Deontology, Non-Identity and Future People

Robert Huseby
The Ethics Programme and
Department of Political Science
University of Oslo
(roberthu@stv.uio.no)
1 The Non-Identity Problem

Many of our actions will affect the welfare of future people. For instance, continued emissions of greenhouse gases may lead to future environmental degradation. This will negatively affect people’s lives. If we continue emitting GHG’s into the atmosphere, are we then harming future people? In light of the so-called non-identity problem, we are apparently not.

It is commonly assumed that an act harms a person to the extent that the person is left worse off than she would have been, had the act not been performed. Initially, it seems reasonable to assume that we can harm future people, for instance by depositing toxic waste in an unsafe way. It can be argued however, that this is not always true.¹ In some cases, people could not have been born had it not been for those actions that are now negatively affecting their welfare. One common example is climate policy. A society can be in a situation in which it must choose between a policy of reducing emissions, and a policy of polluting at the present level. The first policy will result in a higher level of...
welfare for future generations than the second. However, this choice of policy is also implicitly a choice of future populations, because reducing emissions will have societal impact in many big and small ways. This will affect the identities of new people, and over time, the total population will have been replaced, relative to the population that would have resulted had the policy not been implemented. If emissions are not reduced, then, those future generations that exist, say three hundred years from now, and who are badly off because of policies implemented centuries earlier, cannot, for this reason, claim to have been harmed, because in the alternative world in which emissions are reduced, these people do not exist.\(^2\)

The same problem arises also in smaller contexts, if, for instance, a child is negatively affected (by a limiting handicap, say), in a way that could only have been avoided if conception had taken place at a different time.

The implications of the non-identity problem seem highly counterintuitive, but it has proven difficult to get around it, at least on a person-affecting view of morality.\(^3\) This is embarrassing, because it reveals that many moral theories are unable to account for why we should be concerned with what many regard as the most important moral challenge of our time.

In the following I assess three recent attempts, (by Alan Carter, Edward Page, and Rahul Kumar) at grounding concern for future generations in deontological moral theory. Although these attempts are all promising, I conclude that none are completely successful.

\(^2\) Parfit 1984, 361-3

2. The Limits of the Non-Identity Problem

Alan Carter accepts (apparently for the sake of argument) the main tenets of the non-identity problem. He agrees that acts that cause existence (at a positive welfare level) cannot harm. However, with special reference to environmental policy, he argues that the problem will not often arise, and that we can certainly harm future people even if these people’s existence is only possible in the world in which previous generations continued pollution.

To make good his claim, Carter points to the fact that there are many possible future worlds whose populations are overlapping. One major policy decision will normally not entail that the next generation is completely distinct from the next generation that would have existed had the policy not been implemented.

Carter imagines three people, Andrea, Ben and Clara. They exist in the actual world, and the three of them are presently depleting the environment. These activities cause Xerxis, Yolanda and Zak to exist in the future. In an alternative world, Andrea, Ben and Clara refrain from degrading the environment. In this world, Xerxis, Yolanda, and Zak are never born.

In the first world, the world of depletion, Xerxis, Yolanda, and Zak must face the challenges of a depleted environment. If we accept the challenge posed by the non-identity problem, Andrea, Ben and Clara, in this case, have not harmed Xerxis, Yolanda or Zak.

As Carter argues however, if, in the world of depletion, Clara decided to stop her environmental degradation, this would not have altered the future population entirely. If we assume that only Zak is thus dependent on Clara’s depletion, then Xerxis and Yolanda, but not Zak, would exist in the future if Alice and Ben choose depletion while Clara choose conservation. In this alternative future

---

6 Carter 2001, 441.
world, Xerxis and Yolanda are better off than in the future world that includes Zak. Thus, if Clara depletes, she harms Xerxis and Yolanda (though not Zak) because in the world where Clara depletes they are (in the future) worse off than in the alternative world where Clara depletes and Xerxis and Yolanda still exists in the future (though not Zak). The same is true of Alice and Ben, with regards to Xerxis and Yolanda, respectively. On the basis of this analysis, Carter concludes that Andrea, Ben, and Clara individually harm some, but not all future people.

