Toward A Rights-Based Solution to the Non-Identity Problem

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The power that we have over people that will live in the future is great. In some respects, it is much greater than the power we have over our contemporaries. This is because in some cases we have not only the power to affect the well-being or interests of future people, but also the power to affect their number and identity. The fact that we can affect the number and identity of people that will later live raises a variety of special and complex ethical problems. In this article, I want to discuss one of these problems—what Derek Parfit calls the non-identity problem (or more specifically, the same number non-identity problem)—to consider some proposed solutions to it, and finally, to advance what I take to be a more promising approach to resolving it.

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To see what the non-identity problem is, it is best to consider an example.

The Case of The 14 Year Old Girl. A 14-year-old girl decides to have a child (call him Jack).

Because she is so young, she will predictably give Jack a difficult start in life: she will, perhaps unavoidably, fail to give him the love, emotional and financial support, and education that we think all parents are ordinarily obligated to give their children. Despite this difficult upbringing, however, she knows that Jack will have a life that is, on balance, worth living. Yet she also knows that if she waits several years before having a child, she could have a different child whom she could give a much better start in life.

In deciding to have a child at such an early age, it seems that, other things being equal, the 14-year-old girl has done something wrong. Yet, because her child’s life will be on balance worth living, and because Jack would never have existed had she not conceived when she did, it follows that the young girl’s choice was not, on balance, worse for him. Thus a puzzle arises: intuitively, the young girl has acted wrongly, yet her action was not worse for her child. What, then, is the nature of the objection to the 14-year-old girl’s choice?

The case of the 14-year-old girl illustrates how people’s actions can affect not only the level of well-being of future people, but also their
identity. For if she had delayed conception, given certain facts concerning human reproduction, it is clear that a different person would have come into being. Further, this case illustrates what Parfit calls “the non-identity problem”: a person performs an act that is a necessary condition for some person to come into being, and this act will (foreseeably) result in that future person having a life that contains certain serious hardships but that is, on balance, worth living. Our response to such actions is that they are (at least, prima facie) morally objectionable, but it is puzzling what the nature of this objection could be, since the act is not worse for the person that comes into being.

Before discussing some attempts to resolve the non-identity problem, it is important to see that this problem arises not only when a parent decides to have a child whose life will be worth living but will present serious hardships. This problem can also arise on a much grander scale, as in cases where the members of a community decide to implement an inexpensive but risky energy policy instead of a safer, more costly one, or for instance, in cases where a factory decides to remain in operation by secretly dumping toxic wastes into the water supply. For an example of the latter, consider the following case offered by James Woodward.²

The Case of Acme Chemical Corporation. Acme Corporation decides that in order to continue to profitably operate a certain chemical plant it must adopt a policy of disposing of pollutants which (it foresees) will kill or injure many people over a number of years. If Acme did not adopt this policy it would not have been possible for it to remain open. A and B, having been offered employment at the plant, meet, marry, and have a child C. If the plant had not continued in operation they would never have met. C’s life is very much worth living, but at age 14 he develops cancer caused by the pollutants released by Acme. C and his parents think, naturally enough, that a wrong has been done to C, that there is an objection to Acme’s waste disposal policies which consists in the bad effects these policies have on C.

The decision by Acme Chemical to dump its hazardous waste seems morally objectionable. Intuitively, we think the choice is wrong largely because of the ill effects this policy has on the child, C. Yet it is also the case that this choice was not, on balance, worse for C, since his life is worth living and since he would never have existed had the corporation not dumped the chemicals. What, then, can be the objection to this policy?

Thus the non-identity problem threatens to arise not only in cases where individuals are deciding whether or not to have children, but also whenever a social policy is implemented or an event occurs that substantially affects individuals’ day-to-day lives. Thus discovering a satisfactory solution to this puzzle is a matter of considerable concern for those working within normative ethical theory. Moreover, arriving at a solution to the non-identity problem is of great practical importance. There has been an increase in the number of wrongful life cases in the courts, for example, with the judiciary calling for the need for greater clarity concerning the
notion of “wrongful existence.” And within environmental ethics, it is often claimed that at least one of the reasons why it is wrong to adopt ecologically unsound policies is the harmful effects they promise to have on future people. But, given the non-identity problem, it becomes unclear whether such claims are defensible given that the future people affected by the dangerous policies would not have existed had the policies not been adopted. Before advancing my favored solution to this problem, I turn below to a brief critical discussion of some solutions to the non-identity problem that have been proposed in the literature.

