

Intergenerational Justice Review

Foundation for the Rights of Future Generations
The Intergenerational Foundation

A black and white photograph of three men in formal attire (white shirts, dark vests, and dark trousers) balancing on a tightrope structure. They are holding long poles for balance. The structure consists of several parallel horizontal lines supported by diagonal lines. The background is a plain, light-colored wall.

Issue Topic:
The Interdependencies between Justices

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The reviewers for this issue were as follows

(in alphabetical order):

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There exists a frequently unhelpful and rigidly formulated theoretical dichotomy in the intergenerational literature, which can confine our intellectual thinking and restrict the efficacy of our policy: the separation of intra- and intergenerational justice. Intergenerational justice deals with justice between the generations. Intragenerational justice focuses on lines of cleavage between contemporaries, such as economic disparities between states in the international system.

On the one hand, the maxim that each generation has the right to act in a self-determining way has led to a political culture in which present generations pursue short-sighted and generationally specific objectives. By the same token, as Hans Jonas has argued, mankind's realisation that his ability to transform nature for his own purposes may lead to irreversible environmental damage has led to the call for a new ethics for future generations. It is important to emphasise the pertinence this separation has outside the academic world: political decisions are often informed by only one type of justice, ignoring the consequences for other types of justices. On the other hand, proponents of the sustainability concept frequently take all types of justice into account and, by often implicitly assuming that they are complementary, ignore possible trade-offs. Hence one can find a lack of intellectual endeavour focused on bridging the theoretical gap between the more traditional demands of social and international justice and intergenerational justice with real implications for policy.

We therefore present readers with contributions that confront the pressing theoretical challenge of combining intra- and intergenerational justice as well as papers that seek to investigate the interdependencies in case-specific contexts.

In their paper, Prof. Stefan Baumgärtner et al. delimit the extent to which economics can enhance our understanding of the interdependencies between the two justices in question. They develop an argument that economics should be brought to bear on the interdependency question by delimiting the so-called "opportunity-set" of politics: the set of outcomes which are possible for

policy-makers in a given context. In an earlier paper, Baumgärtner et al. developed three hypotheses that can be made with regard to the relationship between intra- and intergenerational justice: 1) independency: there is no discernible link between the achievement of intra- and intergenerational justice; 2) facilitation: the achievement of intra- will improve our chances of achieving intergenerational justice; and 3) rivalry: the exigencies of intergenerational justice clash with those of intragenerational justice – by achieving one the other becomes more elusive.

These hypotheses were used as a basis for some of the following papers, including that of Baumgärtner et al. themselves, who explore the distinction.

In his ambitious paper, Prof. Christoph Lumer evolves a prioritarian criterion for the realisation of universal ethics. Reasoning from philosophical justification to implications for policy, his contribution provides the intellectual basis for an appraisal of our current international and intergenerational political and economic projects. The paper is both spatially and temporally global in scope: Prof. Lumer demonstrates how a just balance could be struck between currently-living generations in all countries at different stages of development and future people. Intriguingly, Lumer concludes that, in practice, conflicts between international and intergenerational justice are almost non-existent.

In a more case-specific paper, Dr. Bruce E. Auerbach and Michelle Reinhart challenge the controversial textualist approach to interpreting the US constitution, as practised by Justice Antonin Scalia. Contra Scalia's belief that the role of the Supreme Court should be to interpret the constitution according to its original meaning, the authors point out that Scalia's approach is not only inconsistent with the language of the constitution and the intent of the framers, but intergenerationally unjust. Although dealing with the US context, the implications of the analysis are of relevance to other countries that have democratic constitutions and therefore of great interest to national debates, especially in countries with a US-style codified constitution.

Juliana Bidadanure's article is constructively critical of the denial of the national guaranteed minimum income support (RSA) to the younger generation in France. She sets out the deontological and consequentialist arguments implicitly and explicitly put forward by the French government for denying RSA. Her article points to the fact that intragenerational justice can be best achieved through the promotion of "real autonomy" for young French citizens. She concludes that the fulfilment of intragenerational justice facilitates the attainment of intergenerational justice. Ms. Bidadanure warns against extrapolating too much from her results, but her research findings could also have relevance for other countries which are cutting social spending in a period of austerity.

In addition to the peer-reviewed articles, this edition contains an Interview with Prof. Dieter Birnbacher as well as book reviews of Ed Howker and Shiv Malik's *Jilted Generation*, Eric Posner and David Weisbach's *Climate Change Justice*, Janna Thompson's *Intergenerational Justice*, and *Ageing Populations in Post-industrial Democracies*, edited by Pieter Vanhuysse and Achim Goerres.

Last but not least, we would like to thank all reviewers who made invaluable recommendations on articles appearing in this issue. We hope it will serve as a step towards bridging the intellectual divide between intra- and intergenerational justice in the realm of theory, and be helpful for decision-making in the non-ideal world of politics.

James Wilhelm,
Editor-in-chief (FRFG)



Boris Kühn,
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Economic Analysis of Trade-offs between Justices

by Prof. Dr. Stefan Baumgärtner, Stefanie Glotzbach, Nikolai Hoberg,
Martin F. Quaas and Klara Helene Stumpf

Abstract: We argue that economics – as the scientific method of analysing trade-offs – can be helpful (and may even be indispensable) for assessing the trade-offs between intergenerational and intragenerational justice. Economic analysis can delineate the “opportunity set” of politics with respect to the two normative objectives of inter- and intragenerational justice, i.e. it can describe which outcomes are feasible in achieving the two objectives in a given context, and which are not. It can distinguish efficient from inefficient uses of instruments of justice. It can identify the “opportunity cost” of attaining one justice to a higher degree, in terms of less achievement of the other. We find that, under very general conditions, (1) efficiency in the use of instruments of justice implies that there is rivalry between the two justices and the opportunity cost of either justice is positive; (2) negative opportunity costs of achieving one justice exist if there is facilitation between the two justices, which can only happen if instruments of justice are used inefficiently; (3) opportunity costs of achieving one justice are zero if the two justices are independent of each other, which is the case in the interior of the opportunity set where instruments of justice are used inefficiently.

I. Introduction

Justice is a multifarious normative idea about the quality of relationships among members of society. One may argue that there are many “justices”, insofar as different parts of society, different types of relationships, or different substantive areas are addressed. The overall societal goal (“vision”) of sustainability particularly addresses two justices: (i) justice between currently living persons (“intragenerational justice”), and (ii) justice between members of present and future generations (“intergenerational justice”).^{1,2}

With two (or more) different justices as normative objectives of equal rank, it may be that there exists a trade-off between them, that is, performing better with regard to one objective implies performing worse with regard to the other one. In particular, it may

be that fostering intragenerational justice makes it more difficult to attain intergenerational justice, and vice versa. Such a trade-off at the level of normative objectives of equal rank – if it exists – asks for societal resolution. The question is: how to act in the face of different justices? Important examples for such a trade-off include government spending on social welfare vs. investment in public infrastructure and education, or the exploitation vs. conservation of non-renewable natural resources.

In this essay, we argue that economics – as the scientific method of analysing trade-offs – can be helpful (and may even be indispensable) for assessing the trade-offs between different justices. We understand economics as being defined by its method, rather than by its subject matter or by some normative objective,³ and we sketch how to employ this method to analyse trade-offs between justices. An important contribution that economics can make to this analysis is to introduce the secondary normative criterion of *efficiency* which characterises the non-wasteful use of scarce resources to attain the primary normative objectives of justice: a situation is efficient with regard to different objectives if it is not possible to improve on one objective without doing worse on another one. Being derived from primary normative objectives, the criterion of efficiency itself makes a normative claim: it is good to use scarce resources efficiently to attain intra- and intergenerational justice; it is wrong to use scarce resources inefficiently for that purpose.

This approach of using economics as a method to study the efficient use of scarce resources in the attainment of rivaling normative objectives of justice⁴ opens an innovative perspective on what the role of economics should be (as a method) in the discussion of justice, and on how to bridge the gap – systematically and rigorously – between ideal theory and non-ideal politics.

II. Specifying justice(s)

To inform our understanding of intra- and intergenerational justice, the abstract and

general concept of justice needs to be further specified. We take justice to generally refer to the mutual claims of members of the community of justice from the standpoint of impartiality.⁵ This minimum definition leaves ample room for very different, and sometimes much contested, conceptions of justice. Each of them can be described more precisely by specifying a number of elements in a “syntax of justice”.^{6,7} In the following, we specify the essential elements of the syntax to clarify the conceptions of inter- and intragenerational justice.

The community of justice. Justice refers to mutual claims⁸ within a community of justice. We term those holding a particular claim the *claim holders*, and those responsible for the fulfilment of the claim the *claim addressees*.⁹ Intragenerational justice entails claims held by currently living persons (claim holders) towards other currently living persons (claim addressees). Intergenerational justice entails claims held by persons living in the future (“future generations”, claim holders) towards persons living today (claim addressees).¹⁰ It is not necessary that such a claim is explicitly put forward by the claim holder (which may be impossible in the case of intergenerational justice). What matters is that a legitimate claim might be formulated by someone speaking for the claim holder.

Positive and negative claims. Generally, claims can be positive, i.e. defining an entitlement to a certain good,¹¹ or negative, i.e. demanding freedom from harm.¹² Claims are considered legitimate if they could be agreed on from the standpoint of impartiality and equal consideration. For example, intergenerational justice claims could be specified as a positive claim of future generations to certain stocks and systems, such as a democratic political system, a stock of manufactured capital and critical knowledge, or intact ecosystems, implying a responsibility of the present generation to pass on these stocks and systems in a good state to future generations. Future generations may also have a negative claim: not to be

harmful by any activities of the presently living generation, e.g. through increasing systemic risks caused by a dysfunctional global financial system or through nuclear waste left over as a byproduct of present electricity production. Intragenerational justice claims include the positive claim for satisfaction of basic needs, and the negative claim that one's freedoms should not be harmed (human rights).

Judicandum. We use the term *judicandum* to describe that which is to be judged as just or unjust. *Judicanda* can be agents, actions, institutions or states of the world.¹³ When discussing inter- and intragenerational justice, the *judicanda* could be the actions of currently living persons (and the consequences of these actions, such as, say, the distribution of certain primary goods), as the claim addressees of both justices belong to the current generation.

Instruments of justice. We use the term *instrument of justice* to describe that which is to be used to satisfy the legitimate claims of justice. In many conceptions of justice, these will be objects of distribution (answers to the question "What is distributed?"¹⁴), but the satisfaction of legitimate claims could also be achieved via, say, institutional reform to ensure procedural justice. So, the question here is *how* legitimate claims are addressed. For example, one instrument of intergenerational justice could be the investment in public goods such as education and infrastructure, or the distribution of stocks of non-renewable resources between different generations. The aim of intragenerational justice could, for example, require institutional reform of international trade rules ("fairness").

Metric for the judgment. For statements about the degree of attainment of a normative objective, there must be some way to measure the justice of the *judicanda*: one needs a metric to judge whether, and to what extent, a *judicandum* is just or unjust. For this metric, different informational bases have been proposed, such as e.g. capabilities, primary goods, or utility.¹⁵ It is possible to use different metrics for inter- and intragenerational justice.

In sum, judging a certain *judicandum* as inter- or intragenerationally just according to a metric requires first to specify the positive and negative claims of claim holders in

present and future generations against claim addressees in the present generation, which are to be satisfied by certain instruments of justice.

As we discuss two different justices, both of which demand the fulfilment of legitimate claims through the use of instruments of justice by the same addressee, a non-trivial decision problem arises for this addressee – the present generation. We therefore need to have a closer look at the possible relationships of these two justices.

III. Relationships between justices

Generally, the two justices are related both on the "value" side and the "production" side.¹⁶ On the value side, the relationship refers to the desirability, from a societal point of view, of attaining one justice relative to the other one. For example, society may be willing to trade-off one justice against the other,¹⁷ or one justice might strictly dominate the other. In this essay, we build on the minimal and very general premise, widely held in the literature,¹⁸ that both intra- and intergenerational justice are considered by society as desirable normative objectives of equal rank. Beyond that, we do not further discuss the value side.

On the production side, the relationship refers to the feasible outcomes of the use of instruments of justice, that is, combinations of degrees of attainment of both justices. Here, what is feasible is determined by the structure and functioning of the given system, based on natural resource endowments, technology, institutions, etc. The set of all feasible combinations in terms of the two justices is called the "opportunity set". It describes society's options for choice, which are independent of what society considers desirable. That is, the production side and the value side are independent of each other.

Scientific analysis and political implementation have shown that, in general, three relationships may hold on the production side between intra- and intergenerational justice:¹⁹

"Meeting the legitimate claims of the poor to the resource possibly reduces the total resource stock passed on to future generations and, thereby, may be at the expense of intergenerational justice."

1) *Independency*: The objectives of intra- and intergenerational justice can be achieved independently, that is, attaining one objective

to a higher degree does not necessitate any change in the degree to which one attains the other one.²⁰

2) *Facilitation*: Achieving one objective supports achieving the other one, that is, attaining one objective to a higher degree induces a higher degree of attainment of the other one.^{21,22}

3) *Rivalry*: A fundamental rivalry (or "trade-off") exists between the objectives of intra- and intergenerational justice, that is, attaining one objective to a higher degree necessarily reduces the degree to which one attains the other one.²³

For illustration, we give examples from different contexts. Independency is an assumption frequently made in ecological, environmental and resource economics.²⁴ For example, cap-and-trade systems for greenhouse gas emissions imply that the overall intergenerational impact on global climate can be governed independently of the initial intragenerational distribution of emission certificates.²⁵ Facilitation is prominently stated with regard to the provision of public goods. For instance, public investment in education or the improvement of public transportation systems may simultaneously benefit today's poor and future persons. Rivalry is often assumed when the possibility of intragenerational redistribution of access rights to rival resources is heavily limited. In such cases, meeting the legitimate claims of the poor to the resource possibly reduces the total resource stock passed on to future generations and, thereby, may be at the expense of intergenerational justice. For example, if the government spends a higher share of tax revenue to increase social support of the poor without being able to enforce higher taxes on the rich, the government has less revenue to invest in public infrastructure and education.

A host of specific *determinants* – natural, technological and institutional factors – impact on the production relationship between intra- and intergenerational justice, for example because they influence the availability and effectiveness of the instruments of justice. Thereby, they affect which relationship holds. Two examples for such determinants are population development and political restrictions. In many countries of the global North, a population development characterised by higher life expectancy and lower birth rates challenges the existing social security systems. A potential trade-off among the goal to reduce old-age poverty

(intragenerational justice), and the goal to avoid an unacceptably high financial burden on the young generation (intergenerational justice) may occur. Political restrictions limit the political scope for redistribution of resources within a society. If, for instance, the political scope for redistribution of wealth within a society is tight due to resistance against introduction of an inheritance tax, the situation of the poor can only be improved by increasing public expenditures and, thereby, possibly adding to public debt in the long term – therefore causing a trade-off between inter- and intragenerational justice.

Regarding the production relationship between intra- and intergenerational justice in the use and conservation of ecosystem services, Glotzbach and Baumgärtner (in press: Sec. four) found that the determinants impacting on this relationship are the quantity and quality of ecosystem services, population development, the substitutability of ecosystem services by human-made goods and services, technological progress, and institutions and political restrictions. The determinant substitutability of ecosystem services, for instance, influences the character of the relationship between the justices as follows: if an ecosystem service is substitutable by human made goods and services, an overexploitation of the ecosystem service by members of the present generation to increase intragenerational justice can be compensated by sufficient investment in other forms of physical, social and human capital to secure intergenerational justice – the relationship between the justices is one of independency or facilitation. If an ecosystem service is non-substitutable, an overexploitation of the ecosystem service by members of the present generation to increase intragenerational justice cannot be compensated and, hence, reduces the degree of intergenerational justice – the relationship between the justices is one of rivalry.

In sum, the opportunity set, which embodies information on the production relationships between the two justices in all feasible outcomes, crucially depends on a number of fundamental context-specific determinants.

IV. Scarcity, economic efficiency, and opportunity costs

Irrespective of which production relationship holds between inter- and intragenerational justice, society has to make a decision on how to use some instruments of justice

in the attainment of these objectives. Very often, the use of instruments of justice means employing scarce resources that may be used in alternative ways.²⁶ This is where the key contribution of economics to the study of societal problems comes in: how to use scarce resources efficiently in the attainment of some objectives? According to a classical definition, economics

studies human behaviour as a relationship between [given] ends and scarce means which have alternative uses.²⁷

With this definition, economists generally understand efficiency as non-wastefulness in the use of “scarce means” to attain some “ends” that humans pursue in their actions. In this understanding, ends are open-ended: they are not determined by economics as a method. In principle, it could be any ends

“The contribution of economics to the study of societal problems lies in characterising the (in)efficient use of scarce means in the attainment of multiple primary normative objectives.”

that humans pursue. Here, we focus on intra- and intergenerational justice as two primary normative objectives that humans pursue.²⁸ Drawing on the common definition of efficiency by Pareto (1906),²⁹ one can define efficiency as follows:

An allocation of resources is efficient if it is impossible to move toward the attainment of one social objective without moving away from the attainment of another objective.³⁰

The minimal assumption needed to define efficiency in this way is that, for each justice, the metric of justice allows a distinction to be made between a higher and a lower degree of attainment of the respective justice. In particular, it is neither necessary to assume cardinality of each metric nor commensurability of the two justices.³¹ Thus, this notion of efficiency and the subsequent analysis are very general.

If efficiency is related in this manner to some primary normative objectives, it acquires the status of a secondary normative objective.^{32,33} This means, it is good to use resources efficiently; it is wrong to use them inefficiently. In this perspective, the contribution of economics to the study of societal

problems lies in characterising the (in)efficient use of scarce means in the attainment of multiple primary normative objectives. For this purpose, economics provides a broad set of methods to analyse, display and empirically verify the relationships between these objectives.

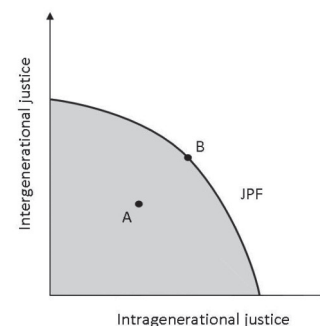


Figure one: Rivalry and independency

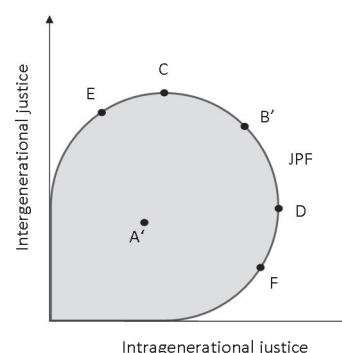


Figure two: Rivalry, facilitation, and independency

Figures one and two illustrate the opportunity set and efficiency in attaining the two normative objectives of intra- and intergenerational justice. The axes indicate the degree of attainment of inter- and intragenerational justice, respectively, based on the respective metrics of justice. Thus each point in the diagram represents an outcome of the use of the instruments of justice. In Figure one, the shaded area depicts all feasible outcomes in the given context, that is, for given resource endowment, technology, institutions, and the like (“opportunity set”). The curve JPF (“justice possibility frontier”) denotes its frontier. Outcomes to the northeast of this curve are not feasible in the given context. Point A represents an outcome where the instruments of justice are used in an inefficient manner as more intergenerational justice could be achieved without sacrificing intragenerational justice. In contrast, the use of the instruments of justice in point B is efficient as no higher degree of attainment of one justice is feasible without reducing the other one. Generally, all

outcomes below the JPF-curve correspond to inefficient uses of the instruments of justice, whereas all outcomes on the curve correspond to efficient uses of these instruments.

Obviously, in point B there is rivalry between intragenerational and intergenerational justice: attaining one to a higher degree necessarily reduces the degree to which one attains the other one. This loss can be measured by the concept of “opportunity cost”. The opportunity cost of increasing, say, intragenerational justice is the corresponding minimal loss of intergenerational justice. In contrast, at point A there is independency between intragenerational and intergenerational justice: attaining one to a higher degree does not necessitate any change in the degree to which one attains the other one. Hence, there are no opportunity costs of increasing one or the other justice. Generally, in all efficient outcomes, i.e. on the JPF-curve, there is rivalry between the two justices and, thus, positive opportunity costs. In all inefficient outcomes, i.e. under the JPF-curve, there is independency between the two justices and, thus, zero opportunity costs.

For example, the opportunity set of Figure one may refer to the use of a non-renewable natural resource such as oil or gas: the resource may be exploited today for social welfare policy (intragenerational justice); alternatively, it may be conserved for future generations (intergenerational justice).

In a different context, the opportunity set may look as in Figure two. The shaded area again depicts all outcomes that are feasible in this context (“opportunity set”), with the JPF-curve as its frontier. As in Figure one, outcomes A’ and B’ correspond to an inefficient and an efficient use, respectively, of the instruments of justice. Obviously, all points on the JPF-curve between C and D represent outcomes of efficient uses of the instrument of justice, because no higher degree of attainment of one justice is feasible without reducing the other one. These outcomes are characterised by rivalry between the two justices and positive opportunity costs of either justice.

