

ARE THERE OBLIGATIONS WITHOUT RIGHTS?

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ABSTRACT: In all command-obedience relations of asymmetric reciprocity, obligations or rather duties do not go normally with corresponding rights. There are no rights related to such relationships, at least not in the present understanding of the word “right”, since they are prerogatives. But there are obligations based on morals, if not on rights, also in relations of asymmetric reciprocity. Only in a relation of symmetric reciprocity do rights appear as foundations (*archai*) for claims, both in a positive, and in a negative sense. We have obligations to future generations, even responsibilities for living up to those obligations, but future generations cannot have rights. There is not, and cannot be, symmetric reciprocity between us and any future generation, in fact no reciprocity at all; there are obligations without corresponding rights. The cases of prospective responsibility, of being in charge, also implies obligations irrespective of the circumstance whether the parties towards whom we have obligations are the bearers of rights or not. Intergenerational justice does not presuppose extant rights whereas potential rights are just projections or metaphors with little relevance, for they are not binding.

KEYWORDS: Obligations. Rights. Future generation. Intergenerational justice.

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The question sounds a rhetoric one, as all question to which there is only one possible answer, namely “of course”. In all command-obedience relations of asymmetric reciprocity, obligations or rather duties do not go normally with corresponding rights. There are no rights related to such relationships, at least not in the present understanding of the word “right”, since they are prerogatives. A Roman son could not claim even his right to life against his father, who could legally kill him if it so pleased him, without the obligation of justification. But there are obligations, based on morals, if not on rights, also in relations of asymmetric reciprocity. Although women were generally not right bearers, husbands were often regarded as having obligations towards them.

Religions often enumerate obligations, even moral claims, without corresponding rights. For example, the Bible commands to give the strangers what is due to them. You ought to perform acts due to the strangers, because you should not forget that your ancestors have also been strangers. This obligation is already a case of intergenerational justice, to which I will return. According to Mencius, you ought to behave to your father as you expect your son to behave towards you. This is also an example of intergenerational justice, yet different from the former one, since you have obligations towards your father, without corresponding rights, but you can expect to have the same rights against your sons.

Some aspects of this tradition has acquired lately a legal form in the so called “right of children”. I said “so called”, for children under age are only potential right holders, not real ones, since there is no symmetric reciprocity between them and their parents. Surely, there need to be laws, which specify serious sanctions against those who do not treat their children according to the moral and cultural expectation of a modern society, who do not fulfill their legal and moral obligations. Yet, I have serious doubts whether this violation of the law must be necessarily regarded as infringement of a right.

To put my preliminary position bluntly: only in a relation of symmetric reciprocity do rights appear as foundations (archai) for claims, both in a positive, and in a negative sense. A Roman patrician had the right to participate in the election of all the magistrates of the city, whereas the plebeians acquired the right to elect their own representatives. A Roman citizen has also the right not to be crucified. In case of all political rights or even quasi rights symmetric reciprocity is of the right holders is presupposed at least in the very relations where they stay as right holders, although not in other relationships. Cicero succeeded to win his case against a Roman magistrate not on the ground that the man was a blackmailer and embezzler, but on the ground that he let crucified- without even a trial- a Roman citizen This is just an example to the fact, that violating the right of another calls always for sanctions, legal, moral, political in kind. That is, political rights, the rights of citizens, always go together with the obligation to honor the right of all other citizens and the interdiction not to infringe upon them. These rights are liberties.

As Kant formulated the traditional, and still, in my view, absolutely valid, principle of liberalism, that everyone has the right, the freedom to do whatever he or she likes