Several different views have been put forward as solutions to the non-identity problem. Among the most radical is the position taken by Thomas Schwartz. Schwartz believes that a person cannot have a legitimate complaint that some act wronged her unless the act left her worse off than she would have been had it not been performed. He writes: “If A’s not doing something would wrong B, then, were A not to do that thing, B would lack some significant benefit he would have enjoyed . . . had A done it.” Since the future people in non-identity problem cases would not have benefited by the nonperformance of those acts that were necessary for them to come into being, Schwartz concludes they do not have a legitimate complaint that such acts wronged them. And this leads him to conclude that in such cases we have no obligations to future people. He later suggests, however, that if existing people are concerned with the well-being of future people, then they “just may owe it to their like-minded contemporaries to contribute to these goals.”

Perhaps it should be granted that Schwartz identifies part of the reason why we find the choices in these non-identity problem cases objectionable. For often such choices will be wrong, in part, because of the expected ill effects they will have on already existing people. Thus in the case of Acme Chemical, for example, it seems that part of the objection to the dumping of the chemicals is that it harms the parents (A and B). And perhaps we can explain part of our objection to the young teen’s decision to have a child on the grounds that her choice is likely to have bad effects on her, and perhaps her family, and society at large. But, still, Schwartz’s explanation of the wrongness of such choices seems inadequate: not only does it seem not to give the complete explanation of why such choices are objectionable, but it also fails to give what seems to be the deepest reason why such choices are wrong. It seems what is primarily wrong with such choices is not the bad effects they are likely to have on presently existing people, but rather the objectionable effects they have on the future people. Thus in the case of the young girl’s child, it seems that her decision to have the child is primarily objectionable because of the effects her choice has on her child’s quality of life. And, at least intuitively, the objection to the manager’s choice to dump the chemicals lies primarily in the fact that it caused a child who will later live to become gravely ill. That Schwartz’s explanation of the wrongness of such choices fails to do justice to our intuitions is perhaps best seen by
considering a non-identity problem case that, we can suppose, will not be bad for any presently existing people.

The Risky Policy. As a community, we must choose between two energy policies. Both would be completely safe for at least three centuries, but one would have certain risks in the further future. This policy involves the burial of nuclear waste in areas where, in the next few centuries, there is no risk of an earthquake. But since the waste will remain radioactive for thousands of years, there will be risks in the distant future. If we choose the Risky Policy, the standard of living will be slightly higher over the next century. We do choose this policy. As a result, there is a catastrophe many centuries later . . . which kills thousands of people. Though they are killed by this catastrophe, these people will have had lives that are worth living. We can assume that this radiation affects only people who are born after its release, and that it gives them an incurable disease that will kill them at about the age of 40. This disease has no ill effects before it kills.7

In this case, we can suppose that the decision to adopt the policy did not go against the interests of anyone living at that time. Further, because the adoption of the policy affected the details of people’s lives over several generations, we can assume that the people who were injured at the time of the accident were not the same people who would have been alive had the safer policy been chosen instead. And given that their lives were on balance worth living, they cannot correctly claim that they would have been better off had the risky policy not been adopted. Here then, we have a non-identity problem case where the act in question (the decision to adopt the risky energy policy) seems clearly wrong; yet, against Schwartz, the wrong-doing cannot be explained by the negative effects the policy had on people living at the time of its implementation. We must, therefore, look for a different explanation of why this choice was wrong.8

