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What do we owe future generations? Climate change and justice.

Peter Lawrence, University of Tasmania Law School

Abstract

Enhanced global warming is predicted by scientists to result in severe impacts with the possibility of catastrophic impacts. Those most affected will be future generations particularly the poor. If sharp reductions in greenhouse gas emissions are to occur this burden will fall on contemporary generations with most benefits flowing to future generations. This paper examines the most convincing justification for an obligation towards future generations in relation to climate change. It is argued that a harm avoidance principle is the most convincing basis for such an obligation, together with a principle of equality and a contingent theory of rights. A Rawlsian approach founded on a notion of impartiality is attractive but only generates an obligation which is overly vague. Contract related theories of justice based on reciprocity fail as there is no genuine reciprocity with regard to future generations. Communitarian theories offer great promise but have limited traction in relation to climate change as they do not establish an obligation at a global level. Cosmopolitan approaches which rest on the argument that there is a global community in relation to climate change must face the current reality of the international climate change regime which remains strongly state-based and an international community in which cooperation is strong in some areas and very weak in others.

While a harm avoidance principle is valuable in establishing a basic obligation towards future generations the difficult distributional issues at the heart of climate change policy can only be solved by application of distributional justice principles. One such issue is whether there is a conflict between intergenerational and intragenerational justice. Finally the scope of the author's ongoing research is outlined including: a) the translation of harm avoidance and the precautionary principles into international law particularly the climate change regime, and b) national mechanisms to implement an obligation to future generations.

Following is a draft extract from ongoing research towards my book: 'Justice for Future Generations: Climate Change in International Law' (Edward Elgar forthcoming). Not for citation.

DRAFT ONLY 28 Jan 2011 EXTRACT ONLY NOT FOR CITATION**CHAPTER 3: FUTURE GENERATIONS AND ETHICS: THE PHILOSOPHICAL BASIS OF INTERGENERATIONAL JUSTICE***

*This chapter relies on P. Lawrence, 'Justice and Future Generations: Environment Discourses, International Law and Climate Change' in: Brad Jessup and Kim Rubenstein's (eds) *Environmental Discourses in International and Public Law* (Cambridge University Press, forthcoming 2011).

... In this chapter we looked more closely at such ethical judgments. In particular, in the context of climate change, what obligations are owed by those alive today to those born in the future? If there are such obligations, then what is their content?

3.1.1 Key assumptions

In the analysis which follows I shall adopt a number of key assumptions upon which my argument rests. These key assumptions find a place in a number of influential theories of ethics and my analysis will take these theories as a starting point rather than seeking to justify them. Edward Page in his book *Climate Change and Future Generations*¹ provides more thoroughgoing account of these issues.

My arguments rests on the following key principles:

- A) Each and every person is entitled to equal consideration (HLA Hart natural right – see Stanford enc).
- B) Each and every person is to be valued equally without discrimination on the basis of when they happen to be born. Rawls 293-294 1971 Sedwick distinguish from

¹ Edward Elgar, 2006.

uncertainty of harm in OUP Climate Ethics book. Tremmel idea of human needs staying same only culture changing.

C) Responsibility principle - Feinberg causation idea page 43 Hiskes

...

3.2 Obligation to avoid harm

Intergenerational justice can be based on the extension into the future of an obligation to refrain from causing future harm to other human beings. The proposition may be expressed as follows in what I would like to describe as a 'harm avoidance principle'²:

The current generation, particularly those in positions of power, has an obligation to refrain from action which has a high probability of causing serious harm to the 1) interests of younger people alive today and 2) the interests of future generations (yet to be born).³

'Harm avoidance' as a key ethical principle has a long history. John Stuart Mill argued that the prevention of harm to others governed the relationship between the individual and society and was the only basis upon which 'power can be rightfully exercised over any member of a civilised community, against his will...'.⁴ A similar concept underlies the law of torts and the criminal law. In order to justify my formulation of the principle it is interesting to posit the contrary principle which would be: 'the current generation has a right to take action which has a high probability of causing serious harm to those born in the future.' This would be problematic as this would arguably justify actions which could threaten the ongoing survival of significant numbers of

² Vanderheiden argues for a similar principle, above n 105, 137 as does Henry Shue???

