

Report from Short Visit in Utrecht 30 May – 9 June

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Purpose of the visit

The purpose of the visit was to meet Marcus Düwell with the aim to join forces in clarifying how a human rights position can meet the challenges from climate change, i.e. to give an account of our duties to future generations and to clarify how to deal with uncertainty about the future. Both duties to future generations and uncertainty are issues which the human rights tradition only have addressed to a minor degree, and which traditionally are seen as difficult to handle within a rights perspective. On the other hand, the consequentialist tradition has worked extensively with both of them, often with the help of formal methods. So by bringing expertise from these two traditions together should make it possible to clarify what the human rights tradition can learn from the consequentialist tradition when taking its different perspective into account.

The work carried out during the visit

The work carried out consisted preparations and talks, where a number of issues were intensively discussed. The talks concluded in a plan for a joint publication.

During the visit, there was also opportunity to participate in a symposium on “Practical reason, desire and the will in Kantian moral philosophy”, which conclude in Frederike Kaldewaij’s defense of her PhD theses *The Animal in Morality: on Reason and Desire in Kantian Moral Philosophy*, as well as meetings with May Thorseth, Trondheim (who is part of the ENRI network and was on visit during the same time) and Bernice Bovenkerk, Marcel Verweij, Jan Vorstenbosch, Fran Broom, Jos Philips and Gerhard Bos from the host institution, most of whom also participates in the ENRI network.

The main results obtained.

A right of someone is typically conceived as a duty for others not to do certain things to this person (in the case of a negative right) or a duty to do something for this person (in the case of a positive right). This conception runs into a problem known as the Non-identity Problem (Parfit 1984), which is relevant when considering alternative policies regarding future generation in the face of problems

like anthropogenic climate change. Suppose we compare business as usual with the alternative policy of major reductions in current and future greenhouse gas emissions. This choice is likely to be a 'different people choice', that is, it will affect the number and identity of future people, because people will live very different lives in the two alternatives. (Personal identity is given by a person's specific DNA and thus dependent on conception within a specific period of time). Intuitively, it seems right to prefer the policy of mitigating climate change through reduction of emissions. The question is, however, if to pursue business as usual violates anybody's rights?

It follows from the standard conception that we violate a future person's rights if we do harm to him in a way that is incompatible with respecting his rights. But the problem is that we do not seem to harm *this* person. Had we not chosen the policy of business as usual but the alternative policy of major reductions in emissions, *this* person would not have been brought into existence. The fact that other people will exist and be better off is irrelevant from his perspective. As long as he will have a life worth living and thereby be content with his existence, he is not harmed by our choice. Hence, we have not violated his rights.

The Non-identity Problem therefore represents a problem for the notion of future people having rights (including human rights) and indeed for any person-affecting ethics, i.e. an ethics for which all that matters ethically is what we do to people.

A possible solution is to re-conceptualize the notion of a right, so it becomes applicable to different people choices, but still retains its meaning in some people choices. The idea would be to set up what in the consequentialist tradition is known as an impersonal objective concerning the future. This might appear *ad hoc* in the case of human rights, but actually it goes well together with the idea of human rights as generic rights as developed by e.g. Gewirth, Beyleveld and Düwell. A generic right is the, roughly, the right to the necessary means to live an autonomous life. Human rights could thus be conceived as the duty not to cause anyone to live a life without these necessary means. This is not a right owed to a specific individual. A person without the necessary means in one alternative future may not exist in another and may therefore not be harmed in the ordinary sense by being brought into existence without the necessary means (provided his life is still worth living). It is a duty owed to any person that is brought into existence; and of course a duty owed to those who already exist or who will necessarily exist in any future alternative.

A similar solution has been proposed by Lukas Meyer with the threshold notion of harm: someone is harmed if he is brought to exist with a life below a certain level of goodness. The theory of generic rights, however, has comparatively more content to its notions of rights: There is a hierarchy of rights, the details of which are contextually dependent. What makes them rights is the fact that the weightiest among them cannot normally be traded off against other possibly greater goods.

