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The Circumstances of Intergenerational Justice

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Abstract: Some key political challenges today, e.g. climate change, are future-oriented. The intergenerational setting differs in some notable ways from the intragenerational one, creating obstacles to theorising about intergenerational justice. One concern is that as the circumstances of justice do not pertain intergenerationally, intergenerational justice is not meaningful. In this paper, I scrutinise this worry by analysing the presentations of the doctrine of the circumstances of justice by David Hume and John Rawls. I argue that we should accept the upshot of their idea, that justice is context sensitive, even if this at first sight seems to invalidate intergenerational justice. On basis of moral constructivism, I subsequently provide a fresh reading of the doctrine according to which it conveys the idea that justice is the solution to a practical problem. However, as the problem background is evolving, we need to properly characterise the relevant practical problem in order to make ethical theorising relevant. Contrary to what has been claimed, the circumstances of justice do not then clash with intergenerational justice, but are the necessary presuppositions for its advancement.

I. Introduction

There are ample intergenerational problems. Climate change, to take a flagrant example, is likely to substantially remould the natural conditions under which human societies have evolved, if the present development continues. As temperature increases faster than what is possible for humans, societies and nature to adapt to, droughts, flooding, increased incidence of infectious diseases, and other related effects will cause massive harm.¹ The fact that the present and preceding generations consume and have consumed, sometimes luxurious, fossil fuel-products while passing on the bill to future generations seems like a paradigmatic case of injustice.

A disheartening observation in light of the above is that intergenerational justice seems immensely hard to ground in ethical theory. The following passage by John Rawls (1971, p. 291) points to a difficulty many theorists have grappled with:

‘It is a natural fact that generations are spread out in time and actual exchanges between them take place only in one direction. We can do something for posterity but it can do nothing for us. The situation is unalterable, and so the question of justice does not arise.’

The feature of the intergenerational setting Rawls draws attention to here, as an obstacle to justice, is the lack of reciprocity (Cf., Gosseries 2009). In addition to this, there are other problems too.² One is the asymmetrical power relation between the present generation and future, as of yet non-existing, generations: while the actions of the present generation can substantially alter the conditions of subsequent generations, through investment in or depletion

¹ For the most updated summary of observed impacts and future risks of climate change see (IPCC, 2014).

² There are many problems in relation to intergenerational justice that will not be discussed in this text. See, for instance, the challenges discussed by Axel Gosseries and Lukas H. Meyer (2009).

of social and natural capital, they are in no position to affect us – the destiny of future generations is to a large extent in the hands of the present. Another reason to doubt the applicability of justice in the intergenerational setting comes from the apparent shortage of resources. Some of the natural resources the present generation enjoys may not be around for future generations. If the scarcity is severe enough with respect to some resource, one may question whether it is meaningful to talk about the just distribution of this resource at all.³ Yet another reason for being sceptical of the relevance of intergenerational justice comes from the apparent gap between the most modest recommendations any theory of intergenerational justice would make, on the one hand, and the apparent disregard people exhibit for intergenerational concerns, on the other.⁴ Consider again the case of climate change: if contemporaries were completely unwilling to reorient their activities in the interests of future persons, would the question of justice still be meaningful? To put it in terms soon to be explained, one may wonder whether we are beyond the circumstances of intergenerational justice.

The topic of this article is the foundational question about the applicability of intergenerational justice. It is a question which must be settled before we could move on to discuss what more specifically it is that the present generation owe to future generations in terms of justice, such as obligations incurred in virtue of climate change. To approach the problem, this text takes a step back and considers, what Rawls called, ‘the circumstances of justice’, and in particular the possibilities for their intergenerational applicability. Contrary to the passage quoted from Rawls above, I will argue that the question of intergenerational justice does arise, but that the circumstances for its emergence are different than what he assumed. I will argue that the circumstances of intergenerational justice not only *can* be given, but indeed also *must* be set out in order to make progress in accommodating the interests of future people.

To this end I will, in section II, present and scrutinise the doctrine of the circumstances of justice, and explain in more detail how this seems to invalidate intergenerational justice. I point to a *prima facie* mismatch between the circumstances of justice and intergenerational justice, and present two alternative responses to this clash. The first is to bridge the gap through an appeal to care for future persons, i.e. to ground intergenerational justice only on present-day sentiments for future persons. This is unpromising because it too narrowly confines to limits of justice to the limits of care. The second is to abandon the doctrine of the circumstances of justice and propose an *a priori* and context-independent ground for intergenerational justice. This is unpromising for several reasons, for instance, because it makes justice fictitious. More basically, however, I will argue that these responses are at fault because of a literal interpretation of the doctrine. On the basis of a problem-oriented, or constructivist, approach to ethics, presented in section III and further developed in section IV, it is possible to give a more nuanced meaning to the doctrine. It is not to be understood as presenting eternally valid and necessary conditions for justice, but as pointing to the functional role justice plays. What is important is that justice is only applicable against a certain problem background. However, this problem background should be seen as evolving, as will be argued in section IV, creating new practical problems as well as needs for new solutions. Whatever original problem justice answered to, the problem background today, in our globalised world, is quite different. In considering intergenerational justice, we need to ponder different conditions than in considerations of intragenerational questions. In conclusion, I will argue that when we theorise about intergenerational justice, we have reasons to think about the

³ One example of such an argument is given by Tim Hayward (2007). He argues against the idea of distributing ‘emission rights’, i.e. rights to emit greenhouse gas emissions, because it is practically obsolete given the finitude of the absorptive capacity of the atmosphere (in addition to being theoretically flawed).