Outcome E is inefficient, but as it lies on the JPF, attaining intergenerational justice to a higher degree starting from this point necessarily also leads to a higher degree of intragenerational justice. That is, in outcome E there is facilitation between the two justices. But facilitation is not symmetric: attaining a higher degree of intragenerational justice, starting again from point E, does not

necessarily induce a higher degree of intergenerational justice. Hence, the opportunity cost of increasing intergenerational justice is negative: increasing intergenerational justice does not incur a loss, but a gain of intragenerational justice, and the opportunity cost of increasing intragenerational justice is zero.

“Many questions of justice arise under conditions of scarcity and involve the freedom to make choices. Such questions can be discussed in economic terms.”

In outcome F, the situation is reversed: attaining intragenerational justice to a higher degree facilitates attaining intergenerational justice to a higher degree, but not vice versa; hence, the opportunity cost of increasing intragenerational justice is negative, while the opportunity cost of increasing intergenerational justice is zero. Generally, all (inefficient) uses of instruments of justice along increasing parts of the JPF correspond to outcomes where attaining one justice to a higher degree facilitates attaining the other one, but not vice versa, so that the former has negative opportunity cost, while the latter has zero opportunity cost.

For example, the opportunity set of Figure two may refer to government spending on education, where a broader educational base decreases income inequality within a generation (intragenerational justice), and at the same time increases prospects for economic growth over time (intergenerational justice).

As the figures and examples illustrate, the shape of the opportunity set may differ from context to context, and with it the relationships between the two justices.³⁴ As the opportunity set is fundamentally determined by natural resource endowment, technology, institutions, etc. (cf. Section III), a change in these fundamental determinants may change the opportunity set and the relationships between the two justices. For example, with given endowment of a non-renewable resource, technical progress in resource extraction would shift the JPF-curve in Figure one outwards.

V. Conclusion

Robbins’ (1932) definition of economics delimits the contribution of economics to the study of normative questions. It does not lie in determining what ends to pursue or in developing the means to achieve a normative objective. Rather, the focus of economic ana-

lysis is on efficiency, i.e. non-wastefulness in the use of scarce resources that have alternative uses as means to attain given normative objectives. “Its (economics) contribution lies in pointing out clearly inefficient outcomes, and in identifying the opportunity costs of moving from one efficient outcome to another.”

Thus, in contexts where there is no scarcity or no alternatives exist, economics does not lend itself to the discussion of normative questions. Yet, many questions of justice arise under conditions of scarcity and involve the freedom to make choices. Such questions can be discussed in economic terms.

Economic analysis of inter- and intragenerational justice builds on three fundamental, and rather weak, assumptions:

- (1) On the “value” side, the two justices are considered by society to be of equal rank.
- (2) For each justice, one can measure the degree to which one attains this justice. This measurement does not need to be cardinal but may be ordinal, and the two justices do not need to be commensurable but the two metrics may be in different units.
- (3) For a given context – specified by natural, technological, institutional factors, etc. – one can describe the outcome of using scarce resources (as instruments of justice) in terms of these measures of the two justices.

With these assumptions, the genuine and original contribution of an economic analysis of justice is threefold:

- (1) Economic analysis can delineate the “opportunity set” of politics with respect to the two normative objectives of inter- and intragenerational justice, i.e. it can describe which outcomes are feasible in achieving the two objectives in a given context, and which are not. The opportunity set includes information on whether the production relationship between the two justices in some outcome is one of rivalry (i.e. trade-off), independency, or facilitation; and it distinguishes efficient from inefficient allocations of scarce resources.

As efficiency, when related to the primary normative objectives of intergenerational and intragenerational justice, is a secondary normative objective, one conclusion for policy-making is straightforward: instruments of justice should be used efficiently; they should not be used inefficiently.

One important conclusion about the production relationship between intra- and intergenerational justice follows directly from the very definition of efficiency. In outcomes of efficient resource use there is always rivalry between the different justices – attaining one justice to a higher degree necessarily reduces the degree to which the other is attained. In contrast, in outcomes of inefficient resource use there is either independency between the two justices – the level of attainment of one justice can be improved without doing worse on the other one, or even both can be improved – or facilitation – improving the level of attainment of one justice necessarily also improves the other one.³⁵

(2) Based on the opportunity set, economic analysis can identify the “opportunity cost” of attaining one justice to a higher degree, in terms of less achievement of the other. Positive opportunity costs of achieving one justice exist if there is rivalry between the two normative objectives of intergenerational and intragenerational justice; negative opportunity costs of achieving one justice exist if there is facilitation between the two justices; opportunity costs are zero if there is independency between the two justices. Generally, negative and zero opportunity costs indicate inefficiency in the allocation of resources, while positive opportunity costs indicate an efficient resource allocation.

(3) Economic analysis can identify how the opportunity set changes as its determinants – natural, technological, institutional factors, etc. – change. In particular, it can study how the occurrence and extent of rivalry, independency or facilitation in the relationship between the two justices changes as underlying determinants change. Hence, it may suggest how to manage these underlying determinants in order to decrease the degree of rivalry and to increase the degree of independency or facilitation.

The economic analysis presented here cannot determine which of the efficient outcomes on the justice possibility frontier is preferable. Moving from one efficient outcome to another means incurring opportunity costs – i.e. furthering the degree of attainment of one normative objective at the cost of the other one. Depending on how the relationship between the two normative objectives is shaped on the “value side”, it might well be acceptable to incur these costs – for example, burdening the presently living with a small tax that would prevent future generations from huge damage.

So, economic analysis can give no clear guidance on how to decide among efficient outcomes – i.e. in the case of rivalry between objectives. Its contribution lies in pointing out clearly inefficient outcomes, and in identifying the opportunity costs of moving from one efficient outcome to another.

These insights can help make an informed decision about how to use scarce resources that have alternative uses to attain the two normative objectives of inter- and intragenerational justice in a non-wasteful manner. This seems to be a valuable contribution for societies facing decisions about the use of scarce resources in view of different normative objectives of equal rank. Of course, this would not make hard decisions easy, but at least efficiently difficult.

Notes

1 WCED 1987.

2 In addition, some conceptions of sustainability also include justice towards nature as a third normative objective of equal rank.

3 This is the standard interpretation of modern economics according to Robbins 1932. For an encompassing discussion of this and other interpretations of economics, see Hausman 2007.

4 This approach, as applied to the three justices included in the vision of sustainability – intra- and intergenerational justice as well as justice towards nature – has been called “sustainability economics” (Baumgärtner / Quaas 2010, Baumgärtner 2011).

5 E.g. Gosepath 2007: 82.

6 Baumgärtner / Glotzbach / Stumpf 2011.

7 This “syntax” is our approach to structuring what has been called the different “dimensions” (Pogge 2006, Dobson 1998, see also Ott / Döring 2008) of the concept of justice. It allows fully specifying a particular conception of justice.

8 Young 1994, Ott / Döring 2008: 59 et seqq.

9 The delineation of the community of justice, especially the question of who is to be included as a claim holder, can be drawn according to different criteria such as reciprocity, dignity, ability to experience pain, etc. (e.g. Baumgärtner / Glotzbach / Stumpf 2011).

10 The third justice often included in sustainability conceptions, justice towards nature, refers to claims held by “nature”, e.g. higher non-human animals capable of experiencing pain or of pursuing goals, against humanity. Thus, the claim holders differ, while the claim addressees belong to the

group of currently living persons in all three cases. While intra- and intergenerational justice reflect an anthropocentric idea of justice, according to which nature matters to humans exclusively because of its instrumental value, the idea of justice towards nature assigns an intrinsic value to nature (Baumgärtner / Quaas 2010: Sec. 2), so that “nature” becomes a claim holder in its own right.

11 “Goods” should be understood in a wide sense.

12 Cf. Baumgärtner / Glotzbach / Stumpf 2011.

13 Pogge 2006: 863.

14 Sensu Dobson 1998: 73 et seqq.

15 Cf. Pogge 2006: 868.

16 LeGrand 1990: 555.

17 Barry 1965: Sec. 1.

18 E.g. Dobson 1998: 3 et seqq., Ott / Döring 2008, Visser ‘t Hooft 2007: 56, WCED 1987: 43.

19 Here, we extend the argument from Glotzbach / Baumgärtner (in press, Sec. 3) which originally refers to justice with regard to the use and conservation of ecosystems.

20 Independency does not need to be symmetric: achieving one objective may be independent of achieving the other one, but not vice versa.

21 This relationship is similar to the concept of “joint production” in economics, which means that the production of a wanted good necessarily gives rise to additional outputs (cf. Baumgärtner et al. 2006).

22 This facilitation may be one-way, or the other way, or a mutual facilitation between the achievement of the two objectives.

23 Like independency and facilitation, rivalry does not need to be symmetric.

24 E.g. Dasgupta / Heal 1979.

25 E.g. Perman et al. 2003: 219 et seqq.

26 Scarcity is generally considered as central to many important problems of justice (Dobson 1998: 12).

27 Robbins 1932: 15.

28 This goes beyond what economists usually consider as ends (cf. Baumgärtner 2011). Traditionally, economics has been concerned with the end of an ever better satisfaction of human needs and wants. This end can be further specified and operationalised as individual utilities (microeconomics), or as policy goals such as low inflation and low unemployment (macroeconomics).

29 According to the original criterion of Pareto (1906), which assesses allocations based on the wellbeing of individual persons, an allocation of resources is efficient if no one can

be made better off (in terms of this person's individual utility) without making anyone else worse off (in terms of the other person's individual utility).

30 LeGrand 1990: 559.

31 A cardinal metric is one that preserves orderings uniquely up to linear transformations; commensurability of justices means that the metric of both justices is in the same units.

32 LeGrand 1990: 560.

33 Here, we study the relationship, including a potential trade-off, between two primary normative objectives. There is also a discussion on the so-called "equity-efficiency trade-off" (surveyed by e.g. Putterman et al. 1998), where equity and efficiency are treated as normative objectives of equal rank. But efficiency – in contrast to equity – cannot serve as a primary normative objective, so that this trade-off is irrelevant (LeGrand 1990: 566).

34 In addition to the two fundamental shapes of the opportunity set discussed here, other shapes are imaginable. For example, the justice possibility frontier may be linearly downward sloping, implying constant opportunity costs in all efficient outcomes. It may also be convex (resulting e.g. from increasing returns to scale in the use of instruments of justice), and the frontier may not even intersect but asymptotically approach the axes. This would imply that the opportunity costs of one justice may rise to infinity. Yet, all insights into the relationships between the two justices and efficiency that are essential for our main line of argument can already be obtained from the two shapes of the opportunity set presented here. We therefore refrain from discussing additional shapes in detail.

35 In the (inefficient) interior of the opportunity set there is always independency; and facilitation can only occur on the inefficient part of the justice possibility frontier.

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Combining Intergenerational and International Justice

by Prof. Dr. Christoph Lumer

Abstract: *The exigencies of intergenerational and of international justice seem to conflict. This paper discusses this problem and develops a solution to it. After criticising several alternative justifications from the literature, a fully universalistic (i.e. universalistic in the temporal as well as spatial dimension) prioritarian welfare-ethic is developed and justified on the basis of our sympathy: first a criterion of moral value is proposed, followed by a conception of moral duties, which relies on socially binding norms and requires to strive for moral efficiency (most moral value for a given effort). Finally, these ideas are applied to determining priorities between several big social agendas. It turns out that, in practice, dimensional conflicts are less prevalent than initially thought.*

Tasks and duties of intergenerational justice seem to conflict with those of international justice. Reducing greenhouse gas emissions in order to maintain a stable climate system seems to require a restriction on economic growth in emerging, and, to a lesser extent, even in developing countries; reducing public debt for the sake of not financially burdening the next generation seems to require cuts in social spending and investment programmes for reducing unemployment etc. Not surprisingly, such conflicts arise in politics because of scarce financial resources. Surprisingly, however, conflicts between the temporal and spatial dimensions of justice, as a consequence of different justifications for extending justice in these dimensions, also exist in philosophical theories of justice. In this paper these conflicts are discussed from an ethical point of view. A theoretical solution of how to resolve them is developed and applied for the purpose of individuating concrete optimum measures and strategies for several open conflicts.

In the first section, philosophical justifications for universalising the domain of justice as well as conceptions of the interrelation between temporal and spatial justice are discussed. In the second section a welfare-ethical, in particular prioritarian criterion of moral value which is universal

in the temporal as well as spatial dimension will be developed and justified. In addition, a conception of what we should do to realise the moral values (in particular, which obligations we have) is developed. In light of the scarcity of moral resources, namely scarcity of moral motivation, a crucial condition for determining our moral commitments is moral efficiency, i.e. to realise maximal moral desirability for a given level of effort. In the third section, this conception is applied to the choices we have with respect to the trade-offs between intergenerational and international justice. Some of the possible and already on-going projects of moral engagement are deemed to be particularly efficient because they are capable of achieving more intergenerational and international justice simultaneously.

I. Dimensions of universality in morals and some universalistic ethics

If one speaks of “universality” or “universalism” in ethics, this most commonly refers to the extension of beneficiaries, i.e. the set of beings who are protected and count as objects of concern for morals. This kind of universality will be henceforth referred to throughout this paper as “beneficiary universality”. There are (mainly) three dimensions in which the set of beneficiaries can be delimited: 1. *the spatial dimension*: whether people of only our country or of all nations count as the objects of moral concern; 2. *the temporal dimension*: whether people belonging to the currently dominant generation, all currently living persons, or beings of all generations morally count; and 3. *the ontological dimension*: which kind of beings are moral beneficiaries: humans, sentient beings, animals or living beings etc.? This paper deals with the spatial and the temporal dimension only. Once being included in the set of beneficiaries, beings may be considered an object of moral concern to a full or partial degree; in particular, people living in distant countries or in the distant future may be included among the beneficiaries but given less weight. In this paper, only morals that give equal weight to all its beneficiaries will

be considered. Universality in both the temporal and the spatial dimension will be henceforth called “full universality”.

There are ethics which are universal in one dimension only, such as John Rawls’ theory of justice, which is beneficiary universalistic in the temporal dimension but nationalistic in the spatial dimension. Although several theoreticians find this incoherent, in the strict sense it is not. Therefore justifying full beneficiary universalism requires justifying universalism in both dimensions. The most ambitious attempt in this direction is probably Thomas Nagel’s (1970) argument, which has been adopted by other philosophers such as Parfit and Broome. The basic idea of his justification is this: persons ontologically consist of person-time slices: me now, me in ten years, you tomorrow, my son in twenty years, the not yet born eldest grandchild of Julio Alexander (from Guatemala) in 80 years etc. Now it is a universally accepted request of rationality to care for one’s later selves, and to give them all the same weight too. However, according to the ontological premise, I will be as separated from myself in ten years as you tomorrow are separated from yourself today and from me today, so the rationality requirement extends to all person – time slices. Thus the rational request of caring for person – time slices different from me today extends to all person – time slices, and, in turn, becomes a way of reaching full beneficiary universalism.

This nice and seemingly strong justification of full beneficiary universalism, however, contains several fallacies. Although it is theoretically unproblematic to consider a person to be composed of time slices, from a biological as well as from a psychological and, in particular, from a motivational perspective, there is a natural continuity between succeeding time slices of the same person, whereas between different persons a clear discontinuity exists. For example, if one of my fingers is cut off today, I will be missing my finger in all my future time-slices. Moreover, my hedonic desires not to suffer but to be happy are timeless (I wish

this today, tomorrow and whenever) and refer to *me* (or to any of *my* future selves). Only because of these desires does the rational requirement to consider our further future as well as our present selves have a motivational basis that makes it acceptable and achievable; and because we often overlook how our desires in the (sometimes distant) future will be affected by some action in the present, to keep the rational requirement in mind makes pragmatic sense.

“The necessary motivating justification of morals cannot rely on a priori reasons; it must instead rest on real rational motives or desires.”

The inverse route of justification – i.e. there is an a priori intelligible requirement to care about all person – time slices different from me now, which then, in a way which is not clear, generates the rational desire to do exactly this – is neither based on a justified principle, since there simply is no valid a priori justification for this rationality requirement, and without such a justification its content appears to be arbitrary and ad hoc, nor can this route generate the desire and motivation out of nothing.

A lesson to be learned from the failure of Nagel's master argument for full beneficiary universalism is that the necessary motivating justification of morals cannot rely on a priori reasons; it must instead rest on real rational motives or desires. Peter Singer's ethics is currently the most prominent defence of full beneficiary universalism, and it is based on rational motives. Singer develops a two-piece strategy of justification, in which the first part justifies a fully universal utilitarian criterion of morality,¹ and the second part provides reasons why to follow it in one's practice. The second part says the following: to use the utilitarian principles not only in one's speech, but also to act on them, is a question of coherence, with the consequence of avoiding uncomfortable hypocrisy;² furthermore, egoism leads to the paradox of hedonism: the egoist is altogether less happy than the altruist.³ The latter argument is then further strengthened by positive considerations: acting for a self-transcendent cause like the perspective of the universe provides sense to one's life.⁴ This line of thought had already been further elaborated by Ernest Partridge: we should identify with and promote self-transcendent (in particular future-related) causes in order to cultivate a rich personality and for the sake

of leaving a work which survives us, even for our own consolation.⁵

This justification leaves open critical questions. The fact that Singer and Partridge, who hold different views in normative ethics,⁶ basically advance the same argument for acting morally, nicely shows that the personally positive effects of devoting much of one's resources to a self-transcendent cause do not depend strongly on the content of that cause. In particular, this implies that the question of how far and in which dimension to extend the set of moral beneficiaries cannot be determined via this route. To give sense to one's life is an important reason and motivation for a strong and active commitment to morals; and good morals, like the ones that will be developed here, should use this resource; but to find sense in this way depends on a prior motivating justification and adoption of some personal morals. One lesson to be learnt from this situation is that Singer's structural layout (providing two justifications) is very strong and should be maintained. However, the systematically primary justification of the moral criteria has to rely on already *motivating* reasons to adopt exactly these criteria as one's personal morals.

II. Justifying a fully universalistic prioritarianism

In criteriological or normative ethics, the currently most prominent and in each case possibly fully universalistic ethic is the group of welfare ethics. These are ethics which define the moral value of an action exclusively in terms of the welfare, utility or desirability brought about by this action for the persons or sentient beings affected by it. The various individual or personal desirabilities are aggregated in some way to one measure of moral value of this action. The different types of welfare ethics differ mainly in how this aggregation is undertaken. *Utilitarianism* simply adds up the individual utilities. *Moderate welfare egalitarianism* first calculates this sum too but then subtracts from it a measure of unequal utility distribution; the higher the inequality, the greater the subtraction. *Prioritarianism* gives desirability changes for people who are generally worse off a greater weight; the worse off people are, the greater the weighting.

Due to the fact that in welfare-ethical criteria of moral value the wellbeing or utility of beings is the only relevant independent variable,⁷ irrespective of spatial or temporal distance, these ethics are in principle

fully universalistic. In addition, they are clear and able to include in their considerations everything which is of value and to balance it against all the other aspects. Therefore, welfare ethics are optimally apt for operationalising full universalism, and, as such, the remainder of this essay will proceed on the basis that they constitute the right general approach.

However, it is always possible to limit the fully universalistic approach of welfare ethics by adding boundary principles or discounting factors. In addition, as just explained, there is a plurality of welfare ethics which imply different preferences with regard to various important questions. So, even if we accept a general welfarist approach in normative ethics, we still have to decide which particular approach to adopt, whether perhaps to limit its universalism and why to accept this particular approach in the first place. Such a decision can only be rationally arrived at with the help of an approach to justifying ethics.

The discussion in the first section, in which various attempts to justify universalistic morals were described, has taught us several lessons. *R(requirement)1: motivating justification*: The prospected justification may neither be intuitionistic (since this is not a justification at all; intuitions are unreliable etc.) nor a priori (because mere a priori considerations cannot provide motivating reasons to adopt and follow moral criteria); it should instead consist of listing motivating reasons to adopt and follow these morals. This implies that the content of such motivating reasons will also shape morals' content. *R2: motivational amplifiers*: The justification should be twofold. Firstly, the moral criterion has to be justified by motivating reasons in such a way that wise moral subjects adopt it and therefore are inclined, to some degree, to follow it. Secondly, further motivating reasons should then be provided and institutions designed which strengthen the motivation to follow the morals (justified in the first step) to a degree that one actually does so in practice. The first step provides the moral "signal" so to speak, the second step "amplifies" it.

However, these specifications are not yet sufficient and selective enough to get the justification of morals started. The considerations undertaken so far (R1 and R2) relate only to formal aspects. Considerations regarding the specific idea, value, aim and function of morals are missing and have to be discussed and fixed. Unfortunately, the

ethical discussion regarding this part of morals is underdeveloped; therefore, the following considerations are much more speculative than what has been developed so far. So what, according to this speculation, is the idea, the aim, and function of morals?

“For defining 'moral value', we have to look for those parts of the moral subjects' prudential desirability functions which are subject universal... there are only very few components of our individual desirability functions which fulfil this condition; the most important is a certain expected sympathy.”

