

THE RIGHTS OF FUTURE GENERATIONS: SOME SOCIO-PHILOSOPHICAL CONSIDERATIONS

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1. The American Philosophical Association, in the February 1973 issue of its Bulletin (No. 14), requested contributions on the topic: "Can it be asserted that future generations have rights, for example, to pure air?" The response raised two second-order questions: (a) why did the participants find so little explicit discussion of the problem to work upon? (b) why did they find so much interest in it now?

The paradox in the conjunction of these two questions is not very difficult to resolve: the problem has only become real recently. The reasons for its late emergence, however, may well deserve stating.

2. Human beings have differed greatly in the accounts they have given of the concept of "justice"; they have spelt out the meaning and the practical implications of such phrases as "giving everyone his due" in many different ways. But they have always agreed on a number of basic points.

The first point is that justice is essential to human conviviality; secondly, that justice is not merely a matter concerning the relations between one individual and another; in traditional terms, "commutative justice"; it also implies duties of individuals towards the community or communities to which they belong; in traditional terms, "social justice". Thirdly, the concept of justice is logically connected with the concepts of "equality" and "proportion"; hence the requirement that an individual contribute to the welfare of the community has particular relevance to the question of proper conduct towards the needier and weaker members of mankind.

Indeed, despite the vast controversy excited by almost all the parts of the most discussed book on the topic in recent years, John Rawls' *A Theory of Justice*, one part appears to have gone unchallenged. It is the thesis that one of the criteria of justice in social policy is the maximisation of benefit to the least advantaged, consistent with the safe-guarding of other principles.

Rawls, however, explicitly rules out of consideration the rights of future generations, on the basis of two assumptions.

His first assumption is that the most appropriate criterion for measuring relative welfare situations is capital stock, rather than such indices as GNP (which roughly measures production and consumption). This assumption may be generally acceptable, if capital stock is taken in the widely inclusive sense given to it by such economists as Kenneth Boulding — and account is taken not only of the nature, extent, quality and complexity of natural and artificial goods, but also of the physical and psychical conditions of the human beings included in the system.

The second assumption made by Rawls is that future generations will in all cases inherit an increased capital stock. Hence, they will always be better off than the present generation.

This second assumption might perhaps have been readily conceded in the past, when it would have been readily thought that "cultural" accretions were more important in the general consideration of welfare than the state of "nature". But this assumption, plainly, cannot be made today. Its validity depends on the degree of "development" reached or, more precisely, on the balance between environmental and other resources in a particular area. The state of the "natural" environment can easily become a more important factor than the level of accumulation of capital goods. (For example, purer air may be more relevant than a second car). In concrete terms, there appears to be a point, in the course of the "development" process as it has historically occurred, at which added material consumption plainly becomes worth much less in terms of welfare than a healthier natural environment. In such a context, future generations will be more disadvantaged than the present. This result can be taken to imply that there is something wrong with the particular pattern of development which produces it. It brings out the fact that the process of "development", such as it has, in fact, historically occurred in recent centuries, has produced a *double* imbalancing effect: between some parts of the world and others on the one hand; between present and future generations on the other.

Two consequences follow from this consideration. First, there is a convergence of interests between the interests of future generations in the more developed areas and of the present generation in the less developed areas. Hence, considerations of justice towards future generations are corollary and, not contrary, to the solution of the problems of justice raised by present inequalities or disproportionate development between different regions of the world. The future generations in the developed world are the natural allies of the present generation in the developing world. It is in the interest of both that another pattern of development be adopted by mankind than that historically pursued over the past few centuries, at least.

The second consequence is that the corrective measures that have to be taken to redress the established pattern of the developmental pro-

cess should not logically take the same form immediately in all parts of the world. If the principle that one criterion of a "just" policy is that it benefit the most disadvantaged is accepted, as it is universally accepted with the proviso that other principles be safeguarded, then it would, for instance, be "just" to allow some present environmental deterioration (to the disadvantage of future generations) if it is necessary in order to ensure the supply of food needed by the present generation in some parts of the world, but it would not be just to allow the same diminution of the heritage of future generations in order to supply a second car to living individuals. If other things were equal, it would be possible to hold that such rules of intergenerational justice: (a) Each generation must leave water, air and soil resources that are at least as pure and unpolluted as when it came on earth; (b) Each generation must leave all the species of animals that it found on earth, etc., should be universally applicable. But other things are not equal. Their application might result, given the present divisions of the world, in handicapping the present generation in some areas of the world severely enough for it to be the more disadvantaged in comparison with future generations. Hence, given that the guiding principle is benefit to the least advantaged, the rules would not be immediately applicable. But, whenever the situation is such that added material consumption is plainly worth much less in terms of welfare than a healthier natural environment, then future generations are clearly more disadvantaged than present ones, and the rules of intergenerational justice are applicable.