³ Space precludes fully elaborating on elements of this proposed harm principle. Issues which would need to be addressed include the responsibility/free will issue in other words, responsibility to avoid harm can only logically be attributed to those with genuine freedom - and power to make decisions which can prevent harm occurring.

⁴ John Stuart Mill, *On Liberty* (1859), reprinted in John Stuart Mill, *Utilitarianism, On Liberty, Essay on Bentham* (1962) 126, 135. There are parallels here with Thomas Pogge's negative responsibility for world poverty, see Thomas Pogge, 'A Global Resource Dividend' in David Crocker and Toby Linden (eds) *Ethics of Consumption* (1999) 501.

human beings. Moreover, the harm avoidance principle is consistent with the instinct and/or responsibility to nurture children and parents' efforts in maximising the likelihood of a successful future for their children.

Action to address climate change falls within this principle as arguably there is a high probability of catastrophic and irreversible impacts on human beings if the current generation does not take mitigation action. Only anthropogenic impacts would fall within this principle. Caney has argued for the polluter pays principle - modified by an 'ability to pay' principle - as an ethical basis for mitigation (reduction of greenhouse gas emissions) and adaptation responses to climate change.⁵ The essence of the polluter pays principle (PPP) is that 'if someone has produced a harm... then they should rectify that situation. They as the causers are responsible for the ill-effects.'⁶ Thus the PPP is linked to the harm avoidance principle in an environment context. Carney argues that the PPP cannot apply to emissions by people long since dead⁷ or in relation to emissions by people during a time when it was not known that fossil fuels produced climate change.⁸ He also argues that the PPP should be qualified so that it cannot require people to pay for emissions needed for their fundamental survival.⁹ He argues that the principle needs to be combined with an ability to pay principle to meet these requirements.

Vanderheiden argues that a duty to future generations can be based on the moral duty to avoid causing predictable harm 'conjoined with the equality principle.' He argues that it makes no

⁵ Simon Caney, *Cosmopolitan Justice, Responsibility, and Global Climate Change*, *Leiden Journal of International Law*, 18 (2005) 747-775.

⁶ *Ibid* 752.

⁷ Caney notes that this factor can be exaggerated given that half of the total global emissions of greenhouse gas emissions occurred since the 1970s. Boden, T.A., G. Marland, and R.J. Andres. 2009. *Global, Regional, and National Fossil-Fuel CO₂ Emissions*. Carbon Dioxide Information Analysis Center, Oak Ridge National Laboratory, U.S. Department of Energy, Oak Ridge, Tenn., U.S.A. doi 10.3334/CDIAC/00001 http://cdiac.esd.ornl.gov/trends/emis/overview_2006.html at 12 May 2010 quoted in Caney (2010), above n 111, 211

⁸ Caney (2005), above n 133, 762. But see Henry Shue who argues that this is reasonable as they caused the problem. H. Shue, 'Global Environment and International Inequality', *International Affairs* (1999) 535-536.

⁹ Caney (2005), above n 133, 763.

sense to discount harm 'just because it occurs in the future' and argues that by automatically discounting such harm we are violating the equality principle in the sense that a person's value cannot depend upon when they happen to be born.¹⁰ Vanderheiden concludes that 'if we can foresee that our current actions will, in the future, cause harm to or violate the rights of some future persons, or if they are highly likely to do so, then we should refrain from engaging those actions.'¹¹

3.2.1 Objections to a harm avoidance principle

A potential obstacle to the harm avoidance principle proposed above is that it could be argued that it presumes that a future technological breakthrough which allows the production of energy which drastically reduces greenhouse gas emissions is impossible. This however ignores the fact that the harm principle is based on foresight and knowledge *now*. An ethically justifiable decision cannot retrospectively become unjustifiable because of events which were not foreseeable at the time.¹² Moreover, according to scientists we are simply running out of time to wait for a magical technological silver bullet for the climate change challenge. Experts have pointed out the availability of existing technologies that - given the right regulatory settings - could address the problem.¹³ Economists applying a cost-benefit analysis have argued that deeper cuts undertaken now will mean a more manageable burden for the next generation.¹⁴

Gardner argues that the principle is inherently problematic as various vagueness as to what constitutes harm. But the same criticism can be made of comparable moral principles.???? In any event there are legal principles with the same level of inherent vagueness which does not seem to prevent them functioning. REF

¹⁰ Vanderheiden, above n 105, 137.