Derek Parfit defends a different solution to the non-identity problem, a solution that, I think, adds to our understanding of our obligations to future generations. Like Schwartz, Parfit also assumes that people cannot have a legitimate complaint that some act wronged them unless the non-performance of that act would have left them better off. He therefore claims that future people in non-identity problem cases have no all-things-considered complaint that they were wronged by earlier people’s actions, since such acts did not prevent them from having lives that are on balance worth living, and since they would never have existed had the acts not been performed.9 But, unlike Schwartz, who locates any objection to such an act in the negative effects it has on already existing people, Parfit goes further and locates the nature of the objection in the fact that such acts fail to bring about the possible world in which people’s lives go best. He thus suggests the following principle as a solution to the non-identity problem:
The Same Number Quality Claim or Q: If in either of two possible outcomes the same number of people would ever live, it would be worse if those who live are worse off, or have a lower quality of life, than those who would have lived.\(^{10}\)

According to Q, an act that results in a person’s coming into being with a life that is worth living may still be objectionable. It would be objectionable in cases where the performance of a different act would have resulted in a different person’s coming into being who would have had a higher quality of life. Thus, on Parfit’s account, the teenager’s decision to have a child is wrong not because it caused her son to have a difficult childhood, per se, but because she could have had a different, happier child if she had delayed motherhood until she was better equipped to care for him or her. And, on Parfit’s view, if the dumping of toxic wastes is objectionable in the case of Acme Chemical, it is not because it caused C to develop cancer; rather, it is because a different possible world in which people’s lives fared better would have been realized had the managers of the corporation acted differently, say a world in which A and/or B have a different child who enjoys a higher quality of life. And finally, we can explain why the decision to implement the risky policy was wrong: if a safer policy were chosen, different people would have come into being would have had a higher quality of life.

I think Parfit’s solution is a good deal more plausible than Schwartz’s, since it is at least able to locate an objection to these choices that is independent of the preferences that earlier people may or may not have had. Yet, I think that his view is still inadequate in that, like Schwartz’s view, it fails to reflect the conviction that many of us have that the actions in non-identity problem cases are at least partially objectionable because of the negative effects they have on the future people.

I think a similar sentiment is expressed by Gregory Kavka when he presents the Case of the Slave Child.\(^{11}\)

A couple who do not intend to have children decide to accept a slaveholder’s offer of $50,000 to produce a child for him to be his slave. Suppose that slavery is legal in this society and that the child’s life as a slave will predictably be worth living. Also, suppose that the parents’ motivation for having a slave child is not one of selfishness and greed (they will donate the $50,000 to a worthy cause).

In this case it seems that what the parents do is objectionable even though it is not the case that they would have had a different, happier child had they refrained from having the slave child. Rather, what seems objectionable in this case is largely the fact that they decided to cause a child to come into being with a life that would be seriously defective—a life lacking freedom. That is, we think that the child has a legitimate complaint that his parents violated his rights by causing him to come into being with a life that would be seriously defective.
Both Schwartz’s and Parfit’s solutions to the non-identity problem appear inadequate insofar as they do not capture an important reason why we believe that these actions are objectionable, namely, the ill effects they have on the lives of the future people. In what follows, I would like to begin to develop a view that states the conditions under which a future person has a legitimate complaint that her rights were violated in non-identity problem cases. Although the view I will develop below will remain somewhat incomplete, my hope is that it will be able both to specify, at least in outline, the conditions under which future people in non-identity problem cases could legitimately complain that an act that was necessary for their coming into being wronged them, and, more importantly, to explain why we have these obligations to them.

Before I do this, however, I want to consider two distinct objections that are often raised in opposition to the project of attempting to ground a solution to the non-identity problem by appealing to the rights of future people. The first claims that such a project is a nonstarter since it is manifestly implausible to maintain that an act that is (foreseeably) not worse for a person can nevertheless wrong that person. The second objection claims that allowing for complaints in non-identity problem cases is unacceptable because such a view would reduce to absurdity: for it is claimed that if we maintain that it is legitimate for some persons who have lives that are on balance worth living to complain that acts necessary for their coming into being wronged them, then this will license people to lodge all kinds of trivial complaints—from illegitimacy to ugliness—against earlier people who caused them to come into being.