3. The paucity of references to the rights of future generations in the philosophical literature of mankind is understandable in the real context of development of the world until recently. However, there is clear recognition of such rights on an individual basis (and usually within a limited time-scale) in most of the juridical systems of mankind. Such systems almost always have given a considerable importance to rules of inheritance, in correspondence to the apparently instinctive and quasi-universal human desire to bequeath the objects of value to sons, grandsons and other relatives, and even non-kinsmen.

Inheritance is the acquisition of ownership rights based not only on what is the primary title to property in all systems (at least, in principle) viz. work, but also on some (usually implicit) axiom about intergenerational relationships. In fact, although the primary axiom relating property to work is the ideological foundation of the right of a property owner to dispose of his property even after his death, juridical systems usually establish systems of inheritance which, in the absence of wills or other testamentary instruments, suppose that there are normal or natural rules for the passage of ownership rights from one generation to another. Certainly, one of the most interesting aspects of most of these legal systems is that they usually allow living persons to bequeath the goods to other persons as yet unborn. (For instance, Mr. X may

leave his money to be invested and the profits accumulated for a hundred years, after which the income is to be distributed to his descendants or to the poor, or as scholarships, and it may be used for no other purposes).

Although this principle, according to which persons, as yet unborn and anonymous are acknowledged to have rights which the State has the duty to protect, is extremely interesting in the present context from an institutional point of view (the legal function of *proxy*), it is not on this rather exceptional case, but rather on the most general features of the inheritance system that attention should be focused. In fact, to inherit implies to accept. What is accepted is not merely an inheritance, but the complete system of rights and obligations which constitutes its necessary context. If I accept a legacy, I agree to play a part in a game with elaborate rules. This "game" is plainly based on the principle that resources are intended to be handed over from one generation to another. There are, therefore, implicit conditions upon my use of what I inherit. Implicitly, inasmuch as I accept that I have a right to my father's property, I accept that I have obligations towards my children. Equally, plainly the obligation is not that I transmit *tale quale* as I received it. The implicit rules of the inheritance game are that my management of the inheritance assigned to me is to be according to its nature. If it is of such a nature that it is used up when used, then I am obviously not bound to hand over anything to my successors if I am entitled to use — and, necessarily, use up — the inheritance. If it is not necessarily used up in use, then my property right means that I have discretion in determining whether to ensure its mere preservation, its transformation, or even its sacrifice, unless the object is patently of such a nature that it should be preserved (e.g. if it is a "work of art"). The essential point here is that accepting an inheritance implies accepting a whole system of explicit and implicit rules which is based on the principle of a social continuity between generations, including both individual relations (justice of the commutative kind) and individual-community relations (social justice).

However, the importance of individual inheritance can be seen to be related to a constellation of biosocial conditions which no longer obtain in a large part of the world today. The principal constituents of this set of conditions can be briefly listed as follows:

- a) short average life-expectancy;
- b) high birthrate; (producing a pyramidal agestructure in the community);
- c) knowledge largely the fruit of practical experience, rather than scholastic education;
- d) life-enhancement possible almost exclusively in individual terms, rather than as collective promotion.

In such a biosocial context, it seems "natural" that power (rights) be invested in the surviving, rare, wise, successful patriarchs, and that the younger generation be content with the prospect of an orderly succession through individual inheritance rules.

On the contrary, in a large part of the world today, the biosocial context is different:

- a) average life-expectancy is long;
- b) the birth-rate is low;
- c) knowledge is obtained more through intensive instruction when young, rather than through life-experience;
- d) life-enhancement is more probable through collective promotion than through individual ladder-climbing.

In such a context, "instinctive" parental concern for the welfare of offspring tends not to be concentrated on preparing an inheritance for them to succeed to; it tends rather to be focused on ensuring for them an independent status as rapidly as possible. Besides, on the one hand, the stage is set for intergenerational ("Oedipal") conflict; on the other hand, the idea of the collective heritage of a whole group to which the individual belongs becomes more important than that of individual inheritance. The size of the cake becomes more important than the individual sharing of it. This is typical of the situation where the cultural heritage of a society is more important than the "natural" and it comes about because of the cumulative nature of cultural resources. This cumulative nature is most obvious in the case of intellectual resources. Through the educational system, a boy of today can in a short time master ("inherit") all the knowledge accumulated through centuries of scientific research. But it is also true of material resources. The inheritance of anybody in a society in which swamps have been drained, roads built, cities organised, etc., over centuries is much richer than that of anybody in a society which does not inherit any such collective heritage. This is, to a considerable extent, one reason for present day inequalities of a regional kind.

