Environmental Human Rights and Intergenerational Justice

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What do the living owe those who come after them? It is a question nonsensical to some and unanswerable to others, yet tantalizing in its persistence especially among environmentalists. This article makes a new start on the topic of intergenerational justice by bringing together human rights and environmental justice arguments in a novel way that lays the groundwork for a theory of intergenerational environmental justice based in the human rights to clean air, water, and soil. Three issues foundational to such a theory are explored here. First is the broad question of whether justice is applicable to future (or past) generations in any real sense, or do such issues fall under the rubric of superogation. Second, can environmental goods properly be contained in a theory of distributive justice at all, since, superficially at least, they seem different in kind than the usual objects of justice? I will discuss them as "emergent" goods in fact central to contemporary justice distributions. Third, what is the relationship of justice to rights, and how can environmental human rights be included in justice distributions?

> *"I can't help feeling that we are the most wretched ancestors that any future generation could have."*[1]

Introduction

What do the living owe those who come after them? It is a question nonsensical to some and unanswerable to others, yet tantalizing in its persistence, especially among environmentalists. In the eighteenth century, David Hume fell squarely into the first group, and liberal theorists of justice have been on the defensive. Hume ridiculed social contractarians for believing that the circumstances of justice could be met in a relationship between a living generation and one that either no longer or did not yet exist. Nevertheless, late twentieth-century concerns surrounding environmental degradation have revived the need for a convincing argument to protect future generations. This paper begins the search for that argument within the language of human rights, specifically the human rights to clean air, water, and soil that together constitute "environmental human rights."

There are many definitional issues of justice, human rights, and their possible relation that will need to be addressed to present a case for environmental human rights as the medium of intergenerational justice. Many scholars agree with

Beckerman (1999) and Ball (1985) who simply deny that justice can be construed as relevant within a cross generational context. Brian Barry admonishes that at the very least, we should recognize that intergenerational justice is a potentially misleading term, since scholars use it "as a sort of short hand for 'justice between the present generation and future generations.'"[2] Time's arrow does render it impossible to alter the relative justice of our relations with past generations, but others would insist, following Hume, that a similar impossibility persists governing relations of justice between present and future. Hume's critique of social contract theory makes his position clear and anticipates many of the myriad criticisms of John Rawls's (1971) argument for what he calls the "just saving principle."

The employment of human rights as the mechanism of intergenerational justice is similarly fraught with conceptual and logical hurdles. Even if we sidestep all the inflated rhetoric of the abortion debate, speaking of the rights of future generations seems to do violence to the whole concept of rights as the property of living individuals. And even if we construe the justice relation primarily as a matter of rights—itself a controversial move at least for utilitarians—we would still have to explain why the rights of potential persons (or, maybe, groups) should function as claims against the living within our justice considerations today.

Aside from these issues, there is another that is often raised specifically within the context of environmental human rights. Shari Collins-Chobanian argues that environmental rights "to clean air, water, and soil" are more fundamental even than the right to life, since the latter clearly is not viable without some measure of the former.[3] Nevertheless, many philosophers and rights theorists follow Maurice Cranston's (1967) and H.L.A. Hart's (1955) arguments that expanding the list of human rights to include environmental rights waters down and weakens the whole concept of rights. Cranston calls such rights—as well as all of the social and economic rights listed in the Universal Declaration of Human Rights (UDHR)—not real but merely "supposed."

So creating a philosophical foundation for intergenerational justice grounded in environmental human rights has several hurdles to overcome on the way to acceptance. I will not have space to discuss all of them, but in the remainder of this essay I take up three issues foundational to any argument for intergenerational environmental justice. They all concern what can properly be contained in a theory of justice rather than, for instance, in a larger theory of morals but outside the bounds specifically of justice. The first issue asks whether justice is applicable to future (or past) generations in any real sense, or alternatively, while obligations to other generations may be required morally in terms of respect or of supererogation, they do not fall under the demands of justice. The second issue challenges whether environmental goods are properly contained in a theory of distributive justice at all since they appear at least superficially to be quite different than the usual objects of distribution within any theory of justice. They are collective—I will use the term "emergent"—goods rather than individually-assignable ones; as such they are usually not contained in liberal justice theories. Finally, the third issue asks why justice

should be specifically about the distribution of human rights, and, even if it is, why should justice extend specifically to environmental rights?