In order to provide an answer to this question, two functionally rather distinct morals have to be distinguished: there are *individual, private morals*, which can be followed by their respective subject individually, and there are *social morals*, which are institutionalised, in particular by social norms. Social morals are binding for everyone and enforced by threats of social sanctions. The aim of individual morals may be to realise one's sympathetic and respect inclinations (i.e. natural altruistic inclinations with a content near to morals) in a systematic and organised way. The function of socially binding morals, on the other hand, could be a kind of *prudential consensualism*: R3: The aim of socially binding morals is, first, to provide an interpersonally uniform and binding value order for a society, i.e. a complete social desirability function, namely the moral desirability function, which, second, is the basis for deciding about conflicts of interests in a binding and socially accepted form, hence has a peace-making function, and which, third, is the basis for determining projects of social cooperation, to be realised collectively.⁸ According to the motivation requirement (R1), the moral desirability function must be motivational and, according to prudential consensualism (R3), it must also be consensual, i.e. equal for all subjects of the moral system; this can be called "*subject universalism*". (Subject universalism says that all the subjects of a moral system have the same moral value function; beneficiary universalism says that the realm of objects who benefit from the moral system is universal.) A motivating form of subject universalism is attainable only if the moral desirability function is (more or less) identical to or follows from the subject universal parts of the moral subjects' prudential

(i.e. rational plus stable) individual desirability functions. In other words, to identify the moral value function, we have to look for those parts of the moral subjects' prudential desirability functions which are subject universal, i.e. (more or less) identical in all moral subjects. There are only very few components of our individual desirability functions which fulfil this condition; the most important is a certain expected sympathy, i.e. the expected desirability of having, as a consequence of some measure to be evaluated, sympathetic feelings for beings one is not personally acquainted with; the respective desire or motive to produce more desirable sympathetic feelings may be called "*sympathy optimising*". For example, for Amy and Bud, Carl eating a nutritious meal may in one respect have the same expected prudential desirability, namely in the respect that this perhaps will make Amy and Bud have the same amount of sympathetic feelings for Carl, i.e. enjoying Carl's moment of well-being. For open-minded subjects (prudence requires open-mindedness), the sympathetic feelings for beings one is not personally acquainted with are not restricted to certain groups of persons, like the citizens of one's community or state; hence, sympathy tends to be beneficiary universal. If

“The question is not whether many or the vast majority of our socially binding or of our personal moral projects should not serve the persons next to us... or why we should devote equal care to all persons ...; the question instead is whether the range of beneficiaries should be limited in principle.”

our sympathetic feelings were proportional to the beneficiary's well-being, the desirability function of expected sympathy would be utilitarian – and this may be what moral sentimentalists defending or tending towards utilitarianism (like David Hume or Adam Smith) had in mind. However, our sympathetic feelings are not proportional to the beneficiary's well-being; negative sympathy, pity, is stronger than positive sympathy, i.e. joy about the other's pleasure and good condition. As a consequence, the desirability function of expected sympathy is not proportional to the beneficiary's well-being but convex: further increases in well-being (over life-time) lead to, taken together, more desirable sympathetic feelings, but the increment becomes smaller and smaller. And

this means that the moral desirability function resulting from its equation with the desirability function of expected sympathy is prioritarian, giving the more weight to improvements the worse off the beneficiaries are.⁹

So subject universalism does not analytically imply beneficiary universalism; but the empirically individuated subject universal desirability function of sympathy optimising tends to be beneficiary universal too. Why should we not curb this tendency within certain limits? To be more precise, the question is *not* whether many or the vast majority of our socially binding or of our personal moral projects should not serve the persons next to us (probably in fact they should do so), or why we should devote equal care to all persons (this would be absurd); the question instead is whether the range of beneficiaries should be limited in principle, i.e. before deciding on single projects. The main reason for not limiting the range of beneficiaries is again the universalistic character of the source of these morals: if we are confronted with the misery of a being beyond the artificially introduced limits, e.g. of national borders, and hence beyond our active concern, sympathy will emerge nonetheless (if it is not blocked by defence mechanisms), thereby rendering our active but curbed sympathy optimising void.

However, we may nonetheless be tempted to curb the range of beneficiaries (e.g. to save costs), accepting the resulting sympathy costs associated with the relatively rare interactions with the sentient beings beyond our official beneficence. There are further reasons why morals should not be limited in this way. In the spatial dimension one finds the nationalist limits on socially binding morals undermine the peacemaking function of morals at the international level; and instead of increasing forces by global cooperation, they lead to the coexistence of various, taken together, often incompatible and hence mutually obstructive projects of different national communities. For example, country A's project is economic growth, for which it needs the estates of country B as well as its raw materials and markets; country B's project is economic development, for which it is best to prohibit the ceding of its estates and to strictly regulate the export of its raw materials as well as the import of mass and luxury products; the result will probably be a trade war between country A and B. Worse outcomes are also possible.

In the temporal dimension, a direct war

between generations who are not living at least to some extent simultaneously is impossible. However, a sort of revolving strife between, on the one hand, the presently dominant middle generation and, on the other, the young and the old generation is clearly possible and, perhaps to some degree, a reality. To strictly confine the range of beneficiaries, however, is more difficult in the temporal dimension than in the spatial dimension because of the permanent change of each possible in-group and out-group, the permanent change of possible coalition partners, and because of the strategically disadvantageous position any such strictly confined group of moral subjects and beneficiaries will end up in – though several gerontocracies show that rather strict temporal confinement, the strategic disadvantage notwithstanding, is possible in cases where the successor generation is confident to inherit all the privileges of the currently dominant generation. In any case, the listed difficulties make moral systems with strictly confined temporal limitations on the sets of beneficiaries unstable. Most of the accomplishments of present generations which are valuable for future generations have not primarily been intended to be so; they pay off already for the present generation and are valuable for future generations only via inheriting goods which are left over but still useful. Nonetheless, in the temporal dimension too, far extending cooperation is possible, namely intergenerational cooperation on long-term projects, with the first cooperating generation reaping only minor profits from the project, whilst later generations are needed to complete it, and the whole project's value exceeds the value of comparable one-generation projects – consider the cultivation of land, the planting of woods, and other very long-term infrastructural projects (tunnel construction, new traffic routes etc.) or, in former times, the building of cathedrals. This presupposes a temporally rather far extended subject universality of the

“For guaranteeing fruitful intergenerational cooperation via socially binding morals, a temporally universal moral desirability function is needed.”

underlying social value function. Though it may seem at first that present generations can, for their own profit, easily and without risk harm future generations (via environmental degradation or resource depletion),

and that, from the temporally extended cooperation just described, these present generations can only encounter disadvantages or, at least, too little in the way of profit, at second glance we may recognise that it is also possible that future generations cancel out the prior generation's projects and hopes – in particular if the projects were intended to serve the prior generation's memory (grateful or admiring memory itself, physical portraits or biographies, mausoleums, idiosyncratic architecture or landscape or social design) or if they were planned perhaps even for future “beneficiaries” but without sufficient subject universality (like much of Stalinist or fascist architecture, megalomaniac nature destruction and “idiosyncratic” social structures like stone age communism or the Millennium Reich). For guaranteeing fruitful intergenerational cooperation via socially binding morals, a temporally universal moral desirability function is needed.

All this shows that the temporal subject and beneficiary universality of socially binding morals are normally better for realising the function of such morals than temporally confined morals. Somewhat different arguments hold in favour of full universality of individual morals. Confining the reach of individual morals is also possible; and it is probably viable to make life meaningful via self-transcendent projects whose significance is narrowly confined to one's spatial and temporal neighbourhood and which are not embedded in universal projects. Why one's personal moral desirability function should be fully universal is mainly a question of personal identity: if one does not want to be provincial (i.e. the significance of one's projects and life to be restricted to one's neighbourhood, the object of one's pride and identification to have only vanishing meaning in a universal context, and the “validity” of one's values restricted to a community of few persons), then full beneficiary universality is the best remedy. The same line of reasoning holds indirectly for socially binding morals too: as requirement R2 states, to be effective, these morals depend on amplifying motives such as self-transcendence, feelings of self-worth etc.; if the range of beneficiaries of socially binding morals is too narrow, such morals are not apt to be adopted as personal morals by subjects with more cosmopolitan ideals; as a consequence, these subjects will not adopt and sustain these morals; and if there is a significant share of cosmopolitan subjects, limited moral conceptions will fail as socially binding morals.

We have so far considered only the moral desirability function, i.e. the evaluative part of morals. Now we have to deal with the normative or instructive part: what shall we do? In axiological ethics (i.e. ethics whose primary moral notion is the concept of moral value, like welfare ethics), moral

“There are strong limits to the possibility of realising new socially valid moral norms – limits produced by political resistance as well as the scarcity of moral motivation among the subjects engaged in sustaining such norms.”

actions serve to realise moral values. However, we are not moral machines which are programmed to always do the morally best; this is simply impossible; and apart from acting morally, we want to have elbow room for our private projects. Therefore, our moral commitment, i.e. the time and resources we dedicate to morals, is limited in principle – the right amount of moral commitment is not of interest in the present context. But if the sense of our moral actions is, nonetheless, the realisation of moral values, then this aim is served better if more moral value is realised, which under the condition of limited resources leads to the request of *personal moral efficiency*: R4.1: the resources the subject is prepared to dedicate to morals should be invested efficiently, i.e. where they produce maximal moral value. This holds for personal morals, but analogously it holds for socially binding morals too. Socially binding morals do not confide (entirely) in the subjects' autonomous motivation for moral action, but introduce norms supported by the threat of social sanctions to strengthen the motivation to act morally; so these norms are again instruments for realising moral values. However, such socially binding norms – whether formal, i.e. legal, or informal norms – do not fall from the sky; they have to be put through by subjects with a particularly high moral motivation, often via a long political process and in the face of resistance, and afterwards they have to be maintained, at least in part, by subjects with a special moral motivation. Hence, there are strong limits to the possibility of emergence of new socially valid moral norms – limits produced by political resistance as well as the scarcity of moral motivation among the subjects engaged in sustaining such norms. If the function of socially binding moral norms is

to realise moral values, this aim is served better if more value is realised, which under the condition of limited resources leads again to a requirement of *social moral efficiency: R4.2*: If new moral norms shall be implemented or old norms reformed, those norms which are politically and technically feasible, and which altogether (i.e. including also surveillance, punishments etc.) produce the highest moral value, shall be realised.¹⁰ Efficiency requirements will often lead to giving priority to those projects that help people who are close (in any respect: physically, mentally, socially, etc.) to us, however, not necessarily and certainly not always. Let us study this in more detail.

III. Efficient moral politics – international and intergenerational

With full universality of morals, for political subjects like states or alliances of states a huge variety of possible long- and short-term interventions or projects to institutionalise new norms or to reform old ones for moral improvement, i.e. welfare increase, become imaginable. Since not all projects can be realised, they compete with each other. In particular, conflicts between present-day national, international and intergenerational concerns (i.e. who will be the primary beneficiaries) are possible and should be expected. According to the theory developed earlier, the presupposition for taking an option into consideration is whether it is technically feasible and politically enforceable; and the criterion for deciding between the remaining options is their moral efficiency: more efficient projects shall be realised first. “Moral efficiency”, more precisely, is usually conceived as the cost-welfare ratio, i.e. the resources invested for realising a given project divided by the moral value produced by it; the lower this ratio is (i.e. if the project is relatively cheap), the higher is the project’s efficiency.¹¹ The usual units for measuring resources of all kinds in a comparable and uniform way are monetary units, e.g. US-dollars (= USD). The units of moral value are *morally and quality adjusted life years*, or “(m)QALYs” for short: for calculating the moral value of the life of a certain person, first, the mean well-being of this person has to be established (via many interviews or via inferences from empirical results about the usual well-being of persons in the same situation) and expressed in per cent of the social mean well-being (so 50% or 0.5 means that the respective person is only half as happy as the rest of the population);

second, this personal mean is multiplied with the person’s (expected) lifespan; the result is the personal value of this person’s life, measured in QALYs – which is a measure of the personal utility. Third, depending on the moral criterion used, the personal utility has to be translated into a moral value via a moral value function; in the case of prioritarianism, this is done via a concavely increasing (i.e. less and less increasing) weighting function; the result is the moral value of the person’s life, measured in prioritarian QALYs (= pQALYs). Finally, for determining the moral value of a certain action, the moral value of the affected person’s life with that action is subtracted from the value it has without that action. In the following, utilitarian cost-welfare ratios, where the welfare is measured in terms of quality adjusted life years (USD/QALY), as well as prioritarian cost-welfare ratios, where welfare is measured in priority weighted quality adjusted life years (USD/pQALY), will be provided. The values

“Much of world poverty and social disintegration is not simply a consequence of so far insufficient economic and social development, but of missing or, even worse, counteracting executive or other power structures led by self-enriching regimes or political castes.”

of USD/QALY and of USD/pQALY are not directly comparable; only values of the same measure can be compared, and then express (inverse) relative preferability.

The following assessments are based on some rough estimates I have developed in other publications; they are not very exact, but give an idea of the order of magnitude. Mere present-day national actions, like reduction of public debts or income redistribution (e.g. for social assistance or provision of basic health, programmes against unemployment, in particular youth unemployment, programmes for better education, programmes for igniting economic growth etc.), although, of course, immensely important, will not be discussed here because the respective efficiency orders even among OECD countries vary greatly due to differing circumstances. The following list of international and intergenerational projects is ordered roughly according to their moral efficiency, more efficient projects are presented first.

1. *Allowances against starvation*, in particular in cases of endemic famines, restore the

hungry person’s original life expectancy with the help of a relatively minor contribution over a limited period; hence within a population, such measures donate to its members, on average, half the life expectancy at birth of that population, e.g. 30-35 years. According to a very rough estimate, the efficiency during the supply period alone is about 784 USD₂₀₁₀/QALY, or 395 USD₂₀₁₀/pQALY;¹² this figure is still radically reduced if, after some relatively short allowance period, a return to normal life is possible (e.g. if the alimentary phase lasts one year in a region with a life expectancy of 60 years, then the just indicated amount would have to be divided by 30, thus reaching 26 USD₂₀₁₀/QALY and 13 USD₂₀₁₀/pQALY). If measures of this sort are necessary and possible, they should be given top priority.

2. *Creating a well-ordered state* is to erect a sovereign political and administrative public power with an effective and law-abiding state machinery devoted to the citizens’ welfare and which respects human rights and the law of peoples and, at best, is liberal and democratic too.¹³ Much of world poverty and social disintegration is not simply a consequence of so far insufficient economic and social development, but of missing or, even worse, counteracting executive or other power structures led by self-enriching regimes or political castes, which for ensuring their power tend to suppress political opposition or social minorities.¹⁴ The overturning of such regimes and the creation a well-ordered state – via measures ranging from insightful reforms by enlightened leaders over peaceful or violent revolutions by a competent opposition, to humanitarian interventions – may liberate political, social and economic potentials, which lead to fast development. Foreigners can support such processes in various ways, beginning with materially helping and instructing the opposition, providing retreat possibilities etc. The last resort can be humanitarian intervention, which does not only protect the victims of crimes against humanity, but, at best (especially if strong and competent opposition forces are present), also overturns an inhuman regime and initiates the progression towards a well-ordered state. Although humanitarian interventions, like wars in general, are tremendously expensive, it is possible, under such conditions, that they are morally quite efficient due to their long-term political, social and economic benefits. (The Kosovo intervention, which did not only protect and liberate the Kosovars,

but also led to the fall of the nationalist Milosevic regime, is an example in kind. According to a rough calculation, the moral efficiency of the immediate humanitarian effects of this intervention – mostly by preventing genocide – was 9426 USD₂₀₁₀/QALY or 9775 USD₂₀₁₀/pQALY.¹⁵ Adding the moral value of the further political and economic benefits (which are very hard to estimate), i.e. the so-called peace dividend, these values are further reduced considerably. To avoid misunderstanding, it has to be added that neither the Afghanistan nor the second Iraq war were humanitarian interventions; their moral values are debatable; and, if they have a positive moral value, their cost-welfare ratio will be tremendously higher than the ratio calculated for Kosovo.)

3. *Development aid*, at least when it is well planned, goes beyond feeding the poor, i.e. providing some sort of permanent social assistance for increasing the income of the poor somewhat above the absolute poverty line – which, again according to a very rough estimate, may cost 6106 USD₂₀₁₀/QALY or 4384 USD₂₀₁₀/pQALY;¹⁶ such social assistance is only a fallback position for development aid. Good development aid accomplishes a certain level of economic and agricultural development, mass and elite education, decent health and life expectancy etc. together with the respective infrastructures in such a way that the country developed so far can guarantee a minimum level of prosperity to all its citizens and is no longer dependent on foreign help. There are excellent development aid

“The possible conflict between the exigencies of international and intergenerational justice within this group of measures is nearly non-existent in practice.”

projects which are highly efficient, impressively more efficient than the values for social assistance just given – e.g. medical assistance for visually impaired or handicapped people, which in extreme cases makes a blind person see for 40 USD, thus reaching an efficiency of up to less than 2 USD₂₀₁₀/QALY, or projects of housing and educating street children, or vaccination or AIDS prevention projects. However, these seem to be the cherries on the cake, whereas the mass of developmental aid is much more awkward, much less efficient, and, in parts, even detrimental, often as a consequence of the problems touched upon under point 2,

or because exploitation is camouflaged as development aid or help is given without feedback.¹⁷ Looking for efficiency whilst keeping in mind the respective traps, the efficiency of development aid should not lag far behind that of creating a well-ordered state.

4. *Fighting climate change and its consequences* is another big topic on the international agenda. Anthropogenic climate change has very few positive consequences (like extending cultivable land towards the poles in some regions of the world) but a huge variety of massive negative impacts – like extending malaria, increasing and aggravating hot spells and hurricanes, the submerging of low islands by the sea, etc. The worst effects, however, will probably result from the aridisation and desertification of former cultivable land, which lead to the displacement, migration and often pauperisation of the affected population, to more famines, increases in the price of food and hence an enormous growth of the number of the absolute poor. With “business as usual” these effects may lead to an additional 4 million casualties per year in the second half of this century.¹⁸ The most important countermeasure, reducing greenhouse gas emissions, requires radical technical improvements at considerable costs, which, however, will, in any case, be inevitable one day. A rough estimate says that sustainable reduction of greenhouse gas emissions to the 1990 level (with discounting future costs by 3% per year) may cost 10268 USD₂₀₁₀/QALY or 9380 USD₂₀₁₀/pQALY.¹⁹ The vast majority of victims of business as usual will live in poor countries; and its worst effects will be brought about by aggravating the situation of the poor. Conversely, this means that development aid also mitigates several bad effects of climate change and makes this aid still more efficient.

In order to give an idea of the efficiency of the programmes just discussed, these have to be compared with measures undertaken in rich countries. Some examples are: social assistance in the U.S., i.e. raising income of people slightly below the poverty line, has a cost-welfare relation of 53939 USD₂₀₁₀/QALY or 51710 USD₂₀₁₀/pQALY;²⁰ reducing taxes of the very rich (more than 1 million USD annual income) or increasing top investment bankers’ bonuses has a cost-welfare ratio of at least 10 million USD₂₀₁₀/(p) QALY; mostly, however, this ratio (more precisely: the limit of this ratio as the starting income approaches 75000 USD₂₀₁₀/

year) is infinite (i.e. the beneficiary’s well-being does not increase at all²¹) and sometimes negative (i.e. the beneficiary’s well-being decreases via the usual disasters of greed).

The comparatively much higher efficiency of the international and intergenerational projects discussed above (as compared to national present-day projects) is to a great extent due to the fact that the beneficiaries of these measures are, at least to a large extent, poor people in poor countries. This has three efficiency increasing effects: 1. because of the lower income, the marginal utility of income increases is higher; 2. purchasing power of money from rich countries in these countries is much higher than at home; 3. prioritarianism attributes more moral value to welfare increases for people who are worse off. One question posed by this paper is whether international and intergenerational justices of beneficiary universality are in conflict with each other. From the great projects discussed, only allowances against starvation have beneficiaries outside the present-day national range in only one dimension: the spatial. The other three projects have beneficiaries in both dimensions discussed here. Their high efficiency originates to a large extent from the fact that at least an important share of their beneficiaries are poor people or badly off for other reasons and that the measures have structural consequences with long lasting beneficial effects for future generations. Therefore, according to this assessment, within this group of measures the possible conflict between the exigencies of international and intergenerational justice is nearly non-existent in practice.

Notes

1 Singer 2011: 87-124.

2 Singer 2011: 142-145.

3 Singer 2011: 145.

4 Singer 1993: ch. 10-11.

5 Partridge 1981.

6 While Singer is a utilitarian, Partridge in his paper mainly defends a – not further qualified – moral requirement to care about the distant future (Partridge 1981: 204). In addition, Partridge, who sees the problem much more from a psychological point of view, provides empirical evidence that self-transcendence is important for everybody but can be obtained by caring for various concerns, including concrete others, even patriotism or religious ideals (Partridge 1981: 208).

