

CHAPTER III

THE DUTY TO POSTERITY: SOME CONCEPTUAL QUESTIONS

In this chapter I will apply my analysis of the logical geography of *obligations*, *duties* and *rights* to the question of how these concepts might or might not apply across generations. Present duties to posterity might be discounted on the grounds (a) that posterity does not presently exist, (b) that posterity is a class without identifiable members, or (c) that posterity cannot *claim* rights to have present duties fulfilled.^a I will argue that, despite these objections, the notion of the duty to posterity is intelligible, and even quite defensible. However, in the process of defending the intelligibility of this notion, several related and complicating issues will be identified and clarified. With the logical structure of the posterity question thus examined, and the limits of intelligible discourse concerning the duty to posterity thus identified, we will be prepared, in the following chapter, to turn to a presentation of Rawls's theory of justice and an analysis of its application to "justice between generations."

12. Posterity: A Unique Case

When, in ordinary discourse, we talk about "obligations," "duties," and "rights," as these terms apply to contemporaries, we usually have no trouble being understood, however much others may disagree about the *substance* of what we say. For example, when Kant, in his celebrated moral dilemma, writes that we have a *duty* to speak truthfully to the gravely ill patient whatever the consequences, we may well dispute this conclusion, or the moral philosophy that supports it, but we have no trouble understanding this claim, nor do we feel that his use of the concept of duty is logically inappropriate. However, when we speak of duties and rights between persons who do not share coincident lives, that is to say between ancestors and descendants, or posterity and its predecessors, these familiar moral concepts are placed in strange contexts and their normal senses are stretched, strained, and put to unfamiliar uses. Logical and semantic gears begin to slip and we feel, in Wittgenstein's words, that we "don't know [our] way about" and that we are bumping up "against the limits of language." (*Philosophical Investigations*, 1968, §§123-119)

^aA more radical argument against the duty to posterity was raised by Thomas Schwartz, Derek Parfit and Gregory Kavka. (Of these three, only Schwartz is convinced by this argument). The argument holds that any attempt to "improve" the lives of remotely future persons will result in different persons existing in that future. Hence, since the lives of *no particular persons* are thus improved, there are no duties to the remote future. (Schwartz, "Obligations to Posterity," in *Obligations to Future Generations*, ed. R. I. Sikora and B. Barry, Temple University Press, 1978, pp 3-13). This "future persons paradox" (Kavka's term) is not addressed in this dissertation. However, I dealt with the paradox later, in "Should We Seek a Better Future," in *Ethics and the Environment*, (3:1, 1998, pp. 81-96), and included here in Appendix II.

This matter of the meaning and use of the terms "duty" and "obligation" as they are applied to the posterity question is a point of deep and fundamental controversy among the few philosophers that I have found who have recently written on the subject. I would not, however, accept the Wittgensteinian suggestion that once we come to understand the logic of the language of the posterity problem, the problem will be "dissolved." For, once we accomplish this considerable task of clarification, we will know if it makes sense to talk of the "rights of" or "duties to" posterity and, perhaps, what characteristics these rights and duties might meaningfully have. However, even if these second-order questions of meaning and intelligibility are resolved to the satisfaction of the defenders of posterity's interests, the normative questions will remain: e.g., What then *are* our duties to posterity -- if any? What are posterity's rights -- if any? What arguments can be produced to support these alleged duties and rights? In later chapters we will examine the answers proposed by John Rawls to these normative questions. Why should the commonplace concepts of *duty* and *rights* be so severely strained when they are applied to posterity? The answer is that, in several respects, the class of future generations is fundamentally and irrevocably different from the class of one's contemporaries. In particular: (a) the class of future generations is not *actual*, rather, *potential*. Consequently, (b) this class does not contain definite, determinate, and identifiable individuals. Thus, (c) no agreements and contracts can be made with these non-actual, indefinite individuals. Moreover, (d) future persons cannot make claims upon present persons demanding that their rights be respected. And finally, (e) the relationship is non-reciprocal: while future persons might experience benefits resulting from our careful provision, we can experience no benefits from contingent acts by our successors. All these conditions are, of course, quite obvious. But the simple, stark clarity of the difference between one's posterity and one's contemporaries causes the moral discourse readily used among contemporaries to seem queer and outlandish when it is applied to posterity. We will not move measurably toward a solution to the posterity problem unless we first untangle the worst of this conceptual perplexity.

Obligations and duties to Posterity. We have already, I believe, made some progress. For instance, a glance at the above list of differences between one's contemporaries and one's posterity shows, once again, that according to the strict sense adopted earlier (p. 15, below), the term "moral obligation" might apply to contemporaries, but is inappropriate between generations. (I.e., agreements cannot be made, there are no reciprocal benefits, and it is not the case that all parties are definite persons.) But what of duties and rights? A glance at our provisional explication of "moral duties" (p. 15, below) reveals no apparent reason to rule out the use of "duties" to apply to posterity (i.e., there is no reference in the list to reciprocal agreements or to definite, identifiable persons). This does not, of course, settle the question. We might yet discover reasons to judge the phrase "duty to posterity" unintelligible; indeed, we will shortly examine several attempts to do so.

"Rights" of posterity. The question of posterity's *rights* raises some new and profound difficulties. The fulfillment of rights, we will recall (p. 26, below), must be within the reach of human capability. In other words, the domain of rights falls between the limits of *impossibility* and *inevitability*. Accordingly, the "rights of posterity" must be responded to by its predecessors, for in posterity's own time, its claim upon its predecessors will be mooted by the immutability of time-past. But does it make sense to speak of the rights now of posterity yet unborn? The notion of "rights of posterity"

seems to require the conceptual binding of the present with the remote and indefinite future. Can moral discourse effectively bear this burden of vagueness and indeterminacy? If we decide that it cannot, are we willing to accept the apparent moral and practical implications of the flat conclusion that "posterity has no rights!" or, perhaps more accurately, that "posterity cannot correctly be said to 'have rights'?"

But why even raise the question of the "rights of posterity" in the first place? If the conclusions of the previous chapter are correct, then one need not affirm posterity's rights in order to affirm that the current generation has duties to posterity. However, there is opportunity here for those who wish to argue for a "duty" to posterity. Recall that I also concluded that if a predecessor generation has the knowledge and the power to affect the conditions of life of future generations, and if these successors have rights to favorable conditions that might be secured by the predecessors, then those rights entail *prima facie* duties owed by these predecessors. Accordingly, proponents of duties to posterity can engage in a "no lose" contest. If, on the one hand, posterity can be said to have rights, then (if the above conditions obtain) the case for duties may be significantly enhanced (since "rights entail duties"). On the other hand, if the concept of "posterity's rights" is found to be unintelligible, predecessor generations might *still* correctly be said to have *duties* to posterity (since "duties need not entail rights," or, equivalently, "no-rights need not entail no-duties." Cf. §11).

Finally, consider the significance of a finding that the expression "the rights of posterity" is unintelligible or indefensible. While these conclusions might make little *logical* difference to the assertion that one has moral duties to posterity, the intuitive and practical import might be considerable. If the moral force of the duty to posterity is to be defended against such a disclosure, then the precise meaning and implication of the arguments against the intelligibility of the phrase "rights of posterity" must be examined in detail. This we shall do in this chapter.

The burden of proof: a note on method. It is, I presume, quite obvious that the scope of this inquiry can be contained only if a number of significant assertions are presupposed. Among the assertions that I have accepted without argument is that moral duties and rights do, in fact, obtain *among contemporaries*. More explicitly, I would say that *prima facie* duties to promote good for others, to avoid harming others, to maintain options for free choice and action, etc., apply to all autonomous, responsible, sentient, and rational beings (i.e., "moral agents"). This class of beings is commonly referred to by philosophers as "the moral community" (Cf. Golding, 1972). The question before us, then, is whether or not this "moral community is restricted to contemporaries, or whether instead this community can properly be extended to include persons yet unborn. If, by definition, such "persons" have the attributes necessary to qualify them for moral consideration (i.e., such attributes as sentience, autonomy, rationality, etc.), then it would seem to follow that the living do have duties to the unborn *unless* some overriding objection to these duties can be raised, an objection based upon basic, intrinsic differences between the living and the unborn. I will, thus, assume that the burden of proof must be borne by those who would disqualify future persons from the moral community of the living and will examine in the following three sections a series of arguments for this disqualification. In each case, I will conclude that these arguments fail.

A symposium on the "Rights of Future Generations." In December of 1973, at the Annual Meeting of the Eastern Division of the American Philosophical Association, a symposium was held on the topic, "Can Future Generations Correctly be Said to Have Rights, e.g., The Right to Clean Air?"¹ Most of the other papers that I have located dealing with the posterity problem also devote some space to this question, as will much of this chapter. It is important, therefore, that we note at the outset that the question is fundamentally ambiguous in that it might be construed either as a question of meta-ethics or of normative ethics. Accordingly, the respondents to the symposium question have addressed themselves to both interpretations (often within the same paper). But how is the question, "Can future generations correctly be said to have rights?" ambiguous? The question is *meta-ethical* if the word "correctly" is presumed to refer to the "saying." On the other hand, it is normative-if the word "correctly" is construed to apply to "having rights." The question itself offers no clear resolution. Now, while this ambiguity could cause us considerable difficulty, I believe that it need not.²

As I indicated earlier (pp. 10-11), I am not committed to the doctrine that issues of meaning and of substance need be rigorously separated. Often the very attempt to prove or disprove a normative claim will serve very well to clarify the meaning, and to prove the intelligibility, of that claim. Accordingly, I will generally respond to the following arguments as presented, and later attempt to sort out the meta-ethical from the normative conclusions. In some instances, if my analyses prove to be successful, I will provide some normative support to the notions that future generations have rights and that present generations have duties thereto. These normative conclusions will, if persuasive, serve as paradigm case arguments for the *intelligibility* of the concepts of the rights of, and duties to, posterity. In other cases, I will attack the meta-ethical issues more directly by attempting to demonstrate that certain arguments against the intelligibility of these ethical concepts are faulty. In general, my primary task will *not* be to validate my normative biases concerning posterity but, rather, to demonstrate the conceptual soundness and intelligibility of moral discourse concerning duties to, and rights of, future persons.

As we examine the papers read at the APA symposium, and some related papers as well, we will find that most of the writers, in fact, deny the (ambiguous) assertion that future generations "can properly be said to have rights." While this may seem to be a startling conclusion, it is important that we do not make too much of it. First of all, it does not follow that we have no *duties* toward posterity, although some participants in the symposium made this stronger claim as well. Neither does it follow that living persons are in no way morally required to take care how their habits and policies might affect their successors. Indeed, apparently all of the seven members of the symposium affirmed that the present generation *has* such moral responsibilities, even though five members argued against the proposition that future generations can properly be said to "have rights." Thus, for example, Ruth Macklin (1973) asserts:

The question of whether future generations can correctly be said to have rights must, I think, be answered in the negative. Nevertheless, it does not follow from this that the present generation ought not to take steps or engage in actions with an eye to, or for the sake of, future generations. . . . The justification for claiming that it is morally wrong to engage in

actions which are likely to affect future generations adversely must, I think, be utilitarian in nature. The justification need make no mention of rights, but remains, nonetheless, a moral justification for a particular line of action. (pp. 1, 5)

Also, Stuart Rosenbaum (1973) remarks:

We have no obligation to future generations. However, I have left open the question of what other unique relationships might obtain between us and future generations. . . . It may be morally praiseworthy for us to give up certain goods in the hope that some of the possibles [i.e., posterity] will become actual and enjoy similar goods. But . . . an action's being morally praiseworthy is different from its being obligatory. (p. 4)

In the following section we will examine some of these arguments against the intelligibility of the phrases "the rights of posterity" and "the duty to posterity."

A final word of warning: in many of the passages to be quoted below, the terms "obligation," "duty," and "rights," which I tried so carefully in the previous chapter to separate and clarify, are freely mixed together. I can only suggest that the writers generally intended "obligation" to be interpreted in its "extended" sense, which is roughly synonymous with "duty." The mixing of "duty phrases" with "rights phrases" is much more difficult to deal with. I will try, when convenient, to favor discourse concerning "*duties* to posterity." Near the end of the chapter, issues dealing with *rights* will be sorted from issues dealing with *duties*. At that time, I will attempt to show that a defense of the rights of posterity may serve as well to defend *duties* to posterity, even if such duties are *not* correlated with these rights (Cf. §18).

