

Kumar's Strengthened Solution to the Non-Identity Problem

A Solution to the Non-Identity Problem through a Types-Approach of Scanlonian Contractualism

Philosophy, Politics, and Economics

10-06-2018

Table of contents

Introduction	3
1. Non-Identity Problem: Stating the Problem and Narrowing Down the Solutions	5
<i>I – Non-Identity Problem</i>	5
<i>II – Three Routes to Solve the Non-Identity Problem</i>	9
2. Scanlonian Contractualism and the Non-Identity Problem	12
<i>I – The Basic Structure of Scanlonian Contractualism</i>	12
<i>II – Scanlonian Contractualism and Non-Selection Cases</i>	17
<i>III – Scanlonian Contractualism and the Non-Identity Problem</i>	20
3. Objections to Kumar’s Solution	23
<i>I – Katz’ objection</i>	23
<i>II – The ‘New Relation’ Argument</i>	25
<i>III – The ‘Existence Is Good’ Argument</i>	28
4. Objections	33
Conclusion	36
Bibliography	39

Introduction

With an ever-growing world population, we are putting more stress on our ecological boundaries every day. If we want the future generations to inherit an earth that is not completely depleted of its resources and inhabitable because of climate change, we need to change our ways. However, Derek Parfit's Non-Identity Problem (NIP) poses a threat to the possibility of intergenerational justice. The non-identity problem states that a supposedly wrongful act that is necessary for someone's existence cannot wrong that same someone because without the supposedly wrongful act that someone would not come to exist, but someone else would come to exist.¹ From this reasoning, it seems to follow that there is no moral difference between the choices we make even though they determine the quality of life for the future generations. This poses a threat to intergenerational justice, because why should we choose to follow the Paris Agreement to battle climate change, if there is no moral difference if we do or not? What the non-identity problem brings into focus is that "our thinking about what policy choice is morally defensible cannot be framed in terms of whether or not those who will live in the further future stand to be wronged if we adopt a particular policy."²

T.M. Scanlon's contractualism (SC) seems to be promising in dealing with our moral intuition that there is a moral difference when it comes to intergenerational justice and the non-identity problem. Scanlonian contractualism is based on mutual recognition of each other as moral persons. Morality is based on that 'what we owe to each other' and we aim to find principles that no one could reasonably reject. One can wrong someone when her act was unjustifiable because she did not take the interest of the other into account.

The question that this thesis will try to answer is whether Scanlonian contractualism can provide a solution to the non-identity problem and thereby neutralising the threat it poses to the possibility of intergenerational justice. Scanlonian contractualism is a fairly new theory and only a few authors have written on the application of Scanlonian contractualism on intergenerational justice and the non-identity problem. Rahul Kumar is the main proponent of this application. He argues that through his types approach of Scanlonian contractualism the non-identity problem can be avoided. This is because Scanlonian contractualism can provide a wide and a narrow person-affecting notion of wrong in non-selection cases. This thesis will, on the one hand, provide an overview of the fairly new debate on the application of Scanlonian contractualism on the non-identity problem. It places Corey Katz as the main opponent to Kumar's solution. Elizabeth Finneron-Burns and Rivka

¹ Derek Parfit, *Reasons and Persons* (RP) (Oxford: Oxford University Press, 1987), 359.

² Rahul Kumar, 'Wronging Future People: A Contractualist Proposal,' In *Intergenerational Justice*, ed. by A. Gosseries and L.H. Meyer (Oxford: Oxford University Press, 2009), 252.

Weinberg are used to defend and strengthen Kumar's case. On the other hand, this thesis adds the new term 'potential' to the debate for clarification. Which gives a new perspective on how it is possible to wrong someone that does not yet exist. I will defend the notion that Kumar's types-approach to Scanlonian contractualism can offer a solution to the non-identity problem.

In the first chapter, section one will elaborate on the non-identity problem by using two well-known cases. Through these cases, the different issues surrounding the problem will be discussed. This section will end with a breakdown of the different premises of the non-identity problem. The second section shows the three possible routes one can take within morality to solve the non-identity problem. At the end of this section, the route of the non-person-affecting view will be considered closed off. Furthermore, it discusses what is needed for the person-affecting route to provide an answer to the non-identity problem.

In the second chapter, the first section will elaborate on the basic structure of Scanlonian contractualism. It will explain how our morality is based on 'what we owe to each other'. Through its core value of mutual recognition, we aim to find principles that no one can reasonably reject. Moreover, Kumar's types-token distinction will be explained and why Scanlonian contractualism is based on second-personal relations between types. In the second section, it will be shown that in non-selection cases Scanlonian contractualism can provide a wide and a narrow person-affecting view of morality. Respectively, it provides a notion of what it is to commit a moral wrong and what it is to morally wrong someone. In the final section, it will be argued that Kumar's types-approach to Scanlonian contractualism can also provide a wide and a narrow person-affecting view of morality in selection cases. Kumar's approach offers a solution to the non-identity problem.

In the third chapter, the first section will look into Katz' objection whether Scanlonian contractualism can provide a narrow person-affecting view solution to the non-identity problem. She argues that the Scanlonian contractualism cannot provide such an answer; because coming into existence with impairments but a life worth-living gives enough reasons to preclude the principle that led to one's creation from rejection. She bases this conclusion on two arguments: the 'new relation' argument and the 'existence is good' argument. The second section will refute the 'new relation' argument by showing that this argument is based on a misinterpretation of Scanlonian contractualism. The third section will refute the 'existence is good' argument. The third section is based on Finneron-Burns' and Weinberg's argument that existence is not an interest one can have, it is the requirement for having interest and therefore it is neutral. The exclusion of existence as a moral reason strengthens Kumar's case.

In the fourth chapter, five objections concerning Scanlonian contractualism and the non-identity problem will be discussed. Three objections on whether any changes in our interests or

capacities in the future might change the justifiability of our actions in the now. Two objections on whether Scanlonian contractualism is open to objections of relativism and whether it is too demanding or not. In the final chapter, I will give a brief summary of the arguments made in this thesis to conclude that Kumar's types-approach offers a solution to the non-identity problem and that his case has been strengthened by, on the one hand, excluding existence as a moral reason and, on the other hand, by adding the term 'potential' to his case.

1. Non-Identity Problem: Stating the Problem and Narrowing Down the Solutions

In this chapter, I will elaborate on the non-identity problem (NIP) and the possible routes one could take to solve it. In the first section, I will explain the non-identity problem and its difficulties using two well-known cases. First, the case of Wilma and then the case of Risky Policy. In the second section, I will show the three pathways within morality one could take to solve the non-identity problem. I will only discuss the non-person-affecting view briefly, because I deem the person-affecting approach more likely to produce an acceptable solution to the non-identity problem. Afterwards, I will touch upon the other two options, which will be extensively dealt with in the next chapters. Finally, this chapter will conclude with an assessment of what is needed for a person-affecting view to provide a solution to the non-identity problem.

I – Non-Identity Problem

The non-identity problem (as is summarised here below) states that when a supposedly wrongful action is necessary for someone's existence, this act cannot wrong her because without the wrongdoing she would not come into existence. She cannot be made worse off by the act that is necessary for existence because the alternative would be not existing at all. If she has a life worth living, she has, *a fortiori*, not been wronged.³ If all actions that are necessary for someone's existence are free from moral blame because there is no moral difference between the outcome of the choices, it would entail that it is impossible to wrong future generations. This kind of reasoning is a serious threat to the possibility of intergenerational justice because what the NIP brings into focus is that "our thinking about what policy choice is morally defensible cannot be framed in

³ Kumar, 'Wronging Future People,' 252.

terms of whether or not those who will live in the further future stand to be wronged if we adopt a particular policy.”⁴

Consider David Boonin’s case of *Wilma* as described by Corey Katz. Wilma wants to get pregnant, however, her doctor has informed her that she has a rare hereditary condition, which if left untreated will cause her child to be born with incurable blindness. However, it is perfectly avoidable by taking a rather cheap pill over a period of two months. For whatever trivial reason – for instance, she does not want to be pregnant in the summertime - Wilma decides not to wait and nine months later her daughter Pebbles is born with incurable blindness. If Wilma would have waited with the conception and would have taken the pill, she would give birth to her perfectly healthy boy Rocks.⁵ Has Wilma wronged Pebbles even though Pebbles has a life worth living, but she will never see? Our commonsense judgment would be to tell Wilma that it is best to take the medicine and wait two months before conceiving; and that it would even be wrong to ignore this advice.

There are several elements to this judgment which have to be highlighted and interpreted. First, our commonsense judgment seems to fail to see that either of Wilma’s choices leads to the birth of different children. Every little difference in time or place of the conception already affects the identity of those born. There might be a possible discussion whether it comes down to seconds or minutes, but we can safely assume that different persons are born when there is a month between the conception.⁶ Wilma her options have a time difference of two months between conception. Therefore, we can say with certainty that Pebbles and Rocks are two different persons; they are non-identical. Non-identical in a genetic sense, but also in a psychological sense because so many factors differ in their situation. They will meet different people, make different choices all these things affect identity.⁷ Thus, when we talk about ‘the child’ in our commonsense judgment we do not refer to a particular person, but rather a general person.⁸ We refer to the group of possible people that can be the child of Wilma, of which Pebbles and Rocks are two particulars.

This brings us to the second element, we cannot claim that it would be better for Pebbles if Wilma would wait, because Rocks would come into existence instead of Pebbles. Because both options produce different persons, the outcome cannot make anyone better or worse off. If Wilma waits, Pebbles will not be born with normal eyesight, instead, Rocks will come into existence. Thus,

⁴ Kumar, ‘Wronging Future People,’ 252.

⁵ Corey Katz, ‘Contractualism, Person-Affecting Wrongness and the Non-identity Problem,’ *Ethical Theory and Moral Practice* 21.1 (2018): 104 – 105, <https://doi.org/10.1007/s10677-017-9857-3>.

⁶ Parfit, RP, 352.

⁷ Elizabeth Finneron-Burns, ‘Contractualism and the Non-Identity Problem,’ in *Ethical Theory and Moral Practice* 19.5 (2016): 1153, <https://doi.org/10.1007/s10677-016-9723-8>.

⁸ Derek Parfit, *On What Matters: Volume Two* (OWM2), ed. by S. Scheffler (Oxford: Oxford University Press, 2011), 220.

Wilma's waiting does not make Pebbles better off, because the only option for Pebbles is to either exist with impairment or not exist at all. Pebbles' and Rocks' situation are incomparable because they are two different persons and nobody is made worse off.

Third, we could interpret our judgment in a consequentialist way. In that case, it would be better if Wilma would wait and take her medicine not because it would be better for the child, but because it would create a better state of the world. If we assume that it would be better for the world to have fewer people with incurable blindness in the world, this would imply that lives without impairments are better than lives with impairments. In that case, it would be better if Rocks was born. Not because Rocks would have perfect eyesight and this would benefit him, but because his eyesight contributes to an overall better world. However, this interpretation is rejected by most people. Further on in this chapter, I will elaborate on this interpretation and solution.

