The Non-Identity Problem, Collective Rights, and the Threshold Conception of Harm

Discussion Paper No. 2011–04
October 15, 2011

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Abstract

One of the primary views on our supposed obligation towards our descendants in the context of environmental problems invokes the idea of the rights of future generations. A growing number of authors also hold that the descendants of those victimized by historical injustices, including colonialism and slavery, have the right to demand financial reparations for the sufferings of their distant ancestors. However, these claims of intergenerational rights face theoretical difficulties, notably the non-identity problem. To circumvent this problem in a relationship between present and future generations, some rights theorists replace future individual rights with such collective rights. Others advance the threshold conception of harm in discussing intergenerational relationships in general. Despite the significant implications these revisionist views might have, few efforts have been made to scrutinize their solidity.

To plug such a gap in the literature, this paper examines to what extent the collective understanding of intergenerational rights is pertinent. I also explore the virtues and drawbacks of the threshold interpretation of harm. The paper concludes by suggesting that the motivation behind these and other versions of the rights theory suffers from the ambiguity of a traditional dichotomy between perfect and imperfect duties.

Keywords: historical injustices, intergenerational justice, perfect and imperfect duties, rights of future generations
Contexts of Intergenerational Rights

In the past four decades, moral issues concerning relationships between present and future generations, particularly in the context of environmental problems, have attracted interest among moral, legal, and political philosophers. Numerous studies have been devoted to searching for the moral foundations of concern for posterity. One of the most widely accepted theories of intergenerational justice invokes the idea of the rights of future people. Inspired by Joel Feinberg’s seminal essay (1974), many authors maintain that our descendants have the right to require us to respect their interests. James Sterba (1981) argues that future generations have the right to receive the goods and resources necessary for their basic needs. Ernest Partridge (1990) defends the rights theory against several forms of early criticism. Richard Hiskes (2009) invokes the notion of environmental human rights, while taking the perspective of communitarian particularism.

Another issue to which the notion of intergenerational rights allegedly has relevance is that of financial reparations for historical injustices, including conquest, colonization, and enslavement. In the United States, for instance, some civil rights lawyers and black activists, notably Randall Robinson (2001), propose that the descendants of slaves should be rewarded monetary compensations for their ancestors’ hardships. Demands for redress for past atrocities are also made by minorities and indigenous peoples in some other countries. In an international setting, it is increasingly argued that the current state of extreme and extensive poverty in the developing world, especially in sub-Saharan Africa, has been significantly shaped by the periods of slavery and colonialism. The same historical wrongs played a crucial role, the argument goes, in bringing about both contemporary affluence in some parts of the world and poverty in others. Accordingly, a growing number of authors (e.g., Howard-Hassmann, 2003; Butt, 2009: 97–139) defend the demand for compensations for past wrongs. Many proponents of domestic and international rectification seem to assume that the current descendants of those victimized by historical abuses have the right to compensation.

However, these claims of intergenerational rights encounter theoretical difficulties. One of the most formidable difficulties is the non-identity problem addressed by Derek Parfit (1984: 351–379; cf., Kavka, 1982). The non-identity problem refers to the fact that each person’s biological identity is contingent on the actions of that person’s natural
parents, the circumstances of conception, and countless events prior to the conception. It stems from this problem that the size and composition of a future generation in part depend on how the present generation chooses to act. It also follows that the number and identity of currently existing people are dependent on the actions of their predecessors. These implications threaten both the idea of posterity’s rights and that of current reparatory entitlements.

To circumvent the non-identity objection in a relationship between present and future generations, some rights theorists replace future individual rights with such collective rights. If the collective-rights argument is sound, all of our successors legitimately demand paramount concern of us. Others advance the threshold interpretation of harm in discussing intergenerational relationships in general. If they succeed in defending the claim for reparations for historical wrongs, citizens in some European countries will owe huge amounts of damages to those living in sub-Saharan Africa. Despite the significant implications that the collective understanding of rights and the threshold reading of harm might have, few efforts have been made to scrutinize the solidity of these views.

To plug such a gap in the literature, this paper examines to what extent the collective conception of intergenerational rights is pertinent. I also explore the virtues and drawbacks of the threshold notion of harm. The paper concludes by suggesting that the motivation behind theories of intergenerational rights, including the two revisionist versions, suffers from the ambiguity of a traditional dichotomy between perfect and imperfect duties.