It is worth noting here that this does not solve the non-identity problem. The argument is valuable, however, in that it highlights the possibility that the non-identity problem might sometimes be overstated, and that it does not arise as often as many seem to think. The argument does nothing to evade implausible implications in small pre-conception cases, but it may nevertheless have real bearing on climate issues. Most of us would welcome this. That we would welcome it does not mean that we should not assess this analysis closely, however. Despite its initial promise, there might be some problems with the approach.

It is true that individual acts to some extent harm those future people whose existence is not contingent on one’s actions. Consider however the following (not wholly unrealistic) scenario. The world faces an energy crisis. In order to avoid plummeting into a massive economic breakdown, this crisis must be solved. There are two main options. Either a) to invest all available resources in the pursuit of developing the technology necessary for extracting vast, newly discovered but hard to access oil reservoirs hidden deep below the earth’s surface, or b) investing all available resources in developing the technology necessary to develop renewable energy on a scale sufficient to avoid economic

---

7 Carter 2001, 441.
8 Carter 2001, 442.
decline. Assume that this choice is real and that both policies are so demanding that compromises most likely will have the result that neither policy fully succeeds. Assume further that the decision is made collectively in a legitimate way, for instance through suitable international institutions, after inclusive and democratic discussions on the domestic level. Lastly, assume that policy a) is chosen, and that this over time depletes the environment in such a way, that some generations down the line, people's welfare levels are substantially lower than the welfare level of the people that would have existed, had policy b) been implemented instead.

If it is true that the population three generations after policy a) is chosen is completely distinct from the population that would have existed at the same point in time had b) been chosen, then it seems to follow that most ordinary acts of depletion undertaken after a) is chosen is dependent in the same way on the choice of a). If so, most individual acts cannot be said to harm even those that are not caused to exist by one’s individual actions of depletion. Surely, one might argue that if I spend my days emitting carbon dioxide just for fun, I harm future people. But I do not harm future people through ordinary conduct within the frames set by the choice of policy a). The reason is that conserving at the level possible if b) is chosen might well be too costly for individuals in a world governed by policy a).

One might think that individually, the people who partake in the decision that leads to the adoption of policy a) harm future people. But this seems implausible. Collective decisions are the result of many agents’ choices. Assume for simplicity that the policy is adopted by an all-inclusive democratic vote. If a) is chosen, Population A will exist in the future. If b) is chosen, Population B will exist in the future. These populations do not overlap. Most likely, Alice’s single vote will make no difference, and even if it did, even if it was the case that her vote decided the election, she would still not have harmed
anyone, because her vote would have decided the whole future population (the same, of course, is true if Alice is a world dictator who individually decides to implement policy a)). It seems, moreover that these are the scenarios in which the non-identity problem is most devastating. Few people believe that there is no way in which to harm future people. To the contrary, this is easily done. The most important question is whether we harm future people by for instance not implementing large-scale reductions in the emissions of GHG’s.

In order to reduce global warming in the future, large societal changes are needed. These changes will lead to a different population than the one which will obtain if the changes are not implemented. Therefore, we have, if we accept the non-identity problem, no moral reason to undertake these large changes. Although we do have reason to protect the environment in other ways, ways which will not affect who is born in the future, it seems that there must be some limit to the cost it is reasonable for existing people to incur in order to benefit future people. In particular it seems unreasonable to ask the world’s poor to pay this price. Many developing countries are today dependent on using environmentally polluting technologies in order to raise the welfare levels of their citizens.

In reply, we could note that if all those who can, incur some cost in order not to harm those in the future whose existence do not depend on their actions, this could amount to real change. It could also lead to the discovery of new technology which in turn could be exported to those who cannot incur the cost themselves. This would further improve the situation of future generations. In this case, no major shift in world energy policy is involved. Rather, small steps taken by those who harm some (but not all) future people, lead to further changes which adds up to a major shift in policy. If so, Carter’s argument may be successful after all.
However, before we conclude that this is the case, we should consider a further possible problem. As we recall, Clara harms the people that she does not cause to exist. Therefore she should stop polluting, or degrading the environment. The same is true of Alice and Ben. But as we also recall, if all of them act as they should, Xerxis, Yolanda, and Zak are not born. Thus, Clara harms Xerxis and Yolanda only if Alice and Ben deplete as well. We can see this more easily if we reduce the number of people involved. Assume that A and B live in the actual world. If A depletes, X is born in the future. If A conserves, P is born in the future. If B depletes, Y is born in the future. If B conserves Q is born in the future. Consider then the following four scenarios.