¹¹ Vanderheiden, above n 105, 137.

¹² Vanderheiden, above n 105, 186.

¹³ Cedric Philibert, 'International Energy Technology Collaboration and Climate Change Mitigation', OECD paper COM/ENV/EPOC/IEA/SLT (2004).

¹⁴ Ross Garnaut, *The Garnaut Climate Change Review*, Final Report, 30 September 2008, chapter 9, www.garnautreview.org.au-Garnaut at 19 December 2008.

Related to this criticism is the notion that Harm avoidance principle is too weak in its content. Put a different way the harm principle might provide grounds for reductions in emissions in greenhouse gases, but this doesn't take us very far given that the big *distributional* issues of how quickly such reductions should occur and who should be responsible for such reductions remain on the table (See Buchanan criticism in the Oxford handbook on jurisprudence-he argues it is better just to go straight to a distributional Justice principle). My view is that the harm avoidance principle does not take us far enough and other principles including the polluter pays and ability to pay principles must be invoked. At the same time, the harm avoidance principle should nevertheless be retained as it provides a basic guidance principle. Contained in many religions?

3.2.2 Individual and collective responsibility

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Hiskes argument that the collective aspect of responsibility for environmental harms cannot be a reason for negating responsibility for harms that violate individual rights is compelling. As he points out if the contrary were true there could be no rights "in the face of mass behaviour such as panic or war".¹⁵

Following Hiskes argument the cumulative and diffuse nature of the sources of greenhouse gas emissions do not preclude responsibility for harm and potentially rights¹⁶. The degree to which individuals, whether acting as consumers, or as directors of companies, or leaders of governments are responsible must logically be linked to the degree to which they have control or participate in the production of greenhouse gas emissions. There is collective and both individual responsibility

¹⁵ Ibid 45.

¹⁶ "potentially rights" as further difficulties with the rights based approach are considered below pp??

What about the fact that there are benefits in the form of energy generation upon which economic life depends which flows from the harmful activity? Does this provide an argument to the effect that greenhouse gas emissions should not be equated with other types of pollution in that they have both a harmful and beneficial aspect. This argument would be more convincing if there were no alternatives to producing energy using technology to produce greenhouse gas emissions. This however is not the case and there are currently available alternatives which allow the production of energy without the production of greenhouse gas emissions. OECD REF???? Although it must be recognised that powerful vested interest in many countries are an obstacle to the rapid uptake of these technologies. S\

3.3 Human *Rights*

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As we have seen, if an interest-based theory of rights is adopted, there does not seem to be in principle any reason why unborn persons cannot possess rights in a contingent sense, based on the very reasonable assumption that the interest underlying the right will continue into the future. Moreover, philosophers have pointed out that there is a contingent element to the application of all moral rules in that duties may be linked to rights which will only come into play when certain events occur. Consider, the example of a person throwing an old World War two bomb down a drain in a marketplace. Imagine that six months later the bomb goes off killing a two-month-old child. At the time the bomb was placed in the drain in the marketplace this child was not yet born. Can it nevertheless be said that this child's right to life was violated? Here the *duty* not to cause harm certainly extends into the future and is valid regardless of a lack of knowledge about who *in future* will be harmed.¹⁷ Similarly the right to not be injured or killed through such negligent acts exists now and continues into the future even if the exercise of this right is

¹⁷ Partridge draws on a similar example devised by Galen Pletcher ('The Rights of Future Generations,' in Partridge (ed) *Responsibilities to Future Generations* (1981) 186). Partridge, above n 101, 16.

contingent on certain factors including the bomb going off and actually causing harm. The fact that at this moment the right holder is not yet born is irrelevant to whether either the duty or right exists.