The fact that is that it does not matter which choice Wilma makes, because it is worse for no one. Our commonsense judgment that it would be better if Wilma waits and takes her medicine seems to lead to the NIP. Our intuition that it is wrong to create lives that are less worth living seems to conflict with the fact that Wilma's decision is free from moral blame because her supposedly wrongful act is a necessary act for the existence of Pebbles. Her act is an identity-fixing act for someone's existence and it has not made this new identity better or worse off. The only way that she could have made someone worse off is if the new identity would still be the same identical person even though she had been conceived two months later. However, as described above, this is not possible. Wilma her case is a same number choice; the same number of people come to exist, but they are different people.⁹

Risky Energy Policy

The NIP is complex when it concerns with same number choices. It becomes more complex when it is concerned with a different people choice, in which the number of people as the identity of the people differ.¹⁰ Such is the case with '*Depleting or Overheating*'. Herein, we choose to raise our quality of life by depleting the earth and thereby lowering the quality of life for the future generations¹¹; Another instance is the 'DNA-altering bomb' in which everyone who survived this bomb goes to live in different cities and meets different people; their children will have small disabilities, but their lives are still worth living.¹² The choices in these cases influence the number of people, and which people will come to exist. The choices determine their quality of life; however, there seems to be

⁹ Parfit, *RP*, 356.

¹⁰ *Ibid.*, 356.

¹¹ Parfit, *OWM2*, 218

¹² Finneron-Burns, 'Contractualism and the NIP,' 1153.

no moral difference between the outcome of our choices because they would be worse for no one.¹³ This showcases why the NIP is a threat to the possibility of intergenerational justice. Consider the following case.

The Risky Policy: We have to choose between two energy policies. The first is the Conservative Policy which preserves the earth and its resources but does not raise our quality of life because energy consumption cannot rise. The second is the Risky Policy which allows for nuclear energy through nuclear plants and the burial of nuclear waste in the ground. Through this policy, we can raise our energy consumption considerably and thereby our quality of life. For the coming centuries both energy policies are completely safe, however, we are sure that in three hundred year times a catastrophe will take place because we buried the nuclear waste in an area that will have earthquakes around that time. We choose the Risky Policy and the catastrophe (i.e. earthquakes) takes place. In the initial blast, several people are killed. From that day onward everyone that is born in that area has a rare radiation disease. This disease has no effects but leads to a sudden death at the age of forty.¹⁴

In this case, it becomes painfully clear that it is hard to pinpoint what is wrong with our choice. Either option creates a completely different generation of different people and numbers. According to what we decide, different people will meet different people and they will procreate in different moments and places. One can imagine that within a couple of generations nobody is alive that would have lived in either the Risky or the Conservative Policy. The effects of the policy choice spread as the “ripples in a pool.”¹⁵ We can conclude that “since it would be different people who would later live these lives, these acts or policies would not be worse for any of these people.”¹⁶ We are left with the non-identity problem:

- I. *Time Dependency Claim:* if there is a considerable amount of time between conception, different people are born; they are non-identical.¹⁷
- II. *Life Worth Living:* the people that come into existence have lives worth living.
- III. *Not Worse Off:* the people that come to exist are not made worse off, if (II) their lives are worth living and because (I) either they or someone else will exist.
- IV. *No Moral Difference:* there is no moral difference between our choices because (III) the outcome is not worse for anyone.

¹³ Parfit, *RP*, 378.

¹⁴ *Ibid.*, 371 – 372.

¹⁵ Parfit, *OWM2*, 218; Parfit, *RP*, 361.

¹⁶ Parfit, *OWM2*, 218.

¹⁷ Parfit, *RP*, 352.

- V. *Non-identity problem*: a supposedly wrongful act that is necessary for someone's existence (IV) cannot wrong that same someone because (III) without the supposedly wrongful act that someone would not come to exist, but someone else would come to exist.

II – Three Routes to Solve the Non-Identity Problem

When our acts in the present are identity-fixing for those who are yet to come, we seem to not be able to wrong them, although we directly determine the quality of their lives.¹⁸ Thus, we are left with the NIP and our intuition that it is possible to wrong those who do not yet exist; that there is a moral difference between the choices we make. Philosophers have broken their minds on this problem and have tried to come up with a solution of how to include future people in our scope of justice. There are three main routes within morality that can be taken to attempt to solve the NIP. First, a non-person-affecting view of morality; second, a narrow person-affecting view of morality (NAV); and third, a wide person-affecting view of morality (WAV).¹⁹

First Route: Non-Person-Affecting View

The first solution embraces impersonal values and it lets go of any person-affecting principles. Something can be good without it being good for someone in particular. Consequentialism looks at what is the best outcome, thus which option, in the end, creates the greatest good. Theories differ on what is this good and thus should be maximised, for instance, for Hedonism happiness should be maximised and for Utilitarianism it is utility. According to the "*Impersonal Total Principle*, if other things are equal, the best outcome is the one in which there would be the greatest quantity of whatever makes life worth living."²⁰ Through a non-person-affecting view, we can provide an answer to our intuition that it is wrong of Wilma to not wait or that it is wrong to choose Risky Policy because it creates lesser lives and worse states of the world. A non-person-affecting view can thus deny the premise (IV) that there is no moral difference between our choices because there is a moral difference. It is morally right to choose the outcome that maximises the greatest good.

However, it is not wrong for someone particular, it is wrong on an impersonal level because it created less aggregate of that what is the greatest good. If the impersonal total principle is applied to the NIP it is possible to come to the 'repugnant conclusion' because it is best to have the greatest

¹⁸ Kumar, 'Wronging Future People,' 252.

¹⁹ Tim Meijers, 'Intergenerational Justice,' in Oxford Research Encyclopedia of Philosophy (forthcoming), 12. URL: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-233>.

²⁰ Parfit, *RP*, 387.

quantity; thus, it is better to have “two bottles more than half full” because they “contain more than a bottleful.”²¹ Consider the following different people choice case.

The Repugnant Conclusion: Consider that we have to choose between two policies that in a hundred years would result in two completely different populations. We could either choose the option in which we stimulate the growth of the population. This will result in more lives worth living and therefore a greater aggregate of that what makes life worth living. However, this will also result in an overpopulated earth with billions of people that have lives that are barely worth living. Choosing the other option would result in a population which has grown naturally and can be sustained by the earth’s eco-system. There will be significantly fewer people and their quality of life is high; they have lives worth living. However, their aggregate of the thing that makes lives worth living is less than that of option one.²²

If we follow the impersonal total principle of a non-person affecting view we come to the repugnant conclusion that the option that stimulates growth would be the better outcome and therefore the morally right thing to do. The best possible world would be to create the largest quantity of that thing that makes life worth living, even if it entails creating an absurd amount of people that live a life barely worth living. A non-person-affecting view could lead to the repugnant conclusion that “[t]he greatest mass of milk might be found in a heap of bottles each containing only a single drop.”²³ The repugnant element is that if we follow this principle we come to the conclusion that is the morally right thing to do to choose an overpopulated world with lives barely worth living. There are multiple approaches to how to deal with the repugnant conclusion, such as questioning the way we aggregate, compare, or measure welfare.²⁴

Nevertheless, I deem it less plausible to succeed because our commonsense moral intuition is not focused on whether it creates a better state of the world, but on whether it is better or worse for someone. I will consider the first route closed off to narrow down the options for the solution. Furthermore, I am more interested in whether a person-affecting view of morality could work, thus to the person-affecting route, which splits up in a narrow and a wide one. These person-affecting views base right and wrong on whether something is better for a person instead of it being better because of an aggregate of good or a better state of the world, as is the case with non-person-affecting views.

²¹ Parfit, *RP*, 387.

²² *Ibid.*, 388.

²³ *Ibid.*

²⁴ Arrhenius, Gustaf, Jesper Ryberg, and Torbjörn Tännsjö, “The Repugnant Conclusion,” in *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), ed. by Edward N. Zalta, 1 – 32. <https://plato.stanford.edu/archives/spr2017/entries/repugnant-conclusion/>.

Second and Third Route: Narrow and Wide Person-Affecting View

A narrow person-affecting view of morality claims that “one of two outcomes cannot be worse, nor can one of two acts be wrong, if this outcome or act would be worse for no one.”²⁵ However, this would entail that we cannot wrong future people because of the NIP. Some philosophers, such as Jeffrey Reiman and Daniel Attas, do attempt to include future people in the scope of justice. They retain the NAV and try to establish duties towards future generations through John Rawls’ original position. Reiman tries it through a contractarian threshold approach, in which one wrongs future people if, by their actions, the future people fall beneath a certain quality of life and suffer a violation of their right to normal functioning.²⁶ Attas attempts to create a transgenerational difference principle in which our obligations to future generations can be derived from the principles of justice.²⁷

A wide person-affecting view does not focus on whether a particular person is made worse off. Instead, it focuses on second-personal relations. Somebody can act morally wrong if this someone violates a non-consequentialist principle. For a WAV it makes perfect sense to talk about the duties two types can have towards each other. For instance, the relation between an employee and an employer, or the relation between a mother and a child. In the case of Wilma, Wilma would have wronged Pebbles because it is the duty of a mother to provide good care for her future child. One can determine whether a wrong has been committed by focusing on the violation of principles. Therefore, a WAV can include future people within the scope of justice because the act itself is morally wrong, without it actually wronging anybody. One can, thus, commit a wrong to future people, whilst they do not yet exist. However, can the WAV can also incorporate a NAV element because otherwise we are left with the question what kind of actions are attached to this violation of rights or who is wronged?²⁸ If we do not have a NAV answer than the NIP can arise because it is not wrong for someone in particular.

Conclusion

In the first section of this chapter, we have discussed the NIP and its complexity through the cases of Wilma and Risky Policy. In the second section, we have closed off the non-person-affecting route and from now on we will focus on the possible solution within person-affecting view of morality. What is needed to provide a WAV and a NAV solution to the NIP? A WAV can supply

²⁵ Parfit, *OWM2*, 219.

²⁶ Jeffrey Reiman, ‘Being Fair to Future People: The Non-Identity Problem in the Original Position,’ *Philosophy & Public Affairs* 35.1 (2007): 69 – 92.

²⁷ Daniel Attas, ‘A Transgenerational Difference Principle,’ in *Intergenerational Justice*, ed. by A. Gosseries and L.H. Meyer (Oxford: Oxford University Press, 2009), 189 – 218.

²⁸ Katz, ‘Contractualism,’ 111.

us with an answer to what it is to do something morally right or wrong even to future people. Whilst a NAV can supply us with what it means to wrong someone and what it means to be wronged. If both WAV and NAV want to supply an answer to the NIP they need to have an answer to why (IV) there is no moral difference between one's choice is not true. A NAV has to include future people within the scope of morality to answer to the NIP. A WAV has future people included in the scope of morality, but without a NAV one could object that it is based on impersonal values. In the next chapter, I will elaborate on how Kumar's application of Scanlonian contractualism can provide a wide and a narrow person-affecting view answer to the non-identity problem.