Some Objections to Posterity’s Rights

The idea of the rights of future generations, while attracting wide support, faces theoretical objections from various angles, although some of the objections are ill-founded. There are two opposing views on the nature of rights in the area of legal philosophy (e.g., Kramer, Simmonds, and Steiner, 1998). One is the will theory, according to which a legal right is the power to enforce or not to enforce the correlative duty as well as the power to waive the duty. The other camp advocates the interest theory, a naïve version of which equates a right with an interest intentionally protected by law. Hillel Steiner (1983: 154–155), a proponent of the will theory, insists that future persons cannot hold rights because
they are incapable of exercising those rights. This criticism is ungrounded. The will theory cannot assign rights to those currently existing individuals who are incapable of meaningful choice, such as infants, senile people, and comatose persons. Nor can it satisfactorily explain inalienable rights, which are of great importance in the system of legal rights. While a naïve version of the interest theory encounters jurisprudential difficulties, a refined version solves them (Usami, 2008b: 301).

One of the well-established arguments against the theory of posterity’s rights is provided by Richard De George (1981: 159–160). He points out that future generations are not the present bearers of anything, including rights, and that they are correctly said to have a right only to what is available when they come into existence.

In responding to De George’s criticism, Lukas Meyer (2003: 145) argues that the rights that our descendants will have in the future suffice to be the grounds for our current obligations to them. His reasoning can be formulated as follows.

(1) Future generations will hold rights after they come into existence.
(2) The rights they will hold will be determined by the interests they will have at that time.
(3) The actions and policies made by the present generation can affect the potential interests of future generations.
(4) If the present generation frustrates their potential interests, this generation can be said to violate the rights they will hold.

I find Meyer’s reasoning misguided. Proposition (3) is true, as a great many observations in scientific research indicate today. Proposition (1) is also admittedly true, though one cannot identify, at present, what rights they will have. The problem with this reasoning is that proposition (2) is not false but misleading. The rights of future persons will be determined not merely by their interests but also by their natural and cultural environments, which will partly depend on the actions and policies of currently living people. If we cause the extinction of wild polar bears by continuing massive discharge of greenhouse gases, our successors will have no right to see wild polar bears, just as we have no right to see Giant Moa. Because the rights of future individuals will be in part defined
by our choice of policies and actions, proposition (4) is false. Meyer’s attempted response fails, and thus the point De George makes is still effective.

The Non-identity Problem

One of the most powerful objections to the notion of intergenerational rights, both in the context of concern for posterity and that of historical justice, is an argument founded on the non-identity problem. Let $P_C$ represent one of the persons who will exist at a certain future point if a policy of environmental conservation is adopted at present and $P_D$ be one of individuals living at that time if a policy of environmental destruction is now chosen. Suppose that the welfare level of $P_D$ is considerably lower than that of $P_C$. If the destruction policy is implemented, is it correct to say that the present generation is violating the rights of $P_D$?

The non-identity problem implies that $P_D$ is a different person from $P_C$, and that the existence of $P_C$ and that of $P_D$ are incompatible. The nonexistence of $P_D$ in the case of the conservation policy can be interpreted in two ways. First, a world in which $P_D$ does not exist is as good to her as a world in which she exists with zero welfare. The result is that $P_D$ is not harmed but benefited by the destruction policy, unless $P_D$ actually exists with negative welfare. It seems unsound, however, to equate the subjective value of the nonexistence of $P_D$ with her zero welfare (cf., Heyd, 1992: 37, 113) because there is no subject who enjoys $P_D$’s welfare when she does not exist. This leads us to the second interpretation of nonexistence: it is logically impossible to compare, in terms of welfare, one world in which $P_D$ exists with another world in which $P_D$ does not. Therefore, considering either of the two interpretations, one cannot help but conclude that $P_D$ has no right to require the present generation to choose the conservation policy.

The non-identity problem also applies to the issue of financial reparations for historical injustices in both domestic and international settings. Consider the following example in the context of domestic compensation proposals. Suppose that John, the African-American living in Detroit, is destitute, but his life is worth living in that he lives with positive welfare. Does John have the moral right to monetary reparations for the coerced and uncompensated labor his distant ancestors performed for many years? The answer depends
on whether it is possible for him to exist in a counterfactual world in which his ancestors were not victimized by slavery. Suppose that one of John’s male ancestors, $M^N$, was forcibly brought as a slave from Nigeria, and his wife, $W^S$, originally came from Senegambia. Then, it is impossible for John to exist in a counterfactual world where the Atlantic slave trade did not occur and where $M^N$ did not meet $W^S$ at their master’s mansion in Virginia.¹ This implies that should John have the right to reparation, his alleged loss would be paradoxically the very existence of him. Therefore, the non-identity problem undermines the notion of John’s right to compensations for slavery.

