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In Defence of the Rights of the Future Generations

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Abstract

The principle of sustainability encompasses two fundamental goals of justice in relation to the preservation and utilization of ecosystems namely: (1) equitable treatment of individuals across the globe within the present generation (known as Global Justice/intragenerational justice); and (2) justice between individuals belonging to present and future generations (known as intergenerational justice). This paper attempts to outline the grounds of rights of future generations.

Key Words

Rights, Sustainability, Intergenerational Rights, Human Rights, Fairness, In Personam Rights, Rem Rights

The Brundtland Report of 1987 (WECD 1987) marked a significant milestone in comprehending the interactions between human beings and nature. Expanding the notion of sustainability, to cover the entirety of the economy and society, the report, out rightly demolished the myth that there is an inevitable trade-off between environmental and economic objectives. By setting environmental considerations within a broader social, economic, and political context, it produced a development agenda which in reconciling the often-conflicting objectives of rich and poor countries could also underline the major normative aspirations of existence. As a paradigm that drives the discourse about the interactions between human beings and nature, the reports aimed to emphasize the notion that development can be regarded as sustainable only if it meets the needs of the present without compromising the ability of future generations to satisfy their own needs (WECD 1987:43). The report laid out four important guidelines for the discourse on development. These guidelines suggest that development can be deemed acceptable and commendable only if it achieves the following:

1. The satisfaction of basic human needs and reasonable standards of welfare for all living beings.
2. The establishment of more equitable standards of living both within and among global populations.
3. The non-disruption of biodiversity while enhancing the regenerative capacity of nature both locally and globally.
4. The avoidance of undermining the possibility for future generations to attain similar standards of living and similar or improved standards of equity.

Recognizing poverty and unequal distribution of resources as the principal causes of environmental degradation, point 1 and 2 clearly emphasize on the utmost priority of fulfilling the essential needs of the world's impoverished population, both in the northern and southern hemispheres. To that end, sustainable development necessitates the fulfilment of the basic needs of everyone, by emphasizing on the right of every individual to attain a better standard of living. Similarly, by touching upon the needs of both the present and future generations, points 3 and 4 acknowledge the rights of future generations (ibid 44).

The Brundtland Report put forward a comprehensive framework for thinking about development by encapsulating concerns of justice and welfare at national and global scales while simultaneously upholding the ideal of justice between individuals of the present and of future generations. Creating and meeting norms for global justice along with equitable treatment of future generations thus became an essential prerequisite and a natural outcome of the idea of sustainable development. These concepts pertaining to justice, despite their arduous attainment, were intended to function as the fundamental and normative directives for ensuring the sustainable employment and preservation of resources.

Arguably, while attaining the ideals of global justice necessitates acceptance of cosmopolitanism as the ethical framework for widening the territorial barriers imposed by conventional notions of citizenship, the attainment of intergenerational justice proves to be a more demanding task, given that legal systems and theories of justice are primarily focused on resolving conflicts among individuals and within the same nation. It requires validating the claims and philosophical reasoning behind intergenerational justice. This paper is an attempt to look into arguments on which a viable theory of intergenerational rights and justice could be built and planked.

The Case Against Intergenerational Rights

Any justification of intergenerational rights and justice necessitates formulating reasons that validate the obligations of current generations toward future generations. Furthermore, it is imperative that the benefits arising from justifying the rights of future generations to the present beyond expressions of eternal gratitude or sentimental attachment be worked out as well. Some of the major arguments against the rights of the future generation have been mentioned in this section.

In traditional contract theory, the motivation for maintaining rights and ensuring justice stems from the need of creating a structured society to overcome the problems induced by the unregulated state of nature based on rational self-interest. However that argument does not hold good for building a case for intergenerational rights and justice given the fact that unlike contemporaneous individuals, future generations lack the potential to pose an immediate threat to the present. The primary challenge in this regard thus is the lack of mutual advantage and reciprocity between present and future generations.

Future human beings are characterized by indeterminacy, contingency and a lack of identity, making their existence uncertain and disqualifying them from any entitlements, including legal rights. Accordingly, intergenerational justice is deemed conceptually impossible (Tremmel 2009; Barry 1989:180).

The issue becomes intricate when viewed through the lens of the fulfilment of rights as an imperative prerequisite for the existence of rights. To put it differently, if rights are only coherent when realized, it implies that rights must initially be recognized and accessible to individuals in order to hold significance. Consequently, in a particular scenario where both the individual expected to experience rights and the claims themselves are either unattainable or beyond the individual's capacity to enjoy, the notion of rights loses its meaning (Beckerman and Pasek 2001).

