

Lukas H. Meyer: Historische Gerechtigkeit

Lukas H. Meyer (ed.): Justice in Time

Reviewed by Wolfgang Gründinger

In his book *Historische Gerechtigkeit* Lukas H. Meyer, professor of practical philosophy at the Karl-Franzens University of Graz, deals with the normative meaning of historical injustice and discusses its implications for generations. The author develops a general theory of intergenerational justice (see also his article “Intergenerational Justice” in the *Stanford Encyclopedia of Philosophy*). Historical justice “examines the moral claims, rights and duties of people owing to historical wrongs” (*Historische Gerechtigkeit*, p. 1). In this book, his investigations concentrate on historical injustices which were committed against trans-generational groups in the past, and in particular on such crimes that were committed in the name of a state when it was ruled by a regime not committed to upholding the rule of law. Despite the complexity of the subject the book reads pleasantly and fluently, even for a novice to the topic, without losing depth and precision, and takes a stand without losing the sobriety and distance necessary for a scientific work.

Meyer distinguishes three main types of duties of intergenerational justice: vis-à-vis future human beings, namely not to injure their claims to sufficient well-being; vis-à-vis presently living people, namely to provide them with measures of compensation for damages they have suffered due to the lasting effects of injustices committed against their ancestors; and thirdly regarding victims of historical injustice that are dead, but ought to be remembered adequately.

Many people deny that we bear moral responsibility today for the consequences of the (in-) actions and misdeeds which were committed by other people long before our birth. No young person living today is - as Meyer also underlines - responsible for past historical injustices like slavery in America or the Genocide committed by the Nazis on the Jews and also on the Roma and Sinti. Those slain are dead; past injustices were committed in the past and are therefore concluded. It remains true, however, that the harmful effects of earlier wrongs are still affecting people. For example the black population in the USA is still affected by structural disadvantages. Also the cultural heritage and the intrinsic value of the group affiliation of the Jews as well as the Roma and Sinti are still damaged.



A theory of historical justice systematically examines these and similar questions by taking into account philosophical-normative problems. One of these problems, the so-called non-identity or contingency problem, is equally important for the first two main types of duties of intergenerational justice: The actions of today's people have a high probability of effecting the personal identity, the number and possibly even on the existence of future people. Undoubtedly, shocking injustice was done to Africans who were kidnapped in Africa and enslaved in America. But if this injustice had not occurred, most of today's descendants of the victims of slavery would not exist at all. For their existence as persons with their respective identities depends, inter alia, on their genetic identity, and this depends on who their parents are and when their parents brought them into existence. Can persons living today make claims for compensation because of the historical injustices committed against their ancestors if it is true that the assumed bearers of the claim are not worse off than they would be if the injustice had not been committed? For in this case they would have never come into existence.

Even if we had an answer to the non-identity problem, how could the consequences for the people living today be determined reliably if the wrong would have remained undone? In the conference volume Meyer edited (see below for more on this) the legal philosopher Jeremy Waldron states that this hypothetical question is not answerable if we take seriously the freedom of choice of those indirectly affected by the historical injustice. For taking their freedom seriously does not allow one to attribute normative significance to their predictable decisions, argues Waldron. In the same volume the philosopher George Sher discusses how the decisions of the indirectly affected persons diminish the normative relevance of the impact of the historical injustice over the generations.