1. A depletes, B depletes. X and Y are born in the future.
2. A conserves, B conserves. P and Q are born in the future.
3. A conserves, B depletes. P and Y are born in the future.
4. A depletes, B conserves. X and Q are born in the future.

In 1, A, according to Carter, harms Y, because Y in 1 is worse off than she would have been in 3, in which A conserves. However, in 2, A also conserves, but Y is not better off, since here Y do not exist. Thus, if A conserves, this is not necessarily better for Y. The same is true of A’s depletion. A’s depletion harms Y in 1, but not in 4, in which Y does not exist. Whether or not A harms Y, moreover, depends crucially on B. More precisely, Y can only be harmed by A if B depletes. Similarly, X can be harmed by B, only if A depletes. Thus, on Carter’s view, both X and Y are harmed. They both have equally valid claims not to be harmed. However, if neither is harmed, none of them is ever born. This casts some doubt on the validity of these claims. Y’s valid claim can only be met if X is harmed. And X’s valid claim can only be met if Y is harmed. This seems to undermine the force of both claims. In addition, if we consider the
situation from the standpoint of X and Y, it seems that both have reason
(hypothetically) to waive their moral claims not to be harmed, since this is better
for both than if both claims are met.

It could of course be argued that the only morally relevant fact for Y in 1 is
that she is harmed relative to 3. After all, 3 is the only possible world in which
Y is not harmed by A. But it would be hard to maintain that 3 is the only
morally relevant alternative for Y, because this implies that 4, for the exact
same reasons is the only relevant alternative for X. If A and B take these reasons
seriously, and for that reason tries to bring about 3 and 4 respectively, 2 comes
about. Given the assumptions, this is a fact. But 2 cannot be said to be better for
either X or Y.

3. Obligations to Future Collectivities

Edward Page has argued that an appeal to collectivities might help circumvent
the non-identity problem. In his view, such “group-centred” views are “special
instances of identity-dependent views…”⁹ Group-centred views, moreover, are
characterized by the fact that they hold that an act can be wrong even if it does
not harm any particular person. An act can be harmful because it affects a
particular group for the worse.¹⁰ On this view groups can possess ethical rights
in ways that are not reducible to the individual rights of the members of the
group. Groups have ethical rights in much the same way as corporations can
have legal rights.¹¹

---

⁹ Edward Page, “Intergenerational Justice and Climate Change”, Political Studies XLVII (1999), 53-66,
and Edward Page Climate Change, Justice, and Future Generations (Cheltenham, Edward Elgar, 2006).
Page uses the terms groups and collectivities interchangeably (Page 2006, 130).
¹¹ Page 2006, 130. Note that the view that groups can have rights is not a focus of attention in Page
1999. My arguments do not depend on the question of rights as opposed to mere harm.
The implications of this theory are well exemplified by the fate of low-lying nations and regions in the event of sea-level rise resulting from climate change. Some small pacific islands are threatened by total destruction if IPPC estimations concerning sea-level rise turns out to be correct. On the assumption that individual islanders cannot be said to have been harmed (because they would not have existed had an alternative policy of conservation been implemented), Page asks whether the island community have been “harmed by … the failure of previous generations to implement GHG limiting policies…”13

On the Group-centred view, there is some reason to think so. Regardless of what environmental policies that have been implemented in the past, it is plausible that some group or community exist on pacific islands in 2100. The question then, is whether “…the interests of those groups are deserving of concern and respect in their own right.”14

The main justification for this view is that cultures realize some sort of impersonal value that is distinct from the value cultures may bring to people. If a whole nation perishes (in part because the young flee the island and take up life somewhere else), as might happen to certain pacific islands, the islanders’ cultural and linguistic heritage becomes impoverished.15

