

THE RIGHTS OF FUTURE PERSONS UNDER ATTACK: CORRELATIVITY IN THE NON-IDENTITY PROBLEM

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1. INTRODUCTION

Concern for future generations often prompts the idea that present generations have certain duties to future people. These duties are explained sometimes in terms of rights that future persons have against persons in the present. This poses a challenge to the very nature of rights in the light of the fact that the context is necessarily time-related. The main problem at hand, arising from a rights-based approach to the relations between non-necessarily-overlapping generations, according to which time creates a distance between moral agents and the persons affected by their actions, is that a certain duty can be binding at a different moment in time than its correlative right. The duty O existing at moment t_1 correlates with right R , existing at moment t_2 ; at t_1 , O is present and actual, whereas R is future and possible; but at t_2 , R is present and actual. How can this be? Is R the same right at t_1 and t_2 , albeit with different properties? Is R a scattered object in time with regard to O , just as certain objects can be scattered in space and yet maintain a specific unity? Or is it possible that R at t_1 is a totally distinct normative reality from R at t_2 ? Or can this all be utter nonsense and there is no such thing as rights of future persons?

There seem to be compelling reasons against attributing such rights to future persons. The ‘nonexistence’ argument states that future persons cannot have rights because they do not exist (De George 1981; Macklin 1981, 151-6; Beckerman 2006); and the ‘no-satisfaction’ argument claims that future persons cannot have rights to resources that do not exist at the time of their existence because such rights could not be satisfied (De George 1981; Beckerman and Pasek 2001). However, the most important argument – because it presupposes the aforementioned arguments and proposes to add a final death blow – is the much discussed Non-Identity Problem (hereafter NIP), developed by authors such as Thomas Schwartz (1978), Robert Merrihew Adams

(1979), Gregory Kavka (1981), and, most forcefully, Derek Parfit (1987), which poses a challenge for any view on which members of present generations would have duties to future persons whose existence and identity are contingent upon present decisions, but whose lives would be unavoidably flawed in some way. A recent and growing body of literature has tried to solve or circumvent the NIP in order to preserve the idea that future persons have rights.

This paper aims at answering some of the objections to the NIP's criticism of the idea of rights of future persons. Those objections usually adopt different perspectives depending on how they understand differently the nature of the correlativity between rights and duties – some adopt a present-rights-of-future-persons view, others a future-rights-of-future-persons view, others a transitive present-rights-of-present-persons view, and others still an eternalist view of rights and persons. The following pages will try to show that only a non-transitive present-rights-of-present-persons view can survive the challenges posed by the notion of correlativity inherent in the NIP.

2. THE NIP

Derek Parfit's reasoning about the NIP is as follows: which particular future persons will exist is dependent on when their procreation takes place; even if we could suppose that following certain actions or policies would make future persons worse off, the fact remains that the people born as a result of these actions or policies would not have been born at all if an alternative action or policy had been adopted; therefore, assuming they have lives worth living, they are not harmed by those actions or policies (Parfit 1987, 351-79). Since present persons' allegedly harmful actions or policies will also influence the identity of future persons, there is a sense in which future persons could not meaningfully be said to be harmed, and even less wronged. And, if they cannot be harmed, what would rights protect them against? Imagine a future individual who is entitled to a right R but will not be born unless R is violated. If R remains unviolated, there is no possible world in which she could exist. So, either it is impossible to respect her right or she cannot have a right in the first place; the NIP assumes the awkwardness of having to do X for her as a content of R only in worlds in which she does not exist.

The NIP's challenge to a rights-based approach to relations between non-necessarily-overlapping generations is based upon a set of fundamental characteristics concerning (i) the metaphysics of time and modality, (ii) the language of rights, and (iii) a person-affecting morality.

The *basic metaphysical assumptions that underpin the NIP* derive from Parfit's Time-Dependence Claim and his genetic essentialism.

The Time-Dependence Claim: If any particular person had not been conceived within a month of the time when he was in fact conceived, he would in fact never have existed. (Parfit 1987, 352)

The Origin View: each person has this distinctive necessary property: that of having grown from the particular pair of cells from which this person in fact grew. (Parfit 1987, 352)¹

Together, both claims emphasize a connection between personal identity and time. This connection contextualizes the relations between present persons and future persons in such a way that present actions can affect both the number and the identities of future persons. The moral status of such actions will be determined by narrow person-affecting principles (PAP) stating that an action is wrong only if it harms and that it harms iff it brings about a state of affairs that makes someone worse off (Parfit 1987, 396; Temkin 2012).

The combination of such claims reflects a specific metaphysical standpoint with regard to time and modality. Firstly, it expresses a commitment to the view that temporally-present objects actually exist and that future individuals are actually nonexistent *qua* future individuals.² In the metaphysics of modality, the soundness of the NIP relies on there being possible future worlds in which particular individuals may or not exist depending on present actions or policies; and the comparative function of the PAP between an actual world and counterfactual worlds depends also upon possible-worlds semantics. This means that there are different senses of existence, depending on whether an individual belongs to an actual necessary world or to a possible future world. Whatever is solely in the future is actually nonexistent except if regarded as a present and actual possibility (Parfit 2011, 467-9).

Secondly, the NIP is underpinned by the idea of an *Open Future*, wherein present possible and different actions may produce future and different outcomes, all of which are possible. This involves conceiving of time in a branching rather than linear system into the future at any given time *t*. *Open future* is the tense dimension of *Possibilism*. Possibilism is a form of nondeterminism in accordance with a metaphysics of modality characterized in terms of individuals existing across a specified range of possible worlds. When present actions affect future people, PAP requires that we consider the different possible people who might later be actual or not. Present people can choose different possible actions and compare their possible outcomes; and this is what justifies commendations and regrets because there is always something else that could have been done instead (Parfit 2011, 464-75). Possibilism opposes broad versions of actualism, which permit no properties to hold of a nonexistent at a possible world and always understand the words ‘there are’ and ‘exists’ in the same single sense; likewise, possibilism opposes modal realism, the view that all possible worlds exist and that our world is only one possible way for a world to be actual, that is, whenever such-and-such might be the case, there is some world where such-and-such is the case.³ Instead, possibilism requires that future worlds remain possible in the present and that at least one of them will become actual, which is different from stating that nothing merely possible cannot exist or that possible worlds are already actual in their own way.⁴

With regard to *the language of rights subject to the NIP*, even though there is a wide margin of choice in terms of content, the formal nature of the normative instrument seems undisputed. Rights concerning members of future generations are normative reasons against the actions and policies available to members of present generations. Rights-language in this context follows the basic formula

(1) A has a right to X against B

or

(2) RabX.

There is a right-holder, A (the subject of the right); X is the object of the right; B, the respondent or addressee of the right. Regardless of what X stands for, the nature of the relation between A and B can be easily established. A has a claim against B, who in turn has a duty to A. This is a consequence of the three-point structure of the right

between a holder, a respondent, and an object. This implies the existence of correlative duties and an emphasis on the passive dimension of rights – there is no relevant purpose in using a language of rights in the context of relations between non-necessarily-overlapping generations if it does not aim at justifying the existence of some normative constraints on the actions of present people. In Hohfeldian terms, they are mostly claim-rights (as against liberties, powers, and so forth), in that they are justified entitlements to the carrying out of correlative duties, positive or negative. They cannot be strictly active rights (a freedom, that is, being entitled to X if one chooses, and not being required not to do X) because that would require a concern with one's own actions, which in turn requires exercisability, existence and actuality.

