

Rights, Obligations and Future Generations

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In the last couple of decades we have come to realize that many of our technological advances are having serious ecological side effects. We also have become aware that much of what we do today will have profound effects upon the future. Accordingly, there has developed, at least in this country, a growing debate among philosophers, legislators, and other policy makers about our possible obligations to future generations. In some instances this debate has resulted in legislation ascribing certain obligations to our society in regard to future generations.¹

In discussing future generations the issue that arises is whether we do have obligations to future persons or even whether future generations should be considered in our moral calculations. On the one extreme are people who argue that we owe the future nothing; that it is simply a matter of luck as to which generation we are born and that we have the right to use whatever we can regardless of the effects such action may have on future persons.² On the other extreme are people who argue that future generations are entitled to a pollution free environment, vast food reserves, and an abundance of natural resources. Of course, in between are many variants of these two positions. However, many times the authors of these positions do not make clear what kinds of obligations are owed to future generations or even what is meant by talk of future generations.

It will be the purpose of this paper to clarify some of these issues. I intend to show that there are several ways to talk about obligations to future generations and that it can make a great deal of difference whether the obligations are to apply to remote generations or to only immediately succeeding generations. In the first part of the paper, I will argue that we have a general duty not to harm either remote or immediately succeeding generations. In the second part, I will show that there are certain obligations created or grounded by the rights to well-being of future persons. Here, it will make a great difference which generations we are talking about and the kinds of actions to be performed. In the third part of the paper, I intend to

show that present generations have obligations regarding certain values only to immediately succeeding generations. Here the notion of social contract rights will be quite important, i.e., rights which guarantee certain things that are valued in a specific society.³

It has been suggested by various philosophers that future persons have no rights and, thus, we have no correlative obligations to them because future persons do not (now) exist. They analogize to dead persons who, they claim, have no rights because of their non-existence. I think, however, that these philosophers have misconstrued the basic reason why we normally do not have obligations to the dead. It is not because of their non-existence that they have no rights; rather, it is that we cannot perform any actions which affect the dead. We cannot injure or kill them, we cannot destroy anything they need, we cannot fail to do anything for them, except in the sense of failing to act according to their wishes that they had expressed while alive, e.g., failing to follow their will. The reason is obvious: they are in the past and our actions are directed toward the future. Thus, unless one holds what I perceive to be a perverted view of causation (i.e., backward causation),⁴ it is clear that none of our actions are causal factors in regard to the dead.

Does this analysis transfer over to future persons? I think the answer is evident. We can affect future persons in many ways and, thus, our actions can be causal factors in regard to them. This illustrates why there are good reasons to deny that we have obligations to the dead, but affirm that we may have obligations to the future. The concept of an obligation presupposes that we can causally affect some situations. For example, if I have an obligation not to kill Jones, it is presupposed that I can in fact kill Jones. This is just a restatement of Kant's famous "ought implies can." Accordingly, if Jones is already dead it makes no sense to say that I have an obligation not to kill him. However, if Jones is yet to be born, it may or may not make sense to say that I have such an obligation. It all depends on what action is to be performed. If I perform Action A which results in some Consequence B which occurs after Jones is born, and Consequence B does in fact kill Jones, does it not make sense to say that I killed Jones? Since Jones will be a human being when born, and since I have a general obligation not to kill human beings, have I not violated this obligation by performing Action A? As we shall see shortly, the answer to this question will depend upon such factors as intent and foreseeability. The main point now, however, is that simply because Jones does not yet exist is not sufficient to deny that we have obligations to Jones with respect to his future existence.

An objection may be made that although there can be causal connections between the present generation and future generations that it still does not make sense to ascribe rights to future generations because future persons cannot claim or enforce these rights against the present generation--no one will be in existence against whom the future persons can make their claim. This, however, confuses having a right with having a remedy. For example, if I promise to give some object X to you upon my death, it would seem that this would give you a right to X. It also creates an obligation on my part to ensure that I keep X so that it can be given to you upon my death. If I destroy X before my death, then it seems that I have violated your right to X, and that is precisely what you would say upon my death, even though there would be nothing you could do about it at that time. However, the fact that you would have no remedy does not detract from the fact that I had the obligation, which could have been enforced against me while I was alive, even though your right to X could not be exercised until my death.