7 Welfare ethics define the moral value of some state of affairs p as a function (e.g. the

sum) of all the personal utilities of that p for the single sentient beings. So, for determining the moral value of p we need only to know these personal utilities of p for the various individuals, but no other facts like the time or place of living of the respective subjects. Time and place of living can and do influence the moral value – it usually makes a difference in moral value if poor Julio Alexander from Guatemala or (relatively) rich Bill from the States receives 1000 USD left over somewhere – but only indirectly via the personal utilities of the persons affected – in the example, because Julio Alexander will have a much higher utility from these 1000 USD than Bill – and not because the place of living counts in itself for the welfare-ethical moral value. This is different e.g. in nationalist ethics, where belonging to a certain nation in itself leads to giving more moral weight to the respective person's fate.

8 Lumer 1999: section 3.
 9 Lumer 2009: 589-632.
 10 Lumer 2002: 93-95.
 11 This way to measure efficiency is a bit confusing because a higher value of the cost-welfare relation (i.e. higher costs for the same welfare) means lower efficiency. The inverse relation, i.e. the welfare-cost relation, fits better to the ordinary meaning of "efficiency" because a higher value of the welfare-cost relation (i.e. more moral value for the same investment) now means more efficiency. However, the substance does not change; the same order of preferences is only expressed in a different way, and it is important to keep in mind that lower cost-welfare relations are more efficient, hence preferable.

12 Lumer 2002: 82. The prices given are prices of 1990; they are corrected here and in the following according to the U.S. general consumer price index: U.S. Census Bureau (ed.): The 2012 Statistical Abstract. Last modified September 27, 2011. Table 725, p. 474. <http://www.census.gov/compendia/statab/2012edition.html>. Viewed 3 November 2011.

13 This definition goes beyond Rawls's (1999) introduction, since it stresses the state's effectiveness, law-abidingness and devotion to the citizens' welfare, which excludes self-enrichment, nepotism, corruption, and power vacuums as well as disorganisation.

14 Landes 1998.
 15 Lumer 2009: 329-333; 338-340. The 1999 price given here has been corrected as described in note 11. The USD/QALY

values have been converted into USD/pQALY values following the method explained in Lumer 2002: 65-71.
 16 Lumer 2002: 82.
 17 Easterly 2006.
 18 Lumer 2002: 26.
 19 Lumer 2002: 81; prices adjusted as explained in note 11.
 20 Lumer 2002: 82.
 21 Kahneman / Deaton 2010.

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Antonin Scalia's Constitutional Textualism: The Problem of Justice to Posterity*

by Dr. Bruce E. Auerbach and Michelle Reinhart

Abstract: Antonin Scalia defends his textualist approach to interpreting the Constitution by asserting that the purpose of the Constitution is to restrict the range of options open to future generations by enshrining institutional arrangements and practices in constitutional mandates or prohibitions. For this purpose to be fulfilled, justices of the Supreme Court must read the language of the Constitution according to its original meaning. We argue there is little reason to believe that Scalia's understanding is correct. Neither the language of the Constitution nor the writings of Jefferson or Madison are consistent with Scalia's interpretation. More importantly, the goal Scalia posits, of seeking to restrict the range of options open to future generations, is intergenerationally unjust.

I. Introduction

United States Supreme Court Justice Antonin Scalia's approach to constitutional interpretation, which he calls "textualism", is as controversial as it is influential. On the one hand, its conservative supporters regard endorsement of textualism as a virtual requirement for confirmation to the federal bench. On the other hand, critics point out that Scalia's approach is entirely extra-constitutional,¹ and that historical meanings are sufficiently obscure and open to interpretation to allow Scalia to tailor textual interpretation to his policy preferences.²

Justice Scalia has defended his theory of constitutional interpretation against his critics vigorously in articles, speeches, and Supreme Court opinions. Scalia justifies his

"The very purpose Justice Scalia posits for the Constitution – to bind future generations to the institutions and limitations on the use of power the Framers thought appropriate – constitutes an injustice to future generations."

"textual originalism"³ by the assumption that the purpose of the Constitution is to restrict the range of options open to future generations by enshrining in constitutional

mandates or prohibitions the institutional arrangements and practices of the Framers' generation.⁴ For this purpose to be fulfilled, the justices of the Supreme Court must read the language of the Constitution according to its "original" meaning. In some situations, Scalia suggests, there will be disagreement as to the original meaning. In other situations

there will be disagreement as to how that original meaning applies to new and unforeseen phenomena. ... But the difficulties and uncertainties of determining original meaning and applying it to modern circumstances are negligible compared with the difficulties and uncertainties of the philosophy which says that the Constitution changes, that the very act which it once prohibited it now permits, and which it once permitted it now forbids; and that the key to that change is unknown and unknowable.⁵

The question we raise is whether Antonin Scalia's understanding of the purpose of the Constitution is correct, and if so, whether it would be legitimate. Applying concepts from the literature on intergenerational justice, we argue that the very purpose Justice Scalia posits for the Constitution – to bind future generations to the institutions and limitations on the use of power the Framers thought appropriate – constitutes an injustice to future generations. Moreover, neither the text of the Constitution nor the writings of the Framers support the understanding of the purpose that Justice Scalia ascribes to the Framers. The institutions and limitations on power they incorporated into the Constitution did not have the primary purpose of restricting future generations, but rather of restricting themselves. They understood, of course, that if the Constitution were successful and endured, future generations would inherit that document and the institutions it created. They fervently hoped that future generations would view their actions as wise and beneficial; but the Framers did not claim to act in the name of future generations, nor did they act with the

explicit purpose of binding future generations to the constitutional arrangements they created.

We argue that the absence of any language in the document itself indicating that the Constitution was ordained in the name of future generations, or any statements that it was established to bind future generations, weakens Antonin Scalia's claim that the Constitution must be interpreted

"Antonin Scalia's view that the role of the judge is to reconstruct and impose the original meaning of the language of the Constitution... represents an intergenerationally unjust approach to constitutional interpretation."

according to the 'original' understanding of the text, when that understanding no longer makes sense to us. The Framers were not in a position to foresee the needs of future generations, nor the circumstances in which their descendants would live; nor could they have understood the values of their remote descendants, or their linguistic usages. Consequently, it would have been unjust of the Framers to have bound future generations to the constitutional arrangements they established, without providing the flexibility to reinterpret the Constitution in a manner that made sense to later generations.⁶ The amendment process alone is insufficient. The ability of future generations to reinterpret the Constitution for themselves is essential to the intergenerational legitimacy of the Constitution.

We argue that Antonin Scalia's view that the role of the judge is to reconstruct and impose the original meaning of the language of the Constitution, even in situations in which that meaning is no longer accepted, represents an intergenerationally unjust approach to constitutional interpretation. If the Framers did not in fact seek, and could not legitimately have sought, to bind future generations to their understanding of the Constitution, it is difficult to understand on what authority current members of the U.S.

Supreme Court would bind us to abandoned moral and linguistic understandings, such as the standards for “cruel and unusual” punishments or “due process of law” that prevailed in 1787.

II. Antonin Scalia’s Approach to Constitutional Interpretation

Antonin Scalia advocates what he calls a “textualist” approach to the interpretation of the Constitution. Textualism consists of interpreting a statute or the Constitution according to “the original meaning of the text.”⁷ Scalia contrasts his commitment to interpreting a text based on the original meaning of the text’s language with both the search for the (original) intent of the authors of the text, and the view that a document ought to be interpreted according to its current or evolving meaning.

Antonin Scalia rejects the search for the original intent of the draftsmen of a law or the Constitution, and claims also to have long ceased using legislative history to discover the intent of the drafters in deciding cases.⁸ Scalia contends that textualism is very different from original intent. The doctrine of interpreting the Constitution according to the original intent of the Framers had been advanced by former Reagan Attorney General Edwin Meese and other political conservatives as a response to liberal judicial activism of the 1960s and 70s. Their approach had also been subjected to a number of devastating critiques. Among the problems critics point to is the difficulty of determining whose intent ought to be counted, those who wrote the Constitution or those who ratified the Constitution?⁹ Other critics point to the difficulty of determining what the ratifiers’ intent was when the text is not clear, and when there is only unreliable evidence, at best, of their thinking about a particular passage.¹⁰ Antonin Scalia rejects the search for original intent, in interpreting both the Constitution and legislation, but he retains Edwin Meese’s goal of making the Constitution a bulwark against an expanded understanding of individual rights.

For Scalia “the Great Divide with regard to constitutional interpretation is not that between the Framers’ intent and the objective meaning of the text, but rather between original meaning (whether derived from Framers’ intent or not) and *current* meaning.”¹¹ His strongest criticisms are reserved for those who espouse the view that the Constitution ought to be understood as a living document whose meaning changes over time. This view “... frustrates the whole

purpose of a written constitution.”¹² If laws were meant to change meaning and application over time, Scalia argues, it would make more sense for old restrictions to be lifted instead of new restrictions added, but just the opposite is the trend in modern constitutional law. “*Less* flexibility in government instead, not *more*... No, the reality of the matter is that, generally speaking, devotees of The Living Constitution do not seek to facilitate social change but to prevent it.”¹³ Nor is it necessarily the case that the Constitution “evolves” in the direction of greater individual rights. We value some rights, such as property rights and the right to bear arms, less than the Founders did.

But this just shows that the Founders were right when they feared that some (in their view misguided) future generation might wish to abandon liberties that they considered essential, and so sought to protect those liberties in a Bill of Rights. We may *like* the abridgement of property rights and *like* the elimination of the right to bear arms; but let us not pretend that these are not *reductions of rights*.¹⁴

Justice Scalia argues that the correct way to interpret the Constitution is textualism. This approach, he claims, removes subjectivity from the Court’s decisions.

In some sophisticated circles, [textualism] is considered simpleminded—“wooden,” “unimaginative,” “pedestrian.” It is none of that. To be a textualist in good standing, one need not be too dull to perceive the broader social purposes that a statute is designed, or could be designed, to serve; or too hide-bound to realize that new times require new laws. One need only hold the belief that judges have no authority to pursue those broader purposes or write those new laws.¹⁵

III. Constitutions and Intergenerational Justice

The decision of a generation to establish specific institutions and to place some question beyond the purview of the majority of its current citizens is an act of sovereignty and self-governance, insofar as those decisions affect themselves and their contemporaries, and if they have a meaningful say in adopting that instrument and if they consented to the terms of that

document.¹⁶ The situation is very different with respect to future generations. Future generations cannot be consulted about the terms of a constitution, nor can they give their consent to that document, except long after it was written and adopted. At that point consent to the Constitution is not free and voluntary, but constrained by the very existence of the Constitution and the institutions that rest upon it, and by the dangers posed by abandoning those institutions.

“Had the Framers claimed to have acted in the name of posterity, there would be grounds for holding that the Constitution is an intergenerational contract... the Framers made no such claim, and surely they would have seen such a claim as hubristic.”

Significantly, the Framers “ordained and established” the Constitution in the name of “We the People of the United States” and not in the name of themselves and their posterity. The Preamble does clearly express the hope that the Constitution will secure “the Blessings of Liberty to ourselves and our Posterity.” But a concern with securing the Blessings of Liberty to the present and future generations is very different from claiming the authority to establish the Constitution in the name of posterity. Had the Framers claimed to have acted in the name of posterity, there would be grounds for holding that the Constitution is an intergenerational contract, binding on later generations. But the Framers made no such claim, and surely they would have seen such a claim as hubristic and illegitimate.

When a people adopt a constitution, and specifically when they choose to protect certain rights and privileges in that constitution, they place those matters beyond the purview of the ordinary legislative process and the power of the majority to alter them through the ordinary democratic process. If a constitution is to be seen as legitimate, the decision as to which rights to protect and which rights to leave to the democratic process should reflect accurately the fundamental values of the founding generation. As generations pass, however, the assumption of congruence between the values and the circumstances of the founders and those of their descendants becomes increasingly problematic. The further removed a generation, the greater the likelihood that there will be significant differences between the moral

concepts and values of the two generations.¹⁷ For this reason, justice to future generations generally requires that the present generation *not* seek to limit the choices and options of their descendants whenever possible. Justice to future generations certainly requires that the present generation not seek to enforce its preferences on future generations, assuming that were possible. Although we should not be indifferent to the types of choices future generations may face, we have an obligation to respect the autonomy of future persons, and not to seek to limit their choices unnecessarily, nor to make choices for them that they are capable of making for themselves.

Antonin Scalia's argument that "the whole purpose [of a constitution] is to prevent change – to embed certain rights in such a manner that future generations cannot readily take them away"¹⁸ ought to give one pause. On the one hand, it is quite clearly legitimate, even desirable, to establish institutions that are just and to leave them as a heritage for future generations. To the extent future generations find valuable and good the institutions they have inherited or established, a strong case can be made that they have an obligation to preserve those institutions both for their own benefit and for

"In order for a constitution to be intergenerationally just, the authority of future generations to reinterpret the document based on their understandings and values must be acknowledged and preserved."

the benefit of future generations. On the other hand, people who establish or preserve institutions as a heritage for future generations must also recognize that future generations may not share their judgment of the worth of those institutions.

The dilemma of constitutionalism is that the mechanisms that protect the rights of contemporaries against legislative majorities who want to take these rights away also make it difficult for future generations to adapt the Constitution to their potentially very different circumstances. As we argue later in this article, in order for a constitution to be intergenerationally just, the authority of future generations to reinterpret the document based on their understandings and values must be acknowledged and preserved.

For this reason, to establish institutions and procedures *for the purpose* of limiting the

choices of future generations is, in and of itself, an act of injustice to future generations, unless there are extraordinary reasons for doing so. Future generations have the right to decide for themselves which institutions are worthy of preservation, and which should be changed or even abolished. This right is not absolute; future generations are obligated to consider the consequences of abandoning established traditions and institutions, especially the consequences for their posterity of abandoning the institutions they have inherited. But the right of future generations to their own judgment of the worth of the institutions they inherited, and their right to act on that judgment, are inalienable. The commitments and actions of past generations cannot take away this right, and every generation has the corresponding obligation to respect and preserve these rights by not seeking to bind posterity to their ancestors' conception of the good. Each generation is thus at liberty to alter or even abandon the commitments of its ancestors, subject to the obligation to consider the consequences of those actions.¹⁹

Thomas Jefferson and James Madison both express very much this view in correspondence they exchanged in 1789 and 1790.²⁰ In a letter dated September 6, 1789, Jefferson poses the question whether a generation has the right to bind a later generation. Jefferson answers that no such authority can exist. He considers it self-evident "*that the earth belongs in usufruct to the living;*" that the dead have neither powers nor rights over it.²¹ Jefferson goes on to argue that "no society can make a perpetual constitution, or even a perpetual law. The earth always belongs to the living generation. They may manage it ... and what proceeds from it, as they please, during their usufruct.... The constitution and the laws of their predecessors extinguished them, in their natural course, with those whose will gave them being."²²

No clearer repudiation of Scalia's claim that the purpose of the Constitution is to bind future generations to the judgments of the past could be asked for. Of course, Jefferson was not at the Constitutional Convention in Philadelphia, and for this reason is not considered to be one of the Framers of the Constitution. But Madison was at the Convention and is generally considered to be the principal architect of the Constitution. While Madison espouses a more flexible position in his response to Jefferson, he largely accepts the validity of Jefferson's

argument. He raises a number of practical objections, including that periodic revisions of the Constitution would render government "too mutable to retain those prejudices in its favor which antiquity inspires."²³ Madison also argues that debts incurred to make improvements in the natural state that benefit future generations are valid obligations of future generations, and ought to be paid by them.²⁴

Nonetheless, Madison agrees with Jefferson's assertion that the validity of national acts generally should be limited to the life of the generation that enacted them. And Madison states that keeping this principle in view in the proceedings of government would serve "as a salutary curb on the living generation from imposing unjust or unnecessary burdens on their successors."²⁵ Clearly, both Jefferson and Madison would reject Antonin Scalia's claim that the "whole purpose [of the Constitution] is to prevent change—to embed certain rights in such a manner that future generations cannot readily take them away."²⁶

A generation ought to preserve those inherited institutions it finds to be beneficial and worthy of passing on to posterity. They may even choose to perpetuate the institutions they have inherited out of familiarity and habit. But future generations should see themselves as having greater leeway than their ancestors to change and adapt institutions they have inherited to their needs. The lack of contractual obligation is only part of the reason for this greater leeway. Future generations are also in a better position to judge how constitutional arrangements have worked over time and how they continue to work. As Plato argued long ago, the user of an instrument will speak of its merits and defects with knowledge that the instrument maker does not possess.²⁷

The most important reason future generations may choose to alter inherited institutions is that these institutions have ceased to be useful in addressing the needs of a changing society. It is impossible for even the wisest founders to foresee the nature and direction of change in society. For that reason alone, institutions and practices must be able to be adapted to the inevitable changes in conditions and values. The greatest flexibility to adapt to change is found in the power to legislate in broad areas for the public welfare. On the other hand, the power of Congress to legislate is limited in a number of ways, including by prohibitions in the Constitution and the Bill of Rights,

by the general requirement that the power to legislate be fairly traceable to a grant of power to Congress by the Constitution, and by interpretations of the Supreme Court.

The constitutional amendment process has been used for great matters and sometimes for small ones. The post-Civil War amendments (XIII, XIV and XV) laid the groundwork for greater equality and civil rights in the United States. But the Amendment process has also been used four times to tweak the way the United States selects its presidents (XII, XX, VVII, XXV). Although constitutional amendments rest on a more solid foundation than laws or constitutional interpretations by the Supreme Court, the amendment process is notoriously cumbersome. More than eleven thousand proposals to amend the United States Constitution have been introduced in its history, but only twenty-seven amendments were adopted.²⁸

The power to adapt the Constitution by reinterpretation has proved to be as important as the amendment process in preserving the United States' political system. The power of the federal government to levy taxes on income was expanded by constitutional amendment, but the equally critical power to regulate the economy came about by way of reinterpretation of the commerce clause by the Supreme Court in 1937. The application of the Bill of Rights to the states is rooted in the 14th Amendment, but it is rooted just as much in the judicially created doctrine of the selective incorporation of the fundamental provisions of the Bill of Rights. The United States Constitution has survived more than two centuries both because it has been amended and because the Supreme Court has reinterpreted key clauses of that document in ways that facilitate adaptation to changed values and circumstances.

It is precisely this ability to reinterpret the Constitution in light of experience that Justice Scalia would deny. By limiting the meaning of the Constitution's language to its meaning at the time it was adopted, Scalia decouples the meaning of the language in the Constitution from changes in meaning in daily use. At the same time Scalia would deny justices the ability to reinterpret the provisions of the Constitution in light of experience.

IV. Scalia's Textualism and Intergenerational Justice – Conclusion

Antonin Scalia's argument that it would have been legitimate for the Framers of the

Constitution to seek to bind the hands of their descendants for their own good, and that the Framers actually sought to do so, turns the Constitution into an intergenerational contract or covenant whose purpose is to bind all generations of Americans to terms set down by the Framers, subject to change only by constitutional amendment. This understanding of the nature of the Constitution underlies Scalia's textual originalism. It requires justices to view their role as one of reconstructing the original meaning of the Constitution and applying that understanding to the constitutional review of current laws and policies.

“One can accept that the Constitution of the United States is an intergenerational compact, without accepting the radical view of that compact espoused by Scalia.”

One can accept that the Constitution of the United States is an intergenerational compact, without accepting the radical view of that compact espoused by Scalia. A far more moderate position is that by establishing a constitution that limits the powers of government, the Framers inevitably restricted the choices of future generations. This position is consistent with the understanding of Edmund Burke that the (British) Constitution is an intergenerational covenant embodying the accumulated wisdom of a people.²⁹ Burke's position is also consistent with a more humble approach to constitutional interpretation that requires judges to weigh the effects of past interpretations of the Constitution on society, and to modify those interpretations that have proven harmful. This view of the role of the Supreme Court has attracted the support of both liberal justices and traditionally conservative justices such as John Marshall Harlan (the younger). In *Gideon v. Wainwright* (372 U.S. 335 (1963)), for example, Justice Harlan was willing to abandon the rule the Court had handed down twenty-one years earlier in *Betts v. Brady* (316 U.S. 445 (1942)), largely because he was convinced that rule had proven unworkable.

Antonin Scalia rejects an evolutionary and pragmatic approach to constitutional interpretation, in part because the U.S. Constitution, unlike the British Constitution, is a written document. But he also rejects an evolutionary view because he understands the Constitution to have been established for the purpose of binding the

actions for future generations of Americans. For Scalia, the terms of this compact can be applied correctly only by reconstructing the meaning of its language as it was understood at the time it was written.

We have argued that Antonin Scalia's approach to constitutional interpretation places an undue and illegitimate burden on the present generation. As a practical matter, exclusive reliance on the Amendment process has proved unworkable. The U.S. Constitution has changed as much by judicial interpretation as by amendment. But Scalia's theory of constitutional interpretation is not merely impractical. It also rests on an intergenerationally unjust model of constitution making. It would not have been legitimate for the Framers of the Constitution to have attempted to impose their values on future generations, by deliberately restricting the choices of their descendants, as Scalia argues they did.