13. Duties to the Non-Existent?

Perhaps the most common argument against the intelligibility of the "rights of future generations" asserts that since posterity does not exist *now*, it makes no sense to speak of posterity having rights *now*. (From this it is commonly, but not necessarily, inferred that it likewise makes no sense to speak of *duties* to posterity.) Thus, Macklin (1973) states:

The ascription of rights is properly to be made to actual persons -- not possible persons. Since future generations can only be viewed as consisting of possible people, from any vantage point at which the description "future generations" is applicable, it would follow . . . that rights cannot properly be ascribed to future generations. (p. 1)

Similarly, de George (1973) asserts that "the class specified by 'future generations' . . . has no presently existing members. Hence we can argue that this class has no presently existing rights, and that it has only possible future rights" (p. 3). Stearns (1972) agrees, although he suggests that "obligations" to the future might be defended on separate grounds. He writes: "Not-yet-existing persons do not have rights now, and therefore an obligation to produce goods for them and to prevent

evils for them cannot correspond to rights claims" (p. 615). Finally, Rosenbaum (1973) has no doubts at all about the status of duties ("obligations") to posterity: "I take it as obvious that the general principle that obligations cannot be owed to merely potential individuals or groups of individuals needs no defense" (p. 2). Most of these flat assertions are supported by more basic objections to the notion of "rights to posterity." I shall present three of these objections and attempt to answer them.

First objection: because future generations have no duties, they have no rights. Macklin (1973) argues against the notion of "rights of posterity" by questioning the intelligibility, not of duties to posterity, but of duties of posterity. She writes:

For those who claim that future generations can correctly be said to have rights, it would be well to reflect on whether we can correctly ascribe duties to the possible people comprising future generations. For, it would seem, where it is inappropriate to assign *duties*, it is similarly inappropriate to ascribe rights. If the defender of the rights of future generations were to reply that when these possible persons become actual persons, they will have all the duties ordinarily assigned to persons, then his answer is precisely that of ours: when these possible persons become actual persons, they will have all the *rights* ordinarily assigned to persons. It does not appear to make clear sense to claim that persons who do not now exist have duties *in the present*. I propose that if this is the case for duties, so should it be for rights. (p. 2)

This, we may recall, is the "doctrine of *moral* correlativity," which we briefly mentioned and then set aside in the previous chapter (p. 22). The doctrine holds that "having rights" entails that *the same individual* "has duties." The answer to this challenge seems simple enough: animals, infants, the feebleminded, and aged all can be said to have *rights*, albeit they lack the capacity to assume duties. Macklin acknowledges this rejoinder and replies:

I think the chief reason why such individuals are properly viewed as having rights is that they are all sentient creatures, and while sentience seems to be a sufficient condition for ascribing such rights as freedom from harm or injury at the hands of persons, it is not sufficient for assigning duties. (pp. 3-4)

With this elaboration, Macklin shifts her ground for assigning rights from "moral correlativity" to *sentience*. (Sentience *with* rational capacity, then, becomes the ground of "moral correlativity" -- the ascribing of rights and duties in the same individual.) But upon what grounds are present infants, etc., afforded rights, and future persons denied them? Macklin replies:

If sentience is a precondition for ascribing rights, then this condition is not met in the case of possible persons. Individuals who are not actual persons are not sentient creatures and do not, therefore (until they become sentient creatures), possess rights. (p. 4)

On the other hand, then, infants, the feebleminded, the insane, etc., are *actual, sentient, and incapable of assuming duties* due to their lack of rationality (and/or physical capacity).³ On the other hand, posterity is *potential, will be sentient, and is presently incapable* (because it is potential). This, we are told, explains why the first class of beings can be said to have rights, and the second cannot. It seems, however, that posterity's present *incapacity* and *insentience* are due entirely to the time factor; that is to say, to the fact of its *potentiality*. Macklin's argument, then, reduces to this: posterity has no rights because posterity does not now exist. But haven't we come full circle? Isn't this the very point at issue? Are we at all closer to showing that *actuality* is a necessary condition for having rights? I think not. So let's move on to the next objection to the idea of the "rights of posterity."

Second objection: "Future generations . . . can have a right only to what is available when they come into existence, and hence when their possible future rights become actual and present." This objection is raised by Richard de George (1973), who continues:

Present persons have no right to enjoy dinosaurs because there are none. Some future peoples may have no right to the use of gas or oil or coal, if, when they come into existence such goods no longer exist. Future generations will have no right to cleaner air than it will be possible for them to have. The point is that future people are future and have no rights now. (pp 5-6)^a

But surely the distinction between our "right to enjoy dinosaurs" and posterity's right to clean air is, from a moral point of view, quite essential! We have no *rights* to enjoy dinosaurs because it was, *at all times*, impossible for us to have them! (Recall, we have "rights" only to things that are possible but less than inevitable, and within the agency of rational and capable beings to provide us.) No rational, morally responsible beings ever violated a duty to us by depriving us of the dinosaurs; they vanished millions of years before any creature evolved to a state of moral responsibility.⁴ The same cannot be said concerning the availability to future generations of clean air and energy sources (be they fossil fuels, or some yet-to-be developed alternatives). It is, to some degree, within the knowledge and power, and thus the moral purview, of contemporary persons to decide whether future generations shall have clean air and energy sources.

There remains, however, a significant and fundamental point to de George's objection which deserves closer analysis; namely, the *time* at which the "rights" of posterity are claimed. Notice, once more, his two remarks: (1) "future generations will have no right to cleaner air than it will be possible for them to have, . . ." and (2) "future people are future and have no rights now" (1973, pp. 5-6). Remember, also, that the issue under discussion in the symposium is, "Can Future Generations Correctly Be Said to Have Rights: E.G., the Right to Clean Air?" This means, I presume, "have rights *now*." De George's first assertion shifts the tense to the future to mean: "Can it properly be

^aAn expanded argument by deGeorge appears as "The Environment, Rights, and Future Generations," in *Responsibilities to Future Generations*, ed. E. Partridge, (Prometheus, 1980, pp. 156-166).

said that future generations *will* have rights? . . ." which is not the point at issue.⁵ His second assertion denies the present rights of posterity. In short, the two remarks are logically disconnected. And so, while the portentous opinion (that "future people . . . have no rights *now*") is often reiterated in de George's paper, I fail to find therein much supporting argument for this assertion. In any case, I believe that it is wrong to claim that "future people . . . have no rights now." Indeed, I would assert that only those rights which future persons "have now" have moral bearing upon us; which is to say, entail duties which present persons have toward these unborn.

Surely it seems paradoxical to claim that persons *in the future* can have rights *in the present*. I will grant that it *seems* so, but I will insist that the claim is intelligible. So that we might unravel this subtle point, I suggest that we shift our time perspective to the past and consider the case of the cedars of Lebanon. In ancient times, the Phoenicians cut the fabled trees from the mountains and thus brought devastating floods and silt to the valleys below. Can we not say that the Phoenicians, by this policy, defaulted in their duties to the present inhabitants of Lebanon? Furthermore, weren't these contemporary persons correspondingly deprived, in the past, of their rights to an abundant and beautiful environment? It would seem that the duty to protect the right of the present Lebanese to have the cedars applied to those who were in a position to protect this right: e.g., the ancient Phoenicians. This follows from the rule that rights and duties apply to *possible* circumstances; i.e., to circumstances that fall between the limits of impossibility and inevitability (Cf. p. 26, above). The savages who lived in the region before the dawn of history, and who were presumably incapable of causing lasting damage to the forests, had no duty to forebear from what was, to them, the impossible. The Romans and Saracens who followed the Phoenicians found barren hills, and thus had no duty to protect the non-existent trees. All this bears some strange implications for the perspective of time-present. Thus, for example, the present-day Lebanese *had* (!) no rights-claims upon the savages or upon the Romans and Saracens. Neither do the Lebanese *have* rights today to trees that cannot be had. (For the sake of argument, I am assuming that the damage was irreversible and, thus, that the cedar forests, once destroyed, could not have been restored at any subsequent time.) The "rights" of the present generation to the cedars of Lebanon belong to the past tense. These rights could only entail duties applicable, first, to the predecessors of the Phoenicians who were capable of destroying the trees, but who fulfilled their duties by protecting the cedars, and finally, to those who violated these duties by destroying the cedars. Thereafter, there were no more rights or duties, for the trees were (I assume) forever gone.

But does it not seem strange to speak of rights, long past, of present persons? I grant that it does, and suggest that this strangeness may be sufficient reason to prefer "duty talk" in such cases. But recall that the very application of duties and rights across generations constitutes an unusual use of these concepts that are usually applied among contemporaries. The strangeness of this use of "rights" is compounded by the fact that "rights" are not commonly referred from the contingent present back to the immediate past. We are not encouraged to cry over spilt milk, or accustomed to lament over long-lost forests. Such issues are no longer "live." Indeed, we are often little aware of what we have lost. However, the situation seems far less odd when viewed from the perspective of the predecessor generation; when, for example, we speak of the rights-claims of future generations falling upon the *present* generation. Accordingly, while it may seem odd to speak of the right of the

present Lebanese to the lost cedars, we would have little difficulty making sense of the recorded plea by some ancient Phoenician environmentalist that the cedars should be carefully managed in deference to the rights of future generations.

Third objection: There are no duties owed to imaginary persons. Stuart Rosenbaum (1973), who argues this point, seems uncommonly sure of his position:

I take it as obvious that the general principle that obligations cannot be owed to merely potential individuals or groups of individuals needs no defense. (Consider my potential harems -- there are an indefinite number of them. Am I obligated to plan for all of their financial securities, or for the care of all of their potential children? And if not all, but only some, then which?) If there is something unique about future generations which exempts them from this general principle, I am unable to discover what it is. Consequently, I take this objection to the claim that future generations have rights to be conclusive against it. (p. 2)

A careful reading of Rosenbaum's paper reveals that he is as good as his word. The principle that "no obligations are owed to potential persons" is reiterated, but it is given "no defense." If Rosenbaum interprets "obligations" in the restricted, "paradigm" sense, then he is no doubt correct -- by definition, but this is trivial (Cf. p. 41, above). However, as we determined in the previous chapter, *rights* also entail *duties*, based upon general moral principles and in behalf of persons in general. The claim that future generations have such rights is too significant to be excluded by mere stipulation.

The closest that Rosenbaum comes to an argument for his "general principle that obligations cannot be owed to potential individuals," is his parenthetical comment about his potential harems:⁶ "There are an indefinite number of them. Am I obligated to plan for all of their financial securities, or for the care of all of their potential children? And if not all, but only some, then which?" In reply, I must agree that a philosophy professor in Minnesota need care little about his "potential harems." But the case would be quite different if one were an Arabian prince or a Mormon elder a century ago. In that case, one *would* have a duty to plan for the security and well-being of potential wives and children. Indeed, the example is by no means far-fetched, for it *is* the duty of every young person contemplating marriage and parenthood to make provision for his potential spouse and children.

What is the essential difference, then, between Rosenbaum's imaginary harems and future generations? It seems to come to this: the former are imaginary and highly improbable; the latter are imaginary and, barring unforeseen catastrophe, virtually *certain*. I suggest that this is ample reason to reject his analogy and his argument.

We have not yet encountered a telling argument against the notions of "posterity's right" or "duties to posterity." However, in reviewing these objections, the "potentiality" or "possibility" of posterity has been a recurring issue. I will attempt now to try to make sense of the expressions "duties to" and "rights of" *potential* future beings.

The rights of potential persons: three issues. What seems to be the difficulty? Why don't these philosophers as readily admit posterity's rights as they surely acknowledge the rights of their contemporaries? The problem seems to be that posterity is *potential*, and not *actual* -- that posterity does not exist now, when the putative rights are being claimed. This difficulty might be broken down into three components: *contingency*, *time-lag*, and *non-identifiability*. We will examine the first two issues in sequence. The third component will be examined in the following section.