Another issue concerning the nature of rights has been raised by Robert Nozick (1974). He asks whether (human) rights should be conceived as the moral goal of minimizing rights violations or rather conceived as side constraint on any moral goal. The answer to this question has consequences for the structure of moral theory, and hence for the questions of how to understand rights of future generations and how to understand risks to future generations.

Nozick's claim is that only if we conceive of rights as side constraints will they ensure protection of each individual against being sacrificed for the greater good of the majority. Nozick's claim may capture important intuitions about the immunity of important rights to trade-offs. However, as he himself also point out, there appears to be something irrational about the approach; and this problem appears more prominent, when we look at issues such as risk and duties towards future generation.

Moreover, Nozick's insistence on the notion of side constraints implies an exclusive focus on negative rights. But from the point of view of the theory of human rights as generic rights, this turns things upside down: The only way to justify protection of the individual via negative rights is to point at the inherent value (dignity) of human beings. This value must be promoted via positive rights. Thus, the theory of generic rights arrives at this route at the moral goal of promoting human dignity.

These points give rise to further clarifications. The theory of human rights as generic rights is teleological in the sense of John Broome: It prescribes a moral goal. However, it is not consequentialist in the traditional sense of being based on a non-moral theory of value. The moral goal is based on the moral value of human dignity. Moreover, human rights make up a hierarchy, where the important rights trump the less important. However, unlike side constraint theory, the theory of generic rights accepts trade-offs.

Finally, there is the issue of risk. Within the human rights tradition, risk has not received much attention. Nozick (1974) was perhaps the first to discuss risks from a rights based perspective, and much later literature builds on his suggestions. But many problems remain.

Also the issue of risk seems to raise questions concerning the nature of rights. Exposing someone to a risk is not necessarily an act done to someone. However, it seems reasonable to say that, in certain cases at least, to expose someone to a risk is to violate his rights. This again appears to make an impersonal understanding of rights necessary. Hence, both the Non-identity Problem and risk points at the fact, that if we want to use the notion of rights outside the clear cases where someone intentionally violate a specific person's rights, a rights violation is not necessarily directed against a specific individual.

All these clarifications have paved the way for dealing more detailed with the issues of the rights of future generations and risks to future generations. This is not to say that these issues are easy to deal with. Most of the thinking which is relevant for anthropogenic climate change, such non-intended harm from pollution or similar non-intended risk of harm has been inspired by Nozick. His ideas are, roughly, based on compensation. However, possible consequences affecting people not yet alive is completely absent from his horizon. And on the face of it, it is hard to see how future people can be compensated.

If no compensation is possible, it would apparently follow that *any* (present) greenhouse gas emission is wrong. However, any practical solution will involve some level of emissions for many years to come. If the human rights approach is to have any impact on the political reality, these two points will have to be reconciled in some way. Here, more work is required in order to figure out

how precisely emissions violate the rights of future generations, and if some scheme of compensation is possible.

Another consequence to draw from a human rights perspective appears surprisingly clear. It seems that a human rights approach would see poverty eradication now as an important means to reduce the risk of future rights violations. This would appear to put more weight on the issue of intra-generational justice than has normally been the case within the consequentialist discussions, where the focus mainly has been on inter-generational justice, whereby the possible interrelations between these two issues are ignored.

In conclusion, the most important result obtained was a number of clarifications concerning the human rights approach. In the process of writing a publication, this approach will be presented and used to address the issues of future generations and risk.

Reference

Nozick, Robert (1974) *Anarchy, State, and Utopia*. Oxford: Blackwell.

Future collaboration

As indicated, the collaboration will continue in order to write a joint paper.

I have over the years been involved in many forms of collaboration with researchers from the host institution, and the visit has further strengthened these ties. Not least is further collaboration with Marcus Düwell within the area of climate change and obligations to future generations projected for the years to come.

Projected publication

Karsten Klint Jensen & Marcus Düwell: How can uncertainty and obligations to future generations be addressed from a human rights perspective? (Working title). To be submitted this year.

Other Comments

I should like to express my gratitude to the ESF for supporting a very beneficial visit.