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# Why and How Should We Represent Future Generations in Policy Making?

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## Introduction

It is very likely that our current actions will adversely affect the ability of future generations (those that do not yet exist) to flourish. The primary question for this paper is whether we have duties to modify our behavior to try to ameliorate these negative consequences by taking the interests of future generations into account in our policy making. More specifically, do future generations have rights that we must recognize? To answer this question affirmatively, we must show that we *can* take the rights-relevant interests of future generations into account, which we can only do if we know what interests they will have. In any event, to be practically relevant, any affirmative answer must specify how to take these interests into account without undermining the structure of democratic decision-making.

We will argue that this means that we should derive directions about political representation of future generations from an interpretation of the human rights framework. The procedural question about how to give a voice to not yet existing generations within modern democracy should be addressed from the perspective that human rights ground majority voting and parliamentary representation. Taking this perspective counters two important challenges to the idea of ‘representing future generations’: the non-identity problem and what we will call ‘the argument from epistemic uncertainty’.

Our argument rests on the presumption that there are human rights, which belong to humans simply because they have the characteristics that make them human. It is clear that *if there are such rights* then future humans will have them as much as we do, regardless of how they might differ from us. To deny that future humans have the same human rights as we do is to deny that there are human rights at all. However, beyond the idea that human rights are held simply by virtue of being human, there is room for debate about the content and form of these rights. Without further analysis, we cannot specify just what it means to grant human rights to future generations and to take their interests into account. Equally, without further analysis,

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we cannot specify how the interests of future generations might/ought to be integrated into the structure of democratic decision-making.

Part One analyzes the main challenges to the idea of representing future generations in policy making. Part Two introduces a framework to elaborate what it means for an agent to have basic rights and how this idea can be founded philosophically. Part Three shows how a human rights inspired framework can answer the challenges discussed in Part One, and elaborates the most important premises as well as the open questions of this approach.

The paper merely outlines the main argument for using our framework. A discussion of concrete details of policy procedure will need more careful consideration in later work.

### **Part One: Representing Future Generations– Policies and Challenges**

It is often claimed that contemporary societies systematically fail to take the interests and needs of future generations into account. The problem posed may be called ‘the challenge of political presentism’, which is generated by a structural bias in political decision-making towards the interests of the contemporary generation over the needs of future generations.

Explanations of this tendency range from reference to individual psychological proclivities to discount future benefits and burdens (Cowen and Parfit 1994), reference to problems of motivating voters to care for distant and unknown future people (Care 2000), reference to the structure of the prisoner’s dilemma with regard to pollution (Gardiner 2001), to more theoretical problems of non-identity leading to questions about whether we can really ‘harm’ future generations (Parfit 1987).

We focus on the political aspect of presentism. A key argument for the moral superiority of democracy over other types of political system is that it gives those who are affected by political decisions a say in these very decisions. However, the fact that many such decisions have far reaching spatial consequences (affecting persons in distant countries) and temporal ones (affecting future generations) challenges this argument. Neither future generations nor inhabitants of distant countries have votes here and now. This alone makes it less than surprising that many decisions in current western democratic countries fail to take distant interests and needs into account (Hösle 1994). Consequently, it has been suggested that

institutions should be set up to try to represent future generations in current decision-making processes.<sup>2</sup> Suggestions range from granting voting rights to children, or additional voting rights to parents, to reserving seats in parliament for special representatives (Ekeli 2009), to setting up extra-parliamentary institutions, like a so called ‘future council’ (‘Zukunftsrat’) to advise parliament (which might even have a legal power to veto new laws affecting future generations) (Von Uexkuell 2009, WBGU 2012).<sup>3</sup>

Such suggestions face many philosophical and practical difficulties.

### **Objections to the idea of representing future generations**

There are two different types of objections. The first alleges practical problems, including motivational ones. This type accepts the idea of representation as such, but highlights challenges that make it difficult to successfully implement it.

The second type is more fundamental. It includes objections to the very idea of representation. For example, it is claimed that we cannot know enough about future generations to represent their interests accurately (‘the challenge from *epistemic uncertainty*’). Alternatively, it is claimed that we cannot actually harm future generations (‘the *non-identity problem*’), which leads to questioning whether we are obliged to include future generations in democratic decision making at all (‘the *moral problem*’).

#### *The challenge from epistemic uncertainty.*

Representing someone not yet born is difficult. We need to anticipate how future generations will evaluate our policy decisions. But how can we be sure that our anticipations will match the real opinions and interests of future people? We simply do not know their preferences, because human needs and preferences are at least partly shaped by societal circumstance. Should we, e.g., preserve wildernesses even if future generations might have grown up in

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<sup>2</sup> Note that the choices of future generations are also not represented in the market economy, as non-existent persons obviously have no purchasing power now. The choices of future generations are neither represented in the distribution system of political power (they cannot vote) nor in the distribution system of market resources (they cannot influence supply or demand).

