mother to the less happy child of the immature mother must be that the *world* will be better, i.e. there will be a larger amount of overall happiness. It cannot be anything to do with the fact that one particular child would be better off than another child from *its* personal point of view (since no child would be worse off if the other child is born in its stead). So it seems that Parfit’s attempt to replace actual individuals as the object of our comparative judgment is an unsuccessful attempt to stick to some middle ground between pure impersonalism and the narrow person-affecting view.

## The No-Difference View and the Two-Tier View

This effort to negotiate between the allegedly unattractive narrow person-affecting view and impersonalism is clearly reflected by Parfit’s wavering

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<sup>12</sup> JOHN RAWLS, A THEORY OF JUSTICE 139 (1971).

<sup>13</sup> PARFIT, *supra* note 2, at 219.

<sup>14</sup> *Id.* at 753.

between two options left open to him: possible and actual people can be considered as having the same moral weight in our ethical choices (what he calls the No Difference View) or have differential weight (the Two-Tier View), assigning actual people more (for instance double) weight in our moral reasoning than possible people. According to the Two-Tier View, if policy A makes future people worse off than *they* (themselves) would have been had we not chosen that policy and policy B makes people worse off than *other* people could have been had we not chosen that policy, then – other things being equal – policy A is worse than policy B. For policy A harms actual (i.e., the same) people while policy B harms just possible people. Policy B does not really harm anyone but creates people who are worse off than other people who could have been created in their place.

Both the No Difference and the Two-Tier views are problematic since, as I mentioned, they inevitably fall into the trap of impersonalism (which Parfit tries to avoid). The Two-Tier View highlights the problematic nature of including both possible and actual persons in moral reasoning since Parfit does not and cannot give us any clue about the way to measure the relative weight of actual and possible people (or in his terms, particular people and general people). If general people are not people, why should they be counted at all? And why half rather than one third or any other fraction?

To better understand the choice between the No Difference and the Two-Tier views, Parfit offers his old example of the Two Medical Programs (IV). In program A, women are tested during pregnancy for a certain disease that would lead to the birth of a sick child; once diagnosed, they can be completely cured in the course of the pregnancy and give birth to healthy children. In program B, women are screened for the same disease before conceiving, and once diagnosed are advised to delay pregnancy until they are cured; this would bring forth the conception of other children than those who would have been born had the screening not taken place, but the children will all be born healthy.

Now Parfit argues that we should in any case give some weight to the interests of children in program B – be it an equal weight to that of children in program A or some fraction of that weight. He is even willing to prefer program B if the number of children saved from disease is sufficiently larger than that in program A, or if the life expectancy of children B would be sufficiently longer than that of children A. This, I believe is wrong, since if we take the person-affecting view seriously, we must give A an absolute priority over B, meaning that B has no weight at all – neither equal nor weaker than A. For, again, the benefits of general people do not count according to the person-affecting view unless we see them as a means for promoting the overall impersonal good. But if we understand general people as groups of individual

possible people, then counting them in the choice between program A and B can only be based on impersonal comparison, since – as Parfit admits – not being born cannot be considered as a loss for any of those possible persons, and as I would complement, being born cannot be regarded as a benefit. To put it in bioethical terminology, in choosing between the two programs for promoting children's health, Parfit is concerned with *life years* while I submit that the choice should be concerned with *living persons*. If I am correct, program B should be given no weight at all.

Parfit says that the children treated under program A may be thought as if they were future people who have not been conceived yet and hence creates the impression that they are non-existent in the same sense as possible people are. But the whole idea of program A is to treat individual people, who have been conceived but not yet born, whether known or unknown, present or future so as to make *them* healthier. Even if children A do not yet exist, they *will* exist, and in that sense not opting for program A is fully analogous to Parfit's own example of the Broken Glass (I). By choosing B we harm the A children, whereas by choosing A we harm no one, certainly not anyone in particular.