Such a broad conception of rights can be supported both by interest theories and by will-theories of rights. According to the interest theories, a person is said to have a right whenever the protection or advancement of some interest of hers is recognized as a reason for imposing duties on others; the interest of the future person A is the value determining the content of X, which can then be opposed to B. Will theories, however, single out right-holders in virtue of the power they have over the duty in question; since this involves zones of freedom to be granted only to those able to exercise such powers, and future persons have no actual power per se, will-theories of rights seem less open to attributing rights to not-yet-existing persons. However, in Parfit's reasoning, the NIP evolves into the waiver argument: when a person A realizes that the only way to have avoided the harm she suffered is to never have been born in the first place, as long as her life is worth living, she will accept the action that caused such a harm; her lack of regret is an implicit waving of her right (Parfit 1987, 364-6). The rights in question are not inalienable, even if they are conceived as counterfactuals; in this non-actualist sense, they can cohere with a will-theory of rights.

The *criterion of morality underlying the NIP* consists in a counterfactual PAP. In the light of this, wrongness is not determined by a violation of some objective values, but rather by the circumstance that some person is wronged; and a person is said to be wronged by the conduct of another if she has been harmed as a result of the relevant conduct. In addition, that person is harmed if she is left worse off than she otherwise would have been. According to the NIP, if being brought into existence is neither a benefit nor a harm, then someone is not made worse off by being brought into existence when the alternative is never to have been born at all; this notion of harm depends upon

comparing possible would-have-been worlds. Such a person-affecting frame of reference fits into the rights-language almost perfectly because it allows for a rights-centred interpretation of what it means to be harmed.

3. THE NIP'S INDEFEASIBILITY

Reactions to the NIP are myriad. Some simply bite the bullet and accept the soundness of the non-identity argument by claiming that it is possible neither to genuinely harm persons who depend on present choices for their very existence nor to violate rights that never actually exist; but they reject that this poses a moral problem since even what seems like an implausible conclusion regarding possible future persons (for instance, that it is not morally wrong to conceive a blind child even if the same agents could have conceived a sighted child) is more consonant with common-sense morality than one might think (Boonin 2014). The remaining reactions to the NIP have different perspectives on what is at stake in a rights-based approach to moral relations between non-necessarily-overlapping generations.

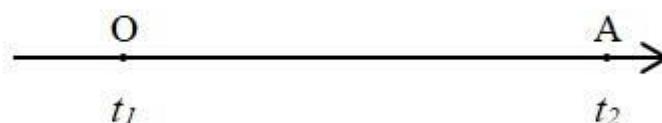
Those that deny the NIP's bullet usually adopt a *present-rights-of-future-persons* view. They might even admit that it is a necessary condition for a right to be violated that someone bearing that right actually exists; but they refuse to acknowledge that the present nonexistence of particular future persons is an impediment to the attribution of rights.⁵ Those that try to dodge the NIP's bullet by attacking at least one of its basic features – its metaphysics of time and modality, its language of rights or its person-affecting morality – tend to adopt a *future-rights-of-future-persons* view. And those who favour a static conception of time that deems them eternalists⁶ even go so far as to adopt an *actual-present-rights-of-actual-future-persons* view.

The difference between these views follows from different ways of perceiving the nature of correlativity between duties and rights inherent in the debate. The present-rights-of-future-persons view requires that present duties with present bearers are correlative with present rights with future holders; the future-rights-of-future-persons view requires that present duties with present bearers are correlative with future rights with future holders; and eternalists require that present duties with present bearers can

be correlative with any rights with any holders at any existing time. Each perspective is subject to different problems.

3.1. Present-rights-of-future-persons view

Suppose there is a present duty O to a future person A.



Rights-based approaches to the NIP agree that O at t_1 has a bearer B (the subject of the duty) who is supposed to perform X, being X the object of a correlative right, R; they also agree that A at t_2 is the holder of a right, whose object is similar to X. But, in cases in which B does not exist at t_2 and in which A does not exist at t_1 , they disagree about whether R can exist at t_1 and, if so, whether it is actually the same right held by A at t_2 .

The present-rights-of-future-persons view understands R to exist and be binding to B both at t_1 and at t_2 , the only difference between both moments consisting simply in the actualization of the holder at t_2 who was merely conditional at t_1 . The future-rights-of-future-persons view, on the other hand, understands that R at t_1 is not the same right held by A at t_2 ; for the purposes of distinguishing them, let us call R_1 to R at t_1 and R_2 to R at t_2 . The correlative of O at t_1 is not R_2 since R_2 only has binding force at t_2 , where B no longer exists; thus, either O at t_1 has no correlative right or, if it has, R_1 has no holder whatsoever and no binding force to B at t_1 . As for eternalists, since they believe that t_1 and t_2 are both equally actual, they have no problem with considering that the correlative of R_2 is O, and vice-versa.

Supposing that all relevant duties in this context necessarily correlate with rights, what are the characteristics of R_1 at t_1 ($R_{t_1}bt_1X$)? Firstly, it has no particular holders. This means that (i) it is not exercisable directly; (ii) it is not an actual deontic power; (iii) it is not based on an actual will; (iv) it protects diffuse interests, not

associated with actual persons.⁷ Secondly, R_1 's rationale or background justification, Y , that is, the reason for having a right with binding force on others, consists of the interests of A assessed at t_1 . Y is also the background justification of O insofar as it coincides with the interest-or-will of B . The correlative bindingness of O and R_1 is based on a value relation between the right-holder and the duty-bearer. B 's duty to X is directed to A if there is a reason to favour A 's 'interest-that- B -does- X ' over B 's 'interest-or-will-that-she-does-not- X ', and that reason justifies O at t_1 . Thirdly, R_1 's effects consist in the actual bindingness of B to X at t_1 , which means that any violation of the contents of O (either not performing what is demanded in X or performing what is forbidden in X , for instance, conservation or depletion) is an infringement of R_1 already at t_1 . So, the right correlative with O at t_1 is a claim-right held by a person who will exist only at t_2 , protective of her interests, but it is not a deontic power per se albeit constituting the normative grounds of O .

Conversely, what are the characteristics of R_2 , at t_2 ($R_{at_2bt_1X}$)? Firstly, it has a particular human bearer, A . This person may be said to have a legitimate claim for reparations whenever Y at t_2 is harmed causally by X or non- X , which means that she has an actual deontic power, based on her actual will and which protects her specific interests. Secondly, this will and these interests are assessed at t_2 and they form the core basis of Y – it is the actual will and interests of A at t_2 that determine Y , not the fact that they can be tokens of the general contents of Y at t_1 . Thus, Y at t_2 differs in content from Y at t_1 , which means that it is not necessarily coincidental with B 's interest-or-will. Similarly, this Y is not the background justification of an O at t_1 , but only of an O at t_2 . Thirdly, R_2 's effects consist in Y not being damaged at t_2 or, if so, repaired as a result of X . This means that it is a deontic power and a claim-right liable to satisfaction.

Conversely, the protection or reparation of Y at t_2 seems to be incumbent upon persons existing at t_2 . However, X at t_1 aimed at protecting Y at t_1 , that is, the interests of future persons assessed at t_1 ; if X at t_2 aims at protecting Y at t_2 , then the contents of X have changed into the actual will and interests of present persons assessed at t_2 . Both the bearers and the object of the duty correlative with R_2 seem to be different from the bearers and the object of O at t_1 .