Another example: assume that some underprivileged and starving country can conclusively show that its inhabitants are entitled to certain basic goods that our country possesses (for example, suppose that it can show that our country had stolen these goods at some point in history from this country), but that this country is totally powerless to do anything about asserting or enforcing this right. Surely we do not want to say that this right creates no obligation on our part simply because it, as a practical matter, cannot be enforced against us. Rather, as often is the case, persons in our country would act as "proxies" for the inhabitants in the underprivileged country, ascertaining their rights for them. Likewise, it seems to make perfect sense to say that if the rights of future persons are recognized in the present generation, then "proxies" can claim and enforce these rights for these future persons.⁵

To gain an understanding of what rights future generations may have and what obligations we have to them, it is necessary to analyze what rights and obligations it makes sense to ascribe to human beings in general. Here I use the term "right" in the sense used by authors such as Dworkin, Nozick, and Rawls.⁶ These authors all derive the concept of right from the idea that human beings are autonomous, rational creatures, which creates in others the obligation either to refrain from interfering in the lives of, or to provide for, these creatures.⁷ The extent and specificity of these rights, and even the conception of human beings itself differs greatly in these writers. (Compare Nozick's conception to Rawls' and Dworkin's.) The basic point upon which all rely, however, is that there is a fundamental connection between rights and

rational, autonomous beings that creates or grounds obligations in others.

Consequently, by "obligation" I mean something others owe to someone as a result of a right that someone has. I do not, however, hold that all obligations create correlative rights. I have many obligations of which it would make no sense to say that someone has a right against me to fulfill that obligation, e.g., duties of beneficence, obligations of my office, etc.

I do not take any position as to the relative weight these rights and obligations should be accorded in relation to present rights and obligations, although they must be accorded some weight if they are to mean anything at all. I do assert, however, that violations of these rights and obligations constitute a wrong that to be justified must be overridden by some other right or obligation.

As I alluded to above, rights talk, and correspondingly, obligation talk can be broken down into three basic categories. First, there are the autonomy rights posited by Locke, Kant, and most recently by Robert Nozick. These are negative in character in that they obligate one not to harm another in his "life, liberty, or possessions." Second, there are rights to well-being, which can be both negative and positive. They are negative in the sense that persons have a right not to have their basic goods or the opportunity to have basic goods destroyed. However, they are also positive in the sense that if one does not have access to basic goods, others have a duty to provide him with such basic goods. The third category is social contract rights, which are all positive in character. These are rights to goods which are valued within a certain society or institution. They are positive because society guarantees that such goods will be provided to each individual in the society. For example, the right to counsel is a social contract right because our society guarantees that each person will be provided with legal counsel in a criminal trial.⁸

I think by looking at various cases we will see that, with respect to present generations, future generations (both remote and immediate) have negative rights, but that only the immediately succeeding generation has positive rights. It should be noted that the distinction between positive and negative rights is somewhat controversial. For example, Henry Shue argues that the distinction is spurious, because, for instance, the negative right to be free from harm requires many positive social institutions (e.g. police force, courts of laws, etc.) to make the right effective.⁹ Thus, he argues, the right to be free from harm is not really negative after all. I think, however, that all this shows is that in certain instances the abstract negative right will take on positive characteristics when institutionalized within a spe-

cific society. It does not mean that in the absence of social institutions human beings do not have the negative right to be free from harm. I will now show what this basic right entails when applied to future generations.

1. AUTONOMY RIGHTS

To begin, I will analyze a case where our society performs actions which affect "strangers" in another country, i.e., persons with whom we have no direct relationship. Suppose we decide to send a missile at this country, killing many of its inhabitants. (Suppose our reason is to prevent the Russians from taking over this mineral-rich country). Since these inhabitants are human beings, they clearly have a right not to be killed. Thus, our act violates this right and we have a duty not to perform it.