What may be misleading in Parfit's medical program example is the reference to fetuses. Fetuses have a blurred identity as human beings, since metaphysically speaking they are human beings in the making. In that sense they seem to lie half way between possible (i.e., yet un-conceived) persons and fully-fledged individuals. But from the conceptual point of view of the non-identity problem, fetuses are actual people no less than future people who will exist like in the Broken Glass case – people who in Parfit's own eyes merit full moral consideration. They can claim that had we not chosen B, *they* would have been better off. Although many of us believe that abortion is not murder since fetuses have a weaker moral standing than children, this does not mean that there is no sharp a-symmetry between actual fetuses and possible people. One can equally complain for not having received certain medical treatment while in utero and while growing up as a baby. Caring for fetuses and babies has equal priority to “treating” possible persons through their actual mothers. Note that by that I do not imply any anti-abortion view. There might be good reasons for not holding fetuses as having the same *moral* standing as babies. What I am calling for is a clear distinction between the metaphysical (and consequently moral) issue of the status of the fetus as a human being and the conceptual problem of its identity, which is the one that concerns us here.

To test our intuition, take Parfit's following case (V): [blank line = “does not exist”]<sup>15</sup>

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15 All the charts are taken from PARFIT, *supra* note 2, ch. 2, *see especially* 223.)

If we choose A	Tom will live for 70 years	Dick will live for 50 years	Harry will _____
If we choose B	Tom will live for 50 years	Dick will _____	Harry will live for 70 years

Tom is an actual person who will exist anyway, whatever we decide to do (although in one option he will live 20 years longer than in the other). Dick and Harry, on the other hand, are merely possible people because their very existence depends on our choice rather than given as a background for our choice. Parfit takes this case as evidence that the Two-Tier view is unacceptable since it would imply choosing A (favoring the betterment of the actual person's life over the betterment of the life of the general person comprising of Dick and Harry). He believes that there is no difference between A and B. But Parfit considers the horizontal lines (which sum up the overall life years which in both A and B amount to the same number, 120); while the narrow person-affecting view to which I subscribe considers the columns, in which only Tom really counts. The reason is that by not coming into existence, neither Dick nor Harry can be said to lose anything or to be wrongly treated. From that point of view (the "vertical"), it is not only the Two-Tier View but also – as we shall see in the next chart – the No Difference View that do not do justice to our moral responsibilities (which are exclusively related to Tom).

## Comparing Possible Lives

Assume now that all three persons are merely possible people (VI)<sup>16</sup>:

If we choose A	Tom will live for 70 years	Dick will live for 50 years	Harry will _____
If we choose B	Tom will live for 50 years	Dick will _____	Harry will live for 70 years
If we choose C	Tom will _____	Dick will live for 70 years	Harry will live for 50 years

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<sup>16</sup> *Id.* at 224.

Unlike the previous example, in which Tom will exist whatever we do, here Tom may not exist exactly like the other two if we choose one of the three options. This makes Tom, Dick, and Harry equal in their moral standing. Parfit argues that according to the Two-Tier view, A is better than B, B is better than C, and C is better than A, which is paradoxical. Whatever we do, we act wrongly. Hence, we have a further reason to reject the Two-Tier View. But since the three persons are merely possible, there is in my view no comparison between the three cases and hence we may choose between the three policies according to our own self-interest. In contrast to Parfit, I propose a No Difference principle according to which there is no difference between actions leading to the creation of alternative, non-identical persons, in the sense that the very comparison is a category mistake even though it *seems* to lead to equal concern. Parfit, I suppose, misinterprets the Pareto principle. He paraphrases it thus: “One of the two outcomes would be worse if this outcome would be worse for *some people*, better for no one, and other things would be equal.”<sup>17</sup> He understands “some people” as including all possible people; I think that the principle in its standard use applies only to actual people (although it might of course include also future people who are anyway going to exist).