Because it assumes that there is inherent value in the survival of certain groups and these groups possess valid moral claims qua groups, the group-centred view appears to avoid the problems of non-identity. This is because the conditions of existence of many future groups (such as states, nations, or cultures) will often be robust to the

---

13 Page 1999, 63.
14 Page 1999, 63, emphasis in original. Alternatively, one could ask whether the group’s rights have been violated (Page, 2006).
15 Page 1999, 63.
point that they will not be affected by environmental policy decisions made in the past … [T]he central idea appears to be plausible: that climate changes will in certain instances jeopardize the survival of certain communities and traditional patterns of life quite apart from the effects it will have on the individual members of these cultures.\[16\]

There is no reason to deny the empirical assumption that some cultures and traditional patterns of life may be jeopardized by climate change. Also, it is indubitable that most groups of the relevant sort will not owe its existence to environmental degradation in the past. However, there are several important questions that must be answered before we accept that the group-centred view solves the non-identity problem.

First, it is not obvious that groups can be inherently valuable in their own right. If we nevertheless grant that groups can have such value, the challenge is to define what kind of groups that can be valuable in this way. There are many groups in the world, and there is little reason to think that all these groups are worthy of protection and moral concern. What characterizes groups whose survival is inherently valuable?

Page suggests that “…we adopt a ‘practical’ approach to ethical standing, we should not be deterred by the lack of a clearly definable list of conditions that will rule certain entities in, and other entities out of the bounds of justice”.\[17\] Instead we should consider which entities we in fact tend to ascribe ethical status to. As Page himself, points out, this is not a fully satisfactory approach. Ideally, we should be able to give persuasive reasons for assigning value to an entity.

\[16\] Page 1999, 63-4.

\[17\] Page 2006, 153.
Another worry is that the group-centred view, even if defensible, may turn out to provide scant guidance in policy questions. Many features of our world leave collectivities, and their ways of life, in flux. Groups generally persist over time. They also change over time. In many cases the changes groups undergo in a couple of centuries are quite radical. If Group G at time t has a particular and valuable way of life w, then it seems as if G at t2 has a different though valuable way of life w2, and this is a result of external influences, including policies, then G is somehow violated, because the former way of life w has in one sense been destroyed, even if it is replaced by another valuable way of life.

Further, it might be true that a policy of depletion risks destroying (and thus harming or violating the rights of) certain cultures. But it seems equally plausible that other patterns of life, and other cultures or groups may be threatened by a policy of conservation. In fact, it is quite hard to believe the opposite: that a major global shift of energy policy will not adversely affect any relevant group. It seems however, that some argument to this effect must be given, if the justification of this policy-shift is the concern for groups. Alternatively, an argument could be given that more groups, or more valuable groups are threatened by a policy of depletion than a policy of conservation. I do not want to rule out the possibility that some such argument could be given, but it seems that they would be quite complex and perhaps insecure.

Also, there are other problems with conceiving groups as moral entities which are capable of being harmed, and whose value is independent of the individuals who constitute the group. For instance, can a group be harmed if its members voluntarily leave in pursuit of other ways of life?

This is not a hypothetical problem. Many traditional ways of life have trouble keeping the attention of the young. Are these groups then relevantly harmed? If not, why? If yes, what restrictions does this pose to those who contemplate leaving? Are they harming the group in the same way as emissions of GHG’s
will harm certain groups? This seems to be the implication of a view of collectivities that take groups to be valuable apart from the value they have to the individuals who belong to them.

Consider the following example. Due to lack of communication and infrastructure, a group lives in relative isolation from the greater society. The group has a traditional life-style, and cultivates and takes pride in its linguistic and artistic heritage. The surrounding society aims to bring the goods of modern life to all its citizens however, and develops infrastructure which facilitates more extensive contact between the group and the rest of society increases. As time passes, more and more young people are attracted to the comforts of modern life, and leave their birthplace in order to take up life in urban settings. Older people, and the young who stay, regret this. After a while, the group realizes that its distinct way of life is threatened. However, access to modern technology and comfort has in many ways improved their quality of life.