Justice and the Future

While some theorists of justice such as Weiss (1982) include the notion of justice toward past generations, most accept Barry's judgment that the concept of intergenerational justice realistically concerns only the duties of present generations to those of the future. I will follow Barry's injunction as well and speak primarily of what justice requires in terms of our obligations to the future. Traditionally since Aristotle and running forward through Locke and most liberal justice theorists, any moral obligations to future persons or generations take the form of superogatory duties or the general demands of a sense of humanity rather than actual requirements of justice. The reasons for this are first elaborated by Hume and accepted by most liberal justice theorists including Rawls, Dworkin, Gauthier, and Barry. Rawls names the issue raised by Hume as one concerning the "circumstances of justice."

Hume argues that it makes sense to characterize a relationship as eligible for the application of justice principles only if three elements pertain. First, it must be a relationship roughly between equals. Second, the goods that persons seek the justice principles that are needed must be relatively scarce. Third and following, the relationship is characterized by a conflict of interests between what are admittedly self-concerned (or just selfish) parties, since they all want the same goods (and are equally capable of acquiring them); but scarcity prevents all from obtaining them even in equal measure, much less in the amounts desired. If these conditions do not pertain, then Hume concludes the circumstance is not one of justice but likely either of war on the one hand or humanistic charity on the other. Neither resides in the moral space occupied by justice.

What Hume and others, especially Rawls (1971) and Barry (1978, 1989, 1999) conclude is that no relationship involving present and future generations can manifest all three conditions or circumstances. Therefore justice cannot be established between them. The particular sticking point is the first, that of rough equality. Whether scarcity and conflict will persist is an empirical question for future generations to explore, perhaps resolve. What cannot be altered, according to Barry (1989: 189), is the effect of time's arrow.

> Whether or not the circumstances of justice obtain among nations is an empirical matter. They may or they may not. Whether or not they obtain between the generation of those currently alive at one time and their successors is a logical matter. They cannot. The directionality of time guarantees that, while those now alive can make their successors better or worse off, those successors cannot do anything to help or harm the current generation.[4]

Both Rawls and Barry support policies that purport to protect the interests of future generations, but upon examination neither can presume that such policies are

required as a matter of justice. Barry points out that Rawls's "just saving principle" depends not upon principles of justice but upon "motivational assumptions" regarding the "actual sentiments of natural concern that people have for their successors."[5] These assumptions show that Rawls's case for preserving resources for future generations is grounded in emotions such as care and simple humanity, not in justice. In Barry's case, while ultimately rejecting that justice depends upon Hume's "circumstances," he is left to support sustainability policies on behalf of future generations not on the grounds of justice but upon "some notion of equal opportunity across generations."[6] Even he admits that conclusion represents little more than a call for further study into the "notoriously treacherous" concept of equality, rather than of justice.

Kristin Shrader-Frechette (2002) accepts Barry's challenge and adapts what she terms the "Principle of Prima Facie Political Equality" (PPFPE) as the axiomatic basis of environmental justice between generations. Shrader-Frechette makes clear that "environmental justice" refers both to a particular meaning of justice as well as a movement. Both manifest "the attempt to equalize the burdens of pollution, noxious development, and resource depletion."[7] As such, environmental justice seeks "a connection between environmental exploitation and human exploitation.[8] We will return to Shrader-Frechette's concept of environmental justice in the next section, but what is important here is her attempt to adapt an idea of equality to cover the relations between generations. Doing so allows her to make an argument for a duty to future generations on the grounds of an axiom of equality contained within her specialized conception of "environmental" justice, but not on a more general concept of social justice.

Why should it matter so much whether obligations to future generations are grounded in requirements of justice rather than in our commitments to other principles such as equality (Barry, Shrader-Frechette) or to our emotional commitments to those who come after us? Why is the extended humanitarianism principle of Wilfred Beckerman (1999) or John Passmore's (1974) "chain of love" stretching to our own posterity not sufficient to protect future generations? Such normative commitments and emotional sentiments, however laudable, cannot claim the universal applicability that Hume recognized separates justice from what he termed sympathy. Sympathy, like Beckerman's normative commitments, Passmore's intergenerational love, and Rawls's motivational assumptions about one's concern for successors, are too particularistic in focus to function as a general principle for savings.