Let us now turn to the issue of international reparation. Suppose that the Beninese peasant, Mathieu, whose ancestors were victimized by the transatlantic slave trade, lives below the World Bank’s poverty line of US$1.25 per day, but his life is worth living in terms of welfare. Does Mathieu have the moral right to require the Portuguese and the French to compensate him for the slave trade? Suppose that in the actual world with slave trading, 300 years ago, a Beninese woman, $W^B$, married a man, $M^B_1$, who had escaped captivity during a war with a neighboring powerful tribe. Suppose further that in a possible world without slave trading, $W^B$ would have preferred to marry another man, $M^B_2$ (or $W^B$’s father would have preferred to have her marry $M^B_2$), but in the real world she was unable to do so because $M^B_2$ was held captive at the war and then taken away by slave traders. Consequently, the actual daughter, $D^B_1$, who was born to $W^B$ and $M^B_1$, is a different person from a possible daughter, $D^B_2$, who would have been born to $W^B$ and $M^B_2$. If Mathieu is a descendant of $D^B_1$, he does not exist in the possible world where slave trading did not occur and where $W^B$ got married to $M^B_2$ instead of $M^B_1$. The non-identity objection strikes down the idea of compensatory rights.²

**Collective Rights**

In the context of our relationship with our descendants, some rights theorists attempt to circumvent objections based on the non-identity problem by regarding the rights of future people as collective or group rights, not as individual ones. In her response to the non-identity objection, Edith Brown Weiss (1990: 203) says that intergenerational rights may be considered as group rights in the sense that each generation holds these rights as a
group in its relationships with other generations. Such rights exist, she asserts, regardless of the number and identity of individuals making up that generation.

The idea of future collective rights appears immune from the non-identity objection, but this outlook is incorrect. Let $G_C$ denote a group of persons who will exist at a certain future point if the conservation policy is adopted at present, and $G_D$ be a group of individuals living at that point if the destruction policy is now chosen. Given the non-identity problem, it is possible—and indeed very likely in cases of remote non-overlapping successors—that all members of $G_C$ are different from any member of $G_D$. In such a case, it is quite correct to say that $G_C$ is an entirely different group from $G_D$. The non-identity problem can undermine not only the notion of future individual rights but also that of future collective rights.

A more refined version of the collective-rights argument than Weiss’s is offered by Edward Page (2006: 150–158). He distinguishes the reductionist view of collective rights from the holistic view. The reductionist view takes the rights of a group to be simply the aggregation of the rights of its members. In contrast, the holistic view, which he prefers, maintains that a group’s rights are not reducible to the individual rights held by its members. The assumption here is that a group is an entity bearing ethical status independently of its individual members. It seems that the holistic view, unlike the reductionist one, can respond to the non-identity criticism. Page concedes, however, that when a current course of action harmful to a certain future group is a necessary condition of that group’s coming into existence, the non-identity problem of the group arises. He therefore concludes that the holistic view is a partial solution, which resolves the problem only in some cases.

True, there are cases in which the argument of future collective rights holistically understood seems to have solidity, while that of future individual rights fails to do so. Suppose that 10 percent of the whole population of a country will vary 20 years later, depending on which environmental policy the government chooses at present. In this case, the individual-rights claim collapses as a result of the contingent identity of these varying individuals, whereas the collective-rights claim may survive because the identity of the whole population will be roughly maintained. However, the holistic view can have some force insofar as it concerns immediately succeeding generations. In cases of distant non-
overlapping future generations—say, those living in the country 200 years later—the identity of the entire population will radically depend on the current policy choice and events thereafter. Page is right when he admits that the holistic view is merely a partial solution, but the range of the solution might be more limited than he expects.

When it is put into the context of proposed international reparation, the idea of collective rights faces the perplexing question of who counts as a member of the rights-holder group. Let us take Mathieu’s case again. One might say that all citizens of the Republic of Benin share the collective right to require the Portuguese and the French to compensate them for the historical slave trade. If this is correct, Mathieu appears to have this right. The question arises, however, of who really holds the collective reparatory right. Thanks to the enormous profit from slave trading, the Kingdom of Dahomey prospered in that land and its ruling ethnic group, the Aja, accumulated great wealth. If Mathieu is a current member of the Aja, does he count as a legitimate rights-holder? Does he rather fall within a group of wrongdoers? If some of his ancestors were among the Aja and others belonged to an oppressed group, the Fon, is he a victim or an offender? The notion of collective reparatory rights does not work in solving the real-world issues of compensations for historical injustices, until current members of the victimized group are identified.