None of this undermines the validity of intergenerational compacts such as constitutions, or other policies likely to affect persons well into the future. Constitutions are important – even essential – devices for shaping political institutions and preserving fundamental values. Moreover, we agree with Madison that constitutions are by their nature inherently intergenerational. If they are successful, they will endure and shape politics into the future, while at the same time restricting the range of available choices open to our descendants. On the other

“There is no reason to think that either we, or the Framers of the Constitution, were endowed with the superhuman wisdom required to justify interpreting the Constitution as a covenant... whose terms are fixed by their meaning at the time it was adopted.”

hand, when we adopt policies that affect future generations, the uncertainty we have respecting the effects of our actions and their impact on future persons requires that we avoid substituting our judgment for theirs whenever possible, and that we err on the side of increasing, rather than decreasing, the range of choices open to future generations.

The question is not whether the present generation may adopt policies that incidentally restrict the choices of future generations by adopting institutions and practices they see as beneficial to themselves. Rather the

question is whether the present generation may deliberately seek to restrict the choices of its descendants, a purpose Antonin Scalia espouses and attributes to the Framers of the United States Constitution. There is no reason to think that either we, or the Framers of the Constitution, were endowed with the superhuman wisdom required to justify interpreting the Constitution as a covenant, binding on future generations, whose terms are fixed by their meaning at the time it was adopted. This certainly was not the understanding of the Constitution reflected in the writings of Jefferson and Madison, and it is not an approach that can withstand analysis as an application of the principles of intergenerational justice. There is good reason to conclude that Antonin Scalia's position is wrong both historically and ethically, and should be rejected.

Notes

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1 Breyer, B 2005: 117.

2 Tribe, L 1997: 68-71. Tribe questions whether one could actually discover a better or more correct understanding of the Constitution by simply meditating on it. He does not believe one can determine the level of abstraction or the "empirical facts about what a finite set of actors at particular moments in our past meant to be saying" (68) even with the use of complicated tools such as biography and psychology. Nor does he believe that all constitutional clauses may be neatly defined as either specific or abstract and that whether a clause is seen as specific or abstract may change over time. The thrust of Tribe's critique of Scalia is that with so much wiggle room for interpretation in discovering the meaning and mode of the law, it is difficult say whether Scalia is espousing law or his own judicial aspirations disguised in fanciful explanations of history.

3 Scalia, A 2003. In a speech delivered in Washington, D.C. on October 18, 1996 at The Catholic University of America, Antonin Scalia describes himself as belonging to a small but hardy school, called "textualists" or "originalists." We have taken the liberty of combining the two terms in describing Scalia's approach to interpreting the Constitution.

4 Scalia, A 1997: 23.

5 Scalia, A 1997: 45-46.

6 If the Framers did not, and could not legitimately, have bound future generations to their understanding of the Constitution, then it is even more difficult to justify the efforts of some current members of the Court to use interpretations of the Constitution to bind us to abandoned moral and linguistic understandings.

7 Scalia, A 1997: 38.

8 Scalia, A 1997: 36.

9 Logfren, C. A 1990: 117-150.

10 Hutton, J 1999: 151-178.

11 Scalia, A 1997: 38.

12 Scalia, A 1997: 12.

13 Scalia, A 1997: 42.

14 Scalia, A 1997: 43.

15 Scalia, A 1997: 23.

16 Different normative considerations would apply to a decision supported by even a large majority to repress a discrete and insular minority.

17 This position is argued first by Martin Golding 1980: 69 in his influential essay, "Obligations to Future Generations." Terence Ball 1988: 150 makes a similar argument in his *Transforming Political Discourse*. See also Bruce E. Auerbach 1994.

18 Scalia, A 1997: 40.

19 Locke, J 1980: 62, who influenced the thinking of the Framers makes very much this point in his *Second Treatise of Civil Government*: "...[W]hatever engagements or promises any one made for himself, he is under the obligation of them, but cannot by any compact whatsoever bind his children or posterity. For his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son than it can of anybody else."

20 The authors would like to thank Prof. Beau Breslin of Skidmore College for suggesting the importance of the correspondence between Jefferson and Madison in comments on a draft of this paper presented at the Northeast Political Science Association (U.S.) annual meeting in November of 2010.

21 Jefferson, T 1989: 960.

22 Jefferson, T 1989: 964.

23 Madison, J 1790.

24 Madison, J 1790.

25 Madison, J 1790.

26 Scalia, A 1997: 40.

27 Republic of Plato (Book X, section 601). It is noteworthy that the Philadelphia Convention was called for the purpose of proposing amendments to the Articles of Confederation. Such amendments would

have required unanimous ratification by all thirteen states. When the Convention had finished its work, not only did they propose adopting a completely new Constitution, they also proposed a ratification process that abandoned the requirement of unanimity.

28 United States Senate Web Page: http://www.senate.gov/pagelayout/reference/three_column_table/measure_proposed_to_amend_constitution.htm. Viewed February 2012.

29 Burke, E 1955: 110.

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Short-sightedness in Youth Welfare Provision: the Case of RSA in France

by Juliana Bidadanure

Abstract: This paper¹ reconstitutes and addresses critically the deontological and consequentialist arguments given by the French government to justify the denial of the national guaranteed minimum income support (RSA) to young people under 25 years old. The deontological arguments express a concern for distributive justice and suggest that young people do not deserve income support. The consequentialist arguments, on the other hand, emphasise social efficiency: they draw on the alleged negative outcomes that the extension of income support to young people would bring about. After analysing each argument, this paper concludes that the denial of RSA to young people is an illegitimate discrimination. It then proposes that we understand our duties towards young people through an account of prudence that reconciles both (1) concerns of distributive justice with concerns for social efficiency and (2) concerns for inter- and intragenerational justices.

Introduction

In June 2009, the Sarkozy government reformed the “Revenu Minimum d’insertion” (RMI), which was the French guaranteed minimum income support (effective since 1988), and implemented a new scheme

called RSA “Revenu de solidarité active”. Just like the former RMI, this new plan included a monthly allowance (of about €460) for those without any source of income. However, as opposed to the former RMI, it also made provisions for a second allowance to top up the income of the low-paid. As a result, the government claimed that it would incentivise work rather than inactivity.²

In the initial proposal, young adults between 18 and 25 years old were ineligible for RSA,³ just as they were excluded from the former RMI. According to the *Haute Autorité de Lutte contre les Discriminations et pour l’Égalité* – the French Equal Opportunities and Anti-Discrimination Commission – such differential treatment was discriminatory. The inequality of treatment was based on age – a criterion prohibited by the law – and it deprived young people of an important social right.⁴

As a response, President Nicolas Sarkozy introduced a new scheme in September 2009 entitled “RSA-jeunes” (RSA-youth) aimed at young people between 18 and 25 years old. However, as its name suggests, RSA-jeunes is different from the original RSA. It requires a past contribution: young people are only entitled to income support if

they have worked full-time for two years in the past three. Initially, 160,000 young people⁵ were supposed to receive this new allocation, which represented only 2% of young people, while approximately 20% of them lived under the poverty line, and while more than 23% of active young people were unemployed.⁶ Today, over a year after its official launch, the situation is even worse: only about 10,000 young people receive RSA-jeunes, while over one million people aged between 18 and 25 live under the poverty line.⁷ French youth unemployment is, on average, more than twice as high as the national (9.3%) and the OECD (8.5%)⁸ unemployment rate.

In this paper, I aim at presenting the justifications that were given for the denial of the original RSA to young people and for the implementation of the very restrictive RSA-jeunes instead. There was a critical lack of governmental publications justifying the practice,^{9,10} which is unacceptable given what is at stake. Drawing mainly on the introductory speech for RSA-jeunes by President Sarkozy and from scholars who questioned age requirements for minimum income, I have tried to reconstitute a taxonomy of the underpinning premises

accounting for the differential treatment. I do not wish to quibble about the numbers: 25 years old may be too old, and two years of work may be too much, yet the general principles symbolised by such numbers may still be valuable. It is my aim that the challenges raised by the assessment of these principles go beyond a mere critique of this specific governmental policy. In fact, I believe that a careful analysis will help us understand how policies aimed at young people tend to become too restrictive and short-sighted.

According to Mongin,¹¹ the authorities denied the original means-tested RSA to young people in the name of both “(1) distributive justice and (2) social efficiency”.¹² I have been able to identify at least three arguments in each of these two fields. The first three arguments are concerned with “distributive justice” and are deontological: they state that young people do not deserve income support. On the other hand, the three arguments of “social efficiency” are consequentialist arguments concerned with the outcomes that an extension of income support to young people would bring about.

Here is a table of my understanding of these arguments:

Deontological arguments

According to Sarkozy, RSA ought to be allocated to those “who deserve it”.¹³ Feinberg explains that desert involves a deserving subject and a desert basis: “judgements of desert carry with them a commitment to the giving of reasons. If a person is deserving of some sort of treatment, he must, necessarily, be so in virtue of some possessed characteristics or prior activity.”¹⁴ By denying the original RSA to young people, the government claims that young people in general (subject) do not deserve RSA (object). Yet, what desert basis can explain such judgements? In other words, what criteria underpin the de facto division between deserving and undeserving subjects imposed by the RSA?

Wim van Oorschot has identified five criteria of deservingness:¹⁵ (1) control, that is people’s power and responsibility over their situation; (2) need, that is the degree of deprivation of the person; (3) identity, that is the intensity of the proximity people feel towards the recipients; (4) attitude, that is the degree of gratefulness or docility; (5) reciprocity, the extent to which the person contributes.¹⁶ These criteria can help in reconstituting three desert-based arguments

Needs-based argument

The framing of RSA-jeunes reveals that the French government believes that young people’s needs matter less than those of older adults, mostly because they can rely on their family. This reasoning explains why most benefits aimed at young people are allocated through their parents by a system of tax deduction. However, the needs-based argument can easily be dismissed because as a matter of fact, not all families provide for their young adult members. If we really care about addressing genuine needs, RSA should be allocated to young people whose families do not provide for their primary needs. It is true that young people are often dependent on their families and are thus generally less in need of a minimum income than adults. However, some young people need it just as much because they are dependent on a poor family. A study from the Secours Catholique has shown that disadvantaged families see an income decrease of 25% when they have to care for one young adult, and single mothers an income decrease of 33%.¹⁷ Disadvantaged families and their young adult members are at risk of falling into a vicious cycle of poverty. Thus, just like a non-working spouse is denied RSA if and only if he or she has access to a rich enough partner, it seems that a young person should be denied RSA if and only if he or she depends on a rich enough household. There are no convincing needs-based reasons for denying RSA to at the least needy young people.

Reciprocity argument

The reciprocity argument appeals to the idea that people ought to contribute to society’s well-being if they are to expect the community to provide for their subsistence when they are vulnerable. This is the idea underpinning the backward-looking requirement that young people must work for at least two years before they can claim income support. Contribution is understood as giving rise to entitlements. As Cummiskey puts it, desert as entitlement provides “the basis for a plausible account of the nature of backward-looking reasons, which are constitutive of some institutions”.¹⁸ The requirement of a past contribution derives from the principle of reciprocity, described by Stuart White in the following way: “if one willingly enjoys the fruits of one’s fellow citizens’ labour, then as a matter of justice one ought to provide some appropriate good or service in return.”¹⁹

Deontological arguments (three desert basis: need, contribution and effort)	Consequentialist arguments
- The “needs-based argument”: Young people have smaller “needs” which can be met by their family; thus more restrictive requirements can justly be applied to them.	- The “paternalistic argument”: Work is essential to people’s happiness and wellbeing; thus, it should be incentivised in general, and more so among young people.
- The “reciprocity argument”: Young people are not “contributors”; thus they should not be entitled to income support unless they have already worked.	- The “dependence argument”: The phenomenon of dependence on benefits is particularly problematic among young people (emphasis on youth behaviour); thus more incentives on work in order to avoid dependence are legitimate.
- The “meritocratic argument”: Young people have made relatively less “efforts” than adults in their lives; thus they do not deserve a reward, apart from those who have worked.	- The “responsibility argument”: Promoting a sense of responsibilities among young people is fundamental; thus the government should not give them something for nothing.

Figure 1: Taxonomy of the arguments supporting more restrictive income support for young people

For the purpose of this paper, I will not analyse each of these arguments in depth. However, I will still introduce them all briefly and try to point out where I believe they fail.

that could justify the differential treatment between under and over 25 years old citizens.

However, this argument is not sufficient to justify RSA being denied to many needy young people for two main reasons. First, even if we agree that participation ought to be a requirement, there is no reason why paid employment should be the only acceptable form of contribution. What about volunteering, caring, interning or even studying? Are these not legitimate activities for citizens under 25 years old? Perhaps studying is less straightforwardly conceived as a societal contribution than paid employment or volunteering. However, even though higher education is a personal investment, it is clear that it has a great impact on how well the society as a whole ends up faring in terms of skills, knowledge, technology and

“Reciprocity rests on a willingness to be part of the social fabric. A retiree displays it by pointing at past achievements; a young person displays it by her intention, in a forward-looking way, to reciprocate, by a willingness to work, to study, etc.”

culture. Thus, even if education is a less direct societal contribution, it clearly is a considerable long-term investment in society as a whole.

Second, even if we agree with White that justice requires that someone who receives benefits offers something in return, it is not clear why this contribution should be required as a past pre-requisite. It seems that discourses tend to confuse reciprocity with utility: reciprocity is not restricted to participation in insurance schemes. These schemes are just one way to promote reciprocity and maximize utility. In the case of retirement pensions, people are indeed required to contribute before they benefit, since they are likely to be unable to work after a certain age; the retirement system is conceived so that it fits utility. So, indeed, the young have not made payments into social insurance yet. But that is not relevant to reciprocity. Since young people have a long working-life ahead of them, forward-looking contributions should not be problematic. Reciprocity rests on a willingness to be part of the social fabric. A retiree displays it by pointing at past achievements; a young person displays it by her intention, in a forward-looking way, to reciprocate, by a willingness to work, to study, etc.

Meritocratic argument

The meritocratic argument is based on the

idea that an individual's merit is a fair basis to justify differential treatment: “RSA-jeunes will be reserved for those who have worked in the past. These young people deserve that the nation rewards their efforts.”²⁰ It relies on the principle that rewards should be allocated in return for a certain effort. Effort is linked to Oorschot's notion of “control”: the more control a person has over his or her situation, the more effort he or she can legitimately be required to show. Oorschot's notion of “attitude” also links with effort. People believe that the better the attitude you have, the more deserving you are.²¹

Drawing on these criteria and comparing the young to the elderly helps in understanding why young people appear to lack the essential desert basis of effort. Old people are disabled by their ageing, over which they have no control. By contrast, young people are able and thus have more power over their lives. Moreover, old people are thought to be “undemanding, grateful and not rebellious”.²² Young people, on the other hand, are often depicted in the media as rebellious, ungrateful, lazy or self-centred.²³ Thus young people who step up and make efforts to provide for themselves deserve a reward; the others do not. RSA-jeunes, by requiring two years of work, is framed so that it protects the meritocratic ideal of effort.

However, effort is only meaningful if young people have control over their situation, and if it is their attitude that causes their deprivation. Yet, when we look at the current job market, it is difficult to claim that unemployed young people are entirely responsible for their situation. Young people may be physically able, yet in the current economic situation they are handicapped by the crisis, and at great risk of unemployment. Even Sarkozy recognises that “young people of today have to face the challenges of a world in crisis – a crisis for which they are not responsible.”²⁴ If young people do not entirely control their situation, then an income support scheme should at least be adjusted to take into account their resulting precarious situation.

Furthermore, even if effort is a fair desert basis, it is very difficult to assess. In fact, the energy, concentration and perseverance someone has applied to a task are not always correlated with the results he or she gets. Assessing effort requires an understanding of the whole path someone has taken, and it is even harder to know whether young person x is more, equally, or less deserving than

young person. Moreover, as Van Parijs points out, the problem with conditionality based on an account of merit is that some deserving people are always overlooked. Yet, according to him, this is worse than allocating income support to undeserving persons.²⁵ This is one more reason to believe that merit is not an authoritative rationale to justify the denial of income support to young people.

I have tried to show that the desert-based account of distributive justice does not account effectively for the denial of the original RSA to young people. Therefore I agree with the Haute Autorité de Lutte contre les Discriminations (HALDE) that the differential treatment is discriminatory – the distinction gives rise to an important social inequality²⁶ – and yet cannot be effectively accounted for by a desert-based account of distributive justice. According to the HALDE, such a discrimination based on age is legitimate “only if it is justified objectively and reasonably, i.e. if it pursues a legitimate goal and if the ratio between the means employed and the goal pursued is reasonable.”²⁷

Consequentialist arguments

From a consequentialist standpoint, no matter who really deserves what, “the right act in any given situation is the one that will produce the best overall outcome.”²⁸ If denying the original RSA to young people brought about a better cost/benefit ratio than its extension, then discriminating against young people would be legitimate. In other words, if allocating income support to young people brought about adverse consequences, then denying young people RSA would be justifiable. Indeed, Sarkozy specifically referred to the detrimental consequences that an extension of the original RSA would provoke: he argued that it would render young people dependent and teach them the wrong values.²⁹ I have identified three fundamental consequentialist concerns for the extension of the original RSA to young people, which support the view that denying benefits to young people is legitimate because it maximises social utility.

Paternalistic argument

The paternalistic argument is based on the very common idea that work is fundamental for our wellbeing. Sarkozy's concern is allegedly primarily motivated by a concern for the sake of young people themselves. He appeals to the common intuition that “any job is better than no job” and thus that

employment among young people must be promoted. Many would agree that work is valuable instrumentally because, in general, it protects people from poverty, gives them a sense of self-worth, and permits them to make friends and develop a social network.³⁰ Yet, this both applies to young people and to adults, so why would it justify young people been treated differently? Let us admit for a second that more paternalistic incentives are legitimate with respect to young people, because they have not yet established a reasonable view of what a good life entails. The state would thus have a duty to compel them, because participation in work is a reasonable and well-shared vision of part of the good life.

Even if this is true, there is still a case to be made against more incentives to work for young people. There are alternatives to employment that may prove more fulfilling, rewarding and will bring better outcomes in the long-term than a bad job. Some jobs tend to be demeaning, exploitative and unrecognised and thus can be more destructive than rewarding. These tend to result in a loss of self-confidence.³¹ Thus, for the paternalistic argument to work, it will have to show that the loss of self-confidence resulting from a bad job is better than that resulting from not being employed.

Moreover, there are several alternatives to inactivity for young people such as education, volunteering, and interning. These might improve young people's skills and accomplish a better sense of self-worth than some bad jobs. Thus it seems that the maxim "any job is better than no job" should be nuanced; and even more so among young people, since there are alternatives that may prove more fulfilling and bring about better long-term outcomes than employment. As a result, RSA-jeunes' incentive, which exclusively focuses on paid employment, cannot be justified solely on paternalistic grounds.

A mix between concerns for young people's wellbeing and for taxpayers may be more successful in justifying more restrictive support. Young people's wellbeing should be compatible with the community's interest: "when a person works there are also gains to the taxpayer (lower benefits and more taxes) and higher profit to employers. This is a powerful case for getting the unemployed into work, even if the work is not ideal."³² Moreover, consequentialism requires that we give equal weight to the interests of everyone.³³ The question of whether the

denial of RSA is legitimate is thus dependent on determining whether imposing a higher burden on taxpayers is legitimate. In this way, the following two arguments may be more efficient since they link concerns for the young with societal concerns.

Dependence argument

The dependence argument rests on the idea that the extension of RSA to young people would be detrimental to young people and to the whole of society since it would promote idleness. Sarkozy justified the denial of the original RSA to young people by stating that it "would contribute to institutionalising a dependency culture among young people".³⁴ RSA-jeunes alleviates dependence since its eligibility is restricted to young people who have worked in the past; they seem to be the least likely to become idle.

Benefits can trap both adults and young people in poverty, yet here again we will assume that more incentives on young people are legitimate because the state has a responsibility to push young people forward – this seems legitimate to the extent that the decisions taken by young people at this stage of their lives are likely to be fraught with consequences. Moreover, it is clear that young people's contribution is more essential than that of their parents; a 20 year old is expected to contribute at least 40 years of work while a 40 year old is only expected to work a further 20 years. Thus the poverty trap may be more damaging in the long run when young people are affected, all the more when the ratio of young/old people is constantly decreasing. Thus the dependence argument may hold more authority in the treatment of youth unemployment.

Intuitively, it seems that some young people on benefits will not develop an ambitious and active spirit – to move to places where there is work, to search for training, or to escape an unpleasant job – while they would have done so without benefits. Mongin argues that if students were to be allocated a minimum income "it would undermine the incentive to succeed in exams, to select demanding fields, to quit education for professional life after a reasonable time."³⁵ But, are these intuitions reasonable? Is the benefit trap a sufficiently objective force in the world to justify denying a minimum income to most poor young people?