2. Scanlonian Contractualism and the Non-Identity Problem

In this chapter, I will investigate whether Scanlonian contractualism (SC) can provide a wide person-affecting view (WAV) as well as a narrow person-affecting view (NAV) solution to the non-identity problem (NIP). I will follow Kumar's reasoning on showing how Scanlonian contractualism can provide a solution to the non-identity problem. The first section will elaborate on the basic structure of Scanlonian contractualism; on why and to whom we owe it to justify our actions by finding principles that no one can reasonably reject. In the second section, the Scanlonian contractualism framework will be applied to a non-selection case to show how contractualism can provide a wide and a narrow person-affecting notion of wrong. In the third section, Kumar's types-approach of Scanlonian contractualism is applied to a selection case to show that contractualism can also supply an answer in a wide and a narrow person-affecting view in these cases and therefore offers a solution to the non-identity problem.

I – The Basic Structure of Scanlonian Contractualism

Scanlonian contractualism is a substantive moral theory based on the core value of mutual recognition. It is based on what we owe to each other. This conception of mutual recognition means that we in our morality, our thinking about right and wrong, aim to find “principles that others, insofar as they too have this aim, could not reasonably reject.”²⁹ As such, SC holds that “an act is wrong if its performance under the circumstances would be disallowed by any set of principles

²⁹ T.M. Scanlon, *What We Owe to Each Other* (WWO) (Cambridge (MA): Harvard University Press, 1998), 191.

for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced general agreement.”³⁰ So, according to SC, if someone acts on a principle that can be reasonably rejected, she commits a moral wrong. Her principles were unjustifiable because she has failed to recognise the other person.

Trying to justify our actions by aiming to find principles that no one can reasonably reject, automatically causes us to take the other into account. To act justifiably we must consider the other’s standpoint to see whether a principle can be rejected from their perspective. When we consider the rejectability of a principle we need to take an abstract and general perspective into account because a principle is not just about particular actions or individuals.³¹ By accepting or rejecting certain principles we constrain the reasons which we can have. It affects our liberty because it prohibits or permits certain acting principles.³² Through hypothetical deliberation, one considers the general performance of a principle and not just the performance in a specific situation with those specific standpoints that happen to be involved.

When we consider the acceptability or rejectability of a principle, we do not know who will be affected by it. Therefore, we cannot base it on information that we have of specific cases. We have to rely on general information that is commonly known; also known as ‘generic reasons’.³³ Generic reasons are those reasons that we can assume certain people will have when they are in certain situations, considering you are well enough informed on the specifics of the situation. Or as Scanlon puts it: “Generic reasons are reasons that we can see that people have in virtue of their situation, characterized in general terms, and such things as their aims and capabilities and the conditions in which they are placed.”³⁴ Moreover, reasons for rejection of a principle are not solely based on well-being. Principles can also be rejected on the basis of them being discriminatory or unfair.³⁵ We examine principles on their rejectability by taking all the involved standpoints into account. Based on the perspectives an individual can have in a certain situation, we can imagine which generic reasons someone has in that context. Therefore, we can reason what is justifiable to them.³⁶

SC is also able to deal with conflicting principles. For instance, our most well-known general principles, such as ‘thou shall not steal’, seem to have the form of a universal truth, a storable rule. Although formulations of principles often seem to be quite clear, there are, however, always exceptions; a decisive answer can often not be formulated. This inability to hold onto universal

³⁰ Scanlon, *WVO*, 153.

³¹ *Ibid.*, 202 – 203.

³² *Ibid.*, 203.

³³ *Ibid.*, 204.

³⁴ *Ibid.*, 203.

³⁵ *Ibid.*, 212.

³⁶ Rahul Kumar, ‘Risking and Wronging,’ *Philosophy & Public Affairs* 43.1 (2015): 41.

rules or principles points to a general difficulty in ethical theory. Therefore, it is important to form a substantive judgment. In this discussion, SC can offer a crucial contribution, due to its ability to prioritise and give the right weight and importance to someone's reasons, thereby being able to offer an answer to cases, which cannot be covered by a general rule. Consider the following case:

Breaking In: I need money to complete a meaningful and worthwhile project I have been working on. My neighbour is a pharmacist. She keeps a valuable antidote in her house. If I steal and sell the antidote I will have more than enough money to complete my project. However, if I steal the antidote, I have wronged my neighbour. The reason for stealing the antidote is purely for my own gain. Taking the antidote for my own gain is a reason that my neighbour can reasonably reject. I did not respect my neighbour's property and I have neglected to respect my neighbour as a person; therefore, I have wronged her.

Nevertheless, stealing is not always wrong. Consider the following alternative. My mother suddenly falls ill and the only thing that can save her is my neighbour's expensive antidote. Sadly, she is on holiday and unreachable. I break into her house to save my mother's life. Although it is an inconvenience for my neighbour that I had to break into her house, I have not wronged her because she could not reasonably reject my principle. The material damage from the break-in does not have the same moral weight as saving someone's life.³⁷

It is the strength of SC, that in such cases, it is able to prioritise between principles. Trying to justify one's action is a constant process and it draws "on this complex understanding, rather than applying a storable rule, and this understanding enables us to arrive at conclusions about new and difficult cases, which no rule would cover."³⁸ Within SC we are constantly looking for a balance and we are in "a continuing process of revising and refining our conception of the reasons that are relevant and those that are morally excluded in certain contexts."³⁹ Morality is never static, on the contrary, it is fluid.

However, when we aim to justify our actions by looking for a principle that 'no one' could reasonably reject, why and to who do we aim to justify it? First, the why; what is the role of justifiability? Justifiability comes from our respect for human life. Therefrom arises a respect for the moral person and "the moral legitimacy of their claims."⁴⁰ This includes the fact that a moral person can assess and act upon reasons and pursue a meaningful life. The aim for justifiability respects the other's capacity to assess our justification and we owe it to them to justify our actions. In this way, justifiability respects the value of human life by respecting the legitimacy of the moral

³⁷ Katz, 'Contractualism,' 108.

³⁸ Scanlon, *WVO*, 201.

³⁹ *Ibid.*, 157.

⁴⁰ *Ibid.*, 168 – 169.

person. The role of justifiability in contractualism is twofold, first, “it provides the normative basis of morality of right and wrong” because the non-rejectability of an act makes the act either right or wrong; and, second, it provides “the most general characterization of its content” because when we think about morality we search for those principles that are possibly non-rejectable.⁴¹

Second, to who do we justify our actions? Who is this ‘no one’? Who falls within the scope of morality? As SC is based on what we owe to each other, justifiability comes from the mutual recognition of each other as rational beings, meaning as moral persons; mutual recognition of the fact that someone is able “to assess reasons and to govern their lives according to this assessment.”⁴² Within the scope of morality, within that ‘no one’, falls every moral person that might have to bear the burden of a principle. Every standpoint that someone could occupy, every interest that is involved with the principle falls within the scope. Thus, even those who do not yet exist, but one day will exist, fall within the scope because they might one day take a standpoint from which one could reasonably reject the principle. SC is based on what we owe to each other and can be seen as analogous to a legal system. On the one hand, we know what can be demanded of us and to what we are entitled. On the other hand, we have a shared basis from which we can criticise and debate our judgments.⁴³

Type-token distinction

Furthermore, SC is concerned with general features or second-personal relations. To come to non-rejectable principles in our hypothetical deliberations we consider standpoints and generic reasons. These situations and perspectives we take into account can be seen as types; general types of situations and general types of persons. The duties that come forth from these deliberations are owed to everyone who fits the description of the type. It is sensible for us to talk of second-personal relations between two types, for instance, the relation between an employer and her employees. When the employer aims to justify her actions towards her employees, in her deliberations she does not justify her action separately to every employee, her principles hold for all the employees. The principle would hold for every token of the type. Therefore, we do not have to think about duties to every separate relation we might have with each token, but we can think of principles towards a type, which is a “cluster of normative significant characteristics.”⁴⁴

These clusters can be types such as mother, employer or teacher. Each of these types can have a special relationship with other types, such as the relation between caretaker-dependant,

⁴¹ Scanlon, *WVO*, 189.

⁴² *Ibid.*, 106.

⁴³ Kumar, ‘Wrongs Future People,’ 260.

⁴⁴ *Ibid.*, 261.

employer-employee, and teacher-student. Someone can, of course, be multiple types at once, one can easily be a mother, an employee, and a teacher at the same time and, therefore, a person always stands in multiple relations at the same time. Within or between these types we can specify general responsibilities, appropriate attitudes and entitlements that can be captured in principles, such as principle M: “Those individuals responsible for a child’s, or other dependent person’s, welfare are morally required not to let her suffer a serious harm or disability or a serious loss of happiness or good, that they could have prevented without imposing substantial burdens or costs or loss of benefits on themselves or others.”⁴⁵ Through principles, one can know what sort of entitlements one type has to the other in specific situations.⁴⁶ Thus every child, which is a token of the type ‘dependant’, has certain entitlements to her mother, which is a token of the type ‘caretaker’.

Through the core value of mutual recognition, SC is concerned with finding principles that no one could reasonably reject. What we owe to each other is analogous to a legal system. We know what we can be demanded of us and to what we are entitled. The different perspectives and standpoint we take into account are types of situation and persons. A type does not refer to a particular individual or a token but rather to a certain set of characteristics. If individuals have the same set of characteristics they are a token of that type.⁴⁷ Everyone is described by the most basic type, namely the type ‘person’, thus having the characteristics of being able to assess reasons and through self-governance pursue a meaningful life.⁴⁸ Our principles are built upon these types and every duty one owes to a type, one owes to a token of that type.

Conclusion

SC is based on mutual recognition, by which it justifies actions by finding principles through hypothetical deliberation. Hypothetical deliberation includes considerations of every possible type and its particular interests, every possible standpoint and generic reasons that could be involved. On this basis, it tries to find principles that no one could reasonably reject. Everyone who might have to bear the burdens of the principle is included in the scope – this means, everyone who will ever exist, currently living people and future people. We know why and to who we justify. Let us now focus on what it means to commit a moral wrong and what it is needed to wrong someone in contractualist terms. An important question, for now, is, how SC can provide a WAV and a NAV notion of wrong.

⁴⁵ Rahul Kumar, ‘Who Can Be Wronged?’, *Philosophy & Public Affairs* 31.2 (2003): 112.

⁴⁶ Ibid., 111.

⁴⁷ Ibid.

⁴⁸ Ibid.

II – Scanlonian Contractualism and Non-Selection Cases

In this section, I will elaborate on what constitutes a moral wrong (WAV) and when someone is morally wronged (NAV) in contractualist terms. Before I will elaborate on the problems surrounding the NIP and SC, in the next section, I will use the Drunk Driving case to show how SC is able to supply a WAV and a NAV notion of wrong. Throughout this chapter, I will use the following structure of Katz in which she makes the distinction on how SC provides the grounds for what is a moral wrong (WAV) and for when someone can claim to be morally wronged (NAV). On this structure, I will develop my argument:

Contractualist 'moral wrong' [WAV]

(1) X's act is wrong if it is unjustifiable on reasons no one could reasonably reject.

Contractualist 'moral wrongdoing' [NAV]

(3) X's act wrongs Y iff (i) X treats Y in a way that is (ii) unjustifiable to Y on reasons Y could not reasonably reject.⁴⁹

Consider the following case of *Drunk driving*: It is Friday night and Alice has been drinking in a bar after work. She has had several beers and is drunk. She still deems herself sober enough to drive. Moreover, the road she uses is always empty around these hours and therefore she thinks it is safe enough to drive home. She drives home safely and she has no oncoming traffic. Alice has committed a moral wrong because (1) she has acted on a principle that can reasonably be rejected.⁵⁰ If we assess the principle from every involved standpoint, we can see that it can be reasonably rejected. In her deliberations, she could have reasoned that the type of her possible 'fellow road-users' would reject her principle, on the grounds that she gave more weight to not having the inconvenience of not drinking and driving, over the benefit of the safety of others on the road. Her actions were unjustifiable to the potential other users. She could have thought of this – nevertheless, she rode home drunk anyway. From the perspective of a wide person-affecting view of morality, this is a moral wrong. It violates a principle by not taking the standpoints and interests of the type 'fellow road-users' into account. The burden of the inconvenience of not being able to drive and drink does not outweigh the benefit of the other road-users' safety. Alice violated this

⁴⁹ Katz, 'Contractualism,' 109.

⁵⁰ Katz, 'Contractualism,' 110; Kumar, 'Wronged?,' 103.

principle and thereby committed a moral wrong, although nobody was harmed or was put in harm's way. It was sheer moral luck that she did not encounter anyone.⁵¹

Consider the alternative situation in which Alice drives home drunk, but the roads are not empty. Bas is also on the road. They pass each other on the highway and the cars almost crash into each other. Alice has wronged Bas because, although he is not harmed, she has put him in a life-threatening situation with her unjustifiable actions. As shown above, she (1) has committed a moral wrong. Moreover, she (3) has also morally wronged Bas because (i) driving drunk past Bas (ii) is unjustifiably putting him in a life-threatening situation for reasons that he could reasonably reject. Alice has committed a WAV wrong by committing a moral wrong to a type. She wronged somebody on a NAV level as well. She encountered a token of the wronged type. When Alice commits the WAV wrong to the type, she also creates the potential to a NAV wronging of a token of that type. Bas becomes a token of the wronged type. Bas is NAV wronged because he entered the potential of the WAV wrong by driving in the wrong place at the wrong time. Besides, Alice was lucky that she did not crash into Bas. However, she was not lucky in the moral sense. She was just lucky because moral luck is committing a wrong and having the luck of not wronging someone in particular.

Furthermore, consider the final situation. Alice and Bas are both on the road. This time they, sadly, crash into each other. Both cars are wrecked and they are both seriously injured. Bas is harmed because of his injuries and wronged because he is a token of the wronged type and therefore both statement (1) and (3) are still the case. Is there a difference in Bas' claim on Alice between not crashing and crashing? What is the difference between harming and wronging? What appropriate attitudes for Bas and Alice in all these cases? These questions touch upon the core and on the difficulties of contractualism. I shall now discuss these issues.

What is the difference between harming and wronging someone? Harming someone is making someone worse off by your acting or not acting. For instance, causing a car accident makes the other person worse off than she was before. Often when people have to decide whether someone is wronged they look whether someone has harmed the other.⁵² However, there is a distinction between harming and wronging. One can wrong somebody and not harm her; not making her worse off. It can even be the case that by wronging someone, one makes her better off. As is the case in *Life-Saving Discrimination*: Mike wants to board an airplane that is destined to crash. The flight attendant Ocky refuses to let Mike board the plane for discriminatory reasons. The plane takes off without Mike and after an hour it crashes into a mountain. Nobody survives

⁵¹ Rivka Weinberg, 'Identifying and Dissolving the Non-Identity Problem,' *Philosophical Studies* 137.1 (2008): 10; T.M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge (MA): Harvard University Press, 2008.), 148.

⁵² Kumar, 'Wronging Future People,' 257.

the catastrophe. Ocky's action has made Mike better off: not letting Mike board the airplane was clearly the best option for him, because otherwise he would probably also have died in the crash. Nonetheless, we can clearly see that Ocky has wronged Mike. His unfair and discriminatory reasons are (ii) unjustifiable to Mike and Mike could easily reject them, although Ocky benefited Mike by increasing his well-being. No matter the outcome, a wrong is a wrong.⁵³ In the case of Bas and Alice, Alice has wronged Bas in both cases, but she has only harmed Bas in the last case.

Is there a difference in Bas' claim on Alice between not crashing and crashing? In both cases, Bas can claim that Alice has wronged her. The moral claim does not differ in these cases because SC is not focused on the outcome, but on the wronging by the wrongdoer. When Bas claims that he has been wronged, he points to the moment when Alice has forsaken her duties to the type 'fellow road-users'. That moment created the potential that wronged him when he became a token of that type. Whether or not Alice hit Bas, on a moral level, no distinction is made.⁵⁴ However, in the last case, Bas also has a compensational claim because Alice is liable for the injuries and damage that she has caused. Bas has a legal claim for compensation. This is on a legal and material level, not on a moral level.

What are the appropriate moral attitudes that both or others could have in the different cases? What kind of moral emotions are appropriate for a wrongdoer or a moral claimant to have? The appropriate moral emotion for Alice to have is guilt; feeling guilty for failing to act justifiably. Even when Alice is lucky and passes nobody, she should still feel guilty for committing her moral wrong.⁵⁵ In the cases with Bas, it is, besides feeling guilty, also appropriate for her to apologise for her wronging and thereby acknowledging her own fault.⁵⁶ In all the cases Alice is blameworthy. For Bas, on the other hand, it is appropriate to feel resentment as a moral claimant.⁵⁷ The appropriate moral responses for Bas are either to forgive Alice, by which he shows "a willingness to forgo reacting to a wrong in ways one would be justified in doing."⁵⁸ Or he can blame her, blame being the modification of his attitudes towards Alice and altering his "readiness to interact with [her] in specific ways."⁵⁹ Both, however, do not alter the fact that Alice has committed a wrong by which she impaired the relation; they are only choices on how Bas wishes to continue the relation with Alice.

Concluding, someone commits a WAV moral wrong when she acts on a principle that could be reasonably rejected by an involved type. If someone forsakes her duties towards a type

⁵³ James Woodward, 'The Non-Identity Problem.' *Ethics* 9.4 (1986): 810 – 811.

⁵⁴ Scanlon, *Moral Dimensions*, 149.

⁵⁵ *Ibid.*, 143.

⁵⁶ *Ibid.*, 150.

⁵⁷ *Ibid.*, 143.

⁵⁸ Scanlon, *WVO*, 272.

⁵⁹ Scanlon, *Moral Dimensions*, 143.

and violates a WAV principle, then the potential to a NAV wronging of a token of that type is also created. When the moral wrong is committed, the potential does not have to be realised immediately, but there can be a time gap before someone is wronged.

III – Scanlonian Contractualism and the Non-Identity Problem

Kumar argues that his types-approach to SC can offer a solution to the NIP by providing a WAV and NAV answer to selection cases. He avoids the NIP, whilst providing a WAV and a NAV of morality. To further build upon Katz' structure statements (2) and (4) have been added below to show how SC is structured in selection cases, such as the case of Wilma.

Contractualist 'moral wrong' in selection cases [WAV]

- (1) X's act is wrong if it is unjustifiable on reasons no one could reasonably reject.
- (2) Wilma's act is unjustifiable on reasons no one could reasonably reject. Therefore, Wilma's act is wrong.

Contractualist 'moral wronging' in selection cases [NAV]

- (3) X's act wrongs Y iff (i) X treats Y in a way that is (ii) unjustifiable to Y on reasons Y could not reasonably reject.
- (4) Wilma's act (i) treats Pebbles in a way that is (ii) unjustifiable to Pebbles on reasons Pebbles could not reasonably reject. Therefore, Wilma's act wrongs Pebbles.⁶⁰

Kumar argues that SC avoids the NIP in two ways. First, NIP does not arise because it "cannot get started within the terms of the contractualist account of wronging."⁶¹ Who might live in the future does not matter whether or not an act is wrong; the outcome does not matter. It matters whether one's actions are justifiable and non-rejectable; not who might be affected by a terrible act or policy choice in the future. Second, future people are in the scope of justice because in one's hypothetical deliberation one tries to find principles that no one can reasonably reject. This 'no one' is also the future people, thus, all the people who have to live in the circumstances we create, or bear the burdens or enjoy the benefits of our actions. In justifying our actions there is no difference between the currently living people and future people, there are just the particular standpoints and interests that are involved. Therefore, when thinking about our obligations to the

⁶⁰ Katz, 'Contractualism,' 109.

⁶¹ Kumar, 'Wronging Future People,' 255.

future generations “there are no distinctive philosophical issues regarding the normative basis of such obligations that need to be addressed.”⁶²

By applying Kumar’s types-approach of SC to the case of Wilma, we can see how it is able to provide a WAV and a NAV answer. When Wilma decides not to wait she commits a moral wrong, because she violates principle M, namely forsaking her duty to provide good care for her child. In her practical deliberations, she failed to take the interest of her future child into account. She could reason that the other standpoint involved in this situation, namely the type ‘her future child’, could reasonably reject her actions, knowing that her future child would have generic reasons to have an interest in normal eyesight. We can, therefore, conclude that (2) is true. From this point onward things differ from the drunk driving case, because the person that is wronged does not yet exist; we are dealing with a selection case. Another difference is that, in Wilma’s case, the wronging of the token is necessarily connected to coming into existence; the wronging is unavoidable if the token comes into existence.

For SC to give an account of NAV moral wronging the (4) must be the case. We can see that condition (i) is met because Wilma caused Pebbles to exist. Whilst it might be more shaping circumstances than ‘treating’ Pebbles. We could argue that Pebbles is affected by Wilma’s choices.⁶³ Whatever happens after the conception, the fact that Wilma has committed a moral wrong and violated an entitlement of the type ‘her future child’ will stand. Even if she does not conceive because, for instance, at the moment of attempt she was not fertile. She experiences moral luck because she wrongs no one in particular. However, when Pebbles comes into existence the wrongdoer gets a victim; Pebbles is a token of the wronged type. Pebbles can assess the situation and conclude that Wilma (i) caused her to come into existence with incurable blindness and (ii) that she could reasonably reject Wilma’s unjustifiable actions. Even though she might enjoy life to the fullest and only views her blindness as a minor inconvenience, she is still wronged.

