

## **Intergenerational justice and transnational political legitimacy: two problems for global justice and political obligation?**

*Stephan Hunt, University of Stirling*

s.j.hunt@stir.ac.uk

In the last fifty years, as democracy globally has moved from aspiration to application, from an ideal to a practice, albeit still an imperfect one, and as the strains and contradictions of representative democracy have become apparent in a world that is less insular and more integrated, focus has shifted from arguing *for* to arguing *about* democracy, with particular interest in examining how it might be improved and strengthened and also to exploring the implications of its central assumptions. As a result, questions have emerged that, separately or together, encourage revision of conventional approaches to domestic and global politics.

Firstly, global justice and political obligation appeals to democracy's ideals: that an unjust world in which the basic needs of billions of people go unmet while the rest enjoy affluent lives is at odds with a universal conception of individuals as "free and equal rational beings" capable of autonomy<sup>1</sup>. Secondly, the question of transnational political legitimacy arises from the evolution of democracy through the development of transnational political institutions, such as the European Union (EU) or the United Nations (UN), for instrumental and moral reasons, such as the preservation of global peace and human rights<sup>2</sup>, and in response to globalisation and other global problems<sup>3</sup>. These institutions possess their own formal political

---

<sup>1</sup> Rawls, J. (1999) *A Theory Of Justice, Revised Edition*, Oxford University Press, Oxford, p. 222.

<sup>2</sup> As suggested by the preambles to the Charter of the United Nations and the Treaty establishing the European Coal and Steel Community, the precursor of the EU. European Union. (2007) 'Treaty establishing the European Coal and Steel Community', retrieved 28th August 2007, from <<http://eur-lex.europa.eu/en/treaties/index.htm>>; United Nations. (2007) 'United Nations Treaty', retrieved 28th August 2007, from <<http://www.un.org/aboutun/charter/>>; Bohman, J. (2006) 'Beyond the Democratic Peace: An Instrumental Justification of Transnational Democracy', *Journal of Social Philosophy*, 37(1), pp. 127-138, p. 128.

<sup>3</sup> Examples include climate change, pollution, terrorism and AIDS. Baylis, J. & Smith, S. (2001) 'Introduction' in *The Globalization of World Politics, 2nd edition*, J. Baylis and S. Smith (eds.), Oxford: Oxford University Press, pp.

institutions, practices, procedures, staff and locations, distinct from those of nation-states, and are commonly perceived to be in 'democratic deficit', requiring but lacking democratic legitimacy<sup>4</sup>. Finally, intergenerational justice has its origins in global changes. Environmental concerns, the depletion of non-renewable resources and the enduring and complex legacy of new technologies, such as nuclear and genetic modification, evince how the actions and decisions of current generations may affect the prospects and well-being of future generations<sup>5</sup>. While there appears to be a strong intuition against harming future people, their ambiguous and ill-defined moral status raises several difficult questions and contemporary moral and political theories either ignore or fail to account for the interests of future generations, or their status as future moral and political agents<sup>6</sup>.

While these developments suggest the need to radically revise, or abandon, contemporary theories of justice and political obligation, the aim of this paper is more modest: sketching the implications of transnational political legitimacy and intergenerational justice for global justice and political obligation. After starting with some comments on global justice and political obligation, for simplicity the argument follows two strands, although the issues overlap: the first deals with the connection between transnational political legitimacy and political obligation, the second with the intersection between intergenerational and global justice.

---

1-12, p. 9. For a fuller list of some of the global problems facing nation-states, see: Rischard, J. F. (2002) *'High Noon: Twenty Global Problems, Twenty Years to Solve Them'*, New York: Basic Books, p. 66 (quoted in Held, D. (2004) 'Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective', *Government and Opposition*, 39(2), pp. 364-391, p. 379).

<sup>4</sup> Scholte, J. A. (2001) 'The Globalization of World Politics' in *The Globalization of World Politics, 2nd edition*, J. Baylis and S. Smith (eds.), Oxford: Oxford University Press, pp. 13-32, pp. 24-25. There is *intense* debate about whether particular trans-national political institutions are, or are not, supranational polities. For example, the EU is variously described as largely intergovernmental, largely supranational, or as a mix of intergovernmental and supranational institutions. Since I do not intend to join that debate here, I take the position that developed transnational political institutions display elements of supranationalism, albeit in a limited fashion.

<sup>5</sup> Partridge, E. (2001) 'Future Generations' in *A Companion to Environmental Philosophy*, (D. Jamieson, ed.), Blackwell: Oxford, pp. 377-389, p. 377.

<sup>6</sup> *Ibid.*, pp. 378-379.

Few things in philosophy are clear. Global injustice is not one of them. While its extent and sheer awfulness should be argument enough against any justification of its causes<sup>7</sup>, despite long and intense philosophical debate over theories of justice and political obligation in the context of the nation-state, their application in a global setting remains inchoate, and ill-defined<sup>8</sup>. As Thomas Pogge notes, broad agreement about the *ideological desirability* of global justice does not always readily translate into *ideological commitment* to it, making the issue of political obligation central to discussions of global justice<sup>9</sup>. As different approaches contest the implications and implementation of global justice<sup>10</sup>, a recent piece by Thomas Nagel provides a neat and concise summary of the ‘problem of global justice’.

Nagel notes that ‘for most of us, the ideal of justice stems from moral motives that cannot be entirely reduced to self-interest’<sup>11</sup> and that ‘justice [...] requires more than mere humanitarian assistance to those in desperate need, and injustice can exist without anyone being on the verge of starvation’<sup>12</sup>. Identifying two key relations – between justice and sovereignty and between justice and equality – Nagel outlines two distinct approaches to global justice, firstly, *cosmopolitanism*, where ‘the demands of justice derive from an equal concern or a duty of fairness’ owed to human beings universally and enforced by appropriate global institutions, or a Rawlsian *political conception* in which justice is ‘the first virtue [...] of social institutions’ owed through ‘shared institutions only to those with whom we stand

---

<sup>7</sup> For an overview see: Pogge, T. (2001b) ‘Priorities of Justice’ in *Global Justice*, T.W. Pogge (ed.), Oxford: Blackwell Publishing, pp. 6-23.

<sup>8</sup> Nagel, T. (2005) ‘The Problem of Global Justice’, *Philosophy and Public Affairs*, 33(2), pp. 113-147, p. 113.

<sup>9</sup> Pogge, T.W. (2001a) ‘Introduction: Global Justice’ in *Global Justice*, T.W. Pogge (ed.), Oxford: Blackwell Publishing, pp. 1-5, p. 2.

<sup>10</sup> See: Beitz, C. (1999) *Political Theory and International Relations, Revised Edition*, Princeton, NJ; Woodstock: Princeton University Press; Caney, S. (2005) *Justice beyond borders: a global political theory*, Oxford: Oxford University Press; Jones, C. (1999) *Global Justice: Defending Cosmopolitanism*, Oxford; New York: Oxford University Press; Pogge, *op. cit.*

<sup>11</sup> Nagel, T. *op. cit.*, p. 117.

<sup>12</sup> *Ibid.*, p. 118.

in a strong political relation'<sup>13</sup>. While conceding that cosmopolitanism has 'considerable moral appeal', Nagel believes the prominence of Rawlsian theory in powerful Western states favours the political conception<sup>14</sup>. Nagel argues that, in contrast to cosmopolitanism, the 'moral outlook' of the political conception is 'essentially multilayered', with different principles governing an individual's actions, the relations between individuals, and to their state and the interaction between states<sup>15</sup>. Although the political conception recognises, with the force of a Kantian categorical imperative, a 'minimal humanitarian morality' in the form of 'basic human rights', this does not exhaust the demands of global justice<sup>16</sup>; since justice is a product of social institutions, it therefore reaches the same conclusion as cosmopolitanism, that 'global justice would require global sovereignty'<sup>17</sup>.

A cardinal feature of global politics however is the absence of a sovereign power that is capable of enforcing the demands of justice and Nagel is sceptical about its creation, since national governments are protective of their sovereignty<sup>18</sup>. Nagel concludes that since historically 'sovereignty usually precedes legitimacy', 'the most likely path toward [...] global justice is through the creation of patently unjust and illegitimate global structures of power'<sup>19</sup>.

Nagel's discussion of global justice suggests, firstly, that irrespective of how it is cashed out, the effective delivery of global justice requires some kind of global sovereign power; secondly that the critical question concerns not the form that sovereignty will take but its legitimacy. Before addressing that problem, it is

---

<sup>13</sup> Nagel, T., pp. 119-121.

<sup>14</sup> *Ibid.*, p. 126.

<sup>15</sup> *Ibid.*, p. 129-133.

<sup>16</sup> *Ibid.*, p. 131.

<sup>17</sup> *Ibid.*, p. 122.

<sup>18</sup> *Ibid.*, p. 136ff.

<sup>19</sup> *Ibid.*, pp. 146-7.

helpful to consider the relationship between intergenerational and global justice. A first glance suggests numerous similarities. Firstly, both concern 'how the actions of a small group (the present generation, affluent people) impact on a much larger group (all future people, all contemporary people) [and how] the interests of the larger group threaten to swamp those of the smaller'<sup>20</sup>. There is a risk, between the demands of intergenerational and global justice, of sacrificing the interests of contemporary people (even the needy) in favour of future people (who may be better off). Secondly, although both consider the extension of justice beyond the traditional limits of the nation-state and its *demos*, at a conceptual level, the intuitions that underpin intergenerational and global justice are similar. In each case, a concern for the well-being of individuals either in different countries or generations motivates consideration of how inequalities may be addressed. That both conceptions of justice are not exhausted by the provision of what bare humanity requires, endorsing not just the preservation of life but the maintenance of meaningful autonomy, suggests this motivation is underwritten by the idea of the individual citizen not simply as a human being but as a moral or political agent. Additionally, as a number of issues range across both time and countries the issues of concern to intergenerational and global justice overlap; for example, climate change and population policies are central to intergenerational and global justice<sup>21</sup>. Nor are nation-states immutable: just as the identities of future individuals are uncertain, so too is it with future global political arrangements.

There are also several differences. Firstly, our relation to future people is *abstract*: since they do not yet exist we cannot know them as individuals, and it is

---

<sup>20</sup> Mulgan, T. (2006), *op. cit.*, p. 255.

<sup>21</sup> This importance is underlined by the fact that because of several lifestyle differences a global rise in sea levels will disproportionately affect the poorest more than the richest. See IPCC (2007) 'Climate Change 2007 - Impacts, Adaptation and Vulnerability: Working Group II contribution to the Fourth Assessment Report of the IPCC' retrieved 14<sup>th</sup> November 2008 from < <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>>.

unclear in what sense they might currently possess rights and attract obligations<sup>22</sup>. Moreover, in his “Non-Identity Problem” Derek Parfit argues that since the decisions of current generations directly influence *which* future people will come into existence and since those individuals cannot exist counterfactually, they cannot be harmed by the actions of current generations, undermining the Person-Affecting Principle of Harm and those theories dependent on it<sup>23</sup>. This abstraction contrasts with the solidarity we feel between future members of our nation-state and citizens of other countries; our intuitions would appear to favour a real concern for abstract future people, over a more abstract concern for real people globally. Secondly, obligations to future generations might be discharged in various ways<sup>24</sup>, a situation complicated by the uncertainty of knowing what “goods” future generations might value, or who is entitled to act on their behalf<sup>25</sup>. Finally, the asymmetrical non-reciprocal nature of our relationship with future generations leaves them unable to *enforce* obligations owed to them<sup>26</sup>.

Given these complexities, those consequentialist and non-consequentialist accounts of justice and political obligation that have not simply ignored them have struggled to accommodate future generations<sup>27</sup>. As Rawls admits, ‘justice between generations [...] submits any ethical theory to severe if not impossible tests’<sup>28</sup>. Notably, Rawls’s own ‘Theory of Justice’ fails this intergenerational test. Rawls’s

---

<sup>22</sup> Delattre, E. (1972) ‘Rights, Responsibilities and Future Persons’, *Ethics*, 82, pp. 254-258. See also: Anglin, W. (1978) ‘In Defense of the Potentiality Principle’, in *Obligations to Future Generations*, (R.I. Sikora & B. Barry, eds.), pp. 31-37; Warren, M. (1978) ‘Do Potential People Have Moral Rights?’ in *Obligations to Future Generations*, (R.I. Sikora & B. Barry, eds.) pp. 14-30.

<sup>23</sup> Parfit, D. (1984) *Reasons and Persons*, Oxford University Press: Oxford, pp. 351-379.

<sup>24</sup> Page, E.A. (2007) ‘Intergenerational Justice of What: Welfare, Resources or Capabilities?’, *Environmental Politics*, 16, pp. 453-469.

<sup>25</sup> Wallack, M. (2006) ‘Justice Between Generations: The Limits of Procedural Justice’, in *Handbook of Intergenerational Justice*, (J.C. Tremmel, ed.), Edward Elgar: Cheltenham, pp. 86-105.

<sup>26</sup> The problem of intergenerational problem also applies retrospectively; Tim Mulgan has argued that the dead raise problems for liberal political philosophy, see Mulgan, T. (1999) ‘The Place of the Dead in Liberal Political Philosophy’, *The Journal of Political Philosophy*, 7, pp. 52-70.

<sup>27</sup> For a clear and concise overview of why these theories fail see: Mulgan, T. (2006) *Future people: a moderate consequentialist account of our obligations to future generations*, Oxford: Clarendon Press.

<sup>28</sup> Rawls, J. (1999a), p. 251.

discussion of the problem, which he calls the 'Just Savings Principle', raises more questions than answers<sup>29</sup>. Rawls writes

'the appropriate expectation in applying the difference principle is that of the long-term prospects of the least favoured extending over future generations. Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education. Assuming for the moment that a just savings principle is available which tells us how great investment should be, the level of social minimum is determined'<sup>30</sup>.

While 'just savings' are necessary to avoid society being founded on injustice, if future generations are better off than present generations (as they are likely to be), the 'just savings principle' risks sacrificing the interests of the (current) worse-off to the advantage of better-off individuals, in contradiction to the difference principle<sup>31</sup>. To defuse this tension, Rawls argues that the unidirectional flow of savings means 'the difference principle does not hold for the question of justice of generations'<sup>32</sup>. With the assumption that parties to the 'Original Position' belong to the same generation, this still leaves Rawls's theory struggling to create intergenerational obligations, since a group of 'rational egoists' could decide not to save for future generations knowing that *they themselves* wouldn't suffer the consequences of that decision<sup>33</sup>. Rawls thus adds the 'motivational assumption' that those in the Original Position care about their close descendants<sup>34</sup>; since this familial altruism is at odds with the 'mutual disinterestedness' of parties in the Original Position, Rawls later abandoned this for the following stipulation:

---

<sup>29</sup> *Ibid.*, pp. 251-258.

<sup>30</sup> *Ibid.*, p. 252.

<sup>31</sup> Mulgan, *op. cit.*, p. 40; Wall, S. (2003) 'Just Savings and the Difference Principle', *Philosophical Studies*, 116, pp. 79-102; Wolf, C. (2003) 'Intergenerational Justice', in *Blackwell Companion to Applied Ethics*, (Eds, Frey, R. & Wellman, C.), Blackwell: Oxford.

<sup>32</sup> Rawls, J. (1999a), *op. cit.*, p. 254.

<sup>33</sup> *Ibid.*, pp. 118-123; Mulgan, T. (2006), *op. cit.*, p. 39.

<sup>34</sup> Rawls, (1999a), *op. cit.*, p. 255.

The correct principle is the one the members of any generation (and so all generations) would adopt as the principle they would want preceding generations to have followed, no matter how far back in time<sup>35</sup>.

While reversing the ‘motivational assumption’ – to determine the ‘just savings’ schedule, citizens now look back, not forwards – this approach remains problematic. Firstly, it makes the ‘ideal world’ assumption that previous generations ‘did what they should have done’<sup>36</sup>. With the further assumption of ‘favourable conditions’<sup>37</sup>, this collapse into ‘ideal theory’, with its ‘cost-blind approach to rights and a narrow view of possible human misfortune’, seems at odds with the intergenerational and global political reality, with its ‘real non-ideal societies that face the fact of scarcity’<sup>38</sup>. Secondly, it offers no guidance as to what a reasonable savings rate might be, excluding only the 0% and 100% limits of saving, complicated further by the significant difference between the costs of setting up social institutions and sustaining them<sup>39</sup>. Since ‘*ought implies can*’, a society can only contribute to rectifying global injustice once it has become affluent; if consistency then requires us to endorse our ancestors’ decision to exclude consideration of the needs of those beyond the limits of our nation-state in favour of establishing just institutions, how could we justify (particularly to our descendants, who might disagree) taking a different approach? If parties to the Original Position cannot reliably determine what they owe to *their own* descendants, how might they determine their obligations to people in other nations? While Rawls’s new stipulation can be interpreted as equally endorsing or excluding a concern for global justice, the implications for the parties in the

---

<sup>35</sup> Rawls, J. (2001) *Justice as Fairness: A Restatement*, (E. Kelly, ed.), Cambridge, MA: The Belknap Press of Harvard University Press, p. 160.

<sup>36</sup> Gosseries, A. (2001) ‘What Do We Owe The Next Generations?’, *Loyola of Los Angeles Law Review*, 35, pp. 293-355, p. 313.

<sup>37</sup> Mulgan, T. (2006) *op. cit.*, p. 44.

<sup>38</sup> Farrelly, C. (2007) ‘Justice in Ideal Theory: A Refutation’, *Political Studies*, 55(4), pp. 844-864.

<sup>39</sup> Mulgan, T. (2006) *op. cit.*, p. 42; see also Gosseries, A. (2001), *op. cit.*, p. 317.

Original Position and how they fare subsequently varies dramatically. Since small contributions from wealthy countries can make significant differences to the lives of people in under-developed countries, it is difficult to see how future needy generations in a well-off Rawlsian state could justifiably claim that their interests had been unreasonably sacrificed, since the benefit they could obtain from that contribution is likely to be miniscule compared to that derived by the global needy.

But why then should that contribution only be small? The 'just savings principle' appears in tension with the rest of Rawls's theory, since while he made justice a product of social institutions and thus applicable only to *members* of those institutions, addressing the intergenerational problem clearly reflects the belief that justice should also apply to individuals who are *not (yet)* members of those institutions. In this case, it is difficult to see on what reasonable grounds Rawls can justify excluding (at least some) consideration of the needs of the global needy.

While Rawls's failure over the intergenerational problem saves him having to reconcile his theory with the demands of global justice, it also suggests a final reason why a political conception of global justice may be inappropriate. If the moral conception of the individual implied by global and intergenerational justice is essentially the same as the democratic political conception of the citizen, with the contingent difference that the latter are members of a *demos* to which the former do not belong, then even if the Rawlsian political conception's assumption that morality is 'multilayered' is correct, the conclusions it draws from it might not be, depending on whether one believes that our intergenerational or global obligations are a matter of individual or collective duty. While a Rawlsian argues that both are a matter for collective concern<sup>40</sup>, the cosmopolitan view that

---

<sup>40</sup> Nagel, T., *op. cit.*, p. 134; Rawls, J. (1999b) *The Law of Peoples*, Cambridge, MA: Harvard University Press.

intergenerational and global justice is a matter of *individual* obligation may be more consistent with our moral intuitions.

The failure of the political conception approach to intergenerational and global justice suggests consideration of transnational political legitimacy from the perspective of the alternative identified by Nagel, cosmopolitanism. The creation of trans-national political institutions is double-edged: while this ‘reconfiguration of political power’ is part of the evolution of democracy, as Robert Dahl remarks<sup>41</sup>, maintaining the political capacity of nation-states in the face of global challenges, it is accompanied by ‘an “unbundling” of the relationship between sovereignty, territoriality and political power’<sup>42</sup>. This weakening of the bond between citizen and polity fuels concerns that such institutions suffer a ‘democratic deficit’ and lack legitimacy. The preservation of coherent national democracy requires that democratic legitimation of those institutions to which powers are delegated<sup>43</sup>.

Legitimacy, the ‘right to govern’<sup>44</sup>, is central to any conception of democracy. By converting *power* into *authority*, legitimacy makes an institution’s actions and decisions normative, and ensures its political stability. Several conditions are necessary, but not sufficient, for political legitimacy, including the congruence of ‘social and political spaces’, the exercise of power in conformance with the law and, critically, the consent and democratic agency of individual citizens comprising the *demos* – the political people<sup>45</sup>. In nation-states, the historical congruence of ‘social and political spaces’ and solidarity between citizens means the *demos* has a close

---

<sup>41</sup> Dahl, R. A. (1994) ‘A Democratic Dilemma: System Effectiveness versus Citizen Participation’, *Political Science Quarterly*, 109(1), pp. 23-34, p. 25.

<sup>42</sup> Held, D., *op. cit.*, pp. 366, 367.

<sup>43</sup> This applies well before full political integration into transnational political institutions.

<sup>44</sup> Coicaud, J.M. (2002) *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility*, Cambridge: Cambridge University Press, p. 10.

<sup>45</sup> *Ibid.*, *op. cit.*, pp. 10-24.

demonstrable attachment to a polity that is largely responsive to *their* needs and concerns, so political legitimacy at a national level is largely uncontested<sup>46</sup>.

The situation at a trans-national level is more complicated. The social and political spaces are dissociated through the absence of a coherent transnational *demos* and the vitiating of political participation and democratic agency by geographic, cultural and linguistic factors, while the intergovernmental origins of transnational political institutions effectively bypassed the consent of individual citizens to their creation. While some have argued that a fully-fledged transnational *demos* is unlikely and without it transnational political legitimacy is implausible, others have been more optimistic. In particular, Jürgen Habermas and others have argued that a transnational 'constitutional patriotism' might deliver effective transnational political legitimacy<sup>47</sup>. Emphasising individualism, universality and generality<sup>48</sup>, 'constitutional patriotism' is a contemporary reinterpretation of Kant's political cosmopolitanism<sup>49</sup>, and an attempt to resolve the 'paradoxical union of contradictory principles' of democracy, in which 'human rights and popular sovereignty' are strongly intuited to be 'co-original' but co-exist in tension, with human rights implying the pre-eminence of the individual and popular sovereignty the primacy of the community<sup>50</sup>.

Part of Habermas's version of deliberative democracy, 'constitutional patriotism' was originally designed to accommodate the challenge of multiculturalism to the legitimacy of the nation-state by reformulating the basis on

---

<sup>46</sup> A separatist's disagreement concerns the *scope* of legitimacy rather than the way in which it originates.

<sup>47</sup> Lacroix, J. (2002) 'For a European Constitutional Patriotism', *Political Studies*, 50(5), pp. 944-958.

<sup>48</sup> 'There is no law without the private autonomy of legal persons in general', Habermas, 1998, *op. cit.*, p. 261; Habermas, 1995, *op. cit.* Habermas, J. (1996) *Between Facts and Norms: contributions to a discourse theory of law and democracy*, Cambridge: Polity Press.

<sup>49</sup> Fine, R. & Smith, W. (2003) 'Jurgen Habermas's Theory of Cosmopolitanism', *Constellations*, 10(4), pp. 469-487, p. 469; De Greiff, P. (2002) 'Habermas on Nationalism and Cosmopolitanism', *Ratio Juris*, 15(4), pp. 418-438; Calhoun, *op. cit.*; Pensky, M. (2000) 'Cosmopolitanism and the Solidarity Problem: Habermas on National and Cultural Identities', *Constellations*, 7(1), pp. 64-79.

<sup>50</sup> Habermas, J. (2001a) 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?' *Political Theory*, 29(6), pp. 766-781, p. 771.

which political power is legitimated. Habermas's critical insight is that political stability and legitimacy are not derived simply from the existence of "democratic" institutions and procedures, but arise indirectly from solidarity between citizens. By providing individuals with reasons to act, filling the 'motivational gap', this civic solidarity ensures social cohesion and justifies the personal sacrifices necessary to the proper functioning of a political system. While, traditionally, this solidarity emerges from an 'abstract form of *social integration*' grounded in 'popular national self-consciousness'<sup>51</sup>, 'constitutional patriotism' offers a 'functional alternative' to nationalism, in which solidarity arises from the collective commitment of citizens to the (universal) democratic values, principles and procedures of a constitutional democracy, expressed through a shared political culture 'decoupled' from particular social cultures. If this decoupling helps preserve the 'equal worth and integrity of all national cultures'<sup>52</sup>, by preventing any group from achieving hegemony over the political process, then the deliberative demands of 'constitutional patriotism' mean that no national culture can claim special protection nor can those nationals decline to take a critical reflexive approach to their own culture<sup>53</sup>. Importantly, national identity and culture is still important in emotionally attaching citizens to *their own* interpretation of democracy. Finally, constant reinterpretation of the constitution in an ongoing process of constitutionalisation resolves the 'founding paradox' by which the original institution of democracy was necessarily illegitimate.

'Constitutional patriotism' has several advantages. Firstly, by transcending national and cultural boundaries, without repudiating national identity or the nation-state, 'constitutional patriotism' enables citizens of different nations to

---

<sup>51</sup> Habermas, J. (1998), *op. cit.*, p.111.

<sup>52</sup> Habermas, J. (2001b) 'Why Europe Needs A Constitution', *New Left Review*, 11, pp. 5-26, p. 19.

<sup>53</sup> Habermas, J. (1998), *op. cit.*

recognise each other as political equals, while decoupling ethnic and political cultures helps mitigate disparities in the size and political influence of states, since every state contributes equally to the constitutional process. Finally, the nature of the solidarity 'constitutional patriotism' underwrites means that there are fewer conceptual limits to the *demos* to which it applies. These features also make 'constitutional patriotism' potentially applicable in an intergenerational context. By rooting solidarity in national interpretations of democratic principles, 'constitutional patriotism' reconciles universal atemporal values with transitory culturally specific ones. Since, as Tim Mulgan points out, 'groups endure across generations in a way that individuals do not'<sup>54</sup>, 'constitutional patriotism' thus underwrites two distinct ways of creating solidarity between individuals in different generations. However, as with Rawls, one problem is that we have a stronger connection and identification with past than with future generations. While 'constitutional patriots' might thus readily identify their current interpretation of democracy as consistent with the values and ideals of their ancestors, it is more difficult to conceptualise the homologous forward-looking comparison necessary to ground obligations to future generations. Moreover, the persistence of group identity through time, while important, is not sufficient since it is individuals as well as groups that will be required to make sacrifices for the benefit of others, a problem compounded if those others fall outwith the limits of the nation-state, as with global and intergenerational justice. This suggests that 'constitutional patriotism' may be too abstract to ground transnational political legitimacy and illicitly and incoherently requires other values to maintain it<sup>55</sup>.

---

<sup>54</sup> Mulgan, T. (2006), *op. cit.*, p. 332.

<sup>55</sup> Canovan, M. (2000) 'Patriotism Is Not Enough', *British Journal of Political Science*, 30(3), pp. 413-432, p. 418; Calhoun, C. (2002) 'Imagining Solidarity: Cosmopolitanism, Constitutional Patriotism, and the Public Sphere',

Because, by definition, 'constitutional patriotism' can only underwrite transnational legitimacy between democratic states a degree of ideological convergence is assumed. But as those convergent values are not necessarily coherent ones, questions remains as to whether that convergence suffices for an effective transnational civic solidarity, or whether solidarity is underwritten by the coherence of a different set of values.

Furthermore, Nagel's and Habermas's analyses both fail to recognise how democracy challenges historical precedents. Firstly, that sovereignty preceded legitimacy in the past says more about the nature of the historical relationship between state and citizen than it does about the present correlation between the two concepts. In the past, sovereignty was often violently imposed on the people. Unless democratic consent is an empty concept, citizens can no longer be *forced* to recognise and accept the sovereignty and legitimacy of a polity. The experience of the ratification of the EU's Lisbon Treaty suggests we may have reached the limits of the political integration (and thus sovereignty) that citizens of different nation-states will tolerate without legitimacy; legitimacy that will not be forthcoming without greater solidarity between those same citizens. Secondly, while the 'legal-political' transformation of subjects into citizens that accompanied the 'painful process of abstraction' that created solidarity in the nation-state fundamentally changed the political status of the individual and their relationship to the state<sup>56</sup>, 'constitutional patriotism', is simply a *reconfiguration* of the basis on which citizenship rests. In short, while the rewards of national solidarity are tangible, they are less evident at a transnational (and intergenerational) level.

---

*Public Culture*, 14(1), pp. 147-171; Hayward, C.R. (2007) 'Democracy's Identity Problem: Is "Constitutional Patriotism" the Answer?' *Constellations*, 14(2), pp. 182-196.

<sup>56</sup> Habermas, J. (1998) *op. cit.*, p. 111.

It is clear that transnational political legitimacy and intergenerational justice are essential parts of any plausible account of global justice or political obligation. Without transnational political legitimacy there can be no meaningful transnational political institutions and no effective delivery of global justice. Similarly, coherent global justice necessitates consideration of intergenerational obligations, suggesting that both are different aspects of a *universal* justice. Despite their importance, however, effective solutions to both problems remain elusive. Discounting future generations might preserve current theories of justice, but the significance of the counterfactual position requires that such assumptions are at least stated if not justified, something conspicuously absent in most cases, leaving a question mark over their validity. Similarly, the traditional political model of the nation-state, while reassuring, seems unable to accommodate effective solutions to intergenerational or global justice. Difficult as they are, these issues are better seen not as problems but opportunities, encouraging us, for the benefit of all, to look beyond the temporal and geographical limits of the state, however uncomfortable that may be. The evolution of democracy requires it; the administration of justice demands it. Most importantly of all, the global poor, present and future, *need* it.

## **Bibliography**

- Anglin, W. (1978) 'In Defense of the Potentiality Principle', in *Obligations to Future Generations*, (R.I. Sikora & B. Barry, eds.), pp. 31-37.
- Baylis, J. & Smith, S. (2001) 'Introduction' in *The Globalization of World Politics, 2nd edition*, J. Baylis and S. Smith (eds.), Oxford: Oxford University Press, pp. 1-12.
- Beitz, C. (1999) *Political Theory and International Relations, Revised Edition*, Princeton, NJ; Woodstock: Princeton University Press.
- Bohman, J. (2006) 'Beyond the Democratic Peace: An Instrumental Justification of Transnational Democracy', *Journal of Social Philosophy*, 37(1), pp. 127-138.
- Calhoun, C. (2002) 'Imagining Solidarity: Cosmopolitanism, Constitutional Patriotism, and the Public Sphere', *Public Culture*, 14(1), pp. 147-171.
- Caney, S. (2005) *Justice beyond borders: a global political theory*, Oxford: Oxford University Press.
- Canovan, M. (2000) 'Patriotism Is Not Enough', *British Journal of Political Science*, 30(3), pp. 413-432, p. 418.
- Coicaud, J.M. (2002) *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility*, Cambridge: Cambridge University Press.
- Delattre, E. (1972) 'Rights, Responsibilities and Future Persons', *Ethics*, 82, pp. 254-258.
- Farrelly, C. (2007) 'Justice in Ideal Theory: A Refutation', *Political Studies*, 55(4), pp. 844-864.
- Gosseries, A. (2001) 'What Do We Owe The Next Generations?', *Loyola of Los Angeles Law Review*, 35, pp. 293-355.
- Habermas, J. (1996) *Between Facts and Norms: contributions to a discourse theory of law and democracy*, Cambridge: Polity Press.
- Habermas, J. (2001a) 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?' *Political Theory*, 29(6), pp. 766-781.
- Habermas, J. (2001b) 'Why Europe Needs A Constitution', *New Left Review*, 11, pp. 5-26.
- Hayward, C.R. (2007) 'Democracy's Identity Problem: Is "Constitutional Patriotism" the Answer?' *Constellations*, 14(2), pp. 182-196.
- Held, D. (2004) 'Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective', *Government and Opposition*, 39(2), pp. 364-391.

- Jones, C. (1999) *Global Justice: Defending Cosmopolitanism*, Oxford; New York: Oxford University Press.
- IPCC (2007) 'Climate Change 2007 - Impacts, Adaptation and Vulnerability: Working Group II contribution to the Fourth Assessment Report of the IPCC' retrieved 14th November 2008 from <<http://www.ipcc.ch/ipccreports/ar4-wg2.htm>>.
- Lacroix, J. (2002) 'For a European Constitutional Patriotism', *Political Studies*, 50(5), pp. 944-958.
- Mulgan, T. (1999) 'The Place of the Dead in Liberal Political Philosophy', *The Journal of Political Philosophy*, 7, pp. 52-70.
- Mulgan, T. (2006) *Future people: a moderate consequentialist account of our obligations to future generations*, Oxford: Clarendon Press.
- Page, E.A. (2007) 'Intergenerational Justice of What: Welfare, Resources or Capabilities?', *Environmental Politics*, 16, pp. 453-469.
- Partridge, E. (2001) 'Future Generations', in *A Companion to Environmental Philosophy*, (D. Jamieson, ed.), Blackwell: Oxford, pp. 377-389.
- Parfit, D. (1984) *Reasons and Persons*, Oxford University Press: Oxford.
- Pogge, T.W. (2001a) 'Introduction: Global Justice' in *Global Justice*, T.W. Pogge (ed.), Oxford: Blackwell Publishing, pp. 1-5.
- Pogge, T.W. (2001b) 'Priorities of Global Justice' in *Global Justice*, T.W. Pogge (ed.), Oxford: Blackwell Publishing, pp. 6-23.
- Rawls, J. (1999a) *A Theory Of Justice, Revised Edition*, Oxford University Press, Oxford.
- Rawls, J. (1999b) *The Law of Peoples*, Cambridge, MA: Harvard University Press.
- Rawls, J. (2001) *Justice as Fairness: A Restatement*, (E. Kelly, ed.), Cambridge, MA: The Belknap Press of Harvard University Press.
- Scholte, J. A. (2001) 'The Globalization of World Politics' in *The Globalization of World Politics, 2nd edition*, J. Baylis and S. Smith (eds.), Oxford: Oxford University Press, pp. 13-32.
- Wall, S. (2003) 'Just Savings and the Difference Principle', *Philosophical Studies*, 116, pp. 79-102.
- Wallack, M. (2006) 'Justice Between Generations: The Limits of Procedural Justice', in *Handbook of Intergenerational Justice*, (J.C. Tremmel, ed.), Edward Elgar: Cheltenham, pp. 86-105.

Warren, M. (1978) 'Do Potential People Have Moral Rights?' in *Obligations to Future Generations*, (R.I. Sikora & B. Barry, eds.) pp. 14-30.

Wolf, C. (2003) 'Intergenerational Justice', in *Blackwell Companion to Applied Ethics*, (Eds, Frey, R. & Wellman, C.), Blackwell: Oxford.

Woodward, J. (1986) 'The Non-Identity Problem', *Ethics*, 96, pp. 804-831.

global politics political legitimacy democratic legitimacy Allen Buchanan distributive justice human rights. Liquid authority and political legitimacy in transnational governance. *International Theory*, Vol. 9, Issue. 2, p. 329. Erman, Eva 2018. *The Political Legitimacy of Global Governance and the Proper Role of Civil Society Actors*. *Res Publica*, Vol. 24, Issue. 1, p. 133. *Intergenerational Justice*. First published Thu Apr 3, 2003; substantive revision Tue May 4, 2021. Central questions of intergenerational justice are: first, whether present generations can be duty-bound because of considerations of justice to past and future people; second, whether other moral considerations should guide those currently alive in relating to both past and future people; and third, how to interpret the significance of past injustices in terms of what is owed to the descendants of the direct victims of the injustices. Within a theory of justice we owe the first systematic account of obligations to future people to John Rawls (see §4.4/§4.5). Derek Parfit's work has defined the problems of how we can and should relate to future people (see especially §3). Justice for victims of all the parties to the conflict, including the victims of state agents, is an essential part of any viable transitional justice regime. Those most re-sponsible for the most serious crimes, from whichever side, need to be prosecuted and appropriate penalties imposed that can be reduced if stringent conditions are met. An amnesty can appropriately cover FARC's political crimes and offences related to political crimes but can never include war crimes and crimes against humanity. 7. Provide amnesty for all political crimes (and crimes connected to political crimes) committed by FARC members. *Transitional Justice and Colombia's Peace Talks Crisis Group Latin America Report N°49*, 29 August 2013. Page iv. *Global justice and climate change*. Climate change requires actors from around the world to come together and agree on how to move forward. Although global justice scholars agree that climate change will affect individuals and are therefore concerned with addressing the problem, these scholars have different ideas on what exactly is at stake and what should therefore be prioritised. For example, Simon Caney (2010) defines three distinct rights that are predicted to be threatened by climate change: the right to life, the right to food and the right to health – and any programme combating climate change should not violate these.