Similarly, the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world loses its sheen in wake of the argument that the reference to all members of the human family implies living people and excludes the yet to be born people from its scope (Weiss 1989:5).

Arguably, the concept of endowing the unborn with rights is akin to viewing them as a distinctive group of individuals awaiting their cue to take centre stage and assume their respective roles. However, there exists no such grouping as "unborn people". Hillel Steiner effectively refuted the notion of assigning rights to future generations by stating that 'in short, it seems mistaken to think of future persons as being already out there, anxiously awaiting either victimization by our self-indulgent prodigality or salvation through present self-denial' (Steiner 1983: 159).

Yet another challenge in comprehending the rights of future generations arises from the perspective that posits the existence of a right as a consequence of obligations though not the reverse. In this context, most rights are considered claim rights, indicating that an individual or institution is duty-bound to provide or allow what is being claimed. Therefore, if an individual possesses a right, there must be individuals or institutions that enable him/her to exercise it. In essence, the existence of a right is a sufficient condition for the existence of an obligation. The dilemma surrounding intergenerational rights lies in the fact that supposing we were to substantiate the notion that forthcoming generations possess entitlements, such as the ability to enjoy natural resources, the resources in question would inevitably be exhausted to the extent that they would no longer exist by the time these generations come into existence. Therefore, accentuating these rights would be nonsensical to say the least.

It is logical to assume that future generations will have interests but that in itself simply does not justify the claim that the future people's claims be made obligatory on the present generations. The attribution of rights contemporaneously is not solely contingent on having interests, as interests are merely a necessary condition and not a sufficient one. For example a student may have an interest in topping his/her class but that in itself cannot be seen as a right (Griffin 1986: 227).

Additionally, the proposition that forthcoming generations will possess interests in the future and possibly acquire rights in the future should not be misconstrued to imply that they can have interests today, that is, prior to their birth. It is plausible that the presence of certain interests may connote the existence of certain rights. The argument that future generations possess 'rights' by virtue of their interests is flawed and in the sense that it is both logically and physically untenable for future generations to entrust the safeguarding of their rights to any particular entity in the present.

Defending the Rights of the Future Generation

Notwithstanding the arguments presented in the preceding section and before proceeding further, certain caveats must be put in place. It is imperative to note that when detailing on rights of the future generations focus is on collective rights and not on individual rights say for example their right to inherit and enjoy a healthy environment which cannot be granted only to a single individual at the cost of others. Additionally, it must be admitted that the rights of the future generations may not be defended on legal terms but primarily normatively on the ground that the rights of future generations are essentially the rights of humanity to perpetuate its existence and so *ceteris paribus* safeguarding future generations equates to safeguarding ourselves and humanity.

Arguments advocating for the rights of future generations often adopt divergent ideological positions, including but not limited to libertarianism, utilitarianism, and egalitarianism. Libertarians, guided by their adherence to the principles of minimalism, assert that the rights of future generations must be defended, and that events such as environmental degradation may be viewed as a violation of a rights-based theory of justice, which cannot be reconciled with the culture of free enterprise (Dore, 1998).

Utilitarians, on the other hand, ground their arguments in the demands of justice, contending that the present generation is obligated to provide more resources to future generations than what they received from their predecessors. Egalitarians, meanwhile, justify comparable concerns by emphasizing the well-being of society's most disadvantaged members, irrespective of their generational affiliation (Fabre, 2000).

While each of these moral and ideological frameworks are unique in offering arguments on why future generations ought to be bestowed with certain basic rights yet they all align with the fundamental principle that future generation ought to receive no less than what was inherited by the present generation from the preceding one (Gosseries 2008).

Two major contentions on the validity or otherwise of the rights of the future generation can be discerned in ethical and moral philosophy. Firstly, it has been contended that the rights of the future generation can be defended on the account which sees present generation as inextricably bound with the future generations on an everlasting agreement. Secondly, the attribution of rights to yet to be born or 'not-yet-determinate persons' encompasses potential beings with interests, needs, and rights akin to our own (Baier 1981; Patridge 2001).

Following the discourse on the correlation between rights and duties (Hohfeld 2008) under which the possession of a right entails the existence of corresponding duty on other for its effective realization placing obligations on the present generation to for honouring the rights of the future generations makes sense but it requires establishing certain essential interests of the future generations that ought to be protected by agents in the present. In actuality, the majority of advocates for the rights of future generations ground their arguments partly on the premise that these generations will possess interests by which they mean things that result in or contribute to an individual's overall well-being. According to Joel Feinberg, 'the identity of the owners of these interests is now necessarily obscure, but the fact of their interest-ownership is crystal clear, and that is all that is necessary to certify the coherence of present talk about their rights (Feinberg 1981: 148).