How is it possible though to wrong someone that does not yet exist at the time of the wrongful conduct?⁶⁴ Pebbles does not exist when Wilma forsakes her duty. However, when Wilma has the intention of conceiving a child she creates the type ‘her future child’ and the corresponding appropriate duties towards this type (i.e. principle M). Even though a token does not yet exist and might never exist.⁶⁵ From now on it is reasonable for Wilma to take the interest of ‘her future child’ into account. For this, she does not need to know the identity of the token, the only necessary knowledge that is needed are the specifics of the type.⁶⁶ Moreover, SC is not focused on the

⁶² Kumar, ‘Wronging Future People,’ 255.

⁶³ Katz, ‘Contractualism,’ 113.

⁶⁴ Kumar, ‘Wronged?’, 110.

⁶⁵ Ibid., 114.

⁶⁶ Ibid., 112.

outcome of an action (as is already explained). Even if a miracle happens and Pebbles is not born blind, Pebbles is still wronged by Wilma; although Wilma did not cause her daughter any harm. Therefore, when Wilma intends to conceive, the fact that the identity of the to be particular is unknown “turns out to be of no consequence, as the other retains her standing as a certain type to whom certain duties are owed regardless of what her token identity turns out to be.”⁶⁷ Thus, when Wilma forsakes her duties, she commits a moral wrong to the type ‘her future child’ and at the same time, she creates the potential for NAV wronging a token of that type.

The relation between Wilma and Pebbles is damaged because of Wilma’s conceptive negligence. Wilma has failed to take ‘her future child’s’ interest into account and by this fact their relation has already been altered.⁶⁸ It does not matter that there is a time gap between the wrongdoing and the creation of Pebbles; the wrong still stands.⁶⁹ In Wilma’s case, the token is necessarily NAV wronged because the token can only come into existence within the potential of the WAV wrong to NAV wronging. However, the necessary link between coming into existence and the realisation of the potential does not excuse the wrongs done. If Pebbles comes into existence as a moral claimant, she has a right to feel resentment. When Pebbles claims to be wronged, she does not point to her blindness, but she points to the moment in which Wilma has forsaken her duties. The moment she failed to take the interest of her type into account and where the potential for the wrong was created. She might have a good relationship with her mother or a terrible one. It cannot compensate for the moral wrong. Pebbles can either blame or forgive Wilma, as is the same with Bas in the drunk driving case.

Conclusion

In this chapter, it has been argued that Scanlonian contractualism can provide a WAV and a NAV solution to the NIP. In the first section, the basic structure of Scanlonian contractualism was discussed. SC is based on the core value of mutual recognition from which our aim of finding principles that no one could reasonably reject comes. Our aim to justify our actions comes from mutual respect of recognising the other as a moral person, that can assess reasons and pursue a meaningful life according to that assessment. We owe justifiability to all whom fall within the scope of morality, to everyone whom falls within ‘no one’, thus to all the people who now exist or will exist and who might bear the burden of our principles.

In the second section and third section, it was shown that SC is able to provide a WAV and a NAV notion of wrong in selection as well as non-selection cases. A WAV moral wrong is acting

⁶⁷ Kumar, ‘Wronged?’, 113.

⁶⁸ Scanlon, *WVO*, 272.

⁶⁹ Kumar, ‘Wronged?’, 114.

on a principle that could be reasonably rejected from the standpoint of an involved type. SC is focused on second-personal relations between types. Responsibilities, demands, and entitlements between types can be specified and if they apply for a type, they apply for a token. A violation of such a principle, thus a WAV wrong, simultaneously creates the potential of NAV wronging a token of the type that is wronged by the violation.

Finally, the only difference between selection and non-selection cases is, is that the potential to wrong a token created by the WAV wrong is necessarily realised in selection cases. It does not matter that there is a time gap between the WAV wrong and the coming into existence of the token. As it also did not matter in the non-selection case in which Bas was not immediately wronged, when Alice committed a moral Wrong by getting in the car whilst she had been drinking. Both cases result in an impaired relation because of the victims have been morally wronged by the wrongdoers because the wrongdoer has “culpably failed to regulate her practical deliberations in the way that the wronged was legitimately entitled to expect and demand of her.”⁷⁰

3. Objections to Kumar’s Solution

In this chapter, the objections to Kumar’s solution will be discussed. The first section will demonstrate Katz’ her objection to the claim that Scanlonian contractualism can provide a narrow person-affecting view answer in selection cases. If her objections are valid the non-identity problem has not been solved. Her objection is based on two arguments: the ‘new relation’ argument and the ‘existence is good’ argument. In respectively section two and three the arguments will be refuted by using arguments of Finneron-Burns and Weinberg. Finally, this chapter will conclude with a strengthened case of Kumar’s types-approach to Scanlonian contractualism and its application to the non-identity problem.

I – Katz’ objection

Katz contests whether it is possible to offer a NAV solution to the NIP in SC terms. Her main objection is that in Kumar’s solution, not all the reasons that Pebbles might have to reject or accept the principle are taken into account and therefore the “counterfactual dependence of Pebble’s existence on Wilma’s act may not undermine Wilma and Pebbles’ actual interpersonal relationship

⁷⁰ Kumar, ‘Wronging Future People,’ 259.

of mutual justifiability *ex post*.”⁷¹ Meaning that when Pebbles looks back she might not reject her mother’s acting principles. The fact that Pebbles existence is dependent on Wilma’s negligence is not taken properly into account when weighing the principle. She argues that Wilma has not wronged Pebbles because (4) is not met because (ii) is not the case, because Pebbles could judge Wilma’s action as justifiable when she takes *all* the reasons into account.

Katz her conclusion that (4) is not met because if *all* the reasons are taken into account, including the new reasons, Pebbles (ii) could judge that Wilma’s action was justifiable to her. Her conclusion rests on two arguments. First, the ‘new relation’ argument, a new relation is created when Pebbles comes into existence. This new relation of actual interpersonal mutual justifiability generates new reasons which should be taken into account. Second, the ‘existence is good’ argument which argues that coming into existence is good and it should also be included as a reason in the weighing of a principle. This argument is based on two premises; (a) existence is good because it is a necessary condition for a life worth living; and, (b) all the goods in life outweigh the burdens.

The ‘new relation’ argument states that the fact that Pebbles has come into existence changes the situation and the relation between Wilma and Pebbles. They are in an actual interpersonal relation instead of the abstract relation of hypothetical agreement, standpoints, types and generic reasons. This new relation influences the mutual justifiability between Wilma and Pebbles. There are different reasons constituted by their interpersonal relation than the generic reasons that are derived from the types. Wilma’s violation of the WAV principle still stands, but at the same time, more reasons have been added to the scales.⁷² These reasons have not been considered in the weighing of the justifiability of Wilma’s action. So, the WAV violation and the potential for NAV wronging is not necessarily realised when a token comes into existence, as Kumar argues. When Pebbles assesses whether she thinks Wilma’s action is unjustifiable, the new relation should also be weighed in as well. She takes the new reasons that are created by the new actual interpersonal relation with her in her assessment. Reasons such as her good relationship with her mother and the enjoyment of life in things such as listening to music, the eating of chocolate or gossiping with friends.

The ‘existence is good’ argument states that coming into existence is good and it should also be included as a reason in the weighing of a principle. Although Wilma’s moral wrong caused Pebbles’ blindness it, on the one hand, also (a) caused Pebbles to come into existence which is a condition for Pebbles’ life worth living. On the other hand, it (b) caused the counterfactual

⁷¹ Katz, ‘Contractualism,’ 113.

⁷² *Ibid.*, 114 – 115.

dependent goods in life that outweigh the burden.⁷³ Therefore, when Pebbles assesses whether she is wronged by Wilma because Wilma's act (i) has treated Pebbles in a way that is (ii) unjustifiable to Pebbles on reasons Pebbles could not reasonably reject. She judges that Wilma's act is not unjustifiable because it was necessary for existence and although she is burdened with blindness the counterfactual dependence of the goods make life worthwhile and they outweigh the bads. She is not wronged by Wilma because "one wrongs another when one treats the other in a way that is unjustifiable to her, but justifiability results from *all* the reasons for and against and how it is reasonable to weigh those against each other."⁷⁴

Therefore, if *all* the reasons are taken into account it seems that SC cannot supply an answer to the NIP because through its own terms of mutual justifiability we come to the situation in which Wilma seemingly wrongful action cannot wrong Pebbles, at least on a NAV level. Without a NAV answer in selection cases, the NIP can arise. For SC to supply a proper solution to the NIP it is necessary to at least be able to provide a NAV answer. There are several objections one could raise to Katz her reasoning. Katz' main objection is that in the process of deciding which principles are justifiable the reasons that arise from the 'new relation' and the 'existence is good' arguments have not been weighed in. Below, in section two and three both the 'new relation' argument and the 'existence is good' argument will be respectively refuted. By discussing these objections and replies we can get a grip on the full account of whether or not SC can provide a WAV and a NAV answer to the NIP.

II – The 'New Relation' Argument

Katz' first objection is the 'new relation' argument. It argues that the actual interpersonal relationship between Wilma and Pebbles adds new reasons to the weighing whether Wilma's negligent act is justifiable. The abstract hypothetical deliberations which produce the WAV principle do not take into account the actual interpersonal relationship. Kumar argues that a WAV principle cannot be reasonably rejected if it took into account every interest of every possible standpoint an individual involved in the situation could have. In hypothetical deliberation, every interest is weighed in the construction of a principle. The fact that Wilma wronged the type 'her future child' by her negligence immediately wrongs Pebbles when she comes into existence. Not because Wilma has caused harm or made her worse off, but because she has not taken her future child's interest into account and thereby created the realised potential to wrong a token of that type. This impaired the relation and created the relation of wrongdoer and wronged between them.

⁷³ Katz, 'Contractualism,' 113 – 114.

⁷⁴ Ibid., 116.

Katz states that the reasons that led to the WAV principle are “different than the reasons had by Wilma and Pebbles now that Pebbles exists and they are in an interpersonal relationship.”⁷⁵ Katz argues that besides the abstract generic reasons, the reasons from the actual relationship are also relevant in the moral justification.

Moreover, she states “the value of at the heart of contractualist metaethics is the value of living in actual second-personal relationships of mutual justifiability, what matters for an agent is that her action be justifiable to the actual people she is in relationship with on reasons those people could not reasonably reject.”⁷⁶ Katz, however, misinterprets the different relations that are in this situation due to a lack of analytical clarity. The core value of SC is indeed mutual recognition and respect, but through moral relations for moral reasons.⁷⁷ Below, it will first be shown that this misinterprets the different relations and afterwards, it will be argued that there is a difference between interpersonal justifiability and hypothetical justifiability.