⁴ Brian Barry expresses such a worry in (2003, p. 498): ‘[w]hether we make the demands of justice more or less stringent, it is going to demand more than is likely to get done in the foreseeable future. What then is the use of pursuing these questions?’ And even if this does not discourage Barry himself – he goes on to argue that political philosophy is concerned with truth and so worth pursuing for its own sake – it is a concern for any attempt to make intergenerational ethics action-guiding and practically relevant at least.

context and so we should properly consider the circumstances of intergenerational justice. Ethical progress, such as a better accommodation of the interests of future persons exposed to climate change, comes from accurate descriptions of the problem background and well-grounded proposals for reform of existing practices.

II. The Circumstances of Justice

The idea of there being circumstances of justice comes from David Hume's *Treatise* (1978/1739, bk. III, pt. II, sec. ii). There, Hume presents a practical view of justice, according to which justice is 'useful' in, and only in – what Rawls (1971, p. 126) calls – 'the circumstances of justice'. Brian Barry, to whom we will soon return as a critic of the doctrine, characterises Hume's position as follows: 'the rules of justice cannot be subjected to criticism on the basis of independent criteria of justice because they define what justice is' (1978, pp. 207-8). Rawls took up a similar, although more elaborated, position as a background to his theory of justice (1971, pp. 126ff).⁵ These circumstances of justice can be summarised as follows: a moderate scarcity of resources and relative equality due to the limited cognitive and physical powers of men (what Rawls called the 'objective circumstances'), and mutual disinterest (the 'subjective circumstances').⁶

Rules of justice on Hume's view facilitate mutual exchanges and interactions against these background conditions. They are conventional, or artificially created for specific purposes, without a more profound basis. More concretely, the rules of justice concern property rules: under the circumstances of justice, it is mutually advantageous to accept and enforce the institution of private property. Conversely:

'Reverse, in any considerable circumstance, the conditions of men; produce extreme abundance or extreme necessity; implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice – by rendering justice totally useless, you thereby totally destroy its essence and suspend its obligation upon mankind' (Hume 1975/1751, pp. 188-9).

In a somewhat similar way, Rawls describes the circumstances of justice as 'the normal conditions under which human cooperation is both possible and necessary' (1971, p. 126). Outside these circumstances it is not meaningful to talk of justice at all. That is why though the parties in Rawls's 'original position' do not know their class, social status, abilities, or which generation they belong to, and so on, they do know that 'their society is subject to circumstances of justice' (1971, p. 137).

An illuminating understanding of the doctrine can be gathered from Onora O'Neill. She writes: '[t]he circumstances of justice are in the first place, so to speak, the circumstances of injustice: they are circumstances which generate the problems for whose resolution justice is needed' (O'Neill 1996, p. 99). These are the conditions under which justice is practical in the sense of being at the same time necessary and possible.⁷ It is so because of the conditions of relative equality between the agents and moderate scarcity of resources: there is a small surplus of resources, and as no one is in a position to lay claim to it alone (i.e. dictate the situation), a discussion about its just distribution is necessitated. The other way around, successful

⁵ It should be noted, however, that Rawls himself asserts that 'Hume's account of them is especially perspicuous and the preceding summary adds nothing essential to his much fuller discussion' (1971, p. 127-8).

⁶ In his later work, Rawls added to the subjective circumstances the 'fact of reasonable pluralism', that is, the persistent yet reasonable disagreement in contemporary societies (2005/1993, p. 66).

⁷ Another illuminating account of the circumstances of justice is given by David Miller (2013, pp. 25-7). He presents the circumstances of justice as *grounding* justice in the sense of making it relevant, or, in other words, being the presuppositions for justice. His more general argumentation in this book for a fact-sensitive political philosophy can also be noted as instructive.

collaboration and sharing is not possible at all in a world of absolute scarcity and is redundant in a world of abundance. The subjective condition of mutual disinterest could be given a similar interpretation as moderate scarcity, *viz.* as the mean between full egoism (i.e. psychological egoism) and full altruism (i.e. psychological altruism). On that reading, justice would not be possible in a world of full egoists, if that is one where no one is willing to do anything for someone else's sake and justice requires at least some level of attentiveness to the interests of others to get off the ground, and correspondingly would be superfluous in an 'association of saints'. This is in line with the reinterpretation I will propose below, although it is not how Rawls understood the doctrine. Rawls defines mutual disinterest as 'individuals taking no interest in one another's interests' (1971, p. 128), which he takes to exclude full altruism, as above, but not egoism.⁸

Now let us move on to consider how this doctrine, if valid, presents an obstacle to intergenerational justice. Brian Barry (1978, p. 209) clearly, and pertinently, expresses the problem:

'On the face of it, if these are the circumstances of justice then things look black for future generations. We may be confident that moderate selfishness is here to stay but we cannot be sure of moderate scarcity (maybe at some time in the future the whole human race will be destitute) and the lack of equality between us and our successors is guaranteed by "time's arrow," which enables us to affect our successors while depriving them of the ability to affect us'.

Clayton Hubin (1976, p. 73) makes a similar point:

'But it is not at all clear that the circumstances of justice exist for all generations of mankind. In order to show that the circumstances of justice will obtain for all future generations, we must postulate either that there will be ever-expanding sources of raw materials and energy for us to exploit or that, through population control and technological advances, mankind will achieve homeostasis in his environment. Otherwise the resources will be exhausted no matter how provident we are. And so, barring these optimistic assumptions, justice among all generations is not possible because the circumstances of justice will not obtain'.