<sup>3</sup> For an overview of suggestions to represent future generations see the Report of the Secretary General to the United Nations General Assembly. *Intergenerational Solidarity and the Needs of Future Generations*. August 2013. A/68/322

cities and might no longer value them? Can we reasonably believe that we know enough about the preferences and needs of future generations to be able to properly represent their potential future interests in our policy contexts?

But even if we can predict their future needs and interests, future generations will surely disagree about their prioritization. Those currently living do not agree on the moral or political evaluation of current policies and the implications of these policies for themselves. Political and moral disagreement is not likely to disappear. How then do we deal with the fact that we have to represent a plurality of opinions of future people rather than aiming at one common interest of all future people?

One way to counter these worries is not to focus on what future people *will* value and strive for, but on preferences they *should* have. In fact, our solution starts from a combination of two premises: that there is a salient body of facts about future people that we do in fact know, and the normative premise that people ought to have certain preferences, namely not to violate basic human rights. We also argue that the best way to answer the challenge of epistemic certainty is to distinguish different ways of representing future generations for different aims. The institutionalization of a representation of future generations should take different forms depending on whether we aim to protect their rights or aim to foster the contingent interests and preferences they might have.

### *The non-identity problem*

The most famous challenge to the idea that we can actually harm future generations is the so-called “non-identity problem” (Parfit 1987), which underpins the moral problem. As we understand it, those who consider that the non-identity problem is fatal to the idea that future generations have rights we must respect argue as follows.

The coming into existence of any particular individual rests on the fertilization of a particular ovum by a particular sperm. Hence, *any* change in behavior of the would-be parents will result in a different set of individuals existing in the future, because the event of a particular sperm fertilizing a particular ovum is extremely sensitive to anything else that happens. So, suppose we behave in a particular way now, and in the future individuals F come into being, who (as a result of the way we behaved) experience life conditions that we have no right to

inflict on our contemporaries N. Perhaps we could behave in a way that would lead to F enjoying conditions of existence that conform to what N have a right to. But, this does not mean that we have violated the rights of F by not behaving in this way, because there is nothing we could have done to improve *their* lot, as anything we could have done in that direction would have caused not to exist, and another set of individuals FO to exist instead. Therefore, our actions cannot harm those who will exist (i.e., make *them* worse off than our alternative actions). Future generations, therefore, have no claim against us, and we have no obligations to them, even if they are subjected to very poor life conditions as a result of our actions and we could act differently.

### **Facing the philosophical challenges of ‘representing’ future generations**

Our central contention is that, to counter these challenges, we need to ground the representation of future generations, not in empirically uncertain anticipations of preferences and interests that they might or might not have, but by linking the idea of democratic representation of unborn future citizens to the idea of human rights. The main moral argument for democracy is that those who are affected by political decisions should have a say in these decisions, and that parliamentary representation should be seen as the attempt to translate the idea of a decision made by ‘everybody’ into a workable procedure of elected representation of the interests of voters.<sup>4</sup> But both principles are compatible with a tyranny of the majority. Nothing within the mere idea of majority vote and representation guarantees that the rights and interests of a minority will be respected as, in principle, a majority could systematically and continually overrule the minority. The protection of the basic rights of all human beings is therefore a central element in the modern idea of a constitutional democracy that establishes the framework within which majority votes may be permitted to further determine concrete policies. This conviction is prominently expressed in the post-World War II German Constitution in which provisions of the Constitution declaring human dignity (the ground of the basic rights) to be inviolable, may not be changed in their essential aspects even with a two-thirds majority of Parliament. We will argue that the best path towards a political representation of the rights of future generations should follow this line of thought. Just as the basic rights of current living generations underpin democratic majority vote and representation, so should the rights of future generations govern our political decisions and

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<sup>4</sup> For an analysis of whether the idea of including ‘all affected’ persons in democratic decision making can solve intergenerational questions of climate change and include the interests of future people, see also Heyward 2009.

any procedural attempt to represent their rights and interests should start from this assumption. In order to present this argument we will introduce some conceptual clarifications, after which we will present one possible philosophical foundation for the main ideas of human rights (the Principle of Generic Consistency, section B). After that we will illustrate how a human rights perspective can counter both the argument from epistemic uncertainty and the moral problem arising from the non-identity problem.