unless he restricts the freedom, the liberties of others. In this sense political rights, that is liberties, go together with corresponding obligations to honor and not to infringe another citizen's liberties. But as far as the right holders are concerned, liberties, political right are permissions, not obligations, It depends on the constitution of a state (written or unwritten) whether the permission is transformed into obligation. For example American citizens can go to the polls or not, according to their decision, whereas in Australia, voting in national elections is obligatory, and if one does not go to the polls one has to pay fines or go to the prison. Yet, being under the protection of the law, or being a full right holder are not identical. An alien is also a right holder, a resident alien can also enjoy the full protection of the law (like in the USA), but still does not enjoy all the rights of citizen, For example cannot participate on the presidential elections. To put it bluntly, the category of full political right holders is smaller than the category of people under the protection of the law. At the same time, however, the enjoyment of certain liberties (I am at liberty to do it if I want to) can encompass everyone who lives in a state, yet it can be restricted also within the group of full citizens. For example, the freedom of religion has been the first liberty enjoyed by everyone in the USA at the time, when it was much restricted in the United Kingdom also within the category of citizens. Finally, there are cases of right without any obligation whatsoever. Here is for example the right to war. A state can argue to have the right to wage war against another state, but no one is obliged to recognize this as its right.

The haphazard examples are not that outdated as they seem. For example, in a totalitarian state there are no political right holders, for there are no citizens, just subjects. The only right granted to subjects is the ancient feudal right "ius supplicationis" Everyone has the right to ask favors. In fact János Kádár formulated it correctly, when he declared that every Hungarian has the right to apply for a passport. Subjects have but obligations without corresponding rights And as I said, political right, presuppose symmetric reciprocity, respect for the rights of the others, obligations to honor them, and legal sanctions against those who infringe the right of others.

Nowadays political rights are intrinsic in liberal democracies, and only there. They are citizen's rights. They are the rights accompanied at least with one obligation, namely to respect the rights of all others. As far as citizen's rights are concerned, the traditional principle of justice "to each according to their rank" is replaced by the new, democratic one: "to each the same", that is the same rights and the same obligations. To infringe the rights of others calls for sanctions, mostly legal sanctions. At least this is the model of modern citizen's rights and obligations, to which states and societies are bound to approximate.

The structure of the other kind of rights, the of the so called welfare rights differs from the structure of liberties. The formula of liberties is: I can if I want to, and no one can legally prevent me to do if I want to do it. (for example to change my religion or

participate in a demonstration and the like.) The structure of welfare rights is the following: I am entitled to this or that whenever I need it. For example I am entitled to hospitalization if I am sick. The single right which is up to a degree also compelling is the right to primary or education. Property right is also a special case for neither the formula of liberties nor that of welfare rights applies to it. Those right are also accompanied by obligations, but not just by the obligation to respect the right for another. Education is a right, but up to an age also obligatory. So are, for example, some vaccinations. The principle of justice applies contextually, for example in elementary education “to each the same”, in tertiary education “to each according to her excellence”.

Welfare rights became accepted later than liberties. Yet, they are rights only within democracies, or they are also citizen’s rights. The presence of welfare institutions is not identical with the right to welfare. There are welfare institutions without civic liberties, yet there are no welfare rights without civic, political liberties. They are so called human rights. Human rights are fictions, for it is only in liberal democracies with citizen’s rights that their infringement cannot go unpunished –But “human rights” are still functioning fictions even without citizen’s rights, for they provide a norm and thus a foundation for the critical rejection of the political institutions where they are continuously infringed.

Paternalism, the practice of a so called benevolent government to take care of its people welfare does nor replace citizen’s right and is no substitute of human rights either. Also for the very reason for the subjects of a paternalistic government cannot practice dynamic justice, thus they are not allowed to make statement such as “ the standing institutions are unjust, other ones would be just or more just” Once upon a time the proposition to make a people happy against their own will, was discussed broadly, also in Kant and Hegel. Kant said, that a people should not be made happy against their will, for freedom has primacy against happiness, Hegel said that a people cannot be made happy at all The whole thing boils down to the elementary statement I tried to make: no welfare right without liberties,. For people must be free to change the welfare rights, and in order to being able to do it, they need to enjoy civic liberties. Otherwise their only right will remain “*ius supplicationis*”, a favor instead of a right.

It is from here that I want to turn to the problem of the rights of future generations. I want to make my conclusion clear at the beginning. We have obligations to future generations, even responsibilities for living up to those obligations, but future generations cannot have rights. There is not, and cannot be, symmetric reciprocity between us and any future generation, in fact no reciprocity at all.