Both David Heyd and Joel Feinberg raise this latter objection to the possibility of a rights-based solution to the non-identity problem. Thus, Heyd asks, “what would be considered the limits of justifiable claims? Would we allow children to sue their parents for having been born illegitimate (as in Stills v. Gratton)? underweight? because of the mother’s smoking while pregnant? with a low I.Q.?” And Feinberg writes,

> if we insist that there is some relevant sense in which the infant in Parfit’s example [who is born with a withered arm] has been harmed by his mother, that could have the unfortunate consequence of legitimizing wrongful life suits for such harmful states as illegitimacy, ugliness, below average intelligence, and the like. . . . Therefore if a writer were to advocate a special sense of “harming” just to permit wrongful life suits in cases like Parfit’s . . . the proposal would founder on these other examples where the harms are relatively insignificant.

I agree with Feinberg and Heyd that a rights-based view would be unacceptable if it implied that relatively insignificant harms were sufficient grounds for one to claim one’s rights had been violated in non-identity problem cases; however, I do not believe that a rights-based view need have that implication. For I think that such a view, if specified with due
care, can (nonarbitrarily) limit the conditions under which one has a legitimate complaint in non-identity problem cases to those occasions where the person’s life is made seriously defective. At the very least, I think it would premature for one to rule out from the start the possibility of a rights-based solution to the non-identity that did not have this absurd implication. Rather, one would do well to wait and see if a rights-based view could be developed that solved the non-identity problem and did not have these absurd results.

The other main theoretical obstacle to developing a rights-based solution to the non-identity problem is the worry that there is something deeply implausible about maintaining that an act whose performance was predictably not, on balance, worse for a person could still be grounds for a complaint. Thus, we find Parfit, Feinberg, Jefferson McMahan, and others all arguing that to claim that a person could have a legitimate complaint in non-identity problem cases is as baseless as maintaining that a person could have a legitimate complaint against his rescuer for performing an act that was necessary to save his life but that left him handicapped though still able to lead a life worth living. Feinberg, for example, writes:

Did the mother wrong the child by causing him to come into existence in a harmful (handicapped) condition? I do not think that the child can establish a grievance against her so long as he concedes that his handicapped existence is far preferable to no existence at all. . . . To hold her liable anyway, would be (at least with respect to the harm element) something like holding a rescuer liable for injuries he caused an endangered person that was necessary to his saving that person’s life. He may have caused the imperiled party’s arm to be broken in the rescue effort, but the alternative, let us suppose, was to let him die. So the broken-armed plaintiff suffered a harmful condition with respect to his arm, but the rescuer-defendant did not cause a condition that was harmful on balance, offset as it was by the overriding benefit of the rescue, and he cannot be said, therefore, to have harmed the plaintiff . . . at all.14

Feinberg, like Parfit and McMahan, rests his objection to an appeal to a personal complaint in non-identity problem cases on an argument by analogy. However, whether this analogy can do the work intended for it is a difficult question. Elsewhere I argue, in detail, that this argument ultimately fails to convince.15 Here, I briefly summarize those remarks. I do not think that this analogy, and others like it, succeed. What it ignores is that there is an important factual difference between non-identity problem cases and the supposedly analogous non–future person case, and I believe that this factual difference makes a moral difference when thinking about these two kinds of cases. This factual difference can be brought out by asking what would have been the result had the act in question in these two cases not been performed? First, in Feinberg’s rescue case, we can say that if the rescuer did not save the accident victim, then this would have been an even worse result for that person: she would have died. On the other hand, in
non-identity problem cases, if the act in question had not been performed, then there would not have been a person who would have been worse off. Thus in the rescue case there is a kind of “moral necessity”: if the rescuer does not save the person, then that person will die. Accordingly, we think the rescuer does well by saving the person, for if he did not, this would have been even worse for her. We, therefore, think that the person in Feinberg’s case of rescue cannot legitimately complain that she has been wronged by her rescuer’s action. But in non-identity problem cases, there is no such necessity: the earlier person is not confronted by someone desperately in need of help. Rather, the earlier person is in the situation of a creator who is aware of what people typically need in order to live a normal life, and yet who acts in a manner that does not respect these needs. Unlike the rescuer who is in the straightforward position of being able to promote or fail to promote another’s best interests, the earlier person in a non-identity problem case is in a position of determining whether or not a particular person will ever come into being. And we may reasonably think that this special power, coupled with the fact that the earlier person is not confronted by someone desperately in need of help, grounds a special responsibility that the person who does come into being is able to live well. That is, we can maintain that a future person may legitimately complain that an act necessary for her to come into being wronged her even though her life is on balance worth living, if it resulted in her being in a seriously handicapped condition.16

Having said this, one may grant that the argument from analogy is hardly decisive given the dissimilarities between non-identity problem cases and cases that do not affect the identity of future persons, but it still may be insisted that there is something prima facie implausible about claiming that an act that is not on balance worse for someone can still be grounds for a personal complaint. But I deny that there is this prima facie implausibility. For often we are prepared to recognize that an act is grounds for complaint even though it may not be worse, on balance, for that person. For instance, it is generally recognized as prima facie wrong, and grounds for complaint, for a physician to lie to her patient, and this is the case even if the lie is in the patient’s best interest. And, it may be wrong to take away one’s right to vote, even if the person does not know that her right has been taken away, and even though she may never want to exercise her right to vote. As Annette Baier argues,

The violation of a right is, of course, a special sort of effect on a person and on his or her good. It cannot be equated with making that person unhappier, or less able to get what she in fact wants. If I don’t want to vote, then the violation of my right to vote by the removal of my name from electoral rolls will not hurt me—it may not even be noticed by me. Nevertheless someone else on my behalf might correctly protest the violation of my right, and correctly say that my position is worsened. . . . I might even myself protest, and insist on my rights, then never exercise them.17
Thus, there seems to be nothing particularly unusual about claiming that a person’s rights can be violated by some act, even when that act does not, on balance, make things worse for the person affected. And so, I deny that there is anything especially problematic about claiming that the future persons in non-identity problem cases may have legitimate complaints that acts necessary for their coming into being with lives worth living, though handicapped, wronged them. What is perhaps more problematic, however, is the task of specifying the conditions under which the future people in such cases can be said to have legitimate complaints. It is to this task that I now turn.

When I reflect upon such cases as the 14-Year-Old Girl, Acme Chemical, and the Slave Child, it seems to me that what is principally objectionable about them is that future people in each of these cases were caused to have lives that were seriously defective. As a preliminary thesis, then, a future person has been wronged by some act A, if A was a necessary condition for her to come into being, and A resulted in her having a life that will in some serious sense be defective. For ease of reference, I will call this the Complaint-Warranting Condition thesis or CWC, and I will say that such a life is complaint-warranting.

Now CWC captures what is intuitively wrong about each of the non-identity problem cases considered above. But this thesis suffers from being exceedingly vague. In particular, to start, we need a more precise notion of a “defective” life, in order to distinguish those cases that satisfy CWC from those that do not.

One way of getting a handle on the relevant sense of a defective life is to consider what are the goods that make a life valuable. For if such a list could be made sufficiently determinate, then we could postulate that a life would be defective and satisfy CWC just in case it failed to possess to a sufficient degree one or more of the goods on the list.

Following James Griffin, I think at least most of us can agree that there are certain goods—that he calls prudential values—that we regard as valuable for all human beings. What exactly these goods are is somewhat controversial, but surely any list must include such goods as physical well-being, understanding, autonomy, liberty, pleasure, and love. And it seems that we can at least usually say how good a life is and how it could be better by looking at whether or not it possesses all of these goods. For although it may be the case that one of these goods turns out not to be good for a particular individual (for example, autonomy may not be a good to a person who, because of mental illness, has great difficulty organizing her life and making major decisions), it is certainly the case that there is a strong presumption that such prudential values are good for human beings, and thus absent strong evidence to the contrary we think these would be important for one to possess if one is to live well. Likewise, given our limited knowledge of future people’s needs, we ought to assume that they too will require these prudential values in order to live well.
Now if this is right, then we might begin to give content to CWC by saying that a future person’s life is seriously defective and she can legitimately complain that she has been wronged by an earlier person if she was caused by this person to exist with a life that lacked one or more of these goods to the extent that she was unable to lead a flourishing life.

