

Present Rights for Future Generations

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Abstract

In this paper, I defend the view that within a rights-based ethical framework, the moral status of future generations is best understood as that of present rightsholders. I argue that in this way it can be justified that we have obligations towards future generations. This justification in turn is of great relevance for many issues in moral theory and applied ethics.

In the first part of the paper, I argue that the fact that future persons will have rights in the future cannot fully account for present obligations. The missing link in this argument cannot be provided by approaches that infer those obligations mediately.

In the second part of the paper, I argue that existing is not a necessary condition for being a rightsholder. First, our own future selves should be said to have rights even though they do not exist at present. Second, even at present, uncertainty challenges the relationship between rightsholders and obligation bearers: often enough, obligations depend on presuppositions or suspicions about other persons' existence. In light of these cases, we should conceive of rightsholders as place holders, that is, sets of (actual) individuals whose existence or identity can be unknown or indetermined, with specific properties. Therefore, future generations can coherently be said to have rights now that correspond to our present obligations towards them.

Keywords: *future generations, rights, sustainability, nonexistence*

1 *Introduction*

It is estimated that in 2050, global warming will have reached the two degree mark that is considered as critical for the conservation of current living conditions [12, p. 9]. Our carbon emissions, therefore, are contributing to potentially disastrous effects for future generations [11]. But do we thereby violate their rights?

Numerous challenges arise when we consider obligations towards future generations in a rights framework. Future generations do not exist yet. So how can we attribute rights to nonexistent beings? As a further complication, some of our actions determine who will come into existence in the future. This fact generates the so-called non-identity problem, since in those cases nobody will be made worse off by our actions, which contradicts the intuition that some such acts are wrong nonetheless [15].

In this paper, I concern myself with the first challenge. This is the problem of offering a consistent account of whether and in what sense rights can be ascribed to future people. Only on the basis of such an account we can tackle issues related to the non-identity problem and infer concrete implications for today's policies and individual action.

The issue of sustainability and future generations is widely discussed in moral philosophy today. Several philosophers have proposed arguments, within a rights framework, of accounting for obligations towards future generations. These include what I call the direct approach (the argument that we can directly violate future rights of future people), the argument from commitment (which says that obligations towards future people are implied by our commitment to human rights or concepts such as dignity), and chain arguments (which can be understood as implying an intergenerational contract). All of these accounts infer present obligations from future generations' future rights.

In the following, I will argue that this future-rights-for-future-persons-view faces a difficulty, namely that there is a missing link in the argument. I will then argue that future generations can, alternatively, be conceived of as present rightsholders. The present-rights-for-future-persons-view also captures our intuitions concerning future selves and cases that involve uncertainty.

2 *A difficulty with inferring obligations towards future persons from future people's future rights*

The approaches that I will consider in the following all have in common that they do not accept the view that future generations have present rights. But they argue that we have present obligations towards them as future rightsholders. The first, direct approach consists in the argument that we can today violate future interests of future people, and thereby their rights. We therefore have an obligation to omit these acts. For example, Feinberg argues that “[t]he identity of [future generations] is now necessarily obscure, but the fact of their interest-ownership is crystal clear, and that is all that is necessary to certify the coherence of present talk about their rights” [8, p. 65].¹ A difficulty with this approach is that it is unclear how not yet existing rights can be binding for us right now. If we have obligations towards present people because of their present interests, it does not automatically follow that we also have obligations towards persons who will have interests or rights in the future. Those future rights cannot be violated today, since they do not exist yet. There seems to be a missing link in the argumentation.