If we move to future individuals, does the situation change in any relevant aspect? I think not. Suppose we would send a satellite into space which would be detonated in 200 years killing many of earth's inhabitants at that time. (The reason given for doing this is that the satellite is designed to detonate over Russia and thus we think it will be to our military advantage to perform the action). Surely we have violated those persons' right to life. They no doubt will be human beings like the "strangers" in the other country. If so, then they will have a right to life which cannot be infringed upon. Our action of sending the satellite into space directly results in such an infringement, and thus, our action is wrong, so long as there is a causal connection between our action and the harmful result.¹⁰

One response to these cases could be that the reason that the actions are wrong is that they were done with bad intent. What if the action performed is not done with the intent to harm anyone per se, but rather is done to either alleviate harm or to achieve a great benefit to us. For instance, suppose that we decide to get rid of our nuclear waste problem by sending it all to the "strangers" in the other country. We send it in such a way that we have taken all the precautions we could to reduce the risk created to the other country, but obviously the risk that harm to its inhabitants will result is still quite high. Suppose also that the country is small and powerless to do anything about our action. Could we possibly justify such an action on the grounds that the risk created is outweighed by the benefits to us? The answer is no. As D.A.J. Richards has shown,¹¹ an action which imposes great risk upon unconsenting human beings who receive no benefit by the action, but all benefit is received by the actors who bear no risk, cannot be justified, because it violates the rights to life, to

be free from harm and, no doubt, to be free to choose how one wants to live one's life.

Under traditional risk-benefit analysis, for an action to be justified the benefits received must outweigh the risks imposed. Also, the class of persons who receives the benefits must also bear at least part of the costs of the action and the class bearing the cost must consent to the action. For instance, driving automobiles and flying airplanes are risky endeavors. However, in our society we have determined that the benefits received by the society outweigh the risks created. Even so, we do not normally require people to get into cars or airplanes without their consent. In the case above neither of these conditions are met. The "strangers" in the other country reap no benefit from our actions and certainly they have not consented to the action. Therefore, I submit, the action is clearly wrong.

If our society could show that we have no choice in the matter, i.e., it is either us or them, then we could at least argue that although the act is regrettable, it may be permissible. However, if the risk created is of our own doing, even this argument probably will not suffice.

If we apply these principles to future generations, will we come to the same conclusions? For instance, if we bury radioactive waste in salt mines predicting correctly that it will be safe for at least two hundred years, have we done anything wrong? Suppose that after two hundred years there is great risk that the waste will seep out, possibly killing and injuring many people. Since these persons bear all the costs of our action and we receive all the benefits, there is good reason to conclude that the action is not justified. In addition, these future persons certainly have not consented to our action.

If our generation could show that the production of these wastes is absolutely necessary for our survival, then we could possibly justify such an action. If our generation does not survive, then there will be no future generations upon which to impose risks. Therefore, it can be argued that future generations would receive benefit from these actions by making it possible for them to exist.

However, as several philosophers, such as Feinberg,¹² have noted, "future persons" cannot be said to have a right to be born. If they do not come into being, our choice not to produce nuclear waste would violate no one's rights in the distant future, simply because if no one has a right to be born and if no one is born, then there will be no one whose rights could be violated.¹³ On the other hand, the production of wastes may allow us to survive and make it possible for future generations to come into being, but that production will also violate the rights of those future per-

sons because of the great risk and harm that the wastes would cause. Thus, if one considers only the rights of future generations in analyzing this argument, it would seem that the moral thing to do is not to produce any long-term wastes because that way we can ensure that future generation's rights will not be violated. (Of course, depending upon the factual circumstances either action could violate the rights of the present generation. On the one hand, the risk of seepage now may be too great. On the other hand, not using nuclear power may have disastrous economic and social consequences.)

Our generation could modify its survival argument to say that producing waste is not essential for survival, but is essential for there to be adequate goods produced for the future. If such goods are produced it will benefit future persons, thus our previous principle does not hold. This is a technological and economic argument which depends upon many factual assumptions. To analyze it fully, if we could, would take us far beyond the scope of this paper. The main point, however, is that our generation would have the burden of proving that future persons do receive benefits which outweigh the costs imposed upon them. Even if we were successful in doing this, we would still have to overcome the problem of the non-consent of the future persons. Accordingly, I think it is reasonable to conclude that we have a prima facie obligation not to produce such wastes.¹⁴ At the very least we have to take seriously the effects such an action has on future persons.