Thus consider again Kavka’s case of the Slave Child. Though the child’s life will be worth living, it will probably contain few enjoyments, and she will lack the goods of liberty and autonomy. And because we think that a good human life (typically) requires freedom and the ability to exercise a large measure of control over one’s life, we can therefore maintain that the slave child has grounds for complaint that her parents wronged her by causing her to exist as a slave.

Similarly, if the 14-year-old child in Woodward’s example of Acme Chemical Corporation dies of cancer as a result of the plant’s dumping of toxins, then clearly he too lacks some of the components of a good life. For part of a good human life consists in being healthy, being able to set and pursue to some extent successfully one’s own life plan, being engaged in deep personal relationships, and so forth; but, because he dies at such a young age, he will be unable to lead this kind of life.

In contrast, consider the case of a couple who is poor and who decides to have a child. Even though the child’s life may, other things being equal, be more difficult than the life of a child raised in a more affluent setting, it seems that provided that she is healthy, has a loving and safe environment in which to grow, is adequately nourished and educated, and has the freedom to set and pursue her own ends, she will still be able to realize all of the prudential values to a sufficient degree so as to be capable of leading a good life. According to our preliminary formulation of CWC, then, her life would not be seriously defective and so she would not have grounds for complaint.

An appeal to the idea of the goods that are typically necessary to lead a flourishing life is thus a useful means for helping to specify the content of CWC. The relevant defects in a life are those that make it the case that the person is unable to attain an essential element of well-being. Moreover, I think the appeal to CWC is important because it helps us understand what is morally objectionable about the cases we have been considering. The list of prudential values is morally significant because it characterizes what is involved in human well-being. Accordingly, if one causes another human being to exist who will be lacking one or more of these values to a sufficient degree, then what one has done is objectionable because one has caused a person to exist who is unable to lead a good or flourishing life.

It seems to me, however, that restricting the criterion for when a person can be said to have a complaint to those cases in which a person is unable to possess all of the goods needed for a flourishing life is, at least in a certain respect, too weak. For I think there could be cases where a future person has a legitimate complaint that some act necessary for her to come into being wronged her, even though she is still able to possess all of the prudential values to a sufficient degree so as to be able to lead a flourishing life.
To see this, consider the following revised version of Woodward’s case of Acme Chemical Corporation:

As a result of Acme Chemical Corporation’s toxic dumping practices a child is caused to exist who develops a rare form of kidney cancer when he is 14 years old. As a result of this cancer, he must have one of his kidneys removed and undergo extensive radiation and chemotherapy. But by the time he is 19 years old, he is cancer-free and well again (minus a kidney).

In this case, the child has suffered a terrible illness, and has clearly been wronged by what the corporation did. However, because he will fully recover and be able to lead a normal life by the time he is 20 years old, it does not seem to be the case that what the corporation did resulted in his being unable to lead a good life, at least as we ordinarily understand it.

Thus the interpretation of CWC that says that a future person has a legitimate complaint that some act necessary for her to come into being wronged her if she is unable to lead a good life provides, at best, a sufficient but not a necessary condition for when a person’s life is complaint warranting. What we really need is some deeper analysis of CWC that is able to explain why someone who is unable to possess some prudential value or other to a sufficient degree to lead a flourishing life and someone who is caused to suffer some serious illness or hardship but who still can lead a good life both have legitimate complaints, but why a child born to poor (though not severely impoverished) parents does not.