On the face of it, two different conclusions seem invited: either that this proves that intergenerational justice is not possible, or that there is something wrong with grounding it on the doctrine. The latter conclusion may seem closer at hand as giving up the idea of intergenerational *justice* could be considered a high price to pay.⁹

This is at least how Barry reasons when he argues that the doctrine does not provide necessary conditions for the application of justice. While he concedes to Hume that justice is inapplicable in conditions of abundance, he tries to resist the other side, namely that extreme scarcity would suspend justice. Even in situations of radical scarcity there are fairness-considerations in play (e.g. cases of triage), he argues, and these hold some weight though they may be overridden by other values if the situation is extreme enough (Barry 1978, p. 213). With regard to moderate

⁸ One could, however, argue that even if egoism is not excluded, *unintelligent* self-interests is. This is how Barry (1978, p. 215) interprets Hume's presentation of the doctrine. On Rawls's account, egoism is excluded, not through the description of the circumstances of justice, but with the formal constraints – e.g. generality, universality, and publicity – imposed on the parties in the original position, Rawls (1971, p. 131).

⁹ David Heyd (2009), however, opts for the former. He argues that 'what remains of the duty of "just saving" is not a principle of justice but only a statement about the *value* of justice and the duty to maintain or promote it' (2009, p. 170). Below, I will argue that this concession is uncalled for, and that a better approach is to revise the doctrine of the circumstances of justice in accordance with the relevant problem background.

selfishness, it is the other extreme he disputes: even if people were perfectly benevolent and all claims were met, there would still be room for criticising the arrangements as unjust, for similar reasons as utilitarian ideals can be criticised (Barry 1978, pp. 218-9). The condition he most forcefully opposes is 'relative equality'. With regards to this he argues: 'A follower of Hume would have to say that he [the Sioux Chief, Red Cloud, who wanted justice] was mistaken in thinking that right and just had any place in relations between Indians and whites, given the superiority of the rifle to the bow and arrow' (Barry 1978, p. 221). If we accept relative equality as a condition for justice, he contends, then we are forced to accept that extremely unequal and exploitive societies, such as Nazi-Germany, the European settlement in America, and Apartheid South-Africa, were not unjust, but merely beyond the circumstances of justice. The bottom line of Barry's argument is that justice is not conventional as Hume proposed, but there is an external standard from which we may assess arrangements and holdings quite apart from them being mutually advantageous.

The dispute between Barry and Hume runs deep, but need not be adjudicated here. Instead we should scrutinise the implications of the critique, especially for Rawls's theory of intergenerational justice. As suggested by the quote from Rawls we started with, the generic problem for Rawls's vindication of an intergenerational principle of justice (what he calls a 'just savings'-principle) is that this setting lacks reciprocity and so the possibility of cooperation between (non-overlapping) generations. Even though the original position is set up to also account for intergenerational justice (the parties do not know which generation they are part of), '[t]he one case where this conclusion fails', Rawls argues, 'is that of [intergenerational] saving' (1971, p. 140). It does not succeed in this since the difference principle cannot be rationally adopted in the original position, because of the situation of the first generation (Rawls 1971, p. 291; cf., English 1977, p. 92). Due to time's arrow and the lack of reciprocity, the rational choice in the original position is to not save. Even though the parties in the original position do not know which generation they are part of, they know that their interests are best served by a no-savings strategy. If they are the first generation, their savings can obviously not be reciprocated, and for any subsequent generation 'previous generations have saved or they have not; there is nothing the parties can now do to affect that' (Rawls 1971, p. 140). The parties have either way self-interested reasons not to save.

There are at least two possible responses available to Rawls to avoid this negative result: either to amend a motivational assumption to the parties in the original position stating that they care for their offspring, which would make certain savings rational irrespectively of the problem above¹⁰, or to add a further procedural constraint on the parties in the original position (what Barry [1978, p. 234] aptly calls 'justice as universal hypothetical assent'). The problem is that neither of these are convincing. Barry correctly criticises the first possibility for making justice too closely tied to actual motivation: if we do not care, then we are not bound by any justice-based claims. In short, the problem is that on basis of this solution 'the limits of caring are the limits of justice' (Barry 1978, pp. 227-8). The second alternative, which Barry himself advocates and which later becomes Rawls's considered view, can be characterised as Kantian (Barry 1978, p. 228; Rawls 2005/1993; cf., Attas 2009, pp. 201-5). This solution is to put external constraints on the reasoning process, as Rawls formulates it in his later work: 'the parties are to agree to a

¹⁰ See Rawls (1971, p. 292); cf., Hubin (1976), who proposes a somewhat similar amendment, but a psychological rather than motivational assumption. This states that it is common and known fact that people care for their offspring and identify their own interests with theirs. Even though it may not be true of each and everyone in the real world that they care for future persons, justice is served when these interests are accommodated, as this minimises the risks of ending up as a caring parent once the veil of ignorance is removed. The difference from the motivational assumption is that Hubin's suggestion preserves the idea that no comprehensive conception of the good should be assumed in the original position. My own proposal developed below is in the same spirit as Hubin's, although more extensive and not put forward within the traditional Rawlsian framework.

savings principle subject to the condition that *they must want all previous generations to have followed it* (Rawls 2001, p. 160, emphasis added).¹¹ The parties of the original position must choose a principle of savings not only for themselves but also in effect for all generations, and this principle must accordingly have the form of a law. When the representatives thus must universalise their choice, it is no longer true that the no savings-strategy will dominate. Even if they worry about being the first, least fortunate, generation, they must choose in a principled way, though that principle of course can make exception for those who lack the resources to meet their basic needs.