For Hume, sympathy dissipated as one became further removed from its particular objects, as in the case of walking away from someone in distress or in viewing the suffering of someone to whom one is only distantly related. Only justice, with its analytical and juridical universality and power, is not susceptible to the motivational, ethical, or sentimental vagaries of individual persons or to the distances (in either time or space) between them. Equality stipulated as an axiom, love, and humanitarianism may indeed move many to care about the welfare of future genera-

tions; only justice can claim that *all* must do so not out of a shared sense of humanity but because of shared moral and legal principles governing ownership and distribution of resources.

So if a principle of justice to protect the welfare of those who come after us is required but apparently not forthcoming given the difficulties of achieving qualifying intergenerational circumstances of justice on the one hand, and the insufficiency of relying on our particularistic attitudes (both normative and affective) on the other, what prospect is there for the emergence of such a principle? What we need is a principle of justice that rises above its time-bound circumstances in order to embrace the future without doing so by relying solely on normative commitments to equality defended merely as an axiom (Barry, 1999, Shrader-Frechette, 2002) or on emotional sentiments (Passmore, Rawls).

Avner de-Shalit (1995) makes a start on supplying such a principle by introducing the concept of the "transgenerational community."[9] This notion of a community that "extends into the future"[10] contains a powerful obligation to future generations as also members of our present community. This community is, in Sandel's (1982) and Taylor's (1989) sense, truly "constitutive" of self-identity but with a new twist. For Sandel and Taylor (and, for that matter, Edmund Burke), their conservative sense of community was constitutive of identity through its connectedness with past generations; for de-Shalit, it is our communal connectedness with future generations that constitutes our identity today, both as citizens and as individual persons. Therefore, in recognizing our justice obligations to future generations, we are serving ourselves.

> I am claiming here that the constitutive community extends over several generations and into the future, and that 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 transgenerational community, which is the source of our obligations to future generations.[11]

For de-Shalit as for Sandel, the possibility of a truly constitutive community relies upon more than merely shared sentiments; it must include, as for Sandel, "the shared self-understandings of the participants and embodied in their institutional arrangements."[12] This shared self-understanding or sense of communal identity is manifested in three ways: through daily interpersonal interaction, cultural interaction, and most importantly through the recognition of what de-Shalit calls "moral similarity."[13] Though daily interaction and cultural interaction cannot include future generations of a community, for de-Shalit moral similarity clearly can and does. This is important since daily and cultural interaction only deliver an "instinctive" sense of belonging to the community, whereas the recognition of moral similarity requires rational reflection and choice.[14] The recognition of future generations as participating members of the community then is not based only on humanitarian or emotional impulses, but on rational self-interest as well.

It is through self-interested reflection that contemporary community members include future members into their consideration of current decisions, and, presum-

ing their moral similarity to themselves, adopt principles of justice to guide their decisions that include the welfare of future members as well. For de-Shalit these decisions are justice decisions, so justice assumes an intergenerational element as a necessary part of the shared moral similarity that defines the community as a whole.

De-Shalit's argument is a novel and compelling one, and lays important groundwork for a conception of justice that delivers an obligation to future generations for reasons more demanding than superogation, general humanitarianism, or affective attachments. Thus it represents real progress in justice theory for its ability to establish the grounds for a concept of intergenerational justice that clearly includes, as we will see in the next section, the preservation of environmental goods. Given its communitarian basis however, it must also include a notion of the communal "good" that defines the community and *only* that community. De-Shalit acknowledges (124ff.) as much, following Sandel and Taylor in recognizing the necessary role of such a shared conception of the good of the community. In so doing, he opens his approach up to an important criticism lodged by Barry, one of particular relevance to the role of human rights with the argument for intergenerational justice.

Barry (1999) expresses the concern that because of its communitarian basis, transgenerational justice delivers rationality-based obligations to future generations of one's own particular community *only* by ignoring the welfare of other future communities to which one's successors will not belong. This is a problem, Barry claims, since de-Shalit's theory "cannot offer any reason for people in rich countries to cut back so as to improve the prospects of future people in other communities." De-Shalit's communitarian approach, in Barry's words, succeeds only too well in closing the gap between the welfare concerns of a particular community's present and future citizens. The problem, Barry claims, is that "the most important thing for a theory of intergenerational justice to deliver" is left out: the obligations the present community has not only to its own future citizens, but to *all* future communities.

