

SYMPOSIUM

MORAL AND POLITICAL PHILOSOPHY FOR A BROKEN WORLD?



DEMOCRACY AND FUTURE GENERATIONS

BY

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Democracy and Future Generations

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It is sometimes suggested that democratic principles require that everyone whose interests are affected by a decision should be included in the decision-making process. For instance, Kristian Skagen Ekeli writes that “everyone whose living conditions and life prospects are seriously affected by a collectively binding decision, should also have the opportunity to influence the decision process and participate or be represented in the making of that decision.”¹ Lecture 17 of Mulgan’s *Ethics for a Broken World* begins with an observation and two important questions: “present decisions always *impact* (often very seriously) on future people. Not everyone *affected* by affluent “democratic” decisions was able to vote. But was this really democratic? Did affluent democracies treat future people justly?”²

These two questions need to be taken separately, since it is possible, firstly, for democracies to act unjustly and, secondly, for

¹ K. Ekeli, “Constitutional Experiments: Representing Future Generations Through Submajority Rules,” *The Journal of Political Philosophy* 17 (2009): 440-61, at p. 445.

² T. Mulgan, *Ethics for a Broken World: Imagining Philosophy After Catastrophe* (Montreal & Kingston-Itacha: McGill-Queen’s University Press, 2011), p. 211. Subsequent unattributed page references are to this book.

non-democratic arrangements to treat people justly.³ I shall argue that there is nothing *undemocratic* about excluding future generations. Whether we treat them justly is a more difficult question, which I do not answer. If we are unjust to future generations though, this is not because of our democratic institutions. While these institutions do not guarantee justice, there is little reason to think that alternative institutions would perform better on this score, and some reason to think that they may do worse; a (liberal) democracy may offer better prospects of justice, for both current and future generations, than likely alternatives.

I

The All Affected Principle

Democracy means the rule of the people. *Which* people, however, is far from obvious. Until comparatively recently, it was commonly assumed that ‘the people’ were defined by national boundaries, but this is problematic. First, there are various questions about who ‘the British people’ are. But, even assuming that these are resolved, there are deeper questions about what the British people have the right to decide. If their decisions affect only themselves, and not outsiders, then there seems no reason to object. Matters are less clear when the decisions of one ‘people’ profoundly affect other peoples, such as neighbouring states. For instance, if the British build a coal-fired power station it will

³ It has been argued that democracy is a requirement of justice; for example T. Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008). If this is so, then it would appear that future people cannot be treated *fully* justly. However, I assume we can still distinguish treatment that is just and unjust in other respects.

contribute to atmospheric pollution affecting Sweden. What gives the British the right to make this decision?

The all affected principle says that all of those affected by a decision should be included in the decision-making body (demos). This has some intuitive appeal.⁴ One reason for extending the franchise to ‘the people’ is so that the people can protect their own interests from predatory rulers. Thus, we might think it natural that all whose interests are affected should be given the opportunity to protect their interests. Nonetheless, the all affected interests principle faces a number of difficulties which, I believe, should lead us to reject it.

Note that I do *not* reject the starting assumption, *viz.* that there is something wrong with the British people unilaterally imposing pollution on the Swedish. I can accept that this is unjust, but I think that the all affected principle fails to explain what is wrong here. The wrong is that the Swedes are unjustly harmed by the decision, not that they were not enfranchised in the making of it. Enfranchising them would not necessarily have legitimised the decision, assuming there are losses that a majority cannot permissibly impose on a minority even democratically. It may be suggested that excluding the Swedes represents an additional wrong; for the UK to pollute without enfranchising the Swedes would be more wrong than to do so after a vote in which they were included. But this further wrong is less obvious. I think our intuition of wrongdoing can be explained simply by the illegitimacy of the harm.

Before criticizing the all affected principle, however, it is necessary to state it more precisely. As Goodin observes, any

⁴ This appeal may be partly due to the principle’s lack of determinate content. I assume that it is most plausible when interpreted as ‘all affected interests’ (as opposed, for instance, to all those causally affected). Even so, its implications rest upon a theory of interests, which will not be developed here.

application of this principle must resolve a number of indeterminacies.⁵ For instance, we cannot enfranchise only those *actually* affected by a decision, since who is affected by a decision will depend on what is decided which, of course, will depend on who is included in making it. Since any decision may have far-reaching consequences, Goodin argues for an expansive reading of the all affected principle, according to which we should enfranchise all whose interests are *possibly* affected by any possible decision. The easiest way to do this, he adds, is to enfranchise everyone on every decision.