Numerous distinguished philosophers have either explicitly or implicitly subscribed to the belief that subsequent generations possess certain entitlements (Feinberg 1998; Warren 1981). In detailing on his arguments on Justice, Aristotle – the great Greek Philosopher attempted to make a clear distinction between general justice and particular justice. For Aristotle, while general Justice dealt with the lawful and fundamental institutions of a just political system, particular justice was about fairness. Distributive justice according to Aristotle necessitates that those who receive justice possess comparable entitlements to limited resources. In light of the fact that natural ecosystems are not the result of any specific individual or group, one could reasonably argue that such benefits associated with nature are the communal assets of humanity. As such, each current and future individual possesses a valid right to stake a claim to these resources.

One of leading philosophers of German enlightenment Immanuel Kant for example justified generational succession on a teleological approach. For Kant humankind, being the sole rational entity on Earth capable of utilizing reason as an end, could never fully attain its capabilities within a single individual, but rather through generational succession within the human race (Kant 1963).

Following Kant it can be argued that the future generations possess rights as we do because they are an extension of our own. However, as aforementioned, future generations are not afforded the same direct entitlements as we. To explicate the nature of future generations' entitlements, one may adopt a legal philosopher's differentiation between *in personam* entitlements and *in rem* entitlements. An *in personam* entitlement is one that operates between specific set of determinate entities – individuals groups communities corporations etc, *In rem* entitlements are not imposed upon named/determinate entities

but imposed on the society at large. It could be understood as moral obligations that humans have to each other qua humanity, though is dependent on possession of resources and capabilities for being effective.

Based on the distinction between in personam and in rem rights it is thus possible to note that the rights of future generations, which are distant in time, cannot presently be considered as in personam rights. However, it is feasible to construe such rights as in rem rights. However, it is important to acknowledge that the aforementioned in rem rights carry with them correlative obligations that must be upheld by others. Moreover, the distinction made by Kant between perfect and imperfect duties can be employed. The former is characterized by being unconditional and allowing no room for deviation. Conversely, the latter permits certain latitude. For instance, a person who is drowning or an individual who has suffered an accident possesses the right to be assisted. However, as this right is an in rem right against the "world at large," it necessarily implies an imperfect duty. The limitation of resources, abilities, and willingness to cater to others underscores the imperfection of these rights.

Understanding the rights of future generations in terms of the negative duties of present generations presents an additional avenue for safeguarding the rights of future generations. It is posited that whilst positive rights cannot be guaranteed to future generations by the present generation, negative rights can be attributed to them, thereby ensuring that they will not be subjected to harm. One of the leading climate justice theorist Simon Caney for example argues that intergenerational obligations constitute a fundamental aspect of worldwide climate justice because of the time-based nature of climate change. This signifies that forthcoming generations will bear the brunt of the harmful consequences of present greenhouse gas emissions and hence future generations possess a negative right to be protected from harm caused by the present generation, thereby imposing a responsibility on us to protect and safeguard their interests (Caney 2019). Furthermore, the in rem rights of future generations impose obligations on powerful entities such as corporations, states, and large groups, who possess more substantial resources than individuals, to fulfil their in rem duties both in the present and in the future.

Finally, the rights of future generations could also be defended from a human right perspective. Primarily, there is the principle of universality of human rights. In my perspective, this is a dynamic notion that essentially implies that human rights are perpetually applicable, universally and for every individual. This encompasses individuals who are yet to be born. Failing to consider it as such would render the notion of universality as bounded by time and subject to qualification. Therefore, universality encompasses an intertemporal dimension. Secondly, there is the principle of human dignity, which is believed to be intrinsic to the human persona. It would be illogical and nonsensical to disallow future individuals the right to live a life of dignity. Thirdly, in accordance with the principle of intergenerational justice and fairness, it is imperative that present generations refrain from imposing situations and conditions upon future generations that may potentially compromise their ability to fully enjoy fundamental human rights. As many of us currently enjoy such rights without significant hindrances, it is incumbent upon us to ensure that the right to food and water, for instance, is not jeopardised for future generations.

Conclusion

It is thus apparent that while future generations may possess certain entitlements, they are not presently endowed with in personam rights. However, they do hold in rem rights. Moreover, the rights of upcoming generations necessitate duties for the present generation, both individually and corporately. To establish a justifiable conception of the rights of future generations, one must carefully navigate between two undesirable alternatives, namely impracticality and avarice. Guided by a perspective of rights grounded in freedom, corresponding duties, and justice, it is possible to formulate a defensible concept of the rights of future generations.

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