Many sociologists have strongly argued against the emphasis on benefits to explain the persistence of dependence among certain groups. They explain why individuals are

and stay on benefits through a systemic approach – structural causes affecting people's abilities to work (for instance, living in remote places or within areas where unemployment is particularly high, lacking training, looking after someone, or being sick³⁶). Moreover, a surprisingly high number of people work, even though they do not earn more than they would receive on benefits. Several sociologists, such as Hartley Dean from the Centre for the Analysis of Social Exclusion, thus conclude that the fear of a dependency culture is based on a "discursive rather than objective phenomenon".³⁷ Therefore there is a critical lack of evidence to support the view that benefits themselves trap people in inactivity and engender a dependency culture amongst young people. As such, the dependency argument is not sufficient to justify the discrimination.

Responsibility argument

The responsibility argument is the last argument I have identified against the extension of the original RSA to young people. Sarkozy argued that the original RSA would undermine young people's sense of responsibility. For him, promoting responsibility matters all the more given that autonomy is on the line. Autonomy is "the faculty for each of us to make his own choices and to assume them, for the counterpart of the possibility to choose is the responsibility of the choice that you make."³⁸ Thus developing a strong sense of responsibility is fundamental for young people's personal development as autonomous agents.

However, I believe that there are two different dimensions of responsibility that concern the French public authorities: when they care about responsibility, they care about both (i) responsibility as autonomy – as taking on the costs of one's choices; and (ii) responsibility as solidarity – as caring for the community.

I think that the allocation of income support to young people may promote responsibility (ii) as willingness to care for the community. Indeed, within a family structure, having been funded and cared for sufficiently to flourish might result in a strong desire to reciprocate in the future: by providing for your own children, and by providing for your elders. Similarly, one could argue that young people "sponsored" by the state in their projects will develop an acute sense of reciprocity, and thus of responsibility towards the very community that has

supported them. Thus the extension of the original RSA to young people may well promote (ii) – that is, responsibility as solidarity.

However, what about (i) responsibility as autonomy? One might argue that RSA cannot be a desirable solution if it slows down young people's development as autonomous agents. The American scholar Marina Oshana defines an autonomous person as an agent "who directs or determines the course of her own life and who is positioned to assume the costs and the benefits of her choices".³⁹ Thus, like Sarkozy, Oshana considers that responsibility for assuming the costs of one's choices is required for autonomy.⁴⁰

"Being responsible is merely the formal part of personal autonomy, but people need a more substantial autonomy in order to make free choices."

However, autonomy cannot be reduced to responsibility. It also requires a certain control over one's "choices, actions and goals".⁴¹ Thus, autonomy is linked to those skills that allow people to create opportunities. Being responsible is merely the formal part of personal autonomy, but people need a more substantial autonomy in order to make free choices.

"Real autonomy", according to Nicolas Farvaque, refers to the "capability, i.e. the potential effectively to achieve personal goals."⁴² His concept is very close to what Van Parijs calls real freedom,⁴³ and, like Van Parijs, Farvaque argues that guaranteed income support is required for real autonomy. Real autonomy demands capabilities, and if a minimum income is not sufficient for this, it is at least required, since money increases the set of choices available to a person. Money can be transformed into a plurality of opportunities; it thus potentially addresses the situation of many young people. Thus, extending RSA to young people without more restrictions than adults is necessary to promote young peoples' real autonomy. Consequently, the obsession of the French government with responsibility is misplaced and does not entail the denial of RSA to young people.

To sum up, it is true that extending the original RSA to young people may result in a welfare loss for those who will choose unemployment over activity, while RSA-jeunes does not bear such costs because it strongly incentivises employment. However, RSA-

jeunes disincentivises alternatives which can better maximise young people's wellbeing and future outcomes than employment; it is likely to reinforce inequality of opportunity, since only those from disadvantaged backgrounds will be incentivised to work; additionally, it may not promote young people's responsibility as solidarity and their real autonomy, whereas the extension of the original RSA would deliver these benefits. Therefore the consequentialist arguments that I have analysed are not sufficient to justify the denial of RSA to young people who need it. The empirical data supporting the official discourse was very scarce and the concepts used – such as responsibility, autonomy and dependence – were not sufficiently defined and thus led to contradictions and misconceptions. As a result, I believe that the denial of full RSA to young people is an *illegitimate* discrimination.

Conclusion: a case for intergenerational justice

Do these conclusions only stand outside of a climate of economic austerity? Does this refutation of the arguments require an ideal and perfectionist conception of justice, which therefore may be opposed by real politicians in a non-ideal political world subject to the rules of scarcity? I will now try to point out one way to argue that even in a context of economic austerity, the extension of a minimum income is required for the achievement of, on the one hand, (1) social justice and efficiency and on the other (2) intra- and intergenerational justices.

(1) The prudential lifespan account: reconciling social justice and efficiency

Drawing from Rawls, Norman Daniels⁴⁴ developed a framework to establish what intergenerational justice requires: the "prudential lifespan account". Since justice requires fairness, this question cannot be answered under particular circumstances. The democratic game may maximise the interests of the taxpayers at a given point in time and this may undermine long-term social efficiency and justice as fairness. Daniels argues that intergenerational policymakers should blind themselves to their age and ask which institutions are prudent over a lifespan. In other words, he asks what a person behind a veil of ignorance would want to secure for each stage of her life. One of the conclusions that Daniels's prudence-based account draws out is that we must

preserve a "normal" range of opportunities throughout the lifespan. Prudence requires that at any age, and especially when we are most vulnerable, we are still free to make choices; this leads us back to the need for "real autonomy". Securing such autonomy would require, for instance, the procurement of a secure income for our old age.

In the same way, young adulthood is a key moment in a lifespan. Although the young are able-bodied, they are vulnerable in the sense that investments in future opportunities need to be made right then and there. Jonathan Wolff⁴⁵ argues that what matters most about disadvantage is its clustering. If we were all equally disadvantaged at one or two things, then disadvantage would not be much of a problem. However, society is such that some disadvantages are corrosive – they yield further disadvantages. Prudence thus seems to require identifying corrosive disadvantages and acting upon them. This view sheds some light on the type of vulnerability from which young people suffer. Disadvantage at this age is likely to provoke a clustering of disadvantage over a lifespan. Just like it makes sense to tackle child obesity rather than deal with the clustering of its consequences during adulthood, tackling poverty and powerlessness among young adults is necessary if we are to avoid severe consequences in the future. In this way, Louis Chauvel⁴⁶ worries about what he calls the "scarring effect" – i.e. the fact that the conditions of entry into the labour market influence one's career (income, unemployment risks) over one's entire life course. We can also realistically worry that the cohort of young people today will face higher social inequalities in the future, higher rates of social exclusion, depression, suicides, etc. These young people, scarred by poverty and unemployment, will become resentful, frustrated, depressed and eventually abandon fighting; we can only imagine the disastrous consequences it will have on society as a whole.

These consequences of youth deprivation suggest that it is very likely that not dealing with youth poverty, which affects 1 million poor young people today, will also end up being more costly in unemployment benefits, social exclusion and the cluster of consequences arising from them. Thus it is inefficient in the long-term to deny a minimum income to young people in need. The prudential lifespan account tells us that intergenerational justice requires maximising young people's capacity to make free choices

in the name of fairness and long-term social efficiency, even in a climate of economic austerity, or, rather, *especially* in a climate of austerity. In other words, if we want fully “functioning” adults in Sen and Nussbaum’s sense, we need to endow the young with the capabilities that will promote their real freedom. Prudence brings together a deontological view of distributive justice, understood as fairness, with a utilitarian concern for efficiency over a lifespan.

(2) The facilitation hypothesis:⁴⁷ reconciling intra- and intergenerational justice

Finally, I believe that our case study has taught us something fundamental about the alleged competition between two kinds of justices: inter- and intragenerational justices. I do not believe that there is a way to be conclusive about their complex rivalries and connections, and the answer probably lies in assessing the plurality of specific cases. However, I believe that two conclusions can be drawn from my specific case study. These conclusions are in line with what Glotzbach and Baumgärtner⁴⁸ refer to as the facilitation hypothesis: “Achieving intragenerational justice will improve our chances of achieving intergenerational justice. Achieving intergenerational justice will also help in securing intragenerational justice.”⁴⁹

First, focusing on young people allows the reconciliation of pressing concerns for the worse off with longer-term issues. Philosophers interested in intergenerational justice often focus on challenges arising from responsibilities towards future unborn people. However, I believe that focusing on young people is an efficient way to address indirectly our duties towards future people. Therefore one question I want to ask is the following: what capabilities, rights, institutions and goods are necessary for young people to be able to tackle and survive tomorrow’s challenges? My hypothesis is that the main capability to promote is what Nicolas Farvaque refers to as “real autonomy”, the “capability, i.e. the potential effectively to achieve personal goals.”⁵⁰ In this context, income support seems to stand as a particularly appealing measure, which both meets the requirements of justice between contemporary generations and promotes the interests of future generations.

Second, when it comes to the option of a minimum income for young people, it seems that meeting the requirements of intergenerational justice improves our chances of meeting the requirements of intragenerational

justice. While most inequalities within age-groups have fallen in France, they have increased within the 18–24 age-group.⁵¹ The current benefits system urges young people from poor families to take on low-paid jobs to meet their needs while others are able to afford studies, internships and other activities which will enhance their capabilities and opportunity set. This is all the more worrying in that we know that young people cannot even find these low-paid jobs easily and that unemployment rates are, on average, more than twice as high for those without a higher education diploma than for those who have completed two years of higher education.⁵² A recent study led by the OVE – French Observatory of student life – has shown that the number of working-class children in higher education is decreasing already. Even in the more technological and professional fields that were initially designed for students from disadvantaged backgrounds, the proportion of young people whose parents were working-class, farmers or employees dropped from 42% to 34% between 2006 and 2010.⁵³

Equality of opportunity is generally understood as a fundamental principle of intragenerational justice; yet promoting equality of opportunity necessarily requires taking into account the transmission of goods from one generation to the other. Consequently, counteracting an unfair intergenerational determinism is our best chance to reduce intragenerational inequalities of opportunity. As a result, it is highly likely that allocating a minimum income to young people, as well as other social institutions and goods, will improve our chances of achieving both justices.

Notes

- 1 This research was conducted with the support of both a master's degree research award from the AHRC (at LSE in 2008–2010) and a doctoral scholarship from the Department of Politics at the University of York.
- 2 Senat 2009.
- 3 Single parents with a dependent child were an exception.
- 4 HALDE 2008.
- 5 Gouvernement 2009.
- 6 Rollot / Floch 2010.
- 7 Landré 2011.
- 8 OECD 2010.
- 9 Mongin 2008.
- 10 HALDE 2008.
- 11 Mongin 2008.
- 12 Mongin 2008: 10.
- 13 Sarkozy 2009.

- 14 Feinberg in Cummiskey 1987: 15.
- 15 Orschot draws on De Swaan 1988, Cook 1979 and Will 1993.
- 16 Oorschot 2000: 36.
- 17 Secours Catholique 2010: 13.
- 18 Cummiskey 1987: 15–16.
- 19 White 2003: 49.
- 20 Sarkozy 2009.
- 21 Oorschot 2000: 37.
- 22 Oorschot 2000: 37.
- 23 Warner 2010.
- 24 Sarkozy 2009.
- 25 Van Parijs 2000.
- 26 Berton 2007.
- 27 HALDE 2008: 10.
- 28 Scheffler 1988: 2.
- 29 Sarkozy 2009.
- 30 Bailey 2006.
- 31 Mark B. Stewart 1999.
- 32 Layard 2004: 2.
- 33 Scheffler 1988.
- 34 Sarkozy 2009.
- 35 Mongin 2008: 9.
- 36 Dubet / Veretout 2001.
- 37 Dean / Taylor-Gooby 1992 : 27.
- 38 Sarkozy 2009.
- 39 Oshana 2006: vii.
- 40 Oshana 2006: 161.
- 41 Oshana 2006: 3.
- 42 Farvaque / Salais 2003: 67.
- 43 Van Parijs 1997.
- 44 Daniels 1988.
- 45 Wolff 2007.
- 46 Chauvel 2010.
- 47 Glotzbach / Baumgärtner 2009.
- 48 Glotzbach / Baumgärtner 2009.
- 49 Glotzbach / Baumgärtner 2009.
- 50 Farvaque / Salais 2003: 67.
- 51 Maurin 2008: 95.
- 52 Maurin 2008: 35.
- 53 Jay 2011.

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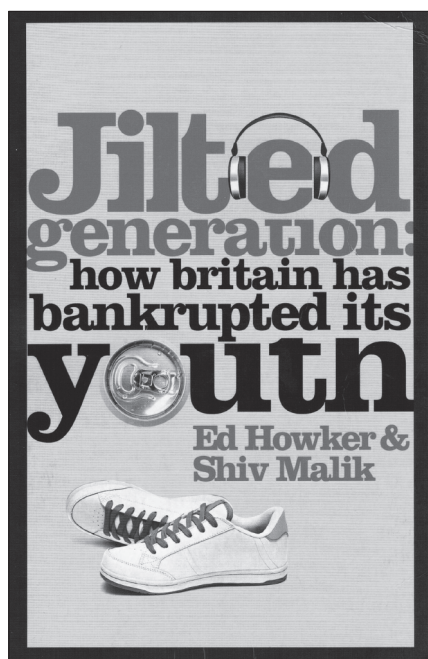
Ed Howker and Shiv Malik: The Jilted Generation

Reviewed by James Wilhelm

To judge from comments made in the British press, it would seem reasonable to conclude that Ed Howker and Shiv Malik are appalled but not entirely surprised by the UK riots which took place during August 2011. The authors have not gone as far as endorsing the eruptions of chaos, but *Jilted Generation*, published prior to the tumult, did forewarn through a thoroughgoing economic, political and social investigation that a socio-politically dangerous relationship between today's old and young was developing. The ambiguity of the riots has left public commentators in search of an explanatory framework, but recent events have been peculiarly resistant to orthodox explanations of left and right, thus creating an explanatory vacuum. *Jilted Generation* meets that demand from a decisively intergenerational perspective.

The book's argument is as follows: members of the "jilted generation", roughly defined as those born between 1979 and 1994, are facing a socio-economic crisis. Their opportunities have dwindled and burdens increased in comparison with the relatively privileged "baby boomer" generation (roughly born between 1945 and 1965). The book does not designate the causality of these profound problems which afflict the jilted generation to the inherent logic of capitalism, or solely to trends in demographics. Rather, it is an attempt to construct a non-reductionist polemic on being young in short-termist Britain – a Britain which has forgotten about its youth (the future), and focuses almost exclusively on the satisfaction of the baby boomers (the present). With regard to the structure, an in-depth analysis of four intergenerational facets is conducted: housing, jobs, inheritance and politics.

As a book which juxtaposes the jilted and baby-boomer generations, the act of persuading the reader that the "jilted generation" concept (and the use of "generation" in general) is meaningful in a contemporary UK context is its most fundamental task. According to the authors, members of the



jilted generation, determined by year of birth, are united in facing a set of unfavourable political and economic circumstances, leading to a common outlook. This would make the jilted generation a chronological generation, in so far as this generation is defined as having a fixed start and end point (people born between 1979 and 1994), and to a lesser extent a societal generation, because this generation share similar (although, far from homogenous) attitudes, lifestyles and perspectives. Given the singular importance of the "generation" concept, a more rigorous discussion and justification for this choice would have been welcome in the opening chapter. Although a few supportive graphs with accompanying commentaries are utilised, a reasoned discussion of why the specific definition of the "generation" concept was adopted does not feature. However, the book is not an explicitly scientific undertaking and therefore, for stylistic reasons, the authors may have decided to avoid a wordy definitional exercise. Moreover, explanatory power is often a more meaningful criterion by which a concept's usefulness can be measured.

In this respect, the book's interpretation of the unjustness of housing opportunities

for young people, well substantiated throughout, is clear and convincing: tax breaks and subsidies for first-time buyers have been progressively reduced since the Thatcher era (only after the baby-boomer generation were able to get a foot on the property ladder as a result of these benefits); public housing has been sold off largely to the benefit of baby boomers without a compensatory increase in its supply, leading to the cost of housing reaching an unaffordable level for today's first-time buyers; and, in recent years, building regulations have been relaxed, meaning that not only are new houses relatively expensive due to supply-side failures, but of lesser quality too.

Counter-intuitively perhaps, one of the book's most fascinating lines of enquiry is a scathing critique of the minimum wage as a key instrument of the institutionalisation of age prejudice: a piece of legislation which, for most readers, might be considered a triumph for at least intragenerational justice. It is noted that the minimum wage discriminates against young people: in 1999, for those under 22, the minimum wage was £4.77, and for those aged 16-17, it was just £3.53. Today, the rate for those aged 16-17 is still only £3.68, while adults can expect £6.08. They highlight that this policy has led to the adoption age-related pay schemes by the private sector which mirror the discrimination of the state sector.

A more questionable claim of Howker and Malik is that the young are experiencing the highest unemployment rates in modern British history. Although eloquently reasoned, the authors must be taken to task for not discussing the finer details employment statistics. The problem is as follows: it is well known that the amount of young people who have entered higher education in the last twenty years has increased dramatically, but no qualifying statement of how this intake might distort youth employment statistics is included. Writing for the BBC, Michael Blastland contends that the opening of higher education institutions to a greater number of students in recent years has dramatically distorted comparisons of

youth unemployment today and its historical rate for the following reason: the rate of youth unemployment is a reflection of “youths excluding those in education” – apart from those in full-time education seeking part-time work – and *not a share of all youths*. Thus, if there is an increase in the number of youths in the education system, the remaining number of unemployed youth may remain the same, but because the official rate of youth unemployment excludes those now in education, the unemployed youths as a fraction of the remaining figure will be higher. Given that unemployed young people constitute a social strata which is unlikely to enter higher education, this effect is highly probable when the exponential increase in young people going to university in recent decades is taken into account. Thus the rate of youth unemployment can increase simply because more young people are attending university. Since Malik and Howker’s claim that Britain’s youth are experiencing the highest unemployment levels in history is rooted in percentage comparisons between youth unemployment today and its historical levels, it follows that they may be right when one takes the rate at face value, but a deeper analysis suggests that this conclusion could be misleading.

One of Howker and Malik’s key arguments is that the problems which afflict the jilted generation are the result of a dysfunctional consideration of the past and future. The claim rests on two lines of reasoning, one in relation to the UK demographic structure, the other cultural. The structural reason for this dysfunction is that Britain is an ageing society in which the baby-boomer generation has a higher propensity to vote than young people. Thus, since baby boomers are more likely to enter the ballot-box, a rational politician must tailor policies to gain the support of this politically key cross-section of the electorate (valorisation of the present). Their second line of reasoning, grounded in research conducted from the 1960s onwards in the field of both marketing and politics, is that a fundamental transformation has taken place in British society. The bottom line is that the British have become “inner-directed”; satisfaction of present wants and the realisation of the inner-self have taken precedence over family commitments and delayed gratification. Politicians from Thatcher to Blair have done the same as the market researchers: marketed products (policies) to the consumer (electorate). Predictably, the result has

been a politics in which long-term thinking is absent. This section is eloquently and convincingly argued.

Howker and Malik’s overarching point is that Britain’s youth has been bequeathed the following odious legacy: an inaccessible housing ladder; a job market in which job-hunters are ill-equipped to compete and with the possibility, at best, of securing a demeaning internship; little inheritance, if at all (and often debt); and a short-termist political framework incapable of long-term planning. For those in the 18–30 category, it’s a rather depressing read.

Unfortunately, the proposed practical solutions are not as convincing as the preceding analysis. The issue at hand is one of implementation: how do we create a long-termist political structure in the face of baby-boomer demographic preponderance? How do we stabilise the employment and housing markets? The authors’ primary solution is the need for a change in socio-political discourse:

We need some new words, and some new thinking that refers not to “rights” but to the practical issues that matter to us; an approach that’s not short-term and myopic, but that will restore the proper functions of politics by placing the future at the heart of our democracy (204).

The authors suggest that long-termist thinking will be restored to politics once a discourse of ‘benefits and obligations’ takes hold. This will, according to the authors, create a more productive democratic dialogue concerning the relationship between past, present, and future generations than the concept of ‘rights and responsibilities’ – the hegemonic understanding of the relationship between state and society since Blair – was able to accomplish. But what about the authors’ earlier admission that the political will of the baby boomers continues to cause politicians to trip over each other in trying to tailor policies to this politically privileged group? In fact, what *would* convince any rational politician to espouse such a language in view of the fact that such a strategy would not appeal to the demographically preponderant baby-boomer generation? The historical record shows that the last time the shackles of populism were broken in favour of principled politics by a mainstream party – Labour party manifesto of 1983 – the result was the infamous “longest

suicide note in history” (BBC, 2003). This experience has long functioned in British politics as a sober reality-check for any potential renegades in parliament foolhardy enough to ignore populist opinion. The authors themselves note that the 2010 general election was one of the most shameless displays of populist politics on record. No new language. No new politics.

If the new language won’t become part of the standard lexicon adopted in civil society and by the political establishment because of its damaging implications for the interests of the most important cross-section of the electorate, then what is to be done? If politics is dominated by the interests of baby-boomers, can the jilted generation, in Britain’s ‘Big Society’, learn to help themselves?