Contingency. Are the rights of, or duties to, posterity diminished by *contingency*?^a Daniel Callahan (1971) seems to think so. He writes:

The claim of future generations against us is a conditional claim, in the sense that it depends upon their existing to make the claim. That we know that they will exist is enough to determine that their claim is not a fictitious one; but it is conditional in the sense that a number of conditions have to be fulfilled before the claim can be entered, the most important of which is that they exist in actuality and not just potentially. Over against that situation are presently living human beings, whose claims are actualized claims, whose rights are in no sense conditional. In this respect, it is difficult to see how one could set aside these claims in the name of claims as yet not made -- even though we have a moral certainty they will be made. (pp. 277-278)

Granted, the probability of particular *persons*, now alive, having remote descendants varies from virtual impossibility (in the case of aged celibates) to virtual certainty (in the case of persons presently with large families). But this is not the point at issue, for by "posterity" we mean *anyone's* descendants. And the probability of *that* sort of posterity is, barring unforeseen catastrophe, quite certain. It is important, therefore, that we not confuse temporally *remote* contingency with *improbable* contingency. As Feinberg (1974) correctly observes, persons born five generations hence are "far more remotely potential than fetuses in one sense, but not in another." It is true, he says, that:

A much greater period of time with a far greater number of causally necessary and important events must pass before their potentiality can be actualized. . . . but our collective posterity is just as certain to come into existence 'in the normal course of events' as is any given fetus now in its mother's womb. In that sense the existence of the distant human future is no more remotely potential than that of a particular child already on its way. (p. 65)

Indeed, if any circumstances within our power (e.g., the existence of atomic weapons) *threatens* the continuation of the human species, we say that our moral duty to prevent disaster is, if anything,

^aTwo years after the completion of this dissertation, I encountered and read Thomas Schwartz' paper, "Obligations to Posterity" (*op. cit.*). That paper vividly demonstrated to me that "contingency" was a far more serious problem than I had previously appreciated. My published response to Schwartz, "Should We Seek a Better Future?" appears as Appendix II, following this dissertation.

increased, not diminished, by the lessened probability of there being future generations. The *probability* of human life continuing into the remote future appears to be reasonably secure, and thus does not seriously compromise the intelligibility of speaking of "duties to" or "rights of" posterity.

The question of time-lag. Can *duties* and *rights* meaningfully be said to hold over long periods of time between persons with non-concurrent lives? As we have seen, some philosophers have denied that present persons can have duties (prospectively) to future generations, or that posterity can (retrospectively) have rights-claims that fall upon those now living. These moral categories, it is contended, cannot meaningfully bind persons divided by long spans of time and thus denied reciprocal communication and interaction.

Do long durations of time erode moral responsibilities? To reply, I suggest that we leave, for the moment, the question of moral connections through time, and consider causal and epistemic connections. According to informed scientific opinion, some technological innovation and social policies enacted during the last quarter century, and others now being contemplated, may result in both short-term advantages for some of our contemporaries and devastating long-range effects for our successors. Such long-term effects, which are tied to their remote causes by quiet, continuing, and accumulating processes, are called by ecologists, "time-lag effects." Consider some possible cases: first, as I pointed out in the opening chapter, a decision in this decade to invest heavily in nuclear fission energy will result in the production of highly toxic, long lasting, radioactive by-products. Some of these substances (i.e., the actinides) must then be isolated from the biosphere for as long as 500,000 years.⁷ If, in the intervening time, a geological event should cause the release of these materials into the biosphere, the results could be catastrophic. The "time-lag" between the disposal of these substances and their possible reappearance is unknown and unknowable.

Another case concerns the accumulation of chloro-fluorocarbons in the atmosphere. In the last three decades, several million tons of these "inert" compounds have been released into the atmosphere, and an additional million tons are manufactured each year (Brodeur, 1975, p. 48). Two chemists, Rowland and Molina, have speculated that chloro-fluorocarbons, now irrevocably in the atmosphere, may drift up into the stratosphere where they will deplete the ozone shield that protects the biosphere from harmful ultraviolet radiation. If this is so, it is expected that the worst effects of ozone depletion might become evident well into the twenty-first century, which means that due to "time-lag effects," the deadly results might not affect the generation that introduced these substances into the atmosphere.

Consider still another case: some climatologists suggest that the recent increase in atmospheric carbon dioxide due to increased energy utilization could create a "greenhouse effect" sufficient to cause a heating of the earth's atmosphere. An opposite effect might be caused by the increase in particulate matter (e.g., smoke particles), which blocks solar radiation and *cools* the earth. As a result of industrialization, say the climatologists, one of these effects (or still another, perhaps not yet detected) might become dominant and upset the delicate balances in the earth's climate and lead either to a significant cooling or heating of the earth's surface. Thus, because of events set in motion by this generation, future generations might face a new ice age or, on the other hand, the Greenland

and Antarctic ice caps might melt, submerging many of the world's great cities and much of its prime agricultural land. Surely, systems-ecologist Kenneth Watt (1973, p. 250) is correct when he says that "in playing with the weather, we are like a group of children playing with a box of dynamite." (See also Chapters 5 and 15).

The point of this recitation should be clear. Events enacted or contemplated within the lifetime of the present generation may, through "time-lag effects," produce benefits for this generation and, perhaps, a generation or two beyond, at the cost of bringing devastation upon those who will be born a century or more hence. Moreover, informed persons now alive recognize these possibilities, and scientific techniques now available might provide even more exact assessments of the long-term impact of our technology.

The moral implications of all this should be apparent. If, indeed, due to their long-term "time-lag" effects, our activities and policies reach "across generations" to cause significant changes in the life-conditions of posterity, can we continue to pretend that we have no duties to this posterity? If it is within our knowledge and power to prevent grave harm to future generations, can we still maintain that future generations have no rights to be spared such injury? Can we, in short, acknowledge our foresight and our causal efficacy across generations while, at the same time, disclaiming moral responsibility across the same time span? I think not. Rather, I would suggest that our power to affect the lives of posterity, and our scientific foresight of the results thereof, *require* us to extend the reach of our moral responsibility to the limits of this anticipation and power.

Perhaps one reason why the notions of "duty to" and "rights of" posterity seem strange is that we have not become accustomed to the moral implications of recent scientific and technological developments. Consider again the technological impacts cited above. Scarcely fifty years ago, atomic energy was merely being contemplated in a few physics laboratories, and artificial disruption of the physics of the earth's atmosphere or of world climate conditions seemed preposterous. Today, environmental scientists know better: albeit, perhaps, the logic of ordinary discourse has yet to reflect the change. Within the lifetime of many of us, one could innocently believe that the effect of his generation upon its successors was totally beyond human predictability and agency, and thus not within his moral competency. No longer. With the temporal extension of foresight and power has come a corresponding extension of duties.

Time span, of itself, cannot be construed as an argument against duties and rights. Quite the contrary: these moral relationships are inextricably bound to durations of time. Contractual obligations, and their correlative rights, endure from the time of the agreement to the time of its consummation. The duty to forbear from injuring others, and its corresponding rights, lasts as long as the agent is capable of causing injury, which is to say, usually throughout one's lifetime. And, if a person is duty-bound not to cause harm *during* his lifetime, is he any less duty-bound to prevent injuries that may occur after his death due to neglect during his lifetime? Have the potential victims any less right to their safety? If one is equally aware of the harm he might cause and capable of preventing it, does it matter if the calamity takes place five years after his death? Five hundred

years? Five hundred *thousand* years? I suggest that *foresight* and *capability*, not time (however long), are the morally relevant factors here.

To summarize this point: if we have a general duty not to cause avoidable pain, this means the pain, *any time*, of *any being* that is a member of the ongoing entity called "mankind." *Time* does not diminish the *prima facie* force of this duty, albeit it may be conjoined with a diminished certainty of efficacy of one's attempt to fulfill his duty. In such cases, it is the factors of probability and efficacy as such, not *time*, that are morally relevant. And with advances of scientific knowledge and technological power, we are losing our ability to hide behind excuses of ignorance and impotence (Cf. my discussion of "time preference," §33, below).

Even if I have effectively answered, in this section, the contention that the contingency and temporal remoteness of posterity placed it beyond our moral purview, a third objective remains; namely, that future generations cannot properly be said to have rights due to their indeterminacy and facelessness. The response that I will give to this third contention has bearing also upon the previous contentions of improbability and time-lag.

14. Duties to the Indefinite Unborn

In the 1973 symposium on the Rights of Posterity, Ruth Macklin presented the issue of "indeterminacy" quite forthrightly:

While it is appropriate to ascribe rights to a class of persons, in general, such ascription is inappropriate when the class in question has no identifiable members. Now the class describable as 'future generations' does not have any identifiable members -- no existing person or persons on whose behalf the specific right can be claimed to exist. Even if we believe that there will be such actual persons in the future, their rights cannot be said to exist until they (the persons) exist. The possible persons who comprise the members of the class of future generations are not identifiable in the present by any of the means ordinarily used to identify actual persons. (1973, pp. 1-2)

(Notice how the now-familiar issues of "potentiality" and "non-actuality" appear in Macklin's objection.)

Of all the objections so far, I find this the most curious in that, while it appears time and again, it seems to be the easiest to answer. Indeed, we need not look to posterity to find examples of duties to or rights of "unidentifiable persons." Such "persons" exist among our contemporaries. We have encountered them already in our discussion of Feinberg's *in rem* rights and duties (pp. 17-18, 29, above). For example, says Feinberg (1966), consider:

The duty of care that every citizen is said to owe to any and every person in a position to be injured by his negligence, I have this duty to some degree even to the uninvited trespasser

on my land. . . . I propose to call such positive *in rem* rights, rights of community membership, because it is their recognition, more than anything else, that molds a society into a cohesive community. (pp. 139-140)

Notice that the duty of the landowner is owed not to *identifiable* persons, or even to probable persons, but only to (indefinite) *possible* persons in the (undetermined) future, whosoever they might be. And what of *in rem* duties? Here too, examples are easy to imagine. For instance, my right not to be physically assaulted entails the *in rem* duty of *any* (indefinite) person who might, *at any time* in the (undetermined) future have occasion or opportunity to do so. Now does Macklin wish to deny that these are rights and duties properly-so-called? And if they are, and surely common usage so indicates, then in what sense are "future generations" less "definite" and "identifiable" than the person, now alive, who might be injured due to my negligence [ten years hence]? Does such a person have any *more* right not to be injured than his now unborn child who will be six years old at that date?

It might be countered that if, due to my negligence, someone will in the future be injured, the victim's identity at that time will be quite definite enough to me, which is not the case with injuries to posterity. But the objection misses the point. My duty not to be negligent is a duty to *anyone* who might be injured, and if my duty is fulfilled there will *be* no "definite" victim and, moreover, the rights of unidentifiable multitudes will thereby be respected. (If the idea of duties to and rights of indefinite, even non-existent multitudes seems to be unmanageably vague and cumbersome, recall Feinberg's answer to this criticism, quoted on page 29, above.) Pletcher (1973) illustrates this point quite effectively with his "parked car paradigm":

Consider . . . the obligation [duty] I have to brake my car properly when it is parked on an incline. When, on a certain day at a certain time, I do properly brake my car, I doubtless have no particular persons in mind who have the right correspondent to my obligation to brake it. Nevertheless, if I fail to brake my car, and it rolls over Smith, then I have done Smith a moral wrong; I have failed to fulfill an obligation which I had to him (and to anyone else who came by). (p. 2)^a

Now all this may appear to be well and good when applied to our contemporaries. But will duties to and rights of the indefinite still be morally valid if the "indefinite" are not yet alive; if they are possible future persons? I believe that these moral requirements might be meaningfully applied to such cases. To illustrate this point, consider another of Pletcher's examples: "the campsite paradigm":

If I have been camping at a site for several days, it is common to say that I have an obligation [in the extended sense] to clean up the site -- to leave it at least as clean as I found it -- for the next person who camps there. We assume, of course, that the person who will use it next

^aFor a published version of Pletcher's argument, see "The Rights of Future Generations" in *Responsibilities to Future Generations*, ed. E. Partridge (Prometheus, 1980, pp. 167-170).

does exist somewhere, but it is not necessary to assume this, just as it is not necessary to know who he is, or when he will use the site. We have an obligation which might be called an 'obligation-function,' because it is to some as yet unspecified person or persons. There is a preliminary 'right-function' in this case, which can be stated: 'for any x, if x is a person who wants to camp at this site, then x has a right to a clean campsite.' (1973, p. 2)

Notice that the morally operative consideration here is not the *time* of the next use, nor the *identity* of the next camper. It is that the area *might* be used by an unknown and indeterminate individual with an interest in having a clean campsite.

