

Why Care About Future People's Environment?

Approaches to Non-Identity in Contractualism and Natural Law

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Abstract

The dissertation analyses the capacity of *contractualism* and *natural law* to justify *environmental intergenerational duties*.

For three decades, climate change has been a major political concern. As a fundamental threat to environmental sustainability, climate change is believed to threaten the long-term welfare of humankind. It thus seems imperative to affirm long-term duties regarding future people's environment. Furthermore, contractualism and natural law are two important moral theories in contemporary political life. While the former seems influential among political liberals, natural law seems more appealing to political conservatives. It is thus of interest how both of these theories can be used to argue for environmental intergenerational duties. Yet, natural law has been particularly understudied in this regard.

The point of departure of the study is the so-called *non-identity problem*, formulated by Derek Parfit. As concerns future generations, what we do not only affects the quality of people's lives, but also *who* will come to exist. If future people come to exist as a consequence of how we live our lives, including the choice of living unsustainably, a degraded environment will be worse for no one. For so-called *person-affecting* theory, such as contractualism, non-identity seems to imply that there is nothing morally objectionable about leaving future people with an unsustainable environment.

First, the dissertation *demonstrates* recent attempts in contractualism, in the vein of John Rawls and Thomas Scanlon, to solve the non-identity problem on person-affecting terms. It is shown that these attempts either fail to affirm environmental intergenerational duties or implicitly abandon a person-affecting view.

Second, the dissertation *explores* a natural law approach to the non-identity problem, employing a recent account of natural law suggested by John Finnis. While natural law can be considered of import in contemporary political decision-making, it has hardly ever been used to ground environmental intergenerational duties. This dissertation shows how an *impersonal* application of natural law could be used in attempts to circumvent the non-identity problem, i.e. to affirm environmental intergenerational duties, and treats possible objections to such an account. It is argued that the requirement to consider so-called *basic values*, also in cases when no individual would be worse off by one's act, should render it at least morally objectionable to leave future generations with an unsustainable environment.

Third, a new kind of objection to environmental intergenerational duties is discussed in depth. The objection applies to theories that, although they may accept an impersonal view in morals, subscribe to a person-affecting restriction in politics. On some interpretations, this limited restriction can be ascribed to both contractualism and natural law. This may imply a specifically *institutional non-identity problem*. It conveys the possibly paralysing conclusion that, even if there are environmental intergenerational duties in a moral sense, we are not permitted to use political institutions to enforce them.

Again, contractualism is used to demonstrate the possible difficulties in overcoming this kind of problem. With regard to natural law, the dissertation explores how the use of institutions could be justified impersonally by reference to the *common good* and the idea of intergenerational community. In this view, experiences that link us to previous generations justify institutional responsibility for the future.

Keywords: *Environmental duties, intergenerational duties, non-identity problem, contractualism, natural law, person-affecting, impersonal, Derek Parfit, Thomas Scanlon, John Rawls, Thomas Aquinas, John Finnis, institutional non-identity problem, basic values, common good, intergenerational community.*

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To my mother,
Anna-Lena.

Contents

1	Introduction: Why care about future people's environment?	13
1.1	Environmental intergenerational duties	15
1.2	Choice of theories.....	18
1.3	The non-identity problem.....	23
1.4	The environmental case: further problems.....	26
1.5	Research questions.....	31
1.6	Methods.....	35
1.6.1	Reflective equilibrium.....	38
1.7	Outline of the thesis.....	42
2	The non-identity problem revisited	45
2.1	Two (moral) versions of the problem.....	45
2.2	Dealing with the problem.....	52
2.2.1	Asserting the problem.....	53
2.2.2	Avoiding the problem.....	54
2.2.3	Solving the problem (in a focal sense).....	55
2.2.4	Circumventing the problem.....	59
3	Contractualism: the environment that cannot reasonably be rejected in the future.....	69
3.1	Scanlon's contractualism.....	71
3.2	Does Depletion wrong actual future people?.....	74
3.3	Does Conservation wrong actual contemporaries?.....	76
3.4	Does Depletion wrong possible future people?.....	77
3.5	Scanlon makes it worse.....	78
3.6	Adhering to the personal reasons restriction.....	81
3.6.1	Risk.....	81
3.6.2	Typed individuals 1.....	83
3.7	Violating the personal reasons restriction.....	86
3.7.1	Typed individuals 2.....	86
3.7.2	Types.....	87
3.7.3	Relationships.....	88
3.7.4	The good.....	89
3.7.5	Groups.....	90
3.8	A note on persons.....	91
3.9	Moving on from contractualism.....	92

4	Natural law: the environment that enables future participation in the good	95
4.1	Natural law – a (brief) history	96
4.1.1	The Ancients	96
4.1.2	Thomas Aquinas	99
4.2	Seven basic values	102
4.3	Natural law in moral theory – practical reasonableness	105
4.4	Requirements on agents	107
4.5	Requirements on reasons	109
4.5.1	Regard for basic values	109
4.5.2	Regard for persons	110
4.6	Natural law’s basic argument	111
4.7	Objection 1: It is too vague	112
4.8	Objection 2: It is too weak	118
4.9	Requirements on acts	119
4.9.1	Efficiency, within reason	119
4.9.2	Respect for every basic value in every act	119
4.9.3	Natural law’s wrongdoing argument (specified)	121
4.10	Objection 3: It excludes institutional responses	122
5	The institutional non-identity problem	125
5.1	Future people’s environment and public institutions	127
5.2	The institutional non-identity problem	129
5.3	Three kinds of subsidiarity principle	133
5.3.1	Efficiency-based subsidiarity	133
5.3.2	Freedom-based subsidiarity	135
5.3.3	Justice-based subsidiarity	135
6	Contractualism: the environmental politics that can reasonably be accepted by all	139
6.1	Circumstances of justice	140
6.2	The original position and future generations	143
6.3	Care for one’s descendants	146
6.4	Two universalization attempts	148
6.5	An elaboration of the original position	151
7	Natural law: the environmental politics of an intergenerational community	157
7.1	Natural law in political and legal theory	158
7.2	Possible natural law approaches to INIP	160
7.3	The four orders of community	162
7.4	Intergenerational community – some pitfalls	166
7.5	Dante as a prime example	169
7.6	Intergenerational community and the environment	172

8	Summary and conclusive discussion: Approaches to non-identity in contractualism and natural law	175
8.1	Contractualism and the wrongdoing problem	178
8.2	Natural law and the basic non-identity problem.....	179
8.3	Natural law and the wrongdoing problem	181
8.4	Contractualism and the institutional non-identity problem	183
8.5	Natural law and the institutional non-identity problem	184
8.6	Duties without rights in natural law	186
8.7	How strong are intergenerational duties?.....	187
8.8	A policy implication	189

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1 Introduction: Why care about future people's environment?

For three decades, climate change has been a major political concern. Among citizens, there is an ever-growing awareness that our everyday actions, such as driving a fossil-fuelled car to work, have this effect.¹ As a fundamental threat to environmental sustainability, climate change is also believed to threaten the long-term welfare of humankind. It may thus seem imperative to affirm long-term duties regarding the environment: *environmental intergenerational duties*.

With regard to future generations, however, what we do not only affects the quality of people's lives, but also *who* will come to exist. In such cases, several moral theories have proved difficult to apply. This has been shown by Derek Parfit, most notably, in the book *Reasons and Persons*, published in 1984. If future people come to exist as a consequence of how we live our lives, including the choice of living unsustainably, a degraded environment will be worse for no one. For so-called person-affecting theory, the non-identity described thereby seems to imply that there is nothing morally objectionable about leaving future people with an unsustainable environment. This is a variant of a problem that Parfit called the non-identity problem. An established way of approaching this has been to abandon the widespread person-affecting view in the hope that impersonal theory will ground intergenerational duties. It has been shown, however, that impersonal approaches can similarly lead to counterintuitive conclusions, in choices that entail different numbers of people.

¹ Stuart Capstick et al., "International Trends in Public Perceptions of Climate Change in the Past Quarter Century", *WIREs Clim Change*, No. 6, 2015, p. 36. See also UNFCCC, "Adoption of the Paris Agreement", Report No. FCCC/CP/2015/L.9/Rev.1, <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>, 2015; and Pope Francis, *Laudato Si'* [Encyclical Letter on Care for Our Common Home], Libreria Editrice Vaticana, 2015.

Contractualism and natural law are among the theories that either aspire to or could aspire to formulating environmental intergenerational duties. The capacity of these theories to do this is the focus of this dissertation. Contractualism and natural law are, furthermore, two moral theories that can be considered important in contemporary political life. While the former appears influential among political liberals, natural law seems to appeal more to political conservatives. The decision to study these theories is further accounted for in this chapter.

A point of departure in the analyses is a basic version of the non-identity problem, with specific regard to climate change. The study is thus concerned with the ways in which contractualism and natural law can be thought to approach this particular problem. To different extents, the study also addresses subsequent problems that may arise with these approaches, mainly other versions of the non-identity problem. The present chapter accounts for this itinerary as well.

Contractualism and natural law arguably differ precisely with regard to a person-affecting view – while contractualism requires it, natural law seemingly does not. First, this thesis identifies recent attempts in contractualism to solve a specific version of the non-identity problem on person-affecting terms. It is shown that these attempts either fail to arrive at an intuitive conclusion or implicitly appeal to an impersonal view. Other than specifying how contractualism fares, this demonstrates how a theory resting on a person-affecting view, normally plausible to many, faces difficulties in accounting for environmental intergenerational duties.

Second, this thesis *explores* a natural law approach to environmental intergenerational duties, drawing on the impersonal resources of natural law. While natural law can be considered of import in contemporary political decision making, it has hardly ever been employed to ground environmental intergenerational duties.² The thesis shows how an impersonal application of natural law could be used in attempts to circumvent the basic non-identity problem and highlights possible objections to such an account. The difficulty of impersonal theory in dealing with different people choices is discussed, here with regard to natural law.

In addition, a new kind of objection is discussed in depth. This objection applies to theories that, although they embrace an impersonal view in moral

² I make this claim in an anglophone context. Possibly, there is work of this kind in other languages and circumstances, e.g. continental Europe, which I have not taken into consideration here.

theory, subscribe to a political person-affecting restriction. On some interpretations, this sort of restriction can be ascribed to both contractualism and natural law. This could imply a specifically institutional non-identity problem. The problem conveys the possibly paralysing conclusion that, even if there are environmental intergenerational duties, we are not permitted to use political institutions to enforce them.

1.1 Environmental intergenerational duties

Human influence on the climate is well-documented, and recent emissions of greenhouse gases are reported to be the highest in history. Many changes in the climate system since the 1950s are unprecedented over decades to millennia. The atmosphere and oceans are warmer; there are smaller amounts of snow and ice, and sea levels are rising. The Intergovernmental Panel on Climate Change (IPCC) reports that continued emissions will increase the likelihood of “severe, pervasive and irreversible impacts for people and ecosystems”.³ In all scenarios but the most stringent mitigation scenario, global warming is estimated to continue beyond the year 2100.⁴ After the present century and over the course of more than a thousand years, the global sea-level is expected to rise around seven metres, as global warming causes the West Antarctic Ice Sheet to melt. In such a long-term perspective, climate change may also cause the Thermohaline Circulation to shut down, cutting off the Gulf Stream to Western Europe.⁵ In 2007, a report commissioned by the British government estimated that the investment taking place during the

³ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, IPCC, Geneva, Switzerland, 2014, p. 8.

⁴ The IPCC uses “Representative Concentration Pathways” (RCPs) to make projections of GHG emissions based on population size, lifestyle, energy use and climate policy, among other factors. RCP2.6 labels the most stringent mitigation scenario, RCP4.5 and RCP6.0 two intermediate pathways and RCP8.5 one with very high emissions. The latest report states that “[w]arming will continue beyond 2100 under all RCP scenarios except RCP2.6” (IPCC [2014], p. 16). Baseline scenarios, with no extra efforts to constrain emissions, lead to pathways between RCP6.0 and RCP8.5 (IPCC [2014], p. 8). Hence, if we go on as we are now, warming is predicted to continue into the next century.

⁵ Stephen Gardiner, “The Pure Intergenerational Problem”, *The Monist*, Vol. 86, No. 3, 2003, note 29, see also Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2001: The Scientific Report*, Cambridge University Press, 2001.

subsequent two decades would “have a profound effect on the climate in the second half of this century and in the next”.⁶ Avoiding irreversible climate change on a multi-century to millennial timescale is still deemed possible, but is said to require a “large net removal of CO₂ from the atmosphere over a sustained period.”⁷

At present, as a consequence of global warming, events such as excessive floods and droughts already threaten vulnerable populations.⁸ How to mitigate, adapt to and compensate for climate change constitutes an acute practical challenge.¹⁰ Given the predictions above, however, climate change also has implications with regard to distant future generations. This specific aspect of climate change raises fundamental ethical questions of its own.¹¹ What are our environmental duties in relation to distant future people? How extensive are they? Is it permissible or even required to use institutions so as to fulfil such duties? These questions should matter to environmental activists, politicians, philosophers, political scientists and jurists, as well as citizens in general, as the answers to them inform environmental policy. Yet, there is a question prior to the questions above. This question, which functions as an overarching question in this thesis, is the following: *What is the*

⁶ N. H. Stern, *The Economics of Climate Change: The Stern Review*, Cambridge University Press, 2007, p. vi.

⁷ IPCC (2014), 16.

⁸ Derek Bell, “Does Anthropogenic Climate Change Violate Human Rights?”, *Critical Review of International Social and Political Philosophy*, Vol. 14, No. 2, 2011, pp. 99-100.

¹⁰ Edward Page and Clare Heyward, “Compensating for Climate Change Loss and Damage”, *Political Studies*, Vol. 65, No. 2, 2017.

¹¹ A classic discussion with regard to distant future generations did take place in the 18th century. The renowned letters of Thomas Jefferson and Thomas Paine were then concerned with the intergenerational legitimacy of constitutions (see Ludvig Beckman, “Do global climate change and the interest of future generations have implications for democracy?”, *Environmental Politics*, Vol. 17, No. 4, 2008). But, the power of present generations to affect future life-conditions is more far-reaching today. Hans Jonas has noted that humankind even has the power to eliminate itself entirely. “The *presence of man in the world* had been a first and unquestionable given, from which all idea of obligation in human conduct started out. Now it has itself become an *object of obligation*: the obligation namely to ensure the very premise of all obligation, that is, the *foothold* for a moral universe in the physical world – the existence of mere *candidates* for a moral order.” (Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, University of Chicago Press, 1984, p. 10, emphases in original.) In this thesis, however, I discuss the moral status of future people, given that there *will be* future people (who would face a catastrophe we have induced).

justification for environmental intergenerational duties? The thesis takes on three specific research questions on this theme, each with a delimited focus. In the present chapter, I account for my delimitations, the specific research questions that follow therefrom and the methods I employ to answer my specific questions.

First of all, the overarching question on environmental intergenerational duties does not concern why many people *perceive* that there are such duties. The question concerns the capacity to argue coherently – in morals – that such duties do in fact exist. We want to know why, according to selected theories, we should consider distant future people in our decisions about the environment. As scholarship on future generations has shown, many theories seem to lack good theoretical resources for saying that rendering the environment unsustainable, with regard to the distant future, would be morally wrong. As I demonstrate in Chapter 2, it is difficult to say that doing so would in any way be morally objectionable. We thus lack the most basic moral precondition for saying that climate change imposes any intergenerational duties at all.

One may think that it is plain obvious that there are environmental intergenerational duties. Yet, given the widespread “person-affecting” view, the philosophical problem referred to as the non-identity problem seems to show that there are no such duties. The problem was identified by an increasing number of scholars in the late 1970s and early 1980s. In *Reasons and Persons* (1984), Parfit would give the problem a thorough and influential treatment.¹² A basic observation made by the non-identity scholars is that personal identity depends on by whom and when a person is conceived. In turn, who meets whom and when procreation takes place depends on a countless number of actions, including a society’s choice to live sustainably or not. Future persons cannot, therefore, be rendered worse off by our unsustainable living. Rather, the particular people who will exist in the future will do so as a result of how we decide to live our lives. Moral theory, as well as common sense, typically relies on person-affecting reasons – an act is seen as being

¹² Derek Parfit, *Reasons and Persons*, Oxford University Press, 1984. Some preceding works are Derek Parfit, “On Doing the Best for our Children”, in Michael Bayles (ed.), *Ethics and Population*, Schenkman, 1976; Thomas Schwartz, “Obligations to Posterity”, in Sikora and Barry (eds.), *Obligations to Future Generations*, Temple University Press, 1978; Robert Adams, “Existence, Self-interest, and the Problem of Evil”, *Nous*, Vol. 13, No. 1, 1979; Gregory Kavka, “The Paradox of Future Individuals”, *Philosophy & Public Affairs*, Vol. 11, 1981.

morally objectionable if it renders another person worse off in some way. In this case, however, such a person-affecting view seems to imply, counterintuitively, that it would not be morally objectionable to leave behind an unsustainable environment.¹³ This would mean that there are no environmental intergenerational duties.

Future people's non-identity, many scholars insist, should make no difference to our judgment in this and similar cases. For around four decades, various moral arguments have, therefore, been tried as an objection to this kind of act. As is recounted in Chapter 2, some scholars, such as contractualists, aim to keep a person-affecting view in these efforts. Others consciously assume an alternative, impersonal view. Predominantly, attempts of the latter sort have been utilitarian in character. According to utilitarianism, the right act is the one that produces the most well-being, summed impersonally across all the people affected. It is recounted in Chapter 2 that this sort of approach can likewise lead to counterintuitive conclusions, including the so-called repugnant conclusion, given that different acts also produce different numbers of people. So far, no suggestion of how to approach non-identity seems to be considered perfect. Using Parfit's expression, we are still looking for "Theory X". Theory X would solve the non-identity problem or circumvent the non-identity problem without running into other problems, such as the repugnant conclusion. How to proceed in the search of such a theory? The choice of theories to examine in this thesis has been made with a political consideration in view. I account for this consideration below.

1.2 Choice of theories

According to a purely analytical-philosophical view, it does not matter where arguments "come from" in the above sort of enquiry; what matters is only that we get the answer right. Taking this view, a reasonable choice would be to study arguments of several kinds, and not only arguments drawn from the theories studied in this thesis. Among pure historians of ideas, on the other hand, there is no "right answer", what is of interest is what certain thinkers really said (and why); what the characteristics have been of different theoretical currents, and maybe (even) their unintended normative implications. Taking this view, it does not seem sensible to put a requirement on

¹³ Robert Huseby, "Person-Affecting Moral Theory, Non-Identity and Future People", *Environmental Values*, Vol. 19, No. 2, 2010.

what one's premises should entail, as is done in this thesis. In this study, we are deliberately looking for ways to conclude in favour of environmental intergenerational duties.

According to a third view, however, it matters both where arguments come from and whether they provide the right answer. One such view has been stated by Alasdair MacIntyre, who speaks of a "rationality of traditions".¹⁴ MacIntyre claims that there are specific, historically rooted, traditions of thought and practice. This raises questions of whether he is correct, whether all people really belong to a tradition (and just one), whether he depicts the traditions accurately, where to draw the line between traditions, and so forth. Although I draw on the idea of traditions, I remain agnostic as to their exact influence, content and where lines should be drawn. Indeed, one could imagine a pragmatic view in which we accept different and functional accounts of this. What is of interest here is a meta-ethical claim we may gain from MacIntyre, regarding the nature of theories. His account includes what could be referred to as a *flesh-and-blood thesis*.

On the one hand, he considers theories to be part of larger traditions involving social practices. Importantly, theories thereby influence persons who do not easily give up on their assumptions and mental frameworks. This makes it important where arguments come from. It implies that a reason to focus on a certain theory can be that, in significant respects, it seems bound to have a particular influence in moral and political life.¹⁵ I assume that contractualism and natural law are two such theories.¹⁶ While contractualism is

¹⁴ Alasdair MacIntyre, *Whose Justice, Which Rationality?*, University of Notre Dame Press, 1988, Ch. 18.

¹⁵ In other words, it suggests that we consider the context in which important decisions about climate change are made. The United States (US), from where I draw examples below, could be considered one such context. The US is the second largest single emitter of greenhouse gases (now surpassed by China) and has emitted more than any other country in history. At the same time, the US has recently withdrawn from important climate engagements, such as the Paris Agreement. (Justin Gillis and Nadja Popovich, "The US Is the Biggest Carbon Polluter in History. It Just Walked Away From the Paris Climate Deal", *The New York Times*, June 1, 2017, retrieved at <https://www.nytimes.com/interactive/2017/06/01/climate/us-biggest-carbon-polluter-in-history-will-it-walk-away-from-the-paris-climate-deal.html>, 2018-08-25.)

¹⁶ For another study in this spirit, see Olle Torpman (*Libertarianism and Climate Change*, doctoral dissertation, Stockholm University, 2016). The study focuses on libertarian theory, which seems particularly influential within neoliberal political strands. Torpman argues that, contrary to what many libertarians tend to think, there are libertarian arguments for quite substantial governmental measures in order to fight climate change.

arguably influential among political liberals, natural law can be considered influential among political conservatives.¹⁷

On the other hand, traditions strive, even compete between themselves, for coherence. Indeed, they are not to be understood as mindless habits or customs, but as ongoing disagreements around common concerns. And, within a tradition, there can be times when assumptions or judgments are questioned more than usual. This seems even more likely in a historically new situation, such as an industrial or sexual revolution. Given that the established theoretical resources have been developed for other, previous purposes, the adherents of a tradition may now be challenged in justifying a particular judgment.

The judgment may nonetheless seem correct to all or a share of a tradition's adherents. MacIntyre speaks here of a phenomenon he refers to as an "epistemological crisis". "At any point", he argues, "it may happen to any tradition-constituted enquiry that, by its own standards of progress, it ceases to make progress. Its hitherto trusted methods of enquiry have become sterile [or] have the effect of increasingly disclosing new inadequacies, hitherto unrecognized incoherences, and new problems for the solution of which

¹⁷ I do not argue extensively here that contractualism influences political liberals, or that natural law influences conservatives. As an example of the former relationship, however, one could consider former US President Bill Clinton's appraisal of John Rawls, as the latter was awarded the National Humanities Medal in 1999: "John Rawls is perhaps the greatest political philosopher of the 20th century. In 1971, when Hillary and I were in law school, we were among the millions moved by a remarkable book he wrote, *A Theory of Justice*, that placed our rights to liberty and justice upon a strong and brilliant new foundation of reason." (Bill Clinton, "Remarks by the President at Presentation of the National Medal of the Arts and the National Humanities Medal," Washington, D.C., September 29, 1999.)

For examples of the latter relationship one might remain in the United States. When Antonin Scalia's vacancy in the US Supreme Court was filled by conservative Neil Gorsuch, commentators were quick to ask how the idea of natural law might thereby shape deliberations in the Supreme Court (see e.g. George Will, "Gorsuch's chance to correct Scalia on the Constitution", *The Washington Post*, February 1, 2017). Furthermore, several profiled Republicans in the US are Catholic, and "describe their political conservatism as an extension of their faith." (Catherine Brekus, "Are American Catholics Too American for the Pope?", *The Slate*, September 22, 2015.) It is an established view that Roman Catholicism as an intellectual tradition "considers natural-law theory as providing the philosophical machinery for articulating concepts central to thinking about moral theory, legal theory, and the social order" (Anthony J. Lisska, "Natural Law and the Roman Catholic Tradition: The Importance of Philosophical Realism", *The American Journal of Economics and Sociology*, Vol. 71, No. 4, 2012).

there seem to be insufficient or no resources within the established fabric of belief.”¹⁸

In a situation such as this, some or all adherents of a tradition may rethink their theoretical resources in order to argue for the seemingly correct judgment. They might do this either in order to convince themselves and others of the coherence of their own tradition, or (in cases when there is no internal consensus on the judgment) in order to convince fellow adherents of the judgment. Hence, if we take MacIntyre’s third view, it can be just as important whether we get the answer right. Our interest in a theory may be whether its premises entail a judgment that, for one reason or other, should be accounted for.

This dissertation is characterized by the third standpoint just described. In this thesis, I study the ability of two moral theories – contractualism and natural law – to produce arguments in favour of safe-guarding future people’s environment. The contractualism I engage with is characterized by the works of Thomas Scanlon and John Rawls, respectively. These thinkers draw on the idea of a social contract and claim (or are assigned) a heritage from thinkers such as John Locke (1632–1704), Jean-Jacques Rousseau (1712–1778) and Immanuel Kant (1724–1804). This kind of theory is a go-to theory for political theorists like myself and has been fairly (although not mainly) studied with regard to environmental and intergenerational issues.

The natural law theory I explore is, instead, characterized by the work of John Finnis, who claims (and is considered) to write in the vein of Thomas Aquinas (1225–1274).¹⁹ Aquinas was also under an important influence by Plato and Aristotle. This theory should, nonetheless, be less familiar to political theorists or other scholars dealing with intergenerational duties. At the same time, environmental and intergenerational matters have so far remained little developed within this theoretical strand.²⁰ The purpose of venturing

¹⁸ MacIntyre (1988), 361-362.

¹⁹ Pauline Westerman refers to the natural law theory suggested by John Finnis as “a new and influential ‘research programme’” (Pauline Westerman, *The Disintegration of Natural Law Theory: Aquinas to Finnis*, Brill, 1998, p. 236). Russel Hittinger and many others refer to it as “new natural law theory” (Russell Hittinger, *A Critique of the New Natural Law Theory*, University of Notre Dame Press, 1989). I assume that this theoretical school is influential enough in political life, while it has sufficient ties to traditional, Thomistic natural law theory.

²⁰ In the English-speaking world (at least), such efforts seem to be oriented towards theology and non-anthropocentric theory, which is not the case in this thesis. For an interesting contribution, see William French, “Natural Law and Ecological Respon-

into natural law is not to embrace natural law theory as a whole, but to see what resources (if any) could be useful there in order to account for environmental intergenerational duties.

Hence, contractualism and natural law are here studied with regard to their ability to bring us to certain conclusions. I assume, here, that a significant number of people who are bound to be influenced by these theories also share or could share views in favour of environmental intergenerational duties. If we believe that environmental intergenerational duties are important, it is likewise important that these theories can be used to argue for that coherently. Adherents of a tradition may want to defend their stance on environmental intergenerational duties in deliberation with others (supposedly the case for political liberals) or need to deliberate internally on the matter (supposedly the case for political conservatives).

My approach is not a necessary choice, provided the flesh-and-blood thesis I have here ascribed to MacIntyre. A tradition-conscious study could tend towards a social study, focusing on if, how or when theories actually affect people's thinking. It could also tend towards a historical study, focusing on a key thinker and the meaning assigned to certain concepts. Instead, this study tends towards analytical philosophy, focusing on whether recent theory within a tradition allows us to conclude in a way that (to many) seems intuitively correct.²¹

sibility: Drawing on the Thomistic Tradition”, *University of St. Thomas Law Journal*, Vol. 5, No. 1, 2008.

²¹ One could discuss whether MacIntyre's view prevents us from ever making truth claims about our moral duties. But, I believe that his view does not prevent that. He proclaims that there is “no neutral way of characterizing either the subject matter about which [traditions] give rival accounts or the standards by which their claims are to be evaluated” (Alasdair MacIntyre, *Whose Justice? Which Rationality?*, University of Notre Dame Press, 1988, p. 166). Responding to this situation, however, he argues that truth-claims *are* to be made with regard to the *internal* rationality of the tradition that upholds those standards. Thus, instead of being compared to the external rationality of some competing set of ideas, a tradition is to be evaluated according to its own ability to produce a *coherent* account. An important element in this search for coherence is arguably the strong intuitions (about moral truths) that some or all adherents of a tradition may have. Therefore, referring to tradition-bound rationality should probably not be understood as another way of saying that anything may be true from this or that perspective (MacIntyre means to side with neither perspectivism [the “many sides” of the truth] nor relativism [the denial of an objective truth], see pp. 352–353). One could rather see it as a strategy to get to the truth, when an independent set of standards acceptable to all rational persons is deemed unattainable.

In order to conduct the study, I employ a variant of a method called “reflective equilibrium”. This method has the virtue of being clearly stated and widely used in normative theory. One may think that this method, identified by John Rawls, has nothing to do with tradition. I claim, however, that although it does not account for my choice of theories, it captures well the concern for coherence set out here. In later sections on methods, I further discuss a tradition-conscious application of reflective equilibrium.

I have now accounted for my limited theoretical focus. Another delimitation in this thesis concerns the different problems that may arise as one wishes to account for environmental intergenerational duties. Below, I justify my main focus on the non-identity problem.

1.3 The non-identity problem

Let us first understand the non-identity problem better.

Imagine that you inherited a coat from your grandmother. It does not only keep you warm in the winter; it is the only thing you have left from her and it brings you fond memories. It seems that, if I stole that coat from you and never returned it, I would harm you. Indeed, I would seem to have committed a moral wrong.

Suppose further that I have no other option than to steal your coat, to avoid dying during cold nights. Even if we came to conclude that I would not be wrong to steal the coat under such circumstances, the initial reason to object to my behaviour remains. The reason seems to be the harm it would inflict on you. Not only you, but anyone could intelligibly find the act morally objectionable for this reason. By stealing your coat, I would leave you worse off than you would otherwise have been.

With regard to future people, we seem unable to apply these ordinary ways of reasoning. To see why, we may start out by considering a frequently employed and recast example of Parfit’s, referred to as the “14-year-old girl”. The 14-year-old is assumed to want a child; she is not yet pregnant but wishes to conceive. The girl is told she should wait and have the child later: “that would be better for him,” her close ones claim, “since you would be able to give him a better start in life.”²³ Nonetheless, she goes ahead and has a child, and gives him a bad start in life.

²³ Derek Parfit, *On What Matters*, Vol. II, Oxford University Press, 2011, p. 220.

Can we uphold, the non-identity literature asks, that she did anything wrong? Stipulate further that neither the young mother herself nor the rest of society suffers from the decision. Although we may still want to say that she did something wrong vis-a-vis her child, we do not seem to be in a position to claim that her decision was in fact worse for her child. A reason behind this is that the child's very identity depends on when he was conceived. "If [the 14-year-old] had waited," Parfit points out, "this particular child would never have existed. And, despite its bad start, his life is worth living".²⁴ Since the child is not worse off than he would otherwise have been, it is hard to say that he has been harmed by his mother's act. It then proves to be difficult to say that the 14-year-old did anything wrong or even objectionable with regard to how her child's life turned out.

The non-identity problem is conceived of as a problem because person-affecting assumptions, which many hold to be true, bring one to a conclusion that seems false. In order to account for environmental intergenerational duties, contractualists and natural law theorists would need to show that they can deal with this problem. In one way or another, they need to come up with an argument where identity makes no difference to the conclusion.

Now, with regard to the question of environmental intergenerational duties, contractualism figures as a person-affecting theory, while natural law here appears as an impersonal account. This implies that while contractualists should aim to solve the non-identity problem on person-affecting terms, natural law theorists should prove able to circumvent the non-identity problem and subsequently solve *other* problems that may arise with an impersonal view. However, while contractualists are well aware of questions regarding intergenerational duties, as well as their own need to handle non-identity, the position of natural law theorists is unclear. The amount of previous research on future generations differs considerably with regard to these theoretical strands. At present, there are few claims, if any, that natural law provides a non-identity proof argument for environmental intergenerational duties.

Against this background, a delimitation has been made in this thesis. Both theories are studied with the non-identity problem as their point of departure. It has been assumed that contractualism and natural law are part of traditions that compete for coherence. A natural law account is thus explored in response to a problem faced by its more experienced interlocutor. This is a

²⁴ Parfit (1984), 359.

focus which (mainly) natural law theory requires me to go beyond. I discuss my treatment of other problems in a section below.

Among contractualists, then, there is a comparatively large amount of scholarship regarding non-identity. Recently, it has been argued that the theory could provide a solution to the non-identity problem on the basis of a person-affecting view. In the first part of the thesis, I show that, to the extent that contractualist arguments seem to succeed, this happens as contractualists abandon a person-affecting view. I also claim that exclusively person-affecting principles are a *prima facie* essential trait of contractualism. The demonstration thus shows that contractualism (as we have come to know it) does not account for environmental intergenerational duties. It also reiterates the traditional view in philosophy that person-affecting theory is not the road to take.

Among natural law theorists, on the other hand, almost no attention has been given to environmental intergenerational duties or the non-identity problem.²⁵ With regard to natural law, still in the first part of the thesis, I argue that, although the theory is often employed in order to make more familiar person-affecting arguments, it has impersonal resources characteristic of natural law. I go on to explore how these resources could be used in an impersonal natural law approach to non-identity. In other words, before natural law theorists move on to handling problems faced by impersonal theories, it needs to be shown whether natural law could in fact aim to circumvent the non-identity problem on impersonal terms, and in what way or ways this could occur. I do, nonetheless, go on to describe and discuss some possible objections to an impersonal natural law approach to non-identity. One of these objections is common to impersonal arguments and concerns how the theory would handle a different number choice (and avoid, for example, the repugnant conclusion). Another objection concerns the inability to justify public intervention in order to enforce environmental intergenerational duties, given a political person-affecting restriction.

The focus on non-identity is retained in the second part of the thesis. In the second part, I develop the objection regarding public intervention and refer to it as an institutional non-identity problem. I proceed to show that, *even if* contractualists start reasoning in more impersonal terms in moral theory, an institutional problem would seem to remain for them in political

²⁵ I am aware of one attempt in bioethics by James Delaney: “The Nonidentity Problem and Bioethics: A Natural Law Perspective”, *Christian Bioethics: Non-Ecumenical Studies in Medical Morality*, Vol. 22, No. 2, 2016.

theory. Yet again, to the extent that contractualism would seem to handle this problem, it seems due to implicitly impersonal arguments. Subsequently, I outline a possible impersonal argument based on natural law, which could be used in an effort to circumvent the institutional non-identity problem. The central natural law accounts, in the first and second part of the thesis, are also provided in the form of syllogisms. This is done in order to facilitate for natural law theorists to keep enquiring into intergenerational duties, while intergenerational scholars may then more easily scrutinize natural law.

Several cases could raise the question of whether there are intergenerational duties. A characteristic of this thesis, in that respect, is that it focuses on *environmental* intergenerational duties. Furthermore, the study is carried out with specific regard to climate change, while other long-term environmental threats could be relevant, such as nuclear hazards. I shall assume that an account of environmental intergenerational duties would also be applicable in relation to other environmental concerns.²⁶ Below, I state some central respects in which the environmental case *differs* from that of the 14-year-old girl. This is interesting for two reasons. First, it indicates the extent to which we could generalize from an environmental account to other cases. Second, the differences shed light on particular requirements that climate change puts on an account of intergenerational duties. While the point of departure is the non-identity problem, problems that may arise for impersonal approaches appear among these subsequent concerns.

1.4 The environmental case: further problems

As we try to deal with the non-identity problem (in order to account for intergenerational duties), we may experience other problems. To see this more clearly, we may turn to our environmental case.

This thesis expounds an environmental case with a focus on climate change. Parfit refers to related examples as “depletion” and “risky policy”.

²⁶ Environmental cases, like other cases, could be divided into so-called bad condition cases and bad event cases, respectively. The climate example in this thesis is depicted as a bad event case, as a future catastrophe is said to lower the quality of future people’s lives (see Ch. 2). However, we could just as well reimagine the climate example as a bad condition case, whereby people would be born into a life of lower quality. I do not take this particular distinction into consideration in the thesis, but rather discuss such scenarios interchangeably. (See, however, David Boonin, *The Non-Identity Problem and the Ethics of Future People*, Oxford University Press, 2014, pp. 8–10.)

We could here think of depletion as the use of fossil fuels – coal, oil and natural gas – as energy supply, for instance for driving a car.²⁷ The release of CO₂ this entails is believed to contribute to global warming. It is widely held that rising temperatures cause climate change – draughts, rising sea levels, extreme weather phenomena and other dangerous events, of which some will happen in a distant future.²⁸ These are events we see as harmful if or when they strike contemporary people. There is a risk, in this case, that a future catastrophe or degradation will have a negative effect on the quality of future people’s lives. At the same time, society’s choice to deplete also affects who will live in the future. We thus seem unable to say that the future persons whose life-quality will be affected negatively by depletion will thereby be made worse off. Our inability to appeal to a notion of harm thus makes the environmental case similar to that of the 14-year-old girl.

Yet, in important respects, the environmental case may differ from the case of the 14-year-old. I bring up three possible differences here, regarding *interaction*, *numbers*, and *agency*, respectively. In this thesis, I take these differences into consideration to different extents.

First, the present generation will experience *no interaction* with the future generation concerned. The choice of the 14-year-old has been described as a “direct” case, as her choice “directly determines which particular person will exist after the choice is made.”²⁹ Contributing to climate change, on the other hand, has been described as an “indirect” case, in which a choice is part of “a complex chain of events that eventually have an equally decisive effect on which particular people exist after the choice is made.”³⁰ This is connected to the fact that climate change is caused by a collective agent, or the joint behaviour of many individual agents, to which I return below. But the causal complexity also removes the possible object of duty from immediate consideration. While the 14-year-old’s choice concerns a close descendant who is likely to interact with her at some point, those who in the climate case would come to experience a degraded environment are distant descendants whose lives will have no effect on us or our present societies. It could be argued

²⁷ A depletion case could be depicted in different ways. One may imagine the choice of whether or not to use nuclear energy and store waste that remains hazardous for hundreds of years and more. In writing, I employ the case of climate change as a running example.

²⁸ IPCC (2014).

²⁹ Boonin (2014), 5.

³⁰ Ibid.

that less or no interaction characterizes the relationship between many contemporaries who are distant from one another in space. Yet, with regard to future people, our interaction with them is not minimal but non-existent; it is not an open possibility but impossible.

With regard to interaction, the environmental case can be understood as a more difficult case than that of the 14-year-old. For example, approaches to the non-identity problem that appeal to special duties given parent-child interaction may not apply here.³¹ If we manage to justify environmental intergenerational duties despite the lack of interaction this may also account for intergenerational duties in a situation like the 14-year-old's. But even if we only account for duties in the environmental case, this will at least have brought us somewhere. In a section on reflective equilibrium below I put an additional methodological requirement on approaches to the non-identity problem. The requirement is that the account should hold true in a case with no interaction between present and future people.

Second, the future generations in the environmental case are not stable in terms of *numbers*. We know that ordinary choices (without the feature of non-identity) are choices concerning the same people and that, on the contrary, the options of the 14-year-old yield different persons. Yet, it is commonly assumed that the 14-year-old will either conceive one person now or one person later. In the environmental case, on the other hand, it is likely that different ways of structuring society will also yield different numbers of people. Many outcomes in the future are impossible to estimate and are, therefore, not morally relevant. Given different scenarios, however, we can often estimate future numbers of people – I assume this is the case here. The choice of the 14-year-old is thus a simple “different people choice”, while inducing climate change is, in addition, a “different number choice”. The two cases could be depicted so that they do not differ in this way. Yet, a typical environmental case will require that an account of intergenerational duties holds true regardless of how many people are estimated to live in future scenarios.

With regard to numbers, the environmental case can also be understood as being a more difficult case. Dealing with different people choices is a precondition for dealing with different number choices.³² If we manage to justify environmental intergenerational duties in the latter, this should also ac-

³¹ Op. cit., 7.

³² Op. cit., 8.

count for intergenerational duties in a case like the 14-year-old's. But, even if it does not, an account of environmental duties in different number choices will at least have brought us somewhere. In a section on reflective equilibrium, below, I put an additional methodological requirement on approaches to the non-identity problem. The requirement is that the account should hold true in a different number choice. This requirement is particularly relevant to impersonal approaches, as such theories have proved to be vulnerable in this regard. In the present thesis, such a requirement is thus salient for natural law, but also where contractualists use implicitly impersonal arguments.

Third, the environmental case expounded here can be described as one of *collective agency*. We are faced with many individual acts that – taken together – cause detrimental global warming. It has been argued that removing or adding one separate individual act does not make any difference at all to the outcome.³³ An implication of this would be that these individual acts cannot possibly be described as being morally objectionable. In turn, whether and how a collective act in general, or a collective act of depletion in particular, can or should be described as in itself intentional and thus subject to moral scrutiny is an ongoing discussion in the social sciences.³⁴ It might be that there is no act there that can be subject to moral scrutiny, and if there is, it is not clear if and how we should use conventional resources in moral theory to discuss such an act.

This thesis does not overly problematize collective action (although, see the discussion on agents from a natural law perspective in Chapter 4). Undeniably, such questions do arise in relation to climate change, but they do so independently of future generations. In this thesis, I wish to shed light on

³³ Walter Sinnott-Armstrong, “It’s Not *My* Fault: Global Warming and Individual Moral Obligations,” *Advances in the Economics of Environmental Resources*, Vol. 5: *Perspectives on Climate Change: Science, Economics, Politics, Ethics*, Emerald, 2005; Aaron Maltais, “Radically Non-Ideal Climate Politics and the Obligation to at Least Vote Green”, *Environmental Values*, Vol. 22, No. 5, 2013, Ewan Kingston and Walter Sinnott-Armstrong, “What’s Wrong With Joyguzzling”, *Ethical Theory and Moral Practice*, Vol. 21, No. 1, 2018.

³⁴ An important issue has been how to account for a collective agency that is neither mysterious, nor reducible to the agency of individuals (see Christian List and Philip Pettit, “Group Agency and Supervenience”, *The Southern Journal of Philosophy*, Vol. 44, 2006; *Group Agency: The Possibility, Design, and Status of Corporate Agents*, Oxford University Press, 2011). There is also a concern that, in the case such agency proved possible, it would concede personhood to entities that for various reasons should not be assigned such status (see Cathal O’Madagain, “Group Agents: Persons, Mobs, or Zombies?”, *International Journal of Philosophical Studies*, Vol. 20, No. 2, 2012).

problems that arise exclusively with regard to accounting for intergenerational duties.³⁵ Given that the present generation can be said to carry out a depletionary act, which lowers the quality of future people's lives, in what sense is such an act morally objectionable? To discuss this and subsequent specified questions, I assume that the contributions of individuals matter to the outcome and treat the present generation as an aggregate group.³⁶ We may think of any potential duty on the part of the present generation as the joint moral duties of individuals.³⁷ The question remains how these duties should be discharged, which I discuss from a specific political theory perspective in Chapters 5–7.

I do, however, take the lack of interaction and the instability in numbers into consideration in this thesis. I understand the environmental case to put these particular demands on approaches to the non-identity problem. In a subsequent section, the capacity to deal with non-identity in non-interaction cases and different number-cases is put forth as additional methodological requirements.