But we might be faced with a choice between options in which like the previous one the outcomes relate entirely to possible people but in which one option is impersonally superior to the other(s) (VII):

If we choose A	Adam will live for 70 years	Bernard will live for 40 years
If we choose B	Charles will live for 50 years	David will live for 20 years

This is a serious challenge to my narrow person-affecting view according to which there is no reason to prefer A to B. Parfit rightly claims that we have a strong belief that A is superior.<sup>18</sup> But I am willing to bite the bullet here and stick to the idea that since the comparison between policies relating to possible people makes no sense in person-affecting terms, we are not obliged to choose A. But consider a scenario which would seem even more challenging to my view: the probability of the existence of Tom, Dick, and Harry in VI is not evenly

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<sup>17</sup> PARFIT, *supra* note 2, at 224 (emphasis added D.H.).

<sup>18</sup> There is a “wide” way in which Parfit’s approach can be said to be “person-affecting,” since all he is interested in is promoting the welfare of *some* future individuals. But strictly speaking, his preference for A over B cannot be justified in any “personal” terms since neither option is good or better from the point of view of either pair of persons.

distributed but, let's say, 98% to Tom and 1% to each Dick and to Harry.<sup>19</sup> One should be however careful here. Since in all of Parfit's imagined choices, it is we, the choosers, who have to make the decision (and are fully free to do so), no probabilities can be assigned to the choice itself (we can equally choose any of the three options). But one may introduce probabilities into the link between our choice and the actual creation of an individual. As has become quite widespread in modern societies, a woman may choose to postpone conception (thus leading to the creation of a different child), but by that reduce the chances of having a child at all. On the basis of the different probabilities of Tom, Dick, and Harry being born, it looks as if A is superior to C (for C would yield only a tiny chance of having anyone born). But it seems to be also superior to B, since although the high probability of Tom being born with a life prospect of 50 years gives us a higher overall number of life years than the longer life of Harry whose chance of getting born at all are slim, still it would be better if the choice included both high probability of being created and having a long-life expectancy (as in A). However, I think that adding the element of probability to the content of the alternative scenarios does not change the issue in the least. It does so only from an impersonal point of view that we are ignoring (as we did with the original, non-probabilistic examples). We have no extra duty toward a possible person whose chance of being actually born (following our choice) is higher than that of other possible persons any more than we have a duty toward a possible person whose life expectancy will be higher than that of his/her "alternative." The actual-possible distinction applies to the way the outcome is dependent on our choice – not on the probability of the choice being actualized.

But in any case note that Parfit added in his original formulation of the whole series of comparisons the *ceteris paribus* condition. In normal cases in which we make such choices as the last one, things are not equal. Since we usually have some relations with our offspring, or generally with the next generation, we have an interest in A rather than B. Such an appeal to the interests of the actual choice makers, which is so natural in family planning but also in demographic and medium-term policies, dispels the difficulty of the preference of A to B despite its apparent fallacious nature due to NIP. A is better for us rather than for the four possible persons or for Parfit's imaginary "general person" (who is here fantastically constituted by two pairs of possible people). Such a "parento-centric" approach explains the grounds for our strong advice to the 14-year-old girl not to conceive. It will be bad for *her*.

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<sup>19</sup> I am indebted to David Enoch for suggesting this example, which to my knowledge has not been raised in the rich literature on Parfit-like reproductive choices.

One may try to solve NIP by changing or widening the metaphysics of the *person*. For instance, “general person” may replace the traditional individual as the object of morality – the carrier of value and the subject of rights. Thus, from a communitarian point of view, governments are responsible for the advancement of the welfare of “society” rather than (or beyond) that of individuals; or we may consider the object of our moral commitment in ecological matters to “generations.” In such cases, once we fix the identity of society or generation we can disregard the question of the identity of particular individuals comprising that society or generation. But note that this does not overcome the philosophical obstacle of NIP but only shifts it one stage higher, since assuming that we have the power to decide whether to create a society (or generation) X or a society (generation) Y, which is completely different from X, NIP raises its head again, and we lose according to the person-affecting view any standard in the light of which we can make the choice.<sup>20</sup> Therefore, the metaphysics of the person is a different issue than NIP, which is a logical problem. Or in other words, once the question of who is the object of moral judgment, the subject of value or the carrier of rights, is settled, the non-identity question arises in contexts of the creation of such subjects (whatever they are). Parfit’s dilemmas would not look easier if the proper names of individuals in the charts were replaced by any other kinds of entities.