This all seems simple enough. Why, then, are some philosophers disinclined to acknowledge that future generations can "properly be said to have rights?" Pletcher suggests (and our previous analyses seem to bear him out), that the problem lies in the tendency of some moral philosophers to confine their analyses to what is called by Brandt "the paradigm use of 'obligation,'" e.g., as applied to "promises, borrowings, and spoken contracts" (Pletcher, p. 3). Because such transactions involve identifiable and contemporary persons, it truly makes no sense to speak of (paradigm) "obligations" to posterity, or of "rights" that correspond to such obligations. But, as we have seen, duties and their correlative rights, need not be so constrained by time and circumstance. Pletcher (1973) develops this point through the use of his concepts of "rights-function" and "obligation-function" (better, "duty-function") of which we had a preliminary glimpse a moment ago. His analysis is quite cogent, so let us return to it:

If I am correct in thinking . . . that there *are* rights of the form 'for an X, if X has Q, then X has R' (where Q is a set of circumstances and R is a right), then these right-functions must range over all people at all times, even to those who are not yet born. To deny this can be seen to commit one to the position that the time of one's birth could be a constituent of Q in the above formula, i.e., that the time of one's birth is in general a morally relevant fact. But the time of one's birth is not in general a morally relevant fact. (p. 3, see also §33, below)

The principle, then, applies quite nicely to the "campsite paradigm," and, through it, to posterity:

If, happily, I have discovered a campsite so removed from the beaten track that the next person to discover it is someone who wasn't even alive when I last camped there, it still is true of that lucky person that he has a right to a clean campsite, and I had an obligation to secure to him that state of affairs. My conclusion can thus be stated: If any moral obligations or rights can properly be stated in terms of 'obligation- or right-functions,' then these apply also to future generations. (p. 3)

The next camper has a "right" to a clean campsite, not because of *who* he is (as an identifiable person), or *when* he is, but for *what* he is -- a sentient, rational person who might have an interest in enjoying the use thereof.⁸ That he may, at this moment, be *non-existent* is, morally speaking, non-relevant. The argument is all the more urgent when we speak not of a campsite where a camper might possibly visit, but of a planet upon which another generation, and then another, *must dwell*.

15. Can Posterity's "Rights" Be Claimed?

A recurring objection against the intelligibility of "the rights of posterity" is that posterity, being "merely potential," is incapable of claiming these rights. And without claims, it is argued, there can be no rights. Says Stearns (1972, p. 621): "Clearly, no just claims can be made by [unborn] persons. Not so trivially, no just claims can be made in behalf of them either." While I do not dispute Stearns's first assertion, I will argue that his second assertion is fundamentally mistaken. Furthermore, I will suggest that an examination of the sense in which "just claims can be made in behalf of" posterity will further illuminate the issue of the rights of, and duty to, posterity.

At the APA symposium on the rights of future generations, Bernard Bandman (1973, pp. 1-3) expressed the "no-claim position" quite directly. "Future generations," he said, "can correctly be said to have [e.g.] the right to breathe clean air, only (1) if they can claim that right and (2) if that right is in accordance with rational principles of justice." Bandman's second criterion (which I accept) is not immediately at issue, so we will let it pass for the moment. Returning to his first condition:

One can only correctly be said to *have*, and hence to be able to enjoy or exercise a right to X if one is in a position to claim that right. It is necessary to provide for this condition in the event that the right to X is blocked. Legal philosophers from John Austin on distinguished primary and secondary rights for this purpose; the first being a right to an action itself, and second being a back-up or remedial right, one that provides a remedy if the first is blocked.

...

Without claims one could not cash-in on one's rights, so to speak; one could not redress violations of rights, nor protect oneself very much against damage, injury or abuse of the rights one was said to have. The right to claim our rights is an important part of our rights.

...

Accordingly, future generations cannot correctly be said to have the rights to breathe clean air if there is no provision for them to claim that right. And there are all sorts of conditions that can easily undercut such a right, such as the end of life on earth, acute scarcity [or] absence of clean air, low priority placed on clean air in relation to other more urgent goals, etc. To claim the right to breathe clean air entails the willingness of a community to recognize and sustain such a claim. (1973, pp. 1-3)

A common and forceful response to the "no-claim" argument is that individuals incapable of claiming their rights may have these rights defended by others acting in their behalf. (While Bandman makes an implicit acknowledgment of the possibility of representing others's rights, he has little more to say about it.) Thus, the rights of animals can be legally represented by private agencies such as the ASPCA, and the rights of infants can be claimed and defended by appointed counsel or by public agencies. Of particular interests to us is the explicitly legal protection of the rights of the unborn. Thus, for instance, a person can stipulate in his will that certain funds be held in trust for the education of yet-unborn grandchildren, who can properly be said to have a legal *right* to these funds,

even though they do not, as yet, exist. Still more to the point, the National Park Act of 1916 specifies that the National Park Service shall protect and keep the land in its charge "unimpaired for the enjoyment of future generations." The Service, in other words, is the legally appointed guardian of the *rights* of the unborn, about which it must be constantly reminded by the Sierra Club, among others.

The critic might reply that these are examples of rights *protected by law*; that is to say, the claims made by, or in behalf of, the rights-holders are legally recognized. However, most of posterity's alleged rights, although they might be argued on moral grounds, lack legal standing. These rights cannot be legally claimed by, or in behalf of, posterity, and thus there are no institutional sanctions against, or remedies for, violations of these rights. If, as Bandman contends, "correctly to attribute rights to future generations is to do so both legally and morally" (p. 7), posterity cannot properly be said to have rights.

Earlier (§7), I made note of the distinction between *legal* and *moral* rights. I would now suggest that this distinction invalidates Bandman's apparent contention that without legal protection and remedies, future generations cannot be said to have rights at all. For one thing, this suggestion runs counter to our moral mode of speaking, and our ordinary "considered moral judgments" (to borrow Rawls's phrase). Bandman appears to acknowledge this elsewhere in his paper: "Jews gassed by Nazis had their rights violated. Slaves in Attica, Greece, had their rights violated. Huck Finn saved his friend Jim from having his right to be free violated. Sacco and Vanzetti's right to live was violated" (p. 6). Most of us, I trust, would agree that most, if not all, of these are bonafide cases of violated moral rights.⁹ Yet, in each of these cases, the "violation" was sanctioned by existing laws. Furthermore, the very conflict between legal and moral rights *precludes* the possibility of claiming one's (illegal) moral rights. Before the Emancipation Proclamation of 1863, the slave who exercised his moral right to be free could find no legal "remedy," as the fugitive slave Dred Scott was to be told, quite directly, by the Supreme Court in 1857. On the other hand, a person enslaved after 1863 could call upon the power of the state to acknowledge his claim and sustain his right to be free. The Proclamation did not alter the moral force of the *prima facie* right to be free, but it totally reversed, in the southern United States, the ability to *claim* that right. Indeed, the growing moral consciousness of the injustice of slavery was a significant factor in bringing about this reversal. I would therefore conclude that a person can be said to have a moral right when, in the words of Joel Feinberg (1973, p. 67), "he has a claim, the recognition of which is called for -- not necessarily by legal rules -- but by moral principles, or the principles of an enlightened conscience."¹⁰

It is commonly said that "you cannot legislate morality." The prohibition amendment and laws against such private vices as prostitution and gambling are cited as examples. However well the rule might fit these examples, it is, as a generalization, patently absurd. Morality *can* be legislated, and *is* properly legislated time and again. Prohibition taught us a much more qualified rule: "You cannot impose by legislation the private morality of a determined but unrepresentative minority." Universal moral rights to life, liberty, and property are, in free societies, guaranteed by the rule of law. A universal abhorrence to murder gives rise, in all civilized societies, to legal sanctions against it. Furthermore, as the public moral consciousness, following perhaps the teachings and example of

moral educators and exemplars, extends to new realms of moral awareness, the legislators respond, and still more right-claims are recognized and protected by law. Thus, at the time of the founding of this republic, there was no legal recognition (and little cultural acknowledgment) of the "right" to a free public education. The right was legally recognized only after a long and sustained struggle by such men as Franklin, Jefferson, Mann, and Parker. The right of future generations to enjoy designated areas of unspoiled natural beauty, and the duty of the living to protect these areas, were proclaimed by such men as Thoreau and Muir before this right, and duty, were recognized and enacted by the National Park Act of 1916.¹¹ To be sure, the laws often determine whether or not a right can effectively be *claimed*. But it is equally the case that laws are often enacted in response to the public consciousness of a legally unrecognized moral right; a right, that is, the claim to which morally *should* be sustained and protected by the force of law. In other words, defenders of the "positive law tradition," such as Bandman, who argue that "rights imply effective legal claims and remedies," beg the essential moral issue. For only if the *moral* case has merit, *should* legal means be enacted to insure the protection of the alleged rights.

This all may be well and good, but an essential problem remains: if, as must be granted, posterity is *itself* incapable now of claiming or appointing a surrogate to claim its rights, who, then, is authorized to *represent* posterity? The answer, quite directly, is *anyone* who is able and willing to defend posterity's rights on the grounds of rational and general moral principles. In such debate, it is the *principles*, and the validity thereof, that count, not who the advocates might be. The pre-abolition slaves could not legally claim their rights, nor could they appoint surrogates. But the fugitive slaves and their defenders could and did argue for abolition on the basis of moral principles. Similarly, animals and infants cannot claim their right not to be cruelly treated, nor can they appoint defenders. They are, instead, defended by the courts or by public agencies which, in a well-ordered community, are the surrogates of *every man*. So *should* it be with the rights of posterity. Ideally, its rights will be protected by the laws and by the legitimately appointed and elected representatives of the community. In the less-than-ideal actual world, the advocates of the interests of posterity (many of them self-appointed) must often present the case for posterity's legally unrecognized rights in the arena of moral debate, in the hope and expectation that the public conscience will come to demand that the laws of the living be extended to protect the rights and interests of posterity.^a

16. "The Right to Exist"

Intermingled with discussions and writings concerning the duty to posterity, is the related question: "Do potential persons have the 'right' to come into existence?" This question, for all its ontological subtlety and obscurity, has practical and political ramifications of which we are all quite aware. The

^aMy defense of the rights of future generations in response to the "non-actuality" and "indeterminacy" arguments (e.g., of deGeorge, Macklin and Rosenbaum) was significantly refined in my "On the Rights of Future Generations" in *Upstream/Downstream: Issues in Environmental Ethics*, (Temple University Press, 1990). A relevant excerpt appears as Addendum I to this chapter.

issue appears most prominently in debates concerning abortion and birth control. Moreover, the issue is often held to be inseparable from the question of the duty to posterity. Thus, for example, the philosopher Martin P. Golding, in discussing the potential hazards to posterity of "biological engineering," reflects that he finds it "odd when the same people who put biological engineering for the future on ethical grounds also defend abortion of a fetus on the ground that we have no obligation in respect of an unborn child" (1968, p. 457). Nonetheless, although Golding's point may have an immediate intuitive appeal, I will argue that the notion of the duty to posterity faces significant difficulties and inconsistencies *unless* we recognize the fundamental difference between such issues as, for example, the right of future persons not to have their germ plasm tampered with by previous generations and, on the other hand, the "right" of four-week fetuses to be born.

There are, I believe, four essential issues before us. The first two are as follows: (1) "Can future persons (those who in all probability *will* exist) correctly be said to have rights?" (The duty-correlate: "Can living persons be said to have duties toward such future persons?") (2) "Can potential individual future persons correctly be said to have a right to exist?" (More accurately: "a right to come into existence?") (The duty-correlate: "Can living persons be said to have a duty to assure that such potential persons become actual?")

The first question is a variation of the guiding issue of this dissertation. Since the bulk of the chapter has been devoted to this question, I will say little more about it in this section. The essential point, however, is that this (first) question is fundamentally distinct from the second, and that difficulties may arise if this difference is not recognized. For example, if defenders of the rights of posterity fail to detach the second issue from the first, they may find themselves logically allied with pro-naturalists and anti-abortionists -- perhaps uncomfortably so. One difficulty arising from such an alliance should be readily apparent, if most ecologists are to be believed: that is, unless the so-called "right of the unborn to exist" is effectively curtailed, and soon, the rights of posterity will be seriously compromised by resource depletion and a likely collapse of the ecosystem and the world standard of living.¹² In this significant case, the rights of future beings that *will* in all likelihood exist are in direct conflict with the right of (still more) potential future individuals to exist.