Is the society to blame? The group is threatened by destruction. Many regret this. But those who leave do so voluntarily, and for something they perceive as a better life. Those who stay are not harmed, apart from realizing that their cultural heritage will not survive them. If groups can be harmed, or have rights, distinctly from the individual members, it seems that this group is harmed in the same way as the pacific islanders.

Of course, there is one difference. The individual islanders are not harmed, because they would not have existed in the world in which their culture is not threatened. Thus, there is no conflict between individual and group rights, and the latter tips the scale. In the case of the traditional group, the individuals actually benefits from moving, and it would be absurd to force them to stay. However, the harm to the group (or rights-violation) seems to be similar in both cases. In my view, this cast the notion of group rights into doubt.
However, if we do accept the notion of group rights, we would still, as suggested, balk at the idea of limiting the opportunities of individuals in order to respect the rights of a group, when no individual rights violation is involved. This points to a limitation in the group-centred view. The islanders are not harmed individually. If we reduce emission on account of the islanders we do so on account of a group. However, reducing emissions will restrain the opportunities of hundreds of millions existing people. Why should the rights of a group whose individual members suffer no harm (though they may of course suffer) take precedence over the interests of billions of individuals?

Page further observes an interesting connection between the group-centred view and Thomas Scanlon’s contractualism. The suggestion is that Scanlon’s judgment that “an act is wrong only if its performance “would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement”. In order for this to work out, Page notes, groups must have properties such that they meet Scanlon’s criterion that

(1) moral beings must possess a good in the sense ‘that there be a clear sense in which things can be said to go better or worse for that being’, and (2) moral beings must ‘constitute a point of view; that is there be a such a thing as what it is like to be that being’.

Page suggests that there “seems to be no insurmountable barrier in the way of those who whish to argue that can be such thing as a group point of view, or perspective on things, or that things can go better or worse for at least some

---

groups.\textsuperscript{19} This seems true, but it is less clear that there is such a thing as \textit{being} a group. According to the quote from Scanlon, there should be such a thing in order for a group to be a moral being. This seems to require a defence. Alternatively, it might be possible to argue in favour of a relaxation of Scanlon’s criteria on this count. This would, however, also require more argument. Note however that if the requirements are relaxed, museums, football clubs, and academic institutions are also candidates.

4. The Nonconsequentialist Account

Rahul Kumar starts by rejecting the notion of harm presupposed by the non-identity problem. He argues that harm does not always constitute a moral wrong, and that moral wrongs do not depend on inflicted harm. In his view, the traditional notion of harm, which he labels “the outcome approach”, implies an unjustified consequentialist bias, in that harms, and thus wrongs are evaluated in terms of counterfactual assessments.\textsuperscript{20} In contrast, on a truly non-consequentialist understanding of wronging, it is not relevant what happens to a person, or whether the identity of the harmed exists in both an actual and a possible outcome.\textsuperscript{21} On non-consequentialism, what matters is “…how the wrongdoer has related to the wronged (quite apart from the consequences for the victim).”\textsuperscript{22} Kumar suggests that Scanlon’s contractualism might provide a nonconsequentialist account of harm that is able both to avoid the non-identity problem and vindicate “commonsense convictions concerning who can be wronged.”\textsuperscript{23}

\textsuperscript{19} Page 1999, 65.
\textsuperscript{21} Kumar 2003, 101.
\textsuperscript{22} Kumar 2003, 105.
\textsuperscript{23} Kumar 2003, 105.
The non-consequentialist contractual account thus rejects the outcome approach, and holds instead that being wronged “requires that certain legitimate expectations, to which one is entitled in virtue of a valid moral principle, have been violated”\textsuperscript{24} These expectations vary with the type of relationship one has to another person.\textsuperscript{25} The main idea is that wronging is a failure on the part of the agent, and not the fact that the “wrongdoer has left the wronged worse-off than she otherwise would have been”\textsuperscript{26}

Kumar is concerned that contractualism may seem counterintuitive in that it focuses so strongly on the culpable wrongdoer, rather than on the wronged. This worry is put to rest because of the

*individual reasons restriction*, which isolates as morally relevant for the justification of principles that regulate individual relations only those considerations that have a bearing upon the recognition of the status of a person as one capable of rational self-government. The restriction should be read broadly enough to encompass considerations that anyone has reason to care about in the early stages of the developmental path that generally results in the realization of the capacity for rational self-governance.\textsuperscript{27}

According to Kumar, the individual reasons restriction enables contractualism to accommodate the intuitions that fuel the outcome approach.