The missing link in the argument might, one could argue, be provided by approaches that do not directly infer obligations from future persons' rights. For example, Beyleveld, Düwell and Spahn argue that “[t]o deny that future humans have the same human rights as we do is to deny that there are human rights at all” [2, p. 550]. Committing ourselves to human rights implies caring for future generations, since we are in a position to violate their (future) rights [5]. Even though this argument can solve some of the problems of the direct approach because of its impartiality and independence from individuals, it does not provide the missing link from future persons' rights to present duties. It is true that future humans *will* share important characteristics with us, and it is true that they *will* have rights, and it is also true that we can today act contrary to their interests and rights; but it is not clear why this should lead us today to act in certain ways. Since future rights do not exist at present, they cannot be violated at present. It is hardly reasonable to deny the existence of rights, but at the same time allow for their violation, that is, the existence of violated rights. But if we cannot violate future generations' rights now, then an appeal to their rights cannot provide a reason for us to act in their favour.

Maybe such an account could be provided by a chain argument such as Howarth's so-called chain of obligations. According to him, this chain is “mediated by the requirements of justice between contemporaries that

mandates our concern for future welfare. We owe it to our children, who will owe it to their children, who will owe it to their children, and so on as far as the mind can see. Thus our responsibility for the distant future follows directly from our obligation to our existing children” [13, p. 138]. It seems that this theory might be able to close the argumentative gap, since it relies partly on present rights towards present generations. But one could object that the problem is simply deferred. The idea is that one of the premises of Howarth’s argument, “[i]t is wrong to place others in a position where they are unable to fulfill their moral obligations to third parties” [13, p. 135], is not adequately justified in cases in which those third parties do not exist (yet). After all, on which basis should we accept that we have moral obligations to nonexistent third parties?

It seems reasonable to attribute future generations strong rights claims, especially in cases of actions that impose great burdens on future generations such as climate change. As Partridge notes, unlike mere beneficence, rights come with a stringency, urgency and a demand to be treated with respect [16, p. 43]. There are good reasons to think that we might need such a strong account in order to justify and enforce sustainable and future-oriented ways of acting. Even if we deny that the missing link is problematic, proponents of the account will probably have a hard time to account for a strong notion of future person’s rights. They cannot hold that those acts constitute a rights violation at the time they are taken (they will do so only in the future, since the rights that are violated do not exist at present). In contrast, rights claims of present persons can be violated at present. This qualitative difference seems to demand a substantially different consideration in moral theory.

I do not wish to claim that the missing link argument affects all theories that adhere to the future-rights-for-future-persons-view. There are many other theories that justify obligations towards future persons in a rights framework and that would need to be examined in this respect. Most recently, Bos’ chain of status connects the argument from commitment and chain arguments [3]. On top of that, there are theories that allow for the possibility that our obligation towards future generations does not correspond to a (future) right on their side. Such an account could, for example, be provided by reference to a Kantian duty of beneficence (although it is unclear whether these duties can be perfect) or so-called non-correlational obligations (which I believe would be quite problematic for other reasons as well²). Maybe those or other rights-based theories imply strong enough obligations towards future generations, without having to assume their present rights. As it has

hopefully become clear, though, the derivation of these duties can not be as straightforward as it might seem. Given that the future-rights-for-future-persons-view does have some difficulties, it might be worthwhile to take a look at alternative views as well.

Although I do not want to press the point here, another argument against the future-rights-for-future-persons-view is that it cannot account for the notion of past generations' rights. For example, we could think of obligations to preserve the remembrance of the Holocaust as implied by corresponding rights of the victims of this horrible crime (though this might be not the only reason that implies this obligation). It therefore seems that past generations can also be said to have rights. Why should rights that have existed long time ago and will never exist again ground any moral rights claims to my present behaviour?³ It seems that one way to avoid this difficulty is to argue that both past and future generations have present rights.

3 Future generations as present rightsholders

The idea that future generations have present rights might not only sound implausible at first, it is also controversial whether it is actually possible. Among others, Beckerman and Pasek state that existing is a necessary condition for having rights [1]. This argument can be understood in two ways. First, it could be argued that a nonexistent person cannot be said to have anything at all. After all, it does not make sense to say that a nonexistent person has brown eyes or a blue backpack. This argument can be countered by pointing out that one does not have rights in the sense that one has those attributes.⁴ Rather, there are attributes that come with the moral status of being a rightsholder. Depending on one's moral theory, this property could for example be rationality, autonomy, sentience, or a mixture of those. Based on this concept of rights, the argument might be explicated in a second way:

- (1) If and only if some being X has the property A , it is a rightsholder.
- (2) To have properties (including property A), this being must exist.
- (3) Future persons do not exist (yet).

