

*How can we ensure justice to future generations?
A theoretical discussion of one basic rule
and the challenges that it faces*

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Abstract and Overview

This contribution departs from the premise that in order to do justice to future generations we have to abide by a single rule. That rule stipulates:

Act only according to those norms by which it is guaranteed that the world's ecosystems are kept sound.

On the face of it that rule is exceedingly simple. However, when it comes to political philosophy things tend to get messy. First of all, a “philosophy” is a specific set of views or theories held by a person on a particular issue. But history has demonstrated that no philosophy is perfect. The reason philosophers adopt new theories is because they are convinced that their ideology is better than that of their rivals. Even so, the question as to how these brilliant new thoughts can eventually be put into practice is often left unanswered. Until now there has been little philosophy on the efficiency of philosophers. Secondly, to some the word “political” as used in association with environmental protection plans amounts to no more than to a virtually impracticable, tough, very noble thought. Their pessimism may stem from the view that compliance with the above stated rule would affect the daily actions—and more precisely the everyday energy-consuming habits—of every single person living in an industrialized nation. How can it ever be made possible for today's self-interested, short-term orientated governments to adopt a rule that curbed their powers and our freedoms for the sake of people who will live in a distant future? Thirdly, at present it is anything but clear how we should behave in order to protect the natural interaction of the world's ecosystems. Scientists across the world are deeply divided on the question of whether some ecosystems are more important or useful than others; whether some ecosystems can be sacrificed without posing a real threat to future generations.¹ Many believe that it is beyond human capacity to influence such systems anyway. This might be especially true when it comes to corrective actions on past mistakes.

Be that as it may, what do we actually owe future generations? How do we balance their needs against our own? Conceivably, one of the problems is that they have nothing to offer us. Distant generations can give the people of today nothing that we do not possess already. *Ergo* let us shift our focus back to the expected behavior of people now. The most obvious theory on why humans are generally willing to make

¹ Detailed information about this disputed topic can be retrieved from the Intergovernmental Panel on Climate Change website, <http://www.ipcc.ch/>.

sacrifices for future generations is, to Canadian-American philosopher DAVID GAUTHIER, the simple fact that people care about their descendants. Future generations might be given just circumstances not as of their own right, but because of their ancestors' concern for them.² English philosopher TIM MULGAN is of the view that the problem with this approach is that sentiments cannot generate obligations to distant future generations. "People's concern for their own descendants definitely does not extend indefinitely into the future." He opines that it might be strong for a generation or two but then it would peter out very sharply.³ And MULGAN is right—the theory of intergenerational affection was proved unworkable.⁴ The fate of other theories is still uncertain. Contractualists, for instance, depart from the assumption that justice consists of the agreement agents would reach if they were self-interested and sought a mutually advantageous bargain. The American economist and Nobel Prize winner JAMES M. BUCHANAN is one of the theory's most prominent exponents. In his work *The Limits of Liberty* (1974)⁵ BUCHANAN tailors, *inter alia*, a solution to the question of how people can be bound by a specific rule to which they have not personally agreed. In *Future People* (2006) English philosopher TIM MULGAN, previously mentioned, challenges contractualist theories. He claims that justice to future generations can be achieved based on a plausible consequentialist value theory of right action.⁶

For reasons of space this contribution cannot offer a comprehensive description, analysis, and subsequent discussion of the two works cited. Instead, in this modest account of justice to future generations complexity is reduced. This means that matters are oversimplified by sketching a hypothetical scenario and applying it to the theories of the two authors named.

Imagine that Joe flies in his private jet every morning from a remote island to his work in the city center. He can afford the travel costs easily because Joe is the general manager of a sizable and successful corporation. Further assume that Joe lives and does business in a typical market-based democracy. However, scientists have just discovered that if Joe lived inside the city where he works, as opposed to a remote island, and went to his company by metro, instead of taking the jet, the world's natural ecosystems would be saved. Arguably, the authorities concerned can respond in two ways to ensure that Joe acts in accordance with this scientific discovery: (a) they can simply *force* him by law to move into the city and go to work by metro; (b) they can frame the laws in a way that Joe *voluntarily* gives up his jet and the island and moves to the city center instead.⁷

² DAVID GAUTHIER, *MORALS BY AGREEMENT* 300-1 (Clarendon Press 1984).

³ Mulgan recognizes the fact that the truth of such a proposition depends upon belief. "If people existed after death in a form that permitted beneficial mutual interaction with the living," this argument would not go through. TIM MULGAN, *FUTURE PEOPLE, A MODERATE CONSEQUENTIALIST ACCOUNT OF OUR OBLIGATIONS TO FUTURE GENERATIONS* 23-8 (Clarendon Press 2006).