Let me then try another approach, let speak about intergenerational justice. First doing justice or injustice towards previous generations needs to be discussed. Justice means here to correct previous injustices, to amend. There are three kinds of “doing justice” in this sense: via retribution, via restitution and, finally, via moral or historical

judgment, All the three kinds or making amend makes sense only if we have in mind the close past, not the remote past.

Retribution is the straight way to do justice in cases of crimes against humanity, mass murder, war crimes, misuse of political power, if the criminals are still alive. Retribution is normally in the hands of the population of a nations, against whom the crimes have been committed, (like today in Kampuchia or in Argentina) and they are also the ones who can forego to punish (like it happened in Spain).But punishment can be meted out also on international courts, like in the Nurnberg trial after WW2 or in the Brussel's court today. Retribution is not restitution for the dead cannot be resurrected-. Restitution can take many forms (from returning confiscated properties until financial help),yet it is always a one way street, whereas judgment a two way street.

What about restitution if the perpetrators are dead?. First, one party or even one nation has to take on itself the guilt of their parents or grandparents, had to admit that once upon a time crimes have been committed. In this case legal measures cannot precede moral admissions. Like restitutions of some land to Australian aboriginals, or financial restitution for those who suffered in concentration camps or whose parents were killed under Nazism fifty years after-.

In case of retroactive moral judgment there is no place for retribution or restitution – A once convicted, once “legally” murdered persons can be rehabilitated, (like Galileo by the Catholic Church) But intergenerational justice can go also the opposite way. Previously hailed “heroes” can be degraded to monsters under the weight of their nowadays discovered crimes. Surely, doing justice is in part fictitious in all these cases since what has once happened cannot be made non happened. In other part, however, it is far from being fictitious, if the grandchildren of the guilty parties are still enjoying the fruits of their grandfather's guilt, Not the dead ones but the living ones admit their moral obligations and, again, the living ones not the dead ones, claims as their moral rights.

According the traditions, for example the Bible, respect is due to our ancestors, not just while alive, but also in their dead. It is an obligation of the children and grandchildren to take care of the proper burial of their ancestors or other relatives. This later obligation or rather duty cannot be described in terms of rights One infringes divine commandments if one fails to perform one's sacred duties.(See Antigone) I want to emphasize a not minor point. Duty is due to our ancestors and not to the ancestors of others, certainly not to all generations preceding ours.

I repeat, even in the case of intergenerational justice in view of previous generations, only moral judgment can reach more than two generations in the past. But at least we know, or we believe to know, what our great-grandparents did, and what their sense of justice used to be. But we have no idea about our grandchildren or great grandchildren Our dead ancestors are strangers, indeed, yet the future generation consists of absolute strangers.

True, most people of our generations are strangers too, yet we can at least encounter them and their sufferings and joys in the newspapers, television, and even in personal experience. Yet we cannot even imagine the life, the needs, the sufferings and the joys of future generations. This is why I said that they consist of absolute strangers.

The next question is, whether absolute strangers can raise claims to us before they are born? If we say, that they have rights, can we also say that we can be punished if we infringe upon their rights? But who is going to sanction? The future generations not, because they are not. Only we can sanction ourselves, if we do something that infringes the rights of a future generation, a right which they do not possess. Thus, their rights are our projections. We project them as being just like ourselves. We project ourselves into future generations, presupposing that what is right for us is right for them, and not wronging them means not to do things we do not wish to have been done to us,. Basically, the golden rule of justice. In doing so, we might superimpose our image of what is right to a generation yet unborn. But what if their needs would be different from ours?

In his remarks on the philosophy of history, Walter Benjamin dwells on the thought that we are never jealous or envious of future generation. If it comes to future generations we are always absolute well wishers. Moreover, we, traditionally, erect buildings for the enjoyment of future generations, plant trees, under the shade of which not we, but they are going to enjoy. We want them to inherit blessings. What we expect from them is keeping us in their remembrance, in their good remembrance, that neither our person, name, nor our deeds should ever be forgotten. We want them to achieve for us what we could not do, to become what we failed to become. We project our wishes, desires-f immortality included -into the lives and needs of future generations.