∴ Therefore, future persons cannot have rights (yet).

In the following, I will refer to this argument as the nonexistence argument. Its conclusion contradicts the claim that future people can have

rights now. It therefore poses a problem for the view that future generations have present rights.

It might also be worth noting that the nonexistence argument can be employed contrary to its inventors' intention. After all, if the nonexistence argument is accepted and if we add the rather uncontroversial⁵ premise

(4*) Iff some being X has the property A , we can have obligations towards X .

then it follows from (2)–(4*) that

∴ Therefore, we cannot have obligations towards future persons (yet).

It can be argued, therefore, that the views that infer present obligations from future rights can allow the nonexistence problem to sneak in through the backdoor. This is the case whenever a notion of duties or obligations is used that is justified by reference to the existence of other persons. This usually is the case for correlative rights and duties. If obligations can be characterized as other people's rights claims, then the existence of the obligation, it seems, would depend on the existence of the rights claim. But also, if obligations are grounded in a notion of respect or fairness towards (autonomous, rational, sentient) beings, then it seems that these obligations do not exist in the case of future persons.

But it might be replied that even if this point is granted, it does not diminish the counterintuitiveness of a notion of rights that exist without a rightsholder. In the following, therefore, I argue that existing is not a necessary condition for being a rightsholder. I will present two arguments for that conclusion. The first argument is about our own future selves. According to the nonexistence argument, they could not be granted rights, which is implausible. The second argument is about epistemic uncertainty. I argue that if we grant rights in certain cases where future generations are not concerned, we commit ourselves to do so when they are.

3.1 *Future Selves*

Let me add two new premises to the nonexistence argument:

(4) Our future selves are beings that do not exist yet.

(5) Therefore, they cannot have properties (including property A).

It seems to follow that our future selves cannot be ascribed any rights (yet). But this seems to be an unacceptable conclusion. For example, in

The bomb case: Tim hides a bomb under Tom's desk just before his sabbatical, asserting that it will not explode before Tom will be back.⁶

As Tom's one year older self does not exist yet, it cannot have a right not to be harmed. But surely, we would insist that hiding the bomb constitutes a rights violation towards Tom. However, it could be objected that hiding the bomb violates his present rights not to be hurt in the future and therefore no future right needs to be assumed to condemn Tim's action. This objection can be countered by pointing out that "present rights not to be hurt in the future" presuppose a morally relevant identity relation between present Tom and future Tom. While it is obvious that there is such a relation, it is worth putting in question how and under which conditions this relation is morally relevant. (I do not need to uphold the stronger claim that there is no way in which future people exist now.) This is especially so since one can ask, second, what morally relevant difference in status there is and should be between our future selves and persons not yet born. For example, consider

The nursing home: Caroline, in the present moment (in 2016), is 10 years old. In 2096, she will, as we assume, become a nursing case. The same is true for Bert, who will be born in 2018.⁷

Let us assume, as seems reasonable from a rights-based perspective, that there is a general right for nursing if it is needed. In 2096, undoubtedly both 90-year old Caroline and 78-year old Bert will have the right to be nursed. This is so although neither 90-year old Caroline nor 78-year old Bert exist yet. It seems absurd to argue that 90-year old Caroline, at the present moment, has a right to be nursed, but 78-year old Bert doesn't. So either we concede that both of them have a right to be nursed (which could yield obligations for us now, for example, to build nursing homes), or we deny present rights to both future Caroline and Bert. Each way, there is no reason why we should consider future Caroline's rights to be different from future Bert's rights, nor does this seem intuitively plausible. The upshot is that future persons – at least those of whom we know that they will exist – have the same rights status as our own future selves.⁸