Interestingly, in this area our obligation to remote generations may be greater than our obligation to immediately succeeding generations. With the latter much better arguments can be made that they receive some benefit from our actions without bearing much cost. (If nothing else, the waste will be buried during their lifetime.) In addition, there is a good chance that the social institutions in existence now will carry over to them and, thus, the benefits reaped by the present institutions should also carry over. In other words, with immediately succeeding generations the odds are much better that our "no benefit--all cost--no consent" principle will not apply; rather, it is much more likely that traditional risk-benefit analysis will apply, since many of our actions have a direct effect upon the immediately succeeding generation.

2. RIGHTS TO WELL-BEING

If human beings have certain negative rights (e.g., right to life and to be free from harm) because they are autonomous rational beings, then do they have the right to the basic goods necessary to be autonomous and rational? Philosophers have given different answers to this question. Libertarians, such as Robert Nozick, argue that one only has a right to strive for these goods, because requiring others to provide them would violate peoples' rights, such as the right to property and right to liberty. Other philosophers, predominantly influenced by Rawls, have argued that human beings have a right to be provided with such goods because without them they could not exercise any other rights, including those the Libertarians believe are basic. For example, if one cannot obtain food to live, one certainly cannot go about appropriating property or exercising any other freedoms.

We have seen that future generations have the various negative autonomy rights attributable to present persons. Does this mean that they also have rights to basic goods if they cannot be autonomous without these goods? If present persons do not preserve goods necessary for the well-being of future persons, are the rights of these future persons violated? Can we not argue that they are being harmed in much the same way as they would be harmed by our direct interference? This is an ambiguous question because there are two ways that someone can be without basic goods. A person can be without basic goods because other persons leave him alone and refrain from providing him with any of the goods. However, a person can also be without basic goods because of (directly as a result of) actions of others. For instance, if we would poison the only water hole in town, we certainly would be harming directly the persons who need this water. However, if every water hole naturally dries up except mine, I may not have an obligation to provide these same persons with water. To have such an obligation I at the very least would have to have enough water for my own purposes and thus, giving up of my water would not cause me to suffer. (Unless, that is, some institutional arrangement has been set up and agreed explicitly or implicitly upon by all parties, which is designed to take care of such disasters. For instance I, with the only remaining water supply, may have agreed to or participated in an arrangement where the agreed upon procedure was that one would share their water with others in the community in times of drought, if one could spare any water.) Thus, it makes a great difference why someone is without basic goods.

The following case may help us to see this distinction better. Suppose there is a group of islands along an ocean current, each island having at least one in-

habitant.¹⁵ Each islander knows of the existence and location of the other islands and knows that they are inhabited. Suppose also that the first islander along the current develops a system of catching fish, which is the major source of food for him and, as far as he knows, for the islanders down the current. What obligations does he have in regard to how many fish he uses and how many are allowed to pass on down the line? Assume that his fish catching ability has gotten quite sophisticated to the point of being able to catch as many as he wishes. If he catches more than he needs, because this is much easier than catching some and letting a lot more pass through, has he done anything wrong with respect to the other islanders? If so, which islanders? It seems clear that if he could let some more pass, say enough to sustain the immediately adjacent island, without much inconvenience to him, he is under an obligation to do so. But it would also seem that he would be under such an obligation even if it caused him quite a bit of difficulty. He knows that fish are necessary for the survival of his neighboring islanders. If a person has a basic right to the things needed for survival, then if the first islander can allow such goods to pass on without depriving himself of those basic goods, then he is under an obligation to do so. It simply will not do for the first islander to complain that this would mean he could not do some of the other things he enjoys doing such as reading books, taking hikes, and other such pleasures. However, if it required him to virtually spend all of his time at the fish catching operation, his obligation to pass on the fish may be overridden. The strength of an obligation, therefore, depends on the amount of sacrifice required of the individual. One does not have to become a slave even if that means that others' rights to well-being will not be satisfied.