We might add one other possibility that Goodin does not explicitly address. We might ask whether only actual (present or future) persons should be enfranchised or whether all *possible* persons ought to be enfranchised. I do not see why we ought to enfranchise an actual person whose interests are only possibly affected, but not a merely possible person. One obvious reason to exclude the latter would be that their interests are less likely to be affected, since it is only possible that they will even exist and thus have interests to be affected. But there may be possible people who will certainly be affected *if* they exist, so the possibility that these people will actually be affected may be no less than the possibility of other, actual people being affected. Moreover, in Goodin's view the likelihood of being affected does not matter. People should not be disenfranchised simply because the chance of their being affected is small. If we want the demos to be maximally inclusive, then it seems that not only all actual people (present and future) ought to be included, but even *possible* people, who may never exist, should also be included, since their interests may be affected if they exist. It may be responded that only actual people are of moral concern, so the interests of merely

⁵ R. E. Goodin, "Enfranchising All Affected Interests, and its Alternatives," *Philosophy & Public Affairs* 35 (2007): 40-68.

possible people do not matter. My argument below does not assume the inclusion of possible people; I merely wish to highlight the difficulties in identifying who is affected.

II

Against the All Affected Principle

Advocates of the all affected principle claim that it allows those affected by a decision to protect their own interests. Democracy is not simply about voting though; it also involves deliberative justifications. If Swedes are enfranchised, then they can call upon Britons to justify their decision. The British might simply say ‘it’s in our interests, and we don’t care about you’, but this is unlikely. Public deliberation usually forecloses certain lines of justification, including such appeals to naked self-interest. The aim, then, is that deliberative inclusion will lead to better (more just) outcomes, since voters will be ‘forced’ to consider the interests of others. This is a worthy aim but, I think, the wrong way to go about achieving it.

Having to justify ourselves to others makes it more likely that we will take their interests into account. It does not, however, require that we think of them as entitled to inclusion in the decision-making body. The all affected principle may fit with some of our intuitions, but it is radically out of keeping with other intuitively acceptable practices, as I have argued elsewhere.⁶

⁶ See my “Defining the Demos” *Politics, Philosophy and Economics* 11 (2012): 280-301 and related arguments developed in my “Democracy, Rights and Immigration,” *Theoria: A Journal of Social and Political Theory* 58 (2011): 58-77 and “Scottish Independence and the All-affected Interests Principle,” *Politics* 33 (2013): 47-55.

We ordinarily assume that individuals have the right to make certain decisions even if they affect others. Consider a woman contemplating a divorce; this decision will undoubtedly affect her husband, any children, and perhaps many others (the husband's mistress, for instance). We do not ordinarily think that these others have a right to be included in the decision-making. Perhaps she ought to consider their interests in deciding, but this is very different from saying that they ought to be joint makers of the decision. The decision is hers – and hers alone – to make, but we hold her responsible for the effects of her choice on others.

This decision is not a democratic one, but that does not mean that it is irrelevant here. If we think that the woman is entitled to decide unilaterally, considering but not including affected others, then it shows that decisions need not include all affected parties in order to be legitimate. Thus, either i) democracy is not necessary for legitimacy or ii) including all affected persons is not necessary for democracy. Note that this applies even if others are left worse-off as a result of her decision.

This lesson can be extrapolated from the individual case to group cases. Members of one group might unilaterally decide to stop purchasing goods that they were previously buying from another, even though that decision may have profound affects upon the former supplier. Similarly, I suggest, whether the British people wish to build a coal-fired power station is their decision. If this decision imposes harms upon others, such as Swedes, then we might hold the British people responsible, and perhaps even require them to pay compensation, but this does not require us to say that they ought to have included the Swedes in the decision-making body.

I have said little about future generations, but I hope it is obvious where the argument leads. The mere fact that some people are affected, even negatively, by a decision does not in

itself show that they must be included in making it. Either there is nothing undemocratic in this or we sometimes have the right to make certain decisions non-democratically. If we accept this, then it presumably applies to intergenerational decisions. The present generation has the right to make certain decisions, even if those decisions may impact negatively on future generations. It does not follow that the present generation may do anything that they like, since we may still criticize their decisions as unjust. Nonetheless, these decisions are not illegitimate simply in virtue of excluding future generations.