Initially in this thesis, an overarching question was asked given anthropogenic climate change: “What justifies environmental intergenerational duties?” The area of interest has now been further delimited. I have considered a context where important decisions on climate change are made. On this basis, I have chosen to study the capacity of two theories – contractualism

³⁵ This is not to reject the idea that moral duties could be discussed in corporate collective terms or that this could have interesting implications for the non-identity problem that would merit discussion elsewhere.

³⁶ How such contributions make a difference is subject to debate. In one view, individuals can be said to add *imperceptible* harm or damage by each act: “... though each act has trivial effects, it is often true that we together impose great harm on ourselves or others. Some examples are pollution congestion, depletion, inflation, unemployment, a recession, over-fishing, over-farming, soil erosion, famine, and overpopulation” (Parfit [1984], 444). In another view, there is a *risk* that one's own individual act of emission is the very one *triggering* climate change (Shelly Kagan, “Do I Make a Difference?”, *Philosophy & Public Affairs*, Vol. 39, No. 2, 2011). In a different vein, John Nolt has argued that the average American, through a *life time* of emissions, is responsible for the suffering or premature death of one or two future people (John Nolt, “How Harmful Are the Average American's Greenhouse Gas Emissions?”, *Ethics, Policy and Environment*, Vol. 14, No. 1, 2011; Avram Hiller, “Morally Significant Effects of Ordinary Individual Actions”, *Ethics, Policy and Environment*, Vol. 14, No. 1, 2011). Here, I remain agnostic with regard to how individual acts matter.

³⁷ See Anne Schwenkenbecher, “Joint Moral Duties”, *Midwest Studies in Philosophy*, Vol. 38, No. 1, 2014.

and natural law – to justify such duties. Furthermore, I have considered the extent of previous intergenerational scholarship within these strands. On this basis, the problem of non-identity has been chosen as a point of departure when discussing both theories. Finally, I have considered other problems that may arise as one addresses non-identity. Against this background, I have formulated additional desiderata on approaches to the non-identity problem, which the methods in this thesis take further into account.

Given these delimitations, I proceed by formulating and justifying three research questions. They are formulated and justified in connection to three different versions of the non-identity problem. With regard to contractualism, the questions prompt an analysis of how person-affecting resources leave the problem of non-identity unsolved. With regard to natural law, the questions (together with the preceding demonstrations regarding contractualism) are an impetus for considering an impersonal account, which could circumvent the non-identity problem.

1.5 Research questions

There can be several relevant intuitions with regard to future people’s environment. Given the non-identity problem as a point of departure, and an interest in contractualism and natural law, the intuitions provided below give rise to a specific set of research questions.

Consider, first, the environmental *wrongdoing intuition*.

The wrongdoing intuition: leaving future generations with an unsustainable environment is morally wrong.

An intuition about wrongdoing appears to be the most common one for non-identity scholars to take on. In the *Stanford Encyclopedia of Philosophy*, Melinda Roberts writes: “an act can be *wrong* only if that act makes things worse for, or (we can say) harms, some existing or future person.”³⁸ In a recent book, which appears to be the most comprehensive overview of the non-identity literature so far, David Boonin (2014) likewise describes the

³⁸ Melinda Roberts, "The Nonidentity Problem", in Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2015.

efforts to deal with the non-identity problem in terms of accounting for a moral wrong.³⁹

In the present introduction, however, I have described the non-identity problem as being more serious than that. It is not only that, all things considered, we find it difficult to account for a moral wrong. It seems we cannot even provide a reason for why leaving behind an unsustainable environment would, in any way, be morally objectionable. In the coat example earlier, it was possible to describe the stealing of the coat as morally objectionable, even if it were not wrong given the circumstances. But in non-identity cases, we do not even manage this basic kind of task.

We may thus refer to an environmental *basic intuition* as follows.

The basic intuition: leaving future generations with an unsustainable environment is (at least) morally objectionable.

At times, Parfit has tried to show how reducing the quality of future people's lives would in at least "one way" be worse. This also seems to presuppose an intuition along more basic lines.⁴⁰ Given the non-identity problem as a point of departure, and an interest in contractualism and natural law, the two intuitions provide us with two different questions in moral theory. A primary question stems from the basic intuition and can be put as follows.

Question 1: Given future people's non-identity, what is the moral reason – according to contractualism and natural law, respectively – not to leave future people with an unsustainable environment?

For brevity, knowingly concerned with contractualist or natural law responses to the non-identity problem, we may ask a shorter version of this question.

Q1: What is the moral reason not to leave future people with an unsustainable environment?

In Chapter 2, I lay out a basic non-identity problem formally. When I speak simply of the non-identity problem or NIP, from now on, it is this basic

³⁹ Boonin (2014), 3–5.

⁴⁰ Derek Parfit, "Future People, the Non-Identity Problem, and Person-Affecting Principles", *Philosophy & Public Affairs*, 2017, p. 129. See also Parfit's question as he introduces the non-identity problem along with the case of "the 14-year-old girl": "What is the *objection* to her decision?" (Parfit [1984], 359, emphasis added).

problem I am referring to. Theoretically speaking, we have still made progress if we are able to account for why leaving an unsustainable environment for the future would be morally objectionable at all. This progress would remain, *even if* we were unable to describe the act as morally wrong.

Yet, we may insist on a second question, for at least two reasons. First, we may feel strongly about the more advanced intuition that leaving future people with an unsustainable environment is morally wrong. Secondly, we may want to make claims on others to sacrifice something for an intergenerationally sustainable environment. We would then want to be able to proceed from moral objectionability (and a *pro tanto* reason not to deplete) to an account of moral wrongdoing (a similar duty all-things-considered). A theory of objectionability that has no prospects of getting us to an account of moral wrongdoing seems less desirable than one that has such prospects.

A second question thus stems from the wrongdoing intuition and could be put as follows.

Question 2: Given non-identity, why is it wrong – according to contractualism and natural law, respectively – to leave future people with an unsustainable environment?

For brevity, knowingly concerned with contractualist or natural law responses to the non-identity problem, we may ask a shorter version of this question.

Q2: Why is it wrong to leave future people with an unsustainable environment?

The non-identity problem connected to the second question can be seen as a different problem, strictly speaking, as the kind of intuition that needs to be accounted for is different. In Chapter 2, I lay it out formally as a non-identity problem in a wrongdoing version, referring to it as NIPwrong. In Chapter 3, my treatment of contractualist moral theory relates to both versions of the problem which have been mentioned hitherto. In Chapter 4, I first formulate a possible natural law approach to the basic non-identity problem (NIP), whereupon I go on to discuss natural law and the wrongdoing problem (NIPwrong).

There is, however, a third position one may want to account for. This position partly rests on the view that the pursuit of a sustainable environment would be more efficient and reliable if it were (also) secured by public insti-

tutions. Since that view also depends on empirical facts, it may not be entirely adequate to refer to it as intuitive. Yet, I refer to the normative position below as a *policy intuition*.

The policy intuition: if future people are wrongfully being left with an unsustainable environment, this should be prevented by public institutions.

As is the case with the two previous intuitions, we may not be able to account theoretically for this claim. In this thesis, one person-affecting and one impersonal approach are studied as approaches to non-identity. As is shown in Chapter 2, neither of the approaches rely on or would rely on a notion of harm. These efforts could be considered successful or not. Yet, if it is the case that the concept of harm remains inapplicable with regard to future generations, this deprives us of a commonly used argument for state intervention. A canonical statement can be ascribed to 19th century liberal philosopher John Stuart Mill. He (famously) wrote: “The only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others”.⁴¹ Certainly, not all theories align with Mill’s contention, which implies that the purpose of harm-prevention is necessary to allow the exercise of public institutions. Yet, I argue, contractualism and natural law at least need to relate to this position as a *prima facie* claim to be rejected. Furthermore, any rejection of the harm principle needs to provide an alternative principle that applies both with specific regard to institutions and in the non-identity case we are dealing with. Even if we managed to answer the first two questions satisfactorily, moral principles that account for objectionability and wrongdoing are not necessarily applicable as political principles. Furthermore, any political principle that traditionally rejects the harm principle (with regard to contemporaries) must prove consistent in an application to future people. If there is no such principle, it would seem impermissible to use public institutions in order to safeguard future people’s environment. In Chapter 5, I lay out this problem formally as an institutional non-identity problem, or INIP.

Hence, a third question arises from a policy intuition, and the question can be put as follows.

⁴¹ John Stuart Mill, *On Liberty*, John W. Parker and Son, West Strand, 1859, Ch. I, sec. 9.

Question 3: Given non-identity, why is it permissible – according to contractualism and natural law, respectively – to use institutions to prevent future people being left with an unsustainable environment?

For brevity, knowingly occupied by contractualist or natural law responses to the institutional non-identity problem, we may ask a shorter version of this question.

Q3: Why is it permissible to use institutions to prevent future people being left with an unsustainable environment?

In the analyses, carried out in Chapters 3, 4, 6 and 7, the research questions are posed with regard to contractualism and natural law, respectively. The questions are not posed in a way that permits one to answer “no, there are no environmental intergenerational duties”. Yet, a theory may not provide a coherent answer to one or more of these questions. The answer is then “–”. If or when this occurs, the conclusion needs to be that environmental intergenerational duties cannot be affirmed on the basis of the theory in question.

It may, furthermore, be that a theory *does* account for environmental intergenerational duties with the non-identity problem in view. If so, other problems may arise. As already touched upon, I include this concern in a method I use in the present enquiry, the method of reflective equilibrium. Below, I present a more general discussion of methods, and thereafter account fully for my tradition-conscious use of reflective equilibrium.

1.6 Methods

This dissertation is written in the style of analytical political theory, in both a formal and a substantial sense, both explained here. However, there is one substantial sense in which this thesis is not analytical. The choice of theories, outlined above, has been made in view of MacIntyre’s idea of a rationality of traditions, and what I refer to as a flesh-and-blood thesis. Contractualism and natural law are assigned importance, due to a persisting influence in contemporary political life. One may think that, in order to account for environmental intergenerational duties, we should not give way to such a consideration. One might think that we should not care about the context in which theories are used, but only about what is the best argument (if there is one at all) for environmental intergenerational duties. This view, to which there is an im-

portant point, could be referred to as analytical in a strong, substantial sense. The point of such an approach is an *exclusive* quest for (moral or conceptual) truth. Yet, this thesis is not analytical in the strong, substantial sense. The thesis is, however, analytical in two other senses: a formal sense and a weak, substantial sense, which I account for below.

An analytical approach could be said to uphold methodological ideals more generally – of systematicity, clarity and transparency.⁴² This can be referred to as a formal sense of analytical. The thesis aims to be analytical in this sense. Compared to empirical fields within political science, political theory may appear to have less established methods of carrying out a study. Some political theorists even reject any advanced methods and claim that their method is simply to “read, think and write”. Here, however, I take (formally analytical) methods to consist of a *way* of justifying one’s conclusions (a way to write), which makes it easier for a potential critic to scrutinize one’s endeavours.

As one conducts tradition-conscious enquiry, with a formally analytical approach, methods may differ a great deal depending on one’s interest. Some theorists may be interested in how systems of thought shape understandings and actions in a particular political setting, or vice versa. This would require a specific ideological analysis of institutions, practices and discourse.⁴³ I do not engage with contractualist and natural law thinking in this way. I simply assume that they are influential enough in moral and political life to warrant our particular attention. Another theorist might be interested in what a certain philosopher meant by a concept, such as right(s) or justice, some centuries ago. This would require specific methods of textual analysis and interpretation, dealing also with historical context.⁴⁴ I do not engage thoroughly, in this way, with historical philosophers of a social contract or of natural law. Although I may refer to contract and natural law thinkers of the past, my focus is on recent expressions of each kind of theory, which (again) appear to have some degree of salience in contemporary political life. What characterizes any of the enterprises mentioned, with regard to methods, is

⁴² Adrian Blau, “Introduction: A ‘How-to’ Approach”, in Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, pp. 6–7.

⁴³ Jonathan Leader Maynard, “Ideological Analysis”, in Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, pp. 302–303.

⁴⁴ Johan Olsthoorne, “Conceptual Analysis”, in Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, p. 185.

that there are “principles of good practice” to follow.⁴⁵ None of the approaches are analytical in a substantial sense, but they are analytical in said formal sense. This thesis is, in addition, analytical in substance, although not in the strong sense first described. It can be referred to as analytical in a weak, substantial sense, as explained below.

In this thesis, I carry out a study of normative theory. Normative theory has its own good principles to follow, distinct from both of the examples above (ideological analysis and history of ideas). The study regards how two normative theories (present in contemporary political life) are able to respond to the non-identity problem without running into other problems. It can be clearly distinguished from a related study in meta-ethics, which would concern what those normative theories are expressions of (truth-claims, perspectives, social constructions, a combination...). It is not as easily distinguished from a study in applied ethics, which would concern what to do. The study centres around the ability to conclude in favour of safeguarding future people’s environment. If a theory were found to do this, that would seem to have implications for decisions on what to do, at least for some people. It would speak in favour of acting in order to safeguard future people’s environment. Likewise, if no theory were found to do this, in our practical decisions we would not seem morally obliged to consider the environment for the sake of future people.

In this study, it is assumed to be true that, in different ways, we should conclude in favour of safeguarding future people’s environment. Yet, in the normative study carried out here, the study objects remain the theories themselves. Moral judgments such as “leaving future generations with an unsustainable environment is morally wrong”, and “leaving future generations with an unsustainable environment is (at least) morally objectionable” figure as methodological constraints. The purpose of our questions is not to investigate whether said judgments are correct (and thus what we should do). Nor is the purpose to find the right argument, unconditionally. The purpose is to study how the *selected theories* can (or cannot) be used to generate what is assumed to be the correct conclusion. To a limited extent, the substantially analytical concern announced initially, about whether we get the answer right, applies here. Yet, the thesis is concerned with two theories that, directly or indirectly, have some people assess and reassess their judgments. While truth matters to the extent described above, it is not the only thing that mat-

⁴⁵ Blau (2017), 2.

ters. One could refer to this approach as substantially analytical, but in a weak sense. We know what we would like the conclusion to be, but we are not sure whether any of the theories can offer a principle that warrants that judgment. We would like to find out. A common method in normative theory, which could be used in this case, is the method of “reflective equilibrium”.⁴⁷ I account for this method below, as well as my tradition-conscious use of it.

1.6.1 Reflective equilibrium

I evaluate contractualism and natural law by employing the method of reflective equilibrium. The method, which I only make partial use of, can be seen as fundamental to reasoning, which is why it may be used without being spelled out. The aim of this section is to spell out my use of reflective equilibrium, defining its specific requirements here.

As described by Carl Knight, reflective equilibrium concerns “the relationship between principles and judgments”. While principles are “relatively general rules for comprehending the area of enquiry”, judgments are “our intuitions or commitments [...] regarding the subject matter”.⁴⁹ Judgments are also the starting point for reflective equilibrium. Even though judgments trade on one’s “gut feeling”, they are not supposed to express the feeling one may have in the heat of the moment but should rather be “considered judgments”.⁵⁰ The point of reflective equilibrium is to achieve an accord between principles and judgments, which is done through a revision either of one’s principle or one’s judgment. Knight provides the following example: “if I am considering the principle that it is always wrong to lie but have the judgment that it would not be wrong to lie in order to save a life, I can reach equilibrium by revising either the principle or the judgment.”⁵¹

In this study, the judgments are held constant in search of a principle that warrants the judgment. In order to achieve a so-called “narrow” reflective

⁴⁷ Walter Sinnott-Armstrong, Liane Young, and Fiery Cushman, “Moral Intuitions”, in John Doris and The Moral Psychology Research Group (eds.), *The Moral Psychology Handbook*, Oxford University Press, 2010, p. 246; Gary Varner, *Personhood, Ethics, and Animal Cognition*, Oxford University Press, 2012, p. 11; Carl Knight, “Reflective Equilibrium”, in Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, p. 46.

⁴⁹ Knight (2017), 46.

⁵⁰ John Rawls, *A Theory of Justice*, revised edition, Oxford University Press, 1999, p. 42, cited in Knight (2017), 47.

⁵¹ Knight (2017), 46.

equilibrium, any principle that grounds the judgment would be acceptable. It has been argued that such an equilibrium is of “limited epistemic value”.⁵² In reaching a narrow reflective equilibrium, according to Rawls one is presented with “only those descriptions which more or less match one’s existing judgments except for minor discrepancies”.⁵³ Often, then, it figures as a first step towards finding a correct principle, a step which is not always interesting in itself. With regard to environmental intergenerational duties, however, even this step can prove demanding. While a judgment on wealth distribution among contemporaries might gain support from several different principles that people tend to embrace, it may prove difficult to find any principle that coherently grounds a concern for future people. In order to achieve narrow reflective equilibrium in this study, a theory must offer a principle that justifies our intuitions regarding future people’s environment.⁵⁴

Given what has been said so far with regard to the environmental case – about non-identity, non-interaction and the different number choices – I put three specific requirements on a narrow reflective equilibrium. The main focus of the study is on the first of these. First of all, a principle should entail an intuitively correct judgment in simple different people choices. That is, a theory must enable us to conclude in favour of safe-guarding future people’s environment without being hindered by future people’s non-identity.

Secondly, and as far as a theory seems to deal successfully with a different people choice, a principle should entail the same judgment in a non-interaction choice. In such a choice, a theory must remain able to lead us to conclude in favour of safeguarding future people’s environment, despite the lack of interaction between present and future people. The theory should not entail that, if present people are never going to face future persons, there are no moral duties in relation to them. The environmental case highlights the

⁵² Op. cit., 49.

⁵³ Rawls (1999), 43, cited in Knight (2017), 49; see also John Rawls, *Political Liberalism*, expanded edition, Columbia University Press, 2005, p. 8 n 8.

⁵⁴ Cf. Daniel Attas, “A Trans-Generational Difference Principle”, in Gosseries and Meyer (eds.), *Intergenerational Justice*, Oxford University Press, 2009; Boonin (2014). Concerned with the capacity of Rawls’ original position to produce a conception of intergenerational justice, Attas states that features introduced in the original position “must be *effective* in generating a plausible conception of justice” (referring to this as an “efficacy criterion”) (Attas [2009], 192, emphasis added). Boonin, on his part, suggests a “robustness requirement”, which demands that one arrives at one’s considered judgment in all relevant cases (Boonin [2014], 21). With these criteria, Attas and Boonin seem to require a narrow equilibrium in that we must be able to conclude in line with our considered judgment.

need for such a requirement. The lowering of the quality of life could very well occur at a point when present people could all expect to be dead. If a response to the non-identity problem has the implications of giving rise to such a (non-interaction) problem, it is not considered to be a fully satisfactory response.

Third, still as far as a theory seems to deal successfully with a different people choice, a principle should entail the same judgment in a different number choice. In such a choice, a theory must remain able to lead us to conclude in favour of safeguarding future people's environment, even if options entail different numbers of people. The theory should not imply, for instance, that some minimal life-quality of a large population outweighs the higher life-quality of a smaller population (referred to in the literature as a "repugnant" conclusion). The environmental case highlights the need for such a requirement. The population experiencing a degraded environment could very well be larger than a population experiencing a well-kept environment. If a response to the non-identity problem has the implications of giving rise to this (different numbers) problem, then it is not considered a fully satisfactory response. This requirement has proved difficult to fulfil for impersonal theories. It is thus particularly salient for natural law, which here figures as an impersonal theory.

These are the requirements of a narrow reflective equilibrium, or narrow equilibrium for short. To a limited extent, I also require a so-called "wide" reflective equilibrium. Knight argues that wide reflective equilibrium is achieved as the principle holds good compared to other similar principles; is reconcilable with one's background views (e.g. ontological positions about personhood); is implied by potential devices of representation one employs (Rawls' original position is such a device); and withstands other possible counter-arguments.⁵⁵ In a conventional view, which is analytical in a strong, substantial sense, these requirements have nothing to do with tradition. For example, if a contractualist principle were to work out if we treated a group as a person, we could perhaps redefine "person" in this way. It would depend on whether the changed conception of person seemed reasonable and had no unacceptable implications. It would not matter whether the theory is thus rendered unrecognizable and unappealing to many people (liberals) who are normally influenced by contractualism. Similarly, if a device of representation turned out to be inapplicable, it would say nothing about a tradition. It

⁵⁵ Knight (2017), 51.

would simply mean that we should not use the device. According to this view, a wide reflective equilibrium can also be very demanding. As Rawls' description has it: "one is to be presented with all possible descriptions to which one might plausibly conform one's judgments together with all relevant philosophical arguments".⁵⁶ This should be considered an ideal, which at best can be pursued jointly by an entire research community. A study along these lines, then, would have to be delimited in some fashion.

Here, the pursuit of a limited, wide equilibrium is carried out in respect of tradition. Arguments are then conditioned by established assumptions within a given context. According to the idea of traditions, principles are not simply snatched from out of the air but are formulated as part of larger systems of thought and practice.⁵⁷ It is not a given what exact requirement(s) should be put on an argument, in order for us to consider it in line with a tradition. On the one hand, it is part of the idea of *rational* traditions that they undergo change over time. Whether an unsuccessful theory forebodes the death or change of a tradition can probably be known only in retrospect. On the other hand, we would not accept any argument as "contractualist" or according to "natural law", simply because the term is used. I shall here put forward a minimal requirement with regard to a limited, wide equilibrium, concerning only one background view. I require that, in order to count as a response according to contractualism or natural law, respectively, the theories should at least keep their position on each side of the person-affecting/impersonal divide.⁵⁸ While contractualists traditionally affirm a personal reasons restriction, natural law theorists seemingly do not. I assume that this is a fun-

⁵⁶ Rawls (1999), 43, cited in Knight (2017), 49.

⁵⁷ In other words, one may see traditions as whole systems including background assumptions, common principles, established devices of representation, previous judgments, social and linguistic practices, and so forth.

⁵⁸ This delimitation may not only more or less leave aside other kinds of consideration, such as comparisons with other relevantly similar theories, it may also exclude several other background views of interest. However, I do evaluate or employ established devices of representation, and think these pursuits are captured by the background requirement set out here. With regard to an institutional non-identity problem, I examine the usefulness of Rawls' original position (popular among contractualists), and employ the afterworld in Dante's *Divina Commedia* (this model should resonate with natural law theorists, and could be regarded as a natural law device of representation). These devices could be said, precisely, to represent differences with regard to the person-affecting/impersonal divide.

damental sort of view, and among those “sticky” assumptions by which liberals and conservatives recognize the respective theory as “theirs”.⁵⁹

Hence, we want the theories to bring us to a narrow reflective equilibrium: the arguments based on a particular theory should cohere with (what is assumed to be) a morally true judgment. They should also remain coherent with at least one traditional assumption employed by the theory in the past, central to this study: the theories should remain on their respective sides of the person-affecting/impersonal divide, which I account for further in Chapter 2. It implies, in the analyses, that while contractualism is bound to remain with a personal reasons restriction, natural law is not. While the requirements put on a narrow equilibrium include a requirement that should be particularly challenging for natural law, the requirement of a limited wide equilibrium should be particularly challenging for contractualism. A successful theory should achieve both narrow and wide equilibrium.

1.7 Outline of the thesis

The rest of this dissertation has the following outline. At the beginning of Chapter 2, I lay out two neighbouring versions of the non-identity problem in moral theory. A basic version is the point of departure for this study. Subsequently, I provide an overview of general approaches to these versions of the problem. Here, I categorize and introduce the theories studied in this thesis, with particular regard to the person-affecting/impersonal divide.

In Chapter 3, I show that, to the extent that a contractualist approach to non-identity seems to succeed, this happens as contractualists abandon a person-affecting view. This is to say that contractualism, as we have come to know it, does not account for environmental intergenerational duties. It also reiterates an established view in philosophy: that person-affecting theory does not solve the non-identity problem.

In Chapter 4, I first develop the claim that natural law allows for impersonal arguments. I then begin to explore natural law by providing a tentative natural law argument in respect of the basic non-identity problem. However, I also treat possible objections to such an account. This includes treating

⁵⁹ This requirement has an affinity with Boonin’s strong, substantial analytical view that a satisfying response to the non-identity problem should be “familiar enough to avoid the appearance of being a merely ad hoc invention.” He refers to this as an “independence requirement” (Boonin [2014], 152).

intergenerational problems other than non-identity, as well as versions of the non-identity problem other than the basic one (such as a wrongdoing problem), in relation to natural law.

In Chapter 5, I develop an objection within political theory, which arises mainly with regard to the natural law account. According to this objection, natural law's reason for caring about future people's environment is not sufficient for public intervention. Rather, the natural law account could seem to speak against institutional responses to climate change. I refer to this as a specific, institutional non-identity problem, which natural law may share with other theories. In Chapter 6, I specify the obstacles faced by John Rawls' contractualism as an implicit solution to the institutional non-identity problem. In Chapter 7, I provide a tentative approach to the institutional non-identity problem based on natural law theory. Chapter 8 summarizes and discusses the findings of this dissertation.

2 The non-identity problem revisited

In this chapter, I provide a formal account of a basic version of the non-identity problem with specific regard to the environmental case implied by climate change. I also show formally how this basic version differs from the non-identity problem in a wrongdoing version.

Thereupon, I account for four general approaches that scholars have taken to the non-identity problem in either version: asserting, avoiding, solving (in a focal sense) and circumventing the problem. I show that the person-affecting restriction in contractualism requires that contractualists try to solve the problem (in a focal sense). In Chapter 3 of the thesis, I proceed to studying existing efforts of this kind. The present chapter also demonstrates how utilitarianism, which is impersonal, has conventionally been used in efforts to circumvent the problem. This specific approach is known to have given rise to subsequent problems and is not explored further.

Finally, it is claimed that there are impersonal resources in natural law, of a different kind than in utilitarianism. This difference is that the impersonalism in natural law is not necessarily aggregative. Natural law's impersonal resources could likewise be used in efforts to circumvent the problem. In Chapter 4 of the thesis, I go on to develop an impersonal natural law response, and highlight subsequent problems that may arise.

2.1 Two (moral) versions of the problem

A starting point for a detailed formulation of the non-identity problem is Parfit's "time-dependence claim". He states that "[i]f any particular person had not been conceived when he was in fact conceived, it is *in fact* true that he would never have existed".⁶⁰ This, in turn, has the strange implication that "lowering the quality of life might be worse for no one":

⁶⁰ Parfit (1984), 351, emphasis in original. To render his claim less controversial, Parfit settles for the following variant of his original Time-Dependence Claim: "If

Suppose that we are choosing between two social or economic policies. And suppose that, on one of the two policies, the standard of living would be slightly higher over the next century. This effect implies another. It is not true that, whichever policy we choose, the same particular people will exist in the further future. Given these effects of two such policies on the details of our lives, it would increasingly over time be true that, on the different policies, people married different people. And, even in the same marriages, the children would increasingly over time be conceived at different times. As I have argued, children conceived [at different times] would in fact be different children. Since the choice between our two policies would affect the timing of later conceptions, some of the people who are later born would owe their existence to our choice of one of the two policies. If we had chosen the other policy, these particular people would never have existed.⁶¹

The claim is not very controversial – as Parfit tells us, it is quite “easy to believe”.⁶² But, believing this claim will have us accept the first in a series of premises that can lead to various counterintuitive conclusions. David Boonin (2014) distinguishes five such premises, in a case similar to that of the 14-year-old girl – a woman who chooses under what circumstances to conceive. Here, I expound a partly similar (but in important respects different) non-identity argument in a case regarding the depletion of environmental resources.⁶³ The premises are based on common *prima facie* beliefs, and many would on reflection modify at least some of these. Furthermore, the moral theories examined in this thesis compete with at least one of these premises. The argument is neither provided as perfectly sound, nor as representative of what most people would actually believe. The argument allows us, rather, to categorize and test the assumptions of theories, precisely as responses to the non-identity problem.

Let us imagine a present generation facing the kind of choice described by Parfit above. Let us assume that the members of this generation must choose

any particular person had not been conceived within a month of the time when he was in fact conceived, he would in fact never have existed” (p. 352).

⁶¹ Op. cit., 361. We are thus dealing with numerical identity, as opposed to qualitative identity. See op. cit., p. 201: “I and my replica are *qualitatively* identical, or exactly alike. But we may not be *numerically* identical, or one and the same person. Similarly, two white billiard balls are not numerically but may be qualitatively identical. If I paint one of these balls red, it will cease to be qualitatively identical with itself as it was. But the red ball that I later see and the white ball that I painted red are numerically identical. They are one and the same ball.”

⁶² In an effort to help us accept the time-dependence claim, Parfit asks us to think about the following question: “how many of us could truly claim, ‘Even if railways and motor cars had never been invented, I would still have been born?’” (Op. cit., 361.)

⁶³ The case builds on Parfit’s cases of Depletion and Risky Policy.

whether or not to deplete a certain kind of natural resource. If this kind of resource is utilized, this will destabilize the Earth's ecosystems in a long-term perspective. We may refer to the present population as Generation One (G1). The choice of Depletion would grant G1 more material benefits, as compared to Conservation, which would bring about less material benefits within their lifetimes. If Depletion is chosen, this will lead to an unsustainable environment. A generation in another century, Generation Five (G5), will experience a significantly reduced quality of life due to, let us only say, a natural disaster. G5's lives will remain worth living, but just barely. If, on the other hand, G1 chooses Conservation, this will (according to the time-dependence claim) yield a different set of people in the future. We may refer to this set as Generation Five* (G5*). These people's environment will be sustainable, and they will not have to endure the disaster that would strike G5.

Assume that – aware of the risks – G1 still chooses Depletion. As a result of their choice, a natural disaster hits G5 and significantly reduces G5's living standards. Most of us have the feeling that G1 did something morally objectionable. Yet, the people belonging to G5 are not made worse off by G1's choice of Depletion.⁶⁴ If G1 had chosen Conservation, the people of G5 would not have existed at all. Instead, there would have been G5*, an entirely different set of people.⁶⁵ Thus, although G5's living standards have been reduced, they have not been made worse off than they would otherwise have been, had G1 not committed their act. We may then formulate a first premise in a non-identity argument as follows:

P1: Generation One's act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than they would otherwise have been

Rendering somebody worse off can be considered a "common sense" definition of harm.⁶⁶ For an act to harm someone, many will say, it must make that

⁶⁴ Cf. Boonin (2014), 3.

⁶⁵ See also Edward Page's "identity dependence claim": "the adoption of the Depletion Policy is a remote, but necessary, condition of the Depletion People coming into existence and leading lives which are worth living" (Edward Page, "Global Warming and the Non-Identity Problem", *Self and Future Generations – an intercultural conversation*, The White Horse Press, 1999, p. 112).

⁶⁶ Lukas Meyer ("Past and Future: The Case for a Threshold Notion of Harm" in Meyer, Paulson and Pogge [eds.], *Rights, Culture and the Law: Themes from the Legal and Political Philosophy of Joseph Raz*, Oxford University Press, 2003),

person worse off than they would have been, had we not committed the act.⁶⁷
We may here speak of P2, as follows.⁶⁸

P2: A's act harms B only if A's act makes B worse off than B would otherwise have been

From these two premises alone, we are able to deduce that Generation One's act of Depletion rather than Conservation does not harm Generation Five.

In order to describe the problem correctly, we will need to make a further stipulation at this point: that G1's act does not harm anyone other than G5.

makes a helpful comparison between the two worse off-notions *diachronic* and a *subjunctive-historical* harm, showing why P2 (a version of the subjunctive-historical notion) seems preferable with regard to future generations. I reproduce accounts of these in detail below, for comparison.

A diachronic notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t1 we thereby harm someone if and only if we cause this person to be worse off at some later time t2 than the person was before we acted in this way, that is, before t1. (Meyer [2003], 148.)

A subjunctive-historical notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t1, we thereby harm someone only if we cause this person to be worse off at some later time t2 than the person would have been at t2 had we not [acted in this way] at all. (Meyer [2003], 148. I have exchanged "interacted with this person" for "acted in this way".)

It is quite obvious why for our purposes we should avoid a diachronic notion of harm. At the time before our act, which takes place at t1, future generations do not exist at all. We thus lack a point of reference that we may compare to the state of future people at t2, the time at which they experience the consequences of our act. Among these variants, then, a subjunctive-historical understanding of harm will seem more adequate when dealing with future generations. If we accept the time-dependence claim, however, the subjunctive-historical notion of harm (simplified in P2) seems ineffective. G1's act in the case of Depletion gives rise to G5 who would otherwise not exist. G5 will thus not be worse off with a deteriorated environment than they would otherwise have been. We are then unable to appeal to our notion of harm to account for the act as morally objectionable.

⁶⁷ Similarly, Page has referred to a "No Worse Off Claim": "an act harms somebody only if it makes a particular person worse off than they would have been had the act not been performed" (Page [1999], 112).

⁶⁸ Boonin expresses this differently: "If A's act harms B, then A's act makes B worse off than B would otherwise have been" (Boonin [2014], 3). I find that formulation less pedagogical, as it is not as clear that the concept of harm is the *definiendum* (what is being defined) while the notion of making somebody "worse off" is the *definiens* (what defines it).

In many actual cases of environmental hazards, the consequences are already faced by present generations. It could thus be argued that G1 harms (some of) its own members. Yet, as Boonin argues, it is still reasonable to add this kind of stipulation. When we are faced with the case of the natural disaster hitting G5, and think that G1 did something morally objectionable, we do not ask ourselves whether the people of G1 also inflicted some harm on themselves (or require them to have done so in order to say that what they did was morally objectionable). What we believe is that G1 did something morally objectionable with regard to future people, independently of whether G1 caused any harm to itself.⁶⁹ We are interested in this intuition. We are interested in whether there is any reason to safeguard the environment for future generations; whether there are additional reasons is not our concern here. This does not mean that we do not care about present people's situation at all. It only means that, right now, we are theoretically interested in the intergenerational aspect of the environmental case. So, we shall formulate, for the sake of enquiry, a third premise, P3.

P3: Generation One's act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

The three premises hitherto accounted for entail that Generation One's act of Depletion rather than Conservation does not harm anyone.

At this point, Boonin would ask us to take into account a principle that many people accept, at least at first glance, namely a moral "harm-principle". His description of this thought is that, if an act harms no one, then the act is not morally wrong. Edward Page, for example, refers to an "inter-generational harms claim" where "the Depletion Policy is wrong because it harms future persons".⁷⁰ Melinda Roberts writes in the *Stanford Encyclopedia of Philosophy*: "an act can be wrong only if that act makes things *worse for*, or (we can say) *harms*, some existing or future person."⁷¹ Similarly, Boonin describes attempts at solving the non-identity problem as efforts to account for a moral wrong. But, I believe that the non-identity problem is more serious than that. It is not only that, all things considered, we find it difficult to account for a moral wrong. It seems we cannot even provide a

⁶⁹ Cf. Boonin (2014), 4.

⁷⁰ Page (1999), 112.

⁷¹ Roberts (2015)

reason for why it would be, in any way, morally objectionable.⁷² To get at this problem, we could reformulate the harm-principle in the following way: if an act does not harm anyone, then the act is not morally objectionable. We may thereupon break this principle down into two premises: the claim that, if an act harms no one, then no one can object to it on personal grounds, and the claim that, if no one can object to an act on personal grounds, then it is not morally objectionable.⁷³ First, we get P4.

P4: If an act does not harm anyone, then the act cannot be objected to on personal grounds

This asserts that, if an act does not harm a particular person, then no one has a claim against the act being done.

We also get a premise saying that, if no particular person has such a claim, then the act is not morally objectionable. We formulate this as P5.

P5: If an act cannot be objected to on personal grounds, then the act is not morally objectionable

While the first four premises entail that Generation One's act of Depletion rather than Conservation cannot be objected to by anyone on personal grounds, these premises together with P5 will bring us to our conclusion, C.

C: Generation One's act of Depletion rather than Conservation is not morally objectionable

In all, we have formulated the following argument:

The basic non-identity problem (NIP)

P1: Generation One's act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than they would otherwise have been

P2: A's act harms B only if A's act makes B worse off than B would otherwise have been

P3: Generation One's act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

P4: If an act does not harm anyone, then the act cannot be objected to on personal grounds

⁷² See also Parfit's question as he introduces the non-identity problem along with the case of the 14-year-old girl: "What is the *objection* to her decision?" (Parfit [1984], 359, emphasis added).

⁷³ Cf. Boonin (2014), 4.

P5: If an act cannot be objected to on personal grounds, then the act is not morally objectionable

C: Generation One's act of Depletion rather than Conservation is not morally objectionable

A basic intuition characterizing this thesis is that the conclusion above is incorrect.⁷⁴ I therefore refer to this non-identity argument as a problem – the basic non-identity problem. Furthermore, an intuition on wrongdoing could be almost as strong. A non-identity argument would likewise arrive at a counterintuitive conclusion with regard to wrongdoing. While such an argument would share the first three premises with the basic argument, the rest of the argument would proceed differently, in the following way:

The non-identity problem in a wrongdoing version (NIP_w)

P1(w): Generation One's act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than they would otherwise have been

P2(w): A's act harms B only if A's act makes B worse off than B would otherwise have been

P3(w): Generation One's act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

P4(w): If an act does not harm anyone, then the act does not wrong anyone

P5(w): If an act does not wrong anyone, then the act is not morally wrong

C(w): Generation One's act of Depletion rather than Conservation is not morally wrong

⁷⁴ Other scholars may want to justify a more ambitious intuition in several ways. Consider again Page's intergenerational harms claim: "adopting the Depletion Policy is wrong because it harms future persons" (Page [1999], 112). It does not only require that we explain the more advanced practical intuition that Depletion is wrong. As Joakim Sandberg and Niklas Juth write, practical intuitions are "intuitions about the moral status of particular actions and cases" (Joakim Sandberg and Niklas Juth, "Ethics and Intuitions: A Reply to Singer", *The Journal of Ethics*, 2011, p. 213). Page's claim also provides us with a theoretical intuition, namely that an account of wrongdoing should refer to harm. This kind of intuition concerns an abstract moral principle or idea about "what makes actions moral or immoral generally and what morality is about" (Sandberg and Juth [2011], 213). In the non-identity argument laid out here, the practical intuition concerns the more basic notion of objectionability. Furthermore, the theoretical intuition (in the intergenerational harms) claim has instead been presented as (and broken down into) two premises, P4 and P5. These claims may then be questioned independently of the (basic) practical intuition, and independently of one another.

Some have argued that the non-identity of future people is unnecessarily made out to be troublesome. It has been pointed out, for example, that we need not look to the future to find examples of duties to unidentifiable persons. Joel Feinberg has argued: “We can tell, sometimes, that shadowy forms in the spatial distance belong to human beings, though we know not who or how many they are; and this imposes a duty on us not to throw bombs, for example, in their direction. In like manner, the vagueness of the human future does not weaken its claim on us in light of the nearly certain knowledge that it will, after all, be human.”⁷⁵ But, we have now seen that future people’s non-identity can have serious moral implications. It could be described as ontological, instead of epistemological. Future persons are here unidentifiable not because it is difficult to know or see who they are, but because they still lack identities altogether. Therefore, their identities are also contingent on our actions over time. In the arguments above, we have seen how this time-dependence renders a common conception of harm inapplicable and forces us to draw counterintuitive conclusions. Given the premises, a generation’s act of resource depletion, to the detriment of future people’s environment, is not even morally objectionable.

2.2 Dealing with the problem

Plenty of scholars have aimed to “solve” the non-identity problem, but it is not always specified what is or could be meant by that. On Boonin’s formulation, a solution simply implies that one premise needs to be rejected, or the counterintuitive conclusion needs to be accepted, in an argument like the ones above.⁷⁶

I here identify four general approaches to the non-identity problem that people may take to solve it. Only one of these conveys solving the problem, in a focal sense. The four approaches are referred to as: asserting, avoiding, solving (in a focal sense) and circumventing the problem.⁷⁷ I suggest that we

⁷⁵ Joel Feinberg, “The rights of animals and unborn generations”, in Partridge (ed.), *Responsibilities to future generations: environmental ethics*, Prometheus, 1981, p. 148; quoted in Bell (2011), 106.

⁷⁶ Boonin (2014).

⁷⁷ These categories draw partly on Paulina Ochoa Espejo, “People, territory, and legitimacy in democratic states”, *American Journal of Political Science*, Vol. 58, No. 2, 2014. Although the typology aims to be purposeful and exhaustive, other distinguishing lines or approaches may be possible. For a similar typology with regard to the non-identity problem, see David Heyd, “The Intractability of the Non-Identity

focus on specific approaches of the last two kinds. While contractualism's person-affecting restriction requires a solution to the problem, natural law's impersonal resources imply that it could be used in an effort to circumvent it. I subsequently go on to evaluate such attempts in the thesis.

2.2.1 Asserting the problem

A first general approach to the non-identity problem can be referred to as asserting it.⁷⁸ By assertion, here, is meant that one accepts that the conclusion goes counter to one's intuition. David Heyd, Melinda Roberts and David Boonin, among others, have taken this view.⁷⁹ Roberts even thinks that, as we assert that nobody is harmed in a genuine non-identity case, "any sentiment that we might have that the [act] is wrong will itself begin to fade".⁸⁰ One may also, like Boonin, try to find additional reasons for thinking that the counter-intuitive conclusion is not as implausible as it first seems.⁸¹

This approach should have a certain theoretical appeal. The problem is a tough one and accepting the conclusion would at least be consistent with assumptions one may be reluctant to abandon. The practical drawback, if this approach is taken, is that duties in relation to future generations cannot be affirmed. In this study, this approach is excluded, as it is assumed to be true that we should not leave future generations with an unsustainable environment. In order to achieve a narrow reflective equilibrium, the theories need to arrive at that conclusion.

Problem", in Wasserman and Roberts (eds.), *Harming Future Persons*, Springer, 2009.

⁷⁸ Ochoa Espejo (2014), 473.

⁷⁹ Boonin (2014), 189, n 1. See also, *inter alia*, David Heyd, "Procreation and Value: Can Ethics Deal with Futurity Problems", *Philosophia*, Vol. 18, No. 2/3, 1988; *Genethics: Moral Issues in the Creation of People*, University of California Press, 1992; Melinda Roberts, *Child Versus Childmaker: Future Persons and Present Duties in Ethics and the Law*, Rowman & Littlefield Publishers, Inc., 1998; "The Nonidentity Fallacy: Harm, Probability and Another Look at Parfit's Depletion Example", *Utilitas*, Vol. 19, No. 3, 2007, p. 272 (the contention excludes depletion cases, however).

⁸⁰ Melinda Roberts, "The Non-Identity Problem and the Two Envelope Problem: When Is One Act Better for a Person than Another?", in Roberts and Wasserman (eds.), *Harming Future Persons: Ethics, Genetics and the Nonidentity Problem*, Springer, 2009, p. 210; Boonin (2014), 190, n 1.

⁸¹ If one shows that the conclusion is plausible, Boonin remarks, this is not enough to show that the conclusion is true, but enough for saying that the counterintuitive conclusion is "no reason to reject the [non-identity] argument itself" (Boonin [2014], 194), see also Roberts (1998), 98, 116.