Barry, as mentioned, sympathises with the Kantian solution to Rawls's conundrum, but what is important, he also stresses that this implicitly forces Rawls to give up the doctrine of the circumstances of justice. I think this is a correct observation, but unlike Barry, not something to be acclaimed. There is a point in maintaining the generic idea about there being circumstances of justice, which should not easily be given up. The normative, and motivational, force that Rawls's resourcefulness opened up for with the original position is lost in this move towards a metaphysically strained Kantianism. The normative recommendations of justice are here lofty and not sufficiently tied down to actual motivation.

Barry is right in pointing to the tension between the Humean characterisation of the circumstances of justice and intergenerational justice. But he is wrong in assuming that Rawls is faced with a choice between what could be thought of as a narrowly construed care-based approach to intergenerational justice and a metaphysically strained Kantian *a priori* approach. Ideally we would ground intergenerational justice naturalistically without thereby confining it to the limits of care. I believe that there is an approach to ethics which allows us to do just that, and that is moral constructivism. With this, we can maintain the generic idea of the circumstances of justice and at the same time point to possibilities for ethical progress. It is to this we now turn.

III. Moral Constructivism

The starting point for moral constructivism is an article by Rawls, where the term is introduced for the first time. Although the approach I put forward below notably differs from Rawls's, we can begin with the core idea of his constructivism:

‘The search for reasonable grounds for reaching agreement rooted in our conceptions of ourselves and in our relation to society replaces the search for moral truths interpreted as fixed by a prior and independent order of objects and relations, whether natural or divine, an order apart and distinct from how we conceive of ourselves’ (Rawls 1980, p. 519).

The key point here is that constructivism is presented as an alternative to moral realism (cf., Street 2006). While realism consists of the claim that normative judgments are correct or incorrect in virtue of a certain relation to a mind-independent moral reality, constructivism denies such claims. Yet, constructivism also contrasts with traditional anti-realist positions in ethics, such as noncognitivism and moral error theory. Unlike these, constructivism does not deny that normative judgements can be objectively correct or incorrect. Instead:

‘*constructivist views in ethics* understand the correctness or incorrectness of some (specified) set of normative judgements as a question of whether those judgements withstand some (specified) procedure of scrutiny from the standpoint of some (specified) set of further normative judgements’ (Street 2008, p. 208).

¹¹ Cf., Rawls (2005/1993, p. 274); In fact, Rawls already gestures towards something similar in earlier: ‘Thus the persons in the original position are to ask themselves how much they would be willing to save at each stage of advance *on the assumption that all other generations are to save at the same rates*’, (1971, p. 287). Compare also with what was said in fn. 5.

The main point is that we determine, construct, or give certain facts the status of being moral facts through a procedure of reflective scrutiny; there are no moral facts prior to or independent of such a procedure (Rawls 1980, p. 519). Consequently, the approach should not be thought of as an epistemic device that indicates or tracks independently existing moral truths. Instead it proposes that morality, or more generally normativity, is constructed in a reflective procedure. Depending on how the procedure is understood, different versions of constructivism will be given; most importantly one could distinguish between a Kantian and a Humean version (Street 2008, 2012). Before we further relate to the difference between them, there are some central points constructivist views hold in common.

Two characteristics can be noted of the procedure. First, it is carried out from a ‘practical point of view’ (Street 2008, p. 209), that is, the perspective of a valuing creature who takes things to be good or bad, worthy or worthless, etc.; in other words, the point of view of someone who embraces some normative judgements. Second, this standpoint is first-person, rather than third-person, which distinguishes constructivism from many alternative views. It is from the perspective of the agent herself, with all normative commitments that involve, that the correctness or incorrectness of normative judgements is arrived at, rather than from the perspective of an external judge or observer. Without resorting to a simple subjectivist view, constructivism allows for the possibility that the agent herself can be mistaken about what is entailed from her set of normative judgements, but maintains that an agent’s reasons are ultimately a function of the normative judgements she holds. The adoption of this practical point of view has several implications, most importantly it underlines that normative judgements are made from somewhere, which resonates well with the explication of the circumstances of justice given below.

To illustrate, a simplified reconstruction of Rawls’s ‘justice as fairness’ can be given on basis of this approach. Basically, justice as fairness assumes that citizens of a well-ordered society are free and equal, and that a society is a fair system of cooperation stably persisting over time. In Sharon Street’s terminology (2008, pp. 210-1) these assumptions are the ‘grounding set of normative judgements’, i.e. the normative input. They should be distinguished from the ‘targeted set of normative judgements’, which is the restricted class of normative judgements now up for scrutiny, which in Rawls’s case are judgements about the just basic structure of a liberal society. The original position is Rawls’s ‘procedure of construction’, and the two principles of justice, i.e. justice as fairness, is the ‘result of construction’, i.e. the normative output.

Understood as a method, the constructivist approach can be seen as made up of several steps. The first is to identify the relevant practical problem. It should be stressed that it is a *practical* problem, one that agents actually encounter – as Rawls addresses the problem for liberal societies of how free and equal persons can get along under fair terms in a cooperative society – and which requires a solution (cf., James 2005). The search for an answer to the problem does not start with a blank slate, but with an affirmation of some normative judgements (*viz.*, the grounding set of normative judgements). To further define and specify the grounding set of the normative judgements, with the expectation of arriving at a procedure of scrutiny, could be seen as a second step. The third step is to scrutinise the targeted set of normative judgements, that is, possible solutions, through the procedure of construction. In other words, to propose solutions to the practical problem faced – such as when different distributive schemas are proposed and scrutinised in Rawls’s original position. The result of this endeavour is thus a constructed solution to a practical problem, not merely a strategy for implementing an independently existing and justified principle.