In the debate about the importance of future generations, some important distinctions are necessary. First, there is the distinction between ‘rights’ and ‘interests’. A right is a genuinely normative concept, whereas an interest is a descriptive one. One can have a right to the fulfillment of one’s interest, but by itself an interest is not a normative notion. In order to be obliged to take a person’s interests into account we need to know why we are obliged to support or maximize the fulfillments of interests. If we start with the notion of rights we can distinguish (*per* Hohfeld 1964) between different types of rights that have different relationships to duties. If we understand rights primarily as mere ‘liberties’, then the idea of rights does not help us. Protecting liberties only requires us to permit future generations to exercise their liberties, but places no duty on us to ensure that they have the capacity for autonomous action in the first place. For rights of future generations to impose duties on us, we must understand them as entitlements or justified claims upon others to support the corresponding interests, i.e., as ‘claim-rights’.

This distinction applies to any further distinctions between moral and legal rights since it is relevant for both. A right recognized by a legal order would be a claim right is grounded in a specific legal procedure, whereas a moral right would be a claim right based on a specific moral reason.

We must further distinguish between negative and positive rights. Negative rights impose duties on agents not to interfere with one’s rights-relevant interests, whereas positive rights impose duties on agents to assist one to secure the interests that one has rights to.

We must also distinguish between a conception of rights as serving certain interests *per se* of the rights holder (“interest conception”) and one that views the granting of rights as a recognition of the autonomy of agents over the way in which the interests to which they have

rights may be disposed of (“will or choice” conception). The justificatory framework we sketch in the next section argues for the primacy of the will conception.

Tackling the non-identity problem within a rights-framework is not novel. For example, Baier (1981) and Bell (2011) do so in the specific context of anthropogenic climate change, while others have claimed, more broadly, that rights-based accounts are fruitful in dealing with different versions of non-identity problems (e.g. Feinberg 1981, Woodward 1986, Elliot 1989, Elliot 1997, Partridge 1990).<sup>5</sup> Feinberg defends the view that future generations “will have interests that we can affect, for better or worse, right now” (1981, 65), and that this is all that is needed to defend a rights-based account in dealing with future generations: “The identity of the owner of these interests is now necessarily obscure, but the fact of their interest-ownership is crystal clear, and that is all that is necessary to certify the coherence of present talk about their rights.” (ibid.). Building upon Feinberg, Partridge argues that future generations have right-claims on us independent of their temporal remoteness, non-actuality and indeterminacy (1990). Using Rawls’ original position, Reiman argues that the non-identity cases that Parfit discusses “wrong the individuals that come to exist as a result of the choices” made (1990, p. 78) and that these actions should be considered rights violations, even if the alternative is that the persons whose rights have been violated would not have existed. Heyward also uses a Rawlsian starting point to stress that what matters are “common citizen type properties” (2008, 640) of future people. Other authors have tried to specify how to interpret ‘harming’, ‘rights-violation’ and ‘wronging’ future people, by, e.g., developing a threshold notion of harm (Meyer 2003, Rivera-Lopez 2009), or by identifying specific rights that are violated by anthropogenic climate change, such as “rights to life, physical security, subsistence and health” (Bell 2011, 100). It has, thus, been argued that humans have the right “not to suffer from the disadvantages generated by global climate change” (Caney 2006, 768).

However, none of these authors offers a foundation for their arguments within a framework of the kind we suggest below. We argue that such an approach, which is built upon the strict rational necessity for agents of the principle of instrumental reason, but takes the idea of impartiality inherent in the idea of a moral requirement from a presumption of human rights

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<sup>5</sup> There is also a rich literature on the wrongful life case of Parfit’s non-identity problem, discussing the moral and legal aspects cases of children with diseases such as Huntington’s disease or hereditary deafness (e.g. Harris 1990, Shiffrin 1999, Steinbock 2011)

(without arguing that it too is strictly rationally necessary) provides a sufficient solution to the non-identity problem. This is because such a foundation abstracts from all person-specific, individualistic aspects that give rise to the non-identity problem, while nevertheless starting from an agential perspective. Consequently, it retains the idea that immoral acts are being performed by agents and affect agents, without relying on the notion of ‘harming’ in the sense of comparative harm or making a particular person/agent worse off.

## **Part Two: A Philosophical Foundation for Human Rights: The Principle of Generic Consistency**

According to Alan Gewirth (1978), the supreme principle of morality is the Principle of Generic Consistency (PGC), which grants ‘generic rights’ to agents, and only to agents. Agents are beings with the capacity and disposition to do things in order to achieve purposes they have chosen, which they regard as reasons for their behaviour. The generic rights are rights to generic conditions of agency (GCAs). GCAs are conditions that must be satisfied if agents are to be able to pursue any purposes whatsoever (basic conditions) or to pursue them with any general chances of success (which are subdivided into non-subtractive conditions, those needed to maintain agency capacities, and additive conditions, those needed to improve agency capacities). Thus, interference with, or non-possession of, a GCA has at least *some* negative impact (immediately or if prolonged) on an agent’s ability to act at all or to act successfully *regardless of the purposes involved*. GCAs are, *in this sense*, essential or categorical *instrumental* requirements of action universally shared by all agents regardless of their circumstances. Life itself, mental equilibrium sufficient to permit one to move from merely wanting to achieve something to doing something to achieve it, health, food, clothing, shelter, and the means to these, freedom of action, (which are all basic conditions) the possession of accurate information, the keeping of promises made to one by others (non-subtractive conditions), and opportunities for further education (an additive condition) are all examples of GCAs (Gewirth 1978, pp 53-55).