We need to separate two kinds of relationships to make clear why Katz her conclusion is wrong, when she argues that the new relationship should weigh as a positive reason and thereby it outweighs the NAV moral wrongdoing. Katz identifies the interpersonal family relationship with a moral relationship and those are not the same. Although other relationships such as friendship and family are very important, they are not the same as a moral relationship; a moral wrong is also different from an interpersonal wrong. The interpersonal relationships Katz refers to, namely the family relationship, exists in virtue of the fact that Pebbles is Wilma’s child. This relationship dictates a normative of ideal of attitudes that one should have such as, for instance, principle M. For example, another interpersonal relationship is friendship. It exists on the virtue of the fact that two people act accordingly to the appropriate attitudes.⁷⁸ It is clear with who you are in a relationship and how it is constituted. Meanwhile, the moral relationship is with everyone and exist in virtue of the fact of being a rational being; a moral person. It might sound abstract and bizarre that we are in a relationship with every rational being. This is a different kind of relationship; “it is a normative ideal, like a normative ideal of friendship that specifies attitudes and expectations that we should have regarding one another whenever certain conditions are fulfilled.”⁷⁹ In virtue of being rational beings, we are always in a moral relation. This relation dictates the attitudes we should hold against each other.

These different kinds of relationships also differ in justifiability, namely interpersonal justifiability versus hypothetical justifiability. The former is between individuals and what is

⁷⁵ Katz, ‘Contractualism,’ 115.

⁷⁶ Ibid., 112.

⁷⁷ Rahul Kumar, ‘Reasonable Reasons in Contractualist Moral Argument,’ *Ethics* 114.1 (2003): 18.

⁷⁸ Scanlon, *Moral Dimensions*, 139.

⁷⁹ Ibid., 139.

permissible in interpersonal justifiability is dictated by the appropriate attitudes of the relation. If one, for instance, acts impermissible according to the appropriate attitudes of friendship, the worst thing that can happen is that someone ends the friendship. Acting impermissible in an interpersonal relation can damage a relation. By damaging a relation one could socially wrong someone, but it would not morally wrong someone. The latter is the kind of justifiability by which the moral person searches for permissibility for their action; searches for permissibility through finding principles that no one can reasonably reject. The performance of a principle is on a general level and “[i]n assessing the implications of a proposed principle for a particular standpoint, whose particular interests are aptly characterized by that standpoint is of no importance.”⁸⁰ The focus of the justifiability is to those with who we are in a moral community, namely our fellow rational beings. Because of that we also justify to those with who we are in an actual relationship. If one acts in an impermissible way in an interpersonal relation, one can damage a relation; however, acting impermissible in a moral relation can justify someone to claim that she is morally wronged.⁸¹

Concluding, the difference in relationships and the corresponding justifiability is misinterpreted by Katz. Relationships might be substantively damaged if someone acts impermissible according to interpersonal justifiability, however, one cannot be morally wronged by it. Katz states that “our actual relationships are ones that express recognition and respect for those actual others by ensuring we treat those others in a way that we could justify to them on reasons they could not reasonably reject.”⁸² This is true; however, besides the actual relationships between actual people, one is also in a relationship with all those that fall within the moral scope. To them, we justify our actions through hypothetical deliberations. We consider the general performance of our principles because morality is not just about particular relations and situations. The new relationship of Wilma and Pebbles, although an actual relationship, is not on the level of hypothetical justification and therefore it does not add new reasons to the moral equation of rejectability. She misinterpreted Scanlon and the distinction in the different relationships. There is a difference between acting impermissible on an interpersonal level and acting impermissible on a moral level.

Katz does accept that Wilma’s WAV moral wrong also constitutes a NAV moral wronging of Pebbles. It is this wrong she attempts to mitigate with the positive reasons that are created by the new interpersonal relationship. Those, however, are not allowed in moral reasoning, nevertheless, the negative reasons that she tried to mitigate still stand, therefore, her acceptance of a NAV wronging still stands.

⁸⁰ Kumar, ‘Risking and Wronging,’ 41.

⁸¹ Ibid., 50.

⁸² Katz, ‘Contractualism,’ 108 – 109.

III – The ‘Existence Is Good’ Argument

Katz her second objection is the ‘existence is good’ argument. It argues that reasons concerning coming into existence should be weighed in the creation of principles. The argument is based on two premises; first, (a) existence is good because it is a necessary condition for a life worth living. Second, (b) all the goods in life outweigh the burdens. The benefits of coming into existence are not taken properly into account and they should be. Wilma is only blamed for all the bads, but why is she not credited for all the goods?⁸³ After all, she is the one that brought Pebbles into existence, the necessary condition for enjoying all those goods in life. Why would it be wrong to bring someone into existence if it is foreseeable that, although some detriments, such as incurable blindness, she would have a life worth living? If the goods outweigh the burdens Katz argues that Wilma has not done anything wrong because “it is reasonable for Pebbles to both recognize the bad of being blind as a reason she could reject Wilma’s action and all the goods of her existence as a reason she could affirm it.”⁸⁴ Katz concludes that Kumar’s approach does not give any weight to coming into existence and if weight is given to existence (ii) is not met and Wilma has not wronged Pebbles.

Finneron-Burns and Weinberg both raise issues with existence as well. However, in contrast to Katz, they argue that existence should not be taken into account at all because existence is not an interest; it is a requirement for having interest. Therefore, it is neither good nor bad; it is neutral. This has several implications, which I will discuss below, but the most important implication is that existence cannot be used as a counterbalance in the weighing of the justifiability of a principle; it cannot be used on the scales as a good. In this section, I will refute Katz her conclusion by discussing Finneron-Burns’ and Weinberg’s arguments concerning existence.

There are three counterarguments to the ‘existence is good’ argument. The first two are focused on premise (a) existence is good because it is a necessary condition for a life worth living. The first argument states that coming into existence cannot be used to either reject or non-reject a principle because it is not a moral reason. The second one argues that bringing someone into existence cannot be used to justify one’s actions because we cannot have any knowledge about who we will bring into existence and therefore to whom we justify.

The last argument is focused on premise (b) that the goods of existence outweigh the bads. It is an implicit assumption in the NIP that if a life is worth living that the goods of existence automatically outweigh the burdens. This assumption should be rejected because, firstly, coming

⁸³ Katz, ‘Contractualism,’ 115.

⁸⁴ Ibid.

into existence should not weigh as a moral reason because it is neutral and it is not in anyone's interest. Secondly, if we do assume that coming into existence automatically outweighs all the burdens, the rejection of the principle that led to existence is not precluded from rejection because reasons for rejection are not solely based on well-being. One can also reject on other reasons than well-being, such as unfairness or discrimination. In this section, I will discuss all three arguments.

First Argument: Existence Is Not a Moral Reason

According to Finneron-Burns, the issue surrounding existence is a major objection to Kumar's contractualist approach to the NIP. His case can be strengthened when existence is ruled out as a moral reason for rejection and justification. When existence is allowed as a moral reason in the contractualist framework there are three consequences. First, it is incoherent to include existence as a standpoint in the justification of principles. Since non-existence is an unreal standpoint because "by definition no one can occupy it."⁸⁵ It would be incoherent to use it in the SC framework because it would be impossible to wrong possible people because we cannot take their interest into account. Moreover, one actually needs to exist to be able to "bear the brunt of a principle, and therefore occupy a standpoint."⁸⁶

Second, existence is a requirement for having interests to begin with; it "is neutral; it's the creation of a subject of interests, not an interest itself."⁸⁷ It is impossible to disadvantage possible people by not bringing them into existence because they cannot have any interest before existence, thus they cannot be advantaged or disadvantaged before existence.⁸⁸

Third, if it would be the case that one could have an interest in coming into existence and it would be allowed in the SC framework. Every decision we make leads to the existence of one group of possible people and the non-existence of another. If their existence or non-existence would have to be included in our decision-making process, no principle would be non-rejectable because there is always a group that could object, therefore "we would be morally paralysed."⁸⁹ We can conclude that existence is not a moral reason because allowing it would be incoherent and practically unfeasible. Existence has no place in hypothetical deliberations of finding principles that no one could reasonably reject.

Second Argument: Bringing Someone into Existence Cannot Justify Actions

⁸⁵ Finneron-Burns, 'Contractualism and the NIP,' 1156.

⁸⁶ Ibid.

⁸⁷ Weinberg, 'Identifying and Dissolving,' 14.

⁸⁸ Finneron-Burns, 'Contractualism and the NIP,' 1157.

⁸⁹ Ibid.

The previous argument showed that an interest in coming into existence cannot be used to reject a principle; this argument shows that likewise it cannot be used to justify bringing someone into existence. Wilma could not argue that she takes Pebbles' interest in account when she conceives her by stating something in the style of 'if I do not commit this wrong, Pebbles will never come to exist and therefore it is good of me to commit this wrong.'⁹⁰ If we assume that coming into existence is beneficiary for a person, we cannot specifically say that we do it to benefit a particular future person. We have no knowledge of who will come to exist.⁹¹ Therefore, we cannot use the benefit of a specific person to be as a reason for justification of our principles. Wilma, therefore, cannot justify her action by arguing that it is beneficiary for Pebbles because she has no means of knowing that Pebbles will be the particular individual that comes into existence.

The only way we can justify our principles to future people is by taking their interests into account by taking the interests of the type into account and by not caring which specific particular individual will come into existence. We never know which particular will come into existence. Existence might be beneficiary for that particular, but we cannot know which particular we will bring into existence. Therefore, our motivation can never be to benefit that particular.⁹² Something else must have motivated us, because we cannot justify our principle with the reason of benefitting someone by bringing them into existence. For instance, if we take the Risky Policy case in mind. Our reason for choosing the Risky Policy is not to create a certain particular group of people in the future, our reason is self-interest, namely having a higher quality of life at the cost of the future burden for the generation to come. Bringing someone into existence cannot be used as an excuse to justify our self-interested actions.⁹³

Third Argument: Existence Does Not Automatically Outweigh All the Burdens

The final argument is the refutation of the implicit assumption within the NIP that existence automatically outweighs every burden and that it is, therefore, precluded that one can reasonably reject the principle that led to one's creation. This assumption should be rejected because, firstly, coming into existence should not weigh as a moral reason because it is neutral and it is not in anyone's interest; secondly, if we do assume existence does automatically outweigh all the burdens, the rejection of the principle that led to existence is not precluded because reasons for rejection are not solely based on well-being. One can also reject on other reasons than well-being, such as unfairness or discrimination as is showcased by Life-Saving Discrimination.

⁹⁰ Finneron-Burns, 'Contractualism and the NIP,' 1158.

⁹¹ Ibid., 1159.

⁹² Ibid.

⁹³ Ibid.