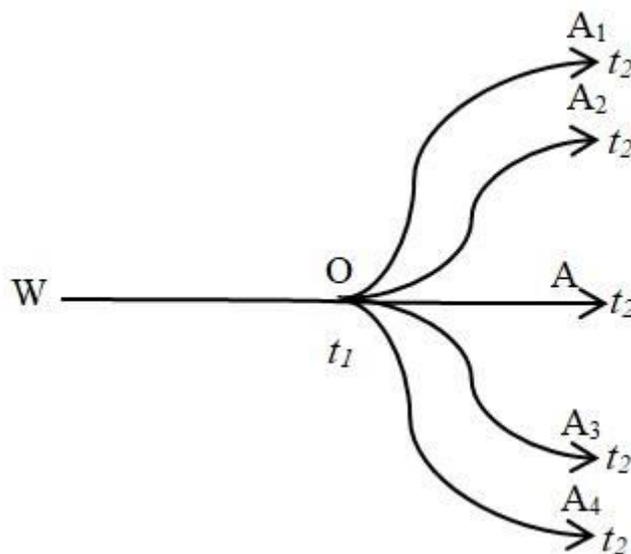
Overall, the essential characteristics of the correlativity between duty and right seem to be very different at t_1 and at t_2 . O 's correlative is normative at t_1 insofar as it is

based on there being holders in the future. The background justification of such correlatives at t_1 is that they are rights of future persons *qua* future persons. R_2 , on the other hand, is at t_2 a right of a present person. Its holder, its binding force, its effects are different from R_1 at t_1 – A does not exist at t_1 , but B does not exist at t_2 , and both X and Y at t_1 are different from X and Y at t_2 . In addition, at t_1 , R_2 cannot be satisfied; and at t_2 , R_1 cannot be satisfied with regard to A. The satisfaction of O's correlative at t_1 seems to be different from the satisfaction of R_2 at t_2 .

Such differences make it hard to sustain that R_1 and R_2 are the same right at different moments. This endangers the present-rights-of-future-persons view.

3.2. The modal realist view

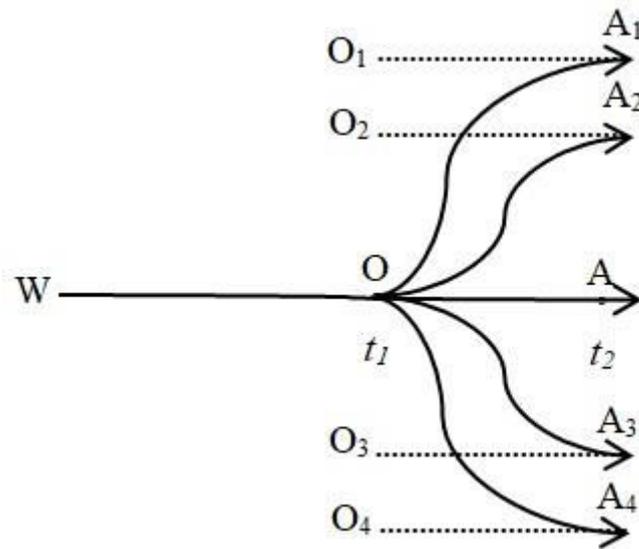
The same problems on the nature of correlativity at different times also affect those attempts to circumvent the NIP by substituting possibilism with modal realism (Wrigley 2012)⁸. Suppose that, in accordance with counterpart theory, any given possible world exists, and for every right-holder A in world W there is a counterpart of A in possible worlds that, albeit somewhat similar, are not W. In a branching system, it would resemble the following.



In world W at t_1 , there are several possible future worlds. Each of these worlds exists. In one of these worlds, A exists at t_2 ; in the remaining similar worlds,

counterparts of A exist at t_2 , for instance, A_1 , A_2 , A_3 and A_4 . The nonexistence and the non-satisfaction arguments that support the NIP are then overcome.

However, if modal realism accepts a branching system at t_1 , it will also have to admit that at t_1 world W has more than two futures; if two futures equally pertain to the same world, and in one of them there will be A whereas in the other there will not be A, the existence of both worlds will make it both that A will exist and not exist in W, which seems absurd. Thus, modal realism tends to replace a branching system with a divergence system.



In divergence, there is no overlap between worlds with regard to their past. Like in the branching system, there are also many futures in divergence, that is, many later segments of worlds that begin by duplicating initial segments of world W; but since only one of these futures is the future of world W, the other futures belong not to W but to W's other-worldly counterparts (Lewis 1986, 206-7). Thus, the rights of A, A_1 , A_2 , A_3 and A_4 never exist equally in W, not even with regard to t_1 at W; their correlative duties will exist as counterparts of different possible worlds in the present of t_1 . The correlative of O at t_1 in world W can be (only) in the future of world W. The problem is that, at t_1 in W, there is no way of knowing which of the future possible worlds will be the actual continuance of W. If A, A_1 , A_2 , A_3 and A_4 all have rights, their correlative duties will exist not in the same present world W but in the counterpart present worlds in which those duties exist. One of them, and only one, will be correlative with the duty

that is actual at t_1 in W . But since it is impossible to assess which of the future possible worlds is privileged with being the actual future of W ⁹, even if all rights of A , A_1 , A_2 , A_3 and A_4 exist at t_2 , it makes no sense to compare existent future rights whose correlative duties do not belong to the same world. Even if we possessed the magical foresight of knowing that A will be the right-holder of O at W , a violation of A 's right could not be compared with a violation of A_1 's right given that they would involve completely different correlative duties (O for A 's right; O_1 for A_1 's right). So, at t_1 in W , even if one takes modal realism for granted, O can only be grounded on the fact that it will have a non-identifiable correlative right in a possible future – and this subjects modal realism to the same difficulties faced by the present-rights-of-future-persons view.

3.3. What are future rights?

Suppose, however, that the rights of future persons should be understood in the light of the future-rights-of-future-persons view. While preserving the metaphysical context of presentism and possibilism, these are *future rights*. What is the nature of correlativity in such a case? Strictly speaking, O has no correlative at t_1 , but only at t_2 ; inversely, the correlative of R_2 at t_2 is O at t_1 . Even though there is simultaneity between the right and its holder, there is no simultaneity between the right and its correlative duty.

For will-theories of rights, this version seems difficult to accept. For how can O be binding at all if at t_1 there is no correlative will justifying it? Interest theories may sustain that a duty can be justified by interests that still remain to be seen. But this expresses a very specific interpretation of correlativity.

There are usually two ways by which to express correlativity.

$$C_1: O \rightarrow R \vee R \rightarrow O$$

$$C_2: O \rightarrow R \wedge R \rightarrow O$$

C_1 understands correlativity as admitting a prior concept that can function as a cause or a reason for a normative instrument. The difference between duty-based and right-based approaches to morality makes use of C_1 . According to the former, duties are

at least logically prior to rights: rights arise from two facts about duties, that A does not have a duty not to X and that others have a duty not to interfere with A's X-ing. And according to the latter, A has a right to X, and the duty of others not to interfere or to fulfil it follows from this, as does the absence of a duty for A not to X. The difference between both approaches is mostly epistemological, but it depends on the nature of C_1 . The future-rights-of-future-persons view also depends upon C_1 insofar as O at t_1 is prior to its correlative R at t_2 .

C_2 , on the other hand, understands correlativity as a special kind of logical equivalence between two normative elements.¹⁰ A correlative is that in which one element of the correlation is inherent in the other element's essence as its logical necessity. One element of the correlation must find its explanation in the other, and vice versa; they are conceived of simultaneously, that is, once one is posed there must also be the other (also, they cancel one another in such a way that if one is taken away there cannot be the other).¹¹ From:

(1) RabX

there follows

(2) ObaX

and vice versa. This strong correlativity expresses the idea that statements about claim-rights and statements about relational duties are the same thing, one described from A's perspective, one from B's.

Some authors take C_2 to be flawed due to the existence of duties that do not imply rights (Lyons 1970; MacCormick 1977; Simmonds 1986, 278; Harris 1997, 82). But with regard to claim-rights, which form the conceptual backbone of the rights of future persons, duties must always be expressed in relational terms. In this sense, C_2 is utterly incompatible with the future-rights-of-future-persons view since it requires that there must be some kind of binding rights existing at t_1 . If the existence of rights remains somehow attached to the idea of personal identity, since A does not exist at t_1 , then O can have no simultaneous correlative.