If we apply this analysis to future generations, it would seem that we have the following principle: the present generation has an obligation not to perform actions which will prevent the immediately succeeding generation from having access to the basic goods it needs for survival, unless this obligation imposes extreme hardship and sacrifice on the present generation. This obligation would seem to be even stronger than it was in regard to our island example. The separate islanders are independent persons who have no real connection between each other; whereas the immediately succeeding generation does have connection with us--they are our children.

Is the above principle sufficient to handle cases dealing with all future generations; or are there still further obligations based upon the rights to well-being of remote generations, which cannot be explained simply by appealing to obligations to our immediate successors?

Suppose in our island case the first islander could without too much difficulty catch all the fish he wants and still let enough fish pass through to fulfill the needs of his immediate neighbors. However, his fish catching methods kill so many fish that the remote islanders will not have the opportunity to catch fish. This results in much suffering due to a lack of basic goods. There simply is not enough food on their islands to sustain them. If the first islander would change his methods to allow more fish to pass through, these remote islanders would be able to live a satisfying life. But under the present methods, they live out a meager existence. Surely we would say that the first islander has an obligation to let more fish pass through, especially when the extra fish caught are wasted.

The same analysis carries over to remote future generations. If our generation would destroy basic goods to the extent that only our immediately succeeding generation will have access to these goods, we would be forced to conclude that the rights to well-being of the remote generations were being ignored. For instance, suppose by a combination of intensive energy exploration, rapid encroachment by overpopulated cities upon rural agricultural land, and pollution of the air and water, we destroyed most of the good agricultural land to the extent that only our immediate descendants could be ensured of having their basic needs of subsistence satisfied. This would mean that some remote generations would be denied a decent life, because they would not be able to obtain even the most basic goods, i.e., food. Surely their condition can be causally traced back to our actions and we would be rightly held accountable (even though as a practical matter they could do nothing to us).

It would seem, therefore, that we have to modify our original principle to the following: the present generation has an obligation not to perform actions which will prevent either immediate or remote generations from having access to the basic goods it needs for survival, unless this obligation imposes extreme hardship or sacrifice on the present generation.

Now the question we turn to is whether the rights to well-being of future generations, either remote or immediate, ground obligations in the present generation to take positive actions to provide basic goods beyond the negative obligations to refrain from performing actions which prevent future generations from obtaining the basic goods. Suppose in our island example that there simply is not enough fish to sustain anyone else but the first islander. Thus, if the first islander uses the fish for his subsistence, as he no doubt has a right to do, islanders down stream will not have enough or any food to eat. However, the first islander could with some minimal effort create spawning beds, which

before long would provide an ample supply of fish to the islanders down current. Is he obligated to do so?

Many philosophers would answer yes to this question on the grounds that each islander has a right to equality of opportunity.¹⁶ They would argue that since the first islander no more deserves the fish than any other islanders, he has a duty to provide the others with the same opportunity, if he possibly can. Thus, since he can "reproduce" the fish, he is obligated to do so. But to whom is he obligated? Suppose it is impossible for him to produce enough fish for all of the islands, but that he can produce enough for the next island without too much sacrifice to himself. Surely it does not make sense to say he is obligated to produce fish for the more remote islands. One cannot be obligated to do what one cannot do. However, since he did receive his fish supply more or less by his lucky position, he should have to provide for others who were not fortunate enough to be in his position, if he can. Thus, he is obligated to produce fish for the immediately adjacent island. He is not obligated, however, to produce more than enough for this island, even if he could. Since the adjacent island can do what he did, the obligation to the next succeeding island transfers to the adjacent island. If he does produce more than what is needed, he has done a supererogatory act, not a morally required act. One does not have to make additional sacrifices in order to ensure that others will satisfy their obligations or that the recipients of these obligations will have their rights satisfied. For example, if I employ someone, I am obligated to pay him a decent wage so that he can get his basic goods. This does not entail, however, that I also have an obligation to provide the basic goods to persons to whom he is obligated, e.g., his family, if he fails to do so. (However, the society as a whole may have an obligation to provide such basic good to those within the society who cannot obtain them.) In other words, I may have an obligation to A to provide A's basic goods; A has an obligation to B to provide B's basic goods. But this is a non-transitive operation, and thus, I do not have an obligation to B to provide B's basic goods.