Threshold Conception of Harm

Another form of attempts to defend the idea of intergenerational rights against the non-identity criticism bases this idea on the threshold conception of harm. Meyer (2003: 143–144, 147–159) addresses this conception in discussing both posterity’s rights and reparatory justice. He begins by noting that according to liberal cosmopolitanism, future people have general rights vis-à-vis us. However, cosmopolitans take the view that currently living people cannot have just claims to compensations for historical injustices committed against their predecessors. He rejects the latter view and purposes to provide the common grounds for posterity’s rights and compensatory claims. For this purpose, he advances what he calls the subjunctive-threshold interpretation of harm, the formula of which reads: “Having acted in a certain way (or having refrained from acting in that way)
at a time \( t_1 \), we thereby harm someone only if we cause this person’s life to fall below some specified threshold” (Meyer, 2003: 147). Meyer concedes that the scope of the subjunctive-threshold interpretation of harm is limited, and thus he finally suggests the combination of this interpretation and the more traditional one.

Meyer and Dominic Roser (2009) develop the sufficientarian theory of currently living people’s duties and future people’s correlative rights, which is based on the threshold conception of harm. The position they particularly advocate is strong sufficientarianism—as opposed to weak sufficientarianism—which gives absolute or lexical priority to the improvement in the well-being of those who live below the threshold, and which holds that the worse their level of well-being is, the more it matters that they receive benefits. Meyer and Roser maintain that one of justifications for intergenerational sufficientarianism is that this view successfully responds to the non-identity problem.

Given the threshold reading of harm, a future person can be said to be harmed by us when our choice of actions and policies causes her life to fall below some reasonable threshold of harm, even if this choice is the necessary condition of her coming into existence. Similarly, some currently living people can be described as harmed by the ancestors of others when the ancestors’ wrongdoings made their present welfare fall below the threshold. Putting aside the complex question of what a reasonable threshold means, these implications are readily understandable.

The most serious defect in Meyer’s argument is that the threshold understanding of harm does not succeed in defending the notion of intergenerational rights against the non-identity objection. Suppose that our choice of the policy of environmental destruction will cause \( P_D \) to live below the specified threshold. Should \( P_D \) have the right to an above-threshold life, this right paradoxically would demand the nonexistence of \( P_D \). The same point can be made in relation to the alleged reparatory rights. If John holds the right to compensations for historical slavery because he lives below the threshold, then this right presupposes the entitlement to live beyond the threshold. In a counterfactual world where the slavery did not occur, however, John cannot enjoy an above-threshold life because he does not come into existence in the first place. The threshold conception of harm fails to protect intergenerational rights from the non-identity problem in the contexts of concern for posterity and compensatory justice.
Perfect and Imperfect Duties

My discussion in the previous sections was intended to establish that several notable versions of the rights theory ultimately provide no foundation for intergenerational concern or reparatory justice. After examining some objections to the rights of future people and rejoinders to them, I explicated how the non-identity problem threatens both the notion of posterity’s rights and that of the right to compensations for historical wrongs in domestic and international settings. Next, it was shown that the collective-rights argument has no force in cases of distant successors and that, as to compensatory justice, this argument faces the question of who counts as a current member of the victimized group. Then, I argued that the threshold conception of harm fails to defend the idea of intergenerational rights against the non-identity criticism.

As I have tried to show, the non-identity problem is too robust for upholders of intergenerational rights to dispose of. If I am right about this, a puzzle arises: Why do so many scholars of ability struggle for such a hopeless project? What lies behind their persistent attempts to defend the idea of rights in intergenerational relationships against the non-identity objection?

At least a part of the answer is, I suspect, the ambiguity of a traditional dichotomy between perfect and imperfect duties (Usami, 2006: 271). The perfect/imperfect distinction about duty or obligation, which dates back to the Stoics, notably Cicero, is notoriously ambiguous. From Ambrose to Aquinas to Kant, classical authors have interpreted this distinction in a great variety of ways. Among the items on a long list of different meanings of the dichotomy are culpable/supererogatory, important/trivial, specific/vague, legal/nonlegal, and correlative/non-correlative. It has long been recognized that the duty not to kill falls into the category of perfect duty, while the duty of charity is a paradigm case of imperfect duty. Yet a few typical examples do not help to clarify meanings of that distinction because the examples are susceptible of various depictions. The obligation of charity is often taken as the supererogatory nonlegal recommendation that correlates with no right of the receivers of charity.