Barry's critique is important and to be expected from an advocate of a universalist theory of justice when confronted with a communitarian one. Yet it overlooks an important aspect of all communities, one which de-Shalit does not emphasize but which fits well within it. It is true that any communitarian theory such as de-Shalit's only argues for the justice obligations of each community for its own successor generations. Yet, if we presume that part of every culture, no matter how different in other ways, is a shared sense of its own successor generations, then a theory of intergenerational justice such as de-Shalit's has a universalistic impact. True, it is an appeal that works only for a community in consideration of its obligations of justice to its own future generations, but it makes the appeal to *every* community to act in such a way. Our conclusion is then, that though all communities may not (and probably will not) make the *same* provision for future generations, they all will make some, and will do so on the grounds of justice. That is an important step to take in terms of intergenerational justice, particularly so for those concerned with environmental justice across generations. Furthermore, if the obligation to one's

own future generations is framed within the language of human rights, this argument represents an important contribution to a genuine global consensus on the meaning of human rights in at least one area. It is to the difficulties of including environmental issues within a concept of justice that we must now turn.

Environmental Goods as the Concerns of Justice

A paradoxical (for me) consequence of the communitarian approach to justice across generations is that it seems at least initially to be of minimum usefulness specifically for environmental issues. Clean air, water, and soil are not particularly benefits that a community on its own can guarantee either to its own successor generations or even its current citizens. Pollution is no respecter of political or even geographic borders, especially when it comes to air and water. Furthermore, what continues as the most discussed environmental issue today—global warming—carries in its name an implicit rebuke to those who view environmental issues in too communal—that is, local—a fashion.

What environmentalists[15] call "global systemic problems," of which global warming and acid rain are but two prominent examples, seem to require a more internationalist than communitarian approach for their solutions. Though debate continues about how real such systemic problems are, at least locally—and in many locations—their effects are readily apparent. So how can a communitarian form of justice cope with such issues of widespread, systemic environmental degradation even today, much less in the future? If the issues are not communal in scope now, why should we presume that a communitarian approach to them will be at all useful to later generations?

Part of the answer to these questions lies in the larger issue of the suitability of environmental goods as the distributional objects of justice, which we will turn to in a moment. But we should not dismiss out of hand the "think globally, act locally" appeal of communitarian approaches to environmental issues. As Leslie Pickering Francis (2003) makes clear, some of the most pressing environmental problems manifest both local and global causes, but the existence of the latter do not render the former irrelevant. Furthermore, steps taken on the global level to remedy the situation do not invalidate local efforts, nor do they relieve communities of their own moral obligation to make such efforts.

Francis uses the example of the degradation of the Everglades ecosystem in Florida. The threatened condition of this unique subenvironment is thought to be caused both by local encroachment of development as well as by the effects of global warming, chiefly rising water levels in the oceans that threaten to transform, even submerge, the Everglades. The Bush administration has supported restoration efforts aimed at combating the local effects of encroachment by developed lands, while at the same time refusing to sign on to global efforts to combat the phenomenon of global warming, whose real existence the administration has disputed. The dispiriting question for supporters of both the Everglades and the Kyoto Protocols

against global warming (which the Administration refused to sign) then is this: if the global effects of warming continue to threaten overwhelming the Everglades, what is the point of local efforts to restore the area by reclaiming developed lands?

Francis's answer is important for its recognition that both local and global causes and obligations need to be acknowledged. The global nature of the problem does not exonerate the local community from its obligation to pursue restoration as a matter of environmental justice. On the other hand, those involved in global responses to the local efforts have a reciprocal responsibility at least not to undercut those efforts, and on fairness grounds, to help underwrite them. For both reasons of reciprocity and fairness, Francis claims, justice requires that both communitarian (local) and global ethical obligations be accepted and be recognized as interconnected moral duties.