Since Parfit addresses the problem of person-affecting ethics through the prism of Scanlon’s contractualism rather than a general theory of value, he does not mention in his latest book the issue of the value of life in non-comparative terms. He deals only with the way we compare two states in which people (either the same or of different identities) are concerned. But there is the further and not irrelevant question about reproductive choices whose alternatives are just avoiding completely the conception of new children. Consider VII: let’s assume that in the case of choice A the alternative is not B but no existence of any new person. Many

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**20** Although individuals have gained in modern times a far-reaching freedom to decide the existence number and identity of their offspring (the ability to prevent conception, to time it, to decide the number of children and even to partly control the identity of future children), states have not (fortunately) achieved a similar freedom to control reproduction (for both ethical and practical constraints). Consequently, demographic predictions present the state (government) with the *given* fact of the existence of a certain number of future people which for the state are all *actual* (since their existence is not dependent on it) and accordingly with the duty to create long-term policies which would take into account the interests of these future citizens. The choice situations of Parfit’s thought experiments can be extended to collective entities only in sci-fi contexts of a ruler who can choose the exact identity of future societies and the individuals comprising them. Such a ruler would not be constrained by moral considerations since there is no way to compare between two totally different societies on other but impersonal grounds.

people would say that A would be superior to non-A. But I am not sure that there are good reasons for this judgment. And what about B having the only alternative in non-B? Here more people would tend to support no reproduction at all. Is there a line which can be rationally grounded for distinguishing between these two preferences? Would Parfit be willing to go all the way down in the quality of the lives of the two members of the B-world to the threshold of life that is barely worth living? Again, and that is the challenge to Parfit, if it can be solved at all, it must be within an impersonalist conception of the value of the existence of human beings.

Another counter-challenge which could be raised by Parfit against the narrow person-affecting approach is the following (VIII):

If we choose A	Tom will live for 70 years	Dick will live for 40 years	Harry will _____
If we choose B	Tom will live for 50 years	Dick will _____	Harry will live for 40 years
If we choose C	Tom will live for 49 years	Dick will live for 60 years	Harry will live for 50 years

Choosing C would be bad (or rather the worst) for Tom and since he is the only actual person under consideration, this should be avoided. But C would add two happy persons (rather than one as in A and B, who will die quite young) with a significant addition of life years at only a marginal cost for Tom. Now had all three been actual rather than possible people, like in real-life cases of medical systems of distribution of organs for transplantation, “sacrificing” one year of Tom’s life so as to significantly ameliorate the lives of Dick and/or Harry would be perfectly acceptable. But would we agree to make such a sacrifice for the sake of possible people? I doubt it. Indeed, in a family planning context, parents could prefer C to both A and B because they are horrified at the prospect of raising a second child (a sibling to Tom who is going to live anyway) who has such poor life expectancy of 40 years. But the parents’ thinking is ultimately about themselves, their pain in raising a child with such bad prospects. Thus, although they had the option of having only two children (which, let’s assume was their initial plan), they prefer having three just for the sake of avoiding to have to raise a child with poor life expectancy. But consider circumstances in which the parents’ choice leads only to the birth of Tom as their child and that Harry and Dick are born as an indirect outcome of their choice and with whom they will have no contact whatsoever after they are born: would we still believe with Parfit that they ought to choose C? Here, our intuitions falter and many of

us would argue that it is perfectly alright for the parents to promote the utmost interests of their actual child with no guilt regarding either of the other two whose lives would not have been created at all had the parents chosen A or B.