Applying the principle to future generations, we can see that we have obligations to provide the opportunity to obtain basic goods to the immediately succeeding generations. However, we are not required to make additional sacrifices to provide basic goods for the generations they are obligated to. In other words, we need to "pass on" only what was provided for us when we came into being. Like the island case, it probably does not even make sense to talk about providing for remote generations. There are too many things that intervening generations could do to upset whatever actions we look to provide for remote generations. It thus seems much more reasonable to only require our

generations to provide the same opportunities to the immediately succeeding generations, and to let them worry about the generations after that, especially when any other action would require great sacrifice on our part. It may be nice of us to make these sacrifices, but it cannot be morally required.¹⁷

3. SOCIAL CONTRACT RIGHTS

It should be obvious from the analysis in the last section what I intend to argue about social contract rights, which are totally positive in character. Since they are of this character, they only exist within a certain specific society. For instance, in our society we have determined that wilderness areas are valuable and should be preserved. Does this mean that human beings cannot exist without wilderness area? Of course not. People have no doubt spent their whole lives in a city without ever seeing the wilderness. It does mean, however, that many human beings find wilderness to be quite important to them, and thus, our society has concluded that such areas should be "guaranteed" to exist for their use and enjoyment. These people will instill this interest into some of their children who will also want wilderness areas to exist for their use and enjoyment. Thus, it makes sense to say that the immediately succeeding generation has a right to wilderness. However, it should be obvious that it would not make sense to say that remote generations, e.g., 500 years from now, have a right to wilderness. Following Golding,¹⁸ these individuals are not part of our "moral community" and may not share our "social ideals."

Martin Krieger¹⁹ has argued that wilderness attitudes are conditioned by society, and thus in the future it may be that no such attitudes exist. If so, no one's rights will be violated, if there are no longer any wilderness areas at that time, unless, of course, the wilderness is cut down during a generation which did in fact value it.

From this analysis we can see that social contract rights only apply to contemporaries or the immediately succeeding generation. They do not apply to remote generations for the simple reason that none of the social connections exist which are presupposed by such rights.

4. CONCLUSION

In this paper I have tried to argue the general thesis that both remote and immediately succeeding generations have negative rights which give rise to obligations to them in our generation including the negative obligation not to destroy access to basic goods. I then argued that the positive right, i.e., rights to

have basic goods provided, and social contract rights only apply to the immediately succeeding generation. Since many of our actions affect the immediately succeeding generation, it follows that our generation must take seriously all these rights and act accordingly. I have also shown that even in situations where our actions may not affect the immediately succeeding generation, but may have profound effects on people in the distant future, that we are obligated to take these latter effects into account when deciding what course of action to follow. This is the minimum that justice requires, if our descendants are to have any hope of attaining a quality of life comparable to ours. To do any less is to fail to take the rights of future persons seriously.

NOTES

¹See, e.g., National Environmental Policy Act of 1969, 42 U.S.C. 4321 (1976); The Wilderness Act, 16 U.S.C. 1131 (1965).

²As long ago as 1909, Secretary of Interior Henry Teller argued this. Recently, the new Secretary, James Watt, seems to suggest similar arguments. See, e.g., "Watt Speeding up Interior Action," Lawrence Journal-World, March 2, 1981. See also Thomas Schwartz, "Obligations to Posterity," in Obligations to Future Generations, ed. Brian Barry and R. I. Sikora (Philadelphia: Temple University Press, 1978), p. 3.

³Given that my purpose is to examine the extent of these rights and corresponding obligations in regards to future generations, I must make the reasonable assumption that the probability is high that there will be human beings existing in the future and that at least in a basic sense they will be somewhat like us. Since I conceive of these rights as being universal and applying generally to any and all human beings, I see no need to deal with the problem concerning the identity of the particular human beings who will exist in the future. See n. 14 infra.

⁴See, however, J. L. Mackie's arguments for a theory of backward causation in his book, Cement of the Universe (Oxford: Clarendon Press, 1974).