Meyer's theory offers a convincing solution for these two problems: the non-identity problem and the problem of how to measure the harm done to indirect victims (ch. 2). Responding to both problems he suggests a second conception of harm, namely to consider, additionally to the historical-hypothetical conception, a conception that is identity-independent. While according to the historical-hypothetical conception a person is harmed by an action if the person is worse off than had the action not been carried out, the identity-independent conception understands harm as based on a threshold level, forbidding actions which result in the descendants having a quality of life lower than this threshold level. So, and according to this conception, currently living people harm future people if as a result of their actions future people are worse off than they should be. Since generations living today are a future generation from the point of view of our ancestors, the conception of harm defined by Meyer can be used independently of time frames. In order to determine historical injustice a hypothetical comparison is no longer necessary. The conclusion that these persons are worse off than they should be according to a sufficientarian standard of well-being is enough. Descendants of victims of unjust actions can count as harmed (or injured) even if they would not exist without this wrong. However, the threshold conception of harm is meant to complement rather than substitute the hypothetical-historical conception. This is Meyer's "combined view". Therefore, persons can be harmed according to both conceptions (or according to one only). Meyer discusses the difficulty of whether harm that can be understood in accordance to both conceptions weighs heavier than harm that can only be understood in accordance to one conception, and in particular only the threshold conception. However, the threshold conception, while interesting, does not seem to be easily applicable. It is contested, for instance, whether historical injustice of slavery as practiced some centuries ago is causally significant for explaining the less than average welfare of the slaves' descendants, while the causal significance of the historical fact of colonisation, to which previously colonised states regularly refer to in order to justify their claims to compensation today, is similarly contested. Those rich colonial powers that are

unwilling to pay measures of compensation respond that these states' underdevelopment is caused by self-inflicted internal factors. To be fair, this is a problem for any conception of compensation that aims at justifying indirect victims' claims to compensation owing to the harmful consequences of historical injustice. At any rate, the threshold conception does not have to determine what the current state of affairs would be like had the historical injustice not been committed.

Meyer bases his reflections on justice as equality and on the homogeneity of generations without, however, discussing the basic concepts of 'justice' and 'generation'. Although for the 'Generation' concept numerous different definitions are conceivable (Old and young, present and future, the 68s generation / Boomerang generation / generation internship etc.), he renounces a sharp contouring. Although one may find this a pity it does not diminish the value of his work since the definition of a generation as a chronologic concept (past – present – future) is implicit in his work and the question of evaluating and handling historical injustice can still be discussed.

According to Meyer, even if no harm to the descendants of victims of historical injustice is noticeable we can still have reasons to relate to the victims that are dead today (chap. 3). There are at least two attempts to show that presently living people can have duties towards the dead even if we suppose that dead people bear no rights today. According to Joel Feinberg's position on posthumous harm, interests of people while they are alive can be injured through posthumous conditions. However, according to this position the harm must have occurred before the death of the person. This argument presupposes a deterministic view of when harmful action occurs, for example, the posthumous defamation. Meyer however explicates the view that presently living people can have duties towards dead people which today do not correspond with the rights of the now deceased persons. Considering historical injustices and given the frequently observable denial of such injustices it is a general duty for those who can be identified as the bearers of the duty to remember the victims of historical injustices properly. This right to be remembered even survives the death of the bearer of rights. The idea of the 'surviving duties' is interesting since it justifies duties of present generations to which no corresponding rights of the past generations exist. While deceased people can have no rights any more, living people today stand under the duty to keep alive the memory of the historical injustices suffered by them.

Based on these main elements of his theory of historical justice Meyer discusses the intrinsic

value of the affiliation to ethnic groups and develops political recommendations for Roma and Sinti which had to suffer from injustices under National Socialism, and the Saami, the only indigenous ethnic group in Europe, whose larger cultural and political autonomy should be supported (chap. 4-5). In other chapters he investigates the legality of prosecuting legal injustices committed under a previous regime that did not adhere to the principles of the rule of law (chap. 6), and subsequently deals with the question to what extent truth committees in connection with conditional amnesties can deal better with historical injustice than penal prosecutions by national or international courts of law (chap. 7).

Meyer's considerations of historical justice are richly supplemented by the contributions of the primarily English omnibus volume *Justice in Time – Responding to Historical Injustice*. The omnibus volume includes the contributions of renowned experts to an international conference held in Potsdam in 2001, chaired by Meyer and the Israeli legal philosopher Chaim Gans.