The second question: "Do potential persons have a right to exist?" can itself be usefully divided into two sub-questions: (3) "Do unspecified *individual members* of the class of future persons have a right to exist?" (4) "Does the *class* of future persons have a right to exist?" The question (4) is similar to, though logically distinct from, the question: "Is it morally desirable that the human race continue to exist?" Question (3) is directly at issue; question (4), which involves deep and fundamental issues of normative ethics and perhaps even ontology, can be (fortunately) and will, except for some brief comments, be set aside.

The right of possible beings *to* exist is an issue which touches us most closely in the fading, but still warm, debate over birth control, and in the unabating furor over abortion (or, as one group prefers to call it, "the right to life"). In both cases, it is charged, future potential persons are deprived of their right to exist. The charge, I believe, often rests upon one or more of the following covert assumptions: (a) that there are bearers of this "right to exist": (b) that retrospective gratitude that one

was born entails a prospective right of others to be born; and (c) that "existence" is just another attribute (such as good health), or another circumstance (such as having clean air and abundant resources). We will examine each of these presuppositions in turn.

Whose "right to exist?" In a recent unpublished address, Bangs Tapscott (1971, p. 5) set up the issue quite well. He suggests:

Imagine a couple which, on some occasion, engaged in sexual union just for the fun, taking suitable precautions to avoid conception. Then, the argument goes, they have done a terrible injustice to the child whose [existence] they prevented by preventing its conception. (p. 5)

Thus stated, we are but a step or two away from revealing the "logical weirdness" of this argument. For, notes Tapscott, the question follows:

Just which child is it that has been mistreated? For the only available answer is 'the child who *would* have been conceived *if* the couple hadn't taken precautions. And obviously, there is *no such child* to be mistreated, precisely because the couple *did* take precautions. One cannot mistreat something that does not exist. (pp. 5-6)

I believe that Tapscott is essentially correct here. There are no rights, if there are to be no bearers of these rights. However, it might appear at this point that I am contradicting my earlier contention that future persons *do* have rights *now*. If the child that is not born because of the couple's precaution has no rights, how, then, can I assert that presently non-existent members of unborn generations have rights *now*? The difference between the two cases is, I suggest, simple, fundamental, and conclusive. The cautious couple's "non-child" will never be; that is, it is forever the case that, in this instance, there is (and will be) no bearer of the right to exist.¹³ However, in the case of posterity, there is good reason to believe and expect that there *will* be bearers of rights in the future, and that many of their rights have entailments that reach back across the generations to duties in our own time. (I have, of course, argued for the intelligibility of this notion earlier in this chapter.) In sum, there is no injustice in denying life to a *possible* person since there is, in such a case, no injured party. Furthermore, there never will, in this case, be an injured party. However, there is injustice in causing harm to beings that will, in any case, exist in the future.

The "retrospective gratitude argument." A common *ad hominem* argument against birth control takes the form: "Well, what if *your* parents had used birth control when your time came to be conceived?" (A variant of this is the exasperated retort of the fecund parent: "Very well, so I've had too many kids; so just which one should I give up?") In view of the joy one might feel in his own life, one may look back to the time of his conception and conclude that it was a fine thing, from his point of view, that this conception took place, and that subsequent events led to the present happy circumstances. Once again, Tapscott does a commendable job of untying the logical knots in this argument:

The idea here is that, since *we* who *do* exist find the notion of our own non-existence [or the non-existence of a loved one] distasteful, it must be the case that 'existence is better than non-existence,' and hence it is better to produce the children than not. But the obvious answer to this is that, although I do in fact find the idea of my own non-existence distasteful, if I had never been conceived, it wouldn't have bothered me a bit. It wouldn't have bothered me precisely because there wouldn't have been any 'me' for it to bother, and therefore, parenthetically, there wouldn't have been any 'it' to do any bothering. (p. 6)

The "retrospective gratitude argument" makes the fundamental error of forgetting that, while we view the past with "twenty-twenty hindsight," we see the future "through a glass darkly," that while the past is fixed and immutable, the future is alive with contingency. To illustrate this point, consider a popular paradigm, as reported by the biologist, Garrett Hardin (1973, pp. 39-40):

Two physicians are talking shop. 'Doctor,' says one, 'I'd like your professional opinion. The question is, should the pregnancy have been terminated or not? The father was syphilitic. The mother was tuberculous. They had already had four children: the first was blind, the second died, the third was deaf and dumb, and the fourth was tuberculous. The woman was pregnant for the fifth time. As the attending physician, what would you have done?'

'I would have terminated the pregnancy.'

'Then you would have murdered Beethoven.' (p. 39)

Hardin's reply is, I think, quite persuasive:

The story has a terrific impact. Yet there's something wrong with it. Somehow logic has slipped a cog. Perhaps the most important counterpoint is this: after suitably altering the earlier details of the anecdote, one can quite legitimately substitute for the name 'Beethoven,' the name 'Hitler,' or 'Caligula,' or 'Genghis Khan.' To deny that these are legitimate substitutions is to imply that there is something inherently excellent about syphilitic, tuberculous parenthood, that such parents should be actually encouraged to have many children in order that many Beethovens may be born. I have yet to hear an abortion-prohibitionist urge this. . . .

It is plainly futile to make predictions of the nonexistent. Every child that is aborted (or not conceived) might have been a Beethoven -- or, equally likely, a Hitler. Much more likely, it would simply have been another Casper Milquetoast, of which the world already has an ample supply. (pp. 39-40)

Of course, to talk of a future "alive with contingency" is to invite endless debate on the venerable "free will problem." Surely we should avoid this digression. However, I believe that the essential practical point is made quite vividly in another passage by Garrett Hardin (1973, p. 38), the length of which is well compensated for by its aptness and wit.

[I am often asked,] 'If your mother had had an abortion, where would *you* be today?'

I must confess, I don't know. This question . . . raises the most fascinating problems of being and nonbeing. A philosopher would no doubt discuss the question in the jargon of ontology. As a biologist, I prefer a different approach. I am reminded of the beginning of Lawrence Sterne's novel *Tristram Shandy* wherein the hero is discussing the circumstances surrounding his conception. As the critical moment approached, Mrs. Shandy said to Mr. Shandy, 'Pray, my Dear, have you not forgot to wind the clock?' -- 'Good G -- '!' replied Mr. Shandy, 'Did ever woman, since the creation of the world, interrupt a man with such a silly question?' It was, as young Tristram pointed out, an 'unseasonable question at least.' Whether Mr. Shandy stopped what he was doing and went downstairs to wind the clock, Tristram does not record. Perhaps Mr. Shandy merely paused and shifted his position. It does not matter. The result, we can be sure, was the same; of the three hundred million spermatozoa Mr. Shandy released somewhat later, a different one led the pack, a different one reached the egg first, and a different Tristram was engendered. Put another way, the Tristram (or the Nancy) who might have been had not Mrs. Shandy asked about the clock -- this Tristram never was, not then nor in any subsequent coming together of Mr. and Mrs. Shandy.

To reply to my [critics], if my mother had had an abortion I almost certainly would not be here today. In fact, if my father had coughed at the critical moment I would not be here today. . . . Perhaps he did cough. . . . Who am I, anyway? [Hardin's ellipses] (p. 38)^a

Is "existence" just another advantage? Can we correctly say that "we owe future persons wild places, clean air, a functioning biosphere, *and* existence?" (I refer here to unspecified future individuals, not to the *class* of future persons. The latter will be treated shortly.) Would it not be an imperfect duty to provide safe and abundant living conditions, and yet, at the same time, not be required to produce the basic prerequisite to enjoying these conditions: namely, existence itself?

The fallacy here rests, I believe, on the inclination to treat *existence* as if it were, logically speaking, an *attribute* or *condition* of life. This error, compounded with the failure to distinguish between the potential existence of indefinite individual persons, and the probable existence of the *class* of persons (see following), may lead to the conclusion that to practice birth control or abortion is to deprive certain individuals of the decided advantage of "having existence."⁴ However, as I pointed out earlier, *there are no such individuals* to be deprived of this "advantage," simply because they *do not* exist. Furthermore, so long as a continuation of the human species is assured, the judicious practice of population control is not likely to deprive future persons of a clean, functioning biosphere. Indeed, there is compelling evidence to indicate that if posterity is to enjoy these advantages, thoughtful population control is *essential*.

^aMy recent unpublished reflections on the "non-being paradox" may be found in Addendum II to this chapter.

Perhaps the temptation to treat existence as an attribute is built into the structure of our language. As the history of philosophy shows, many thinkers have yielded to this temptation, the most prominent of whom was St. Anselm of Canterbury. In his "ontological argument," St. Anselm argued that God must exist, since, if He lacked the "attribute of existence," God would be less than perfect, which is a contradiction. However, as Kant so ably demonstrated, while existence may serve as a *grammatical* predicate, it is not a *logical* predicate. In the *Critique of Pure Reason*, Kant (1929, pp. 593-595) wrote:

'Being' is obviously not a real predicate; that is, it is not a concept of something which could be added to the concept of a thing. It is merely the positing of a thing, or of certain determinations, as existing in themselves. Logically, it is merely the copula of a judgement. (pp. 593-595)

To cause an individual to come into existence does *not* "give" him still another advantage. (Indeed, there is no "him" to *receive* the "gift.") It provides, in that case, the very possibility of *enjoying* advantages. Conversely, to prevent the coming-into-being of a possible person entails no "deprivation" of advantages; rather, it is to prevent, in one particular case, the ground of such "enjoyments." While future persons (that *will* exist) may have rights to clean air and energy resources, no particular potential future individual has a "right," now, to exist in his time. This follows from the fact that no one now is capable of anticipating, much less bringing about, an identifiable, particular person in the remote future. "Rights-in-general" do not morally mandate a bringing-into-existence of persons; *having* rights presupposes personal existence, present or anticipated. Future generations have rights because, among other things, we fully expect that they will exist. But we are entering familiar ground once more.

On the existence of the class of future persons. It is often argued that population control infringes on the rights of future generations. Others contend that it is inconsistent to speak of "duties to posterity" while condoning liberalized abortion. (Golding is a case in point. Cf. p. 57, above). As I have indicated earlier, these assertions may confuse the alleged "rights" of possible future individuals with the supposed "rights" of the *class* of future generations. Of course, the notion that a *class*, apart from its component members, can have "rights" involves ontological issues that have divided philosophers since Plato and Aristotle. Fortunately, we needn't delve into these murky metaphysical questions, since the matter can likely be settled on much simpler grounds.

The assertion (a) "Future generations, as a class, have the right to exist" might usefully be rephrased to read (b) "it is desirable that human life continue." The latter assertion is both broader and simpler than the former. It avoids the ontological obscurities noted above, and it is affirmed by a broad spectrum of philosophers (e.g., by both deontologists and utilitarians). I do not suggest that assertions (a) and (b) are equivalent. Hence, to the degree that statement (a) may be intelligible (and I have some question about this), it likely belongs to a family or moral assertions that affirm, in one way or another, that "human life should continue."

Now I suspect that the assertion (b), "it is desirable that human life continue" enjoys virtually universal assent. To all but a scant few misanthropes, the statement is accepted without dispute, and with scarcely more than a passing thought. Even so, the assertion is not without philosophical interest. As with such celebrated philosophical issues as "other minds," "induction," or "identity," the desirability of human survival is easy to accept intuitively, but difficult to analyze or justify rationally. There are, of course, many philosophical strategies available for those who wish to seek a coherent philosophical solution to the question: "on what grounds can we defend the assertion that human life should continue?" Kant's "practical reason," Mill's equation of "the desirable" with "the desired," and James's "will to believe" come immediately to mind. However, in this direction lies an arena of endless controversy. If I delve further into this, I shall have difficulty returning to the central question of the duty to posterity. For the purpose of this dissertation, I shall accept the desirability of the continuation of human life as "moral bedrock" -- as a basic "considered moral judgment" with which Rawls tells us our theory of justice should stand "in reflective equilibrium" (see §22, below).

Why, then, should I devote this much space to an assertion, only to announce that I will accept it by stipulation? I have done so to emphasize a matter of primary importance: namely, that there is a crucial and fundamental difference between (1) the so-called "rights" of potential individuals to exist, and (2) the supposed "right" of the *class* of future persons to exist. In the first case, if an alleged "right" is violated, the *class* remains; that is, rational and moral human life may go on. But, if in the second case, the presumed "right" is violated, human life, *ipso facto*, comes to an end. (In fact, for reasons that I have already explained, I do not believe that the word "right" is properly applied to either case; hence, the use of the quotation marks, and the use of such qualifiers as "alleged" and "supposed.") It thus follows that one might, with full consistency, *deny* (1) that potential individual human beings have a "right" to come into existence, and at the same time *affirm* (2) the rightness of the continuation of the human race (i.e., of the class of human beings). If this is the case, then the charge that individual acts of population control necessarily infringe upon the rights of the class of future persons is fundamentally mistaken.