Given the foreseeability and indeed high likelihood that a person may in the future be injured by this negligence, it is surely irrelevant in terms of the existence of a duty to avoid harm whether at the moment the old shell is placed in the drain, the potential victim is alive or not. Climate change involves further complications in that we are collectively throwing the old bomb down the drain, raising issues about whether responsibility should be on an individual, corporation, national or sub-national basis.¹⁸

3.6 Reciprocity

3.6.1 Direct Reciprocity

"Why should I do anything for posterity? What has posterity ever done for me" (Narveson 1978, p38; quoted in Tremmel 196) captures the one-way relationship between current generations and our successors. Our successors cannot confer benefits on those alive today. On the other hand, we are in a position to benefit or harm our successors. Thomas Hobbs (1588-1679) took the view that human beings were inherently immoral and that human beings could protect themselves from harm by others by entering into contracts with those others who had the potential to cause harm. In this sense, Hobbs created the concept of "justice as reciprocity as a balance of deterrence" (Tremmel 183). Following in this tradition Barry regards "justice as mutual advantage" (1989, page 8, in Tremmel 183). Theories of justice resting on a contractual or reciprocal basis (such as Rawls, Gauthier, Barry or Nozick) cannot establish a basis of an

¹⁸ See Simon Carney 'Climate Change and the Duties of the Advantaged' *Critical Review of International Social and Political Philosophy* 13 (2010) 219.

obligation towards future generations based on justice.¹⁹ These theories involve *direct reciprocity* in the sense that justice requires the possibility of a mutual exchange of advantages. This 'tit-for-tat' reciprocity by definition precludes obligations to future generations who cannot offer anything to those alive today. It also makes possible obligations to the profoundly disabled (Hiskes REF).

Buchanan has criticised the selfish basis of these theories arguing that they clash with commonsense morality, and that social institutions such as friendship and marriage can't survive on the basis of direct reciprocity (in Hiskes??). Tremmel gives the powerful example of looking after elderly people. If one has benefited from your parents looking after you then you should look after them in old age. If one took an entirely egotistical approach then once parents became frail one would abandon them completely. This example shows that there is a sense of fairness rather than just reciprocity involved (Tremmel) as well as assumptions about the motivations of human beings. This example also shows that what is "just" depends on attitudes which go well beyond self-interest including "shared views of what is just".²⁰

3.6.2 Indirect reciprocity

One response to the justice as reciprocity limitation outlined above is to argue that these theories do not establish a basis to ethical conduct at all (eg Tremmel 193).

Another response is to stretch the notion of reciprocity to include *indirect* reciprocity. This notion is well captured in the Talmud: 'An old man is asked why he is planting a carob tree, as after all, he will not live to see this tree bloom. He answers: "When I was born the world was full of blooming carob trees"' Talmud, Ta'anit, p23 quoted in Tremmel 194). The essence of indirect reciprocity is that each generation has received benefits from its forebears eg a good education.

¹⁹ Hiskes op cit?? 48. These authors do have theories about obligations towards future generations but they lie outside the particular theory of Justice involved. Rawls does have a theory of just savings upon which such an obligation rest but this is strictly outside of his theory of Justice (see below ???)

²⁰ Hiskes op cit 52-53. See also Sandel????

The forebears are no longer alive but in return for these benefits the current generation can convey to its successor generation the equivalent benefits eg a good education. (Becker in Page 121) The successor generation can then convey an equivalent benefit to their successors, creating a "cascade like obligation" (Hoesle 1997, p809, in Tremmel 195). This can also be characterised as a 'chain of concern model' (Page p 115). Thus human beings sentimental concern to the well-being of their nearest descendants constituting a public good which requires every member of society - even those without children -to contribute to its upkeep (Page 115).

This concept underpins Rawls just saving principle according to which

"Each [generation] passes on to the next a fair equivalent in real capital as defined by a just savings principle ... This equivalent is in return for what is received from previous generations that enables the later ones to enjoy a better life in a more just society.

(Rawls, 1971, page 288) (quoted in Tremmel page 195)

Indirect reciprocity has been combined with a stewardship model by a number of philosophers. The idea here is that "existing persons are duty-bound to protect environmental resources for the sake of their successors in return for the benefits inherited from their ancestors" Check quote page 119 Edith Brown Weiss, for example, emphasizes the 'dual role' of each generation as both a beneficiary of the planetary legacy and is a trustee of the planet (Brown Weiss 1989 page 45) Quoted in Tremmel 195).