2.2.2 Avoiding the problem

A second general approach to the non-identity problem may rather be referred to as avoiding it.⁸² Note that this is not the same as avoiding the counterintuitive conclusion, which is required to achieve narrow equilibrium. Here, I mean something close to ignoring the problem.

One way of avoiding the problem, as described, could be to turn to theories marked by so-called *deep ecology*.⁸³ If one based an argument on this idea, it would be possible to describe it as morally objectionable to leave the environment in an unsustainable state. One would say that non-human organisms such as plants and animals have value in themselves, irrespective of how the organisms may cater to humans. Yet, even though this may be true, resorting to such an argument would imply that protecting the environment for the future has nothing to do with future people. Here, however, we have aligned with the intuition that protecting the environment does matter with regard to the quality of future people's lives. The point here is to study the capacities of two theories to account for this.

Another way of avoiding the problem altogether is to remove the feature of non-identity from the case(s) one discusses, as in Feinberg's example above. In an effort to reject P1, someone might argue that at least a few people will be the same in the future (i.e. the time-dependence claim has no implications for them), which is why our act will be objectionable with regard to those particular people.⁸⁴ Others may point to a "possible world" where future people would be the same regardless of our act, i.e. a slight likelihood (however small) that future people will be the same in the Depletion and Conservation scenarios, respectively.⁸⁵ Others still may refuse to accept the stipulation in P3 and point to the harm we could inflict on ourselves by depleting natural resources. But, such approaches do not answer to our intuition that the act would be objectionable with regard to future people, independently of these people's future identities. In the first case, the problem could be restated in terms of asking why, in relation to a (larger) part of the future population, it would not be morally objectionable to leave behind

⁸² See e.g. Ochoa Espejo (2014), 474, on "circumventing" the boundary problem in democratic theory. I use circumventing in a different, positive sense, see section 2.2.4 below.

⁸³ See Arne Naess, "The Shallow and the Deep, Long-Range Ecology Movements, A Summary", *Inquiry*, Vol. 16, No. 1, 1973.

⁸⁴ I thank Aaron Maltais for bringing this claim to my attention.

⁸⁵ I thank Melinda Roberts for bringing this claim to my attention.

an unsustainable environment. In the second case, it could be questioned why the act would not be morally objectionable in relation to a Depletion population in a (more likely) world in which Depletion also affected people's identities. In the third case, it could simply be asked why the act would not be objectionable with regard to future people.

Hence, one may seek to avoid the non-identity problem by reference to a case that does not even involve future people, or if it does, is not marked by non-identity. These approaches avoid the non-identity problem in the sense that they leave the problem unaddressed or allow it to reappear in a slightly altered form. By this route we could not arrive at a narrow equilibrium, according to the requirements set out here.

2.2.3 Solving the problem (in a focal sense)

Given that the problem is that person-affecting theory seems to produce a counterintuitive conclusion, one way of solving the problem could be to provide an alternative definition of harm. As the argument is formulated, an acknowledged conception of harm (P2) is necessary for objecting to an act on personal grounds (P4), which is necessary in order to say that an act is morally objectionable at all (P5). In order to keep our line of reasoning as intact as possible, we could be tempted to reject P2, the claim that A's act harms B only if A's act makes B worse off than B would otherwise have been. Our hope would then be that if harm is defined differently, maybe we could identify G5 as being harmed by G1's depletionary act. That way, we may for instance draw the conclusion that "Generation One's act of Depletion rather than Conservation is morally objectionable" on person-affecting grounds and avoid a counterintuitive conclusion.

Although P2 can be taken to express a very strong intuition that people have about harm, some scholars have indeed suggested an alternative account of harm, which is non-counterfactual. I here use the term "non-counterfactual" for notions that do not rely on a comparison between different states of a person.⁸⁶ A prominent example is Elizabeth Harman's proposal that "an action harms someone if it causes the person to be in a bad

⁸⁶ Some would use the term "non-comparative" for this. But it could be maintained that non-counterfactual notions can be comparative, e.g. when the notion involves a comparison between a person's state and a specified desirable state, such as a threshold. (See Boonin [2014], 54, 69.)

state”.⁸⁷ This rejection does not have to exclude a worse off notion for identifying harm (it may be seen as sufficient rather than necessary). Lukas Meyer, on his part, has suggested a subjunctive-threshold notion of harm: “we [...] harm someone only if we cause this person’s life to fall below some specified threshold.”⁸⁸ According to this view, a worse-off notion is not sufficient to identify an act as harmful.

I do not engage with this discussion. I assume, in this study, that harm is by definition counterfactual.⁸⁹ It may be the case that there are undesirable (sub-threshold) states that future people should not be born into, at least not if we can avoid it at little cost to ourselves. But, this would not be a matter of avoiding harm. If the accounts above do not describe harm, we are brought to ask further questions: “Why should we not cause future persons to be in a bad state, if this would not harm anyone?”, “Why should we not cause the lives of future people to fall below a certain threshold, if this would not harm anyone?”. The answers to these questions could be person-affecting as well as impersonal.

A different person-affecting solution would consist in formulating a person-affecting theory that does not rely on a notion of harm. One would then reject P4: “If an act does not harm anyone, then the act cannot be objected to on personal grounds”; or if we are dealing with the problem in a wrongdoing version, P4(w): “If an act does not harm anyone, then the act does not wrong anyone”. Important such efforts can be found, I believe, in some contract theories. According to contract theories in ethics, the content of morality is not a given, but the result of negotiation or agreement. In common with these theories is the thought that morality consists of a set of rules that rational agents agree to follow because it is in their interest. On an initial reflection, it would seem that a contract on such terms could not include future generations. According to a traditional view, in the vein of Thomas Hobbes (1588–1679), the rules are a result of the actual balance of power between the negotiators. I refer to this as contractarianism. Agents will then make as small

⁸⁷ Elizabeth Harman, “Can We Harm and Benefit in Creating?”, *Philosophical Perspectives*, no 18, 2004, p. 91.

⁸⁸ Meyer (2003), 147.

⁸⁹ It has been observed that Parfit and Feinberg have likewise retained “an intuitive, comparative, person-based criterion of harm” (Melinda Roberts, “The Non-identity Fallacy: Harm, Probability and Another Look at Parfit’s Depletion Example”, *Utilitas*, Vol. 19, No. 3, 2007, p. 272, n 12).

concessions as their relative power to others allows.⁹⁰ In the case of future people's environment, present generations may allow themselves anything at no risk to themselves. We do not exist contemporaneously, and there is thus no mutual cooperation or exchanges between non-overlapping generations. People of different nation states may approach such a relationship to different extents. But, in the case of non-overlapping generations there is a complete, as Axel Gosseries puts it, "lack of coexistence".⁹¹

There are, however, contract theories that (seek to) block outcomes of minimal concession. I refer to such theory as contractualism. In *A Theory of Justice*, John Rawls suggests that we imagine the parties to agreement as having limited knowledge about themselves. In a hypothetical state, which he refers to as the original position, parties are deprived of information about their own particulars (such as social class or abilities) behind a veil of ignorance. They are bound to agree on principles that they are ready to accept under these conditions. This has people concede more to others than they would otherwise have done. Some scholars have argued that this willingness may also apply with regard to future people's environment. The idea is that, even though a real future person cannot be harmed by an act that also caused them to exist, perhaps the act could be personally objected to in a hypothetical situation, by "people reasoning self-interestedly behind a veil of ignorance".⁹² Rawls' model may thus seem more promising than contractarianism. If one is unaware of which generation one belongs to, perhaps one will want to make sure any generation has access to a decent environment?⁹³ The well-known device of the original position, however, is primarily meant to guide us in choosing principles for institutions. In Chapter 6, I consider Rawlsian accounts as efforts to solve a specifically institutional non-identity problem, a problem I account for in Chapter 5. It is shown that Rawlsian contracting expounds a fundamental difficulty in accommodating future generations, as the veil of ignorance cannot hide from us the fact that we are

⁹⁰ For a contemporary Hobbesian account of contract theory, see David Gauthier, *Morals by Agreement*, Oxford University Press, 1987.

⁹¹ Axel Gosseries, "On Future Generations' Future Rights", *The Journal of Political Philosophy*, Vol. 16, No. 4, 2008, p. 447.

⁹² Boonin (2014), 124.

⁹³ Stephen Gardiner, "A Contract on Future Generations" in Gosseries and Meyer (eds.), *Intergenerational Justice*, Oxford University Press, 2009; Rivka Weinberg, "Procreative Justice: A Contractualist Account", *Public Affairs Quarterly*, Vol. 16, No. 4, 2002; Reiman, Jeffrey, "Being Fair to Future People: The Non-Identity Problem in the Original Position", *Philosophy and Public Affairs*, Vol. 35, No. 1, 2007.

time-dependent. A number of scholars have expressed dissatisfaction with the Rawlsian model as far as future generations are concerned.⁹⁴ I argue, in a different vein, that Rawlsian theory does manage to come to an intuitive conclusion in simple different people choices. With, however, regard to the requirements of a narrow equilibrium, this does not take us far enough. Furthermore, this account can be achieved given an interpretation of the original position that verges on being impersonal. It can thus be questioned whether the argument remains contractualist. According to the tradition-conscious view, this is necessary if a Rawlsian argument is to achieve a wide reflective equilibrium.

A different contractualist theory has been offered by Rawls' student, Thomas Scanlon. The Scanlonian account has not been formulated with exclusive regard to institutions and can thus be studied in moral theory, i.e. with regard to the basic version and wrongdoing version of the non-identity problem. According to this account, furthermore, one does not assume that parties to a contract would be minimally conceding *if* they knew their circumstances. As party to agreement, one has a self-interest to justify oneself to others. Here, "[o]ur moral decisions must be justified, not merely *against* some impartial standard, but also *to* the particular individuals who are affected. ... I must provide some moral justification *that is addressed to you*."⁹⁵ The motivation has one naturally evaluating acts or policies in view of everyone concerned, one by one. In order for an act to be morally objectionable, another person must be able to object to the act on personal grounds, or with Scanlon's terminology to "reject" it. For the act to be considered morally wrong, furthermore, the personal rejection must be "reasonable".

Scanlonian contractualism claims its place among contract theories on the basis of this "personal reasons restriction" as a variant of a person-affecting restriction. And some scholars argue that future people would be able to object in the above manner, even though they have not been harmed by our act. An "interpersonal characterization of the basis of our obligations", Rahul Kumar argues, considers "what our choices will mean for *them* rather

⁹⁴ Most prominently Brian Barry, "Justice between generations: power and knowledge" in Smith (ed.), *Thinking Through the Environment: A Reader*, Routledge, 1999; see also Gardiner (2009), Boonin (2014).

⁹⁵ Tim Mulgan, "Answering to Future People: Responsibility for Climate Change in a Breaking World", *Journal of Applied Philosophy*, 2016, pp. 1–2, emphases in original.

than the value of the state of affairs likely to obtain as a consequence of our choice”.⁹⁶

A Scanlonian theory may thus seem more promising than either a contractarian or a Rawlsian one. I claimed that Rawls’ veil of ignorance is unsuitable for intergenerational purposes. But, given the motivational claim, we do not need the veil. To ultimately pursue this or that act, one would need to come up with a justification that members of future generations could not reasonably reject.

Yet, it can be shown that intergenerational duties are here argued for at the expense of precisely *personal* reasons. The Scanlonian requirement to justify oneself to others does not (primarily) affirm the value of justifying oneself in *general*. It is a further requirement to justify oneself to others with regard to how these persons are themselves affected by one’s act. In evaluating how others are affected, one is to take into account how each is or would be personally burdened. As is shown in Chapter 3, the notion of burden is difficult to apply to future persons. One will achieve narrow equilibrium only by violating the personal reasons restriction. This makes it hard to claim that the argument remains contractualist. In the tradition-conscious view, this is necessary if a Scanlonian argument is also to achieve a wide reflective equilibrium.

2.2.4 Circumventing the problem

To employ an impersonal theory (or to employ a theory in an impersonal way) can be described as an effort to circumvent the non-identity problem. Instead of accounting for some kind of morally objectionable behaviour towards particular persons, one here tries to account for some other kind of wrongdoing with regard to future people. Allowing for an impersonal approach means rejecting P5: “If an act cannot be objected to on personal grounds, then the act is not morally objectionable.”⁹⁷ With an impersonal approach

⁹⁶ Rahul Kumar, “Wronging Future People: A Contractualist Proposal” in Gosseries and Meyer (eds.), *Intergenerational Justice*, Oxford University Press, 2009, p. 253, emphasis in original.

⁹⁷ Parfit has argued that “in various ways, our reasons for acting should become *more impersonal*” (Parfit [1984], 443). We should “not merely ask, ‘Will my act be worse for anyone? Will there be anyone with a complaint?’” (op. cit., 444). Hence, a “more impersonal” theory does not necessarily exclude a person affecting ethics. It might simply not be limited to it (“... *not merely* ask ...”). Yet, to include considerations ulterior to person-affecting wrongs remains incompatible with P5. P5 limits our reasons for acting to person-affecting ones.

(rather than a person-affecting approach) the non-identity problem should not arise, even as we are presented with genuine non-identity cases. Impersonal approaches, however, have been known to give rise to other problems, typically in choices that also give rise to different numbers of people. The main point of departure in previous impersonal attempts has been utilitarianism, which I treat very briefly below. According to total utilitarianism, we should try to yield the greatest quantity of whatever it is that makes a life go well. With regard to the case of the 14-year-old, it could explain why she should wait and have a child later. The life of a child born later would (it is assumed) go better. If her choice involved different numbers of children, however, we do not seem able to arrive at an intuitively appealing conclusion. If she had two children now, whose lives would be little more than half as good as the life of just one child born later, to have the two children now yields a larger quantity of good. The better choice would then be not to wait. The same effect can easily be seen in the environmental case, which I show in more detail below.

A common way to proceed, among scholars who explore impersonal approaches, has been to consider alternative kinds of aggregation (of the good). I include one such attempt, average utilitarianism, with regard to the environmental case below.⁹⁸ Such alternatives can likewise yield strange implications. These implications are well known and I do not proceed further along this route. The purpose here is to demonstrate problems with utilitarianism that condition the study of (other) impersonal approaches.

Non-aggregative impersonal approaches, on the other hand, might not be as common.⁹⁹ These could include, for example, reliance on group rights or a reference to virtuous character.¹⁰⁰ In this thesis, I explore non-aggregative arguments within the confines of a natural law account. The basic impersonal natural law claim is that there are basic (human) values, which should be respected rather than maximized. I introduce this claim further below and

⁹⁸ Other alternative aggregations could involve assigning value to added lives only when populations are small, or say that welfare below a certain level does not add value. I do not deal further with these alternatives. (But see Gustaf Arrhenius, Jesper Ryberg and Torbjörn Tännsjö, “The Repugnant Conclusion”, in Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2017.)

⁹⁹ Other alternative ways of dealing with different number choices, which I do not treat here, could involve, for instance, a new turn to person-affecting theory, the rejection of transitivity and, finally, accepting the repugnant conclusion (see Arrhenius et al., 2017).

¹⁰⁰ Boonin (2014), pp. 181-188.

develop the view in Chapter 4, where it is further evaluated with regard to future people's environment.

2.2.4.1 Circumventing the problem: utilitarianism

Utilitarianism rests on the view that the morally right action is the one that produces the most good. It is a radical kind of theory with regard to circumventing the non-identity problem, as it *requires* aggregative impersonalism. In the words of Robert Goodin, “[...] it is the characteristically utilitarian conclusion that the right action is that which maximizes utility (however construed) summed impersonally across all those affected by that action.”¹⁰¹ Classical proponents, such as Jeremy Bentham and John Stuart Mill, similarly thought that we ought to maximize the good by bringing about “the greatest amount of good for the greatest number”.¹⁰² A fundamental appeal of this idea, and a *prima facie* promising trait for future generations, is how it clearly contrasts with egoism. When Derek Parfit gave the non-identity problem its influential formulation, he was much preoccupied by a number of utilitarian responses that he, nonetheless, found dissatisfying.¹⁰³ While I do not study utilitarianism extensively in this thesis, I account briefly for some difficulties here.

¹⁰¹ Robert Goodin, “Utility and the Good” in Singer (ed.), *A Companion to Ethics*, Blackwell, 1993, p. 245.

¹⁰² Bentham and Mill considered pleasure the valuable good to produce. A caricature of Bentham's pleasure-oriented utilitarianism, or “hedonism”, depicts “a mad assembly of pleasure hogs constantly out for a buzz” (Goodin [1993], 242). Mill would instead reason in terms of “higher” and “lower” pleasures. A contemporary notion is that of “preference satisfaction”, where what should be maximized is “not the balance of pleasures over pains, but rather the satisfaction of preferences more generally.” (Goodin [1993], 243.)

¹⁰³ Some may want to object to utilitarianism on grounds other than its alleged inability to handle future generations. When Rawls published *A Theory of Justice* in 1971, and thereby revitalized the social contract tradition, utilitarianism was the kind of theorizing he set out to oppose. The stated aim was to “work out a conception of justice that provides a reasonably systematic alternative to utilitarianism” (Rawls, [1999], xi). Rawls' general objection pointed to a lack of concern for people as individuals with distinctive projects and their own lives to lead. (Rex, Martin, “Rawls”, *Political Thinkers from Socrates to the Present*, Oxford University Press, 2003.) A typical objection would be against letting a few people experience less well-being than they could, in order for many others to become much happier. Here, however, I focus exclusively on the obstacles utilitarianism encounters with regard to the time dimension. (But I do not extensively bring up Rawls' objection, he believed that the proposal of maximizing total utility placed unacceptable burdens on poor generations, as they would be forced to promote the well-being of subsequent and richer ones [Reeve, Andrew; *Property*, Macmillan 1986, p. 172].)

To be consistent with utilitarian thought, intergenerational duties should preferably be justified by reference to the total or average good, or happiness. In order to see how utilitarianism fares in this regard, one could consider two cases. First, consider what the consequences of Depletion and Conservation could be for a *contemporary* community of 100 persons.

In a first scenario, a politician can choose whether to conserve or deplete a natural resource. If they conserve the resource, they will be among 30 persons who will live a life worth 2 utiles, and 70 persons will live a life worth 3 utiles. If they deplete the resource, on the other hand, the group of 30 (which includes the politician) will be happier (live a life worth 3 utiles), while the group of 70 will live a less happy life (worth 2 utiles) due to environmental degradation caused by the depletion. Utilitarianism treats all these people's happiness impersonally – what matters is what choice yields the highest total or average amount of happiness. The sum of total happiness is 270 if the politician chooses Conservation, and if they choose Depletion the sum will be 230. Or, put in terms of average happiness, Conservation will yield an average of 2,7 utiles and Depletion an average of 2,3.

It seems clear here that on utilitarian, impersonal grounds Depletion can be described as morally objectionable as well as wrong. The example serves to show how utilitarianism would work under “ordinary” circumstances (where everyone's identity and numbers are fixed). As construed here, the example caters perfectly to our intuition. But, the same kind of reasoning does not fare as well on intergenerational terms.

In a second scenario, in the future the different choices would yield different populations and population numbers. With Conservation, the next generation will equally consist of 100 persons. Depletion, on the other hand, would lead to a future population of 200. To simplify, we limit our analysis in each case to two generations (which we say are non-overlapping). We assume that the distribution of happiness will be the same. Conservation will in that case lead to a total happiness of 540, while Depletion leads to 690. To be at least objectionable, Depletion would need to produce a suboptimal outcome. But the utilitarian principle of maximizing total happiness here leads to the counter-intuitive conclusion that Depletion is the better choice. Indeed, for any possible population with a good quality of life, “there must be some [...] larger imaginable population whose existence, if other things

are equal, would be better, even though its members have lives that are barely worth living.”¹⁰⁴ Parfit refers to this as a “repugnant conclusion”.¹⁰⁵

The average levels of happiness stay the same, however: 2.7 per individual for Conservation and 2.3 per individual for Depletion. But exchanging total utility for average utility, as a remedy, would instead have us prefer a decreased and happier population, which is a result that is just as odd.¹⁰⁶ Even if the theoretical extreme of one single happy person on Earth (the Nozickean “utility monster”¹⁰⁷), or Parfit’s example of a world where only Adam and Eve ever lived,¹⁰⁸ are practically irrelevant; we could still picture a population as simply decimated and better off. That could be the case, for example, if the use of natural resources implied a reduction in the number of humans, while granting more utility to those who get to live (the utility being due to, say, technological advances). Nor may one increase the population if that would reduce the average happiness. Page explains it as follows: “Suppose all who live in some society are uniformly very happy. Impersonal average-utilitarianism would appear to require that additional people be added to the society’s population if they are on balance happier than presently existing persons, and condemn additional persons being added to the population if [they] are on balance slightly less happy than existing persons.”¹⁰⁹

I now leave utilitarianism aside as far as this thesis is concerned. Just as there are different person-affecting approaches, there are different impersonal approaches. Among non-utilitarian impersonal approaches, of which there are several, I shall consider natural law theory. I introduce a basic impersonal natural law claim below.

2.2.4.2 Circumventing the problem: natural law

In developing a natural law approach to non-identity there are various natural law theorists one could consult. Here, I employ a comparatively recent

¹⁰⁴ Parfit (1984), 388.

¹⁰⁵ Op. cit., Ch. 17. Gustaf Arrhenius and Krister Bykvist likewise caution against the repugnant conclusion brought about by utilitarianism: “a very huge population, say of a hundred billion, with a very low level of welfare, could be considered better than a population of say, five billions, with a considerably higher level of welfare” (Gustaf Arrhenius and Krister Bykvist, *Future Generations and Interpersonal Compensations: Moral Aspects of Energy Use*, Uppsala University, 1995, p. 63).

¹⁰⁶ Arrhenius and Bykvist (1995), 72.

¹⁰⁷ Robert Nozick, *Anarchy, State and Utopia*, Basic Books, 1974, p. 41, referred to in Arrhenius and Bykvist (1995), 16.

¹⁰⁸ Parfit (1984), 420.

¹⁰⁹ Page (1999), 127.

account offered by John Finnis, based on Plato, Aristotle and, mainly, medieval thinker Thomas Aquinas.¹¹⁰ Although I offer a short history of natural law in Chapter 4, my focus is not on an exegesis of Aquinas. The task I take on is to apply a recent, updated theory of natural law to a contemporary problem connected to climate change. Finnis' account seems particularly apt for such a purpose. While he is fairly authoritative among natural law thinkers, his work also seems accessible to other moral and political theorists.

One feature that makes it accessible is, therefore, that it resembles (indeed, anticipated) a kind of objective list-theory that has been popular in recent decades. Objective lists have also been suggested by thinkers outside the classical natural law current, most famously by Martha Nussbaum.¹¹¹ Rather than speaking of *one* good in terms of *subjective* pleasure or preference satisfaction, scholars who propose objective list-theory tend to argue that there is a *number* of *objectively* valuable goods. An early and much discussed list of Finnis' contains: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, and religion.¹¹² Nussbaum's subsequent and widespread list similarly comprises: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; (a relationship with) other species; play; and political and material control over one's environment.

It would not be impossible to apply objective list-theory in a utilitarian fashion. One could consider the items on the list as a pluralist account of

¹¹⁰ Finnis is sometimes considered part of a current called "analytical Thomism". Other proponents would be, among others, Philippa Foot (see e.g. *Natural Goodness*, Oxford University Press, 2001), Alasdair MacIntyre (see e.g. *After Virtue: A Study in Moral Theory*, Duckworth, 1981), Alan Donagan (see e.g. *The Theory of Morality*, The University of Chicago Press, 1979) and Elizabeth Anscombe (see e.g. "Modern Moral Philosophy", *Philosophy*, Vol. 33, No. 124, 1958).

¹¹¹ See Martha Nussbaum, "Aristotelian Social Democracy" in Douglass, Mara and Richardson, *Liberalism and the Good*, Routledge, 1990; "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism", *Political Theory*, Vol. 20, No. 2, 1992; *Women and Human Development: The Capabilities Approach*, Cambridge University Press, 2000. Other proponents could include Thomas Hurka (see *Perfectionism*, Oxford University Press, 1993) and George Sher (see *Beyond Neutrality: Perfectionism and Politics*. Cambridge University Press, 1997).

¹¹² John Finnis, *Natural Law and Natural Rights*, Oxford University Press, 1980, p. 90; the list has been extended and modified in later works such as a 2011 revised edition. Mark Murphy has listed nine items in relation to Finnis' original account: life, knowledge, aesthetic experience, excellence in play and work, excellence in agency, inner peace, friendship/community, religion and happiness (see Mark Murphy, *Natural Law and Practical Rationality*, Cambridge University Press, 2001).

well-being, construct an index, and suggest that the aggregated total or average pursuit of these items should be maximized. The objective list-theorists themselves argue differently, however. Well-being consists, here, in having the *capacities* (Finnis) or *capabilities* (Nussbaum) to engage in or with the listed items. Nussbaum refers to this as functioning “in a truly human way”.¹¹⁴ Finnis is rather reluctant to refer to “human nature”, which seems otherwise common among natural law theorists. Yet, according to his view, the good appears to be good because it is “perfective or completing of a being”.¹¹⁵ What perfects a being depends, in turn, on that being’s nature.

Rather than maximizing people’s capacities, however, one should be making sure that each person is above a certain threshold. In connection to this, objective list-theory typically assumes a person-affecting view. According to an ordinary account, i.e. with regard to contemporaries, the notion of a threshold translates into a notion of harm. Causing present persons to fall or remain below a capacity-threshold, at the same time leaving them worse off than they would otherwise have been, would be to harm them.

Now, ruining present people’s environment can be said to have this effect. As has been shown, however, we are unable to appeal to a notion of harm in different people choices. We would thus need to argue, in some other way, for *why* it is objectionable or wrong to leave future people with an unsustainable environment (possibly causing a lack of capacities with regard to the list). Here, there is reason to think that a list based on natural law could be employed in an impersonal manner. We may note that Finnis’ account does not initially appeal to the “human functioning” of individuals, but to *basic values*. While this difference may not matter in many cases, it may matter here.

The natural law idea of a basic value tends to be argued for as follows. Suppose one is browsing the internet at a friend’s place, after a disagreement about how many times Poland has participated in the Eurovision Song Contest. If asked to explain what one is up to, informing oneself of the number of entries for Poland, one would find oneself able to refer to knowledge (“finding out”, “truth”) as sufficient explanation of one’s activity. Although

¹¹⁴ Nussbaum (2000), 72.

¹¹⁵ Mark Murphy, “The Natural Law Tradition in Ethics”, in Zalta [ed.], *The Stanford Encyclopedia of Philosophy*, 2011, retrieved at <http://plato.stanford.edu/archives/win2011/entries/natural-law-ethics/>, 2018-08-25, emphases omitted. According to Murphy, this view is also “affirmed by Aquinas, as well as the majority of adherents to the natural law tradition”.

one might have other reasons for seeking the information (the pleasure of knowing, the presumed glory of being right, opportunities to use the trivia to brag at a party, make friends, etc.), the simple purpose of knowing will do. Knowledge in the form of a value is in this way the sort of knowledge one may call “an *intrinsic* good”.¹¹⁶ According to a classical distinction in Aquinas, it is a *bonum honestum*, compared to a *bonum utile* (a good valuable as a means to some other good) or a *bonum delectabile* (valuable for the pleasure it may afford).¹¹⁷

A natural law argument, according to Finnis, starts out from at least one basic value.¹¹⁸ He therefore refers to these as “epistemic principles”.¹¹⁹ In this particular sense, we could say, a basic value is a “starting-point (in Latin, *principium*) for *reasoning* about what to do [...]”.¹²⁰ Yet, a classical natural law theorist may also consider the values as something close to entities in their own right.¹²¹ This possibility can be seen most clearly in a peculiar requirement suggested by Finnis: *respect for every basic value in every act*. It tells us “not [to] choose directly against a basic value”.¹²² Finnis claims: “To choose an act which in itself simply (or primarily) damages a basic good is [...] to engage oneself willy-nilly (but directly) in an act of opposition to an incommensurable value [...]”. This would be to treat the value “as if it

¹¹⁶ Finnis (1980), 62, emphasis in original.

¹¹⁷ Thomas Aquinas, *Summa Theologiae* (*ST*), part I-II, q. 94, a. 2; q. 100, a. 2, ad 5. See also Finnis (1980), 76.

¹¹⁸ Finnis will refer to these values as e.g. “basic values of human existence”, “basic principles of all practical reasoning”, and an “evaluative substratum of all moral judgments” (Finnis [1980], 59). Aquinas does not use the term “basic values” but “first principles”.

¹¹⁹ He points out, on at least one occasion, that “truth is not a mysterious abstract entity” (ibid). This speaks against my interpretation. One might suspect that, in referring to the values as “epistemic principles”, Finnis wants to avoid a particular critique. The sceptic, he says, “argues that our belief in the objectivity of values amounts to a belief in very queer ‘things’, perceived by a very queer faculty of ‘intuition’: all very fishy” (op. cit., 72). Yet, future people are indeed queer too, and may require the possibly queer resources natural law theory has to offer.

¹²⁰ Op. cit., 63, latter emphasis added. While Aristotle discusses speculative or theoretical indemonstrable principles, such as the principle of non-contradiction, Aquinas is taken to be the first to develop an explicit concept of indemonstrable *practical* first principles (op. cit., 77).

¹²¹ We could, for instance, accept the existence of values similarly to how some accept that the concept of 4 exists, while 4 is not the same as or derived from the four legs of a table, four seasons or four anything. I remain agnostic as to the exact *way* basic values would exist, however.

¹²² Finnis (1980), 123.

were an object of measurable worth that could be outweighed by commensurable objects of greater (or cumulatively greater) worth”.¹²³ We are instead invited to be “creatively open to all the basic goods” and adjust our projects not only to “avoid substantial and irreparable harm to persons”, but independently of this, to “minimize [the] damaging ‘side-effects’” on values themselves. Thus, an act could possibly be evaluated on non-aggregative terms in relation to at least one other impersonal entity – a basic value. I develop this in Chapter 4.

An important challenge for any objective list-theorist is epistemological – to explain how we can know which items should be on the list. These thinkers seem to have at least two ways of justifying their lists, one inductive and one intuitive approach. According to the inductive approach, modelled on Aristotle’s, one will learn about objectively valuable purposes by examining “a wide variety of self-understandings of people in many times and places”.¹²⁴ According to Finnis and other natural law thinkers, “theoretical studies of human persons, including empirical psychology and philosophical anthropology, uncover the natural inclinations”.¹²⁵ The idea is that across time and space one will be able to observe patterns and similarities, enough to confirm that knowledge and friendship, for example, really are valuable. Those who find this approach implausible may either find the idea of an essential human nature difficult to believe or argue that, if there is an essential nature in humans, we can likewise observe patterns of ignorance, racism, cruelty and so forth.¹²⁶

According to the intuitive approach, we need to appeal to an independent standard of value in order to make moral claims. Most of the emphasis, among objective list theorists, seems to be on this way of justifying a list. Nussbaum writes that “the primary weight of justification remains with the intuitive conception of truly human functioning and what that entails”. On Aquinas’ view, Finnis argues, one grasps the good “*by experiencing one’s nature*, so to speak, from the inside, in the form of one’s inclinations”.¹²⁷ We

¹²³ Op. cit., 120.

¹²⁴ Nussbaum (1992), 215; Jaggar, Alison, “Reasoning About Well-being: Nussbaum’s Methods of Justifying the Capabilities”, *The Journal of Political Philosophy*, Vol. 14, No. 3, 2006, p. 305.

¹²⁵ John Finnis, Germain Grisez and Joseph Boyle, “Practical Principles, Moral Truth and Ultimate Ends”, *Journal Articles*, Paper 846, Notre Dame Law School NDLScholarship, 1987, p. 113.

¹²⁶ See e.g. Jaggar (2006), 305.

¹²⁷ Finnis (1980), 34.

would get familiar with the value of knowledge, for example, through the inclination of curiosity: the “inclination [...] that we have when, just for the sake of knowing, we want to find out about something.”

A common objection to this approach is that, in this way one simply imposes one’s own preconceptions in moral enquiry. An advanced version of the objection is that, by listing allegedly good ways of functioning, objective list-theorists implicitly impose Western values on other cultures. A way to deal with such concerns, among objective list-theorists, has been to keep with open-ended lists that are continuously discussed in a “Socratic fashion”. This is done by testing the items on the list against the theoretical and practical intuitions of oneself and others, including persons from different cultures than one’s own.

This thesis does not provide extensive arguments for or against objective list-theory or natural law theory itself. Chapter 4 further introduces Finnis’ account of basic values. The subsequent focus, in the same chapter, is on the particular value of practical reasonableness. The purpose, however, is to apply the theory to the environmental case in order to see how natural law-theory could deal with non-identity.

In the upcoming chapter, the study begins with a discussion of Scanlonian contractualism, where efforts to deal with non-identity already exist.

3 Contractualism: the environment that cannot reasonably be rejected in the future

There are, notably, two main branches of contract theory. One would consist of contractarian theory, in the vein of Thomas Hobbes (1588–1679).¹²⁸ Contractarianism holds that “persons are primarily self-interested” and that what is morally required of one is what can be generally agreed upon, in order to attain “maximization of [everyone’s] self-interest”.¹²⁹ The focus in this dissertation, as far as contract theories are concerned, is not on this branch. Instead, I deal with different versions of so-called contractualism.

The most famous contractualist, it is uncontroversial to say, remains John Rawls (1921–2002). Rawls is also known to have conducted “the first systematic discussion of obligations to future people.”¹³⁰ Compared to contractarianism, contractualism is less characterized by mutual advantage and minimal concessions. With regard to our purposes, contractualism may thus appear more promising with regard to future people’s environment. Previous scholarship has nonetheless expressed dissatisfaction with Rawls’ original position, as far as future people are concerned. In this thesis, I discuss Rawls in relation to an institutional version of the non-identity problem (see Chapters 5 and 6).

This chapter treats the contractualism of Rawls’ student, Thomas Scanlon. His theory is here handled with regard to the moral non-identity problems outlined in Chapter 2. The focus is on the conventional version, which regards moral wrongdoing. The reason for this is that non-identity scholars who employ Scanlonian contractualism mostly use the theory in this way.

¹²⁸ See Thomas Hobbes, *Leviathan*, revised student edition, Cambridge University Press, 1996.

¹²⁹ Ann Cudd and Seena Eftekhari, “Contractarianism”, in Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2017, URL = <https://plato.stanford.edu/archives/spr2017/entries/contractarianism/>, quoted in Gardiner (2009), 79.

¹³⁰ Lukas Meyer, “Intergenerational Justice”, in Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2016, URL = <https://plato.stanford.edu/archives/sum2016/entries/justice-intergenerational/>.

The question conducive to the enquiry is thus *Q2: Why is it wrong to leave future people with an unsustainable environment?* However, I also comment on the basic non-identity problem, as formulated in this thesis.

Scanlon's version of contractualism could be said to abandon mutual advantage and minimal concessions altogether. While Rawls' idea of rationality in the original position entails that parties are self-interested (under specified conditions), Scanlon does not employ such an idea. Instead, he accounts for a fundamental interest in being morally reasonable, which is a more pronounced alternative to Hobbesian, contractarian thought.¹³¹ What is morally reasonable, in Scanlon's case, is not *derived from* rationality (defined as self-interest) but *constitutes* rationality (i.e. rationality is defined as reasonableness).

A central idea in Scanlonian scholarship on future people has been that Scanlon offers a contract theory that manages to avoid the obstacles found in Rawls.¹³² Contractarian (and to some extent Rawlsian) theory can be said to employ a strong person-affecting restriction, in that the possible duty-bearer needs to have some degree of personal interest in accepting common principles. The Scanlonian idea, as we can see, implies a weaker restriction. It is considered enough if the possible object of duty has personal reasons to require a common principle. Yet, according to an opposing view, contractualism's person-affecting principle inevitably gives rise to the non-identity problem, despite the weaker restriction. This chapter reiterates that view. I demonstrate, here, how solution attempts within Scanlonian contractualism are either inefficient, i.e. fail at achieving narrow reflective equilibrium, or abandon the person-affecting restriction, i.e. fail to achieve wide reflective equilibrium (for a lengthier account of these methodological requirements, see Chapter 1).

¹³¹ Thomas Scanlon, *What We Owe to Each Other*, Harvard University Press, 1998, pp. 191-193.

¹³² “[W]hile some of the objections to using the Rawlsian apparatus to make progress on [intergenerational] questions also have force against Scanlon’s contractualism, and thus need to be addressed as part of a defense of the contractualist approach in this context, many do not” (Kumar [2009], 254). See also Elizabeth Finneron-Burns, *What We Owe to Future People: A Contractualist Account of Intergenerational Ethics*, doctoral dissertation, University of Oxford, 2015; “Contractualism and the Non-Identity Problem”, *Ethical Theory and Moral Practice*, Vol. 19, No. 5, 2016; Rahul Kumar, “Who Can Be Wronged?”, *Philosophy and Public Affairs*, Vol. 31, No. 2, 2003; “Risking and Wronging”, *Philosophy and Public Affairs*, Vol. 43, No. 1, 2015.

I first treat the fundamentals of Scanlon's theory and show in what way it is vulnerable to non-identity. We are able to see, from this, that Scanlonians have good reason to engage with the non-identity problem as they do. Thereafter, I identify recent efforts to deal with the problem within the Scanlonian current, showing in which ways these efforts are unconvincing.

3.1 Scanlon's contractualism

As stated, there is no feature of contractarian nature, such as Rawls' rational (self-interested) negotiators, in Scanlon's approach. Nor is there (a need for) a veil of ignorance that guarantees impartiality. In Scanlon's theory, both of these elements are replaced by a mere concern for individuals to justify themselves to others.

He summarizes his view as follows:

An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement.¹³³

In another passage, people are "*moved* to find principles for the general regulation of behaviour that others, *similarly motivated*, could not reasonably reject".¹³⁴ Scanlon thus makes a "particular motivational claim" regarding the agent.¹³⁵ As one commentator writes, the motivation lies not in "cooperation or advantage".¹³⁶ Instead, there is an objective interest, for the individual, in being morally reasonable as a person. This includes treating others as capable of recognizing and acting upon reasons.

It is in this weak sense that Scanlon speaks of parties to a contract. Reasonableness can be understood as a mutual concern, albeit hypothetical, that, together with the assumption that contractors are fully informed and unforced, renders them on an equal footing. To contract under such conditions can be considered morally more demanding than contracting in Rawls' orig-

¹³³ Scanlon (1998), 153. On many occasions, "rational" and "reasonable" are used interchangeably. By exchanging "rationally", for "reasonably", Scanlon means to exclude crude self-interest, or rationality *simpliciter* (op. cit., 193).

¹³⁴ Op. cit., 4, emphases added.

¹³⁵ Op. cit., 191. In earlier work, Scanlon would instead refer to the motivation to justify oneself as a "desire", but that position has been abandoned (op. cit., 7–8).

¹³⁶ Finneron-Burns (2016), 3.

inal position.¹³⁷ But, it may very well be that the case of future generations *is* morally more demanding and requires a theory that makes these claims.

We are thus informed that, while Rawls seeks principles to which everyone (even the possible duty-holders) would (hypothetically but) *rationally* agree, Scanlon uses the method of seeking principles that “no one could *reasonably* reject”.¹³⁸ Without any further qualification (such as the idea of rational self-interest behind a veil of ignorance, in Rawls’ case) the concept of reasonable rejection would remain empty (or “question begging”). So, we naturally ask – what rejections are reasonable according to Scanlon?

Contractualism was originally formulated as an alternative to utilitarianism, where “imposing high costs on a few could always be justified by the fact that this brought benefits to others, no matter how small these benefits may be as long as the recipients are sufficiently numerous.”¹³⁹ Contractualism, in which objections to a principle need to be raised by individuals, is supposed to block such justifications. “It allows”, argues Scanlon, “the intuitively compelling complaints of those who are severely burdened to be heard, while, on the other side, the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits and would have to forgo them if the policy were disallowed.”¹⁴⁰ An act is thus wrong according to contractualism if it puts a reasonably rejectable burden on somebody.¹⁴¹ For an act to be wrong it must wrong someone – taking this stand, contractualism subscribes to P5(w). But in trying to solve the non-identity problem in a wrongdoing version, contractualism aims at rejecting P4(w): “If an act does not harm anyone, then the act does not wrong anyone”. We shall witness such attempts below.

Nonetheless, judging whether a burden is reasonably rejectable involves *comparing* it to the burden put on others. Normally, this would call for a discussion on how to carry out such comparisons and where to draw the line. But, we should not be led astray by such a discussion here. The possible burdens put on present and future generations, respectively, are of dramatically different calibres in our upcoming cases. It suffices for our purposes to

¹³⁷ Rawlsian contracting can, in turn, be described as morally more demanding than that based on actual and exclusive self-interest, which we find in contractarianism.

¹³⁸ Scanlon (1998), 153, emphasis added. Another difference is that Rawls’ account intends to be exclusively political, whereas Scanlon focuses on basic morality.

¹³⁹ Op. cit., 230.

¹⁴⁰ Ibid.

¹⁴¹ Not all burdens are *reasonably* rejectable; some are inevitable as part of living together in a society.

assume that, given that a person could be burdened by, on the one hand, a modest tax scheme, and on the other, a degraded environment, the latter would be much worse. This assumption will lead us to our central concern in the following sections.

Our central concern is that non-identity, despite the generous assumptions above, makes it difficult to ascribe burdens to future people. A *prima facie* account of burden, I assume here, consists in some conventional definition of harm. If “burdened” is to be understood in this way, we would typically employ a *diachronic* or *subjunctive-historical* notion:

A diachronic notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t_1 , we thereby harm someone if and only if we cause this person to be worse off at some later time t_2 than the person was before we acted in this way, that is, before t_1 .¹⁴²

A subjunctive-historical notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t_1 , we thereby harm someone only if we cause this person to be worse off at some later time t_2 than the person would have been at t_2 had we not [acted in this way] at all.¹⁴³

There can be objections to both these notions. As regards our particular enquiry, however, it is rather clear from the start why we should avoid a diachronic notion of harm. At the time before our act, which takes place at t_1 , future generations do not exist at all. We thus lack a point of reference with which to compare the state of future generations at t_2 , the time at which they experience the consequences of our act. Instead, we will prefer a subjunctive-historical understanding of harm. So, let us define burden by this notion, in order to see how a non-modified version of Scanlonian contractualism plays out in our case.

I show below that this basic understanding of burdening does not render the act of Depletion morally wrong in relation to future generations. Rather, if burdening is understood in accordance with a subjunctive-historical notion of harm, the act of Conservation could (under certain circumstances) even be considered wrongful towards contemporaries.

¹⁴² Meyer (2003), 148.