⁵Joel Feinberg, "The Rights of Animals and Unborn Generation," in Responsibilities to Future Generations ed. Ernest Partridge (Buffalo: Prometheus Books, 1981), pp. 139-150.

⁶John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971); Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1978); Robert Nozick, Anarchy, State and Utopia (New York: Basic Books, 1974).

⁷Rawls does not actually use the term right. Rather he derives "the principle of fairness" from the idea of rational, autonomous beings. However, he borrows heavily from H. L. A. Hart's arguments regarding the natural right to be treated fairly. See Rawls, A Theory of Justice, p. 341; H. L. A. Hart, "Are There Any Natural Rights," Philosophical Review, 64 (1955), 175-191.

⁸In a given society social contract rights may encompass some or all of the rights in the other categories depending upon the values present in that society. In fact, in a perfectly just society they would include all of these rights in the sense that the social, political and legal institutions provide a means of enforcing those rights. See John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971). For an excellent discussion of the distinctions and interrelations between these categories, see Jeffrey G. Murphy, "Rights and Borderline Cases," Arizona Law Review 18 (1978): 228-241. Most importantly, however, for the point to be made here, autonomy rights and rights to well-being exist independently of any particular social institutions, and in fact, it is these rights which are used to test the justness of a society's institutions. With purely social contract rights, however, it is only the particular values present in a given society that give rise to such rights.

⁹See Henry Shue, Basic Rights, (Princeton: Princeton University Press, 1980).

¹⁰The question of foreseeability arises here. If it is foreseeable that someone's rights could be violated, then the action should not be performed, even though it is possible that the bad consequences will not occur because of an intervening cause or event. We simply take the rights of persons too seriously to allow actions to be performed that would violate those rights on the chance that an intervening cause may occur which would prevent the violation from happening. See generally William L. Prosser, The Law of Torts (St. Paul: West Publishing Co., 1971), pp. 236-289.

¹¹D. A. J. Richards, "Contractarian Theory, Intergenerational Justice and Energy Policy," Energy and the Future, ed. Douglas Maclean and Peter G. Brown

(Totowa, NJ: Rowman and Littlefield, 1983), pp. 131-150.

¹²Feinberg, p. 148.

¹³This argument raises an interesting question. If the present society simply wished to do whatever it wanted to the environment, food supply, etc., it could do so by simply devising a plan by which no future generations would come into being (at least at some point)--a universal sterilization program would do. As noted above, I do not think this could be analyzed as wrong by appealing to the rights of future persons (although any such program may at some point violate the rights of present persons, e.g., the right to bear children.) Intuitively, however, there does seem to be something wrong about such a plan--perhaps it is simply the callous disregard for the human species and its history. This example illustrates that, as in most issues in morality, one theory or cluster of concepts may not be sufficient to deal with the full ramifications of the issue, and thus, the rights-theory from which I have been arguing will no doubt need to be supplemented in some way. That however, is another paper.

¹⁴I have ignored any problems concerning the identity or number of future persons who would be affected. Concerning this issue, Derek Parfit has forcibly argued that decisions about major social policies such as the use of nuclear power would cause different individuals to come into existence depending upon which policy is chosen. See Derek Parfit, "Future Generations, The Identity Problem," in Energy and the Future ed. Douglas Maclean and Peter G. Brown (Totowa, NJ: Rowman and Littlefield, 1983), p. 116-179. He argues that we cannot really harm future persons by producing waste because if we had not chosen to use nuclear power other individuals would have existed in their place.

I have several problems with this argument, not the least of which being Parfit's assumption that for all these future individuals it is better for them to have existed, irrespective of their quality of life or of the harm suffered by them, than never to have existed at all. I am also troubled by the theory of human behavior or action theory that is presupposed by Parfit's arguments. It is not at all clear to me that decisions such as the use of nuclear power will have such a great deterministic effect upon the identity of those who come into existence in the future. In any case, with respect to the point I make here, these problems can be ignored. As I showed earlier, if we adopt a rights-based thesis, it is clear that performing certain actions, e.g., producing nuclear waste, will violate the rights of the persons who do exist in the future. If for any reason these individuals do not

come into existence, no rights are violated. Therefore, from this perspective they are not "worse off" by not ever existing.