A serious objection to indirect reciprocity is that obligations arising from reciprocity are generally only considered valid if the particular goods were received voluntarily. (Page p123) A newborn child is not in a position to refuse the heritage of humankind or even understand what this would mean. Tremmel seeks to meet this objection by stating "But if it were possible to ask an average member of the next generation, what would his answer be? Surely "yes". Almost everything seems to be better than not to-exist." But he goes on to acknowledge Partridge's

argument that this involves making comparisons between a certain condition of living and "never existing" which is invalid (Partridge 2007 page 14 footnote 16 (quoted in Tremmel page 196). Tremmel goes on to point out that the average representative of the next generation might in fact say that they would like to accept the positives-democracy and satellite TV, but reject the negatives such as AIDS and poverty. Tremmel's response is that the so-called "cherry picking" is unfair just as it would be under private law in the case of a private inheritance which cannot be partly rejected. But surely this is a weak argument as a private inheritance can be completely rejected in a way that is simply not possible with intergenerational inheritance. It is difficult not to agree with Edward Page that the lack of voluntariness remains a difficulty in this argument (see further discussion Page pages 121-124).

A further issue is whether indirect reciprocity applies in relation to goods - the consumption of which - may be indispensable for survival in the short term. Page on p121 touches on this but does not develop it – eg "hard to believe that it is appropriate to save goods rather than pass on mine "when the persons concerned are impoverished members of developing countries". The indirect reciprocity argument seems insensitive to the specific conditions each generation finds itself. Indirect reciprocity makes sense in a context where a society is sufficiently wealthy to preserve certain goods such as education etc, but what if the society is poor? Can one *a priori* make assumptions about what is appropriate to convey the next generation? What if the society is under such pressure to survive that consuming resources now is the only way of stopping poor people dying right now? In such a context how can it be ethical for the current generation to sacrifice their interest to those of the future as this would mean an arbitrary decision to favour the interests of remote future generations over the interests of those alive today. There is also an interesting question as to whether indirect reciprocity applies equally to institutions and culture as to the preservation of resources with the latter arguably raising more directly issues of human survival.

Moreover, the indirect reciprocity argument seems intertwined with an assumption of progress. Surely for some generations born at particular times - or in the future - they will be in situation where on balance they could understandably take the view that their inheritance has more negatives and positives. Of course this begs the question of comparison with what? Yet human beings have a strong survival instinct to make the best of difficult situations. Artificially constructing a notion of consent to the benefits and burdens of one's inheritance seems a distorted characterisation of this reality.

3.7 Justice as Impartiality

Many of the most influential theories of justice are derived from a notion of impartiality. The basic idea here is that justice is derived from an agreement reached by rational people in a context where they are unable to translate bargaining power into advantage but rather able are able to find a basis for agreement "acceptable from all points of views" (Barry, 1989 page 7 quoted in Tremmel page 150). One of the most influential of such theories was developed by John Rawls (Rawls 1971).

3.7.1 Rawls

The essence of Rawls' theory was to conduct a thought experiment according to which rational persons guided by self-interest would come together to decide on just principles. The thought experiment would occur under a so-called "veil of ignorance" according to which participants would not know whether they were to be rich or poor, intelligent or dull. Rawls argues that the participants would agree to principles according to which inequalities would be allowable only to the extent that the least advantaged enjoyed the greatest benefit ("difference principle") as any participant could be born into this group. Inequalities would still be allowable to the extent that inequality would further economic growth with trickle-down effects to all. Rawls recognised that this created a problem in terms of justice between generations as people in the original position

could decide to favour their generation at the expense of their successor generations. (Rawls 1971 page 140). He therefore extended the thought experiment so that the representatives of past present and future generations were represented in the original position (Rawls 1971 p288). [Footnote: note however that Rawls is not consistent in his formulation - see the careful analysis by Tremmel pages 156-157).

...Rawls includes an indirect reciprocity element by suggesting that each generation pass on a fair equivalent in real capital (including culture and education not just material capital) which is in return for what they have received (Rawls 1971 page 288) even though he acknowledges that reciprocal exchanges between generations can at most be 'virtual ones', involving adjustments in the original position in drawing up the just savings principle (Rawls 1971 page 291). Rawls assumes that each generation cares for its immediate descendants (Rawls 1971 page 288), an assumption at odds with his assumption of participants in the original position acting with 'self-interest'. This assumption was dropped in his later reformulation of this theory (Rawls 2001 page 160 discussed in Tremmel page 157-158).

Rawls theory has been criticized for its failure to take into account depletion of nonrenewable resources and environmental damage by taking for granted that latter generations will be better off owing to technological advantages (Birnbacher 1977 pp386-387 quoted in Tremmel 155). Tremmel has argued that Rawls' just savings principle is given unwarranted importance in Rawls theory given that historical evidence suggests that significant drops in wealth between generations has occurred due to 'wars, enslavement and depression' rather than decisions about savings. (Tremmel, 2009 page 165).

...This discussion suggests that a deeper problem may lie behind all Rawlsian based theories in their application to intergenerational justice. There is a great attraction in finding a general principle which gives content to justice in an intergenerational context. But as we have seen, it is

impossible to find a principle which involves any precision which is independent of the time period for which it is to apply. To date Rawlsian theories have reflected notions of progress, with the content of intergenerational justice being for example the principle that the earth should be handed over in no worse condition, or at least better condition than it was inherited (Tremmel footnote). But if we think ahead to the earth in 10 or 20 years from now, what content could such theories have? If for example, scientists tell us that we are on the cusp of a dangerous tipping point which could seriously impacted the prospects of all future generations then surely a narrow reciprocity principle according to which the generation in power does no more than the feeble efforts of its forebears to avert catastrophe would be totally inadequate as a basis for action. While Rawls adopted an anthropocentric view he acknowledged that there was no definite answer in terms of how "the burden of capital accumulation and of raising the standard civilisation and culture is to be shared between generations" (Rawls 1971 page 286). On the other hand he argued for "certain bounds which impose significant ethical constraints" (ibid page 286).

3.8 Communitarian approaches

Communitarian approaches seem to offer a strong argument for obligations to future generations not dependent on reciprocity. According to these views, justice stems from a shared sense of community (Sandel 1982) (Taylor 1989) quoted in Hiskes 14. This sense of community comes from a shared past. De-Shalit has extended this sense of community into the future to create the concept of a "transgeneration community" (1995 p12). Obligations to future generations are therefore grounded in rational self-interest as an essential component of preserving one's identity. One's identity is rooted in the past and continues into the future. Thus De-Shalit argues that:

"...the constitutive community extends over several generations and into the future, and just as many people think of the past as part of what constitutes their "selves", they do and should regard the *future* as part of their "selves". These are the relations that form the trans-generation community, which is a source of our obligations to future generations. (1995, 15-16; emphasis De-Shalit) (quoted in Hiskes page 14)

De-Shalit, Taylor and Sandel all acknowledge that their communitarian concept of justice is dependent upon a shared conception of the good that defines that particular community and that community only (Hiskes 15). Barry has pointed out that these communitarian theories can only provide a basis for an obligation towards future generations of one's own particular community and that De-Shalit's theory " cannot offer any reasons people in rich countries to cut back so as to improve the prospects of future people in other communities." (Barry 1999, page 99) (quoted in Hiskes 15)

Page points out that applying communitarian based theories of justice to climate change presents difficult problems because by its very transboundary nature climate change involves "the ethical claims of non-compatriots" (Page p120).

Building on communitarian theory Hiskes argues that a shared sense of community is linked to a nation's identity and values. He invokes a concept of "reflexive reciprocity". His argument is that by taking action now to conserve the air, water and soil quality we will in turn protect these elements for future generations to enjoy as well.²¹ He further argues that there is a reciprocal relationship of identities involved as well in that an obligation to future generations is linked to a continuation of our own cultural identity.²²

Hiskes' first argument when applied to climate change seems difficult to sustain. It is true that action now to curb greenhouse gas emissions will to some extent benefit those alive today as

²¹ Hiskes op cit 60.

²² Hiskes op cit 65.

well as those living in the future. Thus for example reducing carbon emissions will immediately reduce air pollution and related health problems. But where is the reciprocity in this? If reciprocity is defined as a mutual exchange of benefits Hiskes argument seems unsustainable. Hiskes argument rests on a notion of reciprocity which seems too far away from other definitions. The future generations are still not conveying any advantage to current generations. Moreover, deep cuts in greenhouse gas emissions taken now for the sake of those in the future will involve an imbalance in that the greater economic costs of such action will be incurred now with the greatest benefits flowing to those born in the future. Analogy of unilateral reduction of tariffs – these can benefit my economy but cannot redefine “reciprocity” to make it so broad as to include this unilateral act which remains distinct from negotiated reductions of tariffs where governments make an agreement based on mutual advantages.