¹⁴³ Ibid. I have exchanged “interacted with this person” for “acted in this way”.

3.2 Does Depletion wrong actual future people?

Developing his argument, Scanlon writes: “According to contractualism, in order to decide whether it would be wrong to do X in circumstances C, we should consider possible principles governing how one may act in such situations and ask whether any principle that permitted one to do X in those circumstances could, for that reason, reasonably be rejected.”¹⁴⁴

Let us return to the case of G1 and G5 laid out in Chapter 1. G1 must choose whether to deplete a natural resource that, excessively utilized, will leave G5 with a degraded environment, or abstain from such an act. With respect to Scanlon’s account, these would be circumstances C. We now want to know whether Scanlon’s formula leads to the conclusion that the act of Depletion – G1’s act X – is morally wrong.

To be accepted, Depletion would have to be sustained, then, by a principle that no one could reasonably reject. “In order to decide whether this is so,” writes Scanlon, “we need first to form an idea of the *burdens* that would be imposed on *some people* in such a situation if *others* were permitted to do X”.¹⁴⁵ Such burdens, which may or may not be acceptable in the end, constitute “objections to permission”.¹⁴⁶ To know whether the objection is sufficient to allow for “some people” to “reasonably reject” the proposal, Scanlon explains, one is to consider “the ways in which others would be burdened by a principle forbidding one to do X”, in the circumstances at hand.¹⁴⁷

We start out, here, by considering “some people” to be those people who will come into existence given the choice of Depletion: G5. Their supposed burden is to be left with a deteriorated environment. The “others”, who seek permission, is the present generation – G1. Would the latter’s choice of Depletion be morally wrong?

A claim could be that abstaining from the act would imply a kind of burden, the burden to change lifestyle somewhat or even have one’s property rights and autonomy slightly restricted. Here, this burden is ground for an objection, on G1’s part, to prohibiting Depletion.

We are now left to adjudicate between these different claims. Scanlon writes: “Suppose that, *compared* to the objections of permission, the objections of prohibition are not *significant*, and that it is therefore reasonable to

¹⁴⁴ Scanlon (1998), 195.

¹⁴⁵ *Ibid.*, emphases added.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* Note that to be forbidden to do X, here, signifies to be prevented from introducing Conservation (i.e. restrictive) policy.

reject any principle that would permit one to do X in the circumstances in question.” Intuitively, many of us would say that objections referring to a smaller change in lifestyle or slight restrictions on property and autonomy rights are not significant compared to objections referring to a life with a deteriorated environment.

One could remark that it is unclear how such a comparison should be made. Scanlon himself seems to resort to intuitions about the “costs” for individuals in specific examples.¹⁴⁸ But we need not, and should not, open this discussion here. Let us acknowledge that making minor changes in lifestyle or having one’s carbon dioxide emissions taxed is a seemingly insignificant burden compared to living with a deteriorated environment. Even so, the non-identity problem makes it difficult to depict those future lives, which, due to our act, would be barely worth living, as an imposed burden for those future persons.

Consider the subjunctive-historical notion of harm, as a definition of burden. We set out to compare the state of G5 at t2 as a consequence of Depletion with the state of G5 at t2 had we not carried out the act. Employing this notion, Scanlonian contractualism encounters the non-identity problem. The state of G5 at t2, provided no Depletion, is none at all. Given that G1 steered history in a different direction, other people would in fact come to exist as a consequence. Even if we take it that G5, due to a deteriorated environment, will live lives that are barely worth living, this needs now to be compared to living no life at all. Perhaps some such comparison is possible. But it can hardly be claimed that G5 will be worse off due to our choice of Depletion. Rather, the implication is that, while G1 would be slightly burdened by abstaining from Depletion, *nobody* (neither G1 nor G5) would be burdened by G1 opting *for* it.

A solution could perhaps be to consider the possible future people that will not come into existence if Depletion is permitted. We shall consider this option soon. Yet, the above analysis points to an even deeper problem for Scanlon. Indeed, not only does permitting Depletion come out as not being wrong. Prohibiting it would put a burden on people that could be avoided at no cost to anyone else. This would make it wrong *not* to deplete. Let us therefore, before proceeding further, take G1’s objection to prohibition seriously. We will now have to reverse the question, in order to investigate G1’s

¹⁴⁸ Op. cit., 195–196, on two people fighting over a life jacket.

case for rejection, why G1's objection will reappear as an objection to permission.

3.3 Does Conservation wrong actual contemporaries?

Given the analysis above, it seems that Scanlon's theory even says that the opposite choice, Conservation, would be downright wrong towards contemporaries. Let us see if this is so.

Imagine that we propose a principle in favour of conserving natural resources. That is, let Conservation instead be our act X. To be accepted, the act would have to be sustained by a principle that no one could reasonably reject. In order to judge this matter, as we know, we need to form an idea of the burdens that would be put on "some people" in such a situation if "others" were permitted to impose Conservation.¹⁴⁹ Likewise, "others" could potentially suffer from burdens if Conservation were prohibited. These burdens allow for objections to permission and prohibition, respectively.¹⁵⁰

Those who are referred to as "others", in the formulation above, should remain the ones proposing the act. Let us, in the following, understand these proponents to be ourselves, among dissenters (all belonging to G1). We are suggesting Conservation. We, the others, are now to put ourselves in the shoes of "some people". We may assume that those future generations who, according to Parfit, will come to exist only if Conservation is chosen, would have no reason to reject such an act. We need primarily to justify ourselves to "some people" among our contemporaries. It is reasonable to assume that "some people" are those persons who would be made worse off, with regard to certain aspects of their lives, by Conservation. We might, of course, ourselves, be included among the worse off. But, more importantly, so are some people who would insist on Depletion. If they can reasonably reject our principle, this speaks against requiring Conservation from them. The lifestyle change or taxing of carbon dioxide emissions which we have suggested is a kind of burden that could make one worse off – the burden would be to redirect one's habits or have one's property rights and autonomy somewhat restricted. This burden thus constitutes an objection to permission.

To know whether the objection is sufficient to allow for "some people" to "reasonably reject" our proposal, we are now to consider "the ways in which

¹⁴⁹ Op. cit., 195, emphasis added.

¹⁵⁰ Ibid.

others would be burdened by a principle forbidding one to do X”, in these circumstances.¹⁵¹ At this point, tables would normally turn, and we – the proponents, the “others” – could point to a burden inflicted on us, if the Conservation principle is forbidden. Our principle, however, is formulated *on behalf of* future generations. Future people are here the potentially burdened. The question, now, would be whether *future* others are burdened by the competing principle of some people, prohibiting Conservation. If so, this would, as Scanlon argues, entail “objections of prohibition”.¹⁵²

Here, Scanlon’s line of thinking again faces the implications of non-identity. It cannot immediately be said that future generations are or will be burdened if we prohibit Conservation. If present people insist on their lifestyles or vindicate their rights to property and autonomy, and thereby enable Depletion, future people will owe their existence to *that* decision. They would not be made worse off.

It is not clear what the conclusion should be. Either we must say that some people of G1 – those who object to permitting Conservation – are right, as their potential burdens are the only burdens we are able to register in the Scanlon machinery, or we may entertain the idea that those future generations whose existence depends on Conservation would be burdened by a prohibition. Let us consider the latter.

In order to test the principle that would potentially be rejected, we need again to reformulate the question, whereby the objection to prohibition hypothesized above will reappear as an objection to permission.

3.4 Does Depletion wrong possible future people?

We have identified an alternative solution: to consider the burdens that may afflict the possible future people who would not come into existence if Depletion is permitted. These possible future people, G5*, would then be ascribed objections to permission. Such an objection, however, is ascribed to a set of people that would not come into existence at all. This sort of argument

¹⁵¹ Ibid. Note that being forbidden from doing X, here, signifies being prevented from introducing Conservation (i.e. restrictive) policy.

¹⁵² To the extent that objections to prohibition are conceded, they can also, according to Scanlon, be “compared” to the objections of permission, formulated earlier, and be deemed as “significant” or not. We can picture some issues that arise regarding this matter, e.g. regarding what is needed in order to consider an objection “strong enough” (Scanlon’s expression), but these issues are not treated here.

is highly problematic. It implies, for instance, that people who choose not to have children are acting immorally, as they in this way burden the never-existent.

Indeed, any principle that allowed us to do anything, such as moving somewhere, register for a course, donate to charity or join an association, could be rejected if they lead to particular persons (not) being conceived. As argued by Elizabeth Finneron-Burns: “Since virtually every action and decision we make influences who in particular will be born, we would essentially be morally paralyzed and even basic, everyday activities would be morally wrong since they prevented certain people from coming to exist.”¹⁵³

In fact, doing nothing would also be morally wrong, since this would likewise prevent particular persons from coming into existence.

3.5 Scanlon makes it worse

Initially, we learnt that Scanlon takes a larger step than Rawls from contractarianism – rationality *simpliciter* is no driving force in reaching agreement. Instead, he puts the morally tougher demand of reasonableness on the parties. In Scanlon’s reasonableness, impartiality is not a function of other, non-normative circumstances (such as fear, risk-averseness and/or ignorance), but inherent in the normative requirement that one should be able to justify oneself to others.

The reason this can seem appealing is that perhaps present generations could be required to take future generations into account – even though present generations have no personal interest in doing so. A hope could be that, with Scanlon’s account of reasonableness, present generations would not be able to justify their act of Depletion to future generations. Possibly, we might think, future generations would be able to reject any principle allowing for that. The analysis of Scanlonian theory showed something else, however.

Reasonable rejections – a closer study of Scanlon teaches us – rest on an account of burden. Now, if we managed to show that future generations were (at some point) to be burdened by Depletion, this would mean that Depletion is objectionable. This does not mean that it has to be wrong – people in a society may put unreasonable as well as reasonable burdens on one another (a judgement that will depend on some sort of weighing of burdens). We

¹⁵³ Finneron-Burns (2016), 12.

could say that burdens are a necessary but not sufficient requirement for a wrong to have been committed. This still means, crucially, that, if we cannot claim that future generations are at all burdened by Depletion, then we cannot logically argue that Depletion is either objectionable or wrong on Scanlonian terms. Without Depletion possibly being a burden for future generations, Scanlonian contractualism is a non-starter.

It has been demonstrated here that, provided that burden is understood according to a subjunctive-historical notion of harm (a not too controversial definition), Depletion cannot be said to burden either the actual generations that would then come into being or the possible future generations that would have come into existence otherwise. Hence, using Scanlonian contractualism, it seems Depletion cannot even be described as objectionable – the theory gives rise to NIP. It follows that Depletion cannot be described as a wrongful act either, i.e. Scanlonianism also gives rise to NIPwrong.

What is more, these are not the only counterintuitive conclusions resulting from a Scanlonian enquiry. Conservation, as it stands, turns out to be a burden for present generations that could be avoided at no cost to anybody else. It would then seem that the implications of Scanlonian contractualism, with regard to future generations, are even worse than the counterintuitive conclusion. Not only is it not wrong to deplete, it would even be wrong to do otherwise, i.e. to conserve natural resources.

If we put aside my stronger claim that Scanlon makes things even worse, the weaker claim that his theory produces the counterintuitive conclusions C and C(w) is bad enough. And the fact that Scanlon can be interpreted in this way has not gone unnoticed among contractualist scholars. I treat some Scanlonian authors here who aim to remain with contractualism and a person-affecting restriction. They here refer to an “individual reasons restriction”.¹⁵⁴ This reformulated restriction allegedly “isolates as morally relevant for the justification of principles that regulate individual relations only those considerations that have a bearing on the recognition of the status of a person as one capable of rational self-government.”¹⁵⁵ According to Rahul Kumar, such an elaborated Scanlonian account will enable “contractualism to be immune to the non-identity problem,”¹⁵⁶ and Finneron-Burns agrees

¹⁵⁴ See Kumar (2003, 2009, 2015) and Finneron-Burns (2015, 2016).

¹⁵⁵ Kumar (2003).

¹⁵⁶ Op. cit., 110.

that this kind of “contractualism provides a promising way of responding to the non-identity problem.”¹⁵⁷

According to this view, contractualism “shifts the focus from what has *happened* to the person wronged to *what was done*.”¹⁵⁸ Is the act to be judged according to its consequences for a future person, or according to what it says about an agent’s conduct? Kumar claims that Scanlon’s contractualism implies the latter.¹⁵⁹ While a notion of harm relies on the idea that a patient suffers bad consequences, the argument goes on, wronging somebody is possible through mere bad conduct. In this “distinction between the wronging and the harming of another”, Kumar sees the key to formulating interpersonal wrongs towards future people.¹⁶⁰ Elizabeth Finneron-Burns argues, in a similar vein, that a distinction between harming and wronging is “a fruitful starting point” for developing a contractualist account.¹⁶¹

Hence, in order to solve the non-identity problem in a wrongdoing version, these contractualists aim at rejecting P4(w): “if an act does not harm anyone, then the act does not wrong anyone”. I discuss the implications of such solution efforts below. The different efforts considered are referred to as *risk*, *typed individuals 1*, *typed individuals 2*, *types*, *relationships*, *the good* and *groups*, respectively. While the first two can be said to adhere to the person-affecting restriction, the subsequent efforts can be said to (more or less obviously) violate the restriction. I demonstrate that the arguments suggested, to the extent that they consist of genuine solution attempts (and do not avoid the non-identity problem altogether), cannot fulfil both of the methodological requirements set out in Chapter 1. In some cases, the arguments remain in line with the person-affecting restriction and thus fulfil the tradition-conscious requirement of a wide equilibrium, but cannot avoid a counterintuitive conclusion, whereby narrow equilibrium is not achieved. In other cases, the arguments seem more promising with regard to avoiding a counterintuitive conclusion, i.e. achieving narrow equilibrium, but do not

¹⁵⁷ Finneron-Burns (2016), 4.

¹⁵⁸ Kumar (2003), 110, emphases in original.

¹⁵⁹ “The kinds of consideration that are relevant for determining whether or not a person has been harmed have primarily to do with the state of the person who claims to have been harmed. Whether or not another has wronged one, on the other hand, has primarily to do with facts concerning the character of the wrongdoer’s regulation of her conduct with respect to how she has related to the wronged.” (Op. cit., 100.)

¹⁶⁰ Ibid.

¹⁶¹ Finneron-Burns (2016), 7.

seem to abide by the person-affecting restriction, here required for a wide, tradition-conscious equilibrium.

3.6 Adhering to the personal reasons restriction

3.6.1 Risk

According to one argument, cases involving mere risk prove that such a thing as wronging without harm does exist. Kumar employs the example of a drunk driver who “comes swerving along the street where you happen to be taking a late evening stroll, thereby momentarily imperilling your life.” “Luckily”, Kumar assures one, “nothing *happens* to you; the whole incident takes place so quickly, you don’t even have the time to be frightened. You are not, therefore, in any way worse-off as a result ...”. Still, he argues, “there is nothing suspect about the claim that one has been wronged by the drunk driver”.¹⁶²

We should insist, however, that this example does not put in evidence a concept of interpersonal wronging independent of the concept of harm. Harm appears, here, in the form of a risk of being harmed. Kumar himself will, accordingly, use expressions such as a life having been “put at risk”,¹⁶³ “exposing [the pedestrian] to a serious risk”,¹⁶⁴ “the risk at which others are put”¹⁶⁵ and being “put in harm’s way”.¹⁶⁶ Even though we do not consider what *has happened* (to a particular person), in a case such as this, we do consider what *could have happened* to a particular person.

This reasoning is likewise problematic in our intergenerational case. As Boonin remarks, in Kumar’s example “there is a person who has been wrongly exposed to the risk of harm. ... But in non-identity cases, there is no one who has been wrongly exposed to the risk of harm.”¹⁶⁷ In our case, as we know, G1 does not harm G5, as G5 will not be rendered worse off than they would otherwise have been. (Hence our venturing to find an alternative rationale for wronging.) But neither does G1 subject G5 to a *risk* of being harmed, as the drunk driver did to the pedestrian out for an evening stroll.

¹⁶² Kumar (2003), 103, emphasis in original.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Op. cit., 107.

¹⁶⁶ Op. cit., 256.

¹⁶⁷ Boonin (2014), 109, n 1.

Hence, the case of negligence, with the pretence of being analogical, points to a property that is lacking in the intergenerational case. If putting others at risk is a property that can make an act wrong, it can be suggested in order to reject P4(w). But, it does not replace P4(w) with a claim that renders Depletion wrong. Furthermore, one can easily reformulate a non-identity argument on wrongdoing so that the non-identity problem reappears, including the notion of risk in P4(w) (e.g. in this way: “If an act does not [risk] harm[ing] anyone, it does not wrong anyone”).¹⁶⁸ Hence, this solution attempt does not arrive at an intuitive conclusion, and thus does not achieve narrow reflective equilibrium.¹⁶⁹

We shall now consider other possible positions. Kumar notes that: “a claim to have been wronged requires that certain legitimate expectations, to which one is entitled in virtue of a valid moral principle, have been violated.”¹⁷⁰ Some expectations may hinge on one’s capacity to reason alone: “[t]he capacity to be conscious of reasons results [...] in a distinct kind of vulnerability, a vulnerability to what another’s reasons, or reasoning, concerning how it is appropriate to relate to oneself, says about oneself.”¹⁷¹ Thus, the fact that somebody lacked reason in relation to oneself (rather than some negative consequences for one or having been put to the risk of suffering such consequences) could constitute interpersonal wrongdoing.

The Scanlonian theorizing treated here can be said to develop three alternative views in relation to traditional contract theory. One is that parties are ready to consider interests that do not coincide with their own. We have accepted this as a variant of contract theory; it suffices to uphold a person-affecting restriction, here in the form of an “individual reasons restriction”. Another is the switched focus to the agent’s character rather than the consequences of an act for another person, as in Kumar’s account above. However, we also come to reconsider, thereby, the very object of one’s duties – a

¹⁶⁸ Op. cit., 21. For different views of rights (regarding e.g. their status as derived or underived), see Brenda Almond, “Rights” in Singer (ed.), *A Companion to Ethics*, Blackwell, 1993. We also exclude, for example, a utilitarian account of rights. If applicable, we will think that rights are “what *constrain*, or *limit*” a principle of utility (Parfit [1984], 366).

¹⁶⁹ Boonin argues similarly with regard to his own “robustness requirement”: “Kumar’s example of the drunk driver who wrongs you by exposing you to the risk of harm even though he doesn’t end up hitting you fails to gain traction [...]” (Boonin [2014], 109, n 1).

¹⁷⁰ Kumar (2003), 108.

¹⁷¹ Op. cit., 107.

position traditionally occupied by the individual person. A prominent suggestion is that we should picture individuals as “types”. A first take on this argument could be said to abide by the person-affecting restriction, I deal with this interpretation below.

3.6.2 Typed individuals 1

We have made note of a requirement that contractualists put on arguments in order for them to rest on person-affecting grounds. Influenced by Scanlon’s account of “personal reasons”, Kumar identifies an “individual reasons restriction” central to social contract theory. “The individual reasons restriction,” the latter author says, “is essential for contractualism being able to do justice to the initial intuition that a person being wronged consists in something having been done to them, the force of which needs to be accounted for in light of the implications for her life.”¹⁷² Since we are now familiar with the non-identity problem, we know that it is not clear that such wronging, interpersonal wronging that is, occurs if we choose to leave future generations with an unsustainable environment. Kumar rhetorically asks: “How can there be an issue concerning one’s failure to have complied with the legitimate expectations of a person if, at the time of acting, there was no determinate person to whom compliance with those expectations was owed?”¹⁷³

Kumar suggests, in this regard, that we could think of future others as typed individuals. His main example regards the relationship between prospective parents and a future child. If a child, it is argued, ends up disabled due to their parents’ choice of time for conception, this child could justly claim to have been wronged, even if the child owes their very existence to that choice. The child may do so, in respect of parenthood and the obligations such a “caretaker-dependent relationship” requires. This is to apply to any child, as a *type*, whatever its specific identity turns out to be. In this thesis, we require that such an argument work out also in a non-interaction case. With regard to distant future generations, Kumar goes on to argue, one would similarly be relating to “a plurality of individuals characterized as types”. Thereby, “the focus of an investigation into a claim of having been

¹⁷² Op. cit., 109.

¹⁷³ Op. cit., 110.

wronged” can be put “on the character of the wrongdoer’s conduct”, whereby the non-identity problem, Kumar claims, will be overcome.¹⁷⁴

It is not obvious how this argument should be understood, however. A first interpretation, below, is in accordance with a person-affecting restriction.

Assume, once again, that we are to judge an act in relation to individuals who – if we choose Depletion – would live with a deteriorated environment 150 years from now. The type features we ascribe to those individuals must not be unique to any specific human being of that future. Let us say that their type is characterized by the fact that one is “human” and “lives in the year 2168”. The first feature distinguishes the type from, for instance, other animal species and plants but makes those people no different from us. The second feature has one implicit element that applies to our own type (call us present persons) – these future persons will also exist at a particular point in time. Furthermore, the type feature has an implicit element applicable to countless other future persons – these future persons are all non-existent. The feature “lives in the year 2168” makes them unique in that the particular point in time at which they will live, differs from that of all others.

What is not noticeable at first, which we now know, is that these specific individuals will also belong to a type whose existence depends on the acts of previous persons, including present ones like us. We have come to affirm this, after accepting Parfit’s time-dependence claim. While present persons – having been conceived – do not share in this type feature at all, the people of 2168 do, at the moment, share this type feature with any other future person. It is these people’s “psycho-physical identities” that are time-dependent, but we may simply refer to *them* as “time-dependent”.

Hence, relevant type-features of a person of 2168, to be left with a deteriorated environment, are: “human”, “lives in the year 2168” and “time-dependent”. They can be said to belong to generation G5, which we are already familiar with. These people will all be individuals and should be treated as such (in accordance with a person-affecting restriction). Yet, they should be treated in a way that disregards what *particular* people they turn out to be. We will now see to what extent these two requirements can both be met.

G5 would consist of a number of specific persons who will descend from presently living people. We can envision them all in the year 2168. There is

¹⁷⁴ Op. cit., 117–118.

individual $G5_1$ who, given the course of events following Depletion, will be a retired actress in Moscow who loves Scotch. There is $G5_2$, a father of four who collects empty deposit bottles in Stockholm to make ends meet. And $G5_3$, a teenage girl who likes to watch the container ships arrive at the port of Naples. And so on.

The choice of Conservation would have brought about $G5^*$, and consequently other specific persons, in the year 2168. We could picture $G5^*_1$, a former janitor whose granddaughter is graduating from Lomonosov Moscow State University; $G5^*_2$, an office clerk in Seoul who spends a lot of time worrying about her mortgage; and $G5^*_3$, a young boy in Helsinki who follows Napoli in Serie A, and so forth.

A first route would be to consider only those who will come to exist, as types. If so, it remains the case that the retired actress, the father of four and the ship-spotting teenage girl all belong to a type whose existence depends on our decision to Deplete. It thus seems to be against their interest, as a type, that we reconsider our choice and commit to Conservation.

In Kumar's words, referring to a type is a way of referring to "a normative significant cluster of relevant interests that a person might well have."¹⁷⁵ If we consider the environment, the type-feature "human" should bring to the cluster an interest in an environment that adequately sustains human life and other human needs (such as beautiful surroundings or recreation). The feature "lives in the year 2168" should bring to the cluster an interest that there be such an environment at that particular point in time, 2168 CE. These normative requirements seem rather intuitive.

The type-feature "time-dependent", in comparison, does not seem to bring such intuitive interests to the cluster. We get something like: the interest that environmental standards are met as long as they do not exclude one's existence. There are two problems in formulating such an interest. First, it is not very intuitive: the fact that living people have an interest in their maintained existence we may apprehend, but to ascribe to somebody such an interest before they exist is not as easy. Second, it may conflict with the other interests in the cluster.

This possible problem has also been noted by Finneron-Burns. She therefore suggests that, since "existing is a basic requirement for being in a position to occupy a standpoint at all", interest in existing should not be included

¹⁷⁵ Kumar (2009), 265.

“as part of a ‘type’ or standpoint”.¹⁷⁶ It is not clear how that is. It would seem that future people can either be ascribed interests or not. Admittedly, a standpoint seems like a reasonable requirement for ascribing interests to somebody. But, if existing is a requirement for occupying a standpoint, then we cannot ascribe any interests to future people (in us acting for a well-kept environment).

If existing is not a requirement for occupying a standpoint, there seems to be no good reason to exclude from future people’s interest cluster an interest in existing. An interest in existing (existing belonging to somebody’s interest cluster) would then be a consequence of somebody being of the time-dependent type.

If the argument on typed individuals remains in line with a person-affecting restriction, it seems unable to avoid the counterintuitive conclusion, why it does not achieve narrow equilibrium. Below, I treat arguments that seem to abandon a person-affecting restriction. One of these is an alternative interpretation of the argument on typed individuals.

3.7 Violating the personal reasons restriction

3.7.1 Typed individuals 2

A slightly different argument may perhaps be that, since future people’s belonging to the time-dependent type should not make any difference, we should simply disregard this feature. G5 and G5* would then, in a different elaboration, not be considered as different persons at all. In order to mirror this, we would have to stipulate that, regardless of which choice present generations make, people in the future will have the same identity. In other words, regardless of which choice we make, the same person will come to exist as, for example, an individual₁ of 2168. This person will exist either as a Scotch-loving former actress or a graduate’s janitor-grandfather, but nonetheless have the same identity. It will work correspondingly for individual₂ and individual₃.

One problem with this argument is that the concept of a person has been thus redefined so as to exclude the original sense. It could be argued that, while this account is nominally restricted to individual reasons, it remains a

¹⁷⁶ Finneron-Burns (2016), 10.

conceptual violation of the person-affecting restriction. Parfit remarks that phrases like “your next child” are often used in this way, so that they refer to what he calls some “general person”. While Scanlon intends to give an account of the specific forms of concern that we owe to other persons, general persons are, as Parfit observes, *not* really persons: “A general person is a vast group of possible individuals, or people, one of whom will be actual.”¹⁷⁷ If we do not distinguish between the former actress and the janitor-grandfather, we are ignoring “the *separateness* of persons”.¹⁷⁸

Even if we did accept this as adhering to a person-affecting restriction, there is a further problem with this outlook. In order to say that our act of Depletion is wrong, we are required to assume that, whatever choice we make, the very same person will be brought into existence. This approach views producing the actress experiencing a deteriorated environment, rather than the janitor experiencing a well-kept environment, as worse – because the retired actress is regarded as being the same person as the former janitor and can therefore be said to be worse off than they would otherwise have been. Hence, the view yields the result we want only because it treats the case as one that is not a non-identity case. As argued in Chapter 2, this should not be seen as a satisfactory solution to the non-identity problem, but as avoiding it altogether. We want to be able to say that the act of Depletion is at least objectionable, even though the persons experiencing the consequences of our act will be of different identities. We are after a solution where non-identity, although it is present, makes no difference for our moral conclusion.

Below, I proceed with arguments where non-identity, although present, seems to make no difference. These interpretations can, however, all be said to violate the personal reasons restriction. Offered as part of a contractualist account, then, they do not achieve a wide, tradition-conscious equilibrium.

3.7.2 Types

According to one understanding, we could have moral duties to a future type, *rather than* to “future individuals as a type”. The argument is similar to the previous argument (typed individuals 2). Nonetheless, the possible object of duty is understood differently here. Rather than having duties towards

¹⁷⁷ Parfit (2011), 235–236.

¹⁷⁸ Op. cit., 236.

future individuals (of different identities merging into one), here one would have duties to a type *as such*.

Kumar draws a parallel to a legal system, where principles set out the behaviour that people are entitled to expect of one another in different types of situation: “just as a type of situation is not an actual fully determinate situation,” he argues, “a *type* of person is not a particular, fully determinate person.”¹⁷⁹ Here then, the sort of “general person”, discussed by Parfit previously, could be interpreted as being the object of duty.

The analogy itself suggests why a future-people-type is unsatisfying as an object of duty, at least if one abides by a person-affecting restriction. In a legal system, one cannot be the victim of *merely* some *type* of crime. To the extent that an actual act is defined as wrongful, a perpetrator will always be charged with regard to that particular act. There is no criminal act consisting of “assault in general” or “vandalism in general” – one will be prosecuted for having assaulted this or that person, for example Mrs Smith, or having vandalised this or that art work or property, for example the Sistine Chapel. A category of crime is not in itself a crime. Likewise, a category or type of person is not itself a person. Therefore, it can hardly be described as either wronged, harmed or worse off. Indeed, to say that we have duties to a type, without thereby implying “particular, fully determinate” individuals, does not seem to be in line with contractualism’s person-affecting restriction, and therefore does not fulfil the requirement for a wide reflective equilibrium.

3.7.3 Relationships

On a second understanding, one’s duties are directed towards a constitutive relationship between oneself and the other, *rather than* towards a person. Kumar engages with this idea by discussing the relationship between a parent and a child. Let us translate this “caretaker-dependent relationship” in respect of distant intergenerational relations. Instead of the type parent, we would speak of the type “contemporary person”, and instead of the type “child” we would speak of the type “future person”. Unlike a parent-child relationship, there is no direct interaction between ourselves and people in a remote future. Yet, our actions could, perhaps, be considered as responses to actions of previous generations. One could perhaps argue that we should

¹⁷⁹ Kumar (2009), 260.

consider the quality of such a relationship, in which future people will later take part.

A problem with this approach, from a contractualist point of view, is that it grants a peculiar status to a relationship as such. One needs to say that the relationship exists in a way that exceeds the sum of experiences gained by the individuals involved. There are similar claims that we know of. For example, Michel Foucault grants this kind of status to a relationship of power between people, as it is not exhausted (or perhaps even defined) by A's power over B.¹⁸⁰ In turn, Edmund Burke could be interpreted as saying that the mere fact that a custom has been established over a long period of time speaks in its favour.¹⁸¹ As I argue in Chapter 7, natural law theorists could use an argument of this kind in order to argue for institutional intervention so as to safeguard future people's environment. But, as far as contractualism is concerned, this sort of solution would not conform to a person-affecting restriction and therefore not achieve a wide reflective equilibrium.

3.7.4 The good

There is yet another interpretation of duties to types that one could possibly make. Consider the statement that referring to "types" is a way of referring to "a normative significant cluster of relevant interests that a person might well have."¹⁸² People "might well have" many kinds of purposes, of course, some directly inadvisable. But, it is reasonable to think that what is, in the end, normatively significant or relevant, according to Kumar, are universally good things – such as living a healthy life, enjoying beautiful landscapes, etc. It might be assumed that all individuals, including present ones, are equally surrounded by this to-be-had cluster of worthwhile ends. A possible claim, in this regard, would be to say that these ends have some sort of status of their own. According to one interpretation, then, it would be the cluster itself – rather than persons – that yields duties. In Chapter 4, I develop a

¹⁸⁰ "What the apparatuses and institutions operate is, in a sense, a micro-physics of power, whose field of validity is situated in a sense between these great functionings and the bodies themselves with their materiality and their forces." (Michel Foucault, *Discipline and Punish – The Birth of the Prison*, Vintage Books, 1995 [1977], p. 26.)

¹⁸¹ See John Randall, *The Making of the Modern Mind*, Houghton Mifflin, 1940, p. 432, cited in Peter Stanlis, *Burke and the Natural Law*, The University of Michigan Press, 1958.

¹⁸² Kumar (2009), 265.

similar argument based on natural law theory. Yet, with regard to contractualism, such a solution would not conform to a person-affecting restriction and therefore not achieve a wide reflective equilibrium.

3.7.5 Groups

Lastly, one Scanlonian attempt to solve the non-identity problem would be to consider a group to be a sort of person and treat future people as a group. Edward Page allegedly starts out from “the influential theory of moral motivation and reasoning proposed by T.M. Scanlon”. Page states: “According to Scanlon’s ‘contractualist’ view, the source for moral motivation is ‘the desire to be able to justify one’s actions to others on grounds they could not reasonably reject’”.¹⁸³ Justifying oneself, one should consider the possible complaints of others, and we are required to adopt policies “in respect of which the strongest complaint is weakest.”¹⁸⁴ Page then goes on to suggest “collectivities” (*rather than* several individuals) as possible complainants, trading on an alleged ambiguity within the tradition: “Scanlon’s talk of ‘future people’ might be stretched to include human collectivities, in addition to individual human beings, within the class of (possible) complainants.”¹⁸⁵ He argues that “Scanlon’s construction does not appear to be formally tied to the idea that the complaints it considers must be restricted to those arising from harms, or wrongs, done to particular *persons*.”¹⁸⁶

Here, one could discuss whether or not the act of justifying oneself to another can only be done with regard to entities that have the capacity to perceive one’s justification as such.¹⁸⁷ It seems unclear whether this could be said about a collectivity, which is supposed to be something else and more than an aggregation of individuals.

¹⁸³ Page (1999), 109.

¹⁸⁴ Op. cit., 110.

¹⁸⁵ Op. cit., 114.

¹⁸⁶ Op. cit., 123. The input seems to be an early account of Scanlon’s: “morality applies to a being if the notion of justification to a being of that kind makes sense ... the being must have a good, that is, that there be a clear sense in which things can be said to go better or worse for that being ... the being [must] constitute a point of view; that is there [must] be such a thing as what it is to be that being” (Thomas Scanlon, “Contractualism and Utilitarianism” in Sen and Williams (eds.), *Utilitarianism and Beyond*, 1982, cited in Page [1999], p. 130).

¹⁸⁷ Contractualism would struggle, of course, with traditional borderline cases such as children and the comatose. Yet, a key share of these could at least be ascribed a potential capacity to perceive one’s justification as a justification.

Regardless, I take it here that contractualism is clear enough on one point. In the case of the Scanlonian branch, several adherents explicitly set out an “individual reasons restriction”, requiring that reasons for rejection are restricted to those of individuals. It is assumed here that to ascribe a “point of view” to collectivities is to violate this person-affecting restriction and thus exclude a wide reflective equilibrium.

3.8 A note on persons

Within contractualism, a person-affecting restriction requires us to consider only individual reasons. What is rarely discussed is that, in order to know what such a restriction entails, one needs to know what a person or (personal identity) is. It is not enough to simply give examples of persons (although we could: Malala Yousafzai, Madeleine Albright, the neighbour that just moved in...), we need to know why these count as persons. This is a metaphysical question that contractualists, for precisely the reason that it is metaphysical, might prefer to leave aside. The matter has, furthermore, been hotly debated.¹⁸⁹ I have abstained here from employing a single definition of a person.

Yet, I believe we are sufficiently able to say what a human person is not, in order to exclude a number of contractualist arguments. There seems to be at least six general positions regarding the definition. According to one view a person is equivalent to their body. According to this view, a brain-dead human kept alive by a respirator is still a person. A second position is to say that a person is defined by their brain. According to this view, a human whose brain was successfully transplanted to another body would continue to live as a person in that other body. A third variant is to hold that memories are what define a person. If there is somebody alive remembering certain experiences, this is a person. Fourth, some people think that a person is defined by having a soul. This soul may alternate between bodies through reincarnation, or be capable of existing independently of any body, for instance in “heaven”. Fifth, one may say that there is really no such thing as a person

¹⁸⁹ See Lynne Rudder Baker, *Persons and Bodies: A Constitution View*, Cambridge University Press, 2000; Roderick Chisholm, *Person and Object: A Metaphysical Study*, Open Court, 1976; Derek Parfit, “Personal Identity”, *The Philosophical Review*, Vol. 80, No. 1, 1971; Sydney Shoemaker, “Persons and Their Pasts”, *American Philosophical Quarterly*, Vol. 7, No. 4, 1970; David Wiggins, *Sameness and Substance*, Blackwell, 1980.

at all, that personhood is simply an illusion. Sixth, one may be of the view that persons exist, but that the question of what a person is remains impossible to answer. Among these, it seems that the fourth position (a soul) is difficult to reconcile with contractualism's commitment to secularism, while the fifth (there are no persons) is clearly irreconcilable with its commitment to person-affecting theory. The sixth position (the question is unanswerable) would be either irreconcilable with person-affecting theory or points us towards agnosticism between the remaining positions. In any case, this leaves us with the first, second and third definition of a person (body, brain or memory). With regard to contractualism, the emphasis on entertaining reasons may lead one to exclude the first view as well, but we could leave the first three definitions on the table. All three views seem eventually to come with some philosophical drawback, and this is not the place to engage in metaphysical discussions.

Importantly, however, all attempts to solve NIPwrong above except *Risk* and *Typed Individuals 1* would be excluded by any of the three remaining definitions. The majority of the contractualist claims tried out above thus seem inconsistent with contractualism's commitment to a person-affecting restriction.

3.9 Moving on from contractualism

Contract theory has dealt convincingly with many normative problems in moral and political theory.¹⁹⁰ The non-identity problem is, however, of a very persistent kind. One judgement, in light of the contractualist quest for intergenerational duties, has been that, due to the theoretical difficulties that arise, "a more sophisticated version of contractualism must part company with the classics."¹⁹¹ This could imply even more attempts – at developing arguments for how to solve the non-identity problem – among contractualists.

A different view would be that, during the quest for intergenerational duties, Scanlonian contractualism excludes or modifies the person-affecting assumption of contractualism to the point of self-annihilation. This implies

¹⁹⁰ Among those convincing accounts we could count the arguments for a basic catalogue of claim-rights, a certain redistribution of income, and accepting certain inequalities among contemporaries, etc.

¹⁹¹ Beckman (2008), 617.

three things. First, it reiterates the view among intergenerational scholars that contractualism is not the place to look in order to find a tenable justification for environmental intergenerational duties. Second, it means that liberals who wish to justify such duties are not helped by a theory that normally caters to liberal positions. When Brian Barry put Rawls' original position to the test, with unsatisfactory results, he wrote: "I must confess to feeling great intellectual discomfort in moving outside a framework in which ethical principles are related to *human interests*, but if I am right, then these are the terms in which we must start thinking".¹⁹² Third, it means that natural law theorists who wish to develop an account of environmental intergenerational duties have reason to explore the impersonal resources of natural law for this purpose.

In the chapter that follows, Chapter 4, I first describe natural law theory further, including its impersonal resources. I thereafter initiate an application of natural law theory to the question of environmental intergenerational duties.

¹⁹² Barry (1999), 88, emphasis added.

Table 3.1: Scanlonian contractualism and future people

Conditions	Problem	Solution
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is unacceptably burdened.	The notion of burden seems to imply an account of harm, which gives rise to the non-identity problem.	Argue that there is wronging without harming.
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is “wronged”.	As long as no particular person can be wronged, the non-identity problem persists. Narrow equilibrium is not achieved.	Introduce the concept of “typed” individuals.
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is wronged. Wronging may take place in relation to “typed” individuals.	It belongs to the future-person-type that they are time-dependent. The non-identity problem persists. Narrow equilibrium is not achieved.	Let the moral patient be something else than particular persons, e.g. a type as such, a relationship as such, the good as such or a group.
We accept principles that no one could reasonably reject. Rejections are reasonable if a type/relationship/good/group is wronged.	This violates contractualism’s person-affecting restriction. Wide equilibrium is not achieved.	<ol style="list-style-type: none"> 1) Elaborate further on contractualist theory. 2) Try an alternative theory that rejects a person-affecting restriction.

4 Natural law: the environment that enables future participation in the good

In this chapter, I describe and develop natural law theory with a view to answering Q1: *What is the moral reason not to leave an unsustainable environment for future people?* Many people have a strong intuition that there is such a reason. At the same time, the question has so far lacked a theoretically grounded answer. In Chapter 1, a political consideration implied a particular focus on contractualism and natural law.

Person-affecting theory, which is common in ethics and perceived as common sense, is known to give rise to the non-identity problem (NIP), described in Chapter 2. The difficulty within contractualism to solve this problem (and a wrongdoing version of the problem) has been demonstrated in Chapter 3. In the present chapter, and against this background, I explore an impersonal natural law approach for circumventing NIP (and responding successfully to Q1). For this exploration, I use a simplified version of John Finnis' requirements of practical reasonableness.

I also formulate three possible objections to such an account. The justification natural law could provide in favour of environmental intergenerational duties may be considered 1) too vague, 2) too weak, or 3) to imply that institutional measures are excluded. The first two objections are met and discussed in the present chapter. The response to the first objection includes different possible specifications of the natural law account. It also demonstrates how natural law theory may lead to counterintuitive conclusions in different number choices and provides an effort to circumvent this problem.

The second objection requires that we ask Q2: *Why is it morally wrong to leave an unsustainable environment for future people?* Many people have the stronger intuition that the act described would not only be morally objectionable, but also wrong. But, as with Q1, it is not clear what the theoretically grounded answer to Q2 is. As described in Chapter 2 and further demonstrated in Chapter 3, theory based on a widespread person-affecting assumption, including contractualism, has given rise to a non-identity problem in a

wrongdoing version (NIPwrong). The response to the second objection therefore consists of a tentative, impersonal approach for circumventing NIP (and responding successfully to Q2) within natural law theory.

The third objection, finally, implies a particular, institutional non-identity problem. This problem is further accounted for and dealt with in the second part of the thesis, in Chapters 5–7.

Below, my description of natural law theory starts out with a history. The history of natural law thinking is long and – for many natural law thinkers – important for the development of the theory itself. Furthermore, this history may not be sufficiently well known outside natural law circles. In addition, the secular and pluralist interpretations characterizing the subsequent analysis should be brought to light. Yet, the roots of natural law theory are not a focus in this thesis. Here, I account for a history of natural law, as well as some relevant interpretations, yet allow for the account to be brief.

4.1 Natural law – a (brief) history

4.1.1 The Ancients

In Sophocles' play *Antigone*, dated to 441 BC, the eponymous heroine is brought before King Creon to answer for illegal actions. Antigone then appeals to “immutable unwritten laws”, which “were not born today nor yesterday”, in defence of her deeds. The passage conveys an early account regarding the moral universe, and the content lends it a place in the natural law canon. A central claim is that there is an objective morality not ruled by any convention or decree, not even a king's.¹⁹³

¹⁹³ In the play, Antigone's brother is deemed to be a traitor; he has picked the wrong side in a war and it is declared he should be left on the battlefield to rot. Still, Antigone defies King Creon's laws and provides a proper burial for her brother. (Jacqueline Laing and Russell Wilcox [eds.], *The Natural Law Reader*, Blackwell, 2014; see also Johan Tralau, “Tragedy as Political Theory: The Self-Destruction of Antigone's Laws”, *History of Political Thought*, Vol. 26, No. 3, 2005.) Facing imprisonment and death, she justifies her actions by pointing to an ethics superordinate to the legislator (Laing and Wilcox [2014], p. 13):

Yea, for these laws were not ordained of Zeus,
And she who sits enthroned with gods below,
Justice, enacted not these human laws.
Nor did I deem that thou, a mortal man,

Not too long after, Plato's dialogues acquaint us with an explicit distinction between *nomos* and *phusis*.¹⁹⁴ *Nomos* refers to established practices in society, such as customs or promulgated laws. *Phusis*, on the other hand, refers to that which is considered unchangeable – nature.¹⁹⁵ This, according to Plato, is a hidden reality, but more real than anything we can actually see. Socrates' debating with the sceptic Sophists in *Gorgias*; his defence in the *Apology* as he faces a fate similar to Antigone's – which is finally death; and the simile of the cave in *The Republic* can all be read as instances where Plato rejects "the idea that morals and law are purely conventional".¹⁹⁶ Like other knowledge, that of the good requires an ability to see beyond an apparent reality into "the hidden, unchanging reality of the Forms".¹⁹⁷ Plato can thereby be said to theorize a necessary basis for natural law theory: the notion of the good as objective, universal, immutable and intelligible.