These steps cannot be pursued in detail here. What can be done is to outline how a version of moral constructivism could approach the intergenerational setting, and how this approach opens up novel responses to the obstacles to intergenerational justice mentioned in the introduction. Before we move on to do that in the following section, the main difference between, what Street calls, the Humean and Kantian version should be accounted for. This is important to the present

discussion, not least because the challenge Barry presents to Rawls's intergenerational theory revolves around a similar distinction. I briefly argued above that a Rawlsian theory of intergenerational justice should avoid a Kantian justification if that amounts to giving up on the idea of the circumstances of justice (and it does). In line with that, I will here propose that it is the Humean version of constructivism that we should opt for. What then is the difference between the two? The rough answer is the following: while Kantian constructivism holds that substantive moral conclusions follow from a formal characterisation of the procedure of construction – e.g. if we properly understand what it is to be a valuing creature, we are committed to the value of humanity – Humean constructivism denies that claim. The Humean version instead proposes that ‘the substantive content of a given agent's reasons is a function of his or her particular, contingently given, evaluative starting points’ (Street 2010, p. 370).

Applied to the present discussion the difference would be something like the following. Kantian constructivism would, roughly speaking, argue that the grounding set of normative judgements are given by a formal characterisation of what it is to be a valuing creature, and from this we can infer an intergenerational theory of justice: seen from the perspective of a valuing creature as such, generational belonging is arbitrary and only a principle that all can hypothetically assent to is justified, hence all generations should be given equal respect (which, in turn, can be fleshed out in terms of, for instance, equal opportunities). Developing intergenerational justice along these lines is likely to lead towards a cosmopolitan theory of justice, which is also where Barry (1978, pp. 243-4) ends up. To try to maintain the more restrictive scope Rawls assumes, i.e. the confines of a domestic society, surely seems arbitrary on the basis of this approach – and Barry (1978, pp. 228ff) is right in criticising Rawls for a lack of unity in his equivocation between a Humean and Kantian persona. Turning to the Humean version of constructivism, the reasons for acting in one way or another, or for taking into account the interests of future generations, are a function of the particular and contingent set of grounding normative judgements the agent embraces. In order to come up with an account of intergenerational justice based on this approach, we thus must begin by describing the set of normative judgements relevant to the intergenerational setting.

Before I outline the development of such a theory, it is important to motivate the choice of a constructivist approach in this context. It is also necessary to stress how this Humean constructivism differs from the care-based alternative Rawls entertained in the discussion of amending a motivational assumption. So, why should we think that normative concepts, such as ‘right’/‘wrong’ and ‘just’/‘unjust’, are constructed on basis of other normative judgements from a practical point of view rather than discovered through ethical insights? The main reason for believing this, I contend, is that it is a much more plausible explanation of the evolution of ethics (Street 2006; Kitcher 2011). There are good reasons for taking on an historical perspective in the present case: in order to understand how we could extend considerations of justice to future persons, we can learn something from how the ‘ethical circle’¹² historically has been expanded, for instance with the women's rights movement or in abolitionism. Under what conditions are restrictive principles revised to become more inclusive? An answer can guide us in thinking about the progress needed in this case, namely how persons distant in time and space can be brought within the purview of justice. In outline, the constructivist answer is that ethical progress is prior to ethical truth, and it comes from reflective construction rather than moments of insight. Ethical progress consists in refinement of the function of ethics.

For the purposes of this paper, there is no need to fully commit to a view about whether ethics in general is best understood as serving a general function, it is enough if it can be showed that intergenerational justice serves some function(s) in present-day societies. Even so, it is useful to briefly relate to the more general question as a context for this discussion. On the basis of a

¹² The expressive metaphor about ethical evolution as an expanding circle can be found in Peter Singer (1981). For a critique of Singer's account as well as a more fine-grained alternative of ethical progress see (Kitcher 2011).

reasonable suggestion for the original function of ethics, the present account could also be distinguished from the limiting care-based one mentioned above.¹³ The conjecture is the following: the original function of ethics was first presented as a response to altruism failures due to limited altruistic capacities. More specifically, human beings have the capacity for psychological altruism – a paradigmatic example is care for one's offspring – but this capacity is severely limited. Thus a need for normative guidance arises, to serve the function of remedying these altruism failures. Already at this stage, the function of ethics is broader than effectively realising desires: there are some things that we should, but do not presently desire, and also some desires that should not be met (i.e. those 'contaminated' desires that cause social friction rather than remedying it). Looking at the diverse ethical practices of today, it is even less plausible to suggest that the limits of care are the limits of justice. Quite to the contrary, justice could reasonably be seen as a response to the problems of our limited ability to care. With this theoretical framework in place, the discussion of the doctrine could now be picked up again.

IV. The Circumstances of Intergenerational Justice

Here is the gist of my proposal. First, the doctrine of the circumstances of justice should not be interpreted literally as providing *the* necessary (and jointly sufficient) conditions for the applicability of justice. It should be understood in a more instructive way, pointing to the idea that justice is a solution to a practical problem: the circumstances of justice are the problem background against which justice is proposed as the abstract solution. The point Hume and Rawls make, according to this interpretation, would be that justice is only meaningful against a practical problem background. Second, this problem background is constantly changing and evolving over time and so are the circumstances of justice. The original function of justice may still be valid, but has now all the same been complemented with ancillary functions. Third, it is in these functional developments that we should search for a ground for intergenerational justice. We need an account of why intergenerational justice is both necessary and possible for present-day human societies. That is, an empirically adequate and non-question-begging description of the problem background which shows how failing to accommodate the interests of future persons is socially disruptive in contemporary societies and how there is room for solving this problem. In what follows, I will give a rough and tentative sketch of the circumstances of intergenerational justice – or, following the terminology introduced above, of the grounding set of normative judgements on the basis of which principles of intergenerational justice can and must be constructed.