In summary. I would suggest, then, that despite all the current popular attention devoted to the issue of "the right to life," the so-called "right of potential persons to exist" has little if any bearing upon the question of the rights of, and duties to, future generations -- provided we assume that future generations *will* exist, regardless of present practices of population control. Our duties are toward persons that *will* exist in the future. So long as we are assured that there *will* be future persons, the question of our direct personal responsibility for the existence of particular members of that future population is a separate moral issue. (These conclusions will prove to be very useful to us in §36, below).

17. The Time Factor

The foregoing analysis may suggest that much of the difficulty attending the question of the duty to posterity has its origin in the disparity of time between the duty-bearers and the rights-holders, and

also the occasional uncertainty as to the time-perspective from which the judgment of rights and duties is made. In this, the first of three summary sections, I would like to draw together several points developed earlier in an attempt to sketch a general pattern of the applicability of the terms "duty" and "right" across generations. Before I attempt to sketch the general pattern, however, I must first state some rules of procedure, and then reiterate a few general assumptions developed earlier.

Some rules. For purposes of simplicity, clarity, and containment, I would like to stipulate a few rules for this analysis:

1. Five non-contemporaneous generational classes will be compared. They are, in chronological order:

Ancestors' Ancestors (Now Deceased).
Ancestors (Now Deceased).
Contemporaries (Now Alive).
Posterity (Yet Unborn).
Posterity's Posterity (Yet Unborn).

2. All comparisons will be between pairs of adjacent classes.
3. All duties and rights are understood to be between generations.
4. All rights and duties are to be judged from the perspective of the present time (i.e., of the class of "contemporaries").

Some presuppositions. On the basis of our earlier analyses, we will presume:

1. "The Possibility Condition." As I have noted several times earlier, persons can only be duty-bound to do that which is neither impossible nor inevitable -- i.e., that which can be affected by voluntary action (pp. 26).¹⁵
2. The Locus of Responsibility: If X has a duty to respect Y's rights-claim, the burden of responsibility falls upon X. In other words, the onus of voluntary moral action is upon those with duties, not those with rights. (I trust that this follows from the meaning of "rights" and "duties" as developed in Chapter II.)
3. It follows from (1) and (2) that, from the perspective of present-time, only the present generation has duties *at this time*. Past and future generations may also have rights correlated to present duties. (Indeed, I have argued in this chapter that the notion of future generations having rights-claims upon present persons is quite intelligible. However, I have scarcely commented upon the question of the rights of past persons. I will have more to say about this.)

With these preliminary explications on the record, let us turn now to an analysis of cross-generational rights and duties.

Ancestors, and their ancestors. This matter can be easily dispatched. From the point of view of present time, there can be no rights or duties the classes or *ancestors*, and *ancestors' ancestors*. This follows, of course, from the simple fact that all members of these two classes are deceased and, thus, incapable of action ("The Possibility Condition").

Ancestors and the present generation. Because ancestors are incapable of action, they can bear no duties presently to those now alive, albeit their appointed *surrogates* (i.e., executors) may be said to bear these duties. (An example would be the Nobel Prize Committee, which administers the will of the late Alfred Nobel.) It follows immediately that the living have no rights-claims against the dead, albeit (once again) they may have claims against the *estate* of the deceased. All this in no way entails that prior generations, during their own era, had no duties to persons-yet-to-be, or that these ("then-future") persons had no rights-claims upon them. However, once persons or generations perish, they can no longer be said to have duties. It then follows that no former or subsequent persons can be said to have rights that would be correlated to such duties of the deceased. (Cf. the discussion of the "cedars of Lebanon," pp. 47-48, above.)

Deceased persons *may*, however, be said to have rights, if these rights are correlated to duties of the living. Some examples would be the right to have the culture and accomplishments of the past preserved and enhanced, and the right to have still-operative contracts (e.g., wills) observed. These "preservation rights" and "contract rights," as I shall henceforth call them, are correlated with "preservation" and "contract" duties of the living, *otherwise there are no such rights*.

"Contract rights" are, of course recognized by law, albeit their duration in time may be quite limited (e.g., to the lifetime of the surviving contractees). There are, of course, exceptional instances of long-lived obligations. (Once again, the Nobel Prize is an example of such a perpetual trust.) "Preservation rights" present an issue with extensive moral and conceptual ramifications. Fortunately, since it is not my purpose here to provide *normative* justification for the claim that cultural accomplishments should be maintained and enhanced, I need not become unduly distracted by this issue. Suffice it to say that a claim that succeeding generations *have* duties to preserve the culture of the past need not entail a reactionary or a conservative view of history. Among the artifacts that should be preserved are *records*, so that errors and misconceptions of the past might not be repeated -- this in addition to the general value of the insights and truths that might be learned from the recorded experiences of former generations. Accordingly, the "preservation rights" of the ancients were violated by the Caliph Omar when, in the seventh century, he set fire to the great library at Alexandria. By the same act, the Caliph also violated the rights of posterity to have these records preserved for *its* use.

It may seem strange to speak of deceased (and thus non-existent) persons having *rights*. However, as I have attempted to demonstrate in the case of future persons, non-existence, *of itself*, is not sufficient to disallow the attribution of rights. But isn't there an essential difference between *possible* persons and *past* persons? Can those now dead (irrevocably!) be said to have rights? If so, how so?

I would suggest that to the degree that past persons were motivated in their lifetimes to act for the benefit of future persons in the *expectation* that their presumed "rights" would be respected (i.e., their culture preserved and their contracts observed), the moral force of these actions and expectations entails duties on the part of the successors -- duties that extend even beyond the lives of those bestowing the benefits. Indeed, in the case of wills and bequests, these rights and duties are also recognized and sanctioned by law. Thus, we say that the testator, not the survivors, not the state, and not the executors, has a *prima facie* right to have the conditions of his will fulfilled. (For more on the rights and interests of the deceased, see Feinberg's, "The Rights of Animals and Unborn Generations," 1974, pp. 57-60.)

Present persons and posterity. We have, of course, covered the most important aspects of this topic earlier in this chapter. If my analysis has been correct, then, to be sure, the living can correctly be said to have duties to the unborn, and correlatively, the unborn can be said to have rights-claims on the living. This does not, however, exhaust the possible moral relationships between the generation of the living and future persons. We have not, that is to say, inquired about the *duties of posterity* and the correlative *rights of the living*.

The issue of the duties *of posterity to the living* can be easily handled. Since posterity does not yet exist, it cannot, from the perspective of time-present, meet the "possibility condition." Thus, we can state unequivocally that posterity has no duties *now* toward those now living. Of course, in posterity's own time, it will assume such duties as the preservation and contract duties described above -- that is to say, it will be the right of the then-forebearers (some now living) that these to-be-existent persons then perform their duties.

The correlative moral requirement raises some difficulties, for when we come to the question of the rights-claims of the living upon posterity, it appears that we have a clash between a common usage and consistency with our previous conclusions. On the one hand, it surely seems to make sense to say that we have a right to have our cultural accomplishments preserved and extended in the future. On the other hand, as I noted in the previous paragraph, since, by assumption, the time of responsible (dutiful) action regarding these rights falls upon the yet-unborn, from the perspective of time-present, these rights cannot now be acted upon. (This is, of course, a *logical* and not a *practical* impossibility.) Strictly speaking, we have no rights *now* to that which cannot be done *now*. It follows that, while it might be said, with virtual certainty (i.e., with the certainty that there will be a posterity), that we *will* have preservation and contract rights-claims upon the unborn, we *cannot* be said to have these rights *now*. Unfortunately, as I have noted above, this conclusion seems to run counter to common usage.

How are we to account for this apparent inconsistency? Part of the explanation may be simple linguistic habit. Since rights are normally correlated to duties that are approximately *concurrent* with these rights, there is a temptation to speak of rights with claims falling upon posterity as if *these* rights also obtained at the present time. The temptation is compounded by the fact that while the rights may apply only in the future (i.e., when the correlative duties apply), the rights-holders exist *now*. But, isn't this "temptation" sufficient to constitute *justification* for speaking of rights *now* to

be treated justly by posterity, *in the future*? For ordinary purposes, I see no great difficulty in such a manner of speaking, although I will maintain that it is, in a strict sense, incorrect and systematically misleading.

A more correct way of speaking of the rights of the living correlative to duties of posterity, would be to say (as we have earlier) that the living "have a right *to expect*" that their rights-claims will be dutifully respected by future generations. Clearly, the time reference of the *second* "right" in this assertion is in the future. But what of the *first* "right" (the "right to expect. . ."), the use of which I have enclosed in "warning quotes?" Wherein are the correlative duties of *this* sense of "rights?" I believe that this application of the word is open to (at least) two interpretations: one moral, and the other non-moral. In the first interpretation, "the right to expect. . ." entails duties (now) upon existing legal and political institutions, and, upon the defenders and office holders thereof, to insure that necessary institutional arrangements be preserved so that posterity might be in a position to fulfill its duty to its predecessors (the now-living).¹⁶ A second interpretation of the "right to expect" is epistemic, and thus, is non-moral and has no duty-correlate. In this sense, the "right to expect" is a prospective "right to believe" -- that is, a type of "warranted belief."

If my analysis is correct, the cumbersome expression, "We have a right to expect that future generations will be in a position to act dutifully, and *will* in fact so act, upon our rights-claims upon them," conflates in informal discourse into the simpler, if not quite correct assertion, "We *have* (now) a right to be treated justly by our successors." Although the continuing integrity of this right is assured by the likelihood that there *will* be future generations, we do not, strictly speaking, have this right *now*. In this sense, our rights-claims upon future generations are like insurance policies or term loans. Though one may be a beneficiary or a creditor, his "right" to the property in question is time-dependent, and while he may assuredly have title to the property in question in the future, he has no such right now. I believe that the so-called rights-claims of the living to dutiful action by the unborn are closely analogous to these cases.

Posterity and posterity's posterity. As with the comparison of the first two classes, this final comparison is quite simple and will be brief. From the perspective of present time, neither posterity nor posterity's posterity exist, and thus, due to the possibility condition, there are presently no ties of rights and duties between them. When, first, posterity becomes actual, and later, when posterity's posterity comes into being, the moral relationships described above will obtain, in order.

Cross-generational rights and duties, from the point of view of present time. The essential points discussed in this section may be summarized in the following table. In this table, the double-pointed arrows (<<-->>) indicate correlative rights and duties. A broken line *within* each generational category separates retrospective and prospective rights and duties. (To avoid confusion, the reader may wish to review the rules and presuppositions listed on pages 63, above.)

Table 1
Duties and Rights from Present Time Perspective

Generation	Rights?	Duties?
Ancestor's Ancestors (Deceased)	No Rights Putative Duty-Bearers (ancestors) incapable of action	No Duties (Possibility Condition)
Ancestors (Deceased)	No Retrospective Rights (Possibility Condition) ----- YES: Prospective Rights (E.g., preservation and contract rights)	No Retrospective Rights (Possibility Condition) ----- No Prospective Duties (Possibility Condition)
Present Persons (Living)	No Retrospective Rights (Possibility Condition. Rights-claims fall upon survivors and executors) ----- No Prospective Rights (Rights "Fall Due" when posterity becomes actual.)	YES: Retrospective Duties (E.g., preservation and contract duties). ----- YES: Prospective Duties (E.g., forbearance from harm, just savings, open options, preserved culture)
Posterity (Unborn)	YES: Retrospective Rights (E.g., forbearance, savings, options, institutions, etc.) ----- No Prospective Rights (Not at present time. Possibility Condition).	No Retrospective Duties (Not at <i>present</i> time. Duties obtain when class becomes actual). ----- No Retrospective Duties (Not at present time Possibility Condition).
Posterity's Posterity (Unborn)	No Rights (Not at present time. Possibility Condition)	No Duties (Not at present time Possibility Condition)

18. Correlativity Again

At the opening of this chapter I regretted the tendency among the few contemporary philosophers writing on the issue to combine, and often confuse, the separate questions of "the rights of" and "the duties to" posterity. While I felt at that time that I would, for the larger portion of the chapter, have to treat these moral relationships together, I also promised that I would, near the close of the chapter, attempt to "sort out" the "rights-issues" from the "duty-issues." I shall do so in this section.