> So a reciprocity argument runs as follows: because we expect you to confer a benefit on us by acting to save the Everglades, we owe you at least that we don't undermine what you are doing in return. A fairness argument would run instead along these lines: you are incurring a cost by restoring the Everglades; it is wrong for us to expect you to incur that cost unless we are obligated to shoulder costs of our own, costs that must be borne if the benefit is to be produced . . . it is important to know that such different moral arguments support interconnected duties.[16]

Francis delivers then, at least a preliminary defense of a communitarian approach to justice applied to environmental goods by suggesting that even global environmental issues have importantly local aspects (both causes *and* obligations) as well. Furthermore, the elements of reciprocity and fairness she identifies within environmental problems and their potential solutions announce that we are in the realm of justice in exploring how to respond politically. But for some this latter supposition is the more controversial—why are environmental goods (or harms) even a matter of concern for justice? Before we explore further the possibility of intergenerational justice, we need to defend the proposition that environmental goods are properly the concern of justice, however defined.

David Miller (1999) points out a second paradox about using the communitarian argument for intergenerational justice as it relates to the environment; indeed, for him it is a paradox of any argument involving environmental goods and the future. All such arguments are, he posits, "back to front;" that is, any argument to protect the future's claims to environmental goods needs first to "endow members of the present generation with such claims."[17] To accomplish that

> [W]e ought first to show that people in general (whichever generations they belong to) have claims of justice to environmental goods, and then having established the general principle we would move on to consider justice between generations in respect to such goods. But to do this we would need to integrate environmental values into the theory of social justice as it applies to contemporaries.[18]

As Miller notes, most theories of social justice do not take the time to consider either the front or back of the intergenerational environmental justice argument

since they consider environmental issues as occupying a "separate region 'beyond justice.'"[19] Similarly, while finding a possible place to address environmental issues within Rawls's theory, Derek Bell nevertheless agrees with Miller that "Rawls and most other mainstream liberals have completely ignored them."[20]

There are two reasons for why most justice theories have not made a place within their general conceptual system for environmental concerns, but have instead relegated them to the "movement," (not the theory) called "environmental justice." John Dryzek refers to both when characterizing the movement as "concerned with the degree to which the environmental risks generated by industrial society fall most heavily on the poor and ethnic minorities."[21] The first reason is that traditionally social justice theories focus on goods distributable to individuals, whereas Miller admits, this seems not to be the case for environmental goods. "Nobody gets a particular share of the ozone layer or the Siberian tiger." Environmental goods, in short, are collective goods, not always easily distributable as individual shares.[22]

Environmental goods to be distributed are also not always "goods." This is the second reason they are usually omitted from theories of social or distributive justice. Dryzek refers to them as "risks" and Shrader-Frechette (1980, 1993, 2002) makes it very clear that risks are costs, not benefits. The risks presented by pollution, global warming, acid rain, and radioactive wastes are clearly negative effects of living together in the twenty-first century.

As to the first issue of the collective nature of environmental "goods," Miller is correct in recognizing the clearly traditional, individual impacts of policies that seek to address environmental problems. Furthermore, these impacts carry distributional aspects across individuals that clearly place them within the purview of justice issues. While it is true that pollution of the water, air, and soil is an emergent phenomenon, policies generated to address them will have real distributional effects for individuals involving their individual liberty, taxation, economic choices, etc. Furthermore, we should not expect, Miller elaborates, "the impact of these measures to be neutral across persons, for two reasons: the cost will fall more heavily on some people than on others, and the environmental good will benefit some more than others."[23] In other words, these impacts raise traditional issues of distributive justice and should be recognized therefore as important elements of any theory of justice.[24]

The fact that environmental impacts as the objects of justice are often not goods or benefits but rather "bads" or risks of harm also does not alter the fact that they should be seen as essential elements of any theory of justice. Following Rawls, most liberal theories of justice persist in focusing primarily on what Rawls called "primary goods" as the currency of justice in need of a principle of fair distribution. Recently several thinkers including Ulrich Beck (1992) and myself (1998) have argued that a more accurate assessment of the contemporary "stuff" of justice would include a prolonged focus on the distribution of risks as harms.

I have argued that it is crucial to understand modern risks as ineluctably collective or emergent in nature, by which I mean that untangling the individual agents,

causes, or policies responsible is pointless if not impossible. That being the case it is easy to see why the distribution of risks should be approached from a communal perspective specifically focused on justice. Accepting risk as a communal product of a society's collective choices such as, for instance, energy usage and provision, allows us to recognize its distributional effects more clearly. Doing so makes it apparent that managing distribution of risk constitutes a rather large part of a society's commitment to justice.