More specifically, I will argue that at least two relevant changes of the problem background make intergenerational justice necessary. First, justice does not only function to facilitate cooperation today, but also to expedite coexistence, and, second, the scope of justice can no longer be equated with the site of justice.¹⁴ Furthermore, I will argue that we can see that intergenerational justice is possible once a plausible reinterpretation of the initial conditions considered by Hume and Rawls is given. In outlining these circumstances of intergenerational justice, I will need to relate to what ultimately are empirical questions. Because of that, the suggestions put forward should be thought of as reasonable conjectures, whose empirical adequacy can only be gestured at presently.

¹³ This account of the function of ethics comes from Philip Kitcher's rich presentation (2011).

¹⁴ The latter point is convincingly made by Arash Abizadeh (2007). He makes the important distinction between the scope and the site of justice. Even if the site of justice, that is the agents governed by principles of justice, is confined to the basic structure of a society, the scope of the principles, that is the range of persons whose claims are considered, can be cosmopolitan. What is important for the arguments here is that with this distinction it is possible to argue for the accommodation of the interests of distant people without thereby releasing the basis for justice from the site of its practical problem.

The first conjecture is the following: the neglect of the interests of future persons constitutes a failure, which is disruptive for the ethical project we are all engaged in and causes social discord in contemporary societies. The explanation of it begins with the natural care people show for their offspring, but is extended through the ways in which people presently are interconnected into something like a diachronically existing global society. The intergenerational problem is forced on us just by us being the kind of persons who engage in future-oriented activities: in addition to caring for our offspring, we plan for the future, invest in the future, initiate infrastructure projects, aim for development and growth, cultivate our culture, etc. In all these, and other similar, activities the interests of future persons are brought to our attention, and with an awareness of the negative side effects of contemporary activities, normative judgements about the need to protect the interests of future persons take form. Once such judgements are sufficiently common in a society, they will effectively be part of its customs and practices and as such be maintained over time and hard to ignore. These norms become something that must be related to and reasoned with in all relevant discussions. It is no longer possible to carelessly and unwittingly engage in future-oriented activities and not pay attention to the impacts on future persons. One may even argue that these normative judgements are mirrored in denials of the global and intertemporal causal relations of present-day activities just as in defences of business-as-usual: advocates of status quo generally seem compelled to justify their position and such attempts are regularly criticised as deceptive rationalisations.

Although the more precise specification of just how disruptive neglect of the interests of future people is cannot be answered with mere gesturing, but needs real empirical examination, the conjecture above should be plausible enough for the present argument.¹⁵ Because of the growing awareness of the causal connections of present practices, the circumstances of justice have changed and the principles of justice need to change too. The general importance attributed to future-oriented questions today is testimony to that. Unlike Rawls, who assumed the closed confines of a domestic society as the scope of both his intragenerational and intergenerational dimension of justice, the scope is here settled by the causal interconnections made, and assumed, in acting in a globalised world (cf., O'Neill 1996, pp. 97-100; Abizadeh 2007). This extension, I argue, cannot be denied today with anything but social discord as a result. In other words, intergenerational justice with a cosmopolitan-like scope is necessary to facilitate harmonious coexistence in contemporary societies.

The second conjecture is the following: intergenerational justice is possible given a plausible characterisation of the relevant agents. We need to show that the problem of intergenerational justice is possible to solve for it to be worthwhile to make proposals for its solution. What does it take to make intergenerational problems solvable? The answer could be given by relating back to the initial description of the doctrine above as moderate scarcity of resources, mutual disinterest, and relative equality of power. Do these conditions need to obtain for it to be possible to vindicate principles of (intergenerational) justice? The answer, as already indicated above, is that two of them indeed are necessary, namely moderate scarcity of resources and relative equality, but the condition of mutual disinterest should be rethought. Moderate scarcity of resources both contributes to explain why intergenerational justice is necessary and possible. It is possible to save for the future, mitigate climate change, make infrastructure investments, etc. If it were not, because the situation was one of radical shortage of resources, then it would not be meaningful to raise the question of intergenerational justice. This way of presenting moderate scarcity of

¹⁵ Where should we search for evidence for the soundness of the empirical claim? The simple answer is in discussions of future-oriented practices and politics. That could, for instance, be discussions around climate change, nuclear energy, management of natural resources, the planning of large infrastructure projects, and in environmental politics in general. The basic claim here is that we will find that in such projects and practices many contemporary people are committed to normative judgements that clash with views negligent of the interests of future people. Some further thoughts about the empirical adequacy of the claim are provided in the main text below.

resources differs from the one we saw in the quotes from Barry and Hubin above. Even if there may come a day when the world is destitute, we are not there yet. What matters is here and now; and intergenerational justice is possible today with respect to access to resources.¹⁶ What about relative equality between people? The point of this assumption, I take it, is to propose that in a 'dictatorial' situation, where one or a few can dominate over the others, it is not possible to be guided by normative ethical principles. As we saw above, Barry describes the intergenerational setting as lacking relative equality because of time's arrow, but this can now be seen to be the wrong focus. It is evidently possible to act in the interests of future persons; to invest in the future, etc., so intergenerational justice is not impossible because of some dictatorial situation. Sure, the present generation could in principle fully neglect the interests of coming generations, but this is not a plausible assumption about the relevant problem background. What is relevant is that the situation is not such that 'generational egoists' can dominate over the 'generational altruists'; in other words, the interests of future persons cannot fully be neglected, even if it is merely represented by present-day spokespersons. That takes us to the final condition for the possibility of intergenerational justice, which is that people to some extent identify their interests with those of future persons. If this were not the case, then intergenerational justice would be a non-starter. Luckily, this is not the case. People are, to different degrees, willing to act on the good of future persons.