Rights and "correlated duties." It would be useful at the outset to note that my decision to deal with the "rights" of posterity was more a matter of *convenience* than *necessity*. Many, if not most, of the writers currently examining the question of "duties to posterity" have approached this question by way of the related question of *rights*. Indeed, the significant APA symposium dealt explicitly with the *rights* of future generations. Rather than expend the considerable space and effort required to rephrase each relevant argument in terms of "duties," I directly responded, when appropriate, to the issue of the "rights" of the unborn. I did so with the assumption that, if the intelligibility of posterity's rights could be successfully defended, it would follow that *most* duties to posterity (and perhaps the most important duties at that) would likewise be supported by implication -- subject to the "knowledge and possibility conditions" described earlier (p. 26). This assumption (oversimplified) that a defense of the intelligibility of posterity's *rights* is also a defense of the intelligibility of many of our *duties* to posterity, follows from the "correlativity rules" developed in the last two sections of Chapter II.

This defense of duties to posterity by way of the *rights* of posterity has the advantage of dealing with *both* sides of the duty-rights correlation, and thus of disarming a potentially troublesome source of criticism. It is also, I suspect, a simpler strategy for supporting the intelligibility of such "correlated duties" to posterity as duties of forbearance from harm, duties of respect, duties of just savings of resources and institutions, etc. (Cf. Feinberg, 1966).

Rights and "uncorrelated duties." Unfortunately, the defense of the duty to posterity by way of posterity's rights, may not cover such duties as duties of charity, supererogation, self-fulfillment, and need-fulfillment, which we earlier found *not* to be necessarily correlated with rights (Cf. 510, above). However, this shortcoming may be more apparent than real. For, if we review the earlier discussions in this chapter and attend not to the general question of the rights of posterity but to the *particular* objections to these rights and to the rejoinders to these objections, we may find that our findings have broader scope than we may first have believed.

If we are to extend the conclusions of our earlier analysis of the "rights of posterity" to include validations of uncorrelated duties, we need first to ask: how might these uncorrelated duties be said to be tied to posterity if not through a correlation with *rights* of posterity? In the most general sense, we might say that these are duties *to benefit*, or *to avoid harming*, future persons (however a particular normative ethical theory might wish to interpret the terms "benefit" or "harm"), to the degree that present persons have the knowledge and power to bring about these morally desirable results. (Of course, the same may be said for the *correlated* duties to posterity.)

But what objections might be raised against an alleged duty to "benefit" persons now unborn? First (a), it might be argued that future persons are, well, *future*; that is, not actual, non-existent, "merely potential." Or, one may object that (b) unborn persons are indefinite and indeterminate. It may further be argued that (c) duties cannot extend to beneficiaries (*not* "rights-holders") separated by large gaps of time. But, of course, each of these objections has been answered in my defense of the intelligibility of posterity's *rights*. I trust that the substance of my arguments would apply about as well to the above objections to the notion that present persons have (uncorrelated) *prima facie* duties to benefit or to refrain from harming future persons -- persons who might not, however, correctly be said to have "rights" to these benefits or forebearances. This suggestion may be tested by reviewing the preceding arguments concerning the rights of posterity (i.e., in order: "futuraity," "mere imagination," "probability," "time lag," and "indeterminacy"), and by substituting "rights-phrases" (e.g., "posterity has a right to . . .") with "benefit phrases" (e.g., "posterity should benefit from . . ."). It seems to me that the force of these arguments is little diminished if they are thus transformed into arguments in defense of the duty to *benefit* the unborn. If this is so, then it appears that the basic factors that distinguish future persons from our contemporaries (e.g., futuraity, possibility, indeterminacy, etc.) are not sufficient to exclude these persons from our moral community; in other words, these persons are proper subjects of moral concern, and, thus, we have *prima facie* duties to secure and enhance their welfare.

In summary: our analysis of the issue of posterity's alleged *rights* afforded us an opportunity to examine the moral significance of the basic and intrinsic differences between actual and future persons. However, a justification of the intelligibility of posterity's *rights* may have been, strictly speaking, more than was required to establish the intelligibility of "duties to posterity." (The "no-claims" argument against posterity's rights [§15] does not touch the concept of "benefit-duties," and thus need not be faced by the defenders of these duties.) If, in my attempt to validate the intelligibility of "responsibilities" and "duties" to posterity, I have also validated the "rights of posterity," I will have accomplished more than I had proposed or required for the purposes of this dissertation -- a dividend that I will happily accept. If, on the other hand, my defense of the concept of "the rights of posterity" has not been successful, the issues of "moral responsibility" or "moral duty" to posterity may remain quite intelligible (Cf. §11). Recall that while five of the seven members of the 1973 APA symposium denied that future persons could be said-to have *rights*, some of those participants acknowledged that we *could* be said to have *duties* to posterity, and all agreed that our willful effects upon the conditions of future life are morally significant (Cf. p. 42, above).

19. The Posterity Problem: A Summary

Our examination of the intelligibility of the "duty to posterity" has been long and complicated. While I do not wish to prolong this chapter with a detailed recapitulation of the foregoing analyses, a brief review of the most significant findings might be useful now as we prepare to move to a presentation and analysis of Rawls's treatment of "justice between generations."

An analytic approach. The central issue of this chapter has been the question: "can living persons correctly be said to have duties to future generations?" As noted earlier, this is an ambiguous question, which can be interpreted either *meta-ethically* (as a problem of "correct saying"), or normatively (as an issue of "having duties"). I have not, however, made a thoroughgoing effort to separate the *normative* from the meta-ethical discourse in the inquiry; nor, for that matter, have many of the sources that I have quoted and analyzed in this chapter. An effort to separate scrupulously these two modes of moral philosophy would have been neither necessary nor desirable, since such an attempt would have been costly in terms of the complication and general extension of this already lengthy analysis. Thus, I have been willing not only to use normative and factual discourse to illustrate many critical points (Cf. the discussion of long-term effects of technology on pp. 91-94), but also, to betray my own personal normative belief that we do, in fact, have duties to posterity. However, my attempts to suggest the *validity* of this normative claim may have, at the same time, served to illustrate the *intelligibility* of the notion of the duty to posterity. Be that as it may, my primary concern has been to defend the *meta-ethical* claim that the concept of the "duty to posterity" is intelligible, and to do so in a manner that is *logically* independent of the truth or falsity of the illustrative normative assertions that may appear within this account. I leave it to the reader to judge the success of this endeavor.

Defending the concept of the duty to posterity: A summary. I began my analysis with the assumption that the concept of *duty* is clearly applicable to certain contemporary persons. (By "person" I meant autonomous, rational, sentient beings.) I then postulated an extension of the concept of duty to future persons, and examined a series of possible objections to this postulate, or to a related assertion that posterity can be said to have *rights*. The primary objections were:

- that posterity, at present, has no duties of its own and, thus, at present has no rights (Macklin. Cf. p. 44, above).
- that while posterity may have rights when it exists, it has none now (Cf. de George, p. 45, above).
- that there can be no duties to imaginary persons (Cf. Rosenbaum, pp. 47, above).
- that duties to posterity are voided by considerations of probability (Cf. p. 48, above).
- that duties to posterity are invalidated by the time lag between the present and the future (Cf. p. 49, above).
- that future persons are indeterminate and indefinite (Cf. Macklin, §14, above).
- that future persons cannot claim their alleged rights (Cf. Bandman, §15, above).

I presented rebuttals to all these objections. In my reading of the lamentably brief list of contemporary writings on the subject, I found no additional objections to the extension of moral duty

to posterity, nor can I think of any at this time. While the case should be considered permanently open to further objections, I have concluded for now that the living can be said to have duties to the unborn. Furthermore, I claim that the case for this conclusion has been strengthened by the additional determination, validated by this inquiry, that future generations can also be said to have *rights*.

Other findings. Later in this chapter (a) I examined the issue of the alleged right of potential future persons *to exist*, and concluded that this question is quite separate from our central problem of the rights of future persons that *will exist* (§16). In addition (b), I charted the moral relationships (i.e., rights and duties) among generations past, present, and future, and concluded that, due to the "possibility condition," the time of moral significance is the ever-moving *present* -- that the locus of duties to, and rights of persons deceased, as well as persons unborn, is the present (§17). Finally (c), I suggested that the arguments which support the concept of the "rights of posterity" can be extended to support the notion of "benefits to posterity" as well. From this, it follows that *duties to posterity* are intelligible, whether or not they might be correlated with *rights of posterity* (§18). These three contentions, and the arguments supporting them are in sufficiently close proximity to this summary section that further elaboration should not be necessary.

A look ahead. What has all this accomplished? As far as this dissertation is concerned, the most significant result of the foregoing analysis is that we have warrant to continue. If we had determined that the notion of the duty to posterity was unintelligible, then Rawls's attempt to establish rules of "justice between generations" would likely have been proven invalid, even without a careful examination of the substance of his arguments. Instead, I concluded that the attempt of Rawls and others to articulate and validate normative rules of duty to (or rights of) posterity is, in general, conceptually sound and meaningful. All this, however, scarcely settles the question of the duty to posterity, for the many significant *normative* issues remain; such issues as: "what duties and rights pertain to posterity?" and "how might these duties and rights be defended?" If the previous chapter has successfully determined that these are intelligible questions, we are ready now to examine the adequacy of Rawls's attempt to establish rules of "justice between generations" from the standpoint of his contractarian theory of "justice as fairness."

ADDENDUM I

Further Thoughts on the “Rights of Future Generations”^a

The "non-actuality" and "indeterminacy" arguments share a common error which, I believe, we are now prepared to identify. Both arguments commit the fallacy of "false criterion" or (viewed differently) of "hasty generalization." Criteria that correctly apply to *certain* kinds of rights are, I believe, falsely assumed to apply to rights in general. I have argued these points informally by citing counter-examples to the claims (of Rosenbaum, DeGeorge and Macklin) that future generations do not have rights due, respectively, to their "mere imaginability," their "non-actuality" and their "indeterminacy." It is time to offer an analysis of the concepts that underlie my refutation of these arguments.

We begin with a simple, and I believe uncontroversial, acknowledgment that not *all* species of rights that obtain among contemporaries are the sorts of rights that can be held by future persons against their predecessors that are now actual. Thus, if future generations have rights now, then these are special kinds of rights (though they may be stringent, nonetheless). My analysis follows upon a partial adoption, and an extension, of Joel Feinberg's analysis of rights -- particularly, of the contrasting pairs of "active/passive rights" and "*in rem/in personam* rights." (Feinberg, 1973, Ch. 4).

Feinberg defines the first pair as follows: "*active* rights are rights to act or not to act as one chooses; *passive* rights are rights not to be done by others in certain ways." He provides the following examples:

Among one's active rights may be such as the rights to go where one will and say whatever one pleases, often referred to concisely as 'the right to liberty.' Among one's passive rights may be such as the rights to be let alone, to enjoy one's property, to keep one's affairs secret, or one's reputation undamaged, or one's body unharmed. These are often characterized collectively as 'the right to security.' (Feinberg, 1973, p. 60).

The *in rem/in personam* distinction is as follows:

The distinguishing characteristic of *in personam* rights is that they are correlated with specific duties of determinate individuals. . . [For example], the rights of landlords to collect rent from their tenants, and the right of the wrongfully injured to damages from their injurers.

^aSection VIII of "On the Rights of Future Generations," by Ernest Partridge, in *Upstream/Downstream: Issues in Environmental Ethics*, ed. Donald Scherer, (Temple University Press, 1990).

In *rem* rights, on the other hand, are those said to hold not against some specific nameable person or persons, but against "the world at large." Examples include a homeowner's right to peaceful occupancy of his own house, and anyone's rights to the use or possession of the money in his own purse or pocket. Corresponding to these rights are the legally enforced duties of non-interference imposed on everyone. *Everyone* has a duty to keep off my land without my permission. . .(Feinberg, 1973, 59)

Feinberg has a third distinction, between *negative* and *positive* rights:

A *positive* right is a right to other persons' positive actions; a *negative* right is a right to other persons' omissions or forbearances. For every positive right I have, someone else has a duty to do something; for every negative right I have, someone else has a duty to *refrain* from doing something.¹⁷

This third pair ("negative/positive") does not have an important role in this analysis, since the rights of future persons can be either *positive* (e.g., the right to have certain resources available), or *negative* (e.g., the right not to be poisoned by radioactive wastes).