If we assume that the principle that led to one's creation is precluded from rejection, because coming into existence automatically outweighs all the burdens. Then existence is a desirable thing to have and one could argue that it is in Pebbles advantage to be born with a disability. Without this disability, she would not have existed because the creating principle accompanies existence with her detriments. It would be in Pebbles interest to be blind "to 'secure the good of existence' since *ex hypothesi*, the person could not exist without the disability."⁹⁴ However, the position of having interest in coming into existence can only be held by possible people. As argued before, possible people are the only category for which non-existence is an alternative. Since coming into existence is a requirement for having interests, possible people do not have any. Possible people cannot have any interest in coming into existence because they do not yet exist.⁹⁵ Moreover, the distinction between possible and future people is that future people will come to exist. Future people is the term that "picks out *the very people* who will exist in the future."⁹⁶ Because existence is a certainty for future people by definition, it cannot be argued that it is "in the interests of future people to have their disabilities, given that the benefit of existence entails these disabilities, since existence is something that they will not lack. Future people will exist."⁹⁷

Moreover, if we apply assumption that existence automatically outweighs all the burdens in the case of Risky Policy. We could see that it is not reasonable to preclude the principle that caused one to exist from rejectability. The generation that is struck by the catastrophe might have gotten the benefit of existence; however, they are left with the burdens of a choice that is made three hundred years ago. A choice they could not reasonably reject if SC was solely based on well-being because if their lives are worth living, then existence outweighs the burdens. However, within the contractualist framework, they could also reject on reasons such as unfairness or discrimination. The future people can still be happy with their lives and at the same time reject the principle of Risky Policy on the grounds that it is unfair.⁹⁸

Furthermore, it is possible to be wronged by people that you have never met and never will in the Risky Policy case. The time gap does not matter. The relation between the impaired and the wrongdoers is "impaired relative to the standard relationship between persons generally, insofar the perpetrator's action showed a failure to have the concern for the welfare of others that is part of what we call owe to each other."⁹⁹ The wrongdoers failed to take the interest of a type into

⁹⁴ Finneron-Burns, 'Contractualism and the NIP,' 1161.

⁹⁵ Weinberg, 'Identifying and Dissolving,' 11.

⁹⁶ *Ibid.*, 12.

⁹⁷ *Ibid.*, 11.

⁹⁸ Finneron-Burns, 'Contractualism and the NIP,' 1161.

⁹⁹ Scanlon, *Moral Dimensions*, 146 – 147.

account and thereby wronged all the tokens.¹⁰⁰ The wronged are at least “owed some kind of symbolic acknowledgment, or apology, by the wrongdoer.”¹⁰¹ They have a reparation claim; a moral claim and depending on whether harm has been inflicted a material claim as well. However, how or what is an appropriate way of redressing the past wrongdoings is a topic for another debate.¹⁰²

Concluding, even if we assume that existence outweighs all the burdens it is still possible to reject a principle that led to one’s creation without having to result in bringing in impersonal reasons. It is possible to keep the contractualist core value of mutual justifiability intact, which insists that reasons for rejectability or acceptability of principles come from the involved standpoints of possible individuals.¹⁰³ The reasons solely come from recognising the other as a person capable of self-governance and having moral legitimate claims, also *individual reason restriction*.¹⁰⁴ Pebbles does not have to use impersonal consequentialist reasons to reject Wilma’s preconception negligence. Moreover, when rejection is not precluded anymore the NIP does not arise. It is possible for Pebbles to embrace all the goods of life and simultaneously reasonably reject Wilma’s principle.¹⁰⁵

The debate around existence has made clear that in an *ex ante* perspective existence is a requirement for having interests and it is neutral. Future people, therefore, cannot have an interest in existence and non-existence would not be bad for them, therefore “we don’t procreate *for the sake of* our children.”¹⁰⁶ Furthermore, from an *ex post* perspective those people who do come to exist have an interest in having lives worth living and those interests are the ones that should be considered.¹⁰⁷ We should view existence as a given and worry about taken the interest of the future people into account by creating the right circumstances. Existence cannot anymore be used as a moral counterbalance. The debate around existence can be made perfectly clear and summed up by the following altered dialogue from Weinberg between Wilma and Pebbles:

Pebbles: Mother, you wronged me by not waiting and taking your medicine.

Wilma: But, had I taken the medicine and waited, you wouldn’t exist, and your existence is worthwhile, so I did not wrong you by not following the doctor’s advice.

¹⁰⁰ Kumar, ‘Wronging Future People,’ 268.

¹⁰¹ Ibid., 269.

¹⁰² Ibid.

¹⁰³ Scanlon, *WFO*, 234.

¹⁰⁴ Scanlon calls it personal reasons restriction.

¹⁰⁵ Derek Parfit calls for Scanlon to drop the individual reasons restriction because he argues that otherwise, it can be the case in the SC framework that it is possible to create lives barely worth living instead of lives that would have been better. His argument is based upon the implicit assumption that existence outweighs automatically everything and therefore a rejection of the creating principle is precluded. Scanlon does not have to drop his restriction and he can keep the SC’s core value of mutual justifiability intact.

¹⁰⁶ Weinberg, ‘Identifying and Dissolving,’ 15.

¹⁰⁷ Ibid.

Pebbles: I don't need to exist; nonexistence would not be bad for me. But, since I do exist, I need to see – being blind is bad for me. You wronged me with your negligence. Furthermore, even if I would have been born with normal eyesight, you would have still wronged me, because you showed a failure by not taking my welfare into account.¹⁰⁸

Conclusion

Katz' objection that *all* the reasons Pebbles could have should be taken into account when judging whether or not Wilma has wronged her. She argues through the 'new relation' argument and 'existence is good' argument that new reasons have been added to the equation. Reasons that outweigh the 'bads' of coming into existence and therefore justify Wilma's negligence. Both arguments have been refuted. The first argument has been refuted because it was based on a misinterpretation of moral relations and hypothetical justifiability. The second, because existence has been excluded as a moral reason. Existence cannot be used as a moral counterbalance in the weighing of principles. Existence is a requirement for having interests and it is neither good nor bad; it is neutral. It is ruled out as an interest and therefore as a possible standpoint in hypothetical deliberations. It cannot be used as a reason to reject a principle.

Moreover, this thesis has added 'potential' as a new term in Kumar's types-approach to the SC. It can help to explain how it is possible for a token of a wronged type to claim that one has been wronged by something that led to one's existence. It is possible to reject the principle that led to one's creation without having to result to impersonal values. One can claim to be wronged because the potential of a WAV wrong has been realised. The interests of a type have not been taken into account and therefore the token of a wronged type is also wronged. One does not point to the outcome of the wrong, for instance, Pebbles' blindness, but to the moment when the duties were forsaken and the potential was created.

Kumar's case has been strengthened because existence cannot be used anymore as a moral counterbalance in the weighing of principles. Existence does not automatically outweigh all the burdens. Kumar's types-approach to SC can provide a WAV and a NAV notion of wrong in selection cases and therefore it provides an answer to the NIP.

4. Objections

¹⁰⁸ Weinberg, 'Identifying and Dissolving,' 15.

Kumar's types-approach to Scanlonian contractualism has offered a solution to the non-identity problem. Seeing that if we focus on mutual justifiability and we take every standpoint, every type into account, there will never be an individual that will come to exist that will be wronged because "one will have given appropriate consideration to the relevant interests of *that* individual."¹⁰⁹ By purely focusing on our justifiability of our principles in the now and excluding which particulars will come to exist as a relevant factor, can it be that we miss certain objections or do we shift problems to the future? Some objections can arise with the lack of our knowledge on the further future. How can we know, on the one hand, what will be the interests of future people, and, on the other hand, what will be reasonable in the future? Kumar distinguishes three questions concerning this topic. First, what if our interests and that what matters to us changes? Second, what if we evolve and our interest and capacities differ hugely from our current ones? Third, what if our interest stay the same, but we can more easily satisfy them? Moreover, I will answer a fourth question on whether the future can be too demanding on us if we have to take into account every future person that will ever exist. Finally, I will answer whether or not SC is open to objections of relativism.

First, concerning our interests and the interests of further future people, "what if human beings who live in the further future have adapted such that certain things that reasonably matter to us no longer reasonably matter to them?"¹¹⁰ Katz objects that no one 'could' object to a principle but does not object to a principle, there must be a reason that should have entered the weighing of the principle.¹¹¹ However, this rests on a misunderstanding on Katz' side of what a moral reason is and how hypothetical deliberation works. Whether or not the wronged 'would' reject a principle is not morally relevant. The difference between 'would' and 'could' does points out that there is an epistemic limitation to what we can know about the interest of people in the future. We can only reason from our current living perspective and if we conclude there could be a reason for rejecting a principle it is unjustifiable, although the future people might not reject it. With our knowledge, we can only produce the 'could', the 'would' is morally irrelevant because SC is not focused on the outcome.

For instance, we build ramps for all buildings so that they are wheelchair accessible. However, all did we know that future wheelchair-bound people have no interest in ramps because wheelchairs can fly.¹¹² From our perspective we think to do the right thing for the future people, however, "given our epistemic limitations regarding future people and events, we erred in how best

¹⁰⁹ Kumar, 'Wronging Future People,' 266.

¹¹⁰ Ibid.

¹¹¹ Katz, 'Contractualism,' 116.

¹¹² Weinberg, 'Identifying and Dissolving,' 10 – 11.

to serve their interests.”¹¹³ We did not act unjustifiably, because we took their interest into account, however, that is all we can do and we can still err. This example shows how interest can change. The outcome does not negatively affect the future people. Although, it is possible to have a negative outcome for future people in two ways. We can either unknowingly ruin the chance for future people to pursue an interest. If we could not reasonably foresee this, we are not to blame. Or as Kumar argues that if it is foreseeable that we might undermine the possibility of future people to pursue a certain interest, in that case, we have to assess the permissibility of our actions.¹¹⁴ Therefore, only if we know for sure that the reasons for pursuing certain interests in the future will disappear, we can remove it from our considerations. However, can we ever know this for sure?

Second, what if we evolve and “in the future having enhanced capacities that make their interests very different from the interests of human beings as we now know them?”¹¹⁵ We can interpret this question in two ways: either the future human beings have enhanced capabilities through technological or biological progress but they are still human beings or we have evolved and in something that is referred to as ‘post-humans’.¹¹⁶ The latter initiates an interesting new debate on how to relate to non-human rational beings. What would happen to morality if we would have two rational species? The former builds upon the previous question. The only thing we can reasonably do is to justify our principle on the generic reasons that we can reasonably know. However, if they are still human beings we can assume that even in the further future they will still have the basic interest of ‘avoiding bodily harm’, ‘being healthy’ or ‘not being hungry or thirsty’. We can thus assume that the basic type ‘moral person’ will still have its core generic reasons which we can take into account in our deliberations. It will not be the case that in a thousand years they suddenly do not find it reasonably rejectable that they experience bodily harm of our nuclear waste. We should, however, keep in mind there is an epistemic limitation to our knowing and being able to make reasonable assumptions on the composition of the further future.

Third, what if the interests stay the same, but the future people “have adapted in various ways such that make those interests much easier to satisfy than they are for us.”¹¹⁷ This question is not foundational but substantive. This touches upon what are the implications of the policies in question. What kind of technological progress is reasonable to expect. What is the reasonable amount of resources we can use?¹¹⁸ SC can be a useful instrument to think about the justifiability of the implications and more can be said on each specific topic. SC can provide grounds for mutual

¹¹³ Weinberg, ‘Identifying and Dissolving,’ 11.

¹¹⁴ Kumar, ‘Wronging Future People,’ 266 – 267.

¹¹⁵ Ibid., 266.

¹¹⁶ Ibid., 267.

¹¹⁷ Ibid., 266.