Parfit is not the only one who is searching for some middle ground between impersonal and person-affecting considerations. He mentions Larry Temkin's suggestion that in cases like V, since the two possible outcomes yield the same impersonal value, the choice should be made on the basis of the potential *personal complaint* that Tom – unlike Dick and Harry – can make if B is chosen. In other words, when impersonal reasoning leads to a tie, we have to add the second-order person-affecting, individual-based considerations. Now, this two-tier method is the mirror image of a clash between two equally powerful claims (or in Temkin's terms, personal complaints), which can be overcome by applying considerations of the overall impersonal good.<sup>21</sup> But again, these two complementary methods of breaking a tie are reasonable within the group of actual moral subjects (like the equal claims of sick people over donors' organs). In mixing possible and actual people in that group, we encounter problems. For instance, if we are willing to be guided by the "complaint criterion" in cases of a tie in the impersonal utility criterion, why not give the complaint principle some force in non-tie cases? And if so, what kind of force? Why not apply some combination of rights and utility in dilemmas about future people as we do in dilemmas about the distribution of life-saving treatments among actual people? But how? How many additional life years of possible persons would justify the loss of for example 20 years of an actual person?

## Can Reproductive Choices Be Split into Stages?

The problem in the argument for the ranking of worlds of possible, i.e. non-identical, people can be traced in Parfit's analysis of the following set of choices (IX)<sup>22</sup>:

If we choose A	Adam lives for 70 years	Bernard lives for 40 years	Charles does _____	David does _____
If we choose B	Adam does _____	Bernard lives for 90 years	Charles lives for 10 years	David does _____
If we choose C	Adam does _____	Bernard does _____	Charles lives for 50 years	David lives for 20 years

<sup>21</sup> LARRY S. TEMKIN, *RETHINKING THE GOOD: MORAL IDEALS AND THE NATURE OF PRACTICAL REASONING* (2012).

<sup>22</sup> PARFIT, *supra* note 2, at 228.

Parfit argues that according to the Two-Tier View it would be wrong to do A rather than B, B rather than C, and C rather than A. For in the first two choices, the first-tier judgment requires that absolute priority be given to the comparison of the respective outcomes for the *actual* person (Bernard in the first; Charles in the second); while in the third choice (between C and A), since there is no actual person involved, we must adopt the second-tier judgment and opt for the impersonally best (which is A). Parfit believes that this is wrong and the Two-Tier View should be abandoned in favor of the No-Difference View, preferring A to B and B to C (as well as A to C). However, *if* we take the three choices separately, it seems highly counter-intuitive to prefer A to B and B to C because of the priority (according to the Two-Tier View) or the exclusivity (according to my own strictly person-affecting view) of the concern for the welfare of the actual person involved.

However, the choices cannot be thus separated and are not presented by Parfit as necessarily involving three consecutive steps of practical choice. It is methodologically misleading to consider the choices “one by one” (which is also the case for VI). As I see it, the case is a *trilemma* rather than a set of three dilemmas and hence it should be decided in “one go” rather than in stages. This means, if I am correct, that all four people should be considered as merely possible. For no one’s existence can be taken as given (making the person “actual”) and no one can hence resort to Temkin’s complaint criterion since there could be a situation (the result of our choice) in which he would not have existed at all. In deciding between B and C, we cannot rely on a previous choice between A and B.

Parfit tries to reply to this objection with his example of supererogation (X), which aims to introduce some structured order or hierarchy in such sets of choices:

Two people are in danger and I can save them only at a great risk to myself. But once I save one, I can save the other at no extra cost or risk. I can do one of the three things: (1) Nothing, (2) Save one, (3) Save two. Doing nothing would not violate any duty since the risk involved in the action makes it supererogatory, viz. lying beyond the call of duty. But once I save one, I have a duty to save the other (because this extra effort does not put me under any further risk than that I have already undertaken).

Now, I am not sure that Parfit is right that in this case we can separate the two choices (that of moving from the first to the second and that of moving from the second to the third) since the rational way for the assistor is to ask him or herself whether taking the risk is justified and one major consideration would be the number of lives saved. This calls for a *global* rather than a two-step

deliberation. Other things being equal it would be irrational to reach the conclusion that saving one person justifies the risk or the cost but saving two people does not! So exactly as in Case X, the separation of steps in some quasi-temporal order is not the right analysis of the case of supererogatory assistance. And we should also note that there is something misleading in the analogy since the unassisted person is an actual person who would directly benefit from being saved and who can be ascribed with rights; while the unborn possible person cannot be said to be saved from the misery of non-existence.