Howker and Malik’s main self-help recommendation with regard to housing is based on the successful scheme set up by the community group London Citizens, which proposes that citizens should act collectively to secure affordable property. In a nutshell, community trusts should buy land in a local area and promise never to sell it. Affordable housing, exclusively for local residents and built to a good standard, could then be built on the land. The trusts would remain the property of the communities at all times, thus providing affordable housing for present and future generations.

The query that arises is whether this provides a solution to the *national* problem. For example, although the idea could work well in a number of local contexts, it is a well-known fact that the UK is facing an acute shortage of land on which to build new homes (Wright, 2011). In light of this, how can we reasonably expect that community trusts will be able to afford the land on which to build affordable housing? And if private developers buy the land, how can communities respond? Options are clearly limited without state intervention in a free-market scenario. The situation is compounded by the fact that the state machinery is largely the property of the baby boomers who cannot be relied upon to support any scheme or political project that works against their own interests. Unfortunately, the space afforded to this review is not sufficient to treat the other proposals made by Howker and Malik. However, it suffices to say that many of them fall foul of the same practical difficulty: where can the political backing be found for labour-market reform, political reform and the realisation of a

generationally fair inheritance system? The logical corollary of their preceding analysis is that the strength of backing for such reforms is too weak to force real change.

The authors should be afforded generous praise for producing an elucidating and multi-faceted generational narrative of contemporary British social, political and economic life. The book's well-reasoned and sober conclusions cast a fresh perspective on the castigated, but often misunderstood behaviour of youth. Even though the solutions are not entirely persuasive, there is a more important

aspect that the book accomplishes: it is a call for readers to think in generational terms and, more broadly, about the long-term.

Ed Howker and Shiv Malik (2010): Jilted Generation. How Britain Has Bankrupted its Youth. London: Icon Books Ltd. 256 pages. ISBN: 1848311982. Price £8.99.

Cited Literature:

Blastland, M (2011): Go Figure: The Youth Unemployment Mystery. <http://www.bbc.co.uk/news/magazine-12480633>. Viewed 21 September 2011.

Mann, N (2003): Foot's Message of Hope to Left. http://news.bbc.co.uk/2/hi/uk_news/politics/3059773.stm. Viewed 22 September 2011.

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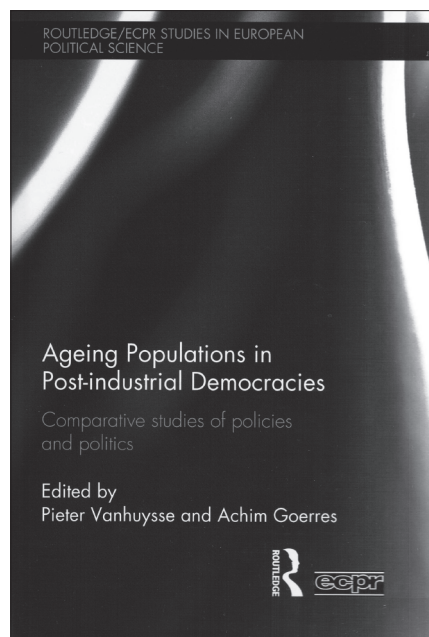
Pieter Vanhuyse and Achim Goerres (eds.): Ageing Populations in Post-industrial Democracies

Reviewed by David Kingman

The politics of ageing has received an increased amount of attention from political scientists in recent years, motivated by relatively new concerns over the impact that ageing will have on the generational balance of power in highly developed democratic nations. This effect has been observed in the elections held by European countries; for example, at the time of the 2001 UK general election, retired people accounted for one-fifth of eligible voters, and there was a 70% turnout rate among this age cohort, compared to 39% among those aged 18-24 (Davidson, 2005).

This book, edited by Pieter Vanhuyse and Achim Goerres, is a collection of articles which examine different aspects of the relationship between age and political power in advanced nations. In particular, several of the papers question whether older people show a greater inclination to vote following their logical self-interest, in support of parties who promise them more generous age-related benefits, or whether their voting decisions are based on a more complex range of factors.

The article by Seán Hanley addresses one of the most obvious manifestations of pensioners' political self-interest: the rise of pensioners' parties in both Western and Eastern Europe. He compares a range of factors using the Qualitative Comparative Analysis method to assess the likelihood of a pensioners' party arising within a particular political system, and how likely it is to obtain



a measure of support. The results revealed that three factors were particularly important in the establishment of pensioners' parties within West European political systems: a high level of self-organisation amongst the retired age cohort (through voluntary organisations, charities and pressure groups); a high level of government spending directed towards older people; and a demand for greater representation, created by a popular sense that existing political parties do not represent pensioners' interests powerfully enough. The more successful pensioners' parties have emerged within political systems where all these factors coalesce, while

conversely, these factors suggest that pensioners' parties are likely to remain of marginal political significance in systems such as the UK's, where a small number of large, monolithic parties seek to represent the interests of the broadest possible range of voters.

However, even if retired people don't start forming their own political parties to represent their interests, there is perceived to be a danger that their numerical weight at the ballot box will encourage mainstream political parties to pander disproportionately to their interests, at the expense of policies which would benefit the younger generation. Yet the interesting chapter by Jennifer Dabbs Sciubba suggests this isn't always the case. She compares recent labour market reforms enacted by the three major developed countries with the most advanced population ageing – Germany, Japan and Italy – and argues that their leaders have all pursued a course which was broadly beneficial to the young, and actually damaged the interests of the older section of the labour force. She does recognise that this may simply be a result of their respective national governments waking up to the dire financial prospects created by their demography, and realising that creating jobs more efficiently for young people will be vital to support the rest of the welfare state, so it may be that these reforms merely damaged the interests of older workers in order to help pensioners, an even older section of the society. As is to be expected, the specificities of the reforms in

each country were also a product of their domestic political system, which varied from the highly fractured state of affairs in Italy – where a multitude of parties regularly formed unstable coalitions – to the virtual one-party monopoly of power enjoyed by the Liberal Democratic Party of Japan between 1955 and 2009.

On the other hand, two further articles suggest that the power of the elderly voting bloc does have a significant amount of influence over government policies. The chapter by Markus Tepe and Pieter Vanhuyse looks at the timing of cutbacks in pension generosity across 18 OECD countries from 1981 to 1999 and comes to the conclusion that the more aged the electorate is, the likelier governments are to implement only modest reforms of the pension system, while postponing more radical changes until the future. Similarly, Juan F. Fernandez, in his chapter, looks at the generosity of pension benefits available in a number of developed countries between 1980 and 1991 and between 1992 and 2002, and makes the argument that the most important variable in determining the generosity of pension benefits is the size of the elderly share of the population.

Taken together, the papers in this book do not provide a definitive answer to the questions surrounding the generational balance of power in ageing societies. However, they present compelling evidence that some aspects of government policy are affected by the age of the electorate (particularly pension reform and generosity), while it seems that the interests of the elderly are not necessarily privileged during the design of labour market reforms (although this may be because governments realize they need more young workers to pay for the welfare state).

Two other papers in this book suggest mechanisms that may affect the generational distribution of power. Goerres and Tepe assess attitudes towards state-funded childcare provision across 21 post-industrial democracies, and found that older voters did not necessarily follow their rational self-interest by opposing it, even though it represents a form of government expenditure that is entirely beneficial to the younger sections of society (both children and their parents). Instead, their research indicated that in countries with a high degree of family solidarity, the needs of their children and grandchildren often mattered more to members of the older generation than pursuing their own rational self-interest. Interestingly, one of the other key determinants they identified was that respondents expected more from the state in this area if they lived under a government which already effectively delivered a large range of services; older people also had expectations of the state which were formed by their experiences while growing up. This provides a possible reason for why reforms to the old-age branches of the welfare state, such as pensions and healthcare, can be so difficult for governments to deliver, because voters form their expectations of what they should receive from the state while growing up, and then react negatively to these being tampered with.

The last paper in the book, by Robert Hudson, looks at the position of power enjoyed by older citizens within the American welfare state, and concludes that this was given to them because they are seen as an unequivocally deserving and needy group. This means that giving resources to them chimes with the Protestant work ethic which the author argues still shapes much of American social policy, and explains why major welfare programmes that give aid to the

elderly have been able to expand with very little controversy, compared to those aimed at ethnic minorities, immigrants and other groups who are considered to be less deserving. While the author's arguments are convincing, an alternative hypothesis could be that it is easier to persuade the electorate to support welfare programmes for the elderly not simply because they are seen as a morally deserving group, but because most younger people anticipate becoming members of the older age cohort themselves one day, and so are willing to pay into a welfare system which supports them as a way of ensuring they will receive the same support themselves in the future, and this gives them an intergenerational right to expect it to still be in place. In his conclusion, Robert Hudson argues that growing socio-cultural awareness of their strong position has emboldened the older generation in America to exercise their high degree of political power. Whether a similar awareness exists among the older generation in Europe is a question which this book, although forming an impressive contribution to the debate, does not convincingly answer.

Pieter Vanhuyse and Achim Goerres (eds.) (2012): Ageing Populations in Post-industrial Democracies: Comparative studies of policies and politics. Routledge/ECPR Studies in European Political Science. Vol. 76. Abingdon: Routledge. 272 pages. ISBN: 978-0-415-60382-9. Price: £75.00

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Davidson, S. (2005): Grey Power, School Gate Mums and the Youth Vote: Age as a Key Factor in Voter Segmentation and Engagement in the 2005 UK General Election. In: *Journal of Marketing Management*. Vol. 21 (9-10/2007), 1179-1192.

Eric A. Posner and David Weisbach: Climate Change Justice

Reviewed by Nicole Roy

In *Climate Change Justice*, Eric A. Posner and David Weisbach pursue the goal of creating a feasible and realistic climate change treaty. Their methods are different to the most common ideas and

already-existing treaties on climate change, which they reject as too idealistic.

The aim is to show that a treaty can be feasible whilst also promoting the welfare of people all over the world. For them, it is all

about balancing feasibility, fairness and justice. But although they favour an agreement which would help the poor, they reject the role of justice in the design of it. Furthermore, it is explained in the book that a

climate change agreement is not a panacea for all problems of international and inter-generational justice. The idea that it has to be consistent with corrective and distributive justice is rejected because that would not be viable.

Their preferred approach is welfarism; they believe that the welfare of all individuals, present and future, should be given equal weighting. But they emphasise the practical limits of what states and ordinary people would sacrifice for the welfare of others. Therefore the conclusion of the book is that a meaningful treaty has to be based upon the principle of International Paretanism. International Paretanism emphasises that a treaty must be feasible for all states that are part of the bargaining process for that agreement.

The book is structured in eight chapters. The first three provide background information for the arguments which are made in chapters four to seven. Chapter eight summarises the main points and proposes a conclusion. It is a clear and understandable structure. The background information about scientific and economic facts, about various policy instruments and about local, national, and international efforts, which have been mainly symbolic until now, are the groundwork of the argument.

Chapters one and two provide a background for the later content. In chapter one, facts are provided to show why a genuinely global climate treaty is indispensable. Firstly, they argue that the efforts of governments are restricted because of uncertainty about the scale of the effects of climate change. Nonetheless, it is clear that climate change will affect everyone in the world and especially future generations. The complexity of climate change makes it difficult to negotiate about it, and the authors argue that, for this reason, it cannot be used to solve other problems like distribution and fairness through corrective justice.

Before Posner and Weisbach begin their argument, they show in chapter two the different opportunities afforded by various policy instruments. The core thought is that costs and benefits must be balanced and that it is important that an "optimal" climate treaty does so, although the calculation of marginal benefits is extremely difficult. For example, they argue that it may seem unethical to have a cap-and-trade system because people pay to pollute, but the point is that emitting carbon belongs to our world, albeit that it must be controlled. If it works this



way it is not unethical because some harmful emissions can be prevented.

Chapter three demonstrates an important point which is criticised throughout the book. The authors claim that the Kyoto Protocol and other international agreements are merely symbolic and lack real substance. The lesson they wish to derive from the Kyoto Protocol is that the goals of distributive or corrective justice essentially handicap an effective climate change agreement. It is not feasible to put the full burden on the United States and to let states like China and India off the hook. The conduct of states is to a large extent not guided by ideas of justice (72). It is a solid argument for a different way to create a climate treaty, while pointing to the failure of former negotiations and agreements.

The authors reject distributive and corrective justice as a tool for a climate treaty. Furthermore, they do not agree with the idea of giving permits to pollute to countries on a per capita basis. All of this is different to the usual ideas about how to create a climate change agreement, and it may seem unethical at first. But Posner and Weisbach's argument is clearly understandable and shows that a different way of looking at this issue is not unethical at all.

They support the idea of distribution between rich and poor, but both this aim and the aim of climate protection are just too important to be tied together. They claim that there is probably a better means of achieving both, independently of each other. Empirically it is most unlikely that it is effective to treat both in one treaty toget-

her. They find different arguments to substantiate the thesis. For example, a climate change agreement is much more likely to spend resources for future generations and therefore does not help today's poor as much as the poor in the future. Furthermore it probably would help the poor more if they could decide for themselves how foreign aid is distributed, although that raises the problem of corrupt governments. The point they make is that foreign aid should not be just a part of a climate treaty, and not the other way around either, because both of them are too important to be put together in just one treaty.

Moreover, the states which are less harmed by climate change are probably unlikely to put as much effort into agreeing a treaty as the states that will suffer more. Therefore, they argue that a globally optimal abatement is probably a fair compromise between the contrasting interests of the states involved. The reason for this is again feasibility.

Corrective justice may seem fair, but there are many arguments against it. Countries like the United States that have a long history of industrialisation and high output of CO₂ emissions should not be blamed for that. First of all, the negative effects of CO₂ emissions on our atmosphere were unknown for a long time and therefore the harm was created without intention. Other scholars, for instance Christoph Lumer, also reject the principle of historical guilt because technical development has provided benefits to all people. Moreover, Posner and Weisbach think that collective responsibility between states has negative outcomes. They illustrate this in a good way with the example of the *Treaty of Versailles* which blamed Germany for World War I and exacted massive reparation payments. That was probably one of the reasons why Nazism took off so quickly. The strategy after the Second World War was totally different and was much more effective (115). There are other examples like this in the book, which help to clarify the authors' argument.

A further reason against corrective justice is again feasibility. It is unlikely that early industrialising countries would sacrifice a lot for a treaty if they knew that other countries would not be sacrificing anything. It would not be very effective if industry just migrated to another part of the world, because the governments there do not put restrictions on industry. It would harm people in the industrialised world, because unregu-

lated industry would profit economically at Europe's cost. Furthermore, it would harm the poorest countries, because if industry just migrates the effect on the climate is not restricted.

Furthermore they doubt the popular idea of fairness, which states that global resources should be divided equally among the world's inhabitants. Why should, for instance, the United States agree to lose much more than everyone else? That is not how international bargaining works. Furthermore, the per capita approach would not be good in the long run, because states with a high population would be rewarded. This could lead to fertility policies that try to maximise the size of the population. In the end their argument remains the same: International Paretanism is the only thing which is feasible because every state thinks it is better off with a treaty, and therefore is willing to negotiate.

The chapter on future generations and the defence of discounting is more complicated than the others, and lacks some of their coherence. Posner and Weisbach use numerous calculations and complicate an issue which – for their purpose – could be explained more easily. Between these calculations they make a point that is clear and well argued. They come to the conclusion that the discounting of today's costs and future benefits at the market rate of return is

the best way to evaluate a climate treaty. Low rates of return would mean that we lose today as much as others will lose in the future. They make clear that this does not mean that it is unethical, because discounting is just a way to choose projects; it is not a way to discount the value of future lives.

Although a total equal weighting of people today and in the future is not possible, discounting to find effective projects is probably the best way to come near to it. The scholar Dieter Birnbacher sees discounting also as a problem if the harms and benefits of the contemporary era are discounted for the future but not if monetary resources are. For example, it would be unethical to say that future suffering is not as important as the suffering today, but it is not unethical to say that a billion dollars will be less valuable in hundred years than today.

Posner and Weisbach sketch the arguments for the optimal design of a treaty in the last chapter and the development of the argument brings clarity to the whole subject. The omnipresent issue of climate change can be seen in a different perspective after reading this provocative book, and in the end it is clear that their ideas on a climate change treaty are not at all unethical. Posner and Weisbach are separating a climate treaty from other important issues and do not

make idealistic proposals. Justice is not left out of it, but it does not help anyone if justice is the reason why an effective treaty is not possible. For the authors it is important that something happens because former negotiations and agreements have failed dramatically. The self-interest of states cannot be ignored in the creation of an effective treaty, so everyone must think that they are better off with a treaty. The book's ideas should be taken into account during future international negotiations.

Eric A. Posner and David Weisbach (2010): Climate Change Justice. Princeton: Princeton University Press. 220 pages. ISBN: 978-0-691-13775-9. Price \$27.95.

Cited Literature:

Lumer, Christoph (2009): Klimawandel, Generationengerechtigkeit und Entwicklung. In: *Journal für Generationengerechtigkeit*. (3/2009), 88-93.

Birnbacher, Dieter (2004): Responsibility of Future Generations. Scope and Limits. In: *Foundation for the Rights of Future Generations* (ed.): *Handbuch Generationengerechtigkeit*. Berlin/Heidelberg: Springer Verlag, 45-78. (German original edition 1992).

Janna Thompson: Intergenerational Justice

Reviewed by James Wilhelm

Janna Thompson's extensive work enters the literature at a significant juncture in intergenerational terms. Notably, the process of ageing in many European countries is causing the sustainability of pension systems to be called into question, and many political commentators are beginning to contemplate whether many of them will – or have already – become “gerontocracies” (hegemony of the old). These changes have begun, in both academia and beyond, to generate a debate about whether the so-called “generational contract”, an implicit compact which governs the relationship between old and young, is still tenable in modern times. Given this increasing uncertainty about how the generations should relate to each other,

Thompson's wide-ranging contemporary account of intergenerational rights and responsibilities could prove to be an important reference text for today's world.

The book is intended for both academics and students with previous experience in the field of intergenerational justice, but can also be read with relative ease by readers with little prior knowledge of the subject. This is made possible by Thompson's ability to articulate the complex ideas she espouses in cogent, comprehensible prose. In a nutshell, it is a multi-disciplinary study on the nature of intergenerational justice between past, present and future generations which draws on, and has implications for, environmental studies, legal studies, political science and philosophy.

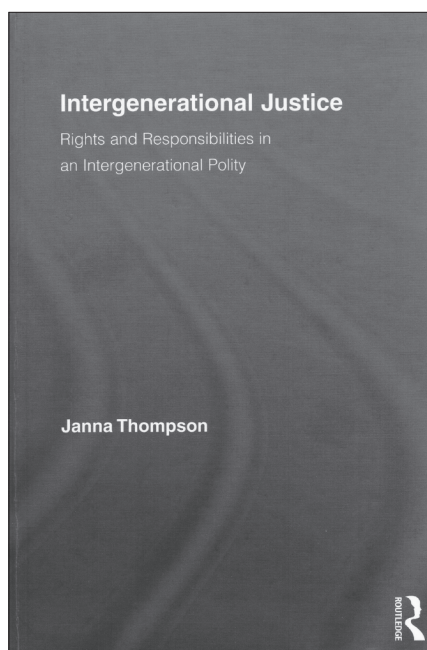
The content of the book is predominantly devoted to Thompson's main aim: to propound a theory of intergenerational justice capable of generating rights and responsibilities – a moral compass for generational relations. For those with a keen interest in the theoretical dimension of intergenerational studies, Thompson's theory will be of great interest due to its uniqueness; Thompson diverges from conventional contract, which broadly focuses on agreements rational citizens would make with each other, often in a “state of nature” (e.g. Hobbes). In the intergenerational justice literature, this method of reasoning has been adopted by many authors, sometimes leading to an expansion of the contractors to include not only the

current generation, but all generations. A popular route is to extend John Rawls' "veil of ignorance" thought experiment; in doing so, a generational contract is reached which would presumably be accepted by all generations.

Thompson rejects this conventional approach to intergenerational theory construction on the basis of an ontological specificity which fundamentally differentiates a contractual agreement made between currently living citizens and one made between succeeding generations: unborn future generations cannot be said to have agreed to any contract, because they do not exist. We cannot know what objects, institutions and practices they will value, and the problem becomes increasingly problematic with regard to distant future generations, whose value system may develop to such an extent that it only vaguely resembles our own. Finding an alternative starting point, Thompson proposes that a theory of intergenerational justice should begin by recognising that all individuals have lifetime-transcending interests (embodied in intergenerational projects) which ought to be respected by political society, thus leading to the recognition of intergenerational rights and responsibilities. This forms the central thesis of the book.

Lifetime-transcending interests are, according to Thompson, central to the lives of most citizens: scholars write books which they hope will make a contribution to their respective field, often for the benefit of both present and future people; grandparents often save to ensure that their grandchildren will receive a generous inheritance, or contribute to their education for the sake of their future career; and people frequently make requests about what should be done with their body after death. As can be ascertained from the examples, lifetime-transcending interests are defined as interests focusing on circumstances which could occur after one's own lifetime.