Attention is often drawn to Plato's belief that knowledge of the good can only be had by a few, apt "philosopher kings". He was also of the view that human societies, varying in their conventions, are more or less ignorant of true goodness. But, those things are not in our interest here. We care for the preceding ideas that *there is a good*, and that *it can be rationally known*.

In a similar vein, Plato's disciple, Aristotle, would make a distinction between two kinds of justice. In the *Nicomachean Ethics* he writes about legal or conventional justice, on the one hand, and "natural" justice on the other, "which everywhere has the same force and does not exist by people's thinking this or that".¹⁹⁸ For Aristotle, however, reality is not made up by hidden

Could'st by a breath annul and override
The immutable unwritten laws of Heaven.
They were not born today nor yesterday;
They die not; and none knoweth whence they sprang.

¹⁹⁴ An appearance of this distinction among the pre-Socratics can be said to predate Plato some decades (Diels-Kranz 87 B 44). (See Hermann Diels and Rosamund Kent Sprague, *The older Sophists: A complete translation by several hands of the fragments in Die Fragmente der Vorsokratiker*, University of South Carolina Press, 1972.)

¹⁹⁵ In ancient Greece, the distinction was not necessarily this settled.

¹⁹⁶ Stephen Buckle, "Natural Law", *A Companion to Ethics*, ed. Singer, Blackwell, 1993, p. 162; Laing and Russell (2014), p. 1.

¹⁹⁷ Buckle (1993), 162.

¹⁹⁸ Aristotle, *Nicomachean Ethics (NE)*, V:7. A more nuanced analysis of Aristotle would show that he (due to a predominantly biological outlook) does think that the natural for a being may indeed change, while its "inner principles" steers its development. For example, a seed turns to seedling, mature plant and finally decays. Yet,

Forms, but consists of what is directly observable by the senses. And while Plato requires advanced study (also in fields not directly related to morality) in order for the good to be perceived and understood, Aristotle's view implies that experience is key to successful moral enquiry.

From adherents of Aristotle, furthermore, we get the idea that there is not just one good, but many.¹⁹⁹ This may not be evident from just reading Aris-

the distinguishing feature of human beings, Aristotle thinks, is their ability to employ reason in decision making. What is natural for the human being here depends on what is (immutably) rational or reasonable. See Buckle (1993), 163.

¹⁹⁹ This aspect of natural law theory (that there is not just one good, but many) is sometimes neglected both by critics and adherents. A prominent critic is Rawls, whose opposite view may be quoted in its entirety (John Rawls, "Justice as Fairness: Political Not Metaphysical", *Philosophy and Public Affairs*, Vol. 14, No. 3, 1985, p. 248.):

One of the deepest distinctions between political conceptions of justice is between those that allow for a plurality of opposing and even incommensurable conceptions of the good and those that hold that there is but one conception of the good which is to be recognized by all persons, so far as they are fully rational. Conceptions of justice which fall on opposite sides of this divide are distinct in many fundamental ways. Plato and Aristotle, and the Christian tradition as represented by Augustine and Aquinas, fall on the side of the one rational good. Such views tend to be teleological and to hold that institutions are just to the extent that they effectively promote this good. Indeed, since classical times the dominant tradition seems to have been that there is but one rational conception of the good, and that the aim of moral philosophy, together with theology and metaphysics, is to determine its nature.

Natural law theory would here be ascribed the idea that there is but one legitimate conception of the good and that the task of political institutions is to promote this good. It is understandable that Rawls took this view. One reason for him to do so is Aristotle's concept of happiness (in a footnote below, Aquinas' concept of happiness appears as another reason). Although people have different purposes in different situations, on Aristotle's view, they have one end in common for which there is no further purpose: *eudaimonia*, often translated as "happiness" or "well-being" (*NE* 1097a30-34). The idea is that one achieves an overall happy life by living in accordance with a seemingly demanding list of virtues, such as courage, temperance, right ambition or modesty (which institutions should aim to instil in citizens by "forming habits in them"; indeed, legislators are thereby to "make citizens good" [*NE* 1103a30]). It is assumed that there is such a thing as true – as opposed to a mere experience of – happiness. Further, *eudaimonia* is the result of having acquired the long-term disposition to maintain "a golden mean" in different aspects of one's life, avoiding vices on both sides. Referring to this as "the highest good", Aristotle can be thought to prescribe too specific and demanding a plan of life. As is accounted for in this chapter, however, this is not how natural law theory is understood in this thesis.

totle. In the *Nicomachean Ethics*, he investigates nothing less than the ultimate purpose of human existence. Starting out with a much-debated observation of the good – the good is “what all things desire”²⁰⁰ – he famously goes on to refer to “the highest good” as the happiness resulting from acquiring a number of pre-defined and interdependent virtues. Aristotle can thereby be understood to require from one a very specified (and demanding) life-project.

Thomas Aquinas, who was a medieval reader of Aristotle, goes on to develop (what we would now call) a pluralist view of the good. In itself, this view can be understood as less specific regarding what is a reasonable plan of life. However, he also assumed a Christian outlook, which could seem all the more demanding. I discuss this further below. Within the natural law current focused on in this thesis, Aquinas is typically considered “the” natural law thinker among classical exponents.²⁰¹ Here, we may thus consider his account – of the foundation for moral judgements – a paradigmatic statement of natural law.

4.1.2 Thomas Aquinas

In a commentary on the *Nicomachean Ethics*, Aquinas argues that “there is not one good to which all tend”, and that Aristotle, by saying that the good is “what all things desire”, does not single out “a particular good but rather discusses good in general”.²⁰² A reason Aquinas is able to take this position

²⁰⁰ Or with a translation that is preferred by some: that at which all things “aim” [*NE* 1:1 1094a3]. In a commentary Aquinas suggests the meaning “tend towards”, which is to comprise both “instinctive” and “volitional” tendencies (cf. the epistemological discussion in Ch. 2 in this thesis). We pass over, here, a discussion on the possible circularity in the natural law argument, if one claims both that we tend towards things because they are good, and that things are good because we tend towards them (see H. L. A. Hart, *The Concept of Law*, Oxford University Press, 1961, pp. 184-7; Finnis [1980], p. 78).

²⁰¹ The *Stanford Encyclopedia of Philosophy* takes this view somewhat to an extreme: “If any moral theory is a theory of natural law, it is Aquinas’. [...] It would seem sensible, then, to take Aquinas’s natural law theory as the central case of a natural law position: of theories that exhibit all of the key features of Aquinas’ natural law view we can say that they are clearly natural law theories; of theories that exhibit few of them we can say that they are clearly not natural law theories; and of theories that exhibit many but not all of them we can say that they are in the neighborhood of the natural law view but nonetheless must be viewed as at most deviant cases of that position” (Murphy [2011]).

²⁰² Thomas Aquinas, *Commentary on the Nicomachean Ethics*, 1:11.

may be the fact that he, in his Christian context, places “the highest good” in the afterlife.²⁰³ In an imperfect world, he can go on to say, there are different goods, which we can nonetheless know about and participate in.

In Lecture IV of *Political Liberalism*, Rawls describes natural law as a theory based on Platonism and Christianity and, as such, he considers it a comprehensive doctrine of the *one* reasonable good.²⁰⁴ Aquinas’ formulation from the 13th century, which applies to any form of good, is that “good is to be done and pursued, and bad avoided” (*bonum est faciendum et prosequendum et malum vitandum*).²⁰⁵ This very first “principle” identified in *Summa Theologiae* (Aquinas refers to it as *principium*, a beginning) can be said to exclude a person-affecting restriction. It is, however, formal and lacks content. Aquinas indeed holds that there are a number of goods “to-be-done” – such as life, knowledge, community and reasonableness.²⁰⁶

Aquinas’ pluralist view underlies several contemporary natural law accounts, as well as the explorations in this thesis. A religious worldview, on the other hand, does not. Yet, a secular approach is not out of line with Aquinas’ own stance on how the natural law may be used. He argues, precisely, that it is possible to employ one’s reason – rather than divine command – in order to conclude how to live and how society should be organized. To account for this view, Aquinas speaks of “the four laws”. A purpose of the scheme is to show how reason can be a source of moral knowledge, next to the revealed word of God. Aquinas refers to the latter as Divine law – an accessible example for the modern reader would be the Ten Commandments in the Old Testament. Here, God is relatively clear: “You shall not kill”, “You shall not steal”... Aquinas contends, however, that God also makes moral principles available to human beings in a different way. Aquinas’ point of departure is here a second law, which he terms the Eternal law. All of God’s creation participates in the Eternal law by conforming to their end. Rocks, trees, animals, humans – all have God-given ends of their own. What characterizes human beings, Aquinas argues with Aristotle, is that they are endowed with reason. Aquinas refers to the precepts of practical

²⁰³ Aquinas’ translation of *eudaimonia* as *beatitudo* could suggest that perfect happiness is rewarded in the afterlife as *visio beatifica* – the moment one comes to see God face to face.

²⁰⁴ John Rawls, *Political Liberalism*, Columbia University Press, 1993, p. 134-135.

²⁰⁵ *ST I-II* 94:2, and Germain Grisez, “The First Principle of Practical Reason: A Commentary on the *Summa Theologiae*, 1–2, Question 94, Article 2”, *Natural Law Forum*, Vol. 10, 1965.

²⁰⁶ *ST I-II*, 94:2-3.

reason as a third law: the Natural law. By acting in accordance with the Natural law, humans participate in God's Eternal law in their specific way. One may thereby discover and live by moral principles without having read or consulted the Bible. Furthermore, Aquinas thinks that the laws governing human societies – the kind of law the reader might normally refer to as “law” – should be derived from the Natural law. Aquinas refers to this as a fourth kind of law: Human law. The latter would consist in legislation – rather than divine commands – that forbid murder, manslaughter, slander and so forth. Although Aquinas takes for granted that divine commands and human laws should coincide, the view is that a natural law approach can be used independently of a religious outlook.²⁰⁷

So far, then, we have come to know that the natural law account in Aquinas may be seen as pluralist (with regard to the good) and be used in secular enquiry. A number of contemporary proponents, such as Finnis, can be said to draw on these aspects. They suggest a pluralist conception of the good by formulating a list of basic values, without requiring radical metaphysical assumptions regarding a divine or eternal law. This sort of account is also employed here. In the following, I account further for Finnis' account

²⁰⁷ In the 17th century, natural law thinker Hugo Grotius would go on to formulate his *etiamsi daremus*, perhaps the most famous statement of this independent or secularizing view. (See *De Jure Belli ac Pacis* [1625]: “Et haec quidem quae iam diximus, locum aliquem haberent etiamsi daremus, quod sine summo scelere dari nequit, non esse Deum, aut non curari ab eo negotia humana.” “What we have been saying would have a degree of validity even if we were to concede [*etiamsi daremus*] that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him.”)

A contrary view is that Aquinas renders Aristotle's concept of happiness dependent on a religious account (which for critics makes it even more demanding). An explanation of the contrary view can be that Aquinas conflates the idea of *eudaimonia* with a position on spiritual life, as he translates it by *felicitas* (“happiness”) and *beatitudo* (“blessedness”), using the terms interchangeably (Robert Dyson [ed.], *Aquinas: Political Writings*, Cambridge University Press, 2002, p. 79, n 21.) He also adds, to a list of virtues, requirements of religion (Christian virtues) for achieving true happiness, referring to God as “the highest good”. (All the while, Aquinas retains the position that institutions should guide us to happiness, which is why it would now look as if the state should be responsible for leading its citizens to a both morally *and* spiritually upright life [*ST* I-II, 90:2].) Natural law can thus, again, be understood as prescribing a very specified life project, which here includes a religious commitment. In turn, some natural law theorists suggest that the idea of a natural law is logically dependent on the notion of an eternal law, and ultimately the existence of God. This thesis does not adopt such an outlook, instead depicting natural law theory as abstaining from prescribing any specific life-project, although it excludes some, and not requiring any religious commitment.

of basic values as well as the value of practical reasonableness, of special import in moral theorizing. I subsequently apply this natural law account to answer the questions on future people's environment.

4.2 Seven basic values

In line with Aquinas' pluralist account, Finnis identifies seven basic values in which participation is possible: life, knowledge, play, aesthetic experience, sociability ("friendship"), practical reasonableness and, within brackets, "religion".²⁰⁸ (Being an atheist, or simply contemplating a possible order of "things 'beyond' each and every man" will allegedly do to participate in the last value.²⁰⁹) The values can be understood as follows.

1. *Life*: "the first basic value, corresponding to the drive for self-preservation, is the value of life. The term 'life' ... signifies every aspect of vitality ... which puts a human being in good shape for self-determination."²¹⁰ This value is considered "first among equals", the values are thus not hierarchically ordered.
2. *Knowledge*: a preference for true beliefs over false ones, which corresponds to a basic drive of curiosity. This good concerns "knowledge ... for its own sake, not merely instrumentally."²¹¹ Such knowledge can range from knowing how many times Poland has participated in the Eurovision Song Contest to the discoveries of a Marie Curie.
3. *Play*: "each one of us can see the point of engaging in performances which have no point beyond the performance itself."²¹² Games played for fun, enactments by children or grown-ups, sports and other kinds of amusement would all fall into this category.

²⁰⁸ Finnis mostly uses the term "basic goods" but will also refer to them as e.g. "basic values of human existence", "basic principles of all practical reasoning", and an "evaluative substratum of all moral judgments" (Finnis [1980], 59). (Aquinas uses the term "first principles".) The list has been extended and modified in later works such as Finnis (2011); Murphy (2001) lists nine: life, knowledge, aesthetic experience, excellence in play and work, excellence in agency, inner peace, friendship/community, religion and happiness.

²⁰⁹ Finnis (1980), 90.

²¹⁰ Op. cit., 86.

²¹¹ Op. cit., 59.

²¹² Op. cit., 87.

4. *Aesthetic experience*: the appreciation of beauty.²¹³ The enjoyment of art as well as natural scenery belong here.
5. *Sociability* or *friendship*: “acting for the sake of one’s friend’s purposes, one’s friend’s well-being.”²¹⁴ Here, Finnis also includes other forms of sociability; community as between business associates, members of the same sports club, citizens and so on.
6. *Practical reasonableness*: “the basic good of being able to bring one’s own intelligence to bear effectively ... on the problems of choosing one’s action and life-style and shaping one’s own character.”²¹⁵ This value also works instrumentally in justifications. I go on to employ this tool in the present chapter.
7. *Religion*: “questions of the origins of cosmic order and of human freedom and reason.”²¹⁶ Thus understood, even an atheist is able to (indeed, does) appreciate this good.

I do not discuss different lists of basic values here, but nor are their number and exact character of primary interest to us.²¹⁷ What we must notice is that the values *are* numerous, as well as secular, and that Finnis provides an implicit reply to Rawls: “our grasp of the basic values [...] creates, not answers the problem for intelligent decision: What is to be done? What may be left undone? What is not to be done?”²¹⁸ The basic values are described as equally fundamental and *incommensurable* variables of “human flourishing”.²¹⁹ A special role is, therefore, assumed by practical reasonableness – it works both as an end (a Stoic “aiming straight”²²⁰) and a tool, as it is “participated in precisely by shaping one’s participation in the other basic goods”.²²¹

Anyone is free to give one or more values precedence in their own life (even though Finnis sometimes requires a minimum participation with regard to each one). As an example, he will mention the asocial scientist who is within her rights to abstain from a life filled with acquaintances in order to

²¹³ Op. cit., 87–88.

²¹⁴ Op. cit., 88.

²¹⁵ Op. cit., 88.

²¹⁶ Op. cit., 89.

²¹⁷ We might take it as an “Aristotelian list”, a working list which is “a summary of what we think so far” (Nussbaum [1990], 219). See also the epistemological discussion in chapter 2 of this thesis.

²¹⁸ Finnis (1980), 100.

²¹⁹ Op. cit., “equally fundamental”: pp. 92-93; incommensurability: p. 115.

²²⁰ Op. cit., 377.

²²¹ Op. cit., 100.

pursue knowledge. Similar examples could involve focused athletes, artists, or stay-at-home parents who abstain from a profession entirely. We could imagine times when one will choose less freely, as when circumstances (such as hunger and poverty) require one to focus on mere survival. Yet, Finnis argues, there is no objective hierarchy between the values. One would thus not be required to give priority to one's own life if other values were fundamentally at stake. One may think of a Malala Yousafzai or a Martin Luther King, Jr., who risk their life or part from their family – or a Socrates who drinks hemlock – in pursuit of other values; values like reasonableness (in the face of an oppressor), sociability (among citizens), knowledge (seeking truth), and so forth.

These values are not thought to be equal to urges or tendencies. There is an assumed difference between “the brute fact of an urge” and “the forms of good which one who has [...] urges can think it worthwhile to pursue and realize.”²²² A judgement should not be based on an urge itself, but on a person's ability to see the good of a particular pursuit or realization. Nor do tendencies among humans to live in a certain way in themselves qualify as basic values.

Furthermore, basic values are not bodily functions or material conditions for a pursuit of the good. Finnis argues that a “sound brain and intelligence are necessary conditions for the understanding, pursuit and realization of truth, but neither brainpower nor intelligence should appear on a list of basic values: knowledge is the relevant value.”²²³

Nor are basic values exclusively a means for attaining other ends. Finnis confronts the basic values to Rawls' “primary goods” (liberty, opportunity, wealth and self-respect). Rawls thinks that it is rational to want these goods whatever else one wants, as they are generally necessary in order to execute one's own rational plan of life.²²⁴ However, such goods are not to be considered goods or values in themselves, but only instrumental to other pursuits.

Finally, the point of pursuing the basic values is not the positive experience one possibly gets out of it, such as pleasure or happiness. Finnis here invokes a famous argument suggested by Robert Nozick. Being offered to remain plugged into an experience machine, which stimulates the brain so that one has all the experiences one wants, one would still prefer not to be plugged into such a machine. One wants to do certain things, rather than just

²²² Op. cit., 82.

²²³ Ibid.

²²⁴ Op. cit., 82–83.

having the experience of doing them, as well as freely and authentically be a certain kind of person. This does not exclude an experience of pleasure being an aspect of, or a result from, pursuing basic values. Yet, pleasure is not a valid reason for pursuing them.²²⁵ The reasons must only be the values themselves.

One may certainly discuss whether it makes sense, at all, to speak of basic values, or whether they should be understood in precisely this way. Yet, at stake in this study is what an impersonal natural law account, employing the basic values, would imply regarding future people's environment. For this purpose, I try out natural law's decision-making tool, practical reasonableness. Below, I discuss this value further.

4.3 Natural law in moral theory – practical reasonableness

The natural law theory I refer to occupies at least three different fields. It may appear in moral theory, political theory or legal theory. These ways of theorizing are not equally relevant for my purpose. In order to answer Q1 and Q2, I here engage in moral theorizing. The point of employing natural law in moral theory is to find out *what moral duties there are*. The value of practical reasonableness, for which there are defined requirements, is central to this task.

In the field of political theory, on the other hand, natural law purports to tell us *which laws are just*. In order to answer Q3 on the basis of natural law, I later engage in this sort of theorizing. In such an enquiry, we are required by practical reasonableness to consider “the common good” in a political context. In the simplified version of practical reasonableness employed in this chapter, I exclude specific requirements of the common good. Instead, I treat the common good separately (with regard to Q3) in Chapter 7. In legal theory, finally, natural law is an aspect of *why the law is law*. How to define law is a matter of extensive legal debate, and this thesis is not immediately concerned by natural law in legal theory. A brief account of natural law in legal theory can likewise be found in Chapter 7; a legal perspective is, however, put aside.

In Aquinas, the value of practical reasonableness appears as *prudentia*. Finnis' account of practical reasonableness can be seen as an effort to spell

²²⁵ Op. cit., 95.

out its constitutive parts. The account provided here is not entirely faithful to Finnis' but takes his and neighbouring formulations into consideration. I identify requirements of three different kinds – those that apply to agents, reasons and acts respectively.²²⁷

Requirements on agents regard an agent's character over sustained periods of their or its lifetime. While I put agent-related requirements aside when dealing with the basic non-identity problem (answering Q1), they shed light on assumptions I have made regarding generations as "agents". In addition, these requirements play a part with regard to the non-identity problem in a wrongdoing version (as one answers Q2) and for the political implications of the natural law approach (that give rise to Q3). I describe these requirements further below and discuss the relevant assumptions.

Requirements on reasons determine what is considered to be morally objectionable. Speaking of reasons, here, I am referring exclusively to moral reasons. The reasons that count in a theory reflect what ultimately matters in the theory. What is fundamentally valuable in the world? Depending on the kind(s) of reasons a theory acknowledges, some acts will fall within the boundaries of the objectionable while others will not. I consider this category of requirements central to identifying how a theory may deal with NIP. Furthermore, I consider one of these requirements incompatible with a person-affecting restriction: *regard for basic values*. The requirements on reasons also show that natural law theory does not have to abide by a person-affecting restriction in order to achieve a wide reflective equilibrium in the way set out by the tradition-conscious methods of this thesis (see Chapter 1). Given natural law's requirements on reasons, natural law theory may try to circumvent NIP. The theory would seek to account, in an impersonal manner, for the objectionability of leaving future generations with an unsustainable environment.

Requirements on acts are decisive for what it is considered wrongful to do. This kind of requirement becomes relevant as I discuss possible implications of a natural law approach to NIP. Given that we do apply a theory suc-

²²⁷ I draw, here, on nine "requirements of practical reasonableness" identified by Finnis (1980), and seven similar requirements identified by Murphy (2001). Murphy makes a distinction, furthermore, between requirements that govern plans of action and those governing agents (see sections 5.5 and 5.6, respectively, in Murphy [2001]). I identify six requirements of practical reasonableness and make a threefold distinction between requirements (those applying to agents, reasons and acts, respectively).

cessfully with regard to the basic, objectionability version of the problem, we will want to see if and how the theory can convincingly guide us in terms of wrongdoing too. An objection to the natural law approach could be that, while it manages to circumvent the non-identity problem in a basic objectionability version, it does not have the resources to deal with a wrongdoing version. In direct connection to such an objection, I describe and discuss the requirements put on acts..

Hence, in moral theory, practical reasonableness puts standards on what kind of person one should be and what (kind of) moral reasons one may invoke; ultimately, it provides guidance on what it is right or permissible to do in relation to others. Practical reasonableness is to guide us on whether we should e.g. lie to a friend, donate to charity, or deplete a natural resource in a particular situation. The decision to be evaluated here, in respect of the requirements, is that of carrying out an act of Depletion, thereby leaving an unsustainable environment for future people (a scenario outlined in Chapter 1).

4.4 Requirements on agents

The first requirement on agents proposed here is *a reasonable plan of life*. Natural law requires that we have effective and harmonized commitments. This is in agreement with Rawls' view (informed by Aristotle) that we should have "a rational plan of life", seeing our life as one whole: "the activities of one rational subject spread out in time".²²⁸ It further implies, on several natural law accounts, that one consistently adopts "projects" or "plans of action" in the pursuit of basic values. In Finnis' understanding, it is unreasonable never to adopt projects and merely live "from moment to moment",²²⁹ while in Murphy's view, one may abstain from adopting plans of action, but would be unreasonable in formulating them and then remain idle.²³⁰ In either view, one should not adopt specific projects or plans of action that are impossible for one to reconcile.²³¹ This requirement also de-

²²⁸ John Rawls, *A Theory of Justice*, Oxford University Press, 1971, p. 420; see also Finnis (1980), 103.

²²⁹ Finnis (1980), 104.

²³⁰ Murphy (2001), 212.

²³¹ Finnis (1980), 103–104; Murphy (2001), 209. Although I exclude this here, the natural law requirement to act according to one's conscience could likewise be seen as a requirement on agents. It is a requirement that would be considered fulfilled

mands “the redirection of inclinations, the reformation of habits, the abandonment of old and adoption of new projects, as circumstances require”.²³² It is thereby interrelated with the requirement below.

A second requirement on agents, as I propose them here, is *flexibility* in adjusting one’s life plan and the projects catering to it. On Murphy’s account, a position “against flightiness and stubbornness” constitutes such a requirement, while Finnis refers to “detachment” and “commitment” as two separate requirements.²³³ I refer to this jointly as flexibility. While the requirement of a reasonable life-plan mainly regards the way agents should formulate projects, the requirement of flexibility puts an emphasis on how agents should treat those projects once they are formulated.²³⁴

These are requirements put on agents, but they can also be read as *features characteristic of agents*. Taking them into consideration as such, it is not obvious that a generation can be treated as an agent. And yet, this is how Generation One (G1) could be understood in this thesis. (See e.g., the counter-intuitive conclusion of the non-identity argument: “*Generation One’s act of Depletion, rather than Conservation, is not morally objectionable*”). At least two objections to treating G1 as an agent arise.

First, it may seem that G1 could not carry out some specified plan of life. A typical life plan may involve settling down to rear a family (pursuing the values of life and friendship). Another could be to realize oneself through one’s work (pursuing the value of e.g. life, knowledge, or aesthetic experience). Yet others may work in order to finance some other project – artistry in one’s free-time, family rearing, etc. Such life plans are, *prima facie*, carried out by individuals. Even though smaller associations may seem to have similar plans, the same could perhaps not be said about a generation. Furthermore, while it is comparatively straightforward to require that individuals are “reasonable”, it can be argued that groups may behave inconsistently even though all members of the group are individually consistent. Groups, such as G1, should not therefore be required to respond to demands of reasonableness in the same way.²³⁵

even though one’s reasons and actions are flawed, simply by one’s acting according to standards one believes are right. In this way, it is a call to live authentically. If one wishes to make room for that requirement here, one may e.g. see it as part of a reasonable plan of life.

²³² Finnis (1980), 104.

²³³ Op. cit., V.5; Murphy (2001), 210–212.

²³⁴ Op. cit., 210.

²³⁵ List and Pettit (2006), 90-95.

Secondly, it may seem that G1 lacks the capacity to fulfil the requirement of flexibility. This is because each individual partaking in Depletion makes no significant difference to the environment. Committing to their projects, the individuals of G1 all, or almost all, cause pollution in the atmosphere. They might, typically, be using fossil fuelled cars instead of trains in order to travel between their homes and work places. But each contribution is diminutive. Nobody could make it significantly better for the environment by withdrawing, or significantly worse for the environment by keeping up their commute, individually.²³⁶

As explained in Chapter 1, I do not exclude that there are corporate agents, even generations, with their own (albeit minimal) plans of life. Here, however, “Generation One’s act” is shorthand for acts on the part of the individuals of G1. For the sake of the enquiry, I think of any potential duty on the present generation’s part as the joint moral duties of individuals.²³⁷ As I discuss G1’s choice with regard to the requirements on agents, reasons and acts, it is by reference to an action pattern of the individuals belonging to G1, within a society which I assume could be organized differently by these individuals. I assume that individuals may act morally, by joining a civil movement (even if only by altering their consumer choices) or by voting, in order to correct for joint moral wrongs.

4.5 Requirements on reasons

4.5.1 Regard for basic values

Reasons are, first, to express a regard for basic values. On a natural law account, any intelligible plan of action is going to involve the pursuit of some basic value or other. This often means giving less priority to one or more other values. As an example, we may consider somebody who chooses a medical education in order to save lives and improve the health of others. This may entail demanding working conditions with fewer opportunities for friendship or play than this person would otherwise have had. Such a commitment is reasonable, natural law theorists argue, if it is based on one’s talent, taste, or circumstance. It is not reasonable, however, if it involves a

²³⁶ Sinnott-Armstrong (2005).

²³⁷ See Schwenkenbecher (2014).

dismissal or a devaluing of any aspects of the good.²³⁸ According to Finnis, “it would be unreasonable for [the doctor] to deny that, *objectively*, [friendship and play] are good in themselves.”²³⁹ The natural law thinkers differ from the contractualists in that they attribute intrinsic value to basic forms of good, such as truth, art or friendship. They also differ from typical utilitarians in at least two ways. First, the good is participated in (or not); it does not depend on the inner states or preferences of persons.²⁴⁰ (We shall consider this in the first formulation of a natural law argument in this chapter.) Second, basic values are incommensurable, which is further discussed with regard to the requirements on acts in a later section.

4.5.2 Regard for persons

Reasons are, secondly, to express a regard for persons. According to the natural law view expressed by Finnis, “another person’s survival, [...] his all-round flourishing, may not interest me [or] concern me”, yet I do not have any “*reason* to deny that they are really good, or that they are fit matters of interest [and concern] by that man and by all those that have to do with him”.²⁴¹ Therefore, I am not only to recognize basic values (and their incommensurability), I am likewise required to recognize the “fundamental impartiality among the human subjects who are or may be partakers of those goods”.²⁴² When allowance is made for some amount of self-preference, this requirement is meant to stand as a critique of selfishness, hypocrisy, egoism and so on. It gives rise to the “golden rule” to be found in nearly every religion or ethical tradition: “what you do not wish for yourself, do not do to others”.²⁴³

Rawls’ heuristic model of the original position could be seen as a device for anyone who would like to see whether some particular plan of action fulfils this requirement. The conditions of the original position guarantee that no principle favours anyone’s life plan just because they participate more fully in the basic aspects of the good. In contrast to Rawls’ model, however,

²³⁸ Finnis (1980), V.3; Murphy (2001), 198–201.

²³⁹ Finnis (1980), 105, emphasis added.

²⁴⁰ Basic values can be discovered by one’s examining the source of one’s well-being, but the values are not inferred from well-being.

²⁴¹ Finnis (1980), 106.

²⁴² Finnis (1980), 107.

²⁴³ Here in Confucius’ negative form (Ancient China), variants can be found in, for instance, all the Abrahamic religions.

natural law is not restricted to this kind of requirement. The previous requirement also demands that each basic good should be regarded for itself. While a principle chosen in the original position would be fair as between individuals, it does not follow “that a principle which would *not* be chosen in the original position must be unfair or not a proper principle [...] in the real world.”²⁴⁴

Given this latter requirement on reasons, it would be a mistake to describe the natural law approach as a wholly “impersonal” theory. But, provided the former, natural law seems to have a wider scope than exclusively person-affecting theories, such as contractualism. It enables a certain kind of impersonal reasoning, which could be useful in cases when objectionable acts cannot technically be described as person-affecting. In other words, natural law theory does not have to abide by a person-affecting restriction in order to achieve wide reflective equilibrium as set out here.

4.6 Natural law’s basic argument

We would now be able to formulate an impersonal natural law argument in an effort to circumvent NIP. If not only persons, but values too, are in themselves reasons for action, we may allow ourselves to formulate a different argument than the person-affecting argument in Chapter 1. We may refer to the following as a basic natural law argument, offered as an alternative.

Natural law’s basic argument: the moral objectionability of Depletion

P1(NL): Generation One’s act of Depletion rather than Conservation impedes participation in basic values

P2(NL): If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One’s act of Depletion rather than Conservation is morally objectionable

In the basic person-affecting argument, which gave rise to NIP, the fact that G5 is not made worse off rendered inapplicable the concepts of harm and personally grounded objection. P1(NL) does not necessarily bring into the picture whether any particular person in the future is made worse off by G1’s act. It proceeds from the good itself and establishes that participation in basic values (in a distant future) is impeded by G1. *P2(NL)*, in turn, is natural

²⁴⁴ Finnis (1980), 109, emphasis in original.

law's main claim with regard to the non-identity problem. It rejects the previously stated P5. P2(NL) states that it is morally objectionable to impede participation in (a) basic value(s). It thus rejects the idea that future people must have personal reasons to object to G1's act. While the person-affecting argument laid out in Chapter 2 led to a counter-intuitive conclusion regarding future people's environment, the conclusion of the basic natural law argument C(NL) corresponds to our intuition. It states that Generation One's act of Depletion rather than Conservation is morally objectionable. Basic values are here (a) moral reason(s) not to leave future generations with a deteriorated environment. The argument arrives at an intuitive conclusion, seemingly achieving a narrow reflective equilibrium. At the same time, it seems to achieve the limited, wide equilibrium that is also required here.

Several concerns may be raised with regard to the basic natural law argument. First, the account can be thought of as being too vague, as it is not specified carefully enough what is meant by impeding participation in basic values. I develop and respond to this objection below. Second, one may think that this account is too weak, in that it says too little about our moral duties, an objection likewise developed below. Thereafter, I account for the last two moral requirements of practical reasonableness (the requirements on acts), which are employed in order to respond to the second objection. A third objection concerns an undesirable implication in political theory. I treat the last objection briefly in this chapter, and further in Chapter 5.

4.7 Objection 1: It is too vague

An objection to the argument above could be that the basic natural law argument is too vague. Some may want to reject the vagueness objection entirely, and argue that vagueness allows for borderline cases, while other cases (perhaps the environmental case) will be clear.²⁴⁵ Others may reject it on the basis of a particular Aristotelian view – that we should rely on experienced people who are able to (intuitively) discern when a basic value is significantly damaged or at risk.²⁴⁶ A response that accommodates the vagueness objection would instead offer an argument that is more specific. I shall

²⁴⁵ See Timothy Endicott, "Law is Necessarily Vague", *Legal Theory*, Vol. 7, No. 4, 2001.

²⁴⁶ International Theological Commission, "In Search of a Universal Ethic: A New Look at the Natural Law", Congregation for the Doctrine of the Faith, The Holy See, 2009, see sec. 2.6, par. 55.

provide examples of three operationalizations that would seek to accommodate the vagueness objection. In these three arguments, I specify “participation in basic values” in the second premise. A problem such operationalizations can bring to light that is of particular interest here is an incapacity to deal properly with different number choices. This would prevent a narrow reflective equilibrium, as required in this thesis, and is thus discussed further.

One route could be to remain close to the impersonalism offered by utilitarian approaches. This would imply a comparison between the quality of life that would result for G5 and G5*, respectively. Such an argument could be formulated as follows.

A first operationalization: a relative comparison

P1(NLrel): Generation One’s act of Depletion rather than Conservation makes Generation Five worse off than Generation Five* would otherwise have been

P2(NLrel): If A’s act makes B worse off than C would otherwise have been, it impedes participation in (a) basic value(s)

P3(NLrel): If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One’s act of Depletion rather than Conservation is morally objectionable

Here, we are not trying to say that the act makes it “worse for people” in a person-affecting sense.²⁴⁷ Instead, this variant compares the estimated life quality of G5 with that of G5* in an impersonal manner.

However, different number choices can cause us to question the argument’s premises. In line with a well-known argument suggested by Parfit, we can imagine a scenario where the individuals of G5 are estimated to be twice as many as G5*, but live lives that are more than half as much worth living.²⁴⁸ It then becomes difficult to say that G5 is worse off than G5*, as the total life quality would then be greater for G5. This puts P1(NLrel) in question and implies what Parfit termed the repugnant conclusion: a larger population with a lower quality of life can be better.

An attempt to solve this could, instead, be to consider how well off on average each individual in respective generation would be. Parfit’s argument in this regard is, however, almost as well-known. Consider, here, P2(NLrel).

²⁴⁷ Similar efforts have been made to develop a so-called “wide” person-affecting account, see e.g. Parfit (1984), 396; Parfit (2017).

²⁴⁸ See Parfit (1984), 398–399.

One could imagine a population B, of 100 persons, where all would enjoy a maximum well-being of 100 units, as regards their capacity to participate in basic values. Population C, on the other hand, would consist of all these people, as well as an additional 20 persons with a well-being of 80, which we assume is a fairly large amount. While the average well-being for B would be 100, the average for C would be 97. With regard to the average amount of well-being, C could indeed be said to be worse off than B. However, it is not clear whether giving rise to C would impede participation in basic values. In this example, the well-being of the batch of 100 persons remains intact. Additional people are put into the world, all of whom enjoy a fairly large amount of well-being. This seems to enable rather than impede participation in basic values.

Even if the argument is valid, then, its premises may appear to be false on consideration. While NIP is being circumvented, since future people's non-identity ceases to make any difference, the argument gives rise to other problems in different number choices. This approach may, then, not achieve narrow, reflective equilibrium, according to the requirements in this thesis. While more sophisticated attempts are possible along this route, I here leave relative comparisons behind.

To try another route, we may recall the comparative, yet non-counterfactual, notion of harm suggested by some scholars aiming for a person-affecting approach (see section 2.2.3). It was assumed in Chapter 2 that harm is by definition counterfactual, which is why such a notion was left behind. Yet, we may still want to compare future people's life quality (given Depletion) to an external standard of some kind. A second operationalization could thus take a similarly comparative, yet non-counterfactual, approach in an impersonal argument. Here, I let the point of comparison be a threshold. In line with many natural law theorists and other advocates of thresholds, I use the Aristotelian term human flourishing in formulating such an argument below.

A second operationalization: a threshold for human flourishing

P1(NLhf): Generation One's act of Depletion rather than Conservation puts at least one person of Generation Five in a sub-threshold state of human flourishing

P2(NLhf): If A's act puts B in a sub-threshold state of human flourishing, it impedes participation in (a) basic value(s)

P3(NLhf): If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One's act of Depletion rather than Conservation is morally objectionable

According to the second operationalization, the impediment of value-participation is constituted by causing individual human beings to fall below a threshold state of flourishing. The notion of a threshold appears here, not as the component of a conception of harm (as no-one in G5 is made worse off than they would otherwise have been), but as part of an impersonal account of objectionability.²⁴⁹ We may reason that natural law's first requirement on reasons (regard for values) allows us to relate to a threshold in an impersonal manner.

There could be several objections to this threshold account. An objection to a threshold conception of harm has been that it would not include cases where one renders someone who is well above the threshold a little worse off, without leaving them below the threshold (an example being stealing one of the cars of a rich person).²⁵⁰ It should be possible to point to an impediment of value-participation in a corresponding way. However, the above argument does not exclude there being other ways of impeding participation in basic values. Hence, we should be able to meet this objection.

Another objection could be that Conservation would likewise lead to at least one person being born into or fall below a sub-threshold state of flourishing. This would be the case, for example, if certain social inequalities remained the same. At least someone who otherwise would not have been born would then be put into a sub-threshold state of flourishing. The "rather than" formulation of P1(NLhf) would thus seem false. A reply here could be that, if one cannot but impede participation in basic values, whatever one chooses, one is simply responsible for minimizing the impediment.²⁵¹

²⁴⁹ Cf. Meyer (2003).

²⁵⁰ Op. cit., 154.

²⁵¹ Op. cit., 153.

To establish different levels of impediment in different number choices could, however, be ambiguous. Imagine that, for any reason, Conservation were to imply larger numbers of people in the future. To simplify, we could think of G5* as 1000 persons. Due to social inequalities, a tenth of these (100 persons), would be born into a sub-threshold state of human flourishing. Depletion would have implied a population of 100 persons, G5, while a natural disaster would have caused 90 of these to fall below the threshold level of flourishing. Strangely, to opt for Depletion here implies that 90 rather than 100 persons are put into a sub-threshold state. This does seem to minimize one's impediment of participation in basic values. Hence, even if we reformulated P1(NLhf) – into, for example, “Generation One's act of Depletion rather than Conservation does not minimize the number of future persons put in a sub-threshold state of human flourishing”, adjusting the argument accordingly – the premise would appear false. Hence, although NIP is being circumvented, as future people's non-identity ceases to make any difference, the argument gives rise to other problems in different number choices. This approach may not, then, achieve a narrow, reflective equilibrium in accordance with the requirements set out. While the approach could likewise be further elaborated on, I here proceed beyond a direct argument on a threshold for human flourishing.

If one wishes to avoid the above kinds of argument, one could employ a third operationalization. One could direct one's attention to the flourishing of the environment itself, as an assumed condition for human flourishing. Developing a capability approach, in the vein of Nussbaum, Breena Holland argues that “the value of the environment should be understood in terms of a relationship between the natural environment and people's capabilities to do and achieve things.”²⁵² Protecting human capabilities, according to this view, also requires protection of an “ecological meta-capability”.²⁵³ Within the

²⁵² Breena Holland, *Allocating the Earth: A Distributional Framework for Protecting Capabilities in Environmental Law and Policy*, Oxford University Press, 2014, p. 21. Edward Page has pointed out that the natural environment could have us acknowledge a separate capability “to represent the value a person derives from operating within a hospitable natural environment” as well as the importance of the environment for the established capabilities as discussed by Nussbaum and Amartya Sen (Edward Page, “Intergenerational Justice of What: Welfare, Resources or Capabilities?”, *Environmental Politics*, Vol. 16, No. 3, 2007; see also Amartya Sen, “Why We Should Preserve the Spotted Owl”, *London Review of Books*, Vol. 26, No. 3, 2004).

²⁵³ Op. cit., 24.

natural law account expounded here, one may likewise refer to a “meta-capacity”. A meta-capacity would be the capacity (of the environment) to provide opportunities for value participation (i.e. exercising human capacities). In the argument below, I refer to this as a threshold of environmental co-flourishing.

A third operationalization: environmental co-flourishing

P1(NL-cf): Generation One’s act of Depletion rather than Conservation puts the environment in a sub-threshold state of co-flourishing

P2(NL-cf): If an act puts the environment in a sub-threshold state of co-flourishing, then it impedes participation in basic values

P3(NL-cf) If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One’s act of Depletion rather than Conservation is morally objectionable

Co-flourishing, here, would be defined by the environment’s own estimated capacity to reproduce itself, as a collection of ecosystems characterized by non-human organisms such as plants and animals, into a distant future. In this approach, it is assumed that when the environment flourishes, humans may flourish too. The impediment of value-participation is thus referable to putting the environment (a meta-capacity) itself in a sub-threshold state of flourishing.

This argument would seem more promising with regard to dealing with different number choices. An immediate counterargument could be that the idea of “co-flourishing” assumes some sort of religious worldview, according to which we are all part of “Creation”. But, I shall consider the account to be secular enough. There could be other objections to the argument, however. One could hold against it that it almost states what it wants to prove. Treating the act of Depletion in this way, it does not fall into a much wider category of acts (which do not all involve the environment) that we could identify as impeding participation in basic values. On the other hand, we could perhaps live with the view of Depletion as a *sui generis* act, due to its unusual implications for the environment, precisely as a meta-capacity.