Thus, Parfit wrongly distinguishes in IX between the choices between A and B and between B and C, which he considers as relating to actual people and that between C and A, which he considers as relating to possible people. As I said, all three relate to possible people because they cannot really be separated into three distinguished stages or comparisons. Had we *first* chosen between A and B, there would be no further choice to be made, since people would be born and their existence and life expectancy fixed and impossible to be negotiated for a better “deal” for other, future possible people. In any case, Parfit believes that we should opt for A, since it promotes the overall life years. I think that there is no compelling reason why we should do so and that if we have to make a reasoned choice, we would make it on the basis of our own interests as actual people.

## Intrinsic Goodness and Impartial Reasons

It should be noted that Parfit often uses the term “intrinsic” good to refer to the condition in which persons are irrespective of their status as actual or possible. A is thus intrinsically better than C. But this impersonalist understanding of “intrinsic” is not the only possible one. Person-affecting ascription of value can be no less intrinsic. For example, one can say that philosophizing is intrinsically good or that justice is an intrinsic value without committing oneself to an impersonal view of value. The meaning of such an ascription is that given the existence of human beings, institutions of justice are intrinsically (non-instrumentally) valuable. That is, for example, Rawls’ view, namely that we should promote future justice on the assumption that there will be people living in the future rather than producing children in order to maintain or “actualize” the impersonal value of justice. And it does not mean that we should prefer creating these people rather than completely different people only because more justice will prevail if we do so. We are fully free to create our offspring even if their system of justice would be less just than had we created other people by

artificial genetic means. Furthermore, when Parfit says that the adolescent mother can be said to *wrong* her child who is born when she is too young, he argues that she violates the child's rights by not being able to fulfill these rights. This again seems mistaken. The child has no more rights to be raised by a mature mother than does a child in Senegal have the right to be born to Danish middle-class parents. The difference between the case is just a psychological matter grounded in the limitation of our imagination: We can fantasize (with no logical basis) about being born to our mother but to a different father, but it is harder for us to imagine being born to a different couple, let alone to a couple in a completely foreign culture or historical period.

Parfit tries to advise Scanlon with the best reasoning which is open to him as a "personalist" theorist, i.e. one who holds that only actual individuals (who exist or will exist) can have reasons for rejecting a principle. Parfit suggests that Scanlon consider not only standard personal reasons but also "*impartial* reasons for rejecting principles that permit or require certain acts."<sup>23</sup> The term "personal" however is ambiguous: it can refer to either the opposite of "impersonal" (i.e. person-affecting) or to the opposite of "impartial" (i.e. partial, biased). Parfit says that since personal reasons cannot explain the concern we should have for future possible people (since they cannot reasonably reject any principle), Scanlon should appeal to impartial reasons that *we* (the choice makers) have. But this does not seem right, since the problem of non-identity does not apply to the choice maker but to the *object* of the choice, namely possible people. We can indeed have impartial reasons (beyond the personal in the sense of partial), but they cannot apply to non-actual people. My argument (and understanding what Scanlon says or at least should say) is that impartiality is a principle of concern which applies only to *actual* people (those who exist or will exist) while the impersonal applies to all *possible* people or rather to the world as a whole. Hence, we cannot be said to violate impartiality if we do not give equal consideration to Dick and Harry as we do to Tom (V). Conceptually we can be required to consider impartially the babies and fetuses in medical program A (even if some would object to it metaphysically), but not the yet-unconceived children of program B.

Hallvard Lillehammer suggests that "we should be impartial when deciding whom, among merely possible people, to cause to exist"<sup>24</sup> I find this equally problematic. Although Lillehammer draws a distinction between impersonalism and impartiality, I cannot see how it applies to possible individuals. Indeed, as he claims, one can adopt an impersonal view and be impartial (for instance by

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<sup>23</sup> PARFIT, *supra* note 2, at 237 (emphasis added D.H.).