Furthermore, when applied to the future-rights-of-future-persons view, C_1 presents two problems. The first is that it does not allow for a rights-based approach to

moral relations between non-overlapping generations at t_1 since it is O that becomes logically prior to R. What is actual at t_1 is O, not R. Even in interest-theories of rights, the foresighted interests of future persons may explain the reason why there should be the grounds for R, but they are not the source of O's obligatoriness; rather, because O is obligatory those interests may be formulated into rights-language later on. The second problem is that, in such a case, O has no apparent grounds for being obligatory at t_1 ; or, if it has them, they are different from the interests and eventual wills of future persons since they cannot be formulated in terms of rights at t_1 without the prior existence and bindingness of O.

These problems are best illustrated with an example. Suppose that there are duties at t_1 for the production and preservation of cans of baby food with remote expiry dates. These cans will most likely be consumed by persons who will only exist at t_2 . A future-rights-of-future-persons view following C_1 will claim that the best account to justify the normative restrictions on the type of food that can be bottled at t_1 , as well as the claim to sue at t_2 for damages resulting therefrom, is a reference at t_1 to the future rights of the baby as a consumer, that is, of baby A at t_2 .¹² However, there seems to be a difference between saying that specific future rights are strong reasons for explaining why there ought to be baby food regulation today and saying that baby food regulation is binding only because there will be specific future rights whose objects consist in fulfilling today the contents of baby food regulation. If there is no right at t_1 , there must be a difference at t_1 between statements of reasons and statements about rights. The former are of the kind:

(3) X is 'grounded in the value of human life'

or

(4) XY.

And the latter are of the kind:

(5) A has a right to X

or

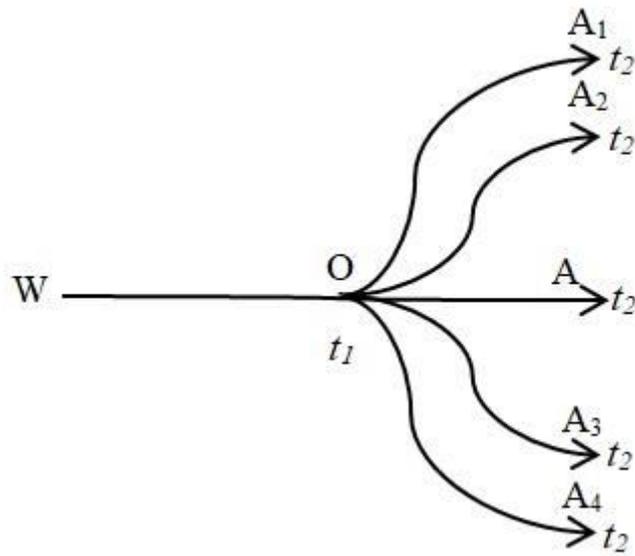
(6) RaX.

(3) is different from (5) just as (4) is different from (6). The relationship between both kinds of statements is mostly justificatory. The reason for a right is one thing; the right which is based upon this reason is another. Obviously, the nature of a right cannot be explained without an analysis of Y; but Y cannot be the source of R's bindingness at t_1 since asking the reason for something somehow presupposes knowledge of the thing to be justified. It is neither baby A's possible right at t_1 (because it does not exist) nor baby A's actual right at t_2 (because it is neither logically nor chronologically prior to O) that constitutes the source of the obligatoriness of baby food regulation at t_1 . Rather, it is the expectation at t_1 that there will be consumers at t_2 (nonexistent at t_1) that justifies there being baby food regulation (the reason for the object of O and the reason for the object of R_2 may be similar), but it is not what brings this regulation about.

3.4. What are future persons?

The NIP's main challenge to both views, the present-rights-of-future-persons and the future-rights-of-future-persons, consists in questioning the possibility of violating future person's rights given that such a violation would involve the person's nonexistence and consequently the right's nonexistence. The whole argument relies on the assumptions that (i) there will be persons in the future; that (ii) those persons will be right-holders; and that (iii) some of their rights can bind us today. These assumptions are descriptive of the state of affairs at t_2 from the viewpoint of the state of affairs at t_1 . In order for such rights to be binding, it is irrelevant whether such states of affairs are true at t_2 ; but it is not possible that they have no truth value at t_1 because that is what attributes binding force to such rights vis-à-vis members of present generations. At t_1 , if there are rights of future persons, these assumptions have to be necessarily true.

Still, if these assumptions are understood only by using a conception of rights inherently connected with personal identity, the particular persons that will be born in the future are not determined necessarily at t_1 . The identity of right-holder A at t_1 is a future contingent. This means that at t_1 there is an infinite number of future possible worlds containing an indeterminate (even possibly infinite) number of individuals who are likely to be right-holders at t_2 .



From the viewpoint of t_1 , A, A₁, A₂, A₃ and A₄ are not equally future persons. Only one of these possible persons at t_1 will live at t_2 , as the future of world W in which t_1 is actual – only one of them will be an actual person in W (at t_2), which means that only one of them is a future person at t_1 . The remaining possible persons are only ‘hypothetically actual’, or ‘furable persons’.¹³ So, with regard to the future, there are three kinds of persons: *furable persons*, that is, all persons whose existence at t_2 is merely possible at t_1 ; *future persons*, that is, the furable persons at t_1 who will actually exist at t_2 ; and *particular persons in the future*, that is, the actual persons that live at t_2 . The right-holder A is a particular person; but at t_1 , particular persons existing at t_2 are in themselves unidentifiable. This conclusion follows from the NIP. As it happens, future persons are also unidentifiable at t_1 . Whether the answer to discerning the truth of future contingents is that there is no special future branch in the tree of possibilities deserving to be called the true future (Thomason 1970); or that all future contingents are false (Todd 2016); or that future contingents have no chronicle-independent truth-values in the present (Aristotle 2002; *De interpretatione*, 18b23ff); or that some function helps to determine where the thin red line will stretch (Belnap and Green 1994); it is not reasonable to assume that at t_1 a statement identifying a future person can be true.

A rights-approach to moral duties towards members of future generations that takes identity seriously should then more accurately talk about the rights of *furable* persons since those are the only ones that can be identified at t_1 . Rights-talk about *future* persons at t_1 seems to rely on the sufficient expectation that there will be persons at t_2

without any need for them to be somehow identifiable or expectable at t_1 – a strategy that involves taking personal identity out of the equation and raises entirely different problems, as will be seen in the following section. However, the adoption of a futurable persons terminology entails assuming at t_1 that there is some normative relevance and influence of rights that will never become actual, given that not all futurable persons will become actual persons. The difficulty in ascertaining which of the futurable persons at t_1 is at t_1 the future person that will be a particular person at t_2 puts all futurable persons on an equal footing. At this level, all (futable) rights are contingent. It is equally possible at t_1 that the futurable person A_1 will exist and that she will not exist. A duty O exists therefore at t_1 not simply towards a future person, but towards futurable persons assessed at t_1 ; and this duty correlates equally with the rights of A , A_1 , A_2 , A_3 and A_4 . Since only one of these futurable persons is the (unknown) future person, there seem to be duties at t_1 correlating with rights of persons that will never exist. Even though it is reasonable to talk of the rights of future persons, the fact that at t_1 all the rights in the future belong to futurable persons seems to invalidate rights-talk at t_1 .