According to Gewirth, the PGC is the supreme principle, not only of morality, understood as a set of norms governed by a categorically binding principle that requires agents to have impartial regard to the interests of all agents (Gewirth 1978, p.1), but of practical reasoning *per se*. This is because he claims that the PGC is ‘dialectically necessary’ for agents, *by which he means* that an agent (call him ‘Albert’) fails to understand what it is for him to be an

agent (hence implicitly contradicts that he is an agent) if he does not accept that he categorically ought to comply with the PGC. Although we agree with Gewirth on this,<sup>6</sup> we will not rely here on the PGC being dialectically necessary for agents. Instead, we will argue merely that anyone who believes that there are human rights as characterized by the modern international human rights regime inspired by the United Nations Declaration of Human Rights 1948 (UDHR) must accept that the content and application of human rights must be consistent with the PGC. In other words, we will rely on an argument that the PGC is dialectically necessary for those who accept that there are human rights, on the PGC being demonstrably the supreme principle of human rights, rather than on its being dialectically necessary for agents *per se*.

### ***The PGC as the Supreme Principle of Human Rights***

The first stage of our argument replicates the first stage of Gewirth's more ambitious argument. It begins with the idea that Albert, in recognizing what it is for him to be *an* agent, recognizes that when he acts he does something X in order to achieve some purpose E that he has chosen, Albert's *understanding* that he needs to do X in order to achieve E being Albert's reason to do X.

Now, suppose that Albert's doing X (or having Y) is not merely conducive to Albert pursuing or achieving E, but necessary for Albert to pursue/achieve E. Albert must then accept that he ought to do X (or secure possession of Y) or give up pursuing E. If he does not accept this he fails to understand what it means to say that doing X (or having Y) is necessary to pursue or achieve E, and thus implicitly contradicts that he is an agent (a being trying to achieve E).

Hence, it is dialectically necessary for Albert to accept the Principle of Hypothetical Imperatives or Instrumental Reason (PHI):

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<sup>6</sup> For a comprehensive defense see Beyleveld 1991. For a succinct statement and defense of the argument against what is probably the most influential objection, see Beyleveld 2013.

If doing X (or having Y) is necessary to pursue or achieve an agent's chosen purpose E, then that agent ought to do X (or act to secure Y) or give up trying to pursue or achieve E.<sup>7</sup>

If there are GCAs, then the PHI requires Albert to defend his possession of these conditions *for whatever purposes he has or intends to have*. So, given the dialectical necessity of PHI, it is dialectically necessary for Albert to accept

I (Albert) categorically *instrumentally* ought to defend my having the GCAs.

In other words, it is dialectically necessary for Albert to accept

I (Albert) ought to defend my having the GCAs, *unless I am willing to accept generic damage to my ability to act*.

We will label this 'SRO<sub>A</sub>'. But to get from the dialectical necessity for Albert of SRO<sub>A</sub> to the dialectical necessity for Albert (and hence for all agents) of the PGC, it must be shown that it follows from the dialectical necessity for Albert of SRO<sub>A</sub> not only that it is dialectically necessary for another agent, say 'Brenda', to accept SRO<sub>B</sub>

Brenda ought to defend her having the GCAs, unless she is unwilling to accept generic damage to her ability to act

but equally dialectically necessary for Albert to accept that he ought to act in accord with SRO<sub>B</sub>.

Such a result is clearly equivalent to the claim that it is dialectically necessary for Albert to grant Brenda a right to possess the GCA's in accordance with the will or choice conception of rights. And if this claim is soundly inferred then it follows that the claim that it is dialectically necessary for Albert to defend his possession of the GCA's categorically instrumentally is equivalent to the claim that it is dialectically necessary for him to consider that he has the

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<sup>7</sup> Kant (1785, 4:417), and e.g., O'Neill 1989, 89-94; Hampton 1998, 40 n. 22; Korsgaard 2008, 68; and Wood 1999, 65, all regard the PHI as a principle that must be accepted for non-instrumental a priori reasons.

generic rights. Hence, it will follow that it is dialectically necessary for Albert to accept the PGC. Since Brenda must engage in parallel reasoning, the dialectical necessity of the PGC for all agents will have been established.