<sup>24</sup> Hallvard Lillehammer, *Reproduction, Partiality, and the Non-identity Problem*, in HARMING FUTURE PERSONS, *supra* note 3, at 231–48.

promoting the good of future people whoever they are) or be partial (for instance by leaving one's fortunes to one's own future family). But these preferences must refer to a group of actual people (including future ones). Thus when he says that people are partial in insisting that they want to have "their own" child, they are giving personal priority to themselves over other couples rather than to their prospective child over other possible children. Accordingly, if there is shortage in assisted reproductive technology, the fact that a couple wants to be on the top of the list does not have to do with partiality toward their prospective child but with partiality toward the urgency of their own wish to have a child versus that of other couples. And as for a strictly impersonal view, the principle of impartiality is not applicable. We simply ought to bring into the world those children who would maximize overall happiness in the world. By definition this should require ignoring their particular identity, but it does not require – as impartiality does – the equal consideration of the rights, claims, and value of all individuals in a certain group. Lillehammer's demand seems particularly counter-intuitive in the decision of Parfit's 14-year old girl (III). Can we say that she should consider delaying pregnancy because she must be impartial between the child she can conceive now and the child she can conceive later in life? Finally, Lillehammer argues correctly that impartiality is partly a function of the unbiased integration of partial perspectives. Every individual is partial toward his or her own good, including the continuation of his or her life. But possible people cannot be partial about their own coming into existence. It cannot even be said to be in their interest. Hence there is nothing to be integrated into an impartial perspective in reproductive policies, unless we think of the parents' point of view of their interests and needs. Creating physically stronger children (instead of other weaker children, as in Lillehammer's example) can be justified only in impersonalist terms. Impartiality has nothing to do with it.

Impartiality, therefore, requires us to give an equal weight to people who are going to live in the future (going to live *anyway*) and hence often to sacrifice some of our welfare for their sake. But impartiality is of no use in the case of deciding between having a baby born to a mother at the age of 14 or a baby born to the same mother at the age of 25. If my objection to Parfit's conflation of impartiality and impersonality is valid, it seems that Parfit's offer of help to Scanlon ("which would keep [his] greatest contribution to our moral thinking")<sup>25</sup> will not work. Scanlon would be right in sticking to his strong personalist or rather "person-affecting" view, that is to say, "the beings whom it is possible to wrong are all those who do, have, or will actually exist."<sup>26</sup> Parfit says that such a

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<sup>25</sup> PARFIT, *supra* note 2, at 240–41.

<sup>26</sup> *Id.* at 241.

view conflicts not only with the No Difference View but also with the Two-Tier View. Indeed, this has exactly been the point of my oppositions to giving *any* status to possible people.

## Conclusion

In *Reasons and Persons* Parfit tried to find what he called Theory X that would account for the conflicting impersonal and person-affecting intuitions. Had he opted for pure impersonalism, he could have done without all the idealized examples, charts, and diagrams; he could simply adopt Benthamite utilitarianism. But he was the first philosopher to raise the problem of non-identity that presupposes a person-affecting approach. Yet this approach led to conclusions which he intuitively rejected. Now he is searching for a middle ground, a sort of wide person-affecting view, which applies (inevitably) to possible people. He believes that switching from the value terms of the older book to Scanlon's language of reasons in his contractual theory would help him to find that middle ground. This requires him to adopt either the No Difference View or the Two-Tier View, both of which introduce "general people" to whom we can refer only *de dicto*. But once he takes general people, i.e. a group of possible people, as the object of moral reasoning in reproductive decisions, it is not clear how he can avoid pure impersonalism. For if we take Dick and Harry as one "person" whose welfare we should promote (by either producing Dick or by producing Harry), there is no reason why we should not include in this group Joan who could be born to the same woman rather than Dick and Harry, or even Jane who could be born to a completely different woman. Such extensions of the scope of "general person" would quickly lead us to the duty to take into account the welfare of *all* possible children, which I believe is exactly the idea of pure impersonalism that Parfit tries hard to avoid.

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