3.5. Can personal identity be taken out of the equation?

Removing personal identity from the language of rights overcomes the problem of futurable human rights-holders. One way of attempting it is to disconnect particular human identities from the concept of a person. In this case, the notion of personhood is strictly normative, independent of actual flesh-and-blood human individuals. Rights are assigned to persons (natural or artificial), not humans; human individuals have rights because they acquire the status of personhood, not the other way round. Human rights are tokens of the personal rights of humanity as a whole; they are the properties of human individuals because human individuals share the normative properties inherent in being a member of humanity. In this sense, rights are attributed to types, of which particular future persons will be mere tokens (Fieser 1992; Herstein 2009; Unruh 2016). However, even if we set aside Carl Schmitt's famous dictum that 'whoever invokes humanity wants to cheat' (Schmitt 1996, 54), different levels of abstraction concerning the subjects of these rights create new problems.

Another way of attempting to take personal identity out of the equation is to depersonalize rights, for instance by attributing them to status-functions (Pletcher 1981)

or social roles (Baier 1981) rather than to actual persons. This, however, entails a conception of right that is neither subjective nor a deontic power. None of Hohfeld's classes of rights fit into this conception given that they all describe human abilities. In the case of status-functions, the non-individualist process is not even complete: a status-function described as 'A counts as Y in context C', in which Y is a function rather than a person, holds a right such as 'Y counts as R_b in context C', where R_b is a right-holder; but since Y can only exist as a status-function given the prior and independent existence of A, then attributing rights to Y is the same as stating that 'A counts as YR_b in context C'; if A is a person that fulfils the function created at Y, particular right-holders are inherent in statements about the rights of Y.

Theorists of functions and roles as subjects of rights might object to this view by saying that even if human right-holders are required to create functions and roles, they are not particular humans but only types of humans, person-types of which particular persons are mere tokens. Person-types are general persons (like 'the average American' [Parfit 2011, 220]), that is, a group of possible persons, one of whom will be actual. However, what is the actual nature of a right of a person-type without a particular instantiation? That is, a right of a person-type to which there is still no token? Since there is no actuality involved, it is not a deontic power except only potentially, so it is neither a claim nor a liberty nor a power. But its correlative duty must be binding on present bearers regardless of the instantiation of tokens – that is what makes it a right in the first place. It is not a future right because what is future is the token, not the type; so it must be a present right without holders.

There are several legal experiences that seem to use rights-terminology to describe normative instruments without human subjects. For instance, donating an estate via testament to an unborn person; an abandoned ticket to tomorrow night's theatre show; a bearer share not physically held by anyone; the rights to an estate left in an inheritance not yet accepted. In such cases, the formula $RaBx$ is valid but non-performative either because A is an empty quantifier from the viewpoint of actuality (a type without tokens) or because A is an absolute quantifier from the viewpoint of possibility (it includes the class of all futurible tokens). Contrarily, a duty to X on account of A may be performative if rendered into a non-relational formula such as ObX , to which A is the background justification of the duty rather than its addressee. The existence of this duty does not mean necessarily that A has a right to X against B; it

could be that nobody, or that some third party, has the right. O is here a two-point operator referring to the relation between a subject and an action, but not to the relation between two different normative subjects. Rights-terminology associated to such cases seems more metaphorical than otherwise; it makes sense in order to justify why X must be normatively protected given that it is expected that X will become the object of actual rights in the future; but that is still one long step away from claiming that X is the object of an actual right in the present. Similarly, the person-type in the present-rights-of-future-persons view does not seem to be constitutive of the actual obligatoriness of X for B, even if it may be a strong reason for why such a duty should exist.

Non-individualist theorists of rights endeavour to avoid these problems of types-without-tokens by claiming that the actual subjects of rights are collective entities, such as future generations (Weiss 1990; Kramer 2001; Brännmark 2016; Schuessler 2016, 91-2).¹⁴ This may avoid part of the NIP since it dismisses personal identities. But it does not avoid the problems of correlativity. Generational rights can be approached from a present-rights-of-future-generations view or from a future-rights-of-future-generations view. In the first instance, even if we concede that they can actually correlate with present duties, what grounds them is still the fact that they assemble a set of prospective interests of future generations *qua* future generations; but the future as future is never actual; the rights that actual generations in the future will have cannot correlate with present duties since the correlatives of the latter (*qua* future) can never be satisfied towards any actual generations. In the second instance, if such future rights are to be binding on present generations they already have to exist as strong correlatives with those duties in the present – which, of course, they do not.

Other non-individualist theorists might take abstraction to yet a higher level by referring to generic rights (Gewirth 1978). In this case, it makes no difference whether right-holders are present or future; what matters is that each right demands the creation of the proximate conditions of action of its holder. A claim about a person's right is implicit in every one of that person's actions. The justification of the right is part of the right-norm itself. These rights are generic in the sense that their holders are intersubstitutable. Their generic nature supposedly dissolves the NIP because it makes duties specifically independent of the existence of particular future persons (Beyleveld et al. 2015). Following the NIP, a future person A's right cannot be compared with a state of affairs in which A does not exist; but supporters of the principle of generic

consistency say that it is possible to compare actions that deprive future persons of generic rights with actions that do not deprive future persons of generic rights; and this even applies to futurible persons.

The correlative terms of generic rights follow from the principle of generic consistency, according to which every agent, even the purely self-interested, must accept on pain of contradiction that she has rights to the proximate conditions of her actions; and this requires that she must accept that all other agents equally have these rights since they are part of the condition of being human. This can be somewhat problematic if they are regarded as generic duties. Like generic rights, such duties do not seem to have particular bearers – they include universal quantification of any given person (intersubstitutable) capable of acting for the protection of generic rights. However, in the light of the principle of generic consistency, a person can only have the conditions for acting if her generic rights are recognized; and recognition of such rights is the object of the correlative generic duties. A chicken-and-egg kind of dilemma arises here: Person B's obligation to recognize generic rights depends upon there being a particular obligation to recognize her rights as particular instances of generic rights. So, what comes first: her particular rights that are instances of generic rights? or the generic rights to which her particular rights are instances? In either case, the bindingness of rights to members of present generations always seems to involve some kind of instantiation or particularization of right-holders (there cannot be any particular duty-bearers that are not already right-holders in this sense). The argument for generic rights, then, is not completely dismissive of the need to associate rights-language to personal identity.

3.6. How are such rights infringed?

The NIP endorses a principle of linear identity, in which an individual A is identified in all possible worlds if her necessary properties are identical to those of the actual world. If the future individual A were said to be contingently harmed but necessarily a female, that would amount to say that there could have been an unharmed individual A but not a male individual A that would be the same individual as that one. Genetic essentialism, however, entails that there will be no possible world where A has any alternative genetic heritage, and consequently there will be no world where she has

any genetic characteristics different from the ones she actually has. The principle of linear identity requires that A exists only in one world rather than having some kind of transworld identity (in which individual A exists as A in more than one possible world) or branching identities.

In a rights-based approach, any temporally-non-overlapping notion of harm consists in an actual violation of rights. Several consequences follow from this frame of reference. Firstly, wrongness is determined by a rights-violation, so it cannot be independent of a person-affecting state of affairs.¹⁵ Secondly, any violation of the rights of A is also a violation of the principle of linear identity insofar as the rights of A depend upon personal identity. In this context, it seems irrelevant whether or not all actions and policies performed at t_1 influence necessarily or probabilistically the identities of all or only a few persons who will live at t_2 ¹⁶ – what matters is whether those actions and policies performed at t_1 which violate rights at t_2 preserve or not the principle of linear identity. According to the NIP, if a violation of the right of A is also a violation of the principle of linear identity, then there is no right that could be violated in the first place. Conceiving of actions and policies that at t_1 do not violate the rights of A is the same as fulfilling the principle of linear identity – and here there is no moral problem per se. Thirdly, a non-comparative notion of harm that depends solely upon someone being in a bad state as a result of an action (Benatar 2006; Harman 2009) seems somewhat insufficient because it is also necessary that such a bad state is the result of the violation of a right in order for it to be morally relevant.