The argument for the dialectical necessity of accepting  $SRO_B$  for Albert is not that Albert categorically instrumentally needs Brenda to have her GCAs. If it were, it would obviously be invalid, as Albert does not necessarily need Brenda to have the GCAs for his actions. But this misrepresents the argument. The argument is that the dialectical necessity of  $SRO_A$  for Albert entails that it is dialectically necessary for Albert to hold that it is in being an agent that he must comply with  $SRO_A$ . Since it follows from this that it is dialectically necessary for Brenda to hold that it is in being an agent that she must comply with  $SRO_B$ , Albert must consider himself bound to comply with  $SRO_B$  because it is the same thing, agency *per se* in their persons, that both must regard as the authority that generates  $SRO_A$  and  $SRO_B$  (see Beyleveld 2013, in particular).

However, to prove that the PGC is dialectically necessary *for agents who consider that there are human rights*, it is only necessary to show that the dialectical necessity for Albert of  $SRO_A$  entails that he must grant Brenda the generic rights *if he holds that there are human rights*. This is because the idea that there are human rights supplies two premises: that human rights are inalienable (implying that acceptance of them is dialectically necessary); and that agents categorically ought to respect each other's humanity (human agency) impartially.

According to the Preamble of the UDHR, all 'members of the human family', all 'human beings', and all 'human persons' are equal in inherent dignity and inalienable rights, and Article 1 UDHR proclaims

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

If all human beings are equal in dignity and rights then all human *agents* (those humans endowed with reason and conscience) are equal in dignity and rights. Since the GCAs are necessary to do anything/or anything successfully they are also necessary to exercise any human right. So a grant of a human right to do anything can only be sincere if it involves a

grant of a human right to possess the GCAs. Since human agents are to act towards one another in a spirit of brotherhood, it does not only follow from the dialectical necessity of SRO<sub>A</sub> for Albert that all human agents must accept that they categorically instrumentally ought (for their own purposes) to defend their possession of the GCAs. It follows that they must equally accept that they categorically instrumentally ought (for any other agent's purposes) to defend possession of the GCAs of any other human agent. *Therefore* they must act in accordance with the generic rights of all human agents as understood by the PGC. It follows, *on pain of denying that all human beings are equal in dignity and inalienable rights*, that it is dialectically necessary for those who accept and implement the UDHR to consider that all permissible action must accord with the requirements of the PGC. *Ergo*, all agents purporting to interpret and implement the UDHR, *and all legal instruments purporting to give effect to the UDHR*, must do so in accordance with the PGC. This is because, although the UDHR is not itself a legally binding instrument, legally binding instruments such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights (ECHR) make it clear in their preambles that they exist to give effect to rights of the UDHR. They can only do so on the understanding that it is rights of the UDHR *as conceived by the UDHR* that they are giving effect to. In this sense, the dialectical necessity of SRO entails that the PGC is the supreme principle of human rights.<sup>8</sup>

### ***Applying the PGC***

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<sup>8</sup> See further Beyleveld 2011. We are not suggesting that courts or Human Rights Commissions *will give effect* to the PGC in their interpretation of human rights. But we do press that they must do so if they are to apply the idea of a human right contained in the UDHR 1948 in a coherent way

It should be clear, too, that it is dialectically for *anyone who holds that agents are to be treated impartially with respect to their interests* to accept the PGC. For example, many utilitarians accept the principle, 'Everybody to count for one, nobody for more than one' (Hare 1963, 118). What is right or permissible *for anyone* is to be determined by calculating the average or aggregate agent utility of an act or rule (for which utilitarians have various measures, such as personal preferences, feelings, or other values). However, and ironically, all such utilitarians are committed to the PGC by the conjunction of the dialectical necessity of SRO<sub>A</sub> for Albert with their egalitarian principle, and this requires them to grant rights distributively, not on the basis of the contingent outcomes of a utility calculus involving dialectically contingent utility measures, but simply because not to do so is to contradict *either* that they are agents *or* that they adhere to their egalitarian principle.

In short, the PGC is also the supreme principle of morality.

In general, anyone who holds the impartiality principle must accept that the PGC is the supreme principle of legitimate action and accord it the same epistemic status that they accord to the impartiality principle.

So justified, the PGC has features and yields methodological principles that must be taken into account when applying it. For present purposes, the following are particularly important.

(a) All agents have the generic rights equally in a strictly distributive manner rather than aggregatively, because Albert must grant the generic rights to all agents by virtue of thinking of himself and other agents in relation to each possessing the universal properties that make them agents.

(b) Because the GCAs must be valued only categorically instrumentally, agents have no intrinsic duties to preserve their own existence. The only such duties they can have are those instrumental to carrying out duties they have to other agents. Thus, e.g., a father having responsibilities to support members of his family may not commit suicide if this means they will suffer serious damage to their GCAs against their will as a consequence. For the same general reason, only agents can have the generic rights, as only agents have the capacity to release others from their duties correlative to their rights by being willing to suffer generic damage to their ability to act.<sup>9</sup>

(c) Conflicts between rights are to be dealt with using Gewirth's criterion of necessity (or needfulness) for action (see 1978, 338-354, esp. 343-350). The GCAs, as previously stated, are ordered into basic, non-subtractive and additive categories. These are ordered hierarchically, with discriminations to be made within the categories according to proximity, immediacy and seriousness of interference with the GCA at risk. Individuals may pursue any purposes and create their own worldviews provided that, and to the extent that, they do not interfere with the GCAs of other agents against their will. Although numbers do not matter per se, they can have a distributive effect. So, for example, I might (depending on my wealth and the value of the euro in relation to it) be duty bound to give up 5 euros to help a starving man. But I cannot give up 5 euros to each of all starving people without ending up starving

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<sup>9</sup> This does not mean that only persons in a position to release others from duties owed to them under the idea that they have rights can have the generic rights. It is the structural inherent capacity to will that is necessary and sufficient. That a person in the far future cannot release us from our duties to him or her has no implications for whether he or she can have the generic rights in relation to us. The situation is analogous to us facing a person who is unconscious and needs treatment or they will die. The person is not able now to release us from our duty to treat him or her. But so long as we reasonably judge that the person has the structural capacity to do so, we cannot suppose that the person does not want to be treated. Precautionary reasoning requires us to treat the person as wanting treatment.

myself. But the PGC requires me to give equal weight to my having the GCAs as it requires me to give to others' having the GCAs. It does not, therefore, require me to starve myself for others, though it will let me do so voluntarily. For this reason, application at the group level requires collective action imposing duties on states and other groups, rather than on individuals (see Gewirth 1978, 312-317).

(d) Not all moral problems can be solved merely by applying the criterion of degrees of needfulness for agency. Decisions with morally relevant outcomes need to be made over matters that are in themselves morally neutral (e.g., whether to drive on the left or the right hand side of the road). In general it also applies to decisions about policies to be pursued where there is disagreement between parties on matters that are in themselves permissible under the PGC but which are not compatible with each other, and if done together produce PGC violations. Decisions also need to be made about situations so complex that they always leave room for doubt about the correctness of the application. Judgments about conflicts between basic conditions or between non-subtractive conditions are not always clearly settled by reference to a hierarchy of need, etc. Then, even when the hierarchy criterion is appropriate, it is not always appropriate to leave individuals to make the judgments themselves. This applies to questions of the adjudication of disputes between persons, to assignments of responsibility for actions. The PGC deals with these indirectly by requiring them to be settled according to procedures to which those who disagree with the outcome will be bound. In the clearest case it requires persons to agree to accept the outcome of a procedure even if they disagree with it. The justification for this must, however, be that this is necessary to protect the values, especially the most important values that the PGC protects (viz., the rights to the basic GCAs). As such the PGC both justifies, limits, and shapes democratic decision-making.<sup>10</sup>

(e) Agents have positive as well as negative duties to other agents, because agents need assistance to defend their GCAs when they are unable to do so by their unaided efforts as much as they need non-interference with their possession of the GCAs. However, because assisting others to protect their rights can impose greater burdens on one's ability to protect one's own GCAs than merely refraining from interfering with the GCAs of others, these

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<sup>10</sup> For further elaboration, see Beyleveld and Brownsword 2007, 307-331.

'burdens' will, again, often require collective action, and cannot be imposed on all individuals equally.

(f) Although the PGC grants generic rights only to agents (see (b)), it imposes duties on agents to respect the interests of apparent non-agents that correlate with the generic conditions of agency as well as duties on agents in relation to apparent non-agents that derive from the duties agents have to other agents (see e.g., Beyleveld and Pattinson 2000; 2010). While this has no direct bearing on the rights of future generations, any duties to the environment that can be generated by such considerations are things that, from the point of view of the PGC, impose duties on the current generation that require behaviour that reduces the likelihood of actions that will negatively impact on future generations (see Gewirth 2001, Düwell 2014).

### **Part Three: The idea of Human Rights of Future Generations and Representation**

#### *Human Rights and the Non-Identity Problem*

On the basis of our argument for the PGC, we must hold that there are specific interests, the need for the GCAs, which are not dependent on the contingent preferences of right-holders. This defuses the non-identity problem, because it makes our obligations specifically independent of the existence of particular future persons and us making any particular person 'worse off'. Our obligations stem from the mere fact that persons will exist, who, simply by being agents, are to be granted the generic rights. This is because even the restricted use of dialectical necessity that we have relied on enables us to ground the *content of* morality/human rights in the possession of specific identifiable properties that belong to agents as agents *per se*. In Kantian terms, while our argument makes the dialectical necessity *per se* of the principle of instrumental reason *conjoined with* the presumption of impartiality implicit in the premise of human rights the *ratio cognoscendi* for human rights, it makes it dialectically necessary for agents to hold that the *ratio essendi* for human rights is being an agent (which makes the GCAs the dialectically necessary content of human rights).

Those who press the non-identity problem assume that to ascertain whether a rights violation has occurred we need to be able to compare the situation of, say, Albert, when we have committed one act, with *his* situation when we have committed another. But the idea that

Albert has rights because he is *an* agent and we have duties because we are agents makes this the wrong assumption. With respect to generic rights and their corresponding duties, all agents are intersubstitutable. Thus, even if it is true that we can never compare *Albert* as the recipient of actions of ours that will deprive him of GCAs and as a recipient of actions of ours that will not, we can still compare our actions as actions that deprive some agents of the GCAs with actions that do not deprive other agents of the GCAs. Because the generic rights attach to agents as agents, we violate the PGC if we perform actions that deprive Albert of GCAs when we could have performed actions that would make Brenda better off in this respect than the actions we perform that bear on Albert, even if Albert and Brenda cannot exist together.

It is also a logical implication of the idea that being an agent is the *ratio essendi* for the generic rights that the requirement to respect rights of future generations (to accept obligations to safeguard the GCAs of future generations) cannot be evaded once the implications of overlapping generations is accepted. This is not an independent argument from the one we have given, but an application of it that some might find easy to grasp. It is clear that an agent (A) has duties to another agent (B) who is now alive and will still be alive after A is dead, and that A has these duties qua A and B both being agents. B, in turn, will similarly have duties to another agent (C) who will not be alive before A dies, but who will be alive when B is still alive. And such overlaps will continue into the future. If A acts in such a way that C's generic interests will be harmed, then this is something that B has a duty to prevent as B has duties to C (owed through C's rights against B). B will have this duty *as an agent*. So, A will not respect B's status as an agent if he interferes with B's duties to C owed by B to C as an agent. So A must accept a duty not to act in a way that will result in C's generic interests (which, remember are universal interests) being harmed. In fact, A can only deny that A owes rights-correlative duties to C by denying that B has rights, and, indeed, that A has rights, by denying that any of them are agents.<sup>11</sup>

### *Countering the argument from epistemic uncertainty*

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<sup>11</sup> Compare the treatment of Gosseries (2008) of this kind of scenario. We owe reference to the scenario to Gerhard Bos at Utrecht, who has a slightly different take on it in as yet unpublished papers he has presented at conferences we have attended.

It is true that we do not know what preferences, motivations, elaborated interests and political leanings future generations will have. But we do not need to know these things to know that we must grant them human rights to the GCAs. So, the ideal of representation must distinguish between whether a democratic decision procedure aims at anticipating the preferences or policy leanings of future generations or whether it aims at avoiding human rights violations. Although our argument renders it desirable to anticipate future preferences, it entails that priority must be given to ensuring protection of the generic rights of future generations, which does not require us to anticipate their preferences.

This, again, is because having the GCAs, in being needed for all action, is constitutive of agency/successful agency *per se*. It is true that the ability of agents to enjoy their generic rights depends on societal and other environmental circumstances. So, in conditions of economic scarcity it might not be possible to provide agents with all of the GCAs, and priority will need to be given to GCAs more basic in the hierarchy of needfulness for action. But this does not mean that there are different GCAs in different circumstances. The PGC, operating with the criterion of needfulness for action (which it must because of the dialectical necessity of the PHI) is categorically binding under the idea of human rights. All the rights it grants according to the hierarchy, with the exception of the right to life, are *prima facie* only, and all rights are subject to the principle that “ought” implies ‘can’ (which, again, is a corollary of the PHI). So, it is important to be clear that the fact that agents might not be able to enjoy all (or any) of the generic rights does not imply that they do not have these rights in those circumstances or that the GCAs vary according to circumstances.

As such, democracy as a legitimate form of government must be interpreted and structured in compliance with the generic rights, which cannot be seen as the result of a democratic consensus. This is a consequence of the very idea of human rights as inalienable. Once it is seen that acceptance of the PGC is a rationally necessary commitment of all those who accept that there are human rights, then the PGC is the standard against which the legitimacy of all the structures, procedures and contents of democratic decision-making (as, indeed, all practical decision making) is to be judged.

The consequence is that moral/human rights, with the form and content of the generic rights ought to be institutionalised in any democracy proclaiming fidelity to human rights. Ideally, the PGC ought to be institutionalised as the supreme constitutional legal principle.

The idea, indeed the practice, of a ‘constitutionalization’ of human rights is nothing new. In Germany, it is a basic duty of the “Bundesverfassungsgericht” (Federal Constitutional Court) to judge whether any given law violates human rights. It can require that such a law be changed, even if it has satisfied a proper legal procedure and received a majority vote in the German Parliament. What our argument adds to this is that in, e.g., Germany, the Bundesverfassungsgericht ought to have the power to subject current legislation not only to the test of not violating current citizens’ rights but also the test of not violating the rights of future citizens.

Extension to explicit recognition of the rights of future generations in the Constitution is also not new, although, thus far, it has only been given effect to in Japan, Norway and Bolivia (Gosseries 2008, p. 448). What is new about our argument is that the content of the rights ought to be interpreted using the PGC as the supreme principle.

Institutional anchoring of future generations’ interests need not, however, be wholly confined to protection of the GCAs. Although speculative and uncertain, it would be useful to be able to anticipate the subjective preferences of future generations. But just because these preferences are variable and open to the choice of individuals, it is appropriate to have a less strict type of institutionalization, one that does not operate by means of a legally bounding veto-right. For example, an advisory council might be set up to provide recommendations routinely on political legislation that affects future generations (see, e.g., WBGU 2012, p.272-231); or parents might be given additional votes as guardians of their children (Grözinger, 1993; Goerres and Tiemann, 2009). Suggestions like these are in line with theories of democratic political representation that include, as subjects, persons who live spatially outside of the territory of the state or will only live there in the future, as in Mansbridge’s notion of surrogate representation (2003; 2009).

The key challenge for political philosophy will be to work out in detail, how to distinguish, in practice, whether a given political decision violates fundamental basic human rights of future generations or (merely) fails to represent their assumed preferences or non-generic interests properly. But it is clear that there should not be one single way of representing future generations, but that the distinction between basic human rights and mere preferences and non-vital interests should be also be represented by different political institutional processes.

## **Concluding Remarks**

If our argument is valid, then those who accept that there are human rights must accept far-reaching moral obligations towards future generations and drastic restrictions on what they consider to be morally legitimate actions. In particular, these affect the decisions and structure of democratic decision making in significant ways, and this means that, with regard to the question of representation of future generations, a central theoretical challenge is connect these rights to the basic idea of democracy.

A key area of dispute is whether we should see democracy as based on moral rights or whether we should we interpret democracy independently from moral considerations? The argument for the latter is that democracy is a form of government developed to deal with moral disagreement in the first place. So, if we base democracy on moral assumptions, such as the existence of human rights, do we not restrict the scope of democratic legitimate positions in a way incompatible with the core idea of democratic government?

To show that this is not the case conclusively requires an appeal to something like Gewirth's full dialectically necessary argument, which we have not relied on here. But, short of this, it should be noted that scepticism about human rights is neither compatible with the historic roots of democracy nor with the current self-interpretation of democratic states. The development of democracy in the 18<sup>th</sup> Century was based on the idea of the equality of all human beings. The extension of democratic structures to all people independent of their religion, gender and income in the 19<sup>th</sup> and early 20<sup>th</sup> Century was based on the idea that all human beings have a right to political self-governance. The global export of democratic governance in the 20<sup>th</sup> Century is based on the normative idea of the equal dignity of all human beings. If countries are criticized as un-democratic this is intended as a normative judgment. The same holds for all kinds of proposals to reform democracy. Populists like Wilders claim that there should be more democracy in the sense that the people of a specific country should have more say over their own country. Proponents of a more democratic Europe claim that an appropriate governmental structure of Europe should be democratic. Defenders of a deliberative democracy claim that citizens have insufficient possibilities to participate in politics. All these proposals are based on normative assumptions about the moral desirability of democracy. On the basis of the appeal to democracy, we therefore, find

normative assumptions about why democracy should be the preferred form of government or why a specific form of democracy should be realized. These normative assumptions themselves are not valid because a majority has voted for them, but are prior to the normative relevance of majority voting in the first place.

Therefore we should stress that democratic governance has a moral basis, not a morally neutral one, which underlies the basic structure of democratic states. If this moral basis appeals to some ideas about the dignity and rights of all human beings, then we have argued that it must require the recognition of obligations towards the basic living conditions of future persons, which has consequences for the design of morally acceptable democratic institutions in our current societies. We should, therefore, not merely feel obliged to vote for parties that take the interests of future generations into account. We must design our institutions in a way that enables us to meet our obligations towards their basic rights. Of course it will be only political institutions and their decisions that can install those institutions, but such an installment is morally required by the very idea of human rights, and as such needs to be interpreted in compliance with the PGC.

But as we have already indicated, we have presented an outline for this interpretation only, and many details of implementation must be left for analysis at a later time.

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