¹⁵This example was originally suggested by Robert Nozick in his book Anarchy, State, and Utopia, (New York: Basic Books, 1974), p. 185 and modified by Brian Barry in his article, "Justice Between Generations," in P. M. S. Hacker and J. Raz, Law, Liberty, and Morality, Essays in Honor of H. L. A. Hart, (Oxford: Oxford Press, 1977), p. 273.

¹⁶See Richards, p. 15; also Brian Barry, "Intergenerational Justice in Energy Policy," in Energy and the Future, ed. Douglas Maclean and Peter G. Brown (Totowa, NJ: Rowman and Littlefield, 1983), pp. 15-30.

¹⁷This category of rights may cause a parting of the ways between persons adopting a Nozickian viewpoint as opposed to a Rawlsian/Dworkinian viewpoint. However, it does not seem that this is necessarily so. Although within a given society, Nozick would argue that no one can be made to provide goods, even basic goods, to others if one's goods were appropriated legitimately, it does not appear that he is committed to saying that this is so when we are talking about separate and distinct societies. This would seem especially the case when we are only talking about providing the opportunity to obtain basic goods, not providing the basic goods themselves. If we have done nothing to create the opportunity, but rather it is given to us by simply being born into a certain society, Nozick may well agree or at least, given his acceptance of the Lockean Proviso, he may be forced to agree, that we have an obligation to pass on the same opportunity to another society or generation. See Nozick, pp. 174-182. But see ibid. at p. 185, 235-239. See also Barry, "Justice Between Generations," pp. 272-273.

Nozick certainly adheres to the view that one cannot appropriate some basic good thereby making others worse off, or if one does, then one is obligated to compensate the others, thus bringing them back up to the "baseline." In this sense the providing of basic goods is required as a result of an underlying harm, i.e., by our appropriation of goods others are harmed by not having the same supply of goods available, thereby making it more difficult for them to obtain their basic goods.

Interestingly, Henry Shue, in his book Basic Rights has made a similar argument in support of his thesis that human beings are entitled to certain basic rights, including the right to subsistence. As noted before, he correctly shows that in a given society the supposed negative rights to security require numerous positive actions, e.g., police protection, courts, lawyers, etc.

He also argues, however, that the supposed positive rights to subsistence may only require that others refrain from depriving one of the opportunity to obtain basic goods, in much the same sense as Nozick.

In regard to future generations my point here is that the present generation not only has an obligation to refrain from arbitrarily destroying the future generations' opportunity to obtain basic goods, but also that if such opportunity is destroyed, even by the legitimate actions of one obtaining one's own subsistence, then the present generation must then take positive actions to compensate for this deprivation. But, here, our obligation only extends to the immediately succeeding generation.

An interesting question not addressed here is whether one is obligated not only to provide goods which replace or compensate for what one has taken from the available supply, but also to perform actions to increase either the quantity or quality of the available supply of goods for others regardless of one's previous actions. For example, suppose in our island case that the available fish supply consists of two distinct species, one of which contains much more of the islander's essential nutrients. Suppose also that there is an ample supply of the other species to feed at least the first and second islanders along the current, but that the nutritious species is not sufficient to feed either islander. Thus, although each islander can survive by eating the one species, they suffer some malnutrition. However, the first islander could develop the spawning beds to increase the supply of the nutritious fish. Is he obligated to do this, or if he does, is he obligated to produce more than he needs. Tentatively, I would say no, since the second and succeeding islanders could, all other things being equal, do the same. But if one supports a strong theory regarding rights to well-being, it may be that one is obligated to provide for others or to raise the quality of life of others if one is able to do so without much sacrifice on one's part. I do not resolve this controversy here, because for my main point, even if one were obligated to do more than simply compensate, I think for the reasons stated in the text that it only makes sense to say that one is obligated to the immediately adjacent islander, or when applied to future generations one is obligated only to the immediately succeeding generation.

¹⁸Martin Golding, "Obligations to Future Generations," Monist, 56 (1972) p. 89.

¹⁹Martin Krieger, "What's Wrong with Plastic Trees," Science, 179 (1972) p. 446.