Is the second conjecture a sound description of the relevant problem background? Is it empirically adequate to assume that contemporary people can act to some extent altruistically towards future people? To answer this one can begin by noting a fact beyond dispute, namely that people generally care about, at least, their future relatives, i.e. altruism based on kin selection (see e.g. Sober and Wilson 1998). This is, for example, reflected in the common ambition to progressively raise the standards of living and in the wish to leave better opportunities to the coming generation than the ones that the present generation itself inherited. Further support could be given by arguing that we identify our interests with those of future persons on the basis of being co-participants of intergenerational projects. Long-term investments, say in the construction of the technically complex Sagrada Família in Barcelona, could amount to a kind of intergenerational cooperation: contemporaries, and people before them, make and have made sacrifices that depend on the willingness of future people to reciprocally contribute in order for the project to be completed and for the offering to be worthwhile. Such undertakings, which we seem generally willing to make, could be motivated by a kind of weak, or indirect, form of reciprocal altruism: people would thus be willing to make the individual sacrifice today based on the belief that future people will contribute their part with the result that the common project eventually is completed. In addition to these two kinds of altruism, one could also think about a third form, non-reciprocal altruism. This, more controversial kind of altruism would in the present case amount to a readiness to advance the interests of future people even if we are unrelated to and do not share any reciprocal exchanges with them. One could here point to studies that indicate that we are generally disposed to distribute social punishment in a non-reciprocal altruistic way (e.g. Gorman et al. 2005), which might lean some support to the thought that trans-generational free riders might be punished altruistically (e.g. altruistically punish a contemporary emitter of greenhouse gases). One might, for instance, hypothesise that once the interests of future persons have become an effective part of contemporary norms and practices, people would be generally disposed to maintain and protect such norms from threats of free riders. However, one should probably say that they jury is still out on whether non-reciprocal

¹⁶ It is, however, a different matter if we pose the question of whether justice is meaningful for a distant future generation living in a situation of radical shortage of resources (for instance, in a world of +5°C global temperature). If such a generation thus faces radical scarcity of resources, i.e. there is no way of distributing survival goods without the death of some members, then it is beyond the circumstances of justice, and justice has no place or function. For an argument to that effect, see Catriona McKinnon (2012, ch. 5).

altruism is an evolutionary fact, and if so, what best explains it (see e.g. Doris and Stich 2014). But even if the prospect for intergenerational justice would benefit from the reality of non-reciprocal altruism, it does not stand or fall by it. First, the welfare of future people are already on the basis of kin selection and reciprocal altruism deeply enmeshed with the welfare of present people, which justifies the adoption of principles of intergenerational justice. Secondly, we could be rationally committed to the adoption of normative principles motivating more far-reaching care than individuals would be motivated to show on their own – a reasonable proposal of the basic function of ethics is after all to remedy altruism failures.

On the basis of the submitted considerations, I believe that the second conjecture is reasonable, although a fuller defence must relate to more empirical work, for instance to the possibly countervailing force of pure time discounting.¹⁷ A more comprehensive description of the problem background is particularly important for the more difficult intergenerational problems, such as so-called “time bombs”, i.e. when actions today have a negative impact on the future that is delayed for a very long time (e.g. risks in relation to disposal of nuclear waste). Notwithstanding the full defence, a critic might argue that the conjecture is unreasonable simply in virtue of the present deadlock over climate change politics. This shows, it can be argued, that generational egoists in the end dominate such that the condition of relative equality does not obtain. My answer is that this likely is the wrong verdict. Even if the generational egoist position dominates by being the default position today, it is obvious that there is a forceful push for change and it is generally recognised that views negligent of future persons have the burden of proof on their side.

Let us thus summarise the problem background, or the circumstances of intergenerational justice. People are nowadays engaged in activities with wide-ranging impacts, e.g. consumption of fossil-fuel products, which leave greenhouse gases in the atmosphere and contributes to harm to future people. The awareness of these patterns of influence is today widely shared – we are all, more or less, familiar with our globalised world. With this knowledge, questions about how we can we go on and develop, consume, invest, produce, plan and more generally act as we do without at the same time frustrating basic desires of those impacted by our activities are provoked. Due to the relevant causal relations, the scope of this problem is markedly broader than the one Rawls addressed with his intergenerational just savings principle. Any proposal should have a cosmopolitan-like scope. The solution to this problem will not come from mere care for future persons, but requires coordinated action and appropriate institutions. Intergenerational *justice* is the necessary solution to the problem. It is possible to solve the problem because of the following factors: we are not in a situation of extreme scarcity of resources, we are not generally indifferent to the prospects of future generations, and even if there are some who do not care about future persons, they cannot dominate over those who do care. In other words, intergenerational justice is both necessary and possible.

To make the proposal more clear and distinct, some claims it does not rely on can be excluded. First, it does not depend on the success of reciprocal cooperation between generations. Recall that Rawls presented the circumstances of justice as ‘the normal conditions under which human cooperation is both possible and necessary’ (1971, p. 126).¹⁸ One approach to the intergenerational setting would thus be to present the circumstances of *intergenerational* justice as the normal conditions under which human *cooperation between generations* is both possible and necessary. That is, if justice is thought of as enabling cooperation, and cooperation between different generations is possible, intergenerational justice has a place. This seems to be the underlying, if not explicit, idea assumed in the dispute between Rawls and Barry, as well as in several other accounts (e.g. Attas 2009; Heyd 2009). But if we think of justice as the glue for social cooperation and the site for cooperation as consisting of several (non-overlapping)

¹⁷ For empirical work on pure time discounting see Frederick *et al.* (2002).