Below, I proceed with an objection against the natural law account, given that this or some other operationalization of the basic argument can be accepted.

4.8 Objection 2: It is too weak

Given the basic argument, we would not necessarily commit a moral wrong by putting the environment in an unsustainable state. An example to the contrary could be if one needs to deplete resources (which remains morally objectionable) in order to participate sufficiently in values oneself. This could hardly be described as a disregard for values. A subsequent objection to the natural law account could thus be that it will never manage to take us from the position that something is objectionable – and thereby lamentable, perhaps – to the position that it is wrong.

An immediate response to this objection is that, theoretically speaking, we have still made progress if we are now able to account for why leaving an unsustainable environment for the future would be lamentable at all. This progress in philosophy remains, *even if* we were never able to describe the act as morally wrong. Yet, we may insist on this objection, for at least two reasons. First, we may have a more advanced intuition that Depletion would also be morally wrong. Secondly, we may want to make claims on others to sacrifice something for an intergenerationally sustainable environment. We would then want to be able to proceed from moral objectionability (a *pro tanto* reason not to deplete) to an account of moral wrongdoing (a moral duty all-things-considered). A theory of objectionability that has no prospects of getting us there could be seen as being less desirable than one that has such prospects.

If we want to approach the non-identity problem in this way, we need to reformulate the problem so that it appears in a wrongdoing version. I spell out such a version below, as announced in Chapter 2, referring to it as NIPwrong. As seen, the fourth and fifth premise of NIPwrong is different than P4 and P5 of NIP, as formulated in this thesis. If we want to keep arguing for an impersonal account, P5(w) would need to be rejected separately.

The non-identity problem in a wrongdoing version (NIPwrong):

P1: Generation One's act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than it would otherwise have been

P2: A's act harms B only if A's act makes B worse off than B would otherwise have been

P3: Generation One's act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

P4(w): If an act does not harm anyone, then the act does not wrong anyone

P5(w): If an act does not wrong anyone, then the act is not morally wrong

C(w): Generation One's act of Depletion rather than Conservation is not morally wrong

Below, I describe two natural law requirements on acts that could be used in order to approach the matter of wrongdoing.

4.9 Requirements on acts

4.9.1 Efficiency, within reason

A first requirement on acts is efficiency, within reason. On the natural law account, there is a requirement to “bring about good in the world” both in one’s own life and in the lives of others. “One’s actions should be judged by their effectiveness, by their fitness for their purpose, by their utility, their consequences...” The doctor in a previous example should, in their treatment of a patient, prefer a medication that both relieves pain and heals to one that only relieves pain. However, the other requirements constitute a framework in which this requirement does not amount to utilitarianism. According to Finnis, no value can provide “a common denominator or single yardstick for assessing the utility of all projects”. Thus, an efficiency principle may not be suitable as a doctor decides whether they should stay at work or take a vacation, or how to treat a terminally ill patient (when resources are scarce). There is a wide range of preferences and wants where, according to natural law, it is “reasonable for an individual or society to seek to maximize the satisfaction of those preferences or wants”, as a certain kind of utilitarianism suggests. But it is not considered appropriate as a general strategy of moral reasoning.²⁵⁴

4.9.2 Respect for every basic value in every act

A second requirement on acts is respect for every basic value in every act. Some, including Finnis, see this requirement as an equivalent to the Bible’s “Pauline principle”: “evil may not be done that good might follow therefrom”.²⁵⁵ (A more colloquial and secular variant has it that “the end does not

²⁵⁴ Finnis (1980), 112.

²⁵⁵ Romans 3:8, *The New Oxford Annotated Bible*, Michael Coogan (ed.), Oxford University Press, 2007. Kant offers a “person-affecting” version picked up by contractualism: “Act so that you treat humanity, whether in your own person or that of

justify the means”). A simple version of a wrongdoing argument could look as follows.

Natural law’s wrongdoing argument

P1(NLw): Generation One’s act of Depletion rather than Conservation is disrespectful of basic values

P2(NLw): If an act is disrespectful of (a) basic value(s), then it is morally wrong

C(NLw): Generation One’s act of Depletion rather than Conservation is morally wrong

But there are different ways of understanding this requirement. Not all would imply that P1(NLw) is correct. In one formulation offered by Finnis, “one should not choose to do any act which *of itself does nothing but* damage or impede a realization or participation of any of the basic forms of human good.”²⁵⁶ In this formulation, the requirement is typically applied – together with the previous requirement of efficiency, within reason – to examples like the choice of whether to torture a prisoner, in order to gain information that saves the lives of many. The good consequences, in these cases, such as the subsequent arrest of criminals, rescuing of innocents and so on, are distinct from the act of torture. The requirement thus demands, in this formulation, that one abstains from torturing the prisoner, regardless of the good consequences, since the act of torturing them in and of itself does nothing but damage the value of life. Thereby, the requirement of respect for values aligns with the so-called Pauline principle. Formulating the requirement in this way, however, we could not identify Depletion as a possible wrong. In and of itself, depletion essentially consists in extracting and employing natural resources. Considered as such, the act does not seem to be of good, but it cannot be described as in-itself evil, in the way torturing a prisoner can. Rather, the single act would appear neutral.

Finnis argues, in a second formulation, that sometimes “the ‘good effects’ are really aspects of one and the same act and can form part of the description of what it is in and of itself.” On these occasions, human acts “are to be individuated primarily in terms of those factors which we gesture towards with the word ‘intention’”.²⁵⁷ This second formulation of the requirement

another, always as an end and never as a means only” (*Foundations of the Metaphysics of Morals*, Bobbs-Merrill, 1959 [1785]).

²⁵⁶ Finnis (1980), 118.

²⁵⁷ Op. cit., 122.

typically identifies cases of self-defence as being morally acceptable by referring to the maiming or killing of another person as a “side-effect” of protecting one’s own life. But nor does intention seem to do any work for us in the climate case. The employment of certain natural resources, like fossil fuels, is typically in the service of human beings and their life plans – aimed at health, knowledge, play and so on.

In a third formulation of this requirement, a value is disrespected if one is not flexible, in this case insufficiently detached from one’s own particular projects.²⁵⁸ This may be the case if one treats “a particular act or project as if it were itself a basic aspect of human well-being” or is not “creatively open to all the basic goods and thus careful to adjust [one’s] projects so as to minimize their damaging ‘side-effects’”.²⁵⁹ In a formulation like this, natural law could perhaps identify depletion as being morally wrong. The employment of fossil fuels, although instrumental to the pursuit of basic values, is not itself an aspect of the good. Furthermore, opportunities to adjust one’s projects in order to minimize damaging side-effects exist in the form of private and public initiatives to mitigate (and adapt to) climate change. Hence, there is room to be flexible, given that the cost to oneself would be small.

On the basis of this formulation, I formulate a specified wrongdoing argument below.

4.9.3 Natural law’s wrongdoing argument (specified)

The following argument would account, more specifically, for the moral *wrongness* of leaving an unsustainable environment for the future.

Natural law’s wrongdoing argument specified

P1(NLws): Generation One’s act of Depletion rather than Conservation impedes participation in basic values

P2(NLws): Generation One could abstain from Depletion at little cost to themselves

P3(NLws): If one impedes participation in (a) basic value(s) when one could abstain from doing so at little cost to oneself, then it is disrespectful of basic values

P4(NLws): If an act is disrespectful of (a) basic value(s), then it is morally wrong

C(NLw): Generation One’s act of Depletion rather than Conservation is morally wrong

²⁵⁸ Finnis refers to detachment as a separate requirement, see op. cit., V.5.

²⁵⁹ Op. cit., 123.

To identify insufficient detachment, Finnis primarily points to interpersonal considerations and the concept of harm.²⁶⁰ But, we have established that we cannot refer to harm in this case. We are, therefore, putting emphasis on the relationship that exists not between agents and other agents but between agents and values as such. The requirements of respect and flexibility imply that, even if the individuals of G1 claim, say, to be passionate about car-driving for its own sake, i.e. see it as a crucial part of their life-plans, they should detach from it in this case, possibly to recommit to their life-plan in a different way.

This may also compel an author of human law to engineer G1's alternatives. The requirements could make it imperative for the individuals of G1 (as well as politicians accountable to them) to opt for public transport (investments) or an electric car (subsidy), rather than the car commute they are most familiar with. (Some passionate drivers, who utilize a car for its own sake, might have to seek alternatives such as kart-racing once a week, or an even less polluting hobby.) To secure the co-flourishing of the environment, at a reasonable cost to citizens, society could impose "capacity ceilings" on present persons.²⁶¹

Yet, treating the requirement of respect as a matter exclusively between agents and basic values has important implications in political theory. A common and reasonable position in political theory is that, given that nobody else is harmed, one's actions should not be regulated by political institutions. Yet, political institutions are typically assigned a key role in maintaining a sustainable environment for future people. Below, I briefly account for the objection that a natural law approach excludes institutions from dealing with intergenerational wrongdoing.

4.10 Objection 3: It excludes institutional responses

Many people tend to think that institutions play an obvious and important role in safeguarding future people's environment. Yet, successful circumvention of NIPwrong, whereby a present generation can logically be said to

²⁶⁰ "[The requirement of no arbitrary preferences amongst persons] here provides a convenient test of respect for good: would the person acting have thought the act reasonable had *he* been the person harmed?" (ibid.).

²⁶¹ Holland (2014), 25.

do wrong in relation to future people, would not necessarily entail public institutions being permitted to correct that wrong. Given our theoretical resources, it may or may not be possible to justify laws regarding distant future people.

According to natural law, a law is just if it is directed to the common good. It must, first of all, cater to natural law's moral requirements on acts. Above, I have suggested that we may be able to formulate a duty, all-things-considered, to act in order to protect future people's environment. I have provided an account where such a duty could be yielded by natural law's requirement to respect every value in every act, coupled with the requirement on agents to be flexible with regard to their own life-plans.

However, even if there are such intergenerational duties, this is not enough to say that legislation on these duties would be a matter of the common good. A law is directed to the common good if it is, in addition, supported by a particular principle of subsidiarity.

In Chapter 5, I refer to a related institutional non-identity problem. It is argued that the subsidiarity principles characterizing contractualism as well as natural law do not seem to allow for institutional responses in the relevant case. In Chapter 6, I further demonstrate the implications of this within Rawlsian contractualism, which is perhaps the most prominent theory on just institutions. A tentative elaboration of the natural law approach, in order to handle the institutional non-identity problem, is carried out in Chapter 7.

5 The institutional non-identity problem

The previous chapter provided an attempt to circumvent NIP by using natural law theory. In a critical discussion that followed these attempts, the natural law approach was also applied with regard to NIPwrong. If such an application were successful, however, it could imply a separate, institutional non-identity problem (INIP). The present chapter expounds this problem further.

Public institutions are often assumed to play an important role in safeguarding the environment for future people. Yet, an approach to NIPwrong whereby a present generation can logically be said to wrong in relation to future people does not necessarily entail that public institutions should be permitted to correct that wrong. An institutional version of the problem arises when a theory accounts for moral wrongdoing in relation to (the environment of) future people, while non-identity prevents it from providing a reason for legislation enforcing that morality.

We could pose at least two, closely related questions with regard to public institutions and future people's environment. These both concern to what extent laws that aim to protect the environment of future people are just. First, we may ask whether laws that aim to protect the environment of distant future people are at all *permissible*. Secondly, we may ask whether such laws are, indeed, *required*.²⁶² For reasons provided in this chapter, a minimal requirement for circumventing INIP should be that the laws in question are permissible.

The question driving the analysis in this and the two upcoming chapters is thus *Q3: Why is it permissible to use institutions to prevent future people being left with an unsustainable environment?* A discussion on permissibility could be carried out with regard to a political proposal, after a certain legislation is or has been in place, or even hypothetically.²⁶³ Below, I employ the

²⁶² I thank Martin Westergren for an illuminating discussion on this.

²⁶³ Already Plato suggested the idea that the reasons for a law should be stated along with its promulgation (Plato, *The Laws*, IV, 719c ff). Some may think that, in a modern, democratic process, this is too much to ask. Even if the passing of a law is

well-known political project of sustainable development as an example. First, I use it to demonstrate how public institutions can be considered to be important with regard to future people's environment. Second, I use it to show that this kind of legislation can also be contested by reference to the rights of living people.

What primarily gives rise to the institutional non-identity problem is the *prima facie* reasonable principle that, if an act does not harm anyone, then the act should not be prevented by public institutions. To facilitate continued discussion, I provide a formal account of INIP which includes this principle as a normative premise. In order to provide a satisfactory answer to Q3, a theory needs to successfully reject this premise.

An exclusively *moral* harm principle was discussed already in Chapter 2. Here it appears as a *subsidiarity principle*. A subsidiarity principle determines when a transfer of power to a more central level is warranted. A discussion on subsidiarity may concern whether power should reside above or with the state rather than a more local level, or as in this case, whether public rather than individual or civic responsibility is appropriate at all. In order to deal with INIP a theory needs to handle NIPw as well as provide an alternative principle of subsidiarity.

There are different kinds of subsidiarity principle. I account for the subsidiarity principles that characterize contractualism and natural law as two different subsidiarity principles of justice. They both reject the normative *prima facie* premise of INIP. It is not clear, however, whether any of these principles thereby speak in favour of laws regarding future people's environment. I argue, thus, that the institutional non-identity problem could be a problem for contractualism and natural law alike. In Chapters 6 and 7, INIP is discussed further from the different perspectives of these theories.

more than a pure act of the will, it may represent an "overlapping consensus" (Rawls [1993], Lecture IV) or an "incompletely theorized agreement" (see Cass Sunstein, "Incompletely Theorized Agreements", *Harvard Law Review*, Vol. 108, No. 7, 1995). Even if a majority prefers a particular law, the people constituting the majority can have different reasons to do so (Jeremy Waldron, "What is Natural Law Like?", NYU School of Law, Public Law Research Paper, No. 12-27, 2012, p. 77). In our interest here, however, is not to find the one right reason, but (the quests) to find at least *one* tenable reason in either contractualism or natural law. If there is no such reason in contractualism or natural law, respectively, one who relies on the theory in question has reason to call the law unjust.

5.1 Future people's environment and public institutions

In the 1980s, future generations became a matter for the United Nations (UN), and in 1992 the issue made its way to the so-called "Earth Summit" in Rio de Janeiro.²⁶⁴ Since then, national legislation has been enacted worldwide in order to promote "sustainable development" and thereby safeguard "future generations".²⁶⁵ Among other measures, commitments have been made to limit pollution and replace the use of fossil fuels in order to prevent global climate change.

The project of sustainable development is distinctively based on the assumption that environmental damage is built into the societal structure.²⁶⁶ The state is, therefore, to assume an important role in altering patterns of production and consumption. This could, among other things, result in: restrictions on the employment of private property (devices and vehicles) belonging to individuals, interventions regarding the exploitation of natural resources (or supply of products derived therefrom), or simply taxation of unwanted behaviour, which would intrude on the private earnings of citizens.²⁶⁷

²⁶⁴ The influential report in this case (*Our Common Future*) was carried out by the World Commission on Environment and Development, known as the "Brundtland Commission" (Brundtland Commission, United Nations, *Our Common Future – Brundtland Report*, Oxford University Press, 1987).

²⁶⁵ One example is the Swedish Environmental Code (SEC), whose purpose is to "assure a healthy and sound environment for present and future generations" (1 kap. 1§). It finds close equivalents in Japan, the Netherlands and New Zealand. (Miljöbalksutredningen II, "Bilaga 2", Staffan Westerlund, p. 1.)

²⁶⁶ See SEC (1 kap. 2§); Brundtland, 1.1.

²⁶⁷ Miljöbalksutredningen II, 10. One Swedish measure is the "substitution principle" (SEC, 2 kap. 4§), which obliges officials, even any citizen, to prioritize those chemical goods that pollute the least, in their consumption (see also Miljöbalksutredningen I, 246; II, 28). Another measure in the same spirit, pursued in Sweden, is the law on punitive taxes on activities that produce high levels of carbon dioxide (Lag [1994:1776] om skatt på energi). The Swedish Nuclear Waste Fund, furthermore, is a government authority that receives and manages fees paid by nuclear power companies and others, in order to finance future expenditures for managing and disposing of waste products (www.karnavfallsfonden.se). The point of this policy is to adapt to the consequences of remaining with a hazardous energy supply. In the case of the Norwegian Sovereign Wealth Fund, surplus wealth from the petroleum sector is invested abroad, not only in order to stabilize the exchange rate for contemporaries, but also to steer towards sustainable development and save for future generations of Norwegians. (Simon Chesterman, "The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations – the Case of Norway's Sovereign Wealth Fund", *American University International Law Review*, Vol. 23, No. 3, 2007.)

On a critical note, legislation on sustainable development has been said to put excessive restrictions on fundamental rights to individual autonomy and private property. In the words of one commentator, it is “largely characterized by a lack of trust in the will and capacity of the individual to judge by herself how modern environmental goals should be achieved.”²⁶⁸

Alongside a demand for structural change, in order to achieve a reorientation, we also get the message that “time is running out”, and that nations will “confront a growing number, frequency, and scale of crises”.²⁶⁹ As a result, the area of application of the law may be as wide as to comprise “[...] those human phenomena that might result hazardous for human health or the environment.”²⁷⁰ Sustainable development can thus be seen as a forceful political agenda.²⁷¹

The implementation of sustainable development involves at least a type of enforcement. We often think of legal enforcement in the form of punishment of an offender.²⁷² In those cases, the offender may have their autonomy severely restricted by a jail sentence or be seriously deprived of their property. Clearly, such measures are seldom within the scope of sustainable development. Yet, there is another aspect of enforcement, which bears on those who may never break the law, but “are coerced into obedience by the threat of legal punishment.”²⁷³ Now, the main reason people do not, for example, maim or kill others seems not to be because it is against the law, but because they do not wish to, for moral reasons. We would mostly not, then, consider somebody as coerced when they go about their business not killing others. Whether a given taxation is just even if carried out for a good cause, is, on

²⁶⁸ This was suggested by Fredrik Bonde in a report published by the SEC Commission in Sweden (Miljöbalksutredningen II, 493, my translation). *Ägarfrämjandet* (which promotes private ownership in Sweden) has argued that the SEC contradicts the European convention as well as European Union directives on ownership (www.agarframjandet.se). It can also be noted that the Swedish approach of “sector responsibility” grants all authorities a particular power to act with reference to environmental protection (the Swedish Environmental Protection Agency, “Myn-digheternas sektorsansvar för ekologiskt hållbar utveckling”, retrieved at <http://www.naturvardsverket.se/Documents/publikationer/620-5268-3.pdf>, 2018-03-26).

²⁶⁹ Brundtland (1987), 12.22.

²⁷⁰ SEC (2 kap. 1§), Miljöbalksutredningen II, 12 (my translation).

²⁷¹ The appointed Swedish Governmental SEC Commission even put it forth as a public confrontation with “environmental sin” (Miljöbalksutredningen II, 9).

²⁷² See e.g. Joel Feinberg, *The Moral Limits of the Criminal Law*, Oxford University Press, 1990.

²⁷³ H. L. A. Hart, *Law, Liberty and Morality*, Oxford University Press, 1963, p. 21.

the other hand, subject to reasonable disagreement. We can expect many people to pay their taxes even when they believe them to be unwarranted or simply would prefer not to. While some people may act out of fear of social sanctions, legal punishment for not abiding to a common tax scheme can be assumed to play an important role. The social engineering of sustainable development, one may argue, is characterized by such coercion to a relevant degree.

Assume, now, that we managed to conclude that it is morally wrong to leave future generations with a deteriorated environment, by rejecting either P4(w) or P5(w). May public institutions be used to – coercively – correct that wrong? This fundamental question should not be confused with subsequent, particular questions of legitimacy. These may be asked with regard to specific organizations and institutions, such as the UN, the UNESCO, specifically appointed commissioners or national ombudsmen acting on behalf of future generations, parliamentary seats reserved for the intergenerationally wise and so on. Issues regarding whether and how particular bodies have legitimate authority are important, but not in focus here.²⁷⁴ Ours is a prior basic question that, on the formulation of H.L.A. Hart, is both *about* and *of* morality. We are asking whether, with regard to future people’s environment, the enforcement of morality can be morally justified at all.²⁷⁵ The legal use of coercion is here understood as *pro tanto* wrong. To allow for it we require an argument for the coercion itself.²⁷⁶

Below, I show formally how future people’s non-identity could imply that institutional coercion “on their behalf” is impermissible. Thereafter, I suggest an avenue for discussing this problem in the subsequent chapters, on the basis of the theoretical strands covered in this thesis.

5.2 The institutional non-identity problem

The difficulties in accounting for a just law, with regard to future generations, are not altogether different from the difficulties in accounting for mor-

²⁷⁴ See Aaron Maltais, *Global Warming and Our Natural Duties of Justice*, doctoral dissertation, Uppsala University, 2008; Martin Westergren, *The Political Legitimacy of Global Governance Institutions: A Justice-Based Account*, doctoral dissertation, Stockholm University, 2016.

²⁷⁵ Hart (1963), 17.

²⁷⁶ Op. cit., 20.

al objectionability or a moral wrong. In both cases, the difficulties stem from the condition of non-identity. An argument may start out with P1(INIP):

P1(INIP): Generation One's act of Depletion rather than Conservation does not harm anyone

P1(INIP) is the implication of the premises P1, P2 and P3 that we are already familiar with from formulating NIP: that G5 is not worse off by Depletion (the implication of Parfit's time-dependence claim); the definition of harm as being made worse off than one would otherwise have been (which I have claimed in Chapter 2 is a premise that should be kept); and (for the sake of argument) the stipulation that no generation other than a distant future one is concerned.

The subsequent premise is, in a sense I shall now specify, liberal. A harm principle, as expressed by liberal philosopher John Stuart Mill, is a common denominator for theories that encounter INIP. In the 19th century, Mill wrote:

"[...] the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise."²⁷⁷

On a strong interpretation of the harm principle, "the harm principle operates as a constraint on the legal prohibition of moral wrongs that have been identified independently of it".²⁷⁸ On a weaker interpretation, "harm is neither a necessary nor a sufficient condition for [prevention through legislation], but 'always a good reason' in favor of it".²⁷⁹ Even if one does not agree with the strong interpretation of the harm principle, one may still acknowledge that it is not feasible to prohibit all moral wrongs by law. Furthermore, those moral wrongs that involve harm to others can arguably be seen as easier to identify

²⁷⁷ John Stuart Mill (1859), Ch. I, sec. 9.

²⁷⁸ Arthur Ripstein, "Beyond the Harm Principle", *Philosophy and Public Affairs*, Vol. 34, No. 3, 2006, quoted in Anna Smajdor, "How Useful Is the Concept of the 'Harm Threshold' in Reproductive Ethics and Law?", *Theoretical Medicine and Bioethics*, Vol. 35, No. 5, 2014, p. 322.

²⁷⁹ Ripstein (2006) referring to Joel Feinberg, quoted in Smajdor (2014), 322. I have exchanged "criminalization" for "prevention through legislation".

and less subjective. The harm principle is then, at least, a reasonable point of departure. In order to justify the use of institutions to counteract harmless wrongs, a theory would need to provide a rejection of the harm principle that applies to the specific case in question.

The principle can be formulated as P2(INIP):

P2(INIP): If an act does not harm anyone, then the act should not be prevented by public institutions

Together, the two premises entail the following conclusion:

C(INIP): Generation One's act of Depletion rather than Conservation should not be prevented by public institutions

The full argument runs as follows:

The institutional non-identity problem (INIP)

P1(INIP): Generation One's act of Depletion rather than Conservation does not harm anyone

P2(INIP): If an act does not harm anyone, then the act should not be prevented by public institutions

C(INIP): Generation One's act of Depletion rather than Conservation should not be prevented by public institutions

C(INIP) is not a conclusion of the same counterintuitive calibre as C or C(w), which constitute NIP and NIPwrong, respectively. One may insist, for example, that intergenerational wrongs (can and) should be corrected by individuals or civil society alone. That conclusion is not as implausible as saying that we cannot act objectionably or do wrong with regard to future people at all. It remains the case, however, that public measures are thought by many people to be a key factor in dealing practically with the environment of future people. INIP implies that we should not. It can thus be said to produce a "paralysing conclusion".

To avoid the paralysing conclusion, we need to say that using public institutions to prevent Depletion is at least permissible. We then need to successfully reject one of the premises in the institutional argument. P1-3 of NIP have (for reasons given in Chapter 2) been left aside in this study, and the same goes for the corresponding P1(INIP) in the argument above. Assuming, as previously, that the premises that give rise to P1(INIP) are true, we are left with the task of rejecting P2(INIP).

Consider, now, the implications for P2(INIP) from rejecting P4(w) or P5(w), respectively, which have been tried in this thesis as approaches to NIPwrong. P4(w) set out the claim “if an act does not harm anyone, then the act does not wrong anyone”. Chapter 3 treated arguments for rejecting this claim in Scanlonian contractualism. It was argued that Scanlonian contractualism either rejects the claim by arguments that do not apply to Depletion or rejects this claim in a way that does not abide by contractualism’s personal reasons restriction. But, even if we accepted an argument that rejected P4(w), this would not imply that P2(INIP) is rejected. A successful rejection of P4(w) would, at best, provide an argument for saying that there is harmless interpersonal wronging, which applies to distant future people. But, interpersonal wrongs should not by definition be regulated by institutions. A rejection of a harm principle, in the case of institutions, would have to be carried out in a way that (also) justifies the use of institutions.

P5(w), furthermore, set out the claim “If an act does not wrong anyone, then the act is not morally wrong”. Chapter 4 provided an argument for rejecting this claim within natural law theory. It was argued that, according to natural law, it is possible to commit a moral wrong by disrespecting basic values even when no person is harmed or wronged. To be unwilling to modify one’s projects, at little cost to oneself, in order to help maintaining a sustainable environment for future people, was described as disrespectful of basic values. One way to make that claim was to say that the environment is a fundamental condition for future participation in basic values. However, even if this natural law argument held, it would not necessarily entail that institutions can permissibly be used to correct the moral wrong committed.

The justification for legislating on future people’s environment should rest on some kind of subsidiarity principle, which determines when a transfer of power to a more central level – here public rather than individual or civic – is just. Below, I account for three different kinds of subsidiarity principle, including a justice principle. This kind of subsidiarity principle prevails in both contractualism and natural law. Ideally, we would be able to use such a principle to justify laws protecting future people’s environment. But, I argue that neither contractualism nor natural law obviously support laws regarding distant future people. Rather, the moral wrong would appear to be of such a nature that institutional involvement is inadvisable.

5.3 Three kinds of subsidiarity principle

Subsidiarity principles get their name from the Latin *subsidium*, for help or assistance. Such a principle regulates when a higher-level unit should govern – assist – within a political order. They favour lower-level sub-units while allowing for central intervention on certain conditions. As a minimum, higher-level governance is conditioned upon it being necessary or more efficient in order to achieve a given purpose.²⁸⁰ This applies to any subsidiarity principle and does not specifically characterize the “efficiency-based” principle below, which rather refers to preferences.

I assume, here, that using institutions for the purpose of long-term sustainable development is not necessary, in a literal sense. We could imagine an alternative route where environmental matters, concerning distant future people, are dealt with by civil society alone. However, the project of sustainable development at least presupposes that complementary enforcement by state institutions would make the transition more efficient and reliable. This is probably what we should take people to mean when, in daily speech, they refer to political measures as being “necessary” for a sustainable development. The subsidiarity principles described here require more, however.

I outline subsidiarity principles of three different kinds: efficiency-based, freedom-based and justice-based, respectively.²⁸¹ Contractualism and natural law are said to uphold different principles of the last kind. None of these theories, I argue, obviously favours institutional intervention with regard to distant future people.

5.3.1 Efficiency-based subsidiarity

An efficiency-based subsidiarity principle, as understood here, would refer to efficiency in channelling the subjective preferences of an electorate (or a

²⁸⁰ An early explicit mention of the principle can be found in Pope Pius XI’s encyclical *Quadragesimo Anno* [Encyclical on Reconstruction of the Social Order], Libreria Editrice Vaticana, 1931. The subsidiarity principle also has a particular contemporary significance in that it characterizes the legal framework of the European Union (see e.g. Article 3b, *Treaty on European Union (Maastricht)*; Article 5, *Consolidated Version of the Treaty on European Union (Lisbon)*).

²⁸¹ These mostly draw on, but are not identical to, Andreas Føllesdal, “Survey Article: Subsidiarity”, *The Journal of Political Philosophy*, Vol. 6, No. 2, 1998.

potential electorate).²⁸² As we know, future people are difficult to include in this regard, as they are yet non-existent. Due to non-identity, it is even difficult to assign preferences to future people hypothetically. I reason here with regard to contemporaries.

Assume that State S contains Regions P, Q and R, with similarly sized populations. Region P has a relatively large share of wealthy house owners, while the inhabitants in Regions Q and R live by more modest means, in rental apartments. The larger Q and R populations prefer central taxation, so that P contributes to health care, sports facilities, etc., for all, while P prefers more autonomy for P. Efficiency is the prioritized value, however, and Q and R outnumber P. Central taxation would be a permissible policy here. On certain conditions, this standard could entail that an objective moral duty to protect future people's environment can permissibly be enforced.²⁸³ This would be so, if the majority of a given (or potential) electorate come to embrace the duty, however argued for. However, in our interest here is the contractualist and natural law arguments as regards the use of institutions. As I argue below, contractualism as well as natural law suggests a condition of justice that may not apply in the environmental intergenerational case.

²⁸² Cf. Føllesdal (1998), VII; see also Trevor Latimer (2017, 16–19) who refers to a democracy-based standard ("Against Subsidiarity", *The Journal of Political Philosophy*, online first, 2017, pp. 12–16).

²⁸³ This efficiency-based subsidiarity principle arguably has a kinship with utilitarian moral theory. If a rejection of P5(NIPw) along preference utilitarian lines were successful, the theory would seemingly not encounter INIP. This as utilitarianism, "a simple, straightforward monistic theory", does not distinguish between moral and political principles (H. J. McCloskey, "Monistic Theories of Absolute Obligation: Utilitarianism", *Meta-Ethics and Normative Ethics*, Springer Netherlands, 1969, Ch. 7). A solution to the non-identity problem would then translate directly as a response to an institutional version of the problem. If it were wrong to leave future generations with a deteriorated environment because it lowers the total (or average) level of preference-satisfaction, then the use of public institutions would be just by reference to the same satisfaction-maximizing principle. The problem for utilitarianism has been that scholars have not been able to successfully circumvent the wrongdoing problem to begin with (see Ch. 2). As could be the case with natural law, however, a theory may successfully formulate an impersonal principle in morals, but *prima facie* not allow for any impersonal principle in politics, thereby avoiding C(w) and yet end up concluding C(INIP).

5.3.2 Freedom-based subsidiarity

Freedom-based subsidiarity principles employ a standard of freedom with regard to centralized governing, and there are different ideals of this kind.²⁸⁴ A first ideal would be in accordance with the thought of Johannes Althusius (1557–1638), inspired by Calvinism. In this conception, humans are dependent on local associations in order to live fulfilling lives. Associations should, therefore, be provided with autonomy within their own sphere. An implication, in our case, could be that the protection of future people’s environment would be left to local associations, and should not be taken on by central institutions.

A second standard of freedom would be in accordance with a more contemporary libertarian view. It would ascribe a fundamental autonomy to individuals, who are to enjoy as much non-interference as possible. This implies minimal coordination on this one common issue. I assume, here, that interference consists in causing people to be in a different state than they themselves would otherwise have been. If we could argue that future individuals are interfered with by our actions, laws to protect them from that interference would seem warranted. But, in efforts to handle non-identity, wrongs would here be accounted for differently, either by a kind of interpersonal wrongdoing that does not, allegedly, depend on counterfactual states of individuals (see the examination of Scanlonian contractualism in Chapter 3) or by reference to impersonal values (see the development of a natural law approach in Chapter 4). It would seem that a minimalist conception of common concerns does not permit the use of institutions to correct such wrongs. Rather, the behaviour of G1 seems to fall within the boundaries of a range of “worldviews and conceptions of the good life” that the state should stay out of.²⁸⁵ As long as one’s action does not leave any individual in a different state than they would otherwise have been, one should be free to be as inflexible as one likes, regarding whatever values are considered to be at stake.

5.3.3 Justice-based subsidiarity

Both contractualism and natural law can be said to justify the intervention of public institutions by reference to demands of justice. Justice, as understood here, requires the state to protect and promote personal development, within

²⁸⁴ Føllesdal (1998), VI; see also Latimer (2017), 19–20.

²⁸⁵ Føllesdal (1998), 205.

reasonable boundaries. According to contractualism, we must be able to justify a social order to one another in a way that would yield general agreement. It is typically argued that institutions should, therefore, satisfy basic needs and all-round means for pursuing different conceptions of the good life.²⁸⁶ As has been shown in Chapter 3, however, general agreement is fundamentally difficult to achieve on intergenerational terms. It rather seems that, due to non-identity, we fail to argue that future generations can even be taken into consideration in a meaningful way. While Scanlon's particular contractualism (treated in Chapter 3) appears predominantly as a moral theory, contract theories are typically employed to account for political measures. To see how this kind of theory fares with regard to the institutional non-identity problem, I consider Rawlsian contractualism in the subsequent, sixth chapter. The main reason for proceeding with Rawls is that his theory seems paradigmatic for contemporary political contractualism and has explicit tools for dealing with institutions.

The natural law view on subsidiarity, on the other hand, is influenced by (and influences) Catholic social teaching. The argument for subsidiarity is here based on the idea that human beings should develop and realize their potential. From the Catholic point of view, this would be to "realize one's dignity as made in the image of God".²⁸⁷ According to a secular natural law view, it would be to pursue the good in accordance with human nature.²⁸⁸ An important role is here assigned to legislation in preserving and promoting human good. Aquinas referred, in this regard, to Aristotle's concept of *eudaimonia* (often translated as "human flourishing") as well as to Aristotle's most far-reaching solution – the State.²⁸⁹

As far as natural law is concerned in this thesis, environmental intergenerational duties have been argued for by requiring that present people be respectful and flexible with regard to basic values. One could then think that

²⁸⁶ Op. cit., 210.

²⁸⁷ Føllesdal (1998), 208. See also Chantal Millon-Delsol, *L'État Subsidaire*, Presses Universitaires de France, 1992, Ch. 8 and 9.

²⁸⁸ The natural law theorists focused on here tend to see normative principles as ontologically, but not epistemologically, dependent on human nature, i.e., what is good for humans cannot be inferred from propositions on human nature, but had human nature been composed otherwise, so would human goods. (See Robert George, *In Defense of Natural Law*, Oxford University Press, 1999, p. 86; Jasmina Nedevska, "Do Principles of Natural Law Depend on Conceptions of Human Nature?", *Studia Philosophiae Christianae*, Vol. 51, No. 2, 2015.)

²⁸⁹ See *ST I–II*, 90:2, arg. 3, ad. 3; 90:4, ad. 4; 96:2 co.; Aristotle, *NE*, 5:1 (1129b17), *Politics (Pol.)*, 1:1 (1252a5).

it is obviously warranted, from a natural law perspective, that institutions lead citizens to live such virtuous lives. Yet, such a conclusion would be too hasty. Pursuing the good typically requires “active *voluntary* interaction with others, without much intervention by the state or other parties”.²⁹⁰ The fundamental task of practical reasonableness, Finnis suggests, is “self-constitution” or “self-possession”. Notably, Aquinas maintained that the law should not prohibit all vices, but only the ones that are more serious, “especially those which involve harm to others”.²⁹¹ And we know, from dealing extensively with the non-identity problem, that future people would not be harmed by present people’s lack of virtue.

At best, the natural law view regarding sustainable development (treated here exclusively in its intergenerational aspect) is unclear. It is argued that “in all those fields of activity, including economic activity, where individuals, or families, or other relatively small groups, *can* help themselves by their own private efforts and initiatives *without thereby injuring (either by act or omission) the common good*, they are entitled in justice to be allowed to do so.”²⁹²

According to one interpretation, *the common good is not injured if no-one else is harmed*. We would then be saying that natural law allows for impersonal moral arguments but puts up a person-affecting restriction in political theory. If so, people should be left to their own devices, rather than being subsumed under a political project such as sustainable development. It would seem unjust to require that contemporary individuals sacrifice their private initiative for the sake of a public enterprise, even if the goal to promote basic values would be better achieved through the public enterprise than by their own private efforts.²⁹³

According to a different interpretation, *there are other ways of injuring the common good*. We would then be saying that natural law allows for impersonal arguments in both moral and political theory. One would then need to show how leaving future people with an unsustainable environment would be to injure the common good, even though this would not harm anyone. In

²⁹⁰ Føllesdal (1998), 208. But see Latimer (2017), pp. 2–4, who argues, in a rather different vein, that a clear distinction should be made between “theological” and secular interpretations of subsidiarity.

²⁹¹ Michael Perry, *Morality, Politics and Law*, Oxford University Press, 1988, p. 98; the widely used translation of the Fathers of the English Dominican Province (available at www.newadvent.org) is: “chiefly those that are to the hurt of others”.

²⁹² Finnis (1980), 169, emphasis added.

²⁹³ Cf. Finnis (1980), 169.

Chapter 7, I discuss the possibilities of formulating such a natural law approach to INIP.

I shall briefly comment on a more doctrinal matter. Anyone familiar with recent natural law theory is aware of the status enjoyed by questions of property.²⁹⁴ More specifically, natural law recurrently shows up as a guardian of *private* property. It may look as if natural law thus excludes a project such as sustainable development from the outset. But, I am not giving weight to this doctrine here. As for Finnis (whom I treat as the main representative for recent natural law), he is part of this current through his defence of autonomy and extensive private ownership. Whereas contractualists would be more attracted by social engineering,²⁹⁵ Finnis proposes a “limited function of the state”.²⁹⁶ From “experience” he believes it to generate the best outcome: “natural resources, and the capital resources and consumer durables derivable therefrom, are more productively exploited and more carefully maintained by private enterprise, management, husbandry, and housekeeping than by the ‘officials’ [...] of public enterprises”.²⁹⁷ However, we are here assuming that using public institutions is efficient for the purpose of safe-guarding future people’s environment. The concern is rather that this kind of efficiency is not enough to allow for institutional measures. With regard to natural law, we need to establish if and how this is also a matter of the common good.

In the upcoming chapter, I first proceed by showing how Rawlsian contractualism fares with regard to INIP. It is demonstrated, again, how contractualism is unable to achieve a narrow and wide reflective equilibrium together, due to a person-affecting restriction.

²⁹⁴ While theories on natural rights in the classical tradition draw on Aquinas, modern ones often draw on Locke (see Nozick [1974]).

²⁹⁵ Rawls asks for “more than procedural justice” in John Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review*, Vol. 64, No. 3, 1997, p. 774.

²⁹⁶ John Finnis, “On ‘Public Reason’”, Oxford Legal Studies Research Paper No. 1, 2007, p. 6.

²⁹⁷ Finnis (1980), 170.

6 Contractualism: the environmental politics that can reasonably be accepted by all

Differently from Scanlon's theory, Rawls' is particularly designed to answer questions on how we should set up institutions. His theory is also closer to contractarianism in at least one sense. To a certain extent, Rawls upholds the assumption that self-interest, or mutual disinterest, characterizes parties to a social contract.²⁹⁸ He suggests that we should picture ourselves in an "original position", where choices are made behind a "veil of ignorance". While primarily self-interested, one is here made unaware of particulars about oneself, such as gender, ethnicity or wealth. The veil will have one agree on principles ensuring that everybody is guaranteed fundamental rights and that nobody is enriched at another's expense. In accordance with contract theory, the fundamental reason for this remains personal. If one does not agree with such principles, one could be the one losing out (once the veil is lifted, one might discover oneself to be among the less advantaged). This chapter focuses on this part of Rawlsian theory in connection to laws on future people's environment. The analysis is driven by the question Q3: *Why is it permissible to use institutions to prevent future people being left with an unsustainable environment?*

In order to apply Rawlsian theory to intergenerational issues, several efforts have been made – by Rawls himself and others – to adjust the conditions in the so-called original position. This chapter surveys previous efforts and adds an independent one. Here it is shown that, as we try our best to formulate Rawlsian intergenerational duties in this way, we remain unsuccessful. In order to answer Q3 satisfactorily, Rawlsian theory would need to provide an account of why Generation One's act of Depletion rather than Conservation should be prevented by public institutions. It would have to do so while achieving both a narrow and a wide equilibrium, according to the

²⁹⁸ In *A Theory of Justice*, Rawls writes with regard to contracting: "in choosing between principles each chooses as best as he can to advance his interests" (Rawls [1999], 142).

requirements set out in chapter 1. It is demonstrated how Rawlsian thought, by employing the original position, does not do this. The aim here is neither a wholesale rejection of, nor an attempt to develop, Rawlsian contractualism. But, we should again be in a better position, after this overview, to part ways with contractualism and a person-affecting restriction, as far as future generations are concerned.

6.1 Circumstances of justice

From a Rawlsian point of view, the use of institutions needs to be phrased in terms of justice. His theory is not built with the purpose of identifying any moral wrong (as is, for example, Scanlon's). It excludes things that may be frowned upon in the private sphere, such as lying to a friend, cheating on a spouse, neglecting kitchen tasks at the office, or heresies. Rawlsian theory is exclusively concerned with political institutions, and consequently, those things that merit legislation.

Now, in order for principles of justice to be relevant at all (for any such principle to be justified), Rawls thinks that particular "circumstances" of justice must obtain. Circumstances of justice can be defined as "those conditions under which there is an intelligible need for criteria of justice"²⁹⁹ or, if we propose a social contract, "the situation in which making a contract for political principles makes sense".³⁰⁰ Several contemporary accounts, Rawls' included, agree on the requirements once suggested by David Hume.

In *A Treatise of Human Nature*, Hume famously stated "that 'tis only from the selfishness and confin'd generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin".³⁰¹ Hence, if everyone were always either fully virtuous, or entirely vicious, there would be no point in having criteria of justice. And, as the quote also implies, if there were either a superabundance of resources (so that everyone could have an unlimited share), or a drastic scarcity (so that there is no way of distributing "fair shares"), there would be no intelligible need for criteria

²⁹⁹ Simon Hope, "'The Circumstances of Justice", *Hume Studies*, Vol. 36, No. 2, 2010, p. 126.

³⁰⁰ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, Harvard University Press, 2006, p. 26.

³⁰¹ David Hume, *A Treatise of Human Nature*, Norton and Norton (ed.), Oxford University Press, 2000 [1739-1740], book 3, part 2, sec. 2, par. 18.

of justice either.³⁰² We may refer to these two circumstances as “limited altruism” and “moderate scarcity”, respectively.