To arrive at this deeper analysis, it may be helpful to consider, in greater detail, why the above interpretation of CWC is not fully satisfactory. I think it is inadequate largely because in determining whether or not a person has a complaint, this view looks at a person’s life solely from a global, rather than a stage-sensitive, perspective. That is, this view lists certain goods as essential for human well-being and then looks at a person’s life as a whole to determine whether or not some act that was necessary for her to come into being also resulted in her being deficient in any of these goods, and thus whether or not the person’s life was complaint warranting. But, as the modified case of Acme Chemical brings out, this approach is not sufficiently fine-grained. It fails to reflect our conviction that one can have a complaint-warranting condition because a part of one’s life is caused to be seriously defective, even though, as a whole, one may still be able to realize all of the prudential values. Accordingly, I suggest that what is wrong with this view is that it does not give sufficient weight to the fact that a normal human being’s life falls into certain stages, and that a person in each stage requires certain goods in order to live well at that stage. And because it ignores this fact, it is unable to give the intuitively correct answer in the modified case of Acme Chemical, namely, that the kidney cancer victim has a legitimate complaint that the corporation wronged him, because by dumping carcinogenic chemicals into the river, the corporation caused him to be exposed to a hazardous environment and consequently to become seriously ill in his adolescence.
Reflection on the inadequacies of the global interpretation of CWC suggests, then, that we need to look for an interpretation of CWC that is sensitive to the fact that normal human lives fall into various stages. But then the question that arises is, How should these stages be understood? At the extreme opposite of the global view is something like the momentary view. As the name suggests, this view says that a person has a complaint-warranting life just in case some act that was necessary for her coming into being also resulted in her lacking some prudential value necessary for being well off at some moment in her life.

Such a view would plainly be too strong, however. A life brimming with well-being that has just a single moment of misfortune in which one is unable to possess a prudential value necessary for being well off at that moment (say ill health at birth that was caused by some foreseeable act of the parents immediately prior to conceiving) would on this view be a complaint-warranting life. But plainly, such a life would be a great one to live, perhaps better than any life that has ever been actually lived, and so could not plausibly be regarded as complaint-warranting.

It appears then that the global interpretation is too weak whereas the momentary interpretation is too strong. For the former fails to explain why certain intuitive cases of complaint-warranting lives satisfy CWC, and the latter fails to explain why certain plainly non-complaint-warranting lives do not satisfy CWC. What is needed, then, is something in between the momentary and the global extremes. And what I suggest we adopt as an acceptable middle ground between these two extremes is the rather common notion that human life typically falls into such stages as childhood, adolescence, adulthood, and so on. For ease of reference, I shall refer to these stages as life stages. The view would then be that we have a certain conception of what goods are needed for a person to live well in each life stage, and that a person would have a complaint that some act wronged her just in case this act was necessary for her to come into being and resulted in her being unable to possess one or more of the goods necessary to lead a good life in some life stage.

What a person requires at each life stage in order to live well may vary somewhat. A child, for example, may need education and a parent’s love, while having little need for autonomy, in order to live well. On the other hand, an adult may need autonomy and liberty more than education in order to lead a good life. But presumably, in addition to these life stage-specific goods, there will also be goods that are needed at all life stages if a person is to live well. Such goods would, for example, include a healthy body and mind, a safe and nontoxic environment in which to live, nutritious food and adequate shelter, and love or emotional support. But regardless of whether these goods are life stage specific or goods required at all life stages, the claim is that a person’s life is complaint-warranting if and only if some act that was necessary for her to come into being also resulted in her being unable to lead a good life in any particular life stage.

It is clear, then, that the notion of a good or flourishing life, and more precisely, of a good or flourishing life stage, plays a central role in my attempt to specify the content of CWC. And although the appeal to life
stage–specific prudential values and to the prudential values that are needed throughout one's life helps explicate the notion of a good or flourishing life stage, it would perhaps be helpful elaborate upon this notion. It seems that just as we are sometimes prepared to say of a life that it is not worth living, or that a life is only barely worth living, we also have a notion of what it is for a person to lead a good or flourishing life or life stage. And as I suggested previously, such a life is one that we ordinarily take to contain certain goods such as autonomy, freedom, and a functioning body and mind, as well as love and emotional support, education, and a safe environment. Now, although I do not claim that we will always be able to say when a person is able to lead a flourishing life or life stage, I believe that there are many cases in which we are able to make such a judgment. And my claim is that when a person is, as a result of an earlier person’s action, caused (1) to exist and (2) to be unable to lead a flourishing life in some life stage, then that person has a legitimate complaint that this act wronged her.