¹⁸ In addition to Rawls suggested function of justice, one could also consider Hume's slightly different suggestion, that is, ‘usefulness’.

generations, then we are of course confronted with the well-known difficulties discussed above.¹⁹ It is warranted to be highly sceptical of the possibilities for rich reciprocal cooperation between generations, and justice would hence, on this understanding, be inapplicable.

However, this is a misconceived presentation of the problem, based on a literal interpretation of the circumstances of justice. To think that these obstacles make justice inapplicable misses the underlying sense of the doctrine. Hume and Rawls were right in pointing to certain conditions as prerequisites for the practice of justice, but that the literal interpretation of the doctrine – whether that is Hume or Rawls’s interpretation, or merely a straw man attacked by critics – is too circumscribed and so curtails the full potential of justice. Granted that justice originally functioned to facilitate social cooperation in small groups of relatively equal and modestly altruistic human beings, it certainly has additional functions today. We can reasonably, though not without controversy, talk about justice between adults and children, mentally normal and mentally disabled, as well as between humans and animals. By way of analogy, it is not necessary to show that reciprocal cooperation exists between adults and children in order to ground justified claims of children, nor is such a relation needed to assert that respect and care is owed to the mentally challenged. What we do need to show is that intergenerational justice is both possible and necessary. In other words, that there exists a practical problem for contemporaries in relation to future persons and that this problem can feasibly be solved. This, I contend, has been made plausible by the reasoning above.

Another claim the proposal does not make is that present-day actions harm identifiable individuals in the sense of making them worse off than they would otherwise have been. That is, nothing in the motivation for intergenerational justice presented above hinges on the so-called ‘non-identity problem’ (Parfit 1984, ch. 16). As this problem is so notorious in debates about intergenerational justice, it could nonetheless be worth mentioning. The question, more specifically then, is the following: in the argument for the extension of the scope of intergenerational justice presented – i.e. that since present-day activities have effects on the interests of future people, the interests of future people should be taken into account – is it a problem that some of these actions also function as necessary conditions for the existence of the purportedly harm future people, such that if it were not for these actions they would not have existed at all? Sure enough this makes the inclusion of the interests of future persons qualitatively different from the historical inclusion of, for instance, women or slaves. If some present-day actions are necessary conditions for the creation of future people *with lives worth living*, then it is hard to maintain that they are harmed, as in made comparatively worse off, by these actions. There are, however, several reasons for why this non-identity problem is not a major issue for the account defended. The most basic reason for why principles of justice today must have an intergenerational scope is that any alternative is socially disruptive because many presently living people identify with the good of future people, and so are worried about the impact of future-oriented actions of today. Some may be motivated to widen the scope because they worry about the risk of unacceptable outcomes of more exclusionary principles, others may be worried that future people will not be able to lead a flourishing, or even worthwhile, life (even if those future people will not be comparatively worse off). There are, in other words, different reasons for why it is not necessary to show that future people are made comparatively worse off by present-day

¹⁹ One may wonder whether it is even conceptually possible to describe currently living people as cooperating with non-contemporaries. I believe we can make sense of this, as was argued above. However, that being said, the main claim here does not depend on the *success* of such intergenerational projects. The reason for adopting principles of intergenerational justice is not directly dependent on us *truly* being in reciprocal cooperative schemes together with them, but rather on the fact that current people hold normative judgments in virtue of engaging with future people (e.g. ‘that the wellbeing of my grandchildren is of paramount importance’; ‘that this long-term infrastructure project should be sustainable’; ‘that it is unfair that we pass on the costs climate change on future people’).

actions in order for us to have reason to adopt principles of justice with a broad enough scope to accommodate the interests of future people.

Even after these qualifications, we are far from having presented a complete constructivist theory of intergenerational justice. The circumstances of intergenerational justice must be complemented with several further conditions to the ones addressed above. However, as the ambition of this text has not been to present concrete solutions or, put another way, to argue for a specific conception of intergenerational justice, such discussions are the topic of another article. I will merely note that such a further specification could relate to features of the situation, such as the limited knowledge present people have of future persons (e.g., will they be richer/poorer than us; how many will they be; what will they desire?) and uncertainties about the situation in general (e.g., in what sense will future persons be harmed/benefited by our actions; what kind of institutions are likely to be maintained over time; how can intergenerational compliance be secured?). These are all part of the problem background in theorising about intergenerational justice. Proposals for reform of our existing practices could be addressed with respect to either of these considerations.

V. Conclusion

In this text, I have argued that context matter when theorising about (intergenerational) justice. I arrived at this conclusion by considering what Rawls called the ‘circumstances of justice’ and their applicability in the intergenerational setting. Instead of interpreting this doctrine literally, as many in the debate have done, I proposed that the important thing it conveys is that justice is only meaningful against a particular problem background. With this, and on the basis of the constructivist approach from which it was developed, I have argued that we need to attend to the circumstances of intergenerational justice. Two of the implications of this methodological proposal could now be stressed by way of conclusion. First, we cannot just extend existing theories of justice to the intergenerational setting, since both normative and empirical assumptions are likely to be different. Secondly, this methodological move indicates a practical relevance of ethical theorising for questions such as management of natural resources. It does so, unexpectedly, by advocating an empirical modesty for ethical theorising. Constructive solutions to ethical problems, such as intergenerational justice, are best proposed on the basis of adequate descriptions of the relevant empirical problem background.

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