However, a third situation is soon bound to come about, in which the heritage of mankind as a whole becomes weightier than that of the specific region to which one belongs. At the point when the state of natural resources (purity of air, water, etc., availability of non-renewable resources, etc.) becomes more important for welfare than accumulated cultural stock, then the state of the natural unappropriated or unappropriable heritage of mankind comes to loom larger from the appropriated, politically circumscribed, heritage of a community. It is at this stage, as has already been seen, that the common heritage of mankind becomes more relevant to "giving everyone his due" (or justice) than either individual or partial-community inheritance. At this point, the interests of the species can be seen rationally (whether they are felt

instinctively or not — a moot question among biologists) to coincide with the interests of the individual, at least in a future perspective — or, in other terms, that the interests of future generations in “developed” regions come to coincide with those of present generations in as yet not fully “developed” regions.

A “signal” that this point is actually being reached in the world today is the following. The period in which the national heritage appeared to be more important than either the individual or the species heritage was signified by certain “fiscal” and “scientific” methods. In the period of the dominance of the “industrial revolution” culture, on the one hand, the heavy rates of “succession duty” expressed the weakening of the natural succession ideology; on the other hand, the conventions of economic science assumed that the further in the future a benefit was expected to accrue, the less its value should be accounted to be. Assumptions about time-preference and discounting-rates were such that very long-term benefits (to be reaped, in the famous Keynesian phrase “when we’re all — i.e. the present generation — dead”) were deemed to be so infinitesimally small that they could and had to be simply dropped out of all consideration or calculation in cost-benefit analysis. But, at present, larger time-scales are being deemed necessary in order to decide on the profitability or otherwise of certain huge investment projects. The eclipse of the future beyond a score or little more of years is apparently coming to an end in economic accounting, precisely because global conditions are becoming more relevant than “national” ones.

While it has been upheld by some that bargaining is the best means to regulate human exchanges, their case clearly does not apply to the question of intergenerational conflicts of interest. While every act with important future consequences affects future generations, no act of future generations can affect the welfare of past generations; hence, no bargaining in terms of exchange is possible, except in terms of the moral satisfaction provided by the carrying out of justice. The reciprocity implicit in systems of bargaining does not exist in the relationship between present and future generations. The case for future generations cannot be based on the principles of commutative justice, but on those of social justice. Despite the “instinctive” concern of parents for their offspring, it is also probably impossible for the matter to be justly regulated on the basis of self-interest considerations. The decisive consideration is that when dealing with resources which, of their nature, are the “common heritage of mankind”, it is self-defeating to seek to apply to them the rules of management which may be the most effective when dealing with resources which, of their nature, are capable of individual or state appropriation (just or unjust) as the case may be. In order to see this point, it is necessary to clarify the concept of “the common heritage of mankind.”

4. Ever since human beings began to reflect on the topic of ownership, they have observed a basic distinction: some goods have been "appropriated" in the sense that exclusive ownership is exercised over them by some individual or group, while other goods have not been so appropriated. The latter kind has often been identified with "public" or "state" property, but it is necessary to distinguish further. The State owns certain goods which it manages in the exercise of its specific functions; but there are other goods which it merely reserves for "common use" — such as common grazing ground or parks. A similar phenomenon exists at the World level. Here, the equivalent of private property is national sovereignty — There is still no World State analogous to national states. But there are areas and resources which are outside national jurisdiction — such as the deep seabed, or outer space — which are analogous to the "commons" within national boundaries. And just as when the uses of the national "commons" becomes multiple, conflicting or excessive, it becomes necessary for the State to regulate them, similarly it has become necessary for the community of nations to regulate the uses of the "commons" beyond national jurisdiction. A first attempt in this direction is represented by the United Nations Conference on the Law of the Sea.

It may be worth noting here that when the question of the ownership of the subsoil mineral resources on land arose in 18th century Europe, and it was debated as to whether such resources belonged to the owner of the land, to their discoverer or to the State, Mirabeau in a speech to the National Assembly of France pointed out, among other things, that common ownership of such resources was a consequence of their very nature: "I say that the inner part of the earth cannot be divided up, and that the fossils can be divided even less because of their irregular position; that the best for society is divided property with regard to the surface, but that it demands unified property as regards the inner parts of the earth". Since subsoil mineral deposits cut across and in no way corresponded to surface divisions, their proper use required a different system of ownership.

An analogous argument was presented by Arvid Pardo on November 1st 1967 to the United Nations Assembly with regard to mineral deposits in the seabed and it is even more applicable to mobile living resources such as fish. The rational use of such resources runs counter to the division of ocean space and its national appropriation. Ocean currents, pollution and fish do not stop at national frontiers. Just as the French National Assembly in 1810 declared subsoil mineral deposits to be the common heritage of the Nation, similarly the United Nations Assembly in 1970 declared the subsoil mineral deposits of the seabed to be the Common Heritage of Mankind.