Such a projection was in times bygone quite rational, for the world changed but slowly and the need structure of children and grandchildren differed not substantially from the need structure of their ancestors. Nowadays, similar projections seem less rational, for we know less about the lives of our grandchildren than our early ancestors in their times did. Yet all in all, doing things in favor of future generation can hardly be described in terms of mere obligations, and certainly not in terms of rights.

But there is an obligation we are aware of.

No generation we know about, entertained the wish to leave a worse world to next generations than the one they inherited from their ancestors. This is also the wish of our generation. We can fear that our grandchildren will even fare worse, than we did, but we cannot wish that they should, and we wish that at least they should not fare worse. Future generations cannot have rights, unless we speak only figuratively, we, however, still have the obligation to leave a better world to them than ours, or at least do not leave a worse one. As far as it is possible.

We feel our obligation to do our best not to worsen the situation for future generation, in the sense what we wish, we desire.

If this is an obligation, then it is also an obligation without rights. But is it?

When we speak about future generations, we normally have in mind our own children or grandchildren. The future generation of our own family, of our own people, our city, our state. It is expected, that we do our best to improve their lives. Yet, what happens if while speaking about future generations we have in mind all people who are going to live on earth after we die? What if we have planetarian responsibility in mind? If we presume, that we carry responsibility not just for the fate of our own grandchildren, but also for the fate of all grandchildren on earth? If we assume that there is such a responsibility, then we also have obligation?

There are two kinds of responsibility: a retroactive and a prospective one. We carry retroactive responsibility for acts we have done, and we carry prospective responsibility in case we are in charge. Just like a captain is in charge of crew and passengers Planetary responsibility would then mean that I am in charge of human habitat in general, and in charge of the future of the human race, also in general. Yet, even in this case we could hardly say that future generations of our planet are the bearers of rights. We could only say that we have obligations towards all future generations. Yet, what kind of obligations?

While speaking about intergenerational justice, we have in mind dynamic justice not static justice, the kind of justice constantly under contestation. In the procedure of contestation of justice arguments need to have recourse to something else than justice. They normally have recourse to two main values: freedom and life. If someone claims on the ground of justice rights to future generations this must be the right to life and the right to freedom.

The value of life has entirely different interpretations. Right to life can mean right to be born or right to equal life chances or right to good life and so on. Freedom as right has also several interpretations such as independence personal and national, autonomy (moral freedom) liberty (political freedom) and else. The question can be raised: which among those interpretations of life and freedom can promote the lives of future generations? We can ask further on, whether we can improve the life for all future generations on earth, or only for the future generation of our family, city or state?

Let begin with freedom. Moral autonomy or heteronomy of future generations cannot be furthered, neither can be restricted by us. We are not in charge of them. Neither are we in charge of national independence or personal independence of future generations, or persons within future generations. Yet we can be in charge of their political liberties, we can be in charge of their citizens rights, and we can be in charge in promoting, as Hannah Arendt expressed herself, their right to have rights To put it bluntly, only in liberal democracies are we in charge of the liberties of future generations. Our obligation is to keep and to further our institutions of liberties, which on their part allow all generations to come to interpret freedom freely and institutionalize their own

understanding of it. It is the obligation of the population of a liberal democracy to leave the practice of contestation of justice for future generations so, that they could decide what is right for them.

As far as liberties are concerned we cannot do more for all the future generations on earth, than to maintain the practical idea, the testament suggested by Arendt, the right having rights (this is the so called human right) and to work on our own liberties we testate on our own descendants in our state, city, culture, world.

And what about the value of life? What if we have recourse to life in our contestation of justice?

Let me accept first the proposition of Kant about the primacy of freedom.

The value of life of the next generation can be defined as right to life in the interpretation of right to be born.