The conference volume publishes a total of 21 contributions from which the first half is devoted to the analysis and development of philosophical perspectives on historical wrongs, and the second half to institutional responses to historical injustice. The philosopher Paul Patton of the University of New South Wales, Sydney, for example uses a different approach to Meyer to solve the non-identity problem: If we suppose that the relevant identity of transgenerational groups remains steady over time and that these groups were harmed as such, then the non-identity problem does not arise and these groups can be bearers of claims to compensation and restitution today. Possibly the corresponding duties can also be ascribed to a group of culprits as such if we suppose that it does not change its identity in a relevant way over the course of time. Meyer discusses this view of the historical responsibility of groups in chapter 5 of *Historical Justice*. He argues convincingly that not only individuals as such, but also individuals as a part of a group, and a group as a collective, can have differing 'historical responsibilities'.

Contributors to the volume also ask under which conditions generations living today may, by their decisions, bind their successors, who are members of their group, who will exist in the future. A demand for consistency in this context, which Australian philosopher Janna Thompson states, is that present generations may only do so if they also accept themselves to be bound to the fulfilment of the obligations passed on to them by their predecessors. A further question concerns the normative signi-

ficance of identity-creating historical relations of a group to a territory, and in particular whether such relations can help to justify a claim for this land as the group's homeland, for example in the case of the Jews and Palestinians with respect to Palestine or in the case of indigenous peoples with respect to the land from which they were expelled (Chaim Gans, Paul Patton and Janna Thompson). Both are questions which Meyer tries to deal with in chapter 4 of his book.

A couple of other articles deal with aspects of the 'Transition to Democracy'. They focus on how presently living people may and ought to respond to the actions and sufferings of previously living people who lived under a regime with no established rule of law. Meyer dedicates chapters 6 and 7 of his book to socio- and legal-philosophical research on this topic and submits concrete legal and political reform suggestions. In the omnibus volume the sociologist Claus Offe examines the penal efforts of coping with the unlawful GDR regime, the legal philosopher David Lyons examines the racist history of the US and Jaime Malamud-Goti, one of the architects of the human rights trials in Argentina, examines how Chile came to terms with Pinochet's unlawful regime.

Also especially interesting is the contribution by Belgian philosopher Axel Gosseries who investigates the justice assessment of climate change. He analyses the case of two states: the first emitted massive amounts of carbon dioxide in the past and suffered no harms owing to this, while the second, without being responsible for such emissions, suffered harms owing to the emissions produced by the first. This contrived case can be considered an ideal type of scenario applicable in the real world, for instance, to the USA and Bangladesh. The earlier generations cannot be blamed because they could not know about the harmfulness of their actions. However, due to the ban on free riding (which can also be understood transgenerationally), a compensation by the descendants of the emitters is to be demanded for the injured people on moral grounds. Unlike the equality principle often proposed in the climate debate, the ban on free riders postulated by Gosseries would only balance out the value of the advantage originating from the wrong without having to necessarily completely compensate for the original damage. However, this view does not take into consideration the non-identity problem that is applicable to advantages also gained from the effects of historical wrong. Gosseries' involuntary free riders would probably not have come into existence with the personal identities they have had there been no industrialisation. One would argue, with Meyer, that it is only relevant whether certain actions press the prosperity of the descendants

of a group under a (sufficiency-) threshold value. The distribution of advantages from emitting carbon dioxide (by distribution of emission rights), exceeding such a threshold value of well-being, is not a question concerning the fair compensation for damages, but a question concerning the fair (global) distribution of these rights among presently living persons (see in particular Meyer (2004): "Compensating Wrongless Historical Emissions of Greenhouse Gases" as well as Meyer and Dominic Roser (2009): "Climate Justice and Historical Emissions").

Meyer's work offers a comprehensive answer to the most important philosophical questions on the relationship between the generations. In his book *Historical Justice* he focuses on the normative (moral as well as juridical) relationship between early and present generations. However, with respect to future generations Meyer's non-relational understanding of intergenerational justice is not the dominant view in the literature (which does not mean, of course, that it is mistaken): While most philosophers believe that we stand under the duty vis-à-vis future people to make them at least equally well off, Meyer allows for future people to be worse off as long as they reach the sufficientarian threshold of well-being. However, Meyer argues that currently living people do stand under duties, other than duties of justice, that speak in favour of making future people as well or better off than themselves. (Chap. 4 and 5)

Without getting involved in the contradictions of the complicated material, Meyer delivers a fully developed theory on the meaning of historical injustice and the moral and political consequences that follow. He does not only reason abstractly, but commits himself to practical action and recommendations for concrete cases.

