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A Capabilities Approach to the Non-Identity Problem

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Claremont McKenna College

A Capabilities Approach to the Non-Identity Problem

SUBMITTED TO

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AND

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By

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FOR

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Abstract

Most recent attempts at solving the Non-Identity Problem have focused on providing a deontological solution to the problem, often by giving special attention to rights. In this paper, I argue for a solution that focuses on highlighting the morally permissible second-personal reasons and claims that nonidentity victims may have. I use a natural marriage between a Kantian conceptualization of what it means to be free and equal—being one's own master—and Nussbaum's Capabilities Approach to identify the rights that all individuals, current and future are assigned. I claim that these rights, or capabilities, are what all are entitled to master for themselves in the Kantian sense. I conclude with a solution that produces intuitively correct results and dissolves the nonidentity problem altogether.

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Introducing the Nonidentity Problem

The nonidentity problem presents a serious moral dilemma that is becoming increasingly relevant as policy decisions have the ability to impact even greater numbers of possible future people than in the past. This is specifically true for cases such as climate change where future people could receive harsh consequences for decisions that we make today. How are we morally required to act with regards to others, particularly future or potential future people?

Solving the nonidentity problem would have serious moral implications for how we ought to act. Many have attempted various creative solutions to solving the nonidentity problem. Of these thinkers, there are a vast number that consider exploitation or rights violations to be the solution to the problem. However, no one has proposed a solution that attempts to solve this problem by specifically stating the rights of future people and the standard of care that we are responsible for giving them today.

As the nonidentity problem becomes increasingly relevant, a new rights-based morality is being widely accepted in communities across the world; Martha Nussbaum's Capabilities Approach¹ is a unique theoretical framework for assigning rights to all individuals and measuring whether or not they are violated. Our intuitions in the nonidentity problem tell us there is a wrong occurring yet we have difficulty classifying

¹ Nussbaum, *Frontiers of Justice*.

and identifying this wrong in an accurate way. Without a description of what specific rights current and future people hold, the nonidentity problem persists. The Capabilities Approach gives us a unique and accurate way to define and identify what rights should be given to people, when they are violated, and thus when individuals are wronged.

In the First Section, I will outline the problem and some of the past attempts at creative solutions—all of which have significant shortcomings. In Section Two I will explore past literature and use it to dissect the different aspects of the problem and how they have previously been addressed. In Section Three, I will discuss the different necessary components of a solution to the NIP. In Section Four, I will show why the Capabilities Approach is uniquely suited to be a morally reasonable and acceptable list of rights that not only gives attention to current individuals. Additionally, I will show how the Capabilities Approach solution can solve all different cases of the NIP, even the ones that bring up unique concerns. My goal is to show how the Capabilities Approach solution succeeds where previous attempts either totally fail to solve or only partially solve the NIP by paying attention to considerations that other solutions have ignored—particularly second-personal reasons and claims as well as what Hallie Liberto classifies as the felt experiences of future generations (something she argues most rights-based solutions ignore).² This paper will result in a deontological solution to the nonidentity problem that gives considerations to rights, exploitation, and second-personal reasons and claims; it will use these considerations to classify the wrongs being done to nonidentity victims, and by doing so, dissolve and solve the nonidentity problem.

² Liberto, "The Exploitation Solution to the Non-Identity Problem," 73-88.

Section 1: The Nonidentity Problem (NIP)

Derek Parfit is one of the first scholars to present the infamous nonidentity problem³ and has provided many additional insights into its nuances following his first description of the problem in 1984.

The problem arises given a few required factors and presents very interesting puzzles. The paradox is created when one person (A) performs an act that both causes the existence of another (B) yet also seems to create some sort of flawed existence for them with the same act. This person, however, must have an existence that is unavoidably flawed. The alternative would be a wholly *different* person who is created without a flawed existence as a result of A not performing the original action.

Due to the physical realities, differences in action and time, even by brief periods of time, impact the reproduction process. If A changes their actions in *any* way, the child will be nonidentical to B because a different sperm will have fertilized the egg. In some particularly difficult cases, it intuitively seems like causing B to exist by performing the action is morally wrong for A to do. However, B is not worse off given the actions of A. This is because if A had never performed these actions B would have never existed in the first place. Additionally, most people intuitively would say that existence is worth having—even with a significant disability. So, given the opportunity to choose between

³ Parfit, *Reasons and Persons*, 351-379.

the unavoidably flawed existence and not existing at all, we can assume that B would prefer for A to do the act.

The apparent paradox that is caused by this sort of situation provides us with the task of finding its solution. Parfit, and subsequently many others, have labeled this the nonidentity problem. These future persons do not have a specific identity until we bring them into existence yet intuitions suggest that the act of bringing them into existence is morally wrong.

So, the nonidentity problem can be classified by three specific **nonidentity**

intuitions:

1. Person affecting/person-based intuition – An act can be wrong only if the act makes things worse for, or harms some existing or future person. A wrong act must be bad for *someone*.⁴
2. The existence that one (B) receives in nonidentity cases is flawed in some way (large or small) yet still worth having. Intuition 1 is not violated because the person is not harmed. This is because the flawed existence is not worse than nonexistence.
3. Nonidentity cases need show that existence-inducing acts are not always morally permissible based on our intuitions.⁵⁶

These intuitions conflict at step 3, which leads to the nonidentity problem. My task will be to figure out which one of the intuitions is incorrect or misleading so as to dissolve the

⁴ Roberts states that to harm another suggests that they are also worse off and vice versa. However, this is an especially relevant distinction to pay attention to as we confront different arguments against and for this specific intuition. I will further address the relationship between harm, wronging, and making one worse off throughout the paper.

⁵ Roberts, “The Nonidentity Problem.”

⁶ When comparing two possible outcomes we need to be able to say that one outcome is better than the other even though nobody seems to be worse off in the same sense as outlined in intuitions 1 and 2.

nonidentity problem. I will do this by showing how our intuitions on harm and morality can be correct despite the nonidentity problem.

In order to best understand where the solution might lie and to grasp the different relevant intuitions it is extremely helpful to look at a common representation of the non-identity problem. Parfit has two classic examples that are regularly used to examine the problem and are also becoming increasingly relevant today:

The Fourteen-Year-Old Girl

This girl chooses to have a child. Because she is so young, she gives her child a bad start in life. Though this will have bad effects throughout this child's life, his life will, predictably, be worth living. If this girl had waited for several years, she would have had a different child, to whom she would have given a better start in life.⁷

Depletion

As a community, we must choose whether to deplete or conserve certain kinds of resources. If we choose Depletion, the quality of life over the next three centuries would be slightly higher than it would have been if we had chosen Conservation. But it would later, for many centuries, be much lower than it would have been if we had chosen Conservation. This would be because, at the start of this period, people would have to find alternatives for the resources that we had depleted.⁸

As we attempt to dissect these three intuitions and try to find which is incorrect, we will continue to come back to these examples. They demonstrate the mechanisms for not only the problem itself but also for the possible solution. Our eventual goal is to specifically highlight how the nonidentity victims are harmed or wronged. In this next section, I will cut up the problem a bit more and share some of the advances that others have made in discovering the best type of solution. Then, I will try to outline what a possible solution would look like using a contemporary and creative approach.

⁷ Parfit, *Reasons and Persons*, 358.

⁸ Parfit, *Reasons and Persons*, 362.

Definitions, Terms, and Abbreviations

Non-Identity Problem – NIP

Non-Identity – NI

Teleological – Duty or moral obligation based on consequentialist measures

Deontological – Duty or moral obligation is independent of the good/bad effects produced

First-personal reasons and claims – “Reasons that reflect the evaluation of states of affairs as better or worse *for a particular person*.”⁹¹⁰ This looks at whether or not one is made better or worse off in any respect. For example, imagine a football team who chooses to cut one of their players. The cut player is made worse off, and he has a first-personal claim against the people who chose to cut him.

Second-personal reasons and claims – Reasons that constrain agents from acting because the person they act upon would have a specific, directed, and personal claim against them as a result of their intended action that represents a wrong done to them by the actor. “These wrongs can be classified into many central moral categories, including rights, moral responsibility, moral obligation, respect for and the dignity of persons, and the very concept of moral agent or person itself.”¹¹ These types of acts

⁹ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 8.

¹⁰ All further references to first and third-personal reasons and claims refer specifically and exclusively to first and third-personal teleological concerns.

¹¹ Darwall, 1

can be represented by the claim a victim of a lie would have against the liar or the claim one would have against another if the other broke a promise that she had made to them.¹²

Third-personal reasons and claims – “Reasons to promote states of affairs evaluated as better or worse *overall*, from an impersonal or agent-neutral point of view.”¹³ This is contrasted with first-personal reasons and claims which do not focus on overall outcomes. Think again about the example of the football player who is cut. Let’s say the team goes on to do much better without him. From an agent-neutral point of view, the team is better off overall and therefore, from this point of view things are better off for third-personal reasons.

Solution – A way to avoid and dissolve the NIP, therefore solving it.

Act (in the NI sense) – An act that creates people with a flawed existence (satisfies the necessary intuitions to create the NIP).

No solution – A principle that doesn’t say the act is wrong.

Shallow solution – A principle that says that an act is wrong yet does not use second-personal reasons or claims to identify its wrongness in any way.