However, conceding that neither our future selves nor future people have rights would lead to absurd conclusions. After all, this would mean

that rights only exist for split seconds, pertaining only to those persons who exist at that point in time. We could then not justify any moral decisions with reference to present rights, as the rights violated would always belong to the future beings affected by the decision. But this would mean that many of the ways in which we speak of rights are actually quite mistaken (e.g., “I have the right now that you do not hide this bomb”). If we want to avoid those difficulties, we have to reject the nonexistence argument.⁹

3.2 *The argument from uncertainty*

How do we know that other people exist? While this is considered to be a somewhat tedious question in moral philosophy, it is also a very decisive one. If other people do not exist, according to the nonexistence argument, they cannot be ascribed any rights, and epistemic uncertainties therefore can affect our moral judgements. In the same way, they are influenced by ontological uncertainties about whether people do or will exist.¹⁰ Some rights are dependent on contingent properties. For example, you have a right to protect your property only with regard to things that you actually own. In contrast, basic human rights should be attributed to any human being. It has often been pointed out that the individual identity of rightsholders does not need to be known to ground obligations towards them – for example, the police officer has the duty to protect every citizen [1, p. 23]. In other words, epistemic uncertainty in those cases *does not* influence rights ascription. But what about ontological uncertainty? Consider the following scenarios:

The river: Imagine Bob is going for a walk at night along the riverside. Suddenly, he sees something moving on the water. It is not possible to go any closer, and he is not sure whether what he sees is really only the branch of a tree or a human being.

Does Bob have an obligation to call the water rescue?¹¹ As long as there is a possibility that the thing in the water is really a human being, most of us would agree that he has this obligation – even if it turns out that Bob has only seen a branch. But, of course, there is a difference between cases in which a present rightsholder might exist and cases in which a future rightsholder might come into existence. Let us consider

The playground: Again, Bob is going for a walk at night along the riverside. He discovers that the fence of a nearby

playground is rusty. While it is still stable at the present moment, in a few years' time, it might not be stable enough to prevent children from breaking through the fence and falling into the river.

The fence poses a danger to a child that might or might not exist today. If Bob has an obligation to repair the fence, he has that obligation with regard to a place holder that is indeterminate both in terms of existence and exact identity. I use the term "place holder" to define a set of actual individuals whose existence and / or identity is unknown or indetermined. Let us consider another case that involves ontological uncertainty:

The drug: A doctor has to decide whether to prescribe drug A or drug B to a severely ill patient. Both drugs will cure her disease. Drug A will cure it at once, while drug B requires a potentially stressful long-term treatment. However, drug A will have harmful effects to a fetus that is already existing or conceived within two weeks of taking drug A. Supposedly, it is not possible to rule out the possibility that the woman is already pregnant or going to conceive a child within two weeks.

The decisive question here is: Does it make a difference whether the woman is already pregnant or not when we decide whether to choose A or B? It is far more likely that our decision will depend on the probability that the woman will be pregnant in two weeks' time, that is, whether a human being will be harmed by our decision or not.

What if we alter the drug case such that the doctor knows that the woman is not pregnant, but he knows that she will conceive a child in the next few days? Probably most of us would assume that he has a duty to take this fact into account, even though he knows for sure that no rightsholder exists at present. The point of the above examples is that ontological uncertainty, in some cases at least, does not affect our moral intuitions.

The distinction between uncertainty about present and future existence can only be gradual: It does not seem reasonable to accept the rights of a place holder that has only a 1% probability of present existence, and to categorically deny the rights of a place holder that has a 99% probability of existence in the near future.

If we accept these intuitions, we also have to accept that they blur the distinction between existent and non-existent beings with respect to

their status as a rightsholder, and that this difference might be better understood as gradual instead of dichotomous.

If I am right with the above argument, then it would be more adequate to define rightsholders in terms of place holders rather than “human beings” in premise (1) of the nonexistence argument, which would have to change to: If and only if some place holder X has the property A , it is a rightsholder. Since a place holder can have properties without existing, (2) would not apply any longer, and the conclusion would not follow.

3.3 *A positive characterization*

Ernest Partridge argues that future persons can have passive rights now [16, p. 60]; [7]. This sounds reasonable: future persons cannot act, but they can be treated in certain ways. Partridge illustrates his argument with a rather curious example:

“In ancient times, the Phoenicians cut [the cedars of Lebanon] from the mountains and thus brought devastating floods and silt down to the valleys below. Can we not say that the Phoenicians, by this policy, defaulted in their duties to the present inhabitants of Lebanon? [...] It would seem that the duty to protect the right of the present Lebanese to have the cedars applied to those who were in a position to protect this right: the ancient Phoenicians” [16, p. 54].

The present Lebanese have no present rights to the trees, as there is no rational agent alive who is in a position to protect this right. For Partridge, a right exists if and only if some existing person is in a position to interfere with (the rightsholder’s) interests [16, p. 41].¹² Partridge’s account poses a lot of questions. How can nonexistent beings be “treated” in a certain way? Does this account not create infinite moral obligations many of which one is oblivious of? And does this account lack plausibility as it seems to give equal weight to present and future generation’s rights?

The first point is crucial. We can counteract future persons’ interests in various ways. When facing moral decisions, we must therefore consider the probability that we violate a place holder’s right by acting in a certain way. We act contrary to others’ interests if our action decreases the probability that their interests will be fulfilled. This relationship between one person’s action and another person’s (even contingent) in-

terest constitutes the right of the latter. Epistemic and ontological uncertainties regarding rightsholders might have been exceptional cases a few centuries or even decades ago. Today, they are everywhere: moral relationships towards people that are unknown, whose number and even existence often remain unclear. Consumer choices might be a good example. Whether online shopping, banking, or big industry – globalisation and development have changed the world we live in. One does not, therefore, have to appeal to scepticism about other persons' existence when stating that uncertainties are common.

These considerations might provide us with hints about how to tackle the remaining two issues. Is the approach impossible to put in practice? After all, we might violate future person's rights all the time without noticing it (every act has potential implications for other persons). While this might be true, it is clear that in many cases, we know exactly what we are doing. Climate change, diminishing resources, overpopulation, nuclear waste, unjust and unsustainable market systems are just some examples of issues that are clearly harmful to future generations and pose a threat to their very subsistence. In those cases, it would follow that we are obliged to care for future generations.

The third question deserves more attention. Is the view too demanding in that present and future generations are both granted present rights, and how should they be distinguished? In talking about future rightsholders, we have to estimate the probability that future persons will exist and will be harmed considerably by our actions. If this probability is high enough (presumably above a certain threshold) we have to acknowledge that these persons are rightsholders. However, it should be noted that many contemporary discussions concern actions whose relevance for future persons' wellbeing is not under question.

In these cases, we should remind ourselves, as Henry Shue notes, that the present generation also has basic rights that must be respected [17]. Steigleder argues that decisions concerning future persons should be made from an internal perspective of the present generation, since our own rights are at stake in those decisions as well. They therefore precede over similar interests of future generations [18].¹³ Discount rates can thus be avoided, while at the same time the plausibility of the rights-based account can be preserved. This is arguably even more important and relevant when future generations are conceived of as present rather than future rightsholders.

4 Conclusion

The upshot of this text is that the nonexistence argument should be rejected. I argued that in explaining obligations to future persons with their future rights one faces a challenge in linking future rights to present obligations, especially if one wants to uphold a strong notion of future peoples' rights. Alternatively, we could treat future generations as present rightsholders. This becomes especially plausible when we take into account the fact that ethics nowadays has to deal with more and more uncertainties. For example, the view could be applied to the challenge of climate change that was mentioned as an introductory example. The future generations that will suffer from man-made climate change, on this account, are the value that the placeholder, conceived as a variable, will take in the future. This placeholder can be ascribed present rights claims. The approach presented in this paper thereby helps to theoretically reinforce our intuitions that we have to strengthen our efforts to prevent climate change, not only because of its effect on this and the next, but also distant generations.