Similarly, the *in personam/in rem* distinction also has no direct application to the posterity issue since, once again, *both* kinds of rights apply to future generations. Thus the putative rights of future generations might be directed, "*in personam*," against a specific person (e.g., a Congressman about to vote on a nuclear energy bill), or, "*in rem*," against "the world at large" (e.g., against any and all citizens in a position to influence that same legislator's vote).¹⁸

But while the *in personam/in rem* distinction does not, in itself, advance our conception of rights which are, and are not, applicable to posterity, this distinction is important for what it suggests; namely, still *another* distinction, *not* explicated by Feinberg, yet relevant to the issue of the moral status of future persons. This pair, which I call "*denotative* rights" and "*designative* rights," might be thought of as correlates to *in personam* and *in rem* duties (not "*rights*"). Thus a (so to speak) "*in personam duty*" is responsive to the rights-claim of ("denotatively") identifiable *individuals*, while an "*in rem duty*" is correlated to the rights of a class of persons identifiable by description (by "designation"). As Macklin has clearly indicated, denotative rights are clearly not applicable to future generations due to their "indeterminacy." But Pletcher's "campsite paradigm" demonstrates, with equal clarity, the applicability of *designative* rights to future generations.

If these distinctions all hold true -- if, that is, valid cases of "rights" can be found to fill these special categories -- then the "non-actuality argument" (of Richard DeGeorge and Rosenbaum) and the "indeterminacy argument" (of Macklin) both commit the fallacy of "false criterion." In both cases, the criterion for *one* type of a right is falsely taken to be the criterion for *all* rights. In the first case, Richard DeGeorge claims that the fact that future persons can not act or exercise their personal "rights" *now* entails that they *have* no "rights" *now*. His argument is sound with regard to active rights, but *not* with regard to *passive* rights. Ruth Macklin states that "it is [in]appropriate to ascribe rights to a class of persons . . . [with no] identifiable members." As noted, she is correct with regard

to "denotative rights," but not with regard to "designative rights." In the two [preceding chapter], I have presented a number of exemplifications of such rights of future persons that demand action or forbearance in the present. All these cases indicate how persons now alive can *now* deliberately set in motion events and circumstances that will affect the quality of life of future persons, regardless of the analytic truth that they are non-active, even non-actual, *now* (cf. the examples of nuclear waste and ozone depletion in Section IV, above). Furthermore, these options now before us affect future persons *generally* (i.e., "by description" or *designatively*-- cf. Galen Pletcher's "campsite paradigm," in §14, above).

ADDENDUM II

“The Riddle of the Non-Beethoven” – A Postscript^a

If Beethoven's mother had aborted the fifth child (the eventual Ludwig), the non-appearance of Beethoven would have been a great loss to humanity, though we would not have known of this loss. Nor do we know of the great literature, music and science that might have been created by the young men who fell at Waterloo or Verdun or Normandy or Stalingrad.

What, then, are we supposed to make of "the non-Beethoven quandary." Is it seriously proposed that we increase the birth rate in the hope of producing more geniuses - this in the face of the serious global population problem? I have an alternative suggestion: let us find and nourish the geniuses that we have, and see to it that they are not lost to poverty and war. And let us also not forget that there is more to genius than genetics. Beethoven Senior, for all his faults, was also an accomplished musician who recognized and nourished his son's talents. Another individual with the equal of Beethoven's genetic endowments, born at that time in a London slum, would have lived and died unnoticed to the world. Surely many such individuals did just that, and still others are now alive in societies that do not value, seek out, and promote their native talent. Absent an enlightened social policy and progressive political order, they too are fated to pass through life and end up, as in Thomas Gray's "Country Churchyard," as "mute inglorious Miltons."

These are the "non-Beethovens," the "non-Shakespeares" and the "non-Einsteins" that deserve our attention.

The puzzle strikes closer to home, as we are asked, "well then, what if your mother had decided to have an abortion when she was carrying you?"

To tell the truth, if she had aborted the fetal me, it would not have troubled me in the least, for the simple reason, *per hypothesis*, that there would have been no "me" to be thus disappointed. Similarly, my parents' decision to "stop at three" doesn't bother my sister at all - for there is no sister, since both of my siblings are brothers. From the perspective of time-present, I am grateful that I was permitted to be born. But that perspective, like time itself, is asymmetrical. My gratitude "looking back" is not complementary to a regret "looking ahead." There is no subsistent, forever would-be but never actual sister-entity, in some sort of Limbo, eternally cursing my parents for not having just one more go at parenthood.

If, on the other hand, as "pro-lifers" contend in these bizarre arguments, it would have been wrong for Beethoven, or you, or me, not to have been conceived, what then are we to conclude from this?

^aThe full essay is titled "The Right to Life and the Right to Love," and appears at my website, *The Online Gadfly*, at www.igc.org.gadfly/liberal/abortion.htm .

That is it wrong to choose not to procreate - even in this over-crowded world? Notice that these arguments apply not only to abortion, but to any and all decisions not to procreate - decisions enacted through abortion, but also through birth-control, and even abstinence and celibacy. If it would have been wrong for my parents to decide not to have their second child (myself), then it was equally wrong for them to "stop at three," thus "cheating" my potential- but-never-to-be-actual sister. Likewise, it is wrong (dare I point out?) for the priest to take the vow of celibacy.

NOTES

1. I am grateful to Dr. William P. Alston, Professor of Philosophy at Rutgers University, for sending me copies of the unpublished papers that were read at this symposium.
2. I am grateful to Dr. William Whisner for pointing out the basic ambiguity in the symposium question.
3. Of course, we might suggest that infants have more compelling rights than animals and the feeble-minded precisely because infants will, in time, become morally responsible, duty-bearing persons. If this is granted, the analogy of this case to that of posterity becomes uncomfortably close for those who would affirm the rights of infants, and yet deny the rights of posterity.
4. I am quite content in the knowledge that all that I shall ever see of a Tyrannosaurus Rex are its petrified bones. Never, while on a camping trip, have I felt "deprived of dinosaurs."
5. Similarly, Bandman (1973, p. 3) states: "Future generations *will* have the right to breathe clean air as long as there is no excessive scarcity of air, to begin with." [My italics]
6. Later in his paper, Rosenbaum attempts to distinguish obligations to actual persons from alleged obligations to "possibles" on the basis of the "relational" and "notional" senses of intensional verbs. Quite frankly, I fail to see any relevance in this technical complication to the issue at hand.
7. The hazards of nuclear waste disposal are explained by Millert and Fritsche in *Nuclear Energy: The Morality of Our National Policy* (1974, pp. 41-47). See also, Hollacher's, "Storage and Disposal of High Level Wastes" (1973).
8. In his paper, "The Rights of Animals and Unborn Generations," Feinberg (1974) presents what I believe is a first-rate analysis of the posterity question and defense of the rights of future persons. Feinberg affirms that "it makes sense to speak of the rights of unborn generations" (p. 43) and that these rights can properly be defended now, on moral grounds, in behalf of the unborn. Future generations can be said to have rights, because they have interests; and any being with at least "a minimal cognitive life" has "interests." Conversely, "without awareness, expectation, belief, desire, aim, and purpose, a being can have no interests; without interests, he cannot be benefited; without the capacity to be a beneficiary, he can have no rights." (p. 61)
9. Bandman's paper presents an enormous puzzle to me. The problem is not that he is obscure, but that he seems to present at least two rather clear, distinct, and *contrary* positions: the first point (a) is that "to have rights means there has to be a way . . . to

claim those rights" (1973, p. 5). This is the position presented and -criticized in this section (FIV-d). The second position (b) seems to affirm that one *can* have a right, without being able to claim it. Thus: "Claiming is no indispensable part of moral rights" (p. 4). Furthermore: "To be deprived of a basic moral right is not to lose or forfeit that right. To be deprived of a basic moral right is to have that right violated." Surely the victims of the Nazi holocaust and the Attica slaves had no hope of claiming their rights. And yet, says Bandman, they had rights, however violated. I quite agree with Bandman's second position (b). The problem, however, is that this point is contrary to his first point. While Bandman's paper treats these issues in some detail, I fail to find therein a resolution of this inconsistency. In any case, Bandman's first point is quite straightforward, and will be treated independently of his other position (b).

10. In his paper, "The Nature and Value of Rights" (1971), and later in his book, *Social Philosophy* (1973, Ch. 4), Feinberg presents a careful and subtle account of the logic and language of rights and claims. While Feinberg's works deal primarily with legal rights, they have useful application to our discussion of claims. It is with some reluctance that I have avoided the intricacies of Feinberg's analysis in order to avoid a further complication of my account of the question of rights and claims.
11. The next, as yet unlegislated, step in this sequence was suggested by Aldo Leopold in his influential essay, "The Land Ethic." "A land ethic," said Leopold, "changes the role of *Homo Sapiens* from a conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow members, and also respect for the community as such" (1970, p. 240). And, "the problem we face is the extension of the social conscience from people to land" (p. 246). Recently, in his book, *Should Trees Have Standing?*, the legal scholar, Christopher Stone applied Leopold's "land ethic" to jurisprudence. Stone states his position with admirable clarity: "I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called 'natural object' in the environment -- indeed, to the natural environment as a whole" (1974, p. 9). Stone's writing figured prominently in a recent attempt by the Sierra Club to represent and defend the wilderness at Mineral King Valley in the California Sierras. See also, Justice William O. Douglas's dissent in the Mineral King Case (1972).
12. This is the direct conclusion of the Club of Rome's study of *The Limits of Growth* (Meadows, etc., 1972). See also the Ehrlichs' *Population Resources and Environment* (1972).
13. Jan Narveson offers a similar argument from the point of view of utilitarian theory: "The argument that an increase in the general happiness will result from our having a happy child involves . . . [a] fallacy. If you ask, 'whose happiness has been increased as a result of his being born?', the answer is that nobody's has. . . . Remember that the question we must ask about [our new personnel] is not whether he is happy, but whether he is happier as a result of being born. And if put this way, we see that again we have a piece of nonsense on our hands if we suppose that the answer is either 'yes' or 'no.' For if it is,

then with whom, or with what, are we comparing his new state of bliss? . . . The child cannot be happier as a result of being born, since we would then have a relative term lacking one relatum. The child's happiness has not been increased, in any intelligible sense, as a result of his being born; and since nobody else's has either, directly, there is no moral reason for bringing him into existence. (1967, p. 67)

Narveson, clearly, is arguing from the "average utility principle." For a rebuttal of this position, from the standpoint of the "total utility principle," see J. Brenton Stearns's, "Ecology and the Indefinite Unborn." (1972) 112

14. I do not wish to suggest in all this that abortion is without moral significance. The matter should not be treated casually, for there are significant moral issues involved. My essential point, however, is that the presumed "right of potential persons to exist" is not among these relevant moral issues.
15. As suggested in Chapter II (p. 68, above), there is another operative condition that we might call "the deliberation condition," which states that a person can only be duty-bound to perform or avoid possible actions with *deliberate* intention consistent with the best available knowledge of the consequences of those actions. This is merely an abstract way of saying that one cannot be blamed for causing accidental evils, or credited with causing unanticipated benefits, if there is no reasonable way for him to predict such consequences of his actions. "The deliberation condition," however, has no direct bearing on the analyses of this section
16. The acute reader may catch a technical irregularity here, which I have allowed for purposes of simplicity. Strictly speaking, if posterity is "in no position to act" it has, because of the possibility condition, no duties. Properly phrased, we should say that the "right to expect" entails the duty to preserve institutions so that posterity might properly *have* the duty (e.g.) to preserve the culture of the past. Thus, the "right to expect" is seen to be pre-requisite to the duty of posterity to its predecessors.

I could probably devote at least another chapter to the task of unravelling and explicating the correlative concepts of posterity's duties to, and the rights-claims of, the living. Fortunately, this task is the *reverse* of the task chosen for this dissertation, and I will soon, quite thankfully be able to set it aside.

17. *Ibid.*
18. Bandman, (op. cit, p. 99), errs in overlooking the fact that the *in rem/in personam* distinction refers to *duty bearers*, and not to *rights-holders*. Thus he incorrectly concludes that future generations do not have *in personam* rights.