However, a third point on the subject will be our focus here. It can be gathered from *An Enquiry Concerning the Principles of Morals*, where Hume writes:

“Were a species of creatures intermingled with men, which [...] were possessed of such inferior strength [...] that they were incapable of all resistance [...] we should be bound by the laws of humanity to give gentle usage to these creatures, but should not [...] lie under any restraint of justice with regard to them [...]. Our intercourse with them could not be called society, which supposes a degree of equality.”³⁰³

Hume thinks there needs, to some extent, to be an initial equality of power (to inflict harm or fend for oneself) between the parties bound by justice. In lack of a better term, we may refer to this third circumstance as “rough equality of power”. The capacities of individuals are here, in Rawls’ words: “comparable in that no one among them can dominate the rest. They are vulnerable to attack, and all are subject to having their plans blocked by the united force of others.”³⁰⁴

There is no need to align with Hume’s own theory of justice in order to acknowledge the circumstances of justice that he outlined. Many different thinkers subscribe to these assumptions.³⁰⁵ Yet, we may object to the idea that these circumstances apply at all to the relationship between individuals of different generations. It is particularly difficult to see how the third circumstance could be fulfilled.

Consider that we do not exist contemporaneously. Thus, there is no mutual cooperation or exchanges between non-overlapping generations. This might be reminiscent of the relationship between peoples of different nation states. But, in the case of non-overlapping generations there is, as mentioned, a complete lack of coexistence.³⁰⁶

First, this puts in question whether there is even limited altruism in the case of future generations. Some will argue that the lack of coexistence re-

³⁰² Hope (2010), 125–126.

³⁰³ David Hume, *An Enquiry Concerning the Principles of Morals*, Beauchamp (ed.), Oxford University Press, 1998 [1751], sec. 3, par. 18.

³⁰⁴ Rawls (1971), 127.

³⁰⁵ Hope (2010) mentions John Rawls, David Miller, Onora O’Neill and Jeremy Waldron.

³⁰⁶ Gosseries (2008), 447.

duces our altruism to zero.³⁰⁷ But, let us be open to the idea that some degree of altruism could be possible in relation to future people. We will soon become more familiar with Rawls' notion of "mutual disinterestedness"—his interpretation of limited altruism in the so-called original position (a hypothetical contracting state).³⁰⁸ Taking limited altruism as a given, Rawls will encounter enough problems anyway. Therefore, I will put Hume's first circumstance of justice aside for this enquiry.

Secondly, one might think that there is an absolute rather than a relative (or moderate) scarcity of some natural resources. Fossil fuels (among other resources) are, from a long-term perspective, finite. At the same time, we lack adequate knowledge about the future in this regard. Distance between generations, it is said, "increases uncertainty as to the effects of our actions or the nature of future generations' preferences or their environment."³⁰⁹ Technical development might in the future present new opportunities regarding what resources can be used and how. Either, then, it could be that Hume's second circumstance is not fulfilled, or it could be that it is difficult or impossible to know. But nor will I engage further with this matter. Even if this requirement is (also) fulfilled, problems arise from the lacking third circumstance, which appear intractable.

Third, we observe that there is a radical power asymmetry inherent in intergenerational relationships. With regard to negative environmental consequences of our actions, there is little or nothing future generations can do to prevent them. Furthermore, in choosing how to live, and with whom, present generations even have the power to affect the number and identity of future people.³¹⁰ Future generations, on their part, cannot affect us in any of these ways. This makes future people worryingly similar to Hume's fantasy creatures above, which are subject to absolute inequality, and for precisely that reason are not owed any obligations of justice. In order to depict Depletion as an injustice, we would have to stand in a relationship to future generations where it is in our direct interest to affirm duties to the contrary. But, since there is no rough equality of power between present and distant future generations (future generations are – at least close to – powerless) it is not in the interest of present parties to do so.

³⁰⁷ During a conversation, I understood this to be the view of David Heyd.

³⁰⁸ Rawls (1971), 142, 146.

³⁰⁹ Gosseries (2008), 447.

³¹⁰ Parfit (1984).

In what follows, we shall see how this lacking circumstance, or radical power asymmetry, makes it difficult to formulate an account of intergenerational justice within Rawlsian thought. As long as it sticks to a personal-affecting restriction, required for a wide equilibrium as set out here, Rawlsian theory remains unable to arrive at an intuitive conclusion, and thus achieve a narrow reflective equilibrium.

6.2 The original position and future generations

The question of intergenerational justice has not taken Rawlsian thought by surprise. Rawls himself characterized it as a trouble-maker from the start, stating that it “subjects any ethical theory to severe if not impossible tests”.³¹¹ But, he also insisted that, without a discussion on justice between generations, “the account of justice as fairness would be incomplete”.³¹² It is furthermore the case that other pressing issues, e.g. redistribution of income, seem to have been successfully dealt with by Rawlsian thinking. One might, therefore, expect this school of thought also to offer an account of intergenerational justice.

In the following, I demonstrate the various problems for Rawls’ theory, which arise as future generations are brought into the picture. We shall see *in what way*, according to Rawlsian standards, Q3 is not answered satisfactorily.

As mentioned, Rawls derives his basic principles for society from a hypothetical, ideal, forum for decision making, which he names the original position. The defining character of this particular approach is that the parties are placed behind a veil of ignorance. Although aware of the general facts of human societies, all are assumed to be uninformed of contingent details such as their own social position, abilities or inclinations. The decision makers are bound to choose guidelines for society the consequences of which they are prepared to endure.³¹³ All parties are self-interested individuals in the sense that: “in choosing between principles each chooses as best as he can to advance his interests”.³¹⁴

³¹¹ Rawls (1971), 284.

³¹² Ibid.

³¹³ Op. cit., 137.

³¹⁴ Op. cit., 142.

As has been pointed out, this does not mean that the parties are egoists.³¹⁵ Rawls is careful to point out that the parties are not “individuals with only certain kinds of interests, say in wealth, prestige, and domination.”³¹⁶ They are evaluating principles out of “pure” self-interest – lacking “envy, jealousy or spite; empathy, care or other concern for others”. One might refer to this as “mutual disinterest”³¹⁷ (Rawls would phrase it as “not taking an interest in one another’s interests”³¹⁸).

The original position can be described as a screening device, capable of giving verdicts on any suggested principle. Principles that pass are taken to be just. One derivative conclusion is, for instance, in favour of the “maximin-rule”, which implies that social and economic disadvantages are accepted as long as they are to the greatest benefit of the least advantaged in society.³¹⁹ The rationale behind this is that, given that one knows nothing about one’s own position in society and thus perceive a *risk* of being among the least advantaged, one will agree to a principle that maximizes the living standards of the least well off, now equal to one’s own worst expected outcome.

Below, I show why it will seem appealing to widen Rawls’ theory so that it includes future generations, by letting the veil of ignorance conceal (in addition to social position) which generation the parties belong to. The situation could be described as a kind of prisoner’s dilemma.³²⁰

³¹⁵ Claus Dirksmeier, “John Rawls on the rights of future generations”, *Handbook of Intergenerational Justice*, Edward Elgar, 2006.

³¹⁶ Rawls (1971), 13.

³¹⁷ Attas (2009), 197.

³¹⁸ Rawls (1971), 13.

³¹⁹ Rex (2003), 132–133.

³²⁰ Attas (2009), Gardiner (2003).

Table 6.1: An intergenerational prisoner's dilemma: G3's preferences

G3 \ G2	Cooperate	Defect
Cooperate	2	4
Defect	1	3

A prisoner's dilemma arises when agents deciding on whether to cooperate have no power over one another's decisions. It can be shown that agents will then choose what is individually rational, but collectively suboptimal. In the intergenerational case depicted here, generation G3 faces G2, a previous generation, and is to decide on whether or not to save natural resources. Since G3 lives at a later point in time than G2, they have no means of affecting G2's decision to save (cooperate) or refrain from saving (defect).

The table shows the preferences for G3. The preferred outcome for G3 is that G2 has saved and that they themselves have not; the next most preferred outcome is that they both save, the third preference is that neither save, and lastly, that G2 has not saved but G3 has. G3's dominant strategy will be not to save, since regardless of whether previous generation G2 has saved or not, G3 gains by not saving. This prisoner's dilemma is normally transitive – G4 will meet the same kind of situation in relation to G3. Each subsequent generation will rationally decide not to save, and all will end up in the lower right box – everyone's third preference. If the universal strategy had instead been to save, everyone would have been better off, ending up with their second most preferred outcome in the upper left box.

This situation is in fact worse than an ordinary prisoner's dilemma. Stephen Gardiner refers, therefore, to a "pure intergenerational problem".³²¹ All parties are subject to one another's actions in a prisoner's dilemma. In the intergenerational counterpart, on the other hand, each generation has the power to pollute when it is no longer subject to the actions of their predecessors. It is not possible to achieve compliance with moral norms through re-

³²¹ Gardiner (2003)

peated games – a “tit-for-tat” strategy. Nor is it possible to gather in order to set up an actual contract or authority to regulate behaviour.

Thus, a situation similar to a prisoner’s dilemma arises, where previous generations have saved or not, and either way, the contemporary population gains the most by not saving.³²² If not all parties that either affect or are affected by decisions are present in the negotiations, but rather reach their decisions at different points in history, the third circumstance of justice is lost.

It has been argued, however, that “this is a feature of the real world, but it need not be the situation in the original position.” Indeed, a (self-imposed) challenge for Rawls as well as Rawlsians has been to construct the original position so as to “model relations of mutuality between generations even if these are absent from the real world.”³²³ Let us see how such a quest turns out.

6.3 Care for one’s descendants

Our initial interest should naturally turn to the following statement in Rawls’ *A Theory of Justice*: “[t]he persons in the original position have no information as to which generation they belong to” which is why, in turn, the parties should agree on a principle of “just savings”. Specifies Rawls: “questions of social justice arise between generations as well as within them, for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature”.³²⁴

What the contracting parties do know, however, is that they are all “contemporaries”.³²⁵ The main reason for this appears to be a wish to render the original position “a natural guide to intuition”.³²⁶ To elaborate independently on this feature is still possible (such attempts have been made before and one is made below). The results of a more rigid interpretation remain, however, the first link in a chain of problems, as the following substantiation aims to show.

For the sake of argument, we could imagine the number of generations one could belong to during a lifetime – let us say three or four – in a con-

³²² Barry (1999), 86.

³²³ Attas (2009), 191.

³²⁴ Rawls (1971), 137.

³²⁵ Op. cit., 140.

³²⁶ Op. cit., 139.

tracting state.³²⁷ We might label these generations “age groups” for clarity, as elsewhere (in this thesis) I refer to generations as everyone alive at a certain point in time. The age groups are kept ignorant of what group they really belong to, and could thus be interested in, for instance, a certain degree of redistribution that “remedies” the lack of resources among the very young and the very old.

As far as the environment is concerned, they might be interested in an economized use of natural resources. This interest, however, as was early noticed by Jane English, only extends to the extent that all *present* negotiators are treated fairly. In her words: “they know that none of them will be alive in, say, 150 years, so they would not find it in their interest to invest in any programs which would not pay off within their lifetimes. For instance, they would presumably not acknowledge principles which prevented them from exploiting natural resources or destroying the environment in a way that would have disastrous consequences only after they could all expect to be dead”.³²⁸

A solution proposed by Rawls has been to say that, other than the risk of being a young person in the original position, one is also motivated by care for one’s close descendants. One could of course object, here, that care for one’s descendants is a departure from Rawlsian theory. From a contract-theoretical point of view, it is not obvious why Rawls would depict the parties of the contract as “continuing persons (family heads, or genetic lines)” rather than “single individuals”.³²⁹ Indeed, it could appear to violate a personal reasons restriction, or as imposing a conception of the good.³³⁰ Here, however, we shall move on as if care for one’s descendants is an uncontroversial self-interest. It still seems the self-interested intergenerational care does not extend as far into the future as it would need to. A chain of caring does not stop the present generation from acting in a way that would be beneficial to themselves, and detrimental only to a generation in a distant future. Later, in an attempt to accommodate future people in the Rawlsian construct,

³²⁷ A “number of generations” might not really exist, as we are rather experiencing a continuous replacement of human beings.

³²⁸ Jane English, “Justice between generations”, *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, Vol. 31, No. 2, 1977, p. 99.

³²⁹ Rawls (1971), 146.

³³⁰ Attas (2009), 199: “if the natural care and concern for one’s immediate descendants is a legitimate assumption of the theory, why not include also the care for one’s tribe, nation, class, religion, and so on and so forth?”

Brian Barry would refer to nuclear energy, global warming and other retro-active threats to mankind as “sleepers” in this respect.³³¹

Rawls was initially reluctant to depict a negotiating situation even in English’s fashion. He insisted that “the original position is not to be thought of as a general assembly which includes at one moment everyone who will live at some time; or much less, as an assembly of everyone who could live at some time. It is not a gathering of all actual or possible persons.” It does appear rather contradictory – do the parties of the contract know themselves to be contemporaries, while being insensitive to their own place in history? Rawls maintained, however, that anything else would be “to stretch fantasy too far”.³³²

However, we have now seen that taking the course of time into account does bring problems to Rawlsian thought. In a first instance, parties end up in a situation similar to an intractable prisoners’ dilemma. Secondly, self-interested care for one’s descendants cannot be said to extend far enough to comprise distant generations, whose environment is threatened by climate change.

6.4 Two universalization attempts

In his second major work, *Political Liberalism*, Rawls seems to have overcome some of his unwillingness to let the original position relate to a certain point in history. He introduces a “present time of entry interpretation”.³³³ Here, possible future people are still banned from negotiations. Instead, present generations are required to “agree to a savings principle subject to the further condition that they must want all *previous* generations to have followed it”.³³⁴ Of course, previous generations may or may not actually have saved in the past, to the benefit of the present generation. This solution therefore posits “full compliance” by previous generations. We now disregard that the identities of present generations depend on the fact that previous generations did not comply (or complied to the precise degree that they did). Even so, this solution attempt does not achieve narrow equilibrium.

³³¹ Barry (1999), 81.

³³² Rawls (1971), 139.

³³³ Attas (2009), 202.

³³⁴ Rawls (1993), 274, emphasis in original.

The assumption of full compliance can be pictured by eliminating the right-hand column in the table showing the prisoner's dilemma.

Table 6.2: An intergenerational prisoner's dilemma: assuming full compliance

		G2	
		Cooperate	Defect
G3	Cooperate	2	x
	Defect	1	x

As we have seen, there is no personal reason for the members of the present generation (here G3) to agree to a savings principle. Thus, Daniel Attas argues: “the rational choice in the original position – a choice that will neither bind previous generations nor affect their choices – remains not to save.”³³⁵ Hence, we will not be able to reach the conclusion that Depletion is an injustice.

Attas' own solution is instead to introduce a “universality constraint”. This is supposed to put “a constraint on the available principles on the *menu* from which the participants are to choose”. This could be pictured by eliminating the lower left and upper right boxes in our table.

³³⁵ Attas (2009), 203.

Table 6.3: An intergenerational prisoner's dilemma: a universality constraint

G3	G2	Cooperate	Defect
Cooperate		2	x
Defect		x	3

But this seems to make the original position, with its veil of ignorance, redundant. This view could be seen as simply restating our intuition (that a present generation should abstain from its most preferred outcome for the sake of future people's environment) without providing any argument for it. Otherwise, this constraint would seem to be based on some other rationality than personal reasons, external to the original position – if so, this solution attempt does not achieve the tradition-conscious, wide equilibrium required here.

At this stage, if one wants to “rescue” Rawls’ theory for one’s own purposes, it seems that one is forced to elaborate on the possibility to put “possible future people” among the parties that negotiate on a social contract.³³⁶ Attas’ view is that lacking knowledge of whether one exists at all is “conceptually impossible”.³³⁷ But one attempt of this kind has been made by Barry,

³³⁶ An important input from *Political Liberalism* could have been the thought of an “overlapping consensus”. With this idea, however, Rawls only directs himself to a group of countries that share history and traditions with his own cultural and political sphere, identifying the larger part of its contemporary doctrines as reasonable. Given that we accepted a theory that applies only to these states, one effect of this approach is that questions that transcend national borders, such as environmental justice, become difficult to address. Even if all the countries belonging to that cluster followed the updated just savings-principle, and we cared only for those countries, they could still suffer from pollution and environmental deterioration caused by states unable to form such a consensus (Nussbaum [1990], 207). We also notice, in this regard, how the Brundtland commission stated that “the onus for action lies with no one group of nations” (Brundtland, 12.3). Our priority, with regard to Rawls, should therefore be to reason in respect of the original position.

³³⁷ Attas (2009), 196.

who first observes that future people have nothing to offer the present.³³⁸ But a veil of ignorance could, he reasons, make sure that the negotiators are still interested in basic principles catering to intergenerational justice, if the veil also prevents one from knowing to which era one belongs among several represented. From this point, however, Barry questions the overall soundness of the argument. Is the construction still viable if populated by people who will live at different points in time? If our present behaviour puts an end to humankind, and a number of possible people will never come to exist, how could we ascribe any rights to “them”? If human extinction in a distant future is to be avoided, Barry writes, it appears due to nothing but its “cosmic impertinence”.³³⁹

It is assumed, here, that we fear not for the existence of humanity as such, but for things like future human health, enjoyment of nature, and so on. Given that there *will* be human life on planet Earth, are we able to yield a principle in Rawls’ original position, for using institutions to safeguard future people’s environment? We will now have to deal with the implications of non-identity for Rawlsian theory.

6.5 An elaboration of the original position

Who are we placing in the original position when we wish for future people to be represented? We are here taking seriously Parfit’s “time-dependence claim”. He states that “[i]f any particular person had not been conceived when he was in fact conceived, it is *in fact* true that he would never have existed”.³⁴⁰ Consequently, choosing one policy over another, which will result in a lower quality of life for people in the future, “might be worse for no one”. Explains Parfit: “Since the choice between our two policies would affect the timing of later conceptions, some of the people who are later born would owe their existence to our choice of one of the two policies. If we had chosen the other policy, these particular people would never have existed.”³⁴¹ In addition, in comparing the two acts, we relate to so-called different people choices as well as different number choices.³⁴² The latter is entailed

³³⁸ Barry (1999), 81–82.

³³⁹ Op. cit., 88.

³⁴⁰ Parfit (1984), 351, emphasis in original.

³⁴¹ Op. cit., 361.

³⁴² Op. cit., 356.

by the fact that different policy choices will have different consequences for demographic growth.

For Rawlsian theory, all this implies that, even if we assume that there will be human life on Earth in the future, it is not clear how we should conceive of an intergenerational contract situation in the original position.

One way to construct a fit with the original position would be to invite different groups of possible people to attend the negotiations. The move is itself strongly hypothetical, even imaginary, as some of these individuals *would* come to exist after we have made our decision, whereas some of them *would not*. Surely, Rawls had nothing like this in mind when he first came up with his idea about the original position. We, however, will go through with this test. We may picture ourselves trying to stretch the idea of the original position as far as possible. The purpose is to demonstrate how intergenerational tasks actually work in the original position.

Among different people choices, some are also different number choices. Here, the former is handled first, independently of the latter kind; thereupon, we will handle a combination of the two. In both cases, an underlying assumption is that one primarily cares for one's mere existence and in the second place for one's quality of life.³⁴³ For simplicity, we shall now reason assuming small numbers of people.

Imagine G1 to consist of 20 persons, who must choose whether to deplete or conserve a natural resource. The choice of Depletion would grant them more economic growth, in relation to Conservation, which would bring about less economic growth within their lifetimes. G1 thus has a preference for Depletion. We now stretch the concept of the original position, as to include future generations, and use it as a guide to determine which decision is just.

If Depletion is chosen, 20 persons in another century will experience a significantly lower quality of life due to a natural disaster. These are possible people, as they would come to exist in the case of Depletion. We refer to them as G5.

If, on the other hand, Conservation is chosen, this will give rise to the same number of people in the future, but with different identities. The alter-

³⁴³ As we apply the non-identity problem to the original position, it can be discussed whether this in fact assumes that causing to exist can *benefit*, or that not causing to exist can *harm* hypothetical parties (cf. Parfit [1984], 363). I do not discuss this extensively, but see e.g. Per Algander, "Värdet av att existera", *Filosofisk tidskrift*. No. 2, 2017.

native 20 persons of the remote future will not have to endure the disaster that would hit their counterparts in G5. These people are G5*.

60 persons, real and possible, are now situated in the original position in order to decide on a fair principle. Because of the veil of ignorance, nobody knows of any particulars, including to which group they belong among G1, G5 and G5*. The persons in the original position are assumed to be rational in the manner described by Rawls, i.e. in choosing between principles “each tries as best as he can to advance his interests”. The probability that one belongs to any group is 0.33. How will the parties act at this point?

According to David Boonin, this approach will not produce the result that Depletion is morally wrong. He pictures the following reasoning behind the veil: If I turn out to be part of G5*, I will prefer a rule that prohibits G1 from depleting natural resources. If, however, I turn out to be either G1 or G5 I will prefer a rule that permits it. Since there is a two in three chance that once the veil is lifted I will find that I am someone who prefers Depletion, it may well seem to follow that I should favour permitting Depletion.³⁴⁵

I shall argue here that Boonin’s conclusion is mistaken in this regard. It should not be excluded that an application of the original position can indeed produce an intuitive conclusion in a simple different people choice. The problem of the Rawlsian approach, I believe, is that it does not apply successfully to different number choices as well. Lacking this capacity, it does not achieve a narrow reflective equilibrium. Let me first provide an example of what an intuitive answer in a simple different people choice may sound like.

There is, in our Rawlsian toolbox, the maximin rule: “The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others.”³⁴⁶ That is, not only does a negotiator, according to Rawls, try “as best as he can to advance his interests” – in doing so, he is also risk-averse. This risk-averseness, we should believe, would apply both to my primary concern, my mere existence, and (all things equal) my quality of life.

What we know is this: if Depletion is chosen, G1 and G5 will exist, whereas if Conservation is chosen, groups G1 and G5* will exist. Whatever policy is chosen, the probability of ending up in the group of existing people

³⁴⁵ Cf. Boonin (2014), 129.

³⁴⁶ Rawls (1999 [1971]), 133.

(to be), which will be [G1, G5] or [G1, G5*], is 0.67. Depletion conveys that G1 will obtain a higher quality of life than otherwise, whereas G5 will experience a significantly lower quality of life. Conservation, on the contrary, will grant a lesser degree of economic growth to G1, and to G5* an acceptable quality of life.

Since there is an equal probability of ending up in either [G1, G5] or [G1, G5*], we may expect that the parties also take into consideration the life conditions entailed by different decisions. Given (that one exists due to) Depletion, the worst among the outcomes is a significantly lower quality of life (G5). Given (that one exists due to) Conservation, the worst outcome is less economic growth than one would otherwise have had (G1). The worst outcome from Conservation seems better than the worst outcome from Depletion. A reasonable interpretation is that, other things being equal, the parties will prefer to live their lives as members of [G1, G5*] rather than [G1, G5]. The preferred principle would then be Conservation.

This means that, in a simple different people choice, the original position provides an answer that is either intuitive (if my interpretation is correct) or unclear (if it cannot be decided whether Boonin's or my interpretation is correct). But, even if my charitable interpretation is correct, an intuitive result with regard to same number choices is not enough to achieve narrow reflective equilibrium. We need to be able to account for intergenerational duties in different number choices as well.

If we link our decision to a different number choice – in addition to the different people choice described above – the situation changes. Here, we could picture that Depletion also conveys a larger – whereas Conservation conveys less – population growth. Let us suppose that G1 consists of 20 persons, G5 of 60 persons and G5* of 40 persons, which gives us 120 negotiators. The probability that one belongs to G1 will then be approximately 0.17, the corresponding probability for G5 is 0.50 and for G5* approximately 0.33. As before, different decisions will result in different people. If Depletion is chosen, the probability that one belongs to the group of people that have a future ([G1, G5]) is approximately 0.67. If Conservation is chosen, the corresponding probability (for [G1, G5*]) is approximately 0.50. In order to increase the probability of ending up among those who (will come to) exist, the rational parties in the original position could settle for Depletion.³⁴⁷

³⁴⁷ Even if one is kept ignorant of the specific probabilities, one will, given the assumption, know that the probability of AB is higher than that of AC.

We now see that different precepts may yield different results. Given that the number of future human beings on Earth is held constant, the negotiating parties could, as I have argued, agree to preserve natural resources. If, however, Depletion brings about population growth that exceeds that which would follow Conservation, the original position makes a rational choice of exploiting those resources.

As we try to handle intergenerational matters, then, a factor such as demographic change has consequences for deliberations in the original position. Assuming, as we have discussed, that there is no demographic growth, we relate to a different people choice. We will then, in the intergenerational original position, get self-interested actual contemporaries and self-interested, possible future generations, whose numbers are assumed to be independent of policy. One could abstain from an analysis based on such premises altogether, claiming that the original position thereby becomes too unnatural a thought experiment. But I have argued above, against Boonin, that a two-step application of the maximin-principle could have the described assembly decide in favour of Conservation. The Rawlsian framework does not, however, deliver in different number choices, which are here required for a narrow reflective equilibrium.

In the next chapter, attention will turn again to natural law theory, for an exploration of its impersonal resources in political theory. With regard to Rawlsian contractualism, I leave behind a schematic view of the trials encountered and accounted for here (see Table 6.4).

Table 6.4: Rawlsian contractualism and future people

Conditions	Problem	Solution
Rational contemporaries in an original position, unaware of having a place in time.	Intergenerational justice impossible to address.	Include the concept of time.
Rational contemporaries in an original position, aware of having a place in time.	Transitive prisoner's dilemma.	Include care for one's descendants.
Rational contemporaries in an original position, whose self-interest includes care for one's descendants.	Environmental "sleepers" (it may also imply a conception of the good).	Retract care for descendants. Assume full compliance by previous generations.
Rational contemporaries in an original position, who assume full compliance by previous generations.	There is no personal reason for the members of the present generation to agree to a savings principle.	Replace full compliance with a universality constraint.
Rational contemporaries in an original position, who choose from a "menu" of universal principles on future generations.	Either this simply restates our intuition or bases the constraint on something other than personal reasons (which excludes wide equilibrium).	Depart from the present time of entry interpretation and allow future generations in the original position.
Rational contemporaries and rational future generations in an original position.	Future people's non-identity.	Include possible future generations.
Rational contemporaries and rational, possible future generations in an original position.	If Depletion implies population growth, it cannot be defined as an injustice. This does not achieve a narrow reflective equilibrium.	Keep the number of possible future people constant.
Rational contemporaries and rational, possible future generations whose numbers are assumed to be independent of policy, in an original position.	The original position does not handle different number choices and therefore does not achieve narrow equilibrium.	<ol style="list-style-type: none"> 1) Keep elaborating on a Rawlsian approach. 2) Try a different theoretical approach.

7 Natural law: the environmental politics of an intergenerational community

In Chapter 4, it was argued that within natural law a basic values-principle would tell us why it is morally objectionable to leave future generations with a degraded environment. A subsequent discussion yielded a possible account of why such an act would also be morally wrong. This provides us with a circumvention of the basic non-identity problem (NIP) regarding objectionability, and a circumvention of the non-identity problem in a wrongdoing version (NIPwrong). It also provides us with natural law accounts in a discussion in which natural law theorists have so far been lacking.

In Chapter 5, I argued that handling non-identity in morals may give rise to a different, institutional non-identity problem (INIP). Even if natural law tells us why it is morally wrong to leave future generations with a deteriorated environment, this does not imply that public institutions are permitted to correct that wrong. Given INIP, natural law would need to formulate an independent rejection of P2(INIP): “If an act does not harm anyone, then the act should not be prevented by public institutions”. The formal research question that drives such an analysis is *Q3: Why is it permissible to use institutions to prevent future people being left with an unsustainable environment?*

There are different ways one could approach INIP on the basis of natural law theory. I do not intend to pursue all of them. In this chapter, I give descriptions of three possible approaches and proceed with one. According to a common natural law view, the intervention of public institutions is warranted in order to protect and promote the common good. The approach would consist in showing how leaving future people with an unsustainable environment is to injure the common good, even though this would not harm anyone. We would then be saying that natural law allows for impersonal arguments in both moral and political theory. In this chapter, I suggest the concept of community as a starting point for discussing whether natural law could circumvent INIP in this manner.

First, I clarify how this natural law enquiry relates to political and legal theory, respectively.

7.1 Natural law in political and legal theory

In the field of political theory, natural law purports to tell us *which laws are just*. When I refer to “law” in this way, without qualification, I mean any kind of promulgated legislation (referred to in legal theory as positive law). In the footsteps of Aquinas, natural law theorists think laws should be directed to the common good.³⁴⁸ This concept can sometimes appear diffuse. Arguably, it can be used to evaluate particular principles for any group with a common purpose, a family, organization, company and so on.³⁴⁹ In this context, I am exclusively interested in the purpose of state laws regulating the common life of citizens through public institutions.³⁵⁰ Under such circumstances, the general principles of natural law theory can be applied in order to evaluate *political* choices, e.g. whether (or to what extent) defamation should be punished, faith schools should be allowed, or CO₂ intensive energy should be taxed.

In order for a law to be directed to the common good, I take at least the following to be required. First, the content of the law must be in agreement with the moral requirements on acts accounted for in Chapter 4 (political natural law theory thus presupposes natural law theory in the moral field). Secondly, the law must be conducive to life in community. I refer to this precisely as a *requirement of community*. This requirement often implies that private immoralities, implying no or little harm to others, are left unregulated. When the immoralities convey no harm to others, these should preferably be dealt with by individuals themselves (for the purpose of personal devel-

³⁴⁸ *ST I-II*, 90:2. In Aquinas’ formulation (just) law (*lex*) is “an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (*ST I-II*, 90:4).

³⁴⁹ Other than a law’s purpose, it may denote the institutions catering to that purpose or even basic values as such.

³⁵⁰ Such matters of the common good are sometimes referred to as matters of *public good* (see John Finnis, *Aquinas: Moral, Political and Legal Theory*, Oxford University Press, 1998, VII.2). Note that my point is still to discuss public institutions in general. The discussion may be extended so as to concern a different central authority (e.g. the EU or an imagined global authority) in relation to other sub-units than individuals (e.g. states). (See Bo Rothstein, *Vad bör staten göra?*, SNS Förlag, 2006, p. 13, n 17.)

opment). When there is little or less complex harm involved, these may be better dealt with in the context of life in smaller communities, such as the family, a group of friends or religious or other associations.

The requirement of community takes on particular significance in this chapter. Here, we would need to argue that leaving the future with a degraded environment is an immorality that, even though it harms no-one, is serious and complex enough with regard to life in community, so as to warrant law enforcement by public institutions. While the threat of a degraded environment does seem serious and complex enough, it is not clear how future people would be united to us in community, according to natural law.

Now, it seems logically possible to take a natural law position regarding a particular law, while not adhering to the requirement of community. On the understanding here, however, a majority that imposed duties of natural law, through laws that do not abide by the requirement of community, could only be said to promote natural law morals *through* politics; this majority could not be said to act according to the *political* requirements of natural law. This may be seen as controversial or incorrect by some. I return to a different possible natural law approach in the section below.

Before proceeding with that issue, I shall separate the upcoming enquiry from legal natural law theory. In the legal field, natural law theory proposes that the natural law is an aspect of *why the law is law*. According to natural law theory, the status of positive law as law derives, at least to some extent, from its moral and political merits. According to this view, there can be occasions when *lex iniusta non est lex* (“an unjust law is no law”),³⁵¹ whereby the law should not guide those in charge of the community or should not be obeyed by the community’s members. A legal natural law view lay behind the Nuremberg trials, the international military tribunal at which brutal war criminals were prosecuted after World War II. In this case, the process did not depend on violations of national laws – the perpetrators were charged for crimes against humanity on supposed objective, universal grounds. Another, well-known example of a legal natural law position is that of Martin Luther King Jr. (1929–1968) during the American Civil Rights Movement, as he opposed racial segregation laws through civil disobedience.³⁵² In addition,

³⁵¹ This expression is often ascribed to Aquinas; it belongs originally to Augustine.

³⁵² Under harsh conditions in Birmingham City Jail, King wrote a letter claiming: “There are just laws and there are unjust laws. [O]ne has a moral responsibility to disobey unjust laws. [...] An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human

legal natural law theory has a place in the realm of ordinary jurisprudence. According to some, the room for lawyers to fill in “gaps” in a system of law (perceived of as incomplete) depends on the recognition of a natural law that, in some circumstances, can yield legally binding norms in the absence of a political decision. Yet, the fact that a system of law conforms to the natural law is only one aspect in which that system is to be considered law. Aquinas, for one, argued that “sedition” (we may think of civil disobedience or revolutionary attempts) was warranted only if the ruler was unjust *and* the benefits of sedition outweighed the benefits of keeping public order.³⁵³ Positive law may still count as law, according to this view, even though it is not derived from the natural law.

How to define law is a matter of extensive debate, and this thesis is not immediately concerned with natural law in legal theory. In the present chapter, natural law theory is employed in the search for an answer to Q3. This question concerns why (and whether) laws safeguarding future people’s environment can be considered just, and not why or whether such a law (or a law in conflict with such an ideal) would be binding on lawyers or citizens. Matters specific to legal theory are thus put aside.³⁵⁴

Below, I identify three possible ways to approach INIP, on the basis of natural law theory. I go on to develop natural law theory in accordance with one of these approaches.

7.2 Possible natural law approaches to INIP

One natural law response to INIP could be to accept C(INIP). One would then affirm that institutions may only prevent wrongdoing that harms or risks harming persons, and that since (the risk of) harm is absent in the act of Depletion, we cannot allow institutions to prevent it. Concluding that the law should, in principle, leave intergenerational matters entirely open, we would have to rely on individual virtue and civic engagement in order for intergenerational duties to be fulfilled. Melissa Lane refers to a similar approach as

law that is not rooted in eternal and natural law.” (Martin Luther King, Jr., *Letter from a Birmingham Jail*, 16 April 1963.)

³⁵³ *ST II-II*, 42:2, ad 3.

³⁵⁴ Questions of interest, here, may concern if and when citizens or rulers are morally entitled to disobey/disregard legislation by reference to intergenerational values, if and to what extent courts or other institutions may fill possible gaps in the legal system when intergenerational values appear threatened, etc.

informed by Plato: “In such an outlook, the free choice of options ... is informed from within by an orientation towards the value of sustainability in one’s personal choices, even those which the law leaves open.”³⁵⁵ This would also be in line with the prevailing natural law doctrine that advocates the protection of private property, limited state intervention, and entrusting civil society with important moral and social responsibilities. A solution of this kind could merit more discussion, yet I do not opt for it. Even though the conclusion constituting INIP is not as counterintuitive as the conclusions of NIP and NIPwrong, there seems to be good reason to shun C(INIP) as well (see Chapter 5). Just as I required a narrow reflective equilibrium from responses to NIP and NIPwrong, where a counterintuitive conclusion was to be avoided, here I wish to avoid what I refer to as a (politically) paralysing conclusion.

Another response to INIP could be to reject P2(INIP) in the style of Robert George in *Making Men Moral* (2002). The author defends the idea that public prevention of “private” or “self-regarding” immoralities is, contrary to the assumption here, permissible. George writes: “... someone who has good reasons to believe that a certain act is immoral may support the legal prohibition of that act for the sake of protecting public morals without necessarily violating a norm of justice or political morality.”³⁵⁶ In this vein, one could argue that matters of interpersonal wrongdoing are not the only thing that warrants institutional measures – so do certain matters of great moral import, and protecting the environment of future generations seems to fall into such a category. Such a suggestion could likewise merit more discussion, but nor do I pursue this kind of approach.

Here, natural law’s principle of subsidiarity has been understood as a principle of justice. Natural law theory is taken to be similar to contractualism in this regard. According to the understanding stated in Chapter 5, justice requires the state to protect and promote personal development, within reasonable boundaries. As laid out in Chapter 5 and here, the particular principle of justice characterizing natural law is that law should be directed to the common good. An initial, institutional argument based on natural law theory could be formulated as follows:

³⁵⁵ Melissa Lane, *Eco-Republic – What the Ancients Can Teach Us About Ethics, Virtue, and Sustainable Living*, Princeton University Press, 2012, p. 72.

³⁵⁶ Robert George, *Making Men Moral: Civil Liberties and Public Morality*, Oxford University Press, 1993, p. viii.

Natural law's institutional argument

P1(NLi): Generation One's act of Depletion rather than Conservation is detrimental to the common good

P2(NLi): If an act is detrimental to the common good, then the act can possibly be prevented by public institutions

C(NLi): Generation One's act of Depletion rather than Conservation can possibly be prevented by public institutions

P2(NLi) would reject P2(INIP). It is not obvious, however, whether future people's environment could gain protection (through laws) by an appeal to the common good. On the account provided here, matters of the common good need to concern life in community. According to this view, law is *not* to regulate the private or self-regarding dealings of A. It concerns a *relationship* that exists *between* A and B. Given the moral natural law argument suggested in this thesis, referring to basic values *rather than* interpersonal harm, the community view in political theory may put obstacles in our way with regard to justifying intergenerational environmental laws. We must show, more specifically, why we would make a claim like P1(NLi). At the same time, if such laws can be considered just, even according to a more demanding view, we get a less ambiguous account of what natural law theory implies in this area.

If we consider Rawls, for example, the original position has been an efficient address regarding ordinary questions of redistribution. Still, the added dimension of *time* made it difficult to uphold a social contract between the parties. Likewise, natural law theorists have yet to demonstrate an ability to deal with this matter comprehensively. To be a matter of the common good, environmental intergenerational duties must be proved to concern life in community.

In the section that follows, I first expound the elements of community in natural law theory, according to a conventional understanding. I then show how these elements would seem to be lacking between present and distant future people. In subsequent sections, I elaborate on how this obstacle could be overcome.

7.3 The four orders of community

The requirements of the common good have here been taken to include a requirement to act morally, i.e. to promote and respect a whole range of ob-

jective values: life, knowledge, play, aesthetic experience, friendship, religion and practical reasonableness. Sometimes, these values themselves may be spoken of as “the common good”, as these are considered “good for any and every person”.³⁵⁷ As a legally binding task, however, the common good requires community, and on the natural law account community originates in *human interaction*.³⁵⁸ Whatever else community is, Finnis reasons, it is “a form of unifying relationship between human beings.” Subsequently, he identifies four basic ways in which human understanding stands to unifying relationships, arguing that human community is constituted in all four of these “orders”.³⁵⁹ He exemplifies the orders by describing various interactions between a lecturer and a listener at the same location. Interaction may as well take place at a considerable distance, or by using senses other than hearing, but for clarity and simplicity I remain with Finnis’ example.

- The first order finds expression when the listener *hears the sounds* made by the lecturer’s vocal chords. Here, the aspect of human community is the biological community of the human race. We know it as studied by the natural sciences and it is, essentially, an “order which we can understand but which we do not ourselves bring about.”³⁶⁰
- The second order finds expression when the listener *hears expositions, arguments, and explanations* made by the lecturer. Part of our unity is that of intelligence in its many capacities. One can, e.g. bring one’s understanding in line with a lecturer’s views, even if only to the degree needed to disagree with them. Reportedly, this aspect is studied reflectively in logic, methodology and so on, and is summarily defined as a “unity or order which we can bring into our understanding itself.”³⁶¹
- The third order finds expression when the listener *hears the English language* (or some other form of communication) and a pedagogical technique. Another part of our unity, then, is in the cultural unity of shared language and other common modes, which are studied in art, technology and sciences of human symbol-

³⁵⁷ Finnis (1980), 155.

³⁵⁸ Op. cit., 135.

³⁵⁹ Op. cit., 136.

³⁶⁰ Ibid.

³⁶¹ Op. cit., 136–137.

making. It is “the unity or order which we bring into, or impose upon, whatever matter is subject to our powers.”³⁶²

- The fourth order finds expression when the listener *makes a self-constituting decision by sharing* with the lecturer. Part of our community, in this case, is the community of (common) action. In science, we find this aspect of humanity in branches within psychology, the history of human affairs, ethics and political philosophy. It is defined as “the unity or order which we bring into our own actions and dispositions by intelligently deliberating and choosing.”³⁶³

Human community, as Finnis is concerned with it, “is primarily a matter of community in the fourth order”.³⁶⁴ Still: “Some degree of unity of the other three sorts is clearly needed if there is to be the community of joint action or of mutual commitment to the pursuit of some common good.”³⁶⁵ We can learn something about the obstacles of intergenerational justice through this explication. The relationship(s) above may be present between a professor and her students, a group of business associates or two friends (the smallest “group” imaginable) as well as between millions of citizens: “a group, in the relevant sense, whether team, club, society, enterprise, corporation, or community, is to be said to exist wherever there is, over an appreciable span of time, a co-ordination of activity by a number of persons, in the form of interactions, and with a view to a shared objective.”³⁶⁶ It is thus possible to be in community with human beings on the other side of the Earth, as far as many 21st century-beings are concerned. We could still doubt, however, whether we could establish such a relationship between ourselves and future generations. Let us reconsider the “four orders” in this regard.

- Even though we cannot hear the vibrations of future vocal chords, we could rest assured of a biological unity with future generations. Our calling them so relies on the fact that we take part in “generating” them, so to speak. Perhaps we could accept an ac-

³⁶² Op. cit., 137.

³⁶³ Op. cit., 138.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Op. cit., 153.

count of unity in the first order. Furthermore, it pertains regardless of the identities-to-be of future individuals.

- The second order is harder to establish between ourselves and future people. Even if future individuals were to have specific identities, regardless of our policies, we would not be able to take part in any exposition of theirs.
- We can imagine that future people will speak differently than we do, and that they will form cultures different from the contemporary ones – yet, we can expect those languages and cultures to be developments, albeit distant, of at least some of our own. However, we do not experience those future modes of communication as directed to us, in a unifying manner.
- Finally, we are led to doubt that actions on our part could be the result of “sharing” in some sort of account provided by future generations.

The basic idea seems to be that we rely on impressions from at least one external mind in order to be in community. Mutuality cuts through any explicit account of community that Finnis’ natural law account provides, such as “play communities” and “business communities”, community in friendship or political community.³⁶⁷ Such a relationship would seem impossible to establish with future people. How may natural law theorists proceed?

The justification for an “all-round association”, such as the nation state, is that it caters to human needs that are impossible to fulfil within the boundaries of smaller communities (such as the family or a sporting association). A community with a reasonably exhaustive address of the kind is a *complete community*.³⁶⁸ The legal claims of the modern state, Finnis argues, are based on its “self-interpretation” as such a community.

In connection to this, we may notice the acknowledgement that some modern relationships “transcend the boundaries of all *poleis*, realms, or states.”³⁶⁹ There are varying “global” relationships – of communication, technology, ecology, ideas – that make it impossible to deny the good of

³⁶⁷ Op. cit., VI.3, VI.4, VI.6.