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Notes

- ¹ Gewirth writes that a “right is an individual’s interest that ought to be protected for his own sake and controlled by him. Since future agents will have such interests, they have rights” [9, p. 209]. Davidson makes the same point. He argues that we can affect the interests of future people, and therefore their rights: “I see no logical problem in the existence of a present duty to respect possible future rights of future generations” [4, p. 475]. Steigleder speaks of the “truism that people who do not yet exist do not have rights” and asserts that nonetheless “duties accrue to us today from the rights the people living in the future will have” [18, p. 8].
- ² Gosseries gives three examples of non-correlational duties, two of which are based on an interest theory of rights [10]: First, if many people have an interest that is not significant enough to constitute a right on an individual level, these interests,

- taken together, might still ground a corresponding obligation. One problem with this case is that it is not clear why a significant collective interest would not constitute a collective right, which Gosseries wants to avoid. Also, it remains unclear whether these dispersed significant interests constitute rights and obligations that are as strong as those inferred from individual significant interests. Even then, it would not be obvious that obligations can be inferred from non-significant individual interests. This claim would need further justification. The second of Gosseries' cases for non-correlativity is demandingness for the obligation bearers. But should states be in the position to grant or withhold right statuses? Obviously, this might be problematic. Gosseries' third case, powerlessness, says that will theorists could not grant rights to powerless people. So if we are supposed to have obligations towards them, this must be based on their interests, not their rights. But seen in this way, would this not lead to an inflation of obligations similar to the "inflation of rights" that will theorists, according to Gosseries, want to avoid [10, p. 449]?
- 3 Interestingly, on first sight, this case poses a threat to both will and interest theorists: of course, past generations cannot anymore claim their rights, so it seems that will theorists cannot endorse the notion of the rights of past generations. On an interest account, it could be argued that past generations once had significant interest and rights, but this fact does not provide us with an explanation as to why we can have obligations towards them now.
 - 4 Here, I disagree with Beckerman/Pasek, who argue that "properties, such as being green or wealthy or having rights, can be predicated only of some subject that can exist" [1, p. 20].
 - 5 Unless we are deep ecologists, we would agree that it is not possible to have obligations towards a stone, or a room-palm tree, but that we have obligations towards a child, and that there is a criterion to distinguish these cases.
 - 6 Similar examples have been brought forward by Parfit [15, p. 356]) and Beckerman [1, pp. 17-18].
 - 7 A similar case is presented by Partridge. See [16, p. 56].
 - 8 This is what Elliot calls the non-concessional view: „there is no present bearer of the right but that, nevertheless, the right exists now and its present existence is contingent on the future existence of some person who will then be the bearer of the right“ [6, p. 161].
 - 9 It is possible to explain within the future-rights-for-future-persons-view why we have obligations towards future selves. However, for the reasons mentioned above I believe that this renders a weaker notion of future selves' rights than one might (intuitively) want.
 - 10 It is hard to determine when a person's existence begins or ends. The most consensual account probably is that human beings do not start to exist before they are conceived, and do not cease to exist until they are brain dead. But there might be good reasons for quite different definitions. These are crucial questions to many of the topics currently discussed in applied ethics (for example, concerning abortion, organ transplantation, or, in some cases, medically assisted suicide). Still, for the purpose of this paper, I will leave these questions open, as it is not decisive to my argument where exactly the line between existing and not existing is drawn. It is also necessary to distinguish among non-existent persons people who have existed in the past from future generations. (All of these persons are actual, in contrast to merely possible people).

- 11 The example is similar to Elliot’s missile case. He defends the non-concessional view suggesting an analogy to future generations by arguing that if we fire a missile on an island we violate contingent rights of the potential inhabitants [6, p. 161].
- 12 See [16, p. 57]: “My duty not to be negligent is a duty to anyone who might be injured, and if my duty is fulfilled [...] the rights of unidentified multitudes will thereby be respected.”
- 13 Additional considerations might come into play here when weighing rights claims. Those might, for example, include issues such as demandingness, emergency, personal bonds and proximity.

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