Environmental risks are the progenitor of rights precisely because they qualify as the type of harms against which people should have rights. Recognizing the reality of modern risks as emergent, particularly those represented by environmental hazards, only intensifies the need for individual rights to protect citizens from them. Therefore, any theory of justice needs to be careful to include environmental risks as a major element of distribution and participation. Not to do so threatens to make the whole project of a theory of justice irrelevant.

So we can conclude that environmental goods (and harms) are intrinsically part of any system of distribution and participation outlined by a theory of justice. Though this appears to be a somewhat novel conclusion given where justice theory has occupied itself since at least Rawls, it is not really a surprising one. A final area of concern in the development of this argument then, is whether we should explore remedies for environmental harms (and their distribution) using the language of human rights. Not all justice theorists are comfortable couching arguments for just distributions in terms of individual rights, and this discomfort appears at least initially to be warranted when it comes to environmental rights as responses to risk. Moreover, even if justice is a matter of rights, how those rights relate to individuals' interactions with their natural environment and with their successor generations inherited environment, remain as complexities worthy of our investigation.

Human Rights and the Community of Justice

Isaiah Berlin is rightly famous for admonishing that when we seek to understand the interaction of concepts, we should recognize that "everything is what it is" and nothing else—liberty is not the same thing as equality, morality is not patriotism, justice is not coterminous with rights. Sometimes we have to choose between related but nevertheless discrete values; in those moments it is crucial for both clarity and intellectual honesty that we not attempt to reduce or redefine one of them into another. "The necessity of choosing between absolute claims" is, Berlin concludes, "an inescapable characteristic of the human condition."[25] So far I have sought to bring together the concepts of justice, community, and environmental goods, with Berlin's warning in mind, we need to bring one more into relation with these—the concept of human rights. When thinking about obligations to preserve the environment for future generations, is it possible to speak of justice in communal terms and still rely on the claims of human rights?

In the history of philosophy and political theory, the discussion of justice did not

begin with the idea of rights of course, but with community. Plato and Aristotle both, though differently, framed the question of justice in communal terms involving individual obligations and benefits to participation in the just community. Besides being construed as a concept applicable only within political communities, justice resided in the theoretical realm of the "good" more than in that of the "right." Hume changed things by exploring justice as a concept governing the rightness of any society's distribution of goods rather than its embrace of *the* good. Justice became less a matter of virtuous participation in the realm of the good than in fair participation in the marketplace.

Though closer to Aristotle's approach than to Plato's, Hume's recasting of justice as a distributional concept challenged both its intimate relationship with community and especially accommodated the new concept of natural right as a measure of one's entitlement to a distributional portion. Hume's theory of justice is still disputed today, but what is indisputable is that in including individual rights as a measure of justice, subsequent theorists such as Rawls would adopt rights as an integral part of the meaning of justice, while downplaying justice's connectedness to feelings of and participation in the community.

Today there is little debate about the role of rights within theories of justice, but considerably more about whether an emphasis upon community is consistent with either a concern with justice or rights. Especially in the latter case, critics from Bentham and Marx to contemporary theorists within feminism, communitarianism, neo-conservatism and postmodernism have argued that the concept of individual moral rights is inconsistent with the goal of community.[26] This raises a particularly thorny concern here of course: how can a communitarian theory of justice that seeks to accommodate the interests of future generations as well as present ones be founded on an idea of human rights?

The answer to this question cannot be answered fully here. But by way of introduction it is instructive to focus on the work of Alan Gewirth in contemplating what he calls (1996), somewhat paradoxically it seems, the "community of rights."

For Gewirth, such a community of rights has seemed like an oxymoron to thinkers as divergent as Marx and Bentham to MacIntyre and Glendon because a focus on rights implies a view of individuals as "atomic entities existing independent of social ties" (i.e., as "isolated monads" to Marx). Conversely, a focus on community regards individuals as more or less defined by their "affective social relations with one another."[27] Gewirth proposes to bridge this divide by relying on a concept of human rights that recognizes the intrinsically communal background conditions necessary for any right to exist.