Now given this idea of what a person requires in the various stages of life in order to live well, it seems to me that we can begin to better understand the nature of the obligations that existing people have to future people, and specifically, the nature of future people’s complaint in non-identity problem cases. To see this, consider once again my version of Woodward’s case of Acme Chemical Corporation, in which a 14-year-old child is both caused to exist and to develop a nonfatal cancer as a result of Acme Chemical’s toxic dumping practices. In the case I imagined, the 14-year-old boy loses a kidney as a result of the cancer, but, after several years of radiation and chemotherapy, is cancer free and well again. According to the view proposed, he would still have grounds for complaint, even though he is able to lead a flourishing life (as an adult) and even though he would never have existed had the corporation not dumped the chemicals. For, as a result of the corporation’s practices, he was deprived of what he and all other children need in order to live well, namely, a healthy body and a safe environment that is free from such hazards as a tainted water supply.

By appealing to the idea that human lives characteristically fall into various stages, we thus arrive at a more satisfactory way of specifying the conditions under which a future person may legitimately complain that she has been wronged by an action that was necessary for her to come into being. A future person has a complaint if and only if some act that was a necessary condition for her coming into being also resulted in her being unable to acquire to a sufficient degree one or more of the elements needed for well-being in a particular stage of life. To be sure, much more needs to be said about the details of this complaint-based view. We will want to understand more precisely what is required for each stage of life to be flourishing, and relatedly, whether the notion of flourishing is best understood as a relative one, where what counts as a flourishing life varies according to time and circumstance, or as an absolute notion, where what counts as a flourishing life remains constant over time. 206 Further, we will need to consider the conditions, if any, that can justify overriding a future person’s complaint that her rights have been infringed in a non-identity problem case. But still, the above criterion goes a considerable way in
helping us fix when one’s life is complaint-warranting. It also helps us understand the nature of the complaint in non-identity problem cases: one has a complaint because, due to earlier people’s actions, one is unable to acquire what is needed in order to lead a good or flourishing life at some particular life stage.

My work on the non-identity problem has benefited from many hours of challenging discussions with Shelly Kagan. I am grateful to him for his insights and encouragement.

Notes

5 Schwartz, p. 11.
6 Schwartz, p. 13.
8 Rather than look for an alternative solution to the non-identity problem, we could, of course, follow Heyd and Schwartz and maintain that no wrong has in fact been done in the Case of the Risky Policy. But this wholesale rejection of our intuitions should be resisted, I think, since there are other solutions to the non-identity problem that nonarbitrarily explain why cases like the Risky Policy are wrong.
9 Parfit, pp. 364–66.
10 Parfit, p. 360.
12 Heyd, p. 34.
14 Feinberg, p. 27.
16 Perhaps a thought experiment will help convince that the special power of being able to determine who will come into being generates a duty to one’s creation that she be able to have a life that is better than one that is only barely worth living: “Imagine a scientist who is attempting to create a human being by artificial means. Surely, in such a case, we think that the scientist has a greater responsibility than just making
sure that the creation’s life can be expected to be not worse than nothing. Intuitively, at least, we [or at least, I] think that the scientist’s awesome power to create a human life gives her the responsibility to make sure that the creation’s life can be expected to be (in some sense of the word) a good one, and that if she fails in that responsibility then it is the creation who has been wronged.” Smolkin, “The Non-Identity Problem and the Appeal to Future People’s Rights,” The Southern Journal of Philosophy, vol. 32, no. 3, Fall 1994, p. 326.

17 Baier, p. 218.


19 To what extent “flourishing” is best thought of as a relative or an absolute notion is explored in my unpublished manuscript, “A Mixed View of Flourishing.”