\textsuperscript{24} Kumar 2003, 106.
\textsuperscript{25} Kumar 2003, 106. Note that person refers to a normative ideal of a person. Kumar follows Scanlon, and hold the normative ideal of a person to be that of a rational self-governor. A rational self-governor is a “creature capable of recognizing, and acting upon reasons” (Kumar 2003, 106), and “with a capacity to select among various ways there is reason to want life to go (T. M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998), 105 (quoted in Kumar 2003, 106).
\textsuperscript{26} Kumar 2003, 108.
\textsuperscript{27} Kumar 2003, 108.
It does so by securing a connection between culpably failing to comply with the legitimate expectations of another – or wronging another – and a failure to have appropriately recognized her status as a person in one’s understanding of how it is appropriate to relate to her. While rejecting the idea that having been wronged has to do with having been left worse-off, then, contractualism can be understood as recognizing the importance of the intuition to which this idea appeals, namely that to be an instance of wronging, an action must be such that it can make the kind of difference to a person that can be appealed to as a basis of a claim to have been wronged.28

Does this accommodate the intuition behind the outcome approach? In one sense yes, because it rules out the possibility that my legitimate expectation to you can imply that you in any sense wrong me by deciding to have salad rather than sandwiches for lunch. But then again, the absence of such a limitation would simply be absurd. It is also worth noting that for an action to be an instance of wronging it must “make the kind of difference to a person that can be appealed to as a basis of a claim to have been wronged.” One way in which an act can make a difference to a person is making him worse off than he would have been. A difference, one might think, is a sort of relation, in which the relata in many cases will be states of affairs. It is tempting then, to think that in some cases an act makes a difference to someone if he is made worse off (than he would otherwise, in an alternative world in which the act was not committed). If so, contractualism too, is outcome-oriented, despite Kumar’s remarks to the contrary.

However that might be, Kumar is right to point out that wronging and harming are not co-extensive. The outcome-oriented notion of harm cannot stand alone. It is reasonable to think that people can be wronged even when they

28 Kumar 2003, 109-110.
are not harmed. It is also reasonable to accept that someone can be harmed without being wronged. It is not harms, but *undue* harms that constitute wrongs. Harms are potential wrongs, whether or not they are, in the end, wrongs, depends on justified rules of conduct. But surely, some of these rules are justified in part by what a particular harm amounts to. In other words, some harms are wrongs in virtue of their outcomes. I do have legitimate expectations that you do not chop off my right leg. If you do this, you culpably fail to comply with my legitimate expectations. The same is true if you take the last cookie without asking if I want it. But there is a difference between the two cases that are not best explained in terms of legitimate expectations, but in what your acts lead to, or the outcome.

Anyhow, Kumar argues that focusing on what was done instead of what happened will enable the contractualist to evade the non-identity problem. He admits, however that it is at first not entirely obvious

[H]ow can one have wronged another when there was no “other” who stood to be wronged by one’s conduct at the time of that conduct, and who is now the particular person she is because of the conduct in virtue of which she takes herself to have been wronged?30

These questions seem pertinent. The answer according to Kumar is that legitimate expectations in contractualism are those expectations certain *types* of persons (for instance one’s children, children in general, family, friends, students or colleagues) can legitimately have in certain *types* of situations (for

---

30 Kumar 2003, 110.
instance teaching, socializing, working, or considering whether to have a child).\footnote{31}{"[T]he “types” in question are simply normatively significant sets of characteristics, whose instantiation together may be found in actual, substantial individuals, and in the actual situations in which individuals find themselves.” (Kumar 2003, 111).}

This means that any individual’s legitimate expectations depends on “both a) what expectations can in fact be defended on the basis of the relevant principle, and b) the relevant type descriptions that happen to fit her an her circumstances at that time.” Principles are here the word for legitimate expectations of a type of person in a type of situation.\footnote{32}{Kumar 2003, 111.}