Gewirth focuses specifically on two distinct human rights, on freedom and a certain level of well-being, broadly conceived. These two rights are indisputable, his argument in *Reason and Morality* (1978) concludes and begins anew in *The Community of Rights*, because "persons must have and claim these rights because their objects are needed for the very possibility of action and generally successful action."

Accepting these two rights as indisputable carries two general consequences. First, several specific human rights can be seen as constitutive of these two general ones. Gewirth explores five in his book (1996): productive agency, private property, employment, economic democracy, and political democracy. Second, and of more relevance to my argument, Gewirth claims these human rights can exist only conterminously with a strong, even constitutive sense of community.

For Gewirth, any society demonstrating a commitment to human rights must accept (or have accepted) certain principles enabling the regime of human rights to succeed. The primary of these is what he terms the Principle of Generic Consistency (PGC), stating "act in accord with the generic rights of your recipients as well as yourself."[28] The PGC is a logical requirement for all believers in human rights since these claim rights are stipulated for *all* human beings. Thus, "every human has rights to freedom and well-being against all other humans, but every other human also has these rights against him, so that he has correlative duties toward them."[29] Gewirth characterizes this relationship as one of "mutuality," to be somewhat distinguished from reciprocity, and it is this mutuality that makes possible the "conciliation" between the concepts and practices of individual human rights and community.

The universality of human rights, in Gewirth's view, establishes a relationship between persons in a society committed to human rights that is more embracing than that established by mere citizenship rights. This relationship is properly viewed as a genuine community of rights, he claims, for three reasons. First, it requires society to provide for "equal and mutual assistance to secure persons human rights," which it accomplishes by "protecting and promoting the freedom and well-being of all its members."[30] Second, by accepting such protection the members "have, recognize, and accept obligations to the society."[31] These obligations are accepted willingly given what is at stake in receiving the protection (the possibility of freedom and well-being), and lead citizens to acknowledge what is required of them from the second major principle of the community of rights: the *social contribution thesis*.[32] Third, citizens' acceptance of the obligations entailed by this thesis is a recognition of how important to their freedom and welfare society's protective function really is. Because society is essentially making possible their agency as free individuals, members "develop psychological attitudes of gratitude and loyalty to it, so that it becomes a community of cooperativeness and fellow feeling."[33]

Gewirth's argument is perhaps a bit too sunny in its ability to bring rights and community together, but at the very least it calls attention to how much any appeal to human rights relies on its reception by a group of people who share more common moral and political beliefs than not. In other words, human rights do indeed require a high degree of the "fellow feeling" that most commentators recognize as central to the nature of community. Gewirth goes further (perhaps too far) in establishing the "constitutiveness" of the community of rights, but nevertheless his argument at least opens the possibility that rights and community can share the same political program.

Conclusion

The importance of Gewirth's argument lies in its establishing the possibility that a society that pursues human rights can indeed be one that is highly communal in nature. If we are to arrive at a conception of human rights that protects—as a matter of justice—the environmental human rights of future generations, we cannot escape the conclusion that only a strongly communal society can do so. As de-Shalit's argument makes clear, only a highly communalistic society can envision its future generations as participants in its realm of justice. Therefore, if such a society can exist it will be precisely what Gewirth envisions—a community of human rights.

Such a community will have to appreciate how human rights can change or "emerge" as new threats emerge that threaten individuals' welfare in a way that properly triggers a rights-based response. It will also need to appreciate the broadening nature of reciprocity as a requirement for protecting the rights of the future, even admitting the possibility of reciprocity with those not yet born. The community of human rights will also need to be able to recognize the identity of its future fellow citizens as a group of "people like us" and therefore deserving of the same, though probably "group" rights. And finally, the community of environmental human rights must be able to see beyond its borders, since the environmental justice it seeks as its legacy cannot be achieved alone in a global environment. Thus, environmental justice based on human rights must strive to be the foundation of a global consensus on human rights that embraces all cultures. That consensus remains elusive, but in its emphasis upon duties to future generations of one's own culture—"people like us"—the theory of environmental justice sketched here takes a step toward its achievement. All societies value the welfare of their own successor generations. Therefore, by including environmental welfare in the definition, and by grounding the attendant obligations of present generations to their successors in terms of human rights, the cause of global human rights consensus is served as well.