The concept of the Common Heritage of Mankind was evolved

partly by analogy and partly by extension of the concept of social ownership as embodied, notably, in the Yugoslav Constitution. Here, it had three main elements:

a. *Non-appropriation*: neither by individuals or groups; nor by the State.

b. *Participatory management*: without which there would be no meaning to common ownership.

c. *Benefit-sharing*: with special consideration of the disadvantaged and also of knowledge as one of the benefits to be shared.

In addition, the concept of the Common Heritage of Mankind implies:

d. *Exclusively peaceful use* (and, hence, for instance, disarmament on the seabed, or in outer space).

e. *Preservation for future generations* (because of their environmental character).

In fact, the United Nations applied the concept of the Common Heritage initially only to the non-living resources of the seabed beyond the limits of national jurisdiction. But it is obvious that logically the principle applies even more strongly to the living resources, because of their mobility, whether they are within or outside national frontiers. It is only for the practical reason that it is less difficult to establish new legal régimes where there are no heavily-entrenched vested interests than where longstanding, however unreasonable, claims exist, that the principle was so limited. Practical reasons, however, also militate in favour of its extension, because, in fact, the possibility of multiple and conflicting uses of the same space require a unified system of management, as again Mirabeau had pointed out in the case of mining: "No legislation would be useful if it allowed for two types of property which are interdependent and of which one would become useless, just because the other one was to be its foundation and criterion".

In addition, it was also clear from the start that for the Common Heritage Concept to be applied even with regard to the seabed, it required that access be regulated not just to the mineral resources, but also to the technical knowledge required to get them. But such knowledge, unlike the minerals themselves, was not at present beyond national jurisdiction, but in possession of natural or juridical persons. Hence, it is more difficult to get it accepted as part and parcel of the common heritage of mankind.

However, certain devices of a juridical nature are possible, such as the so-called "solidarity clauses" introduced into international contracts, e.g. in agreements between Spain and Latin America in the context of the transfer of automated technology. Just as estimates of environmental impact and measures to eliminate or at least reduce to the minimum negative effects are now being increasingly required at the

national level when new projects are proposed, similarly an analysis may be required of its social effects, especially as regards the distribution of economic and political benefits, with relevant measures to be taken to redress anticipated results contrary to accepted criteria of social justice. Moreover, third parties who claim that they will be effected by international economic agreements can be given the opportunity to have their case heard before the agreement is concluded. Other institutional ways can and should be developed to achieve as much practical implementation of the principles of justice implicit in the recognition that certain resources are, of their nature, "Common Heritage of Mankind".

Summing up: (A) The greater the role in the development process of renewable resources in relation to non-renewable resources, the greater is the measure of justice towards future generations in relation to the present, in a universal perspective; (B) This exigency of justice is founded on the principle of maximal benefit to the least advantaged consistent with other principles of justice; and hence the shift from non-renewable resources is to be considered obligatory only as long as its application does not result in present generations becoming more severely handicapped than future generations, as will be the case where the basic needs of the present generations are not yet being adequately met; (C) The application of the rules destined to ensure the interests of future generations in the more "developed" areas of the world — insofar as such rules enhance or at least safeguard the "common heritage of mankind" (to be managed on behalf of mankind as a species and, hence, with special regard to the needs of the less advantaged sections of the species) will contribute to the alleviation of inequalities between present generations; (D) It has been argued that present generations are not entitled to decide for future ones. But to a great extent such decisions are inevitable, since whatever we do affects the future more or less. Hence, the right principle appears to be that present actions should be such as to leave as many future options open as possible. In any case, however, great changes in human life have been or are likely to be, the most basic needs (air, water, food, habitat, etc.) have remained and will remain unaltered as long as the human species as such is unaltered. (E) Our present resources are for the greater part, not the result of our own work but the accumulation of the results of the work of previous generations. Hence, our ownership of these resources (the "common heritage of mankind") is only ours inasmuch as we form part of the species and resources have been distributed (when they have been so distributed, or "appropriated") according to such conventional systems of inheritance as mankind has devised in order to give effect to the social apprehension of the continuity between generations. It is, therefore, a logical need — i.e. based on consistency — that in the use of this heritage, we be bound in justice to consider the good of the species as a whole. (F) While it is extremely difficult in practice to redress past

wrongs, it is more possible to ensure that they be alleviated, rather than aggravated by the future course of "development". Hence, it appears to be both urgent and necessary to institute such organs at an international level as can contribute to another type of development, more in accordance with a situation in which the common heritage of mankind is more important than either individual or national heritage even for the children and grandchildren of the more developed nations, when these institutions can, in so doing, also redress the direction of growth from that of increasing present inequalities to a more harmonious proportionality over the one world which is the global habitat of the human species.

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