But how can rights held by persons in the future be violated? The PAP states that there must be some kind of comparison between an actual state of affairs and an alternative state of affairs in which there is no harmful action or policy; threshold conceptions of harm determine wrongness not by comparing a person's current condition with that in which she would otherwise have been if not for the allegedly harmful action, but rather with how she ought to be regardless of the harm done (Hanser 1990; Shiffrin 1999; McMahan 2001; Harman 2004; Rivera-Lopez 2009)¹⁷. In rights-language, however, this distinction is not so clear.

Suppose there is a person at t_2 holding an actual right R_2 against B at t_1 for the performance of non-X, in which X is a set of policies promoting depletion of available

resources. How is R_2 violated? The relation between R_2 and O can give rise to the following scenarios.

- (1) B follows the prohibition of depletion at t_1 and at t_2 no resources are depleted.
- (2) B does not follow the prohibition of depletion at t_1 and at t_2 resources are depleted.
- (3) B follows the prohibition of depletion at t_1 and yet at t_2 resources are depleted.
- (4) B does not follow the prohibition of depletion at t_1 and yet at t_2 no resources are depleted.

Whereas (1) describes the scenario in which R_2 is fulfilled, (2) describes the scenario in which R_2 is violated inasmuch as depletion at t_2 is the result of not following O at t_1 . The main problem lies with (3) and (4): Which constitutes a violation of R_2 ? That is, which describes a situation in which A is harmed by B?

According to the threshold conception of harm, the ideal situation is described by (1); A is harmed if she is left in a situation different from (1) as a result of the violation of O . As it happens, neither (3) nor (4) are descriptive of such a situation: (4) expresses the same outcome to A as (1), even if O is not followed; and (3) expresses a different outcome to A but which does not follow from the violation of O . However, both statements seem to contradict the whole purpose of attributing R_2 to A against B, for (3) describes a situation in which what is supposed to be protected at t_2 is actually damaged, whereas (4) describes a situation in which the blatant violation of $O \sim X$ seems disrespectful of that which is protected by R_2 . On the other hand, it sounds strange to claim either that A has been harmed by B because she exists at a time in which resources are depleted even though B followed the prohibition of depletion to the utmost, or that A has been harmed by B's violation of the prohibition of depletion even though she lives at a time in which resources are not depleted at all.

The rights-approach to the PAP compares the situation of A in (3) and (4) with her situation in the cases in which what seems wrong about (3) and (4) does not happen, that is, the cases in which R_2 is fulfilled as described in (1). In this sense, there is no difference whatsoever between both conceptions of harm given that the ideal situation expected by the threshold view is the fulfilment of R_2 , which for the person-affecting

view is the actual non-affecting of R_2 . However, the PAP compares the actual situation of A with all other alternative situations of A, rather than just comparing it with (1). This makes it possible to establish a scale of protected values, according to which A is worse off at (2) than at (3); also, she is worse off at (3) than at (4); and in (2), (3) and (4) she is always worse off than at (1). Borderline cases such as those of (3) and (4) can therefore be overcome: except for (1), all other situations may be descriptive of a violation of R_2 within the context of counterfactuals.

The PAP seems more effective in identifying violations of the rights of persons that exist at t_2 . The fact that it is in direct contradiction with the principle of linear identity when the latter is expressed by means of a language of rights is a further argument in support of the NIP. But in either conception of harm in play, it is interesting to note that they involve the rights of A at t_2 , which are actual rights of actual persons; strictly at t_1 , and at t_1 alone, there is no available definition of harm being done to A, and not even (1) can be stated truly at t_1 . The violation of rights such as R_2 depends upon there being present rights against past persons (a focus on the moral state of affairs at t_2) rather than there being present duties to future persons (a focus on the moral state of affairs at t_1). The discussion of the infringements of rights at t_2 is not a debate on the rights of future persons per se.

4. EMBRACING THE NIP AND THE LANGUAGE OF RIGHTS: THE PRESENT-RIGHTS-OF-PRESENT-PERSONS VIEW REVISITED

The soundness of the non-identity argument makes it difficult to talk about the rights of future persons. Authors such as Boonin (2014), for instance, fail to see how this connotes a moral problem at all. But the thesis that one should embrace rather than solve the non-identity argument does not necessarily entail that there is no problem. Concern for future generations is a legitimate moral topic that might depend on the expectation that future persons will be right-holders. In fact, specific institutions and practical proposals aimed at defending the interests and rights of future generations are already in play, and this includes the increasing tendency to upgrade such rights to the status of constitutional rights.¹⁸ In addition, the temporal distance between some generations increases uncertainty as to the effects of present actions or to the nature of future generations' available resources; the temporal direction of causation may

generate problems of asymmetry of power across time; the lack of temporal coexistence with remote generations is insufficient to remove the interests that present persons may have in the interests of future persons. All this is constitutive of a moral problematic to which there should be at least a tentative reply.

There are two kinds of moral replies that embrace the NIP. The first takes rights-language out of the equation of non-overlapping intergenerational relations, and replaces it with principles establishing that something is wrong either in view of impersonal effects¹⁹ or because it contradicts the agents' reasons, attitudes or intentions (Wasserman 2005). Since the NIP's conception of rights is inherently connected with personal identity, this strategy also involves depersonalization, that is, taking future personal identity out of the equation. In this setting, there are normative elements binding in the present that take into account either the long-term effects of present actions or respect for objective values that supposedly are (or should be) shared at all times. It is the impersonal moral status of present actions that induces principles and constraints justified by what is expected to occur in the future. Such a view constitutes a duty-based account of morality which has no rights as correlatives and whose key elements resemble what Kant called 'duties to oneself' rather than duties-to-others (Kant 1996, 385, 395).

The second kind of reply refuses to rely entirely on a duty-based account of intergenerational relations. Rights-language seems so much more axiologically-charged when compared to duty-based moral views that it is capable of upgrading the value of future interests, thereby attributing stronger reasons or purposes or meaning to present duties. But in order to preserve rights-language, it is the future that needs to be taken out of the equation, the not-yet-of-personal-identity. Moral intergenerational relations can thus be conceived of in terms of rights of living people, whether they are adults with present interests in future states of affairs (Mazor 2010), our children or other children born in our lifetime (Vanderheiden 2006; Gheaus 2016), any presently existing person (Delattre 1972), or any member of temporally neighbouring generations that will at least at some point in the future have a chance of overlapping (Gosseries 2008).

Both replies involve somewhat strange presuppositions. The first grounds a depersonalized ethics on the interests of persons, even if they live only in the future. And the second purports to solve moral problems pertaining to the future by focusing

exclusively on the present. However, both seem to be legitimate accounts of morality that sidestep the NIP – what makes them equally legitimate is the fact that they rely on different assumptions concerning the metaphysics of time.

The depersonalization strategy conceives of the relation between t_1 and t_2 as a present-future kind of temporal order. Within this context, the future comprises the set of all intervals beginning at t_1 but not including t_1 itself; that is, all intervals (including t_2) beginning immediately after t_1 and extending into the indefinite interval. The (impersonal) moral principle at t_1 is binding only at t_1 as actual, regardless of the future and independently of any personal rights at any interval. The moment immediately succeeding t_1 in the order of time assumes then the same characteristics of t_1 , where the same moral principles are binding. Such duties have the appearance of being tenseless insofar as their bindingness does not depend on any correlative normative element beyond the present. Contingent sentences at t_1 have different truth values than the ones potentially assessed for any future interval. This includes moral duties, which are equally universal at any moment that shares the characteristics of t_1 as actual. They are moral principles in the strong sense of a universalizable ethics.

On the other hand, the *present-rights-of-present-persons* strategy, which preserves rights-language, is not tenseless. The reason why such actual rights at t_1 may contribute to the solution of moral problems arising only at t_2 is that those problems are already normatively relevant at t_1 . Somehow, the truth values of contingent sentences at t_1 must coincide to a minimum extent with the truth values expected at succeeding intervals, including t_2 . The temporal order no longer displays a distinction between present and future, but a sort of ‘semi-future conception of the present’ which comprises the set of all intervals beginning at t_1 and including t_1 itself, as though the present were the first moment of the future. Whereas in a present-future temporal order, the truth values at t_1 of any duty to X are irrelevant to the truth at t_1 of the strictly future versions of ‘when next’, in the semi-future temporal order if X is true already at t_1 , then all the succeeding intervals are true at t_1 if X is true at t_1 . In this sense, the contents of Y and X are coincidental at t_1 and t_2 . In rights-language, this translates into actual rights held by actual persons whose bindingness protects interests that they have equally at t_1 and at any succeeding moment (assessed at t_1) in which the same persons will continue to exist.

Consider a world with three generations (G1, G2, G3), in which G2 overlaps with both G1 and G3 but in which G1 never overlaps with G3. Typically, G1 and G2 overlap at t_1 , where members of G1 are duty-bearers and members of G2 are right-bearers; and G2 and G3 overlap at t_2 , where members of G2 are duty-bearers and members of G3 are right-bearers. At t_1 , the truth value of moral statements of G1 towards G2 somehow includes the truth value that G2 will have obligations towards G3 at t_2 . The rights that correlate with the duties held by members of G1 are held by members of G2 at t_1 , and these rights have at t_1 a background justification Y which includes an interest in persistence throughout time, a present expectation of overlapping coexistence with members of G3. Because the idea of succeeding generations is merely an abstraction since it assumes that one entire group of persons departs as another arrives on the scene, whereas human population replacement is continuous, the rights of any persons born at t_1 will have as their object a considerable regard for succeeding moments. This does not imply any rights relation between members of G1 and G3, neither at t_1 nor at t_2 ; but the nature of the rights relation between members of G1 and G2 at t_1 is based upon a Y that includes the expectation that members of G2 will be alive at t_2 with the same deontic powers (for instance, they will have to be capable of duties) that members of G1 hold at t_1 . The reason for this equality of treatment is that Y for every living person has the same truth value at t_1 and at every single moment between t_1 and t_2 . Duties and correlative rights between members of different generations are therefore always ongoing and actual – it is the temporal persistence of the truth values of t_1 throughout succeeding moments (whether justified by continuant or four-dimensional theories of temporal persistence) that makes such rights and correlative duties binding at (and between) t_1 and t_2 .

Typically, transitive strategies of generational overlap take into consideration the interests of remote future generations either by granting to G2 at t_1 a right to defend the interests of G3 (in consonance with will-theories of rights) or by identifying that G2 has an interest in fulfilling its duties to G3 and therefore a corresponding interest in preventing G1 from making it heavier for G2 to comply with these duties (in consonance with interest-theories of rights) (Gosseries 2008, 461-4). But this strategy seems to confuse temporal orders, given that at t_1 the interests of G3 exist only as interests of G2, which are at t_1 present interests of G2 concerning the future. They are not interests in fulfilling duties that they do not have yet, but rather interests in

persisting throughout the succeeding moments of t_1 while preserving the same truth value. Conversely, the interests of G3 at t_1 exist for G1 *qua* future, not *qua* semi-future. The only way to overcome this difficulty is by narrowing down the temporal scope even further, that is, by binding members of G1 to the rights of persons that actually overlap with them rather than with those with whom they shall overlap eventually. Since these rights belong necessarily to members of G2 at t_1 , the interests of G3 are relevant only as present interests of G2.

Such normative relations can even be grounded on actual self-interest and the fact that they might benefit persons who will live in the (proximate or remote) future is somehow contingent. This present-rights-of-present-persons view is hence more suitable for the legal and political realms, where policies and law-making are actually more concerned with present addressees and short term (often electoral) effects.

This view may seem extremely minimalist but it is able to (i) embrace the non-identity challenge, (ii) preserve rights-language in the intergenerational context, and (iii) consider the existence of present binding rights that include the preservation of truth value in the future, that is, rights that preserve the value of X ongoing from t_1 to t_2 .

5. CONCLUSION

The argument presented here identified the main challenges posed by the NIP to the rights of future persons, and tried to demonstrate that its inherent notion of correlativity between rights and duties makes it invulnerable to the attacks to which it has been subjected over the last years. The most reasonable reaction to the NIP's persuasion with regard to the rights of future persons remains embracing it as a problem that can be overcome only by restricting rights to relations between temporally-overlapping persons.

At first glance, this solution does not seem to satisfy the intuitions of those many observers who assume that persons existing in the present should care for members of future generations even if there were no generational overlap. Moreover, sceptics may inquire: How is this solution helpful in assorting the contents of X in cases where the consequences of present actions or policies are very remote? For instance, in determining what to do with industrial waste that remains toxic for over 100 years; in

choosing at t_1 between a short-term favourable policy that will likely kill thousands of persons 300 years later or a short-term less favourable policy that will kill nobody; in choosing at t_1 between a policy of conservation of resources or a policy of depletion? However, the proposed solution entails neither disregarding the interests of near and distant future persons nor dismissing the importance of long timeframes for certain moral problems. The point of the argument is that small normative steps lead less problematically to where large normative steps would lead us. Each person born at t_1 who becomes a duty-bearer at t_1' is engaged in normative relations that protect her and other right-holders at each moment, including her interests in persevering in the succeeding moment. There is no futurity here except as a broader conception of the present encompassing continuity and actuality – that is, a semi-future.²⁰

This does not mean necessarily that the immediacy of X involves disregard for a remote state of affairs, as long as the foresight of such a state of affairs is relevant to the bindingness of X in the present. The precise moments in the future in which something bad might occur that was predicted earlier (being exposed to other people's toxic waste; dying of a disaster caused by an unstoppable event caused 300 years earlier; depletion of resources) are generally unknown and uncertain; from the viewpoint of a member of G1 at t_1 , it is possible that it might occur during a moment in which those with a claim to X at t_1 overlap with right-holders not living at t_1 , which means that such a possibility is already relevant to the contents of X at t_1 .

Ultimately, the road to recognizing the rights of future persons leads to a dead end. Yet, attention paid to the semi-future nature of the present rights of present persons contributes to the process of opening a path, even if a narrow one, towards protecting the interests of who will come to live.

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¹ Parfit relies upon a form of Kripkean ‘geneticism’, where our identities are understood in terms of the necessity of our genetic origins (Kripke 1980, 113–15).

² This view directs the NIP very close to *presentism* (according to which only present objects actually exist) due to the fact that it makes no assumptions about the (non)existence of future individuals *qua* individuals but only *qua* future individuals. This distinctive detail, however, can make way for eternalist alternatives to presentism (Griffith 2017), if surpassed. In addition, the Growing Block theory of time, according to which the past and present exist and the future does not exist, also seems compatible with the NIP. But since the NIP’s main point involves an argument about the normative relations between a present moment and a future moment, it does not seem to rely on any metaphysical assumption about the existential status of the past.

³ For broad actualism, see Quine (1948). For modal realism, which reformulates Diodorus Cronus’ classic Master Argument, see Lewis (1973; 1986).

⁴ The NIP’s possibilism requires a comparison between an actual state of affairs and possible counterfactual states of affairs belonging to worlds which are generally similar. In modal metaphysics, this can best be described in the possible-worlds semantics as closer either to *Ersatzism* (according to which the truth or falsity of a modal statement is explained by appeal to surrogates for possible worlds, rather than to genuinely existing worlds themselves), to fictionalism (according to which possible worlds have truth-values similar to the specific truth-values of fiction), or to some form of argument in-between both (Armstrong 1989).

⁵ There are two ways to sustain this claim. The first is the ‘concessional view’ (Elliot 1989; Schlossberger 2008), also called ‘the meinongian view (Routley and Routley 1977): it states that rights exist presently without a bearer because they correlate with present duties, and its present existence is contingent on the future existence of some person who will then be the bearer of the right, which does not imply that the future person is the present bearer of the right. The second is the ‘constitutive view’: it states that a certain course of action might involve the creation of rights that would probably be violated in the future; a present action that may be a cause for a legitimate complaint is constitutive of a right whose binding force does not depend merely upon possible people – the morally wrongful act generates a new right that might be violated eventually (Sterba 1980; Woodward 1986; Smolkin 1999). Rather than considering rights the grounds for duties, this second strategy reverses the perspective insofar as duties are directed to person A if its purpose gives A a certain special place – the right is a normative consequence rather than the justification for such a consequence.

⁶ According to eternalism, the nonexistence argument inherent in the NIP can be surpassed since cross-temporal normative relations are perfectly intelligible within such a frame of reference in the light of the claim that objects exist tenselessly, that is, they exist at the times they do in exactly the same manner that objects existing at this moment do (Griffith 2017). Thus, change takes place within time but time itself does not change; it merely separates events in such a way that even though each moment is present from

its own viewpoint, no moment is just absolutely present. Future persons exist and are no less real or actual due to the fact that they are future, and so eternalists might hold that future persons have rights at the times at which they exist and that those rights might be correlative with duties that exist at different times, as well as satisfied at the time at which the correlative duty is had. For an opposition to eternalism in the context of the NIP, see Earl (2011).

⁷ The ongoing debate on the possibility of representatives or *ombuspersons* for future people, especially before courts (Ekeli 2006) or policymakers (Beyleveld et al. 2015), presents a challenge to the present-rights-of-future-persons view in the sense that representatives can be said to count as replacement rights-holders for future persons. However, this hypothesis seems to put too much weight on the already inherently difficult and ambiguous concept of representation since it seems to imply that the contents of the representatives' mandate not only includes rights rather than duties, but also includes the actualization of nonexistents, when in fact representatives actualize diffuse claim-rights rather than actual persons. That is why even those observers that talk about representation within this framework often resort to such abstractions as generic rights (Beyleveld et al. 2015). Strictly speaking, present representatives are not rights-holders – as the term suggests, they represent the genuine (future) rights-holders.

⁸ Supposing that a future individual A with a specific genetic heritage exists only in one possible world, modal realism claims that there is a suitable counterpart for A in some other possible world that does not rely strictly on genetic identity but rather on similarity. According to counterpart theory, the future individual may be represented *in absentia* at other worlds: other possible worlds can have a flesh-and-blood counterpart of A, someone very like A in her origins and in her character; those worlds represent *de re*, concerning A, that she exists and does thus-and-so (Lewis 1986, 194). Individual A can satisfy the person-affecting conception of harm by comparing her (violated) right not with nonexistent rights but with the (unviolated) rights of her relevant counterparts. The advantage of this argument is that she no longer has to measure violation of her rights against nonexistence – her right exists in her world and can be compared with other existing rights in other possible worlds.

⁹ Even in accordance with the Thin-red-line thesis (according to which at any moment of time, including counterfactual moments, there is a true future passing through that moment, that is, a privileged branch related to actuality) (Belnap and Green 1994), it is not sufficient for the model to specify a preferred branch; it must also be assumed that there is a preferred branch at every counterfactual moment, that is, not only at W, but at all other worlds. Only a function that might give the true future for any moment of time at any possible world could resist the temptation to refer to a wait-and-see status of the privileged branch from the viewpoint of t_I .

¹⁰ On logical equivalence, cf. Carnap (1956, 11).

¹¹ This is also Aristotle's version of correlativity, for whom a relative always has its relational correlative. A wing and a bird are not reciprocally correlatives because there are winged animals that are not birds: similarly, head and animal are not correlatives, but head and headed. See Aristotle (2002), *Categories* 6b28-7b34.

¹² For this example and interpretation, see Gosseries (2008).

¹³ ‘Hypothetically actual’ is Luís de Molina’s description of what he calls *futurabilia*, the future contingents, in his *Concordia liberi arbitrii*. Bertrand de Jouvenel’s later description of futuribles is as follows: ‘A futurible is a *futurum* that appears to the mind as a possible descendant from the present state of affairs’ (Jouvenel 1967, 18).

¹⁴ I must thank an anonymous reviewer of this paper for suggesting that humanity as a whole can be considered the relevant collective in this context; for instance, when invoking ‘the rights of humanity’ in order to include future persons. However, within such a framework, humanity as a whole can hardly be considered a collective entity in the sense of having a sufficient unity that deems it capable of becoming a right-holder vis-à-vis particular duty-bearers that are also members of humanity. We can use the term ‘humanity’ to qualify a collection of humans, but if this collection is to involve future (possible) humans it must be a general type. And so it must be included in the discussion about types and tokens (which it is). Even Kant’s broad use of the expression ‘right of humanity’ refers to the innate right of humanity in one’s own person, to ‘the original right belonging to every man by virtue of his humanity’ (Kant 1996, 393), that is, to how person-tokens have rights in reason of their participation in the person-type.

¹⁵ For the opposite view, according to which wronging can be separated from harming, see Kumar (2003).

¹⁶ The opposite view interprets the principle of linear identity only circumstantially. One way of providing such an interpretation is to claim that relevant person-affecting present actions are those not only likely but necessary conditions of the existence of future persons (Roberts 1998). This entails taking the NIP seriously but without necessarily extending its scope to all our present actions, but only to those that are the direct cause of one’s particular genetic identity. A second way of providing such an interpretation is to reject that present actions can affect the identities of all future persons; rather, linearity between present actions and particular identities might extend only to some specific persons (Carter 2001). In either case, not all present actions are potentially limitative of the particular existence of future rights, even if the NIP remains sound in specific circumstances.

¹⁷ For a similarly unsatisfactory account of the worse-off argument, see Morriem (1988); Woollard (2012). More recently, Hanser (2011) has tried to develop an event-based account of harm independent of alternatives and outcomes.

¹⁸ See, for instance, the Argentinian Constitution, art. 41, §1; the Norwegian Constitution, art. L 110b, al. 1; the Japanese Constitution, art. 11; the Bolivian Constitution, art. 7(m); and the Pennsylvanian Constitution, art. 1, §27.

¹⁹ This is Parfit’s position when formulating Principle *Q* (Parfit 1987, 360). On a posthumously published work, however, he came to accept that the NIP could be overcome by what he called a ‘wide person-affecting principle’, according to which one of two outcomes is worse if it benefits people less than the other outcome would have (Parfit 2017). Preference for impersonal principles can also be found in Brock (1995); Buchanan et al. (2000); Page (2006); and Sanklecha (2017). For a theistically-based account of impersonal moral principles, see Reichenbach (1992).

²⁰ Medieval visions of hell depicted it often as the continuous repetition of the present: see St. Augustine (2003, Bk. XXI, 9). Such a moral reproach of the present is also reflected in the notion of *long durée* employed by historians such as Fernand Braudel, according to which History occurs not just at the level

of events, but as a principle of restlessness existing beneath the constantly moving conjunctures (Braudel 1958). However, semi-future conceptions of the present entail considering each partial moment of duration a sort of mirror reflection of the set of infinite moments to come.