Notes

1. Violinist Yehudi Menudin in a conversation with Dr. Jonas Salk, broadcast on PBS-TV, 27 September, 1982. Quoted in Terence Ball (1985), "The Incoherence of Intergenerational Justice," *Inquiry*, 28, p. 334.
2. Barry, Brian (1999). "Sustainability and Intergenerational Justice," in Andrew Dobson, ed., *Fairness and Futurity*. New York: Oxford, 107.
3. Collins-Chobanian, Shari (2000). "Beyond Sax and Welfare Interests." *Environmental Ethics* 22: 133–48, 135.
4. Barry, Brian (1989). *Theories of Justice*. Berkeley: California, 189.
5. Ibid. 202.
6. Barry, Brian (1999). "Sustainability and Intergenerational Justice," in Andrew Dobson, ed., *Fairness and Futurity*. New York: Oxford, 104.
7. Shrader-Frechette, Kristin (2002). *Environmental Justice*. New York: Oxford, 6.
8. Tartar, Jim (2002). "Some Live More Downstream than Others: Cancer, Gender, and Environmental Justice," in Joni Adamson, Mei Mei Evans, and Rachel Stein, *The Environmental Justice Reader*. Tucson, Arizona.
9. De-Shalit is not the first to explore the idea of community as including future generations. For a

interesting discussion of the obligations to future members of one's own "moral community" that can be expected to share the same conception of the good, see Martin P. Golding, "Obligations to Future Generations," *The Monist*, 56 (January 1972), reprinted in Ernest Partridge, ed., (1981), *Responsibilities to Future Generations*, Prometheus. De-Shalit's approach focuses more clearly on communal identity than does Golding's; an approach shared by Homes Rolston III in "The River of Life: Past, Present, and Future," in Partridge.

10. DeShalit, Avner (1995). *Why Posterity Matters*. New York: Routledge.
11. Ibid, 15–16.
12. De-Shalit (1995, 33). De-Shalit is quoting Sandel (1982, 173).
13. Ibid, 22.
14. Ibid, 43.
15. See Leslie Pickering Francis (2003), "Global Systemic Problems and Interconnected Duties," *Environmental Ethics* 25, 115–128. Francis gives credit to Robin Attfield (1999), *The Ethics of the Global Environment*, Purdue University Press for the term "global systemic problems;" (1999)
16. Francis, Lesley Pickering (2003). "Global Systemic Problems and Interconnected Duties." *Environmental Ethics* 25: 115–208.
17. Miller, David (1999). "Social Justice and Environmental Goods." In Andrew Dobson, ed., Fairness and Futurity. Oxford, England: Oxford.
18. Ibid.
19. Ibid, 151.
20. Bell, Derek (2004). "Environmental Justice and Rawls' Difference Principle." *Environmental Ethics* 26: 287–306.
21. Dryzek, John (1977). *The Politics of the Earth*. Oxford, England: Oxford, 306.
22. Miller, 154.
23. Ibid.
24. Shrader-Frechette is correct to point out that environmental issues raise not only distributional aspects of justice, but what she terms "participative" elements as well. That is, environmental decisions need—on grounds of justice—to be opened up to participation by all citizens. Along with other thinkers (Hiskes (1998) and Dryzek, (1997) Shrader-Frechette seeks to connect the distributive and democratic elements of justice into one singular approach.
25. Berlin, Isaiah (1969). *Four Essays on Liberty*. Oxford, England: Oxford, 169.
26. See among many others Taylor (1989); Hiskes (1998); Sandel (1982); Nancy L. Rosenblum ed. (1989), Liberalism and the Moral Life, Harvard; Seyla Benhabib (1992), *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics*, New York: Routledge; John Charvet (1981), "A Critique of Human Rights," in J. Roland Pennock and J.W. Chapman, eds., *Nomos XXIII: Human Rights*, NYU; Judith J. Thomson (1990), *The Realm of Rights*, Harvard; Mary Ann Glendon, 1991.
27. Gewirth, Alan (1996). *The Community of Rights*. Chicago, 1
28. Ibid, 19.
29. Ibid, 6.
30. Ibid, 82.
31. Ibid, 83.
32. Ibid.
33. Ibid, 85.

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