³⁶⁸ Op. cit., 147. Aquinas expresses this idea in *ST* I–II, 90:2, referring to Aristotle’s perception of just laws (these produce *eudaimonia*, human flourishing) in *NE* 5:1 (1129b17), as well as Aristotle’s most far-reaching solution: the State, see *Pol.* 1:1 (1252a5).

³⁶⁹ Finnis (1980), 149.

international community. Despite the practical difficulties that might follow, he concludes that “[i]f it now appears that the good of individuals can only be fully secured and realized in the context of international community, we must conclude that the claim of the national state to be a complete community is unwarranted [...]”³⁷⁰

When discussing the requirements of the common good, Finnis seldom reasons outside the dimension of space, and when he does, his argument does not seem to apply far into the future. However, just as a state may participate in an international community, and conform to it even despite the preferences of a majority in its legislative assembly, a state may perhaps conform to the standards of an intergenerational community. In other words, if we *did* manage to show that there is such a thing as intergenerational community, it could signify that laws safeguarding future people’s environment *are* permissible according to natural law. A community between generations could perhaps allow the inclusion of “some co-ordination ... of any and every individual life-plan and any and every form of association”, in order to safeguard the environment in the long-term.³⁷¹ An effort to stretch natural law’s concept of community in this direction seems required and reasonable. I perform such an elaboration below.

7.4 Intergenerational community – some pitfalls

Where does one find indications that we are united with future generations in community? Our relationship to “them” appears helplessly one-sided – we forward ideas, words, artwork, recipes and entire cities to them, whereas we ourselves obtain nothing from the future.

One often-cited formulation of community over time is that of Edmund Burke, in which he objects to a particular notion of the “social contract” that influenced his contemporaries. In his *Reflections on the Revolution in France* (1790) he claims that society is “a partnership not only between those who are living, but between those who are living, those who are dead, and those who are yet to be born.”³⁷² Does this declaration mean anything to us?

³⁷⁰ Op. cit., 150.

³⁷¹ Finnis (1980), 148.

³⁷² Edmund Burke, *Reflections on the Revolution in France...*, seventh edition, J. Dodsley, Pall Mall, 1790, p. 144.

On a first reading, we ought to remain unimpressed by any “partnership” with people who are yet to be born. Our decisions will even affect who those people turn out to be. In the search of some motivation to legislate to safeguard their environment, Finnis will have us look for it in mutuality. However, there appears to be no communication or mutual effort on the part of future generations on this matter.

On a second reading, we discover something else. We notice that the partnership described by Burke also includes the dead. What is more: in contrast to the identity-less people of the future, these are “particular people”, as one writer points out, who have built, maintained and left a social order to us: “[w]e receive the buildings they put together, the languages they spoke, the books they wrote, the ideas they had, the economic opportunities they made possible, the moral consequences of the things they did [...] just as others will receive ours”.³⁷³

Could we, perhaps, accept an extension of community in time, based on the idea that a relationship between us and the future is initiated by the past? One answer of this kind is often labelled “communitarian”. Communitarianism, some will argue, “by stressing communal values of the embedded self”, is in a better position than liberalism to explain “why obligations in respect to the past as well as the future should play a central role in conceptions of justice.”³⁷⁴ Argues Annette Baier: “Persons are essentially successors, heirs to other persons who formed and cared for them, and their personality is revealed both in their relations to others and in their response to their own recognized genesis.”³⁷⁵ We are thereby, Janna Thompson adds, “second persons”.³⁷⁶ MacIntyre conducts a similar discussion of justice in *After Virtue*: “I am someone’s son or daughter, someone else’s cousin or uncle [...]. I belong to this clan, that tribe, this nation. Hence, what is good for me has to be good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point.”³⁷⁷

³⁷³ Joseph Bottum, “Death & Politics”, *First Things*, June/July 2007.

³⁷⁴ Janna Thompson, “Identity and Obligation in a Transgenerational Polity” in Gosseries and Meyer (eds.), *Intergenerational Justice*, Oxford University Press, 2009, p. 25.

³⁷⁵ Annette Baier, “Cartesian Persons”, in A. Baier, *Postures of the Mind*, University of Minnesota Press, 1985, p. 85, cited also in Thompson (2009), 37.

³⁷⁶ Thompson (2009), 37.

³⁷⁷ Alasdair MacIntyre (1981), p. 220, cited in Thompson (2009), 28.

Early on, before non-identity was being discussed, Martin Golding would suggest the idea that we have obligations to future generations that belong to our *moral community*. He would then point out the oddity of having obligations to individuals who do not yet exist. Rather: “There is something which is due to the community of the future from us.”³⁷⁸

There might be a way, then, to render environmental intergenerational duties a matter of the common good. One would take into account that “future individuals will be members of our community: our descendants or successors.”³⁷⁹ Communitarianism can thus be thought to circumvent a problem like INIP, as obligations to such a community “do not depend on who these descendants or successors turn out to be, or on the course of events that will bring them into being.”³⁸⁰ Yet, we face one immediate problem: appeals to the past could take undesirable shapes, either as nostalgia, dogmatism or general backwardness.³⁸¹ It is undesirable because we are employing an instrument for moral balancing, and ought to reject ideas of old habits or institutions as valuable in themselves (not to mention the habit of using fossil fuels). Alarmingly enough, Burke, who was referred to earlier, has been labelled a “conservative utilitarian” as well as “an enemy of the Natural Law”, with motivations such as John Randall’s: “He was primarily a utilitarian, a worshiper of the expedient, who was convinced that the mere fact that any custom or institution had grown up over a long period of time established an overwhelming presumption in its favour. The whole business of appealing from tradition to reason and nature was distasteful to him.”³⁸²

If Burke’s or some other full-blown communitarian approach were the only thing available to us, we would indeed find it difficult to formulate a natural law argument. Martha Nussbaum’s Aristotelian critique of Rawls’ “primary goods”, and his inclusion of wealth and income among them, provides a parallel. Without denying the role assumed by such “pre-requisites”, Nussbaum makes a theoretical distinction between material resources and

³⁷⁸ Martin Golding, “Obligations to Future Generations”, *The Monist*, Vol. 56, No. 1, 1972, p. 89.

³⁷⁹ Thompson (2009), 31.

³⁸⁰ *Ibid.*

³⁸¹ See Avner de-Shalit, “Down to Earth Environmentalism: Sustainability and Future Persons” in Fotion and Heller (eds.), *Contingent Future Persons*, Theology and Medicine, Vol. 9, Springer, 1997. An aim of de-Shalit is to establish a notion of trans-generational community “unlike the Burkeian ... that looks backwards and sees an obligation to continue the heritage of previous generations” (p. 126).

³⁸² Randall (1940), p. 432, cited in Stanlis (1958).

human goods: “However much people may actually be obsessed with heaping [...] up [wealth, income and possessions], what they have really, when they have them, is just a heap of stuff. A useful heap, but a heap nonetheless, a heap that is nothing at all unless it is put to use in the doings and beings of human life.”³⁸³ She agrees with Aristotle that they all “have a boundary, like tools: all are useful *for* something”.³⁸⁴ We should not go as far as to say that knowledge of history never has a value of its own. But the “use” of history with regard to community (similarly to the use of money) begs the question “What for?”³⁸⁵

7.5 Dante as a prime example

The answer provided by Thomas Paine, Burke’s antagonist, would have been that history should not be particularly used at all. In a reply to Burke (1791), he declared: “I am contending for the rights of the living, and against their being willed away and controlled and contracted for by the manuscript-assumed authority of the dead.”³⁸⁶ What we care to know is: how does one relate to history in a kind of dialogue in order to decide for the future, as opposed to referring to old customs or historical commands as goods in themselves? Here, we may consider Dante in the *Divine Comedy* as an example.

Dante’s initial *canto* opens with the following *terzina*: “Nel mezzo del cammin di nostra vita/Mi ritrovai per una selva oscura/Che la diritta via era smarrita” (“Midway the path of life that men pursue/I found me in a darkling wood astray/For the direct way had been lost to view”).³⁸⁷ Far from dead, Dante has gone morally astray. With the guidance of late poet-colleague Virgil, he is subsequently brought to the afterlife as a *visitor*. Walking through Hell, Purgatory and Paradise, Dante encounters historical and literary persons from the past. Along this path, Dante is given motivations and explanations regarding the judgements under which all those people are subsumed. Yet, Dante does not appear to cope with just anything. He is to regret that Aristotle dwells with the other Greek philosophers in the first circle of Hell (the “reason” being that none of them could possibly have been bap-

³⁸³ Nussbaum (1990), 210.

³⁸⁴ *Pol.* 1323b7–8.

³⁸⁵ Nussbaum (1990), 210.

³⁸⁶ Paine quoted in Bottum (2007).

³⁸⁷ Dante Alighieri, *La Divina Commedia*, Blanc-Montanier, 1843, Inferno I:1–3.

tized). A similar fate seems to have befallen a number of great scholars of the Muslim world.³⁸⁸ It also seems unfair that Francesca, a woman who was tricked into marrying the wrong person, has been condemned for showing her true love for Paolo.³⁸⁹ And so forth: while many a verdict is depicted as more or less “just”, Dante will often enough insist, cry – he even faints on occasion³⁹⁰ – as the journey goes on.³⁹¹

Ever-present during Dante’s journey, rather than the idea of some “minimal” or “one” good, is a “theoretical thickness” when accounting for human goods.³⁹² Yet, Dante capitalizes on the “vagueness” that marks each particular application of the good. Even when intimidated by the horrifying circles of Hell, he remains *critical*, requiring legitimate answers from his guide Virgil. The reader is not deceived or brain-washed – some verdicts will remain unacceptable to Dante and to us. At the same time, Dante is *receptive* in relation to the past, accepting that there *is* a sort of list, call it a working list, of basic tasks that make us human. Hence, if we identify ourselves with Dante, we are spoken to, and perhaps, encouraged to respond.

In Finnis’ view, death functions as a time-limit that will have us fulfil, each of us individually, the first requirement on agents: a coherent plan of life.³⁹⁴ This probably corresponds to the account that many people (in our time, at least) would provide when asked about death. But, it does not seem to comprise the role that death actually plays in “the life of the citizen” and “political action”.³⁹⁵ Even if our experience is not quite like Dante’s, we could argue that the dead contribute to an important kind of community.

Let us check, briefly, how communication from the dead could qualify as unifying according to Finnis’ four orders.

- We may safely say that there is a biological link between past generations and ourselves.
- It might not be the case that we can literally “hear” the arguments which past generations (have) suggested. But, we may perceive

³⁸⁸ Op. cit., IV.

³⁸⁹ Op. cit., V.

³⁹⁰ Op. cit., V:139-142.

³⁹¹ See Olof Lagercrantz, “Inledning” in Dante Alighieri, *Den gudomliga komedin*, Natur och Kultur, 1995, p. 9. Lagercrantz refers to an interpretation suggested by T. S. Eliot.

³⁹² See Nussbaum (1992).

³⁹⁴ Finnis (1980), V.2.

³⁹⁵ Op. cit., 23.

intellectual expositions from the past. Considering this order, we understand the explicit request by some academic scholars (e.g. historians) that we should take care to understand what an author writing in a different historical context than ours “really meant”.³⁹⁶

- Past generations do “speak” in modes that we, more or less, recognize. It could be counter-argued that most messages were not consciously directed at us, specifically, but so is sometimes the case with even contemporary large-scale community-building. One could also suspect that the further back in time we go to retrieve information, the more we will have to “decipher” messages from past generations. But relating to past accounts seems pursuable enough for our cause. Inherited or recovered artwork, handicraft, architecture etc., should at least be as comprehensible.
- Finally, we may act in accordance with, in opposition to, by compromising with or after consultations from accounts that have been made in the past. Hence, the claim by *other* scholars (e.g. in the field of philosophy) that a text is “never emptied of its true meaning”.³⁹⁷

A similar argument has been made by Avner de-Shalit, who believes that appeals to community (rather than utilitarianism and contractualism), may justify intergenerational duties.³⁹⁸ Aware of the problem that there is a lack of face-to-face interaction between distant generations, but dismissing intergenerational community of place, of blood or of specific ways of life, he argues that different generations belong to a community of “deliberation”.³⁹⁹ Even if distant future people choose to pursue values differently, de-Shalit considers a community to be in place “so long as there is a debate going on”.⁴⁰⁰

We could also consider Seana Shiffrin’s view, suggested in a comment to the work of Samuel Scheffler. Scheffler, on his part, believes that inter-

³⁹⁶ See e.g. Quentin Skinner, “Meaning and understanding in the history of ideas”, Ch. 4 in *Visions of Politics*, Vol. I, Cambridge University Press, 2000.

³⁹⁷ See e.g. Hans-Georg Gadamer, *Sanning och metod*, Daidalos, 1997, pp. 138; 145.

³⁹⁸ de-Shalit (1997), 126. See also Avner de-Shalit, *Why Posterity Matters*, Routledge, 1995.

³⁹⁹ de-Shalit (1997), 126, 131; see also de-Shalit (1995), pp. 30, 34, 44-45.

⁴⁰⁰ de-Shalit (1997), 132.

generational community consists in future persons continuing present projects, “preserving our values” with regard to particular “things we value”, in a manner that if “contrary to fact, one did survive, one would remain socially at home in the world”.⁴⁰¹ On the contrary, and in line with the elaborated natural law account, Shiffrin argues that our regard for the future rather rests on “the continuation of the activity of valuing itself”.⁴⁰²

In this way, a community with future generations could perhaps be described as being triggered by the past. Previous generations would then provide us with sources or accounts of flourishing; and as we respond to *them*, passing on what we consider valuable, an intergenerational community is perpetuated. One may argue, furthermore, that the environment matters in a particular way for the intergenerational community we are speaking of. I develop this argument below.

7.6 Intergenerational community and the environment

John O’Neill has described the past as the “other half of the temporal dimension”. Not only does he think that the past has been dealt with poorly by contemporary theories, he believes that “their failure to do so [...] points to difficulties in their account of obligations to the future.” We could almost see Dante nod in approval when O’Neill argues that “One failure we can make in decisions and actions about a place is not to respect its past and specific history, the work of individuals it contains, the memories it embodies, and so on.”⁴⁰³

An illuminating example considers a dew pond: “It is this dew pond, constructed by people long ago to water their livestock, which is where we used to picnic, where I looked for frogs as a child, that I want to preserve. Another identical dew pond built last year could never do as a substitute simply because its history is wrong.” The natural environment thus plays a particularly important role in intergenerational community. This approach does not have to equal nostalgia (or dogmatism, or general backwardness),

⁴⁰¹ Samuel Scheffler, *Death and the Afterlife*, ed. Nikolodny, Oxford University Press, 2013, p. 34.

⁴⁰² Seana Valentine Shiffrin, “Preserving the Valued or Preserving Valuing?” in Nikolodny (ed.), *Death and the Afterlife*, Oxford University Press, 2013, p. 143.

⁴⁰³ John O’Neill, “Time, Narrative, and Environmental Politics” in Gottlieb (ed.), *The Ecological Community: Environmental Challenges for Philosophy, Politics, and Morality*, Routledge, 1997, p. 24.

since O'Neill opinions that legitimate "resistance" should not be to change as such, but rather "with the kinds of changes that are thought appropriate".⁴⁰⁴ The view would seem to fit well with the two (moral and community) requirements of the common good provided in this chapter, since "part of both individual and social decision-making processes should involve notions of narrative unity and continuity: of an individual life – where should my life go from here given the story of my life thus far; of a community – where should we go from here given the history we have experienced".⁴⁰⁵

Dantesque experiences are lived by all of us when we, for instance, see or walk in places that tell a story, or read texts and enjoy art from times that have passed. Furthermore, to assume the responsibility "to attempt, as far as possible, to ensure that future generations do belong to a community that has a narrative continuity with our-selves" would include taking long-term care of the environment. Future generations should be capable "of appreciating works of science and art, the goods of the non-human environment, and the worth of the embodiments of human skills, and [be] capable of contributing to these goods".⁴⁰⁶ This should also have us opt politically for Conservation rather than Depletion, according to natural law.

A specified natural law argument along these lines could be expressed in the following way:

The institutional natural law argument specified

P1(NLis): Generation One's act of Depletion rather than Conservation is detrimental to intergenerational community

P2(NLis): If an act is detrimental to intergenerational community, then it is detrimental to the common good

P3(NLis): If an act is detrimental to the common good, then the act can permissibly be prevented by public institutions

C(NLis): Generation One's act of Depletion rather than Conservation can permissibly be prevented by public institutions

According to the natural law view developed here, we would not be saying that institutions have responsibility for protecting future persons from being harmed. Rather, the act of depletion is described as being directed towards intergenerational community as such. This is a relationship that we did not initiate, and which future people should maintain, in one way or another.

⁴⁰⁴ Op. cit., 25.

⁴⁰⁵ Op. cit., 28.

⁴⁰⁶ Op. cit., 32.

That community, rather than the wishes or interests of the individuals involved, is what is at stake according to this account. It is on this basis that institutions may permissibly be used to safeguard the environment of future people. P2(NLi) and P3(NLis) thus reject P2(INIP) and allow us to draw an intuitive conclusion, achieving a narrow reflective equilibrium. If one accepts that natural law's subsidiarity principle of justice, like its moral principles, does not have to abide by a person-affecting restriction, this account also achieves wide reflective equilibrium.

8 Summary and conclusive discussion: Approaches to non-identity in contractualism and natural law

This dissertation has engaged with environmental intergenerational duties on the basis of contractualism and natural law. While the former theory seems influential among political liberals, natural law seems appealing to political conservatives. The justifications that these theories can provide are thus of particular interest.

The point of departure of the study has been a problem in philosophy known as the non-identity problem. It remains predominantly a problem for so-called person-affecting theory, such as contractualism. I have argued here that natural law, due to impersonal theoretical resources, could provide a means of circumventing the problem.

I have also argued that there are at least three versions of the non-identity problem. In scholarly literature, one of these versions seems to have gained more salience as *the* problem, namely the non-identity problem in a wrongdoing version.⁴⁰⁷ Given the environmental focus of this thesis, the wrongdoing problem here consists in the difficulty of coherently accounting for the judgment (many of us make) that leaving future generations with an unsustainable environment is morally wrong. I have referred to this problem as NIPwrong, for short. I have claimed, however, that there is a more fundamental problem that, as long as it is not solved, should be tended to as *the* problem. This problem consists in the difficulty of *even* accounting for the judgment that leaving future generations with an unsustainable environment is morally objectionable. I refer to this as NIP, or the basic non-identity problem, restating the difference below. These are problems in moral theory, while a third problem is a problem in political theory. I return to the political problem in a section below.

⁴⁰⁷ Most clearly seen in Boonin (2014).

As I have described it, to refer to something as “morally objectionable” is not the same as saying that it is “wrong”. Nor is it necessarily the same as referring to something as “rejectable” in accordance with a contractualist account (also treated in this thesis). For something to be rejectable in the contractualist sense, someone needs to have a personal reason for rejecting it. There may be a connection between the two. Some people may want to say that, for an act to be morally objectionable, somebody needs to have a personal reason to reject it. This assumption has been captured in a syllogism reproduced below, which shows the components of NIP (see premise P5). But, if we do not subscribe to the contractualist (person-affecting) view, there is no necessary connection of this kind. Further acts could then count as being morally objectionable. Nor is the morally objectionable to be equated with what would simply be bad in some way. This would include the unforeseen consequences of a volcanic eruption (say, for a nearby village) and similar things outside human control. The term morally objectionable refers to acts that, from an objective point of view, could be found to be morally blameworthy. Yet, while there is reason not to carry out the act, it does not have to be wrong all-things-considered.

In moral theory, then, the non-identity problem can be formulated in at least two ways: with regard to moral objectionability and moral wrongdoing, respectively. The two difficulties in arriving at an intuitive moral judgment can be demonstrated by two different syllogisms. While the first three premises are held in common, the difference can be seen in the last two. These series of premises have been further introduced in the second chapter and are reproduced below. They have served, in this thesis, as sorting tools for identifying different kinds of approaches to non-identity. Both arguments are based on the simplified case of a present generation (Generation One, G1) that depletes natural resources, thereby causing climate change that will have a negative impact on the environment (of Generation Five, G5).

The basic non-identity problem (NIP)

P1: Generation One’s act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than they would otherwise have been

P2: A’s act harms B only if A’s act makes B worse off than B would otherwise have been

P3: Generation One’s act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

P4: If an act does not harm anyone, then the act cannot be objected to on personal grounds

P5: If an act cannot be objected to on personal grounds, then the act is not morally objectionable

C: Generation One's act of Depletion rather than Conservation is not morally objectionable

The non-identity problem in a wrongdoing version (NIP_{wrong})

P1: Generation One's act of Depletion rather than Conservation does not make the individuals of Generation Five worse off than they would otherwise have been

P2: A's act harms B only if A's act makes B worse off than B would otherwise have been

P3: Generation One's act of Depletion rather than Conservation does not harm anyone other than the individuals of Generation Five

P4(w): If an act does not harm anyone, then the act does not wrong anyone

P5(w): If an act does not wrong anyone, then the act is not morally wrong

C(w): Generation One's act of Depletion rather than Conservation is not morally wrong

If we find these premises initially plausible but are not ready to accept the conclusions, each argument constitutes its own problem – NIP and NIP-wrong, respectively. These problems each raise their own question in this thesis:

Question 1: Given future people's non-identity, what is the moral reason – according to contractualism and natural law, respectively – not to leave future people with an unsustainable environment?

Question 2: Given non-identity, why is it wrong – according to contractualism and natural law, respectively – to leave future people with an unsustainable environment?

These questions have been simplified as follows:

Q1 (NIP): What is the moral reason not to leave future people with an unsustainable environment?

Q2 (NIP_{wrong}): Why is it wrong to leave future people with an unsustainable environment?

I have also demonstrated the difficulties for person-affecting theory in answering these questions through the analysis of contractualism, an influential theory in moral and political theory. The focus with regard to contractualism has here been on the wrongdoing problem, as it is what contractualists have mostly cared about. I have then gone on to develop and use hitherto unemployed resources in natural law theory, which could provide an impersonal response to these questions. The summary and discussion in this chapter focuses on the findings with regard to natural law.

I have imposed two general methodological requirements on the responses of contractualism and natural law. These theories have been required to achieve a narrow as well as a limited, wide equilibrium. My requirement of a narrow equilibrium necessitates that a theory manages to conclude in favour of safe-guarding future people's environment, despite future people's non-identity, and without encountering other problems. Other problems typically arise for impersonal theory in so-called different number choices, which is why this requirement is particularly challenging for natural law. My requirement of a limited, wide equilibrium refers to the allegiance to a person-affecting view. While contractualism needs to abide by a so-called personal reasons restriction, I claim that natural law does not. This requirement is thus particularly challenging for contractualist theory.

Below I provide a summary of my analysis of contractualism, with special reference to Scanlonian theory and the wrongdoing problem. I thereafter proceed to accounting for the exploration of natural law with regard to both problems identified in moral theory.

8.1 Contractualism and the wrongdoing problem

In Chapter 3, I have shown how contractualist moral theory – in the vein of Thomas Scanlon – either fails to account for an intuitive moral judgment (fails to achieve narrow reflective equilibrium) or abandons the person-affecting restriction characteristic for contractualist theory (fails to achieve a limited, wide equilibrium), when responding to non-identity cases. This analysis is summarized below.

Table 3.1: Scanlonian contractualism and future people

Conditions	Problem	Solution
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is unacceptably burdened.	The account of burden seems to imply a notion of harm, which gives rise to the non-identity problem.	Argue that there is wronging without harming.
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is “wronged”.	As long as no particular person can be wronged, the non-identity problem persists. Narrow equilibrium is not achieved.	Introduce the idea of “typed” individuals.
We accept principles that no one could reasonably reject. Rejections are reasonable if someone is wronged. Wronging may take place in relation to “typed” individuals.	It belongs to the future-person-type that it is time-dependent. The non-identity problem persists. Narrow equilibrium is not achieved.	Let the moral patient be something else than particular persons, e.g. a type as such, a relationship as such, the good as such or a group.
We accept principles that no one could reasonably reject. Rejections are reasonable if a type/relationship/good/group is wronged.	This violates contractualism’s person-affecting restriction. A wide equilibrium is not achieved.	<ol style="list-style-type: none"> 1) Elaborate further on contractualist theory. 2) Try an alternative theory that rejects a person-affecting restriction.

8.2 Natural law and the basic non-identity problem

I have suggested natural law as being a theory worth developing, with the aim of circumventing the non-identity problem. In Chapter 4, I have gone on to develop a natural law approach to NIP that provides the following, basic answer to Q1.

Natural law's basic argument: the moral objectionability of Depletion

P1(NL): Generation One's act of Depletion rather than Conservation impedes participation in basic values

P2(NL): If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One's act of Depletion rather than Conservation is morally objectionable

The principle P2(NL) in this argument draws on the natural law requirement (on reasons) that demands a "regard for values". Yet, the answer can be further specified. I here exemplify with the third of three possible operationalizations discussed in the thesis, which aimed to deal properly with different number choices.

A third operationalization: environmental co-flourishing

P1(NL-cf): Generation One's act of Depletion rather than Conservation puts the environment in a sub-threshold state of co-flourishing

P2(NL-cf): If an act puts the environment in a sub-threshold state of co-flourishing, then it impedes participation in basic values

P3(NL-cf) If an act impedes participation in (a) basic value(s), then it is morally objectionable

C(NL): Generation One's act of Depletion rather than Conservation is morally objectionable

To be acceptable, these arguments need to achieve both narrow and wide equilibrium. To achieve narrow equilibrium, the conclusion must be compatible with the view that leaving future generations with an unsustainable environment is (at least) morally objectionable. C(NL) is compatible with this view. Natural law does not have to conform to a person-affecting restriction in order to achieve a limited, wide equilibrium. P2(NL) and P3(NLcf), which express the same moral principle, should therefore be acceptable.

This does not say, however, that one would necessarily commit a moral wrong, putting the environment in an unsustainable state for future people. A possible example (of morally objectionable) behaviour, which is not necessarily wrongful, would be a depletion of resources in order that one may participate sufficiently in values oneself. I proceed to summarizing my analysis of natural law and intergenerational wrongdoing below.

8.3 Natural law and the wrongdoing problem

A natural law approach to NIPwrong could provide the following simple answer to Q2:

Natural law's wrongdoing argument

P1(NLw): Generation One's act of Depletion rather than Conservation is disrespectful of basic values

P2(NLw): If an act is disrespectful of (a) basic value(s), then it is morally wrong

C(NLw): Generation One's act of Depletion rather than Conservation is morally wrong

This argument draws on the natural law requirement (on actions) of "respect for every value in every act". One might here want to know when an act counts as disrespectful. The argument was specified by considering the requirement of respect together with the natural law requirement (on agents) of "flexibility", as follows.

Natural law's wrongdoing argument specified

P1(NLws): Generation One's act of Depletion rather than Conservation impedes participation in basic values

P2(NLws): Generation One could abstain from Depletion at little cost to themselves

P3(NLws): If one impedes participation in (a) basic value(s) when one could abstain from doing so at little cost to oneself, then it is disrespectful of basic values

P4(NLws): If an act is disrespectful of (a) basic value(s), then it is morally wrong

C(NLw): Generation One's act of Depletion rather than Conservation is morally wrong

If the argument is to achieve a narrow equilibrium, the conclusion must be compatible with the view that leaving future generations with an unsustainable environment is morally wrong. C(NLw) and C(NLws) are compatible with this view. To achieve a limited, wide equilibrium, natural law does not have to conform to a person-affecting restriction. P2(NLw) and P4(NLws), which express the same moral principle, should therefore be acceptable.

According to the overall argument, however, the said impediment of value-participation for future people, in case it took place, would not harm anyone. Abstaining from harm-based arguments in moral theory could imply a

separate problem in political theory. In Chapter 5, I have introduced this as an institutional non-identity problem, restated below.

The institutional non-identity problem (INIP)

P1(INIP): Generation One's act of Depletion rather than Conservation does not harm anyone

P2(INIP): If an act does not harm anyone, then the act should not be prevented by public institutions

C(INIP): Generation One's act of Depletion rather than Conservation should not be prevented by public institutions

I have argued that, even though we might have accounted for harmless and impersonal wrongdoing, this does not necessarily convey that public institutions should be permitted to correct such a wrong. Rather, a common principle in political theory has it that, if an act does not harm anyone, then the act should *not* be prevented by public institutions. This is particularly problematic, given that public institutions are assumed to play a key role in sustainable development. I have therefore referred to C(INIP) as a "paralysing conclusion". If we find the premises initially plausible, but are not ready to accept the conclusion, the argument constitutes a separate problem – INIP. This problem raises its own question in this thesis:

Question 3: Given non-identity, why is it permissible – according to contractualism and natural law – to use institutions to prevent future people being left with an unsustainable environment.

This question has been simplified as follows:

Q3: (INIP): Why is it permissible to use institutions to prevent future people being left with an unsustainable environment?

Contractualists and natural law theorists should be able to respond to this question. In this thesis, I have analysed the capacity of the theories in this regard and I summarize the findings below.

8.4 Contractualism and the institutional non-identity problem

In chapter 6, I used Rawlsian theory (typically employed with regard to institutions) to show that, even if contractualism accounted for interpersonal wrongdoing or allowed for impersonal arguments in moral theory, an institutional non-identity problem might remain. It seems the theory either fails to account for an intuitive moral judgment (fails to achieve a narrow reflective equilibrium) or abandons a person-affecting restriction (fails to achieve a limited, wide equilibrium); a restriction that should enjoy an even stronger position in political theory.

Table 6.4: Rawlsian contractualism and future people

Conditions	Problem	Solution
Rational contemporaries in an original position, unaware of having a place in time.	Intergenerational justice impossible to address.	Include the concept of time.
Rational contemporaries in an original position, aware of having a place in time.	Transitive prisoner's dilemma.	Include care for one's descendants.
Rational contemporaries in an original position, whose self-interest includes care for one's descendants.	Environmental "sleepers" (it may also imply a conception of the good).	Retract care for descendants. Assume full compliance by previous generations.
Rational contemporaries in an original position, we assume full compliance by previous generations.	There is no personal reason for the members of the present generation to agree to a savings principle.	Replace full compliance with a universality constraint.
Rational contemporaries in an original position, who choose from a "menu" of universal principles on future generations.	Either this simply restates our intuition or bases the constraint on something else than personal reasons (which excludes wide equilibrium).	Depart from the present time of entry interpretation and allow future generations in the original position.

→

Rational contemporaries and rational future generations in an original position.	Future people's non-identity.	Include possible future generations.
Rational contemporaries and rational, possible future generations in an original position.	If Depletion implies population growth, it cannot be defined as an injustice. This does not achieve a narrow reflective equilibrium.	Keep the number of possible future people constant.
Rational contemporaries and rational, possible future generations, whose numbers are assumed to be independent of policy, in an original position.	The original position does not handle different number choices and therefore does not achieve a narrow equilibrium.	<ol style="list-style-type: none"> 1) Keep elaborating on a Rawlsian approach. 2) Try a different theoretical approach.

8.5 Natural law and the institutional non-identity problem

In chapter 7, I explored how natural law could be used to deal impersonally with INIP. A natural law approach could provide the following initial answer to Q3:

Natural law's institutional argument

P1(NLi): Generation One's act of Depletion rather than Conservation is detrimental to the common good

P2(NLi): If an act is detrimental to the common good, then the act can permissibly be prevented by public institutions

C(NLi): Generation One's act of Depletion rather than Conservation can permissibly be prevented by public institutions

However, it is not obvious that we share a common good with future generations, as our relationship with them may not seem to be characterized by community, given how community is described in natural law theory. In Chapter 7, I have argued that an elaborated natural law account could acknowledge an intergenerational community, where we interact in relation to past people while future people will interact in relation to us. Furthermore, the environment could be understood to play an important part in this kind of community.

Natural law's institutional argument specified

P1(NLis): Generation One's act of Depletion rather than Conservation is detrimental to intergenerational community

P2(NLis): If an act is detrimental to intergenerational community, then it is detrimental to the common good

P3(NLis): If an act is detrimental to the common good, then the act can permissibly be prevented by public institutions

C(NLis): Generation One's act of Depletion rather than Conservation can permissibly be prevented by public institutions

Does this argument achieve a narrow and wide equilibrium, as required here? For a narrow equilibrium, the conclusion must be compatible with the view that, if future people are wrongfully being left with an unsustainable environment, this should be prevented by public institutions. C(NLi) and C(NLis) are compatible with this view. Given that one accepts that natural law does not need to abide by a person-affecting restriction in political theory, P2(NLi) and P3(NLis) should be acceptable (as impersonal claims).

Natural law thus provides us with basic value principles to deal with NIP and NIPwrong, and a common good principle to deal with INIP. Now that these accounts exist, they can be evaluated further, criticised and modified by non-identity scholars and natural law theorists alike.

Below, I proceed by raising some further issues that would be implied, if the natural law account above were correct. Although I have set out to engage with basic theoretical concerns in this thesis, these implications are closer to practical politics.

With regard to the basic value principles, the arguments hinge on the idea that we can derive intergenerational moral duties from intergenerational basic values, *rather than* the interests of future individuals. With regard to the common good principle, the argument for intergenerational duties of justice hinges on an intergenerational relationship itself, *rather than* the individuals who are or will be part of that relationship. This implies that intergenerational duties are *not* based on the rights of future individuals, and do not correspond to any either. Or, put differently, we have duties and obligations with regard to future people, while future people do not have moral or legal rights.

This raises a number of questions. First, Finnis' own account of duty, in that case, does not sit well with the natural law account developed here. However, I will argue below that an account of duties without rights is at least not out of line with Aquinas' own view. Secondly, one may ask wheth-

er intergenerational duties are as strong as rights-based (or rights-corresponding) duties. This question cannot be satisfactorily answered here, but, in a final section, I point to a practical implication of weaker duties in order to invite further discussion.

8.6 Duties without rights in natural law

A possible discomfort, here, is due to Finnis' alignment with a "modern vocabulary and grammar of *rights*", as developed by Hohfeld.⁴⁰⁹ It should be used, Finnis tends to think, in order to evaluate relationships of justice "*from the point of view of the person(s) who benefit(s) from that relationship*".⁴¹⁰

The antecedent of "right" is the "*jus*" of Roman law. And, whereas Thomas Aquinas referred to it mainly as "that which is right", Finnis has stated his use of "right" to be in line with the "*jus*" of Francisco Suárez, who, 340 years later, would define it as "a kind of moral power that every man *has*, either over his own property or with respect to that which is due to him".⁴¹¹ Finnis has argued further that "[t]here should be no question of wanting to put the clock back. The modern idiom of rights is more supple and, by being more specific in its standpoint or perspective, is capable of being used with greater differentiation and precision than the pre-modern use of 'the right' (*jus*)."⁴¹² But, as it seems, that idiom would exclusively yield "rights" that are in need of "claimants" to work out. And in the case of future generations, no people from distant generations are present in order to make such claims. Indeed, we seem unable to ascribe any interests to future individuals at all, even hypothetically. It is also difficult, with regard to the elaborated common good account, to say which one of the two categories of distant generations (past or future ones) we should assign claims to. We could, perhaps, put them in the same group as claimants, but the only ones capable of acting would still be the "duty-holders" of present generations.

There is no arguing here that one should side with Aquinas in opposition to Suárez. Rather, we could allow for the use of language that is required by the circumstances. The intergenerational common good principle would

⁴⁰⁹ Finnis (1980), 205, emphasis added. See W. N. Hohfeld, *Fundamental Legal Conceptions*, Yale University Press, 1919.

⁴¹⁰ Finnis (1980), 205, emphasis in original.

⁴¹¹ *Op. cit.*, 206–207, emphasis added; see also Francisco Suárez, *De Legibus*, *ex typis Fibrenianis*, 1872 [1612], lib. I, cap. ii, 5.

⁴¹² Finnis (1980), 209.

point to a continuation and development of human tasks by humankind as a whole. To abide by it *would* be to give way to a concern to be “simply reasonable”. However, it would not apply due to any identity-less rights-holders from the future, but due to its being that-which-is-just.

8.7 How strong are intergenerational duties?

In most accounts, it seems, possible obligations to future generations are naturally thought of as “a counterpart to their rights”.⁴¹³ Many philosophers see rights as “the foundation of political morality and possibility of morality in general”.⁴¹⁴ In an influential essay, Wilfred Beckerman has furthermore argued that future generations cannot be ascribed any rights. This entails, in Beckerman’s view, that “it is difficult to construct *any* coherent theory of intergenerational justice”.⁴¹⁵

Beckerman’s argument against intergenerational justice is formulated as follows:

The impossibility of intergenerational justice: Beckerman’s view

P1(B): Future generations – of unborn people – cannot be said to have any rights

P2(B): Any coherent theory of justice implies conferring rights on people

C(B): The interests of future generations cannot be protected or promoted within the framework of any theory of justice

He suggests as a crucial point that “properties, such as being green or wealthy or having rights, can be predicated only on some subject that exists”.⁴¹⁶ And, since, he reasons, future generations do not yet exist, we cannot ascribe any rights to them. Intergenerational rights, which in Beckerman’s view are required for a theory of intergenerational justice, are here described as a logical impossibility. He adds to this the observation that “In the case of rights to particular physical objects, for example, like a right to see a Dodo, it is [also] essential that the Dodo exist.” It might be, Beckerman reasons, that some natural resource that now exists will, similarly to the extinct Dodo,

⁴¹³ Wilfred Beckerman, “The impossibility of a theory of intergenerational justice” in Tremmel (ed.), *Handbook of Intergenerational Justice*, Edward Elgar, 2006, p. 53.

⁴¹⁴ *Ibid.*

⁴¹⁵ *Ibid.*, emphasis added.

⁴¹⁶ *Op. cit.*, 55.

be gone in the future. But just as we who live now can have no right to see an extinct animal, it is implausible to say that unborn generations have or will have a right to inherit some particular asset.⁴¹⁷

Those who insist that future generations have rights usually point to the interests of future generations, rather than their capacity to claim any rights. One will be informed by Lukas Meyer that “we can safely assume, first, that future people can be bearers of rights in the future; second, that the rights they have will be determined by the interests they have then; and, third, that our present actions and policies can affect their interests.”⁴¹⁸ The idea is that, if we can violate a contemporary persons rights by severely frustrating their interests, and if we have the power to frustrate the interests of future people as severely, we can violate the rights of future persons. “Temporal position,” as Jeffrey Reiman puts it, “is an arbitrary difference between people from a moral point of view. But, then, as a matter of fairness, temporal position should not change the force of people’s rights.”⁴¹⁹

The investigations in this thesis suggest that neither claims nor interests can be ascribed to future people. Hence, similarly to Beckerman, we do not assign rights to future people. The findings with regard to natural law do not, however, imply that future people’s environment cannot be protected or promoted within a framework of justice (crucially because natural law theory rejects Beckerman’s second claim in the syllogism above). A natural law account of justice has been formulated on different, impersonal grounds.

Yet, we should still note that, in Reiman’s rights-based account, “the duties of living people to future people *should be no weaker* than their duties to other living people.”⁴²⁰ In the natural law account, on the other hand, it could very well be that intergenerational duties are weaker than other, rights-based ones. As argued by Goodin: “[f]orced to choose between a good that is good for someone and a good that is good for no-one, morality would almost invariably lead us to prefer the former to the latter.”⁴²¹

To consider the possible implications of such a natural law position in practice, we could turn once again to the political project of sustainable development.

⁴¹⁷ Ibid.

⁴¹⁸ Meyer (2003), 145.

⁴¹⁹ Reiman (2007), 20.

⁴²⁰ Ibid., emphasis added.

⁴²¹ Goodin (1993), 242.

8.8 A policy implication

Sustainable development is defined as: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.⁴²² This definition, established in 1987 by the World Commission on Environment and Development (the Brundtland Commission) appointed by the UN, comprises two key concepts:

- the concept of “needs”, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.⁴²³

There is a practical tension to this project. The concept of needs, with particular regard to the world’s poor, puts emphasis on the “development” in sustainable development. The ambition is that people who now lack essentials such as food, shelter and education should gain access to these things. That goal, it is understood, hinges on some degree of development – to the benefit of the poor – of the technology and social organization characteristic of modern societies. The notion of limitations, however, suggests the current state of technology and social organization as being a potential threat to the environment and, indirectly, long-term welfare for present and future generations. In short, it puts emphasis on the “sustainable” in sustainable development.

The joint ideal of sustainable development, then, can be understood as a reconciliation of two, potentially conflicting, ideas. We are to favour a global rise from poverty, through social and economic development, without compromising (as the basic definition has it) the needs of present and future generations as regards a sustainable environment. If Goodin’s view applies, a natural law account of intergenerational duties could signify that, when certain rights of present generations (e.g. to have essential needs met) and the duties to future generations are in conflict, we should give priority to the rights of our contemporaries.

⁴²² Brundtland (1987), 2.1.

⁴²³ Ibid.

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Sammanfattning på svenska

De senaste decennierna har klimatförändringar blivit en allt viktigare politisk fråga. Klimatförändringar hotar miljön för både nuvarande och framtida generationer och det har därför blivit angeläget att formulera långsiktiga miljöplikter. Denna avhandling analyserar två moralteorier, kontraktualism och naturrätt, med avseende på förmågan att rättfärdiga intergenerationella miljöplikter. Dessa teorier har också politisk betydelse. Medan kontraktualismen är inflytelserik bland politiska liberaler är naturrättsargument vanligare bland politiskt konservativa.

Studiens utgångspunkt är det så kallade icke-identitetsproblemet, formulerat av Derek Parfit. Kontraktualismen hör till de teorier som endast tar hänsyn till hur enskilda personer påverkas av en handling. Avhandlingen demonstrerar hur icke-identitet här leder till slutsatsen att det inte finns något att invända moraliskt mot att orsaka en ohållbar miljö på lång sikt. Naturrätten har tidigare inte studerats i större utsträckning med avseende på intergenerationella miljöplikter. Avhandlingen utforskar därför ett så kallat impersonellt, naturrättsligt angreppssätt för att hantera icke-identitet. Teoriutvecklingen bygger på naturrättstänkaren John Finnis' teori om grundläggande värden och syftar till att internt rättfärdiga intergenerationella miljöplikter.

En ny, institutionell version av icke-identitetsproblemet diskuteras utförligt. Kontraktualismen och naturrätten kan båda förstås som teorier vilka tillerkänner individen ett handlingsutrymme fritt från politisk inblandning, så länge ingen annan påverkas negativt av detta. Detta skulle kunna medföra en "paralyserade" slutsats: att intergenerationella miljöplikter kan rättfärdigas i moralisk mening, medan det inte bör vara tillåtet att använda politiska institutioner för att se till att dessa plikter uppfylls.