Apart from Meyer's legal-political suggestions considering the statute of the international penal court of law in chap. 7, the discussion of how institutional measures can prevent possible historical injustice for future generations from the start is absent in *Historical Justice*: Meyer discusses the different possibilities for the material compensation and symbolic restitution for historical injustice, but disregards how a social order could be formed in order to ensure that historical wrong could be avoided from the start.

In other publications Meyer examined questions of environmental justice and in particular climate change under the aspect of historical justice. The historical injustice of excessive historical emissions is not committed against single (possibly ethnic) groups, but against today's and future generations as a whole (on the national level or worldwide). How do we proceed with the dilemma that the raw materials that past generations used irreparably have produced nuclear waste, manipulated the ozone layer and atmosphere, but at the same time have created prosperity through materials and in-

dustry which we profit from today at the expense of future generations? How could an adequate reaction to such an injustice be formed?

Surely not by continuing with the wrong. Nevertheless this is sadly the case today. The unpleasant outlook is that future generations could bring us to justice in tribunals.

Lukas H. Meyer (2005): Historische Gerechtigkeit. Berlin/New York: Walter de Gruyter. 458 pages. ISBN: 978-3-11-018330-6. Price: 49,95 €

Lukas H. Meyer (ed.) (2004): Justice in Time. Responding to Historical Injustice. Baden-Baden: Nomos. 544 pages. ISBN: 978-3-83-290503-3. Price: 66,90 €

Also cited in this review:

Meyer, Lukas H.: Intergenerational Justice, Stanford Encyclopedia of Philosophy (2008) (<http://www.plato.stanford.edu>). (approx. 50 pages.)

Meyer, Lukas H. (2004): Compensating Wrongless Historical Emissions of Greenhouse Gases. In: Ethical Perspectives. Vol. 11, 22-37.

Meyer, Lukas H. and Roser, Dominic (2009): Climate Justice and Historical Emissions. In: Meyer, Lukas H. and Matravers, Matthew (eds.): Justice, Equality, and Democracy (From a special edition of CRISPP).

Call for Papers for the next issues of *Intergenerational Justice Review*

The peer-reviewed journal *Intergenerational Justice Review (IGJR)* aims to improve our understanding of intergenerational justice and sustainable development through pure and applied ethical research. Regularly published in English and German, the *IGJR* (ISSN 1617-1799) seeks articles representing the state-of-the-art in the politics, law, and philosophy of intergenerational relations. It is published on a professional level with an extensive international readership. The editorial board comprises over 50 international experts from ten countries, and representing eight disciplines. The *IGJR* is not only read by the scientific community but also by members of parliaments, decision makers from the economy and persons with a general interest in intergenerational justice.

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If you are interested in submitting an article please send us a short proposal (up to 500 characters). Subsequently, the editors will contact you and discuss the details of your possible article.

Size limit of final article:

Up to 30,000 characters (including spaces, annotation etc.). These are between 4,500 and 5,000 words.

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A Young Generation Under Pressure? The Financial Situation and the "Rush Hour" of the Cohorts 1970-1985 in a Generational Comparison

The topic:

This issue is divided into two parts, the first one dealing with the time restrictions of the young generation, the second part with their financial situation – both from a life course perspective. The first part: even though life expectancy continues to rise, many people feel that they do not have the time to combine work, children and leisure. This focuses on the easing of the so-called "rush hour" of life between 28 and 38 years of age. In this period, people finish their studies; they take decisive career steps and have to decide whether or not to start a family. It is this crucial period of time we have to examine to detect the underlying causes for the difference between the desired and the (lower) actual number of children in various industrialized countries. Key questions are: