The meaning of intergenerational equity

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1. Theories of (intergenerational) justice

- Concepts (1) Generations = birth cohorts as opposed to age-groups (NB: the implications of the existing anti-age-discrimination legislation for justice between birth cohorts are underestimated), (2) savings and dis-savings, (3) commutative, corrective and distributive. J. (corrective J. left aside here – key e.g. in the climate change debate on historical emissions - as it is not strictly speaking intergenerational)

- Key challenges (independently of enforcement): (1) justifying accumulation, (2) non-renewable resources > substitution > share of education needs to increase, which entails extra positive duties as opposed to merely negative ones (“don’t deplete”), (3) dependence on intermediary generations (time-lockedness) (4) demo-sensitivity (crucial and underestimated), (5) uncertainties (but one should not overestimate them, especially if we take a continuous assessment of our intergenerational duties seriously)

1.1. Commutative justice: (Indirect) reciprocity

- Justificatory: « The current generation owes something to the next generation because it received something from the previous one ». (compare: because causally responsible for existence or for problem; because of the demands of distributive justice)
- Substantive: « The current generation must pass on to the next a capital at least equivalent to the one it inherited from the previous one ».
- Challenges: (1) « justice as no-net-transfer » logics does not seem problematic here because the openness to the future does not force anyone to become net beneficiaries BUT is problematic in general and the fact of allowing savings can be seen as problematic too; (2) receiving as duty-generating (3) demo-insensitivity

1.2. Distributive justice: Prohibiting both dis-savings and savings

- Egalitarianism does not commit to levelling down and rejection of responsibility
- Equality, Leximin, sufficiency
- Basic needs sufficiency. Consider three formulations:

**Brundtland** (1987): development is only said to be sustainable if it "Meets the needs of the present without compromising the ability of future generations to meet their own needs".

**Pinchot** (1910) “recognizes fully the right of the present generation to use what it needs and all it needs of the natural resources now available, but [also] recognizes equally our obligation so to use what we need that our descendants shall not be deprived of what they need.”

**Daly** (1996) “…the basic needs of the present should always take precedence over the basic needs of the future but the basic needs of the future should take precedence over the extravagant luxury of the present” (differs from Brundtland and Pinchot)

- Problem with sufficiencyarianism: not very ambitious if applied to the intra-generational realm, which entails at the intergenerational level that compatible with massive dis-savings.
- Does leximin egalitarianism do better? Yes: Neither savings nor dis-savings (“Each generation should leave/transfer to the next generation(s) neither less, nor more in the relevant respects (and per capita) than what it inherited from the previous one”) > convergence with sufficiencyarianism on the “prohibition on savings”, but divergence with it on the “prohibition on dis-savings”.
- The concept of solidarity fits well with the notion of distributive justice/equity (although in practice (not conceptually), the words equity/justice are less ambiguous). There is no reason to doubt that there is a “need” for intergenerational solidarity if we accept that there is clearly a need for intragenerational solidarity (e.g. towards those amongst us who were born in the poorest families or with the worst health condition). Also, Brundtland’s sufficiencyarian vision allows for a direct connection with the idea of sustainability and a possible (minimalistic) understanding of what intergenerational solidarity can require.

Conclusion: (1) in adopting an intergenerational view, always consider consistency with our view on domestic justice, (2) if we can expect that even a basic needs sufficiencyarian view will be violated by
our intergenerational policies, it is hard to see why it would be controversial to call for action, (3) these views take very seriously the situation of the current least well off as well (intergenerational justice does not take intra-generational distribution as a black box), (4) intergenerational justice may require early action (e.g. Stern on climate change) and strong constraints on current people (e.g. insofar as non-renewable resources are concerned, but also re. the costs of education). This does not need to entail a sacrifice of the current least well off if there are strong intra-generational global redistributive transfers.

2. Are rights of future generations meaningless and/or useless?

“these fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights.” (Japanese Const. 1946, art. 11)

“every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.” (Norwegian Const., art. L 110b, al 1, as amended in 1992)

All citizens have a fundamental right “to enjoy a healthy environment, ecologically well balanced, and appropriate to her well-being, while keeping in mind the rights of future generations. » (Bolivian Const., art. 7(m), as amended on Aug. 8, 2002).

2.1. Does the current non-existence of future people make rights of future people meaningless? NO

- There will be people in the future
- Future rights can correlate with present obligations
- Ex: Baby food regulation can be said to embody such rights

2.2. Does the current unactionability of such rights in court render them useless? NO

- Preconception torts actionable only after birth (overlap)
- No future class action if only involves future victims (+ see 1993 Minors Oposa case).
- Future rights could be actioned by legal players other than the victims or their representatives (e.g. criminal law > state prosecutor) + important extra-legal effects, e.g. influencing how the public debate is framed.

Such rights make perfect sense > crucial to use the term “rights” and to give them specific substance.

3. Two priorities

We need special representation for the same reasons as when we insist that there be e.g. women in parliaments (epistemic and motivational reasons), with admittedly some extra difficulties here.

We need to carefully think about which precise mandate to grant to a special institution within the UN architecture (e.g. High Commissioner for Future Generations). We also need to examine what would make other UN bodies more long-termist as well.

- The need for aggregate continuous measurement

The specific institution needs a clear mandate, with clear principles. It should have a broad mandate, not limited to environmental issues or social policy issues. A broad mandate will force such a special institution to make the trade-offs. As part of this mandate, it seems crucial that this special institution be expected to produce some measurement method that would allow to get an idea of how much we are actually transferring to the next generation(s) and to answer the question “are we transferring enough?”. Such a measurement method should be such that we could anticipate as well in the middle of our life, whether we can reasonably expect, by the end of our cohort’s life, to have transferred enough. And this method could then also be used by countries in their national accounts.