The one-way unilateral dimension involved in this problem is analogous to a family, and society looking after a severely disabled child. This seems to have nothing to do with reciprocity in my view but rather an obligation owed to the vulnerable resting on a shared sense of values and dependency relationship.

Reciprocity seems more linked to his identity argument—we have all benefited from our forebears leaving to us the planet in no worse condition than we inherited it (NOT true) if we don't respect this same principle we will be gaining an unfair advantage????

3.9 Cosmopolitan theories

Communitarian theories of justice are limited in only providing a basis for obligations to members of a particular society. In contrast, cosmopolitan theories of justice rest on the notion that obligations are owed to all persons regardless of which state they happen to be born into. Cosmopolitan theories of justice contain three core elements: firstly, "the ultimate units of concern are human beings or persons, rather than tribes, nations, states". Secondly,

"universality" with the "status of the ultimate unit of concern attaching to every living human being equally", and thirdly "generality, the special status has global force, and is owed not just to compatriots" (Pogge (2008 p175) CHECK quoted in 101 Harris). Within cosmopolitan justice theory there is a variety of perspectives, ranging from Peter Singer's utilitarianism (1996) to Simon Caney's human rights approach (2005) (Harris 102).

Cosmopolitan theories of justice would seem to offer great promise in establishing obligations owed towards future generations as responsibilities are owed to other persons regardless of "spatial or temporal distance" (Attfield 2003 p162, quoted in Harris p 103). However, cosmopolitan theories of justice have their critics. Cosmopolitan theories are seen as flying in the face of this state sovereignty which remains the linchpin of the international system. Rawls theory of justice (see above) only applies within the nation state with limited ethical obligations extending to those of other states REF. So-called "sceptical realists" have taken a view that international relations is based on sovereign states pursuing their narrow self-interests (Vanderheiden p 83).

A common thread running through these criticisms is the idea that at the international level we lack a genuine justice community. This point is certainly holds true in relation to antipoverty efforts and redistributive economic development with international law failing to impose obligations in this area (Vanerheiden 97-98). However, at least *elements* of an international justice community are evident in the discourse on human rights and in treaties aimed at furthering trade liberalisation (Hurrell in Vanderheiden p 98).

Moreover, Vanderheiden convincingly argues that the arguments challenging cosmopolitan justice cease to apply in relation to climate change as "[a]ll depend on a stable climate for their

well-being, all are potentially affected by the actions or policies of others” and none can fully opt out of any effective cooperative scheme to mitigate emissions (Vanderheiden p 104).

...Cosmopolitan justice theories have been criticised for failing to indicate how the principles can be implemented in the current global climate architecture which is based on state sovereignty. For example Page states that “it remains unclear how Caney’s methodological individualism can be operationalised given the national focus of current global architecture” (check referencing page 160 Harris). In chapter X below we examine how justice of future generations can be implemented in the current international climate change negotiations. Suffice it to observe here that the sovereign state remains likely to be the central component in building an effective international climate change regime. Moreover, elements of cosmopolitan justice are already part of the global climate change negotiation discourse, for example the concept of equal per capita emissions espoused by India (check REF). In addition, international climate change negotiations inevitably reflect national climate change policies. In the national climate change policy debate the concept of equality which is at the heart of cosmopolitan justice is likely to play a very significant role including application to the difficult issues of intergenerational justice. [Cosmopolitan justice theories have not given great attention to future generations (REF)]

Conclusion

Justification for an ethical principle of intergenerational equity according to which current generations have an obligation to pass on the planet with a climate which provides for basic life support functions can be grounded in a harm avoidance principle, Hart’s minimum content of natural law and a contingent view of rights, given the high probability of current generations’ actions impacting on future person’s rights. We have seen that the impartiality and equality principles embedded in Rawlsian theories remain crucial while Rawlsian theories in themselves remain inadequate to address climate

change as they cannot come up with principles sufficiently detailed which remain applicable regardless of the time context in which policy choices are being considered.

While the analysis in this chapter has focused on obligations towards unborn generations, strong climate change mitigation action can also be grounded on the need to take into account the interests of young people *alive today*, particularly given the interest of younger people to eventually bring children into the world in a context where their children's future is not imperiled. In this sense the duty to take climate change mitigation action may - at least partly - be based on self-interest given the inextricable link between the interests of parents and grandparents and their children.