If I do not attribute any rights to future generation on the already presented ground, I cannot make sense of the interpretation of the right to be born. I speak about obligations without corresponding rights. I do not ask whether it is the duty of presently living generation to give life to the next, for they do it without obligations, out of pleasure. I rather ask whether this is the duty of every single person. The answer would be that it is not, unless we believe that it is. Free choice enjoys precedence. In view of the same question one can also ask, whether it is the right of every healthy adult, having as many children she or he wishes and can have? I speak now of rights of the present, not those of future generations. In this case the formula of liberties applies. "One can, if one so will." Biopolitics of all kinds restrict liberty and narrows down personal freedom, it is irreconcilable with liberal democracies.

There are two other interpretations of the value of life, such as life chances and good life. The question is not raised then in the following way: do the unborn have rights to good life or good life chances? Such a question would be merely rhetorical. One rather asks whether we admit our obligations to enhance the life chances of future generations. Are we in charge of the future generations of our state, city etc, or are we in this case also in charge of all future generations on earth?

The answer to this question depends on our action radius.

In case of liberties, we can care for the future generation in our state and city, leaving them the institutions of liberties and the right to have rights, and we are in duty bound to do it, for they are all our own rights. We can also maintain further the claim for the right to have rights (human rights) as a regulative idea in view of the present generations in non-democratic political systems, although we cannot institutionalize those rights. If we admit such an obligation in view of the present generations, we, by definition, promote the same right also for all the future generations on earth. As it can be seen, our action radius is fairly limited.

Greater problems arise about the interpretation of life as “good life” Since there is no “good life” in a traditional philosophical understanding of the world without freedom, if one cares for the freedom of future generations, one also cares for one of the constituents of good life, even if not for the others. There are, however, additional difficulties. The main among them being that the image, the model of good life differs substantially also in our culture, not to speak about different cultures, and we hope that this will remain the case also in the future. Everyone transmits their own image.

Equal life chances is, in contrast, an interpretation of the value of life which leaves a broad free territory of concretization for the interpreters. I might refer here to Hegel’s description in his “Philosophy of Right” of the rights he called “moral rights”, such as the right to pursue our own happiness in our own way, the right to develop our capacities into talents and, finally the right to have a moral concept of our own. I would accept this description as a proper rendering of the content of the term “equal life chances”. Yet, if we think of it, equal life chances in the above understanding, can be warranted also only in a liberal democracy, given that they presuppose a combination of political rights and welfare rights. And, as I said, there might be welfare institution in all possible states, but welfare rights only in liberal democratic states. We remain still in charge of the future generation of our own city or state.

There is, however certain aspects of equal life chances or good life, which are not only dependent on free institutions, for they are dependent on nature. Not just political institutions (democratic, liberal democratic, autocratic, totalitarian etc) are modern, so are science and technology. They are providing knowledge yet they also create structures of needs and need satisfiers. Their accumulation, their progress can be wholesome, but it also pollutes rivers, destroys forests, it transforms clean air or water into a privilege. It cures, but it also causes sickness. It destroys natural beauty and result in the extinction of thousand and thousand species. Nature does not know borders. We cannot preserve nature only for the future generations of our own state, but we must include all the future generations who are going to share mother earth in the not very far future. The living generation is in duty bound to prevent the deterioration of our natural environment not because the future generations claim their possible or imputed rights, but because we are alive, and while alive we are also in charge of the earth, of nature, of the livelihood of our and of future generations.

Taking care of nature is not as novel thing, neither is it novel, that the present generation has to make some sacrifices for future ones./Agriculturists or animal breeders of old times also made such sacrifices. What is new is the planetary impact of our actions, which makes it more difficult to comprehend the cause/ effect relation in proper light.

To sum it up: there are obligations without corresponding rights. The cases of prospective responsibility, of being in charge, also implies obligations irrespective of the

circumstance whether the parties towards whom we have obligations are the bearers of rights or not. Intergenerational justice does not presuppose extant rights whereas potential rights are just projections or metaphors with little relevance, for they are not binding.

What is binding, depends also on our perception, on our sense of responsibility, on our moral sense of justice.

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