Deep solution – A principle that says that an act is wrong *because* it either wrongs the victims by failing to recognize their second-personal reasons and claims or it fails to recognize their second-personal reasons and claims *in addition to* some other harm.

¹² All further references to second-personal reasons and claims refer specifically and exclusively to second-personal deontological concerns.

¹³ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 8.

Section 2: The Problems and Past Thinkers

There are many large issues that are currently looming and each focuses on different aspects of the NIP. Many people have different intuitions for how to attempt to break up the NIP in order to identify where there is some sort of moral wrong occurring. I have already classified the NIP with the three previous nonidentity intuitions. In order to avoid or “solve” the NIP, we will have to find out which specific intuition has a fault of some sort. Then we must show specifically why it solves or results in us avoiding the NIP altogether.

Intuition One

Let’s start by looking at the first intuition. This intuition is the one that states that an act must make someone worse off or harm a specific person in order for it to be morally wrong. This original intuition also suggests that when we say someone is harmed it says that they are also worse off.¹⁴ This is a very important distinction to make and we will continue to pay special attention to this relationship throughout the paper. Those who try to find a flaw within this first intuition focus primarily on identifying the definition of harm. These solutions would be something like denying the claim that one has to be

¹⁴ It is important to separate harms from wrongs towards victims here.

overall worse off¹⁵ and attempting to show how one can be harmed by an agent even if the victim were made better off overall: “Several philosophers, including Matthew Hanser, Elizabeth Harman and Seana Shrifin, have attempted to solve the Non-Identity Problem by denying this apparently plausible claim”¹⁶ However, despite how we choose to define harm/wrongs in future persons, these types of solutions do not fully solve the NIP because even if we recognize that the victim was harmed, this does not tell us *why* it is wrong in all cases.

For example, let’s take the case of Depletion. Those that employ this type of solution might say that though the future peoples are better off overall (because they exist), we still cause them significant harm because they don’t have the same access to resources (among other bad effects) and therefore the act of depletion is morally impermissible. This is what I will classify as a *shallow solution*. This is a solution that can classify that the act (of depleting) is wrong in most cases but that also fails to recognize *why* it is wrong in all cases. Let’s take a look at how it fails to recognize why the act of Depleting is wrong some of the time. In order to do this, it is easy to first look at a case that Woollard brings up to show that whether or not a harm occurs is not an adequate way to measure the permissibility of an action alone.

The Surgeon

Take for example a surgeon who has a patient whose appendix is about to burst. It seems morally permissible for the surgeon to operate on the patient even if in doing so

¹⁵ Something we will later classify as a third-personal reason or claim.

¹⁶ Woollard, “Have We Solved The Non-Identity Problem?,” 678.

she causes extreme pain to the patient.¹⁷ Instead of just focusing on the harm in this case, it also must be taken into consideration that harming could be the only way to prevent the victim from suffering a more serious harm. Also, in this case, if the surgeon chooses not to operate there would not be a different future individual as there is in the Depletion case. Lastly, in the surgeon case there is no significant benefit on others available if he chooses not to operate. Although Hanser, Harman, and Shiffrin each choose different combinations of these three relevant factors to form their definitions of harm, Woollard shows that choosing which one is important is irrelevant to solving the NIP. It is not solely an issue of harm and we therefore must explore the other intuitions to find a possible alternative solution regardless of whether or not it includes the rejection of intuition number one.

Let's take a closer look at Depletion to see why. Initial intuition suggests that we should not deplete because future individuals will be harmed by our actions. However, Fiona Woollard makes the observation that there is much more going on. NI cases could easily prove problematic for those who try to solve them by solely using harm when we begin to involve benefits as a result of the identity causing action. If we try to find a solution solely based on intuition one (or solely based on harm) we are ignoring any possible benefit that could come from depleting for the acting group.

The problem arises when our intuitions say that the NI victim is harmed to a much lesser degree than the actors are benefitted. In many cases when the victim is made no worse off overall, Woollard points out that because of these intuitions we can morally justify depleting (and harming the victim) because of a much greater benefit to current

¹⁷ Woollard, "Have We Solved the Non-Identity Problem?," 682-683.

people—we are better off in the third-personal sense but the victims are worse off in the first-personal sense. Let's say for example, that by Depleting now, current society will be able to use the resources to save one hundred million lives in addition to having better lifestyles today. However, future victims, had their ancestors chosen not to deplete, would only have been able to save one million lives and their lives would be better off in that they didn't have to carpool, they could still heat their pools, and more surface benefits like these. Many would agree that depleting now is justified. Even though the future people are harmed (their lives are made worse off), it is justifiable because there is a great benefit today. If we weigh one hundred million lives against ten million plus marginally worse lifestyles for future peoples, it is an easy choice for most people to choose the one hundred million now plus better lifestyles for current people.

For those who disagree we can surely keep shifting the degree to which the future peoples are harmed or how much and how many people are benefitted today until we get to a point where depleting seems to be the correct action. For example one billion people saved today against ten saved in the future. What this example demonstrates is that harm is not the only relevant factor in our decisions about why we should not deplete. There are still some individuals who point out that this is not a solution to the NIP. So, in order to figure out why we should not deplete, as our intuition suggests, we must seek an alternate solution.¹⁸ There must be some attention to *why* the act is wrong in order to find a *deep solution* to the NIP—one that satisfies all of the relevant claims of the victims in

¹⁸ Woollard, "Have We Solved the Non-Identity Problem?," 679.

NIP cases and not just some of them.¹⁹ What Woollard proves is that there are many cases for which a harm-based solution (a solution that addresses only intuition one) is unsatisfactory. The solely harm-based solutions, which are the common strategy for those rejecting the first intuition, say that it is possible to *better/make no worse off* a person even while making them, or another group overall better off to a point that is greater than the harm against the victims. Since at least one group is better off and neither group is ever worse off harming seems to be justifiable. So, Woollard objects to purely harm-based or teleological solutions on the grounds that, even if we can establish that in NI cases the act harms the created people, harming is insufficient grounds for wrongness. That is, the case of the surgeon shows that an act that harms a person may still be permissible.

Because of this disconnect we must seek an alternative. This new alternative solution might very well include the rejection of our first intuition (or not). However, as we have just worked out, we cannot solve the NIP sufficiently by just focusing on the first intuition. Instead, we must look at the others as well.

Intuition Three

Next, let's skip ahead to look at intuition three. Intuition three uses our intuitions about the specific non-identity cases to show why each is wrong, even if we have trouble identifying a specific harm or wrong done to the victims or the agents. It says that although we know that the existence-inducing act is wrong (because of our intuitions), we

¹⁹ Later on, we will discuss the rights and claims that the NI victims have against the agents who originally act to Deplete (in this case) and how this is a way to classify the wrongs against future peoples. However, this expands outside of NI intuition one alone.

do not know *why* it is indeed wrong. A solution that would try to point out a flaw with intuition three would have to be something that claims our intuitions are simply incorrect and that existence-inducing acts are always morally permissible. The result of this realization would be that the NIP fails to exist altogether as we bite the bullet. This seems a rather thin solution that just says there is no problem besides our false intuitions.

To accept this argument against intuition three and discount the NIP altogether, we would need to justify why our intuitions that existence-inducing acts are not always morally permissible are wrong in the first place. More specifically, one might say that although our intuitions might suggest that, for example, the victim is better off existing with some sort of disadvantage than to have never existed at all, this intuition is actually wrong. However, this sort of reasoning takes us to the second nonidentity intuition where we say that the existence-inducing act is still worth having. Overall, any true solution to the NIP that could be garnered from nonidentity intuition three would have to come through some sort of rejection of intuition two so we must move on and discover what sorts of problems may lie within nonidentity intuition two. Any other alleged solution, using solely intuition three, would produce a skeptical or error-theoretic “solution” to the NIP by simply saying our intuitions on existence-inducing acts are incorrect.

Intuition Two

So, since we know the first solution is unsatisfactory because it does not fully solve the NIP without intuition two and that the third solution either simply does not

provide a solution²⁰ or brings forward the “no better off” problem (which requires a rights-based portion found in intuition two), our solution to the problem must lie somewhere within our interpretation of the second intuition and/or its relationship with the other intuitions. The vast majority of work on the NIP is focused on identifying issues with the second intuition. However, this work has yet to produce a fully satisfactory solution that works across non-identity cases and also shows how we should act in these cases. My goal is to first discover what the solution will look like before proposing a potential system of justice to solve the problem.

Before we dive into other types of solutions that focus on the second nonidentity intuition, I want to confront the one that was brought up by the third nonidentity intuition. By definition, the second intuition points out that the future person’s existence will be flawed before stating that the flawed existence is better than no existence at all (the only alternative) so this person is therefore no worse off (not harmed). A solution that would target this part of the intuition would involve us demonstrating successfully that all existence-inducing acts are not wrong because nobody is worse off as a result of the act. There are many debates that focus on whether or not existence is intrinsically valuable or is simply a starting point where good is at zero from where we might build value. This is relevant when we compare flawed existence, no existence, and regular existence. Some argue that existence in itself is not a good. This then might lead them to the argument that

²⁰ It does this by saying that there is no harm occurring, when there clearly is a harm in Nonidentity cases by definition of the NIP.

a flawed existence is actually worse than not existing at all in some cases. James Woodward describes this argument as the “no worse off” argument.²¹

The “no worse off” argument rests on the fact that causing to exist cannot benefit or has no intrinsic good. That is to say that the act of having a child does not benefit the child. Instead, it rests on treating the existence-inducing act as simply neutral. From there, we can at least claim that the existence causing action makes its victims²² no worse off. Woodward then goes on to show how in the case of the fourteen-year-old girl, there is no harm done to the child (victim) in the NI case or violation of their rights but instead the objection must be that had the fourteen-year-old girl waited to have a child, the resulting child would be better off. Parfit agrees with Woodward on this aspect of the “no worse off” solution by referencing a principle he refers to as Principle Q, which I shall discuss more extensively in the following paragraphs. However, the relevant part of Parfit’s Principle Q to Woodward’s argument is that when we compare two cases where we have the same number of people in each group, we should choose the one with the highest quality of life.²³ The argumentation for the “no worse off” argument is as follows. Since nobody is worse off, we should compare the two situations and choose the one that is most likely to produce the highest quality of life. However, those that support the “no worse off” argument fail to account for certain wrongs that are occurring and therefore fail to solve the NIP. Woodward demonstrates this in the rest of his paper.

²¹ Woodward, “The Non-Identity Problem,” 805.

²² They are not necessarily victims (because they aren’t directly harmed) in this argument but I am purely using the term victim to describe them in order to remain consistent with my references to different groups.

²³ In the next section, I will also address other problems that arise when looking at different number cases and other variations of these situations.

The next step in Woodward’s argument with regards to the “no worse off” solution is “to conclude that the objection to choices like [the fourteen-year-old girl’s or the current individuals in Depletion] rests *wholly* on a comparative principle like [Parfit’s Principle] Q.”²⁴ He concludes that “we can coherently claim that the above choices would violate rights possessed by or duties owed to the [future peoples or victims] and that it is an important part of the explanation of why such choices would be wrong.”²⁵ Interestingly, Woodward believes that Parfit, a supporter of this “no worse off solution” but not of a rights-based solution in general, could possibly allow a solution that is based partially on Principle Q (or something like it) and partially on a rights-based approach. However, since rights are now becoming involved, we must look at the second half of nonidentity intuition two. This is because even if one claims that the victims are “no worse off,” the victim is still *harmed* and Woodward believes that this harm likely has to do with some sort of rights violation. The rest of this section will focus on further understanding of the problem before attempting to highlight these harms that are taking place.

In order to deconstruct the problem further, it would be helpful to know exactly how people view the second intuition and to learn more about the aforementioned Principle Q—a relevant part of the argument for a pluralist solution (part teleological and part deontological).²⁶

In his original construction of the problem Derek Parfit also attempts to find a solution to the problem. First, Parfit outlines the different types of future cases we may

²⁴ Woodward, “The Non-Identity Problem,” 806.

²⁵ Woodward, “The Non-Identity Problem,” 806.

²⁶ As classified by Woodward

run into. One can be faced with a choice that will cause the same exact people to exist no matter the direction she chooses. The second says that one causes different people to exist if she is to choose one way or the other but the same number of people to exist. The third possible choice may lead to different numbers and different people being caused to exist by an action. In order to address these different cases with regards to NI, Parfit develops a principle that he refers to as Principle Q but can also be thought of as the “Same Number Quality Claim.”

Principle Q In a same-number choice, if one of two options would result in a generally lower quality of life than would the other, it is worse—regardless of whether it makes any particular individuals better or worse off.²⁷

Principle Q, however, is not a wholly satisfactory answer to the NIP. It only gives us a way to treat the cases where the same numbers of future individuals are caused to exist—the second type of choice. In many nonidentity cases, however, the number of future people will be significantly affected. Take the case of Depletion, for example, where our choice will dictate the amount as well as whom the future people end up being. This is the first reason that Principle Q is unsatisfactory.

Additionally, even in these cases where Principle Q is relevant, it does not give us a deep solution to the cases it allegedly “solves”—instead, it gives us a shallow solution and is therefore unsatisfactory. It fails to account for the *directedness* of the wrong²⁸ that we discussed earlier in the section on nonidentity intuition one. Recall the case of the surgeon who was faced with deciding whether or not to operate on a patient whose appendix was about to burst. This is a same number case where there are no extra people

²⁷ Parfit, *Reasons and Persons*, 360.

²⁸ As brought up by Hurley, Weinberg, and Liberto. I will discuss this directedness and how to address it in the following paragraphs after the discussion of Parfit.

that will come as a direct result of the surgeon's decision so it should apply to Principle Q. However, Principle Q ignores the fact that the victim has a specific ability to demonstrate that they were wronged. The victim could have a claim against the surgeon that says that they were wronged by the surgeon if the surgeon were to not operate on them. The important lesson to take from this example is that rights are not based simply on what makes people better off. Instead, because of the directedness of the wrong, the claim that a victim has against an agent of being wronged by them has particular significance in NI cases. I will further discuss these claims that victims have against those who act against them in the subsequent sections on Weinberg and Hurley.

Parfit himself recognizes that Principle Q may only be a piece of the solution, claiming that it might lead to a fully adequate theory he refers to as Theory X. Unfortunately, Parfit is unable to discover what Theory X is, but he is able to figure out what it would need to do. First, it would somehow need to justify Principle Q. Then, it would have to give us some sort of moral guide on how to act in cases that are different number choices. My goal will be to solve both of these issues as my solution will give us a deontological basis for which Principle Q can be based and then discuss how we should act. However, it will be very different from Principle Q.

Before we move on, however, we should continue to look at a mistake that Parfit makes in his attempt to find Theory X: he ignores rights-based solutions and instead chooses to focus solely on his principle of beneficence. Parfit chooses to avoid rights-based solutions because he claims that the victims of the NIP would waive their rights (whatever they may be) if given a choice to choose between two outcomes—one being the flawed existence and the other being never existing at all. He claims that this

contractualist view on relationships satisfactorily deals with rights and warrants us the ability to set rights solutions aside. However, Parfit is wrong in this assumption. Woodward, as well as many others, show that rights are an integral part of a NIP solution. Woodward points out that: “a complete moral theory will include both a principle of beneficence²⁹ (which could be interpreted as a consequentialist part) and a part that makes reference to nonconsequentialist considerations like rights.”³⁰ Despite the fact that Parfit rules out a rights-based approach and focuses on his principle of beneficence (Principle Q), Woodward argues that this is a mistake and believes that Parfit moved too quickly before exploring a rights solution thoroughly. I, as well as many others, agree with Woodward who says that Parfit was wrong to rule out rights-based solutions altogether.

Woodward states that having at least part of the solution be rights-based is a necessity. This is because in some of the NI cases (for example the Surgeon or other cases where the victim has a direct claim against the agent who acted against them) a rights-based solution is more appropriate to describe the wrongs than a principle of beneficence alone. Woodward states, “that an action will cause an increase in someone’s overall level of well-being is not always an adequate response to the claim that such a specific interest [one’s right] has been violated.”³¹ Since a principle of beneficence only addresses cases where we can compare the amount of “good” that is done in each case it fails to address many of the NIP cases (such as the Surgeon). Since the victim is not “worse off” under the definition of intuition two than in some cases the wrong has to be

²⁹ Like principle Q

³⁰ Woodward, “The Non-Identity Problem,” 807.

³¹ Woodward, “The Non-Identity Problem,” 807.

explained by something else—rights. The victim is “wronged” but she is not made “worse off”³² in the same sense that we naturally conceptualize being worse off.

A specific example might help us to understand why this is the case. Let’s think back to the case of the fourteen-year-old girl. Our intuition says that the act of having the child at fourteen was wrong even though it also brought her baby into existence. We want to know in virtue of what is this wrong? Is the act wrong because the baby was wronged (a deontological solution)? Or because of a teleological solution which is often proposed as some sort of consequentialist explanation?³³ In this specific case, it is difficult to think of a purely teleological solution because the baby is not worse off overall and there are no externalities at play. So, that must mean that there is at least some aspect of the solution that is deontological if we want to find a solution³⁴ whereas Parfit has previously posited that the solution would be purely teleological.

Paul Hurley and Rivka Weinberg give a more thorough explanation of the problem that teleology faces in their 2014 article: “teleology – it cannot account for the intuition that non-identity victims have been wronged³⁵ – but deontology can.”³⁶ They do this by showing that teleology can provide shallow solutions, or seemingly correct

³² Even for those who believe that the victim is not harmed (in the third-personal reasons and claims sense or the overall sense), this still exposes the wrong and uses it to classify why the NI cases cause problems with our intuitions. This is where we will craft our deep solution/dissolve the NIP. However, this still holds true even if the victim is “harmed,” just in the first-personal reasons and claims sense.

³³ For example, the baby was better off overall (leaving the NIP to persist), or an attempted solution like Principle Q (the baby *would* have been better off in another case).

³⁴ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 1.

³⁵ Hurley and Weinberg are referring particularly to the problem cases for teleological solutions here but not also all solutions. It is important to again note the difference between the wrong that victims face and the harm that they are caused.

³⁶ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 1.

results, for some manifestations of the NIP, but fail to highlight all of the wrongs against the victims. This argument against purely teleological solutions is a consensus starting point for each of the scholars that examine any sort of deontological solution. Hopefully, then, our solution will eventually avoid this same problem that teleological solutions face and will be able to account for all types of NI cases. The question remains as to what type of deontological solution is best at addressing the NIP and whether or not it will be a combination solution that is partially deontological and partially teleological, as Woodward suggests.

Next, the reason each of these scholars is seeking a deontological approach is because our natural intuitions say that the rights of either the agent or the victim are violated and that there is a directed wrong against the victim. Yet somehow the victim is made “no worse off” by definition of the NIP. So, in order to demonstrate why the definition of the NIP is false, and dissolve the NIP, we must classify this “directed wrong/rights violation” against the NIP victims to show how it can account for *all* of the moral problems occurring. Additionally, Hurley and Weinberg suggest that even when teleological solutions seem to produce satisfactory results, they do not account for the directed wrongs against the victims, thus giving us only a shallow solution. Because a teleological approach produces only a shallow solution, Weinberg and Hurley, as well as myself, argue that a deontological approach is better suited to solve the NIP than a teleological solution.

However, dissecting how a rights-based solution (that pays attention to these directed wrongs) to the NIP would look is very difficult. Paul Hurley and Rivka Weinberg do thorough groundwork on figuring out specifically what claims need to be

addressed by a rights-based solution. They show that any solution would need to “recognize reasons and claims which we will characterize, following Stephen Darwall, as second-personal reasons and claims. ... On such accounts a person can wrong another if the person wronged is not made worse off ... These accounts would appear to be in a far better position to identify the apparent wrong committed against victims in non-identity cases.”³⁷ That is to say, by recognizing these second-personal reasons and claims we can find a solution that would satisfy both those who accept and reject the “no worse off” claim. Darwall provides us with a system that allows us to easily group the justifications of the wrongs that deontological solutions can highlight into a named category. We will classify these claims that deontological solutions account for and that teleological theories do not pay special attention to as second-personal reasons and claims, or the claims that highlight these directed wrongs that I have been referring to in previous paragraphs.³⁸

In order to clarify what this means, and therefore what our solution might look like we must first look at what constitutes a second-personal reason or claim. Stephen Darwall’s classification states that these second-personal reasons and claims are “a distinctive kind of reason for acting”³⁹ and an “ineliminable aspect of many central moral categories, including rights, moral responsibility, moral obligation, respect for and the

³⁷ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 2-3.

³⁸ Hurley and Weinberg chose to use this same classification, though there are different interpretations of what exactly a second-personal reason and claim is. They chose to use a similar idea to Stephen Darwall. You can find my specific definition that I choose to use on the terms page and a further clarification in the following section.

³⁹ Darwall, “Authority and Second-Personal Reasons for Acting,” 1.

dignity of persons, and the very concept of moral agent or person itself.”⁴⁰ Darwall has his own way of figuring out what specific behaviors and sentiments should fall into these categories and what can appropriately be considered as a reasonable second-personal claim against another. While I like the strategy to use second-personal reasons and claims to highlight the wrongs occurring in the NIP, I will, in Section Four, set my own standard for how we must respect possible future persons on the second-personal level (in addition to the first and third-personal level) by using the Capabilities Approach. This will involve using the capabilities to assign all individuals rights that we are morally obligated to pay specific attention to when performing any act for all current, future, and future potential people.⁴¹

What these second-personal reasons and claims suggest is that we are morally obligated to give special attention to another’s rights, whatever they are, regardless of the outcome of an action. Furthermore, these second-personal reasons and claims are “Reasons that constrain agents from performing precisely such overall outcome optimizing acts”⁴² (as suggested by third-personal reasons and claims). Agents are constrained by second-personal reasons and claims because they classify respect as “to recognize, e.g., each person’s moral claim upon you”⁴³ to not commit acts against her such as lying (or any of actions from the categories mentioned by Darwall), even if it would provide some further first/third-personal benefit.

⁴⁰ Darwall, "Authority and Second-Personal Reasons for Acting," 1.

⁴¹ Such as rights, moral responsibility, moral obligation, respect for and the dignity of persons, and the very concept of moral agent or person itself. I will define what this means with specific attention to the NIP.

⁴² Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 10.

⁴³ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 10.

In the case of the fourteen-year-old girl, for example, the mother would be wronging the baby (yet still not harming) because she violates her baby's second-personal reasons and claims to some extent. The baby has a directed claim against the mother that says that the mom wronged her. Let's say the mother deprived her child of her right to have a mother who is emotionally developed enough to raise a child. It's not just that the baby was wronged but it was that the baby was wronged *by the mother*. This child's claim against her mother will help us to highlight why teleological solutions fail where deontological solutions have the ability to succeed. Regardless of whether or not it is the right of the child to have a fully prepared and emotionally developed mother, the concept of the directedness of the baby's claim against her mother is the important aspect of this argument.⁴⁴ It will be our task to decide whether or not this should be a reasonable claim that the child could have against their mother.

So, now that we have a system to classify these problems, we must figure out first what can be classified as a reasonable second-personal claim (Section four) before showing how this conception, when applied to NI cases, can succeed in solving them deeply. Hurley and Weinberg show that under a rights-based solution that pays special attention to second-personal reasons and claims there will be a distinctive account of what it is to wrong another and why they are wronged—one of our goals:

Theories that recognize a fundamental role for such [second-personal] reasons suggest a distinctive account of what it is for one person to wrong another upon which a person wrongs another if his actions violate her second-personal moral claims, thereby treating her disrespectfully, as a thing rather than a person – ‘a mere means.’⁴⁵

⁴⁴ In section four, I will discuss how we should classify what rights individuals should be given so as best to solve the NIP by paying attention to all of the concerns at play.

⁴⁵ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 3.

Hurley and Weinberg suggest that violating another's second-personal moral claims,⁴⁶ whatever they may be, is a strong measure for highlighting the wrongs done to others. Furthermore, they then evoke a Kantian conceptualization of what it is to wrong another—treating another as a mere means—to justify why violating another's second-personal moral claim is wrong. They also note that it is necessary that the harm violation is a predictable side effect of the agent's actions. If one accidentally violates another's rights and they could not have reasonably avoided doing so, we do not assign them blame. However, when one violates another's claims intentionally or does not take *reasonable* action to avoid subjecting another to having their claims violated (whatever these claims may be), they treat the other as a thing. Hurley and Weinberg classify this as wronging another. Previously, they also identify second-personal claims as the morally relevant claims to the NIP, so when these claims are violated, the victims are wronged because they are treated as a thing or a means instead of as a person.

Hurley and Weinberg demonstrate a strategy for identifying when someone is wronged even when they are not made worse off.⁴⁷ In doing so, they immediately address one main theory that conflicts with their argument. If a victim is made "better off" or there could be foreseeable benefit, some might argue that this benefit might outweigh any negative consequences from the second-personal reasons and claims violations (harms). This is especially relevant for those who believe that existence is a good in itself because

⁴⁶ We have yet to identify specifically what a *reasonable* second-personal reasons or claims is.

⁴⁷ With regards to teleology

the “victim” is benefitted.⁴⁸ However, Hurley and Weinberg believe that their argument still holds true regardless of the case. What Hurley and Weinberg show is that whether or not the victim or the agent is better or worse off does not matter in our quest to find a solution. Instead, we should be driven by deontological concerns and not by teleological concerns. Let’s take a look at an example to see why.

The Airline Company

A common example that is cited first by Woodward⁴⁹ and then referenced by Hurley and Weinberg is that of the airline who discriminates against an African American client. The airline refuses to provide this client with a ticket to go on their airplane because of her race. However, the plane ends up crashing and everyone on board is killed. This example is meant to show that even though the African American woman is better off by not taking the flight and not being killed, the airline company wronged her by discriminating against her (and treating her as a thing rather than a person). This demonstrates how Hurley, Weinberg, and Woodward can avoid the previous common objection that is based on consequentialist concerns.

To further substantiate their claims that second-personal reasons and claims should be considered in NI cases and applied to possible future persons as well as current persons, Hurley and Weinberg demonstrate how Anglo-American tort law also has a fundamentally second-personal structure. They use this fact to show how the American justice system, which aligns naturally and reflects many of our intuitions with regards to

⁴⁸ This is a particularly large problem that Hurley and Weinberg address for some solutions that try to use existence as a good to help justify the wrong against the victim.

⁴⁹ Woodward, “The Non-Identity Problem,” 809-810.

how it treats cases of future possible people, is evidence that we believe second-personal reasons and claims are relevant for this group. For example, let's say that someone is polluting to a degree that no individual today is harmed in any way. However, her pollution will have a significant impact ten years later on the town baby formula and will cause the only source of child nutrition in the town to be unsafe in one year. Let's also say that this person who is polluting the formula does it knowingly and knows of the consequences as well. Even though those people who she will harm do not yet exist, because the infants are not born yet, our justice system will still hold her responsible for the deaths of the future people in one year who are born and cannot eat because they lack access to formula that is not polluted. This is because our justice system gives each person "certain legal claims on each other person, certain legally protected interests."⁵⁰ It does not matter that the victims do not yet exist. Instead, it only matters that the courts are able to prove that the agent was acting negligently. Since the woman who polluted knowingly did so and knowingly knew of the consequences our justice system deems this act wrong.

Since we have shaped our justice system around these types of reasons and claims it seems intuitive that we might also respect them with regards to NI victims by assigning them the opportunity to have second-personal reasons and claims (such as the right to be fed early on in life and receive proper nutrition). Hurley and Weinberg point out an "irrelevance of non-identity considerations to determinations of liability in tort law"⁵¹ which they believe suggests its structure. We use the tort law as a representation of our

⁵⁰ Hurley and Weinberg, "Whose Problem Is Non-Identity?," 3.

⁵¹ Hurley and Weinberg, "Whose Problem Is Non-Identity?," 4.

intuitions on future peoples and potential future peoples. If we believed that non-identity was a problem that should change how we assign liability then it would be reflected in our laws by changing how we treat future and future potential people. However, our system fails to do this. So, we can assume that our intuitions state that we should not treat current, future, and future potential people differently when their rights are violated.

In mentioning tort law, Hurley and Weinberg propose an interesting new question in the context of the NIP: “What counts as negligence, in either the moral or the legal case?” (And what is the appropriate standard of care we must show current or future individuals?)⁵² It will be my task to answer these questions. I am focused more specifically on the moral case and how we should act with regards to future potential people (the NI victims). However, Hurley and Weinberg focus on procreative ethics and the implications that might result from this type of solution to the NIP. This focus reveals another consideration I must confront:

By focusing on second-personal claims and interpersonal respect, a second-personal deontological standard of procreative care will require the motivation and alternatives available to the agent to play a role in the setting of a standard of procreative care such that whether one could easily do better for future persons or whether one is respectfully considering the claims of future persons will, in part, determine whether one has been procreatively negligent or not.⁵³

Hurley and Weinberg point out here that motivations and alternatives available to agents do in fact matter in cases of procreative ethics. Not only do I agree with this claim but I also extend it to all types of NI cases where if an agent is attempting to act in the right and is not being negligent, their action is not wrong. As a result, true accidents where the actors are not negligent are not classified as wrongs in a deontological solution.

⁵² Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 5.

⁵³ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 5.

In their commentary specific to procreative ethics, they first reject what they call the “life worth living standard”⁵⁴ which we have previously discussed. They then conclude that instead of leading to a standard of procreative care, the NIP leads to a setting for a *discussion* on what the appropriate standard of procreative care should be: “While we do not ourselves, in this paper, set that standard, our argument will suggest and imply some parameters to that kind of standard because second-personal ethical theories set standards.”⁵⁵ While I also will not be setting a standard of procreative care specifically, my solution will define reasonable care that one must have for all others, including future people. In this way, it does restrict procreation. Because of this, I will further the discussion. However, procreative ethics brings forth other issues that I will not attempt to confront in this paper. Instead, I will seek to create a standard of care we must follow with regards to future potential persons, the common NI victims. This standard of care, or the conceptualization of what constitutes reasonable second-personal claims and what constitutes negligence on an actor’s behalf, will also have some implications for procreative ethics. However, I want to make it clear that I am not attempting to make a statement on procreative ethics. Instead, I am simply trying to further conceptualize what should count as a reasonable second-personal claim. This is because setting the standard of what is reasonable makes a big difference in whether or not we can actually have a truly deep solution to the NIP.

Hurley and Weinberg do not attempt to classify what counts as an appropriate second-personal reason or claim. They focus on demonstrating what they are and why

⁵⁴ The standard that says as long as someone is overall “better off” than they have a life worth living and are neither harmed nor wronged.

⁵⁵ Hurley and Weinberg, “Whose Problem Is Non-Identity?,” 5.

they are relevant to the NIP. Because they do not attempt to address this issue, they do not solve the NIP completely. They do, however, give us the means to find the solution. I will use the work that they have done and build from it to establish what counts as a reasonable second-personal claim against another and therefore, what counts as a wrong act.

The last consideration I want to focus on is wrongful exploitation and how it is related to the NIP. Hallie Liberto attempts to show how a solution that focuses on exploitation is better than a purely rights-based solution (one which focuses on the wrongs done to victims instead of the harms done to them) by avoiding some of the problems that a purely rights-based solution might have whilst acting similarly to a rights-based solution in concept. She begins her argument by defining wrongful exploitation through two necessary and jointly sufficient conditions: “There is some predicament that must characterize the circumstances of the exploited persons ... In addition, there must be something morally problematic about the gain that the exploiter achieves.”⁵⁶ Exploitation is particularly relevant to many NI cases as these conditions are often satisfied. For example, Liberto brings up the case of Depletion in which the current people gain from using as many resources as they desire (an unfair amount) while taking advantage of future potential peoples’ vulnerability; their existence is dependent on the decisions of current people. Liberto’s exploitation solution is similar to the solution that we have conceptualized thus far. She would say that in the case of Depletion, the future individuals are wrongfully exploited. A rights solution would similarly say that their rights were wrongfully violated. These are similar, but Liberto, in her section on the

⁵⁶ Liberto, "The Exploitation Solution to the Non-Identity Problem," 76.

“Exploitation solution versus the rights solution,” claims that exploitation solutions are different in just one particular way.

Liberto believes that rights solutions fail to take into account the felt experiences of future generations that can be attributed to the wrong against them whereas typical rights solutions only care about the rights violations that are occurring. Liberto uses exploitation “in order to gauge unfairness”⁵⁷ while a typical rights-based solution would attempt to do the same through rights violations. While the exploitation is the same type of solution (deontological) as the rights-based solution, Liberto argues that it additionally captures the sentiments of what victims have to go through much more accurately than a purely rights-based solution. She argues that this is what differentiates the two solutions and what makes the exploitation solution better than the rights-based solution. This is because it defines the entirety of the harm(s) much better than a purely rights-based solution. We will have to discuss whether or not this fits into our conception of second-personal reasons and claims sufficiently. Liberto thinks that practically speaking, the exploitation solution is the most effective solution because it measures things that are not captured with traditional conceptions of rights.⁵⁸ This is an important point to note and will have to be a final aspect of our solution in some way. However, while I will pay attention to the “felt experiences” that she brings up, I will not necessarily use the same strategy as her to solve the problem. Since this is the only difference she highlights between the exploitation solution and a rights-based solution in general, I will claim that

⁵⁷ Liberto, "The Exploitation Solution to the Non-Identity Problem," 80.

⁵⁸ For a further explanation of her argumentation, see pages 79-81 in Liberto's "The Exploitation Solution to the Non-Identity Problem." I am purposefully concise because her defense is a lengthy one.

my solution is at least equally as good as her exploitation solution if I can account for these felt experiences of future peoples.

My next goal in this paper is use our previous discussion as a starting point for creating a practical solution. We have outlined what our solution should look like so the next step is to find the specific concerns and attention we must give to possible future peoples in order to satisfactorily avoid *all* problems that NIPs bring up. I will, in Section Four, show how attention to the Capabilities Approach standards will help set a standard of care that if recognized appropriately and applied to possible future persons, will avoid the problems that other solutions have not been able to deal with. My first step in Section Four will be to show how this Capabilities Approach standard explicates all of the different types of second-personal reasons and claims. Next, I will show that by satisfying all types of first, second, and third-personal claims, the Capabilities Approach standard, as part of a greater deontological solution that pays special attention to second-personal reasons and claims, deeply solves the NIP.

Section 3: Conceptualizing an Ideal Solution

To get started figuring out what our solution will be, we must start by looking at the different features that it will have to include and avoid. In the first section, we concluded that it would have to falsify at least one of our three basic intuitions in some way. We established that it should be the second intuition in particular that we must falsify, if not more than one, as focusing on intuitions one and three failed to provide us with a suitable deep solution for NI cases. Following in the footsteps of Woollard, Woodward, Hurley, and Weinberg, we next established that this type of solution that operates on our second nonidentity intuition would be at least partially deontological in nature.⁵⁹

Next, we used Hurley and Weinberg's argumentation to discern that our solution must pay special attention to second-personal reasons and claims. Following their argument for second-personal reasons and claims, Hurley and Weinberg also point out in their paper that we must consider the motivations and alternatives available to acting agents when deciding whether or not an agent is negligent. This brings forward new questions on what it means to be "negligent" with respect to others and their rights: What actions is an agent responsible for avoiding so as to pay appropriate attention to these

⁵⁹ Each of these authors produces slightly different suggestions for how to incorporate deontology into their solutions yet they all agree that Parfit's original assumption that deontology would not be a part of the solution was misguided.

second-personal reasons and claims? This is the standard that I will be setting in Section Four.

In section two, we also concluded through Liberto's reasoning that many deontologically or purely rights-based solutions ignore the felt experiences and feelings of future people and other NIP victims. So we must have a system that incorporates them and pays attention to their concerns or these felt experiences and feelings. She proposes an "Exploitation Solution"⁶⁰ as the answer to addressing this problem and whether or not we choose to incorporate it we must account for the problems it addresses in some way.

What conception do we have of our solution at this point? It must:

1. Find some flaw within Roberts' intuition number two that creates the NIP
2. Be at least partially deontological in nature
3. Pay special attention to second-personal reasons and claims
4. Pay attention to motivations and options that agents have when acting
5. Account for the felt experiences and feelings of NI victims sufficiently

⁶⁰ Liberto, "The Exploitation Solution to the Non-Identity Problem," 73-88.

Section 4: The Capabilities Approach Solution to the NIP

In order to satisfy all of the necessary components of our conceived NI solution, I seek to employ a purely deontological solution that focuses on rights and assigning the wrongs done to NI victims in the first, third, *and* most importantly second-personal sense. In order to do this, I propose a rather contemporary approach to rights: Martha Nussbaum's conceptualization of the Capabilities Approach. I will not attempt to defend the different capabilities that she proposes.⁶¹ Instead, I will argue that they provide a means to measure *all* types of wrongs that occur in the NIP. It will therefore give us a deep solution to the NIP because of its consistency in all cases at identifying all of the wrongs that are occurring. The Capabilities Approach allows us to identify concretely the previously hidden wrongs that have been there since the proposition of the problem. Additionally, I am not choosing to use the Capabilities Approach because of its recent popularity and acceptance in both philosophical communities as well as throughout world policymaking organizations.

With regards to NIP cases, our goal is not to focus on the *harms* done to the victims but instead to highlight when victims are *wronged*. I, like Liberto, am separating harms from wrongs. In Section Three, we learned why solutions that focus on harms produce shallow or otherwise insufficient solutions. I suggest that we use these

⁶¹ Martha Nussbaum's book, *Frontiers of Justice*, provides an extensive defense of each of her capabilities and the capabilities approach in general as well.

capabilities as this objective standard of what it means to wrong another. This is because any account of second-personal reasons and claims needs to have an objective standard rather than one that is subjective. Otherwise, we would run into significant problems. Let's look at an example to see why.

The Student

Think of the interaction between a student and her professor. Let's say that the student submits a paper to the professor thinking that she has written an A level paper. However, the professor reads the paper and decides that the paper deserves an F. The student, regardless of whether or not it is reasonable, feels she is harmed on the second-personal level. She may feel as if she has a claim against the professor for wronging her and giving her an F grade. However, from an honest professor's perspective, there was no wrong and the student has no legitimate claim against the professor. The honest professor might say that she is helping the student by giving her the fair grade for her paper, even if the student disagrees. If the professor were dishonest, however, she might instead say that she is not helping the student by being fair and just giving the student the grade that she has earned because the student will have more difficulty achieving things in the future. This might lead the professor to give the student a grade that she does not deserve. However, from the outside perspective, it seems that the professor would be wronging the other students in her class by doing this. Or, the individuals that her student would compete against for a job later in life would be harmed. If the paper is honestly graded by the professor and receives the grade that it deserves, then there is no wrong done to anyone. This raises an interesting question that we will have to address if we are to use

second-personal reasons and claims to identify wrong acts with regards to the NIP: what constitutes whether or not an act is wrong? If people can just arbitrarily feel like they have a claim against another individual, we would have individuals like this student who have claims that are not well-founded. This will require us to create an objective standard of what it means to wrong another. I am choosing to use the Capabilities Approach as an objective standard of care for numerous reasons, the least of which is its success in producing reasonable outcomes that align with intuition in all cases.

What sets the Capabilities Approach apart and makes it more appropriate than other conceptualizations of what it means to wrong another? It is uniquely ambitious in the suggested rights that it assigns to all individuals. This unique ambition, or ambition to assign a large amount of rights to all humans, is what makes the Capabilities Approach suited to provide a deep solution to the NIP. Additionally, the Central Human Capabilities are “specifically political goals ... free of any specific metaphysical grounding.”⁶² Because the argument for using the Capabilities Approach is for its practicality and general agreeability, it is naturally suited to work as a representation for our intuitions and to produce results that are congruent with our intuitions. Nussbaum argues that since these intuitions are “implicit in the idea of a life worthy of human dignity,”⁶³ and that because this goal is generally agreeable, with further argument the capabilities “can become the object of an overlapping consensus among people who otherwise have very different comprehensive conceptions of the good.”⁶⁴ I will not include Nussbaum’s extensive argument in support of her specific capabilities. Instead, I

⁶² Nussbaum, *Frontiers of Justice*, 70.

⁶³ Nussbaum, *Frontiers of Justice*, 70.

⁶⁴ Nussbaum, *Frontiers of Justice*, 70.

seek to first employ her capabilities followed by her rationale behind them: it provides us with a system that is practical, can be reasonably supported, and that also avoids the inevitable conflicts that arise when discussing rights and goods by not attempting to operate from a metaphysical grounding, but instead a practical one based on intuition.⁶⁵

In this section, I will first identify Nussbaum's Central Human Capabilities. Next, I will discuss how the Capabilities Approach can be combined with a Kantian conceptualization of freedom, equality, and rights. The Capabilities Approach will provide a better account of what it is to set another back (or wrong them) than what others may propose because of its malleability. This malleability provides us with the ability to deeply solve all NI cases. Then, I will demonstrate how this new, more malleable Kant plus Capabilities Approach standard of wrongdoing can solve the NIP by going through the solution checklist and showing how my Kant and Capabilities solution sufficiently satisfies all of the necessary criteria that we have established. This solution will focus on protecting victims from all types of wrongs⁶⁶ by setting the standard of care targeted specifically towards protecting the capabilities of current, future, and potential future people. The result of this conclusion will be that agents who fail to constrain their actions that are likely to violate the "rights" or capabilities set forth by Nussbaum will be acting either negligently or directly harming a victim, resulting in their action being classified as morally impermissible and the dissolution of the NIP.

⁶⁵ For example, in the NIP there is a back and forth between Woodward and Parfit.

⁶⁶ When one is wronged in the first, second, and/or third-personal sense.

Nussbaum's Central Human Capabilities:

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason—and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.
5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance, among other things)
7. **Affiliation.**
 - a. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation and also protecting the freedom of assembly and political speech.)
 - b. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. **Play.** Being able to laugh, to play, to enjoy recreational activities.
10. **Control over One's Environment.**

- a. **Political.** Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
- b. **Material.** Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.⁶⁷

The Solution

The hope for Nussbaum is that the capabilities develop into an overlapping consensus that leads to political thought. However, under my solution, we use the Capabilities Approach in a different way. My solution extends the right to each of the central human capabilities to all current, future, and potential future people. When another violates that right to a capability (or more than one) then that person is acting wrongly. To have a right to a capability means that every individual is entitled to what Nussbaum classifies as the “threshold level of each capability, beneath which it is held that truly human functioning is not available to citizens.”⁶⁸ Each individual, under my solution, has the right to not have any of these capabilities violated (taken below the threshold level as identified by Nussbaum) by another. Nussbaum spends the rest of her book highlighting and defending what each of these thresholds should be but I will not endeavor to add commentary on that topic in this paper. Since we cannot control many of the capabilities, for example the case where a child is born with autism, it would be very difficult to say that each person has a right to *have* each of the capabilities. Instead, in terms of the NIP, I am more concerned not with giving the capabilities but instead with

⁶⁷ Nussbaum, *Frontiers of Justice*, 76-78.

⁶⁸ Nussbaum, *Frontiers of Justice*, 71.

protecting them. A capabilities violation, and therefore a wrong would be any action that either succeeds in taking another's capability below Nussbaum's defined threshold. Or, it is an act that risks another's capability to an unreasonable degree. However, alone the capabilities approach is not necessarily a satisfactory answer to the NIP. The work we did in Section Two to help define what our solution would look like gave us insight into how we are able to extend the Capabilities Approach by combining it with the concept of second-personal reasons and claims.

My solution to the NIP states that if you violate someone's ability to pursue any of their capabilities from an even starting point or expose them to a risk of capabilities violations, they then have a valid second-personal reason or claim against you that highlights the wrong that you have done to them. Next, we extend the rights to each of the capabilities to all current, future, and potential future peoples. Then, we can use this wrong done to NI victims, highlighted by their second-personal claim against the acting agent, to show that the second nonidentity intuition is flawed. This is because I classify being wronged on the second-personal level as being harmed in a specific type of way. As I have demonstrated, this holds true in cases where it *seems* as if the victims and the agents are "no worse off" and therefore not harmed. However, I classify the violation of another's capability as a harm in itself. In this way, my solution claims that the only types of "harms" that matter in NI cases are the ones that come as a result of an action that produces a victim who has a valid second-personal claim against the agent who violated their capability. This capability violation has therefore "second-personally harmed" the victim, in a different way than we normally conceive of a harm. This is because by

having a capability violated a victim is harmed. The result is the dissolution of the NIP as the first, second, and third intuitions unravel when a harm is identified.

Kant

I am taking the Capabilities Approach and extending its reach by wedding it to a Kantian idea of freedom and equality: being one's own master. Kant establishes a basis of what it is to be in charge of one's self before attempting to classify what it is to violate another's rights. I borrow from Kant for the first part of his argument, but instead depart from Kant's second part and use the Capabilities Approach to define what it is to violate another's rights. I do not take from Kant his argument on treating others as a mere means but instead choose to use the Capabilities Approach. Kant proposed this standard of "freedom and equality" in his *Metaphysics of Morals*⁶⁹ in the section on the Doctrine of Right.

Arthur Ripstein's interpretation of Kant in *Force and Freedom* exposes why this relationship between Kant and Capabilities is a natural one.⁷⁰ Alone, the Capabilities Approach fails to address the questions of *why* we must treat others a certain way and simply focuses on *how* we should treat others. Since Nussbaum does not give the Capabilities Approach any metaphysical grounding, this may cause problems for a deep NIP solution that is meant to be deontological in nature. For example, the Capabilities Approach does not tell us "what terms of cooperation are acceptable to persons

⁶⁹ Kant, *Metaphysics of Morals*.