Relevant types may be that of a person understood as a rational self-governor, or more specifically a husband, a child, a dependent or a caretaker.\footnote{33}{Kumar 2003, 112.} Kumar goes on to argue that even though one normally knows those individuals who are entitled to legitimate expectations in relation to one’s acts and decisions, this is not necessary. It is sufficient that one has “reason to take the other to be of a certain type.”\footnote{34}{Kumar, 2003, 112.}

It is not hard to accept the basic tenet of this argument. Children are entitled to certain expectations concerning their parents’ behaviour towards them.\footnote{35}{We might add that children are entitled to certain expectations concerning their parents’ behaviour in general.} Kumar tries to establish that anybody being a token of the type child has legitimate expectations that her parents care duly for her welfare. According to Kumar, in some circumstances, these expectations include preconception screening for certain limiting handicaps.\footnote{36}{Of course, whether or not this is the case also depends on other circumstances, such as the access to the screening procedure and so on.} This holds regardless of the identity of the child that happens to be born. The prospective parents are responsible for
taking into account the legitimate expectations of their future child. Among these expectations is the expectation that the parents take reasonable steps to make sure their future child is not handicapped. At this time, then, the parents take into consideration the legitimate expectations of a type of person, the type of which any child of theirs will be a token.

The question here is really who can have legitimate expectations before conception has taken place. Kumar suggests that the child (whose parents neglected to screen for handicaps) have been wronged. Thus, it must be her legitimate expectations that have been violated. But it seems odd that her expectations are violated before she is even conceived. As Kumar realizes, this means that she is equally wronged even if she happens to be born healthy. If the parents had delayed conception in order to screen for handicaps, the wronged child would not have been born. But it seems that it is the instantiated actual self-governing person that actually has these claims. Smith’s children are entitled to expect that he care for them. The same would have been true of the children Smith might have had, but do not in fact have. But to the extent that these other non-existent children are in fact not Smith’s children, they do not in fact have the legitimate expectations that they would have had had they been his children.

Of course, Kumar avoids identity-dependence by focusing on types. If the child in question is not born, another child, conceived later, will be born instead, and her legitimate expectations have not been violated. However, if the first, wronged, child is born, nonconsequentialism implies that respecting her legitimate expectations imply her not being born in the first place. After all, she is a token of the type child, and she is born, and her legitimate expectations are hers, even if these expectations can be generalized to all instantiations of her type. Thus, she has a legitimate expectation of not being born, whether or not she is born healthy. This seems a bit awkward. It is hard to believe that actual
children carry along the legitimate expectations that the type children have even before they are conceived, especially since the expectations imply never being born.

Consider also an alternative scenario. A couple considers having a baby. They do not screen for handicaps. Unfortunately, they do not conceive a child. Are they still culpable? It seems that they are, since they have failed to take due account of the legitimate expectations of the type children. As we remember, nonconsequentialism focuses on the wrongdoer, and how he or she takes into account the interests of types of persons. It is not outcome-oriented. But since there is no instantiation, who has been wronged? (This is really a non-identity problem).

Lastly, note that Kumar’s example concerns a child with a handicap that impose “severe restrictions on the quality of her life”, but who nevertheless has a life “objectively worth living.” There are many things that can severely restrict the quality of one’s life, without reducing it to a level not worth living. Lack of intelligence, unfortunate looks and poverty may at times fit this description. These traits are sometimes hereditary (socially or genetically). Have parents of less than average intelligence wronged their children, simply by trying to conceive them?

It seems that Kumar’s attempt at solving the non-identity problem does not succeed. Although his arguments concerns pre-conception cases, it is likely that this lack of success carries over to larger cases concerning climate change and future generations.

5. Conclusion
In my view, none of the theories examined in this paper can be said to avoid the non-identity problem altogether. Although many are reluctant to give up a
broadly deontological moral outlook, it seems to me that we have reason to accept at least elements of a consequentialist, non person-affecting doctrine, because this will better make sense of the convictions we have concerning who can be harmed (and wronged).

37 Kumar 2003, 99 (and note 2).