¹¹⁸ Ibid.

justifiability by stating what we owe to each other, however, it cannot supply an answer in the substantive debates on, for example, how much each country should be allowed to emit in greenhouse gasses to have a balanced ecosystem. What can be demanded of us? What is reasonable?

Fourth, one could ask how much can the future demand from us now and whether it is too demanding? Within SC questions of intergenerational justice are substantive instead of foundational. Every decision we make might have an effect in the further future. Is it too demanding? It might paralyse us. What is reasonable to do? Because our intergenerational obligations are substantive their demands are not different than the demands of our obligations we already have to the current living people. The demandingness of the future is not different as the problems we already have with “thinking about the demandingness of obligations to help alleviate the plight of the distant needy.”¹¹⁹

Finally, one could argue that SC is open to the critiques of relativism. Morality is based upon the justifiability to the other and the non-rejectability of principles. Are we left to the whims of particulars? Is right and wrong only grounded on an interpersonal level through the other? Moreover, how can SC deal with the disputes between deontologists and consequentialists on what is good? The core value of SC, however, is mutual recognition. By this evaluative commitment, morality is grounded in the recognition of each other as a moral person; a person that can recognise and act upon reasons and is capable of pursuing a meaningful life. Although there might be debates between deontologist and consequentialist on the substantives about what is good, there are some “kinds of consideration whose importance for moral argument anyone can uncontroversially agree with, as they appeal to the kinds of goods that virtually anyone capable of living a rationally self-directed worthwhile life has at least prima facie reason to care about.”¹²⁰ Our moral community is grounded in mutual respect for and recognition of the legitimacy of our moral claims.

Conclusion

This thesis set out to defend the notion that Kumar’s types-approach to Scanlonian contractualism could provide a solution to the non-identity problem. First, this thesis elaborated on the NIP. It discussed the NIP through the same number choice case of Wilma and the different number choice of Risky Policy. It showed that a possible solution has to have an answer to why there is no moral difference between our choices when the outcome is not worse for anyone. Otherwise we are left with the NIP: a supposedly wrongful act that is necessary for someone’s existence cannot wrong

¹¹⁹ Kumar, ‘Wronging Future People,’ 270.

¹²⁰ Kumar, ‘Reasonable Reasons,’ 14.

that same someone because without the supposedly wrongful act that someone would not come to exist, but someone else would come to exist. There are three main routes within morality to solve from which can attempt to solve the NIP. The non-person-affecting route was closed off because it was deemed less plausible to offer an acceptable solution and, moreover, this thesis was interested in the person-affecting approach of SC. On whether SC is able to provide a wide and narrow person-affecting notion of wrong in selection cases.

Second, this thesis elaborated on the basic structure of Scanlonian contractualism. The core value of contractualism is mutual recognition. Because of this, we seek to justify our actions to the others of our moral community. We aim to find principles that no one can reasonably reject. Within this 'no one' falls everyone who might have to bear the burden of the principle, thus currently living and future people. Furthermore, it is sensible to use types in our moral reasoning. Through the types-approach, we can determine which demands and entitlements tokens of a type can have. Moreover, in the Drunk Driving case it was shown that SC is able to provide a wide and a narrow person-affecting notion of wrong in non-selection cases. Alice commits a WAV moral wrong by acting on principles that no one can reasonably accept. She wrongs the type 'fellow road-user' by failing to take their interest into account. With this failure, she also creates the potential to a NAV wronging of a token of the wronged type. When Bas drives onto the road, he drives into the potential and is wronged, whether he is hit by Alice or not.

Subsequently, SC was applied to the selection case of Wilma to show that it is able to provide a WAV and NAV notion of wrong in these cases as well; to provide an answer of how it is possible to wrong someone that does not yet exist. When Wilma thinks of conceiving a child, she creates the type 'her future child' and the relation between caretaker and dependant. Wilma commits a WAV moral wrong by not waiting with the conception. She fails to take the interest of 'her future child' into account. Simultaneously, she also creates the potential of NAV wronging a token of the wronged type 'her future child'. When Pebbles comes into existence, she is immediately wronged because the potential is realised. The only difference with non-selections cases is that the potential of to NAV wronging is necessarily realised and linked with existence; even if Pebbles was born with normal eyesight, she would still have been wronged. Finally, in both non-selection and selection cases the result is an impaired relation. When the wronged tokens claim to be wronged, they do not base it on the outcome of the wrong (e.g. blindness or injuries of a crash) but to the moment when the wrongdoer has forsaken her duties by not taking the interest of her or his type into account.

Third, this thesis demonstrated the objection of Katz to Kumar's claim that SC can provide a NAV notion of wrong in selection cases. Katz argues that Pebbles could judge that Wilma's

negligence was not unjustifiable if all the reasons were considered in the weighing of the principles. Pebbles coming into existence creates new reasons that should also be taken into account. Katz bases her conclusion on the 'new relation' and the 'existence is good' argument. In other words, Katz argues that a WAV wrong in a selection case does necessarily entails that the potential to a NAV wronging is realised, because when all the reasons are weighed Pebbles can judge Wilma's action justifiable. The 'new relation' argument states that by Pebbles coming into existence Wilma and Pebbles enter an actual interpersonal relation that creates new reasons. Those new reasons should also be considered with regards to the weighing of a principle. This argument, however, is based on the misinterpretation of mutual justifiability in SC. The new relation is an interpersonal relation which is not the same as a moral relation; and the interpersonal justifiability is not the same as hypothetical justifiability.

The 'existence' is good argument states that the benefits of coming into existence should be considered as reasons as well. Why should Wilma only be blamed for the bads and not credited for the goods. The argument is based on two premises: first, (a) existence is good because it is a necessary condition for a life worth living. Second, (b) all the goods in life outweigh the burdens. The first premise is refuted because it is argued that existence cannot be used as a moral reason or seen as interest. Existence is a requirement for having interest and it is neutral. Therefore, it cannot be used to either reasonably reject or justify a principle. The second premise is an implicit assumption in the NIP. If existence automatically outweighs all the burdens, then the principle that led to one's creation is precluded from rejection. This assumption is invalid on the one hand; one could argue that it is in someone's interest to come into a flawed existence to at least secure the goods of existence. However, the only people who have an interest in coming into existence are possible people. They, however, cannot have any interest because existence is a requirement for having interests. Coming into existence is a certainty for future people by definition. On the other hand, the principle that led to one's creation is not precluded from rejection because reasons for rejection are not solely based on well-being. As is shown with the case of Life-Saving Discrimination one's well-being can be improved, but simultaneously one can be wronged.

Kumar's case is strengthened by excluding existence from moral reasoning. It cannot be used to outweigh the burdens that might be caused by committing a moral wrong because it is not a moral reason. Existence is neutral; it is the requirement for having interest to begin with. Existence cannot be used as a moral counterbalance. Otherwise, by once more showing that it is able to provide a WAV and a NAV notion of wrong in selection cases; and by clarifying the debate with the addition of the term 'potential'. Kumar's types-approach to SC offers a solution to the NIP, because it is able to provide an explanation of how it is able to wrong someone that does not

yet exist. If someone commits a WAV moral wrong by culpably failing to take the interest of a type into account; this WAV wrong towards a type simultaneously creates the potential to a NAV wronging of a token of that type. This token does not yet have to exist; the time gap does not matter. When the wrong token claims to be wronged, she does not point to the results of the wrong; she claims to be wronged because the wrongdoer has forsaken one's duties and thereby impaired their relation; that is the wrong.

With Kumar's case strengthened I consider the thesis that Kumar's types-approach to Scanlonian contractualism can offer a solution to the non-identity problem defended. Scanlonian contractualism is a relatively young theory in philosophy. It is still a new kid on the block because it was only twenty years ago that *What We Owe to Each Other* was published. It has big potential. Scanlonian contractualism can appear complex, nevertheless its beauty and strength are its simplicity and comprehensibility at first glance. It can account for our commonsense moral intuitions and for complex situations with conflicting principles with priority and importance. It becomes more complex when it is applied to the theoretical and ethical challenges, but so does every theory. It is open-ended and fluid. The idea that morality is not static and needs a constant revising and refining is one that fits an ever-changing world. Now that it has successfully offered a solution to the non-identity problem. It would be interested to do further research on whether Scanlonian contractualism can offer new insights in contemporary debates concerning intergenerational justice, such as the debate on climate change.

Bibliography

- Arrhenius, Gustaf, Jesper Ryberg, and Torbjörn Tännsjö. "The Repugnant Conclusion." In *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), edited by Edward N. Zalta, 1 – 32. <https://plato.stanford.edu/archives/spr2017/entries/repugnant-conclusion/>.
- Attas, Daniel. 'A Transgenerational Difference Principle.' In *Intergenerational Justice*, edited by Axel Gosseries and Lukas H. Meyer, 189 – 218. Oxford: Oxford University Press, 2009.
- Finneron-Burns, Elizabeth. 'Contractualism and the Non-Identity Problem.' *Ethical Theory and Moral Practice* 19.5 (2016): 1151 – 1163. DOI: 10.1007/s10677-016-9723-8.
- Parfit, Derek. *Reasons and Persons*. Oxford: Oxford University Press, 1987.
- Parfit, Derek. In *On What Matters: Volume Two*, edited by Samuel Scheffler. Oxford: Oxford University Press, 2011.

- Katz, Corey. 'Contractualism, Person-Affecting Wrongness and the Non-identity Problem.' *Ethical Theory and Moral Practice* 21.1 (2018): 103 – 119. DOI: 10.1007/s10677-017-9857-3.
- Kumar, Rahul. 'Who Can Be Wronged?' *Philosophy & Public Affairs* 31.2 (2003): 99 – 118.
- Kumar, Rahul. 'Reasonable Reasons in Contractualist Moral Argument.' *Ethics* 114.1 (2003): 6 – 37.
- Kumar, Rahul. 'Wronging Future People: A Contractualist Proposal.' In *Intergenerational Justice*, edited by Axel Gosseries and Lukas H. Meyer, 251 – 272. Oxford: Oxford University Press, 2009.
- Kumar, Rahul. 'Risking and Wronging.' *Philosophy & Public Affairs* 43.1 (2015): 27 – 51.
- Meijers, Tim. 'Intergenerational Justice.' In Oxford Research Encyclopedia of Philosophy (forthcoming): 1 - 60. URL: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-233>.
- Reiman, Jeffrey. 'Being Fair to Future People: The Non-Identity Problem in the Original Position.' *Philosophy & Public Affairs* 35.1 (2007): 69 – 92.
- Scanlon, T.M. *What We Owe to Each Other*. Cambridge (MA): Harvard University Press, 1998.
- Scanlon, T.M. *Moral Dimensions: Permissibility, Meaning, Blame*. Cambridge (MA): Harvard University Press, 2008.
- Weinberg, Rivka. 'Identifying and Dissolving the Non-Identity Problem.' *Philosophical Studies* 137.1 (2008): 3 – 18.
- Woodward, James. 'The Non-Identity Problem.' *Ethics* 9.4 (1986): 804 – 831.