⁴ For the relevant evidence regarding people's concern for their own descendants, PARTHA DASGUPTA, *AN INQUIRY INTO WELL-BEING AND DESTITUTION* ch. 12 (Oxford University Press 1993); Partha Dasgupta, *Saving and Fertility, Ethical Issues, Philosophy and Public Affairs* 23, 99-127 (1994).

⁵ JAMES M. BUCHANAN, *THE LIMITS OF LIBERTY, BETWEEN ANARCHY AND LEVIATHAN* (The University of Chicago Press 1975).

⁶ MULGAN, 56.

⁷ The possibility that Joe sacrifices such luxury for distant generations without any governmental intervention I do not even find worth considering.

Both solutions seem plausible, at least on theoretical terms. The difficulty lies not in the theory of these two propositions, but *a fortiori* in the legitimacy of the means of turning them into reality. Moreover, the two solutions trigger a series of questions. For example, in the case of situation (a): How can the lawmaker be convinced that acting coercively is the right and just solution to the problem posed? What state of mind must be present in the lawmaker in order to enact laws which restrict Joe by force? Would it ever be possible to win over the majority opinion in Parliament? Similarly, situation (b) produces such questions as: What makes Joe want to act according to the scientists' discovery? Are incentives the right and realistic way to bring about such radical change? Who pays for them and how great is the likelihood that they will produce the desired results?

It can already be mentioned that neither BUCHANAN'S, nor MULGAN'S theory provide answers to all of the questions posed. Philosophical theories are limited in nature and extent. Conceivably, they are still valuable sources from which one can commence a specific inquiry. For this reason, solutions (a) and (b) as illustrated will not be treated in their fullest scope, but to the extent that they are inferable from the ideas of the two authors—nothing more, and nothing less. Further, in order to add a practical dimension to the work of both philosophers, we combine their findings, the idea being to create by way of deduction simplified rules so that the most convincing elements of their theories can eventually be put into practice. This in other words means that a partial objective of this paper is to define rules which function as intermediaries between highly abstract theories and the practical implications of statutorily or constitutionally based legal provisions. To accomplish this, we take recourse from PAUL RICHLI'S theory of drafting legislation. The Swiss jurist describes the circumstances in which so-called "rules of thumb" can be tailored easily.⁸ As we will see later, the value of such rules lies in their reconciliatory effects on varying views.

To sum up, Part I deals with BUCHANAN'S *Limits of Liberty* primarily by virtue of his continuing contract and the *status quo* theory. Part II includes a discussion on MULGAN'S account on *Future People* and advocacy of moderate consequentialism. Part III combines the findings of both authors and creates a first (but incomplete) set of rules by which justice can start to operate. Finally, this paper closes with an appeal on all governments to invest in scientific programs that study the consequences of human action upon nature, and—depending on those scientific findings—to enforce reasonable laws in order that their people act only according to those norms by which it is guaranteed that the world's ecosystems are kept sound. It will be difficult to do justice to future generations, but it is the kind of challenge we ought to face now.

⁸ The term "rules of thumb" (*Daumenregeln*) was first used by ELMAR HOLENSTEIN, KULTURPHILOSOPHISCHE PERSPEKTIVEN, SCHULBEISPIEL SCHWEIZ, EUROPÄISCHE IDENTITÄT AUF DEM PRÜFSTAND, GLOBALE VERSTÄNDIGUNGSMÖGLICHKEITEN 288 ff. (Suhrkamp 1998); the actual concept was developed in detail by PAUL RICHLI in his work on INTERDISZIPLINÄRE DAUMENREGELN FÜR EINE FAIRE RECHTSETZUNG, EIN BEITRAG ZUR RECHTSETZUNGSLEHRE IM LIBERALEN SOZIAL UND ÖKOLOGISCH ORIENTIERTEN RECHTSSTAAT (Helbing & Lichtenhahn 2000); and was later revisited in PAUL RICHLI, MARCEL STÜSSI, DIE POLITISCHE PHILOSOPHIE ALS ERKENNTNISQUELLE FÜR DIE BESTIMMUNG UND REGELUNG VON STAATSAUFGABEN (Helbing & Lichtenhahn 2009).

Please note that this paper is presented at the special workshop “Efficiency, Sustainability, and Justice to Future Generations,” which is lead by Prof. Dr. iur. Klaus Mathis, MA in Economics, Chair of Public Law and Law of the Sustainable Economy. For more information visit:

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