Given the ambivalence of the perfect/imperfect dichotomy, one may assume that, when a duty of one party does not correlate with any right of the other party, the duty must be supererogatory, trivial, vague, and nonlegal. Under this assumption, if one believes in the
culpability or importance of some duty, one may feel that one needs to demonstrate its correlation to some right. Theorists of intergenerational rights seem to be trapped in such an obsession. Their conviction that our obligation to respect the interests of future people is significant drives them to contend that these people have rights vis-à-vis us. Because they are convinced that affluent citizens in Europe bear the moral duty to contribute to improving the well-being of those living in sub-Saharan Africa, they feel compelled to assert that the latter group hold compensatory rights vis-à-vis the former.

The non-correlativity of a duty, however, does not logically imply its supererogatory character, trivialness, vagueness, or nonlegality. This point is well illustrated by a familiar example. My duty to pay taxes does not correlate with any specific right of other citizens. Despite its non-correlativity, this duty is neither supererogatory nor trivial, and it is specifically provided by relevant tax laws. Once one distinguishes among different meanings of the perfect/imperfect dichotomy, one can conceive the idea of a non-correlative duty without worrying about the unintended degradation of the duty. Obligation to take account of the interests of future generations falls within the category of non-correlative duty, and the obligation is arguably justified with no reference to posterity’s rights.6

With regard to reparative justice, it stems from the non-identity problem that only the survivors and members of the victim’s family who were born before the misdeeds occurred have a compensatory right, which correlates to a duty of the perpetrators or their government. Injustice must be rectified promptly. The limited temporal scope of compensatory rights does not indicate that the descendants of those victimized by historical injustices do not matter in a society or the international community. They do matter. In a domestic setting, a variety of policy options should be considered and pursued for the sake of minorities and indigenous peoples, which might include anti-discrimination laws, affirmative action programs, multicultural policies of language and education, and political arrangements for self-government. Severe poverty in sub-Saharan Africa and other parts of the world deserves high priority on the agenda of the international community. Governments of affluent societies, transnational institutions, and nongovernmental organizations have many things to do in order to improve the well-being of the global needy.7
Advocates of intergenerational rights have struggled against the non-identity problem. However, their attempts so far have not been successful, as I argued. This problem rather seems to suggest that we should seek some other approach than the rights theory.
References


An earlier version of this paper was presented at the 5th Annual International Conference on Philosophy, Athens, 2010. I am grateful to the participants for their helpful questions and comments. This paper will be published as “Intergenerational Rights: A Philosophical Examination” in Patricia Hanna (ed.), An Anthology of Philosophical Studies, Vol. 5, Athens: Athens Institute for Education and Research, in press.

1 To circumvent the non-identity problem, it is proposed to compare the actual world with one counterfactual world in which the past interactions between victims and offenders were just and consensual, instead of with another possible world in which the acts of injustice simply did not occur (Butt, 2009: 107–115). This proposal does not help. Imagine that all of the Africans who crossed the Atlantic became well-paid workers in the two American continents. In such a possible world, the working place of each African worker depended on transactions in a competitive labor market. It is thus highly improbable that $M^A$ and $W^S$ met at that mansion and got married.

2 There are several attempts to justify reparations for historical atrocities without invoking the notion of intergenerational rights. One of these attempts is the argument from inheritance. This argument notes that the past Africans were morally entitled to compensations made by their contemporary European wrongdoers. It is then contended that the Africans of today inherit, from their ancestors, the entitlements to compensations. However, the inheritance argument encounters the problem of the temporal boundaries of historical liability (Usami, 2007: 165). George Sher (2005: 191–200) suggests a more sophisticated response to the non-identity problem; however, his response also seems susceptible to the temporal-boundary problem.

3 Jeff McMahan (1998: 223–229) discusses several issues related to the threshold understanding of harm.


5 The ambiguity of the perfect/imperfect dichotomy is concisely described and decomposed by Millard Schumaker (1992).

6 I elsewhere try to develop a theory of intertemporal obligation from the perspective of intergenerational fairness (e.g., Usami, 2006: 272–279; Usami, forthcoming).

7 My own view of global justice is based on the human right to subsistence, and it focus on the current realities of international political economy instead of the distant past (Usami, 2007: 165–169; Usami, 2008a).