For the attentive reader, a question will undoubtedly emerge with regard to the tenability of Thompson's thesis: is the supposition that citizens have life-transcending interests that extend beyond their lifetime not negated by the fact that many citizens are, *prima facie*, indifferent towards the future? In other words, does Thompson have a response to the vulgar egoist who claims that that which occurs after his life has ended is unimportant? Some readers will surely conclude that lifetime-transcending interests are simply not considered important enough by a large



enough fraction of the population to constitute a basis for generating rights and responsibilities which should be recognised and protected by political society. In modern consumer society, this view has enough of a basis to threaten the very foundation of Thompson's intergenerational theory.

Thompson, in response to the sceptics, neatly circumvents the indifference of the egoist towards future generations. She convincingly argues that many of the activities which egoists engage in are, in fact, dependent on the maintenance of intergenerational relationships. Thompson confronts the reader with the case of the miser who openly confesses to having no concern for future generations and, on the face of it, hoards gold for the sake of his own self-interest. Thompson utilises the well-known sociological premise of not understanding a social actor's interests according to his/her own self-definitions, but instead identifying the sociological underpinnings of the actor's actions. In this way, she demonstrates that the miser's pleasure in amassing a fortune is dependent on the *social meaning* of gold as a mark of value, and that this meaning is maintained intergenerationally. Given the centrality of lifetime-transcending interests to the proposed thesis, and the fact that the indifference of the egoist (if widespread) poses a fundamental challenge to a theory based on these interests, it is surprising that Thompson devotes so little space to her explanation to this challenge. An expanded explanation with more examples would have strengthened Thompson's claim that unacknowledged intergenerational interests exist, and, in turn, strengthened the basis for her theory.

In contrast to the initial theory building phase (chapters one to four), the rest of the book devotes itself to making a contribution to some of the most prominent contemporary debates amongst scholars of intergenerational justice: what constitutes a fair share of burdens and benefits between generations; the role of inheritance in intergenerational cooperation; justice between both cotemporal and distant generations; and the non-identity paradox problem. As well as making valuable contributions to the above-mentioned traditional debates in intergenerational studies, Thompson also provides the reader with a commentary on less often discussed topics, such as the implications of genetic engineering for intergenerational justice.

In the final chapter, Thompson problematises her theory by considering its relation to the subject matter of international relations: a world of nation-states. Thompson suggests that two intergenerational principles should operate in international relations. The first is that each polity should respect the entitlement of members of other polities to pursue and maintain intergenerational relationships: if a polity economically exploits or damages the environmental resources of another polity to the extent that intergenerational relationships which maintain things people value – such as a system of inheritance or an ecological site of great cultural or economic importance – cannot be sustained within it, then this constitutes an intergenerational injustice. The second principle asserts that polities that have committed an injustice with regard to the first principle should seek to put things right by striving to ensure that the initial injustice does not prevent intergenerational relationships being reformed. In terms of implications, Thompson suggests that the application of these principles to international relations would lead to redistribution between rich and poor countries. In fact, since Thompson believes that an agent, including a collective agent such as a nation-state, can be held morally accountable for unwitting harms and to some extent responsible for acts committed by predecessors representing that agent, it holds that Thompson's theory may have far-reaching moral implications for historical injustices and, if accepted and acted upon, the present international order.

In order to make the step from theory to political reality, Thompson suggests that the lifetime-transcending interests of citizens need to be further researched and explicated, and, after the content of these interests has

been determined, they should be made more visible in the democratic arena. Thompson's argument suggests that a more long-term oriented democratic process could be achieved not just through the use of an "Ombudsman for Future Generations", or a lowering of the voting age in order to incorporate the views of the young generation at the ballot box, but through a reconsideration of what we currently regard as rational interests of present people. In other words, Thompson

concludes by calling for a re-examination of the real interests, namely the intergenerational interests, of present generations.

Thompson offers an innovative approach to considering the rights and responsibilities of citizens towards posterity and directly confronts potential critique of her theory in a convincing and logically persuasive manner, although more space could have been devoted to its defence. Whilst certainly providing an original contribution to the debate, it remains

to be seen whether Thompson's theory is able to challenge the dominance of the contractarian school in intergenerational studies.

Janna Thompson (2009): Intergenerational Justice. Rights and Responsibilities in an Intergenerational Polity. New York: Routledge. 191 pages. ISBN: 0415996287. Price £80.75.

An Interview with Professor Dieter Birnbacher: Reflections on Ethical Universality

conducted by Hanna Schudy

Dieter Birnbacher is professor of philosophy at the University of Düsseldorf and a member of the Foundation for the Rights of Future Generations' scientific board. In 1988 he published the book *Verantwortung für zukünftige Generationen* (responsibilities for future generations), which was translated into French (Paris: Presses Universitaires de France 1994) and Polish (Warsaw: Oficyna Naukowa 1999). Hanna Schudy is an ethicist and environmentalist interested in questions of intergenerational responsibility concerning the natural environment. She is a doctoral student at the University of Wrocław and a DAAD scholarship holder. The interview was conducted in December 2011 at the Heinrich Heine Universität, Düsseldorf. It is part of Ms. Schudy's current research into "The principle of responsibility in Hans Jonas' and Dieter Birnbacher's environmental ethics".

Hanna Schudy: Within the framework of the ethics that is developed by you, it is emphasised that moral norms must be understood and accepted in general; that is why, according to you, not every concept of value can fulfil the requirements of universal ethics. You stress that the axiology which supports such an ethics should understand value as a result of an evaluation by the subject. According to this axiology, the value of the environment is equivalent to the interests of the evaluating subject(s). But, problematically from an intergenerational

perspective, most people, especially in Poland, are not interested in protecting primeval forests such as the Białowieża.¹ When one accepts your axiology, the logical corollary appears to be that, morally speaking, the area is worthy of no special protection. Is this an acceptable conclusion? Furthermore, what kind of moral norm with regard to human attitudes towards other similar cases can be recommended within the framework of your ethics?

Professor Birnbacher: Ethics should be universally applied, and moral norms should be formulated in such a way that they can be universally accepted and understood. This implies that our axiology, or our theory of value, has to be rather narrow and somewhat elementary. Therefore we cannot expect that the values we consider to be of importance will be shared by all subjects. In fact, in connection with the environment, there is a varied spectrum of different attitudes. On the one hand, many subjects hold anthropocentric attitudes towards the environment. On the other, there are many subjects who ascribe an intrinsic value to nature as a whole, or to certain nature systems, plants, animals, etc. In short, there exists a variety of values. How do we manage this variety? My proposal is that we try to make our axiology as universalisable as possible. This seems to me the correct route to a kind of utilitarian ethics that respects the variety of existing attitudes and evaluations and, in turn, ascribes value to the satisfaction of

these values, or, in other words, to a certain interpretation of utility. This route is not contrary to the protection of the environment since the interests of not only the present generation, but also future generations must be taken into account. These interests are crucial in our preservation efforts because we do not preserve landscapes and other natural items solely for those living now, but also for the indefinite future, and all this rests upon the irreversibility of much of the destruction of nature. In the process, we may not only lose *this* plant or *that* forest as an entity, but a specific facet of nature that is unique, such as the irreversible extinction of an animal species; it should make us reflect on whether this has compatibility with our intergenerational responsibilities. This responsibility is not indifferent to what we think our future will be, and the best guess concerning our future is that people will be better off than they are today; not only will civilisation continue, but it will spread and expand. Additionally, the degree of material wellbeing of humans will, at minimum, continue to grow, and it is also probable that human needs and wants will at some point become more concerned with non-material goods. Among them, natural goods will become increasingly important; they will become scarcer, and more wanted and desired in the future as the level of wellbeing increases.

Technical and scientific progress as well as the so-called internal logic of capital will, by yielding a constant surplus, ensure that

levels of wellbeing increase as economic growth continues.

Hanna Schudy: What sort of social and political factors can influence attitudes towards nature conservation?

Professor Birnbacher: It is a very difficult question, because there are a great variety of social and political factors that influence people's attitudes. If one assumes high levels of unemployment, or high levels of uncertainty about the financial situation, one can expect environmental interests to decline in relation to the more immediately pressing existential interests. In other words, if a society experiences environmental and economic crises simultaneously, then the interest in environmental protection will decline, because it is perceived as a luxury. The interest in nature therefore depends on many factors that often seem completely unrelated and turns on people's preferences. One important factor is the legal system: it is more stable than preferences and it has the power of sanction through which people can be compelled to act in accordance with certain rules. For example, the legal system in Germany is greener to a far greater extent than the preferences of many German citizens who act as the addressees of its rulings. The intrinsic value of nature principle is an established precedent in German law which, I would think, conflicts with the preferences of many German citizens. In this way, the legal system can be more progressive than public opinion.

Hanna Schudy: Does it follow that it is possible to shape moral attitudes towards nature through the establishment and observance of environmental law?

Professor Birnbacher: The legal system can play a very educational role. A famous German lawyer once spoke of the "*sittenbildende Kraft des Rechtes*". The phrase refers to the powerful effect the legal system can have in cultivating people's moral views and actions. Nonetheless, the legal system is only respected to the extent that politicians and governments respect their own rules consistently.

Hanna Schudy: A situation has developed in Poland recently in which some Natura 2000 areas, such as Czarny Groń,² have been allocated and used for commercial purposes. Investors and owners of ski lifts have arbitrarily started to use these lands without re-

quired permission. Inhabitants of the land believe that the transformation, or, more precisely, degradation of the area presents them with an opportunity to earn some money. Both investors and inhabitants have an intragenerational interest in continuing the process of environmental degradation even if it is against a law. What kind of solution can we find in such a situation when we refuse to accept the concept of intrinsic natural value?

Professor Birnbacher: This is a very complex question, because we have to determine whether the problem we are dealing with is a legal or moral problem. From the moral point of view, a legal system can be immoral, even if there is a presumption that adhering to existing laws is of primary importance to society.

The case you mention is in fact not a moral case. It is firstly a legal case and the question is whether the permission given to these investors of Czarny Groń was legal, given that the areas concerned are protected by national law. More questions with regard to a breach of the law follow. In particular, the question arises whether compensation and the restoration of the destroyed landscape can be demanded. This is a problem of equity and fairness. If there is no legal provision for this case, morality demands that this decision should be made by taking into account the interests of all parties concerned. If there is a legal provision, one is obliged to follow the highest possible legal redress. The question is whether the natural protection law is too strict in allowing too many or too few exceptions; this is a moral question. I believe that Polish law for the protection of the environment is not too strict, but justifiable by moral concerns for the intergenerational preservation of landscapes, species, and natural values in general. However, in the EU, we have supranational legal structures to a far greater extent than people believe; European law determines which policies are acceptable to pursue in national politics, environmental policy included.

Hanna Schudy: Do you think that, beyond the argumentation according to legal norms, there exists any reason, in the situation mentioned above, to admit that this case is morally relevant?

Professor Birnbacher: We should try to narrow the gap between morality and the

law in the service of rule observance. If a norm of the legal system is not understood and not respected as a consequence, then this weakens the authority of the law. I think this is undesirable. There is currently certain pressure and a strong reason to adjust public morality to the law, because this would make it less difficult for people to respect law. This applies at all levels of law-making.

Hanna Schudy: Does the German government meet the expectations of German society with regard to nature conservation?

Professor Birnbacher: There are high expectations in nature conservation, but they go along with high expectations in other fields of politics such as transport. In a contradictory manner, people tend to want both intergenerational integrity of nature and the freedom to drive cars. They want to go on holiday by plane, but they are irritated by air traffic and noise pollution; so they protest on the one hand for more income for consumption opportunities, and, on the other, for more environmental conservation. Both are incompatible, but politicians are usually wary of making clear that there is an ultimate incompatibility, to the effect that consumption has to be reduced in order to preserve nature. You cannot economically subsidise air, as most governments do, and try to introduce sustainability in fuel uses. There is a fundamental trade-off in this domain.

Hanna Schudy: How high is the level of public engagement of citizens in Germany? Does German society work collectively in order to confront environmental challenges?

Professor Birnbacher: It depends very much on the social strata. Of course, there is a very active upper middle-class stratum that is environmentally very sensitive and readily engages in political action. Those who vote for green parties are typically intellectuals, and they come from the upper strata of society. However, the majority of society lives in the lower strata; you can expect much less public engagement from these citizens. They put a higher priority on the stability of work, the regularity of their incomes, the receipt of social security payments and they are in general far less interested in public issues concerning the whole of society. You have also a certain gradient concerning age: the older the person, the less interested he will be in public issues because he does not expect to profit from the policies he helps to

shape. On the other hand, young people are very optimistic and interested in engaging in public issues because they have an expectation that they will profit from such policies within their own life-time.

Hanna Schudy: Is there hope that partial damage of the environment will create the necessary intergenerational consciousness and motivation required for environmental protection?

Professor Birnbacher: It is always difficult to make political objectives compatible. In democratic society, all processes take much more time than in a dictatorial society. Changes come from local activity and they require social commitment. It is also not acceptable in a democratic society to introduce any political changes without a social consultancy period. It is no use expecting that a different form of social organisation might be more effective; there are no examples of a dictatorial society that could teach us how environmental politics should be developed. I think you necessarily have to wait for a certain level of economic development within a democratic framework for meaningful green politics to develop. It is also very important to promote ecological education and work to increase levels of civic engagement. The price of all this is that some irreversible environmental damage will have occurred during the somewhat cumbersome democratic process which, if one follows democratic principles as one should, cannot be prevented.

Notes

1 Białowieża Forest is the name of the primeval woodland in eastern Poland and western Belarus. It is one of the last and largest remaining parts of the immense primeval forest that once stretched across the European Plain. It constitutes an important refuge for many endangered species and has been recognised as a UNESCO World Heritage Site as well as a Biosphere Reserve. In Poland, only part of it (30%) is under the protection of the Białowieża National Park. The remaining part is the property of State Forests (Lasy Państwowe) and used for the commercial purposes. Polish NGO *Pracownia na Rzecz Wszystkich Istot* as well as the Polish Ministry for the Environment state that current measures in place to protect Białowieża Forest are insufficient to ensure the long-term stability of its natural processes and, moreover, break the intergenerational principle of sustainability. Polish law allows local governments a *liberum veto* that currently prevents further parts of it being protected under the auspices of the National Park, even though it is officially property of the Polish state.

2 Czarny Groń is the name of a Polish ski resort in Beskid Mały, a mountain range in Western Beskid which constitutes part of the NATURA 2000 area. Czarny Groń was built by a private investor from Poland, even though a mandatory report on the environmental impact of the ski resort was not written prior to its construction. As a result, over 600 beech trees were cut down, protected

acidophile flora sites were violated and considerable interference into sites of fauna species has been noticed.



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GD Bildung und Kultur

Programm „Jugend in Aktion“

Demography Prize 2012/2013

The Foundation for the Rights of Future Generations (FRFG) and the Intergenerational Foundation (IF) award the Demography Prize, endowed with **€10,000**, to essayists who address political and demographic themes relevant to the field of intergenerational justice. The prize was initiated and is funded by the Stiftung Apfelbaum. Through the prize, FRFG and IF aim to promote a discussion of intergenerational justice in society, and, by providing a scientific basis to the debate, establish new perspectives for decision-makers. The call for papers is intended to target young scholars of different disciplines. Entries should range from 20 to 40 pages in length.

For 2012/2013 entries, the awarding consortium calls for papers on the following topic:
“Youth Quotas - The Answer to Changes in Age Demographics?”

The following text will provide some first ideas for a submission:

Demographic change in many developed and developing countries means an ageing population. In the UK in 2050, government statisticians predict that there will be 2.5 times as many people aged 85 and over as there are today. The number of people aged between 16 and 64 is predicted to fall from 65 per cent to 59 per cent. Similar trends have been observed throughout Europe.

An ageing population has a number of significant intergenerational implications for voter power and political representation. Is it possible that youth will find it increasingly difficult to exercise power through the ballot box? Will our democracies become gerontocracies?

One way to counterbalance the trend and ensure the young do not become sidelined could be the introduction of youth quotas.

Although submissions can treat both, there is a difference between “youth quotas” and “youth representation in decision-making”. While the first stipulates that a certain percentage of young people must be included in a panel or body, the second generally prescribes one seat for young people. Above all, the latter applies to committees, panels and bodies in which all societal groups are represented.

Almost nothing about youth quotas can be found on Wikipedia or by searching the web with Google. It appears to be a brand new topic: this means that addressing it could be very innovative, or is the fact that almost nobody has promoted it a sign of its irrelevance?

A list of sectors in which the introduction of youth quotas might be envisaged could include:

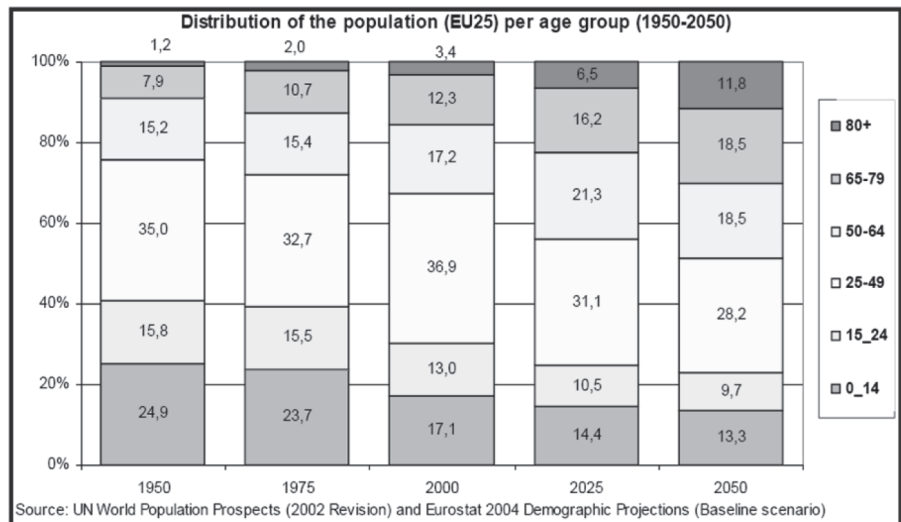
- Parliaments and local government
- Party panels and bodies
- Advisory boards for businesses, media companies, trade unions

The introduction of youth quotas could have the consequence of reenergising internal party structures. Political parties could increase their attractiveness to young people, who may be more inclined to try to climb the party ranks if a quota system makes entry-level access more readily available. In the UK, young people are recruited through youth groups such as Conservative Future and Young Labour, but are more concrete participatory mechanisms required to increase youth participation in the main party structures themselves?

Many questions of justice are raised in the context of this debate: for example, is it necessary for a parliament to reflect the demographic make-up of society to be just?

The promotion of youth quotas and youth representation in decision-making could initiate an important societal change. As organisations whose mission is to promote justice and fairness between generations, IF and FRFG would like to generate a fruitful debate in this area, with a focus on the empowerment of young people in politics and society.

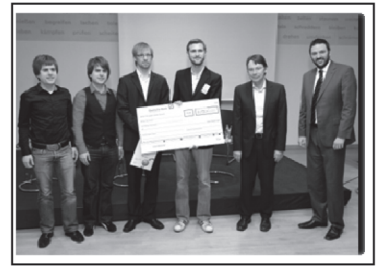
The deadline for submitted papers will be announced shortly on the FRFG and IF websites. After the deadline is published, all the documents required for a formal submission and the complete call for papers will be obtainable by sending an e-mail to: **kontakt@srzg.de**.



The Foundation for the Rights of Future Generations



The Foundation for the Rights of Future Generations (FRFG) is a think-tank that has operated on the interface of science, politics and the business world since 1997. To the FRFG, intergenerational justice means that today's youth and future generations must have at least the same opportunities to meet their own needs as the generation governing today.



From our offices in Stuttgart, Germany, FRFG releases a monthly digital newsletter on intergenerational justice and organises awards targeted at the promotion of intergenerational scholarship among young researchers; these include the *Intergenerational Justice Award* and *Demography Prize*, both of which are endowed with a prize fund of €10,000. A third award is the *Legislative Prize for Generationally Just Laws*, which will be awarded at the end of each electoral cycle in Germany. With this new award, the FRFG will recognise laws at the national and European level which have had the most significant impact on the achievement of intergenerational justice. The Foundation is also planning to create an artwork in Stuttgart's regional parliament to remind politicians of their responsibilities to future generations.



Visit us: www.intergenerationaljustice.org

The Intergenerational Foundation



The weakness of successive UK governments is short-termism. This weakness, together with rising longevity and a demographic bulge of 'baby boomers', is leading to intergenerational unfairness. From pensions, housing, education, employment, the environment, taxation and welfare, to health and social care costs, large and increasing liabilities are being passed down the generations for younger and future generations to pay.

The Intergenerational Foundation (IF), a UK-based, non party-political – and vehemently independent – research and education charity, seeks to demonstrate the scale of this intergenerational unfairness and offer solutions to redress the imbalance.

Recent collaborations include co-sponsoring *Regeneration*, a collection of essays by young British thinkers; working with the UK Youth Climate Coalition on a TEDx event on intergenerational justice; contributing to the Alliance for Future Generations' Rio +20 Open Challenge paper; and supporting the Right to A Future e-petition calling for an Ombudsman for Future Generations. IF also contributes to the work of the All Party Parliamentary Group on Intergenerational Futures.

Visit us: www.if.org.uk