⁷⁰ Ripstein, *Force and Freedom*.

considered as free and equal?”⁷¹ The first part of the Kant argument tells us what it means to be in charge of one’s self and what it means to be free and equal. This is a necessary component of establishing a basis for interaction between people—allowing everyone to be their own master. I choose to use a Kantian basis for what it is to be one’s own master because it in no way interferes with the Capabilities Approach. Instead, it gives us a basis to understand *why* we must respect others. Then, the Capabilities Approach tells us *how* to respect others. To clarify, the argumentation is as follows. We take from Kant what it means to be in charge of one’s self (free and equal) and we take from Nussbaum’s Capabilities Approach what rights each person should have—the right to each of Nussbaum’s defined levels of each Capability.

At this point we know that our objective standard of care towards others will be partially Kantian but we must also examine his argument for how we must interact with others in order to further clarify the basis of freedom, equality, and what each mean in terms of human interaction. We are charged with identifying the terms of social interaction that are both *reasonable* and still allow for all to be free and equal. This requires that we define what it means to be free and equal. Additionally, in order to discern what it means to be free and equal we must discuss the breadth of freedoms and equality that all are entitled to having. I will use Kant to answer these questions that would plague the Capabilities Approach solution if it simply stood-alone. There are many different interpretations of freedom and equality. Kant focuses on giving everyone an equal starting point by not holding others back: “a system of equal freedom is one in which each person is free to use his or her own powers, individually or cooperatively, to

⁷¹ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 3-4.

set his or her own purposes, and no one is allowed to compel others to use their powers in a way designed to advance or accommodate any other person's purposes."⁷² I will use an example to demonstrate equality and freedom in Kant's view.

The Fisherman

With regards to the NIP, for example, many are concerned with equality in outcome and believe that this might take precedent over freedom of choice. In fact, many of the NI victims have their choices limited by the acting agent. To see why this is wrong and why whether or not one is better or worse off does not influence the wrongness of an act, imagine an example where a government forces its citizens to go fishing every Saturday. Now, there happens to be a citizen of this government that loves to fish. In fact, he chooses to go fishing every Saturday and would do it regardless of whether or not the government forced him to fish. The fisherman is still wronged by his government when they force him to fish on Saturday even though he fishes the same amount in either case and his life is not necessarily changed. This is because he does not have the same freedom that he should be entitled to—we value an individual's ability to choose which hobbies or interests he or she pursues. Therefore, we have discerned that freedom is important and that outcome is not a factor that we should look at when measuring wrongs.

Kant does make an attempt to classify the rights to which he believes all individuals are entitled by first focusing on one main right that he believes individuals should have which acts as a basis for any further rights:

⁷² Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 33.

His grounds for rejecting empirical and anthropological starting points in political philosophy rest on the simple but compelling normative idea that, as a matter of right, each person is entitled to be his or her own master, not in the sense of enjoying some form of special self relation, but in the contrastive sense of not being subordinated to the choice of any *other* particular person.⁷³

I choose to accept Kant's basic right that he gives everyone—the right to be one's own master. However, Kant and I must now discern what it means to be one's own master. Additionally, we must figure out specifically what we are a master of when we are our own masters. Kant has an extensive amount of commentary dedicated to figuring out what being one's own master truly means. While I agree with Kant's basic right (the right to be one's own master), I disagree with how Kant goes about describing what this right means. Instead of using a Kantian conceptualization of what it means, I use the Capabilities Approach to define what it means to be one's own master. By using the Capabilities Approach, it is much easier to define when a rights violation is occurring in a practical sense because the system is a simple list of ten standards that must be followed.

To see why the Capabilities Approach is easier to use we must look at Kant's conceptualization of a wrong. Kant defines a wrong act as: "Any real or claimed entitlement of a person or group of persons to tell another what to do, or force him to do as he is told, is potentially in tension with the latter person's entitlement to be his own master."⁷⁴ Additionally, "an action is wrong if it hinders an action or 'condition' that is itself rightful, that is, one that can coexist with everyone's freedom [to be one's own master]."⁷⁵ This starting point of equal freedom in choice and action is something Kant classifies rather easily. However, his system of identifying wrongs is less efficient than

⁷³ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 4.

⁷⁴ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 4-5.

⁷⁵ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 30.

using the Capabilities Approach to identify when one's ability to be their own master is violated. The Capabilities Approach is much more streamlined than his extensive defense of what it means to wrong another. Kant struggles much more with highlighting what it means to be one's own master. Ripstein spends much of his time in *Force and Freedom* on what it is to be one's own master and Kant's full explanation of these rights that one is granted as a result of being their own master. Instead of using Kant's argumentation here I define being one's own master as simply having full access and being the "master" to each of your capabilities.

I choose to use the Capabilities Approach instead of Kant's extensive explanation of what it means to have your rights violated because it is simpler and it is more malleable than Kant's conceptualization of rights. Kant himself, "in the *Critique of Pure Reason*—supports the maxim that 'rudiments or principles must not be unnecessarily multiplied.'"⁷⁶ The Capabilities Approach may seem rather arbitrary, but I do not seek to defend it. Instead, I champion it for its ability to solve the NIP problem with exquisite simplicity and ease relative to what a Kantian solution would look like along with its defense and justification. Nussbaum believes that having a written list of capabilities is an advantage and that once it is written it is our task to defend it. To those that say that the Capabilities are arbitrary, I charge them with identifying a solution that produces outcomes that are as congruent with our intuitions without being too complicated.

Under my solution, one wrongs another when they violate another's ability to be their own master of their ten capabilities, which I classify as their right. Additionally, they wrong another if they expose another to a risk of having their capabilities violated. A

⁷⁶ Baker, "Simplicity."

result of this wrongdoing is that the victim of the wrong—the NIP victim—then has a second-personal reason or claim against the actors because the actors wronged him/her. I claim that this second-personal wrong leads to a type of harm that we have difficulty conceptualizing, a second-personal harm. This type of second-personal harm demonstrates the harm done to a victim when they have their rights violated and is superior to looking at other types of harms because it uses its second personal nature to account for the feelings and experiences of the victims. Lastly, whether they may have been harmed in the first or third-personal sense is not relevant to our NIP solution. These first or third-personal claims, as we have discussed in Section Two, only highlight a part of the wrong done to the NI victim—the part that without second-personal reasons and claims only led us to shallow solutions.

Let's look back at the case of the Student. Under my solution, the professor, as well as the student, would be required to treat each other with reciprocal constraint in their interactions not only with each other but also with all people. They are constrained and must avoid treating other people in a way that might violate their ability to be the master of their capabilities. In this sense, the teacher is responsible and should be held morally accountable for treating the general student, not this specific student. By treating her student as a general student, she is charged with not only treating her fairly but also not treating the student in a way that would be too generous when grading. In this way, we also restrict second-personal reasons and claims that one can reasonably have against another. The general person is able to have only those second-personal reasons and claims that are derived from a violation of one of their ten capabilities. For example, the student may not have a second-personal claim against her professor because none of her

ten capabilities have been violated by the professor if the professor treats her fairly. Additionally, this constraint of action must be paired with the equal starting point that Kant requires to begin. This means that an action may not expose third parties to possible capabilities violations. For example, by treating the student in general, the professor does not expose other students to capabilities violations. If she were to give this particular student an unfair advantage in the grading as she desires, the other students who had to write the same paper for the class would have their capabilities violated. The other students would then have a valid second-personal claim against the professor. This is because as students and teachers, we enter into a contractualist agreement that there will be an even playing field in academics (at least this is the case at most universities). By violating this equal playing field and her contract with her students, the professor violates the students' capability right to having control over their environments, among others. This respect for others and their capabilities gives us a unique solution to all NIP cases.

Risk

A potential problem with our solution has to do with exposing others to risks. Specifically, when one exposes another to a potential risk of having their capabilities violated without actually violating them, they are acting wrongly. This is because they violate another's ability to be their own master of their capabilities. For example, in the case of the fourteen-year-old girl, one might say that we do not necessarily know that the child will be disadvantaged in any way. However, because the mother is fourteen, and fourteen-year-olds are often unable to provide the emotional support, stability, and parenting skills that a child needs in order to have a successful start in life, the fourteen-

year-old mother exposes her daughter to a risk of having, among others, his capability to have Emotions hindered. This is because his mother would not be supplying the forms of human association that are critical to a child's successful development, purely based on her age. All that is required to identify a wrong is to have one capability hindered. So, as long as we can identify at least one, the action can be classified as wrong. It is likely, however, that many cases will involve agents violating multiple capabilities simultaneously. But, is there a wrong that occurs even when the child is not emotionally disadvantaged and does not have their capability hindered in any way?

We must look at each of the two possible scenarios for the fourteen-year-old mother. In the first, the child is set back developmentally and has a difficult start in life. In the second, the child is very lucky to not be set back at all by growing up with a fourteen-year-old mother. This is the very rare case that seems to provide problems for many NIP cases and not just specifically the case of the fourteen-year-old mother. I argue that although some might point out that the child is not set back at all, it does not matter whether or not the child is set back. Instead, for the same reasoning that we used when looking at the case of the Airline Company, the mother wrongs the child by exposing her child to the risk of having his capabilities impeded. This reasoning states the outcome for the victim does not matter. Instead, it shows that exposing another to a risk of having their capabilities impeded violates their freedom to be their own master. In order to maintain full freedom, an individual must expose *themselves* to any risks of having their capabilities held back after starting from the level playing field—having full access to all of the capabilities. For this reason, we can easily confront cases of risk exposure with regards to another's central capabilities.

Potential Future People

Another objection that this solution might face could come in the form of a question that is similar to this: even if we are morally required to respect another's capabilities who is living, why must we also respect the capabilities of future people and potential future people? As discussed in section two, Hurley and Weinberg use the system of Anglo-American tort law and its relationship with second-personal reasons and claims to show that our current system already pays special attention to future potential people and future people by treating them no differently than current people. Because we fail to differentiate between the two in our court system, we can discern that for this solution we also are permitted to treat them as equals: "A second aspect of the applied ethics approach to political philosophy supposes that law and the state are instruments for approximating underlying factors that really matter."⁷⁷ Therefore, this objection does not provide any problem to our solution.⁷⁸

Looking Back At The Cases

Fourteen-Year-Old Girl – We covered the solution to the case of the fourteen-year-old girl in the previous section on Risk and its relationship with the NIP.

Depletion – Another important positive aspect of my solution to the NIP is that it additionally pays special attention to nonhuman animals. Past proposals to solve the NIP have yet to explicitly highlight how we should treat nonhuman animals. However, since

⁷⁷ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 7.

⁷⁸ A further defense can be found in Section 2, *The Airline Company*

there is a specific capability dedicated to living with concern for other species, plants, and the environment, we can see that if we harm animals or nature in any way, we may violate another's capability to interact with other species. This would result in the act being wrong. In the case of Depletion, we could easily highlight the wrong in the act of Depleting because the agent is either restricting another's capabilities by not allowing them to live and interact with nature or by restricting their capability to control their own material environment. Even risking the victim's capabilities is wrong, as we have highlighted previously. Depleting takes away the future potential individuals' abilities to be their own masters and their freedom. This demonstrates that the act of Depleting is wrong in all cases.

The Surgeon – The surgeon is an interesting case because we are trying to show why the surgeon *should* be able to operate on the patient and how the victim is not wronged. Some might argue that because the surgeon does not have the consent of the patient and because the surgeon causes the patient pain while the surgery is being performed and in the recovery that the act is wrong. However, looking at it from our capabilities perspective, the surgeon is actually enhancing the capabilities of the patient. Consider the alternative course of action where the surgeon does not perform the surgery on the patient even though they have the ability and opportunity. It would be wrong for them *not to* perform the surgery because this would potentially violate their first three capabilities to life, health, and bodily integrity. The surgeon additionally does not restrict the freedoms or the victim's ability to be their own master by operating on them. The patient does not have to provide consent in this case because they do not have the ability. In these cases

where an agent is saving and improving the capabilities of another and does not otherwise wrong the so-called “victim,” the agent does not act wrongly. Lastly, it is important to note that the surgeon is acting with good intentions.

The Airline Company – In the case of the Airline Company, the company wrongs the African American client by restricting her Affiliation capability. This is the capability that states that individuals have the right to live and be treated equally regardless of race. Since the airline specifically treated the African American client differently, the client has a second-personal claim against the airline and they are acting in the wrong.

The Student – The professor does not wrong the student in this case because she does not restrict any of the student’s capabilities. The student has an equal opportunity to her peers to write the paper and has previously submitted to a standard of grading by enlisting in the class. Additionally, since she submitted to this grading process with the company of other students, it would be wrong for the professor to not grade the student’s paper fairly and honestly. Therefore, the teacher is correct to give the student an F.

The Fisherman – In this case, the government is acting wrongly because it is restricting the Fisherman’s freedom to choose what to do with his time or his ability to be his own master. By restricting his choice on how and when he wants to Play they restrict his capabilities. Now, if the Fisherman had voted in the election that had the fishing mandates on the ballot then he would have satisfactorily been respected with regards to

his capabilities to participate in the political process. The government, however, would have to allow him to have other time to pursue his hobbies and recreational activity.

Checklist

Now that our cases all seem to have satisfactory solutions I will return to my solution checklist to ensure that my solution has all of the necessary requirements that we have identified.

Find some flaw within Roberts' intuition number two that creates the NIP. The nonidentity intuition number two is flawed under my solution because we are able to show that the victims of NI cases are wronged. This wrong demonstrates a type of harm done to the victims that was previously difficult to identify. Because it was difficult to identify, it seemed like we had a problem (the NIP). Instead, we can say that the victim is second-personally harmed by being wronged because their second-personal claims were violated.

At least partially deontological in nature. My solution is totally deontological in nature because it focuses on the second-personal sense. Whether or not an act is wrong is based not on the outcome of the action but instead on the morality of the action itself with regards to the central human capabilities. Others may not decide what is best for you: "You alone are entitled to decide whether a benefit to you is worth the burdens it brings.

Nor can others justify authority over you, or use force against you, on the ground that the restrictions thereby placed on you will generate greater benefits for others.”⁷⁹

Pay special attention to second-personal reasons and claims. Since my solution uses second-personal reasons and claims to highlight the wrongs done to victims, it pays specific attention to these types of claims over both first and third-personal claims.

Pay attention to motivations and options that agents have when acting. In the example of the Surgeon, we paid special attention to the doctor’s intention to help the “victim.” One is not punished for the outcomes of their actions but instead their motivations because our solution is deontological. If they act with the motivation to avoid restricting another’s capabilities than they are not acting in the wrong. However, if they are acting maliciously in intent and desire to restrict the capabilities of another or act negligently, their act is considered wrong even if they are unsuccessful in actually restricting the victim’s capabilities. In this respect my solution certainly pays attention to the motivations and options of agents when they are acting.

Account for the felt experiences and feelings of NI victims sufficiently. My solution avoids exploiting future individuals in addition to current individuals by first treating them equally and secondly by paying attention to their capabilities. I employ Hurley and Weinberg’s conceptualization of a rights-based solution, which is unique. This specific type of “rights” based solution highlights rights violations through second-personal

⁷⁹ Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 5.

reasons and claims. These claims, as I have demonstrated, do satisfactorily consider the felt experiences of future generations. Next, if an individual's capabilities are sufficiently respected then it is not possible for them to be exploited because the capabilities approach does not allow for coercion in any sort of relationship. Any scenario where this is occurring would have a victim whose freedom to be his or her own master is being violated. Finally, my solution also pays special attention to the intentions of the agents who are acting. If an agent is trying to take advantage of another's vulnerability in order to experience some sort of gain then the action is wrongful.

Conclusion

I have worked my way to a deontological solution to the NIP, which combines a Kantian framework of classifying freedom and equality with Martha Nussbaum's Capabilities Approach. In order to highlight the wrongs done to victims in NI cases, I employ what Hurley and Weinberg classify as second-personal reasons and claims, or claims that victims have against others for the wrongs done to them. These wrongs give us a way to identify the harms occurring in NI cases. These are the harms that teleological solutions failed to identify. This causes teleological solutions to fail and helped us arrive at our conclusion that the NI solution is deontological in nature. In turn, we are able to use these deontologically identified harms to show how the second nonidentity intuition is flawed. Although the victims are in fact better off in NI cases, they are still harmed. Whether or not the victims are better off in the first or third-personal sense is irrelevant. Instead, what matters is that victims have a second-personal claim against the agents who violate their freedom to be their own master of their central capabilities. Since the first, second, and third nonidentity intuitions all prove to be false the nonidentity problem is dissolved. This dissolution allows us to satisfactorily state that the NIP is solved because the problem ceases to exist.

Solving the NIP has tremendous implications because it is such a contemporary philosophical problem. First, there is a good deal of discussion occurring specifically on

the case of Depletion and our general requirements for how we should treat future persons. If we fail to highlight how we are harming or wronging future individuals, current society will have a moral license to act in a way that is wrong, even though that the particular philosophy behind that wrong is difficult to identify. Depletion is just one of many relevant cases. Without a solution to the NIP, parents have a moral license to take risks that may lead to them having disadvantaged or disabled children. However, I have identified that the agents in NI cases wrong their victims. Additionally, I have provided a practical, simple list of ten capabilities that should be given to all current, future, and potential future people. This gives current individuals a guide for action because they must act in respect to the capabilities of *all* of these groups. This NI solution will continue to prove invaluable as a morally restrictive system of interacting with others.

I recognize that my system is particularly ambitious. However, even though I believe it does provide us with a unique solution to the NIP, there are many problems that still persist and will require further thought. There remains extensive work to be done to define acceptable levels of risk that one could reasonably subject another to. For example, we deem it acceptable for all parents to have a child even though there is a small risk for all births of the child having autism, which would restrict a child's capabilities. Even though this risk is low, it is a known risk that the parents subject upon their child. Deciding exactly what is a reasonable level of risk is extremely difficult. Additionally, more work will have to be done to further justify each capability and the extent of each one as well. Martha Nussbaum continues to develop and improve her capabilities and the arguments on behalf of each one but there are still problems with this

approach that I chose to avoid confronting in this paper. Instead, I focused on highlighting the advantages that a capabilities approach has at producing NIP results that align with our intuitions and avoid the common problems that emerge with most NIP solutions.

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