Whether a given decision is just depends on a theory of intergenerational justice. *Ethics for a Broken World* critically examines several leading contenders, including moral theories based on natural rights, utility, and a hypothetical social contract. Perhaps none of these are satisfactory, but let us imagine that an acceptable theory has been found, perhaps a rule-consequentialist theory of the kind that Mulgan has developed elsewhere.⁷ We can now judge whether or not the democratically-authorized decisions of the present generation treat future generations justly. Perhaps the answer is negative. What should we do in the face of democratic injustice? Can we modify democratic procedures to reconcile them with what justice requires?

III

Democracy and Trade-offs

Democracy can take a variety of forms; for instance, we may or may not have a second legislative chamber, an entrenched

⁷ T. Mulgan, *Future People: A Moderate Consequentialist Account of our Obligations to Future Generations* (Oxford: Oxford University Press, 2006).

constitution, proportional representation, etc. Some of these mechanisms may be more democratic than others, but even if judicial review is less democratic than unconstrained majoritarianism (for instance), this does not mean that it should be rejected. I assume that democracy is the only justifiable form of government in our circumstances, but this does not tell us *how* democracy ought to be weighed against other values.

Perhaps there is a sense in which it would be more democratic if decisions over my private life, such as what religion I should practice, were taken out of my hands and decided by a vote with universal franchise. But, if this is so, then giving me rights over my own private life is a justified departure from democracy. Similarly, if democracy requires a universal franchise (at least among those affected by a decision), then democracy might require us to enfranchise even young children. Restricting the vote to those over, say, sixteen would, on this view, be less democratic, but might still be justified by other considerations. In other words, we need not assume that democracy is something that must be maximized in order for political decisions to be legitimate.

Denying that we must *maximize* democracy is not to say that some non-democratic regime is preferable. But, within the class of reasonably democratic regimes, we may justifiably opt for one that is less democratic than alternatives if it better realizes other values. Thus, when considering questions of institutional design, such as whether to adopt entrenched rights, our argument need not be confined to whether or not such a measure is more or less democratic than unconstrained majoritarianism. We may prefer less democratic institutions if they better realize justice.

IV

Democracy and Constitutionalism

One of the most obvious choices faced in designing democratic institutions is whether to include entrenched constitutional rights, as in the USA, or whether to trust in unchecked democratic decision-making, as in the UK.⁸ It is often assumed that constitutional rights, enforced by unelected judges, are a departure from democracy. But, even if constitutional rights represent departures from democracy, they may be justifiable where they better secure just outcomes. Both constitutional and non-constitutional regimes are within the range of democratic possibilities identified in the previous section, so our choice between them should depend on which better serves other substantive values.

We might expect a constitutional regime to better protect rights than a non-constitutional one, since the point of taking these rights out of ordinary democratic decision-making is to protect them. If the majority can do whatever they like, then nothing stops them tyrannizing over a minority. To give the minority rights is to give them a ‘trump’ card,⁹ with which they can override the ordinary process of democratic decision-making. This allows the minority to protect themselves from what the majority might otherwise do. But this overlooks the fact that there is likely to be disagreement not only over what to do, but also over rights.

⁸ This position is often described as unchecked majoritarianism, but democratic decision-making mechanisms need not be majoritarian. See my “Democracy, Political Equality, and Majority Rule,” *Ethics* 121 (2010): 148-77. Nonetheless, I shall speak of majoritarianism for simplicity.

⁹ R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977).

It is all very well saying that rights ought not to be determined by the majority, if their purpose is to check that very same majority, but they must be determined by someone. Constitutional regimes give the power to determine rights to judges, but this means that a panel of unelected, unaccountable, and (usually) unrepresentative individuals have the power to frustrate the will of the people. Judicial activism has sometimes been a force for good, as in the case of civil rights in the USA, but note that judicial review did nothing, for a long time, to prevent racist segregation and even slavery. Furthermore, it may have been easier to abolish unjust practices had a simple majority been empowered to do so, without the need for a constitutional amendment. Constitutional checks, by privileging the status quo, can be impediments not only to injustice but also to just reforms. While placing the rights of minorities in the hands of a simple majority carries obvious risks, there are also risks attendant to judicial review. We need some reason to believe that judges will do a better job of protecting the rights that minorities should have than majorities will.

There is a considerable literature on the merits of constitutional rights, but not all of these arguments apply to future generations. For instance, Anthony McGann argues that minorities are better protected by simple majority rule than supermajority rules.¹⁰ This is because winning majorities are usually loose coalitions of minorities, so even a small minority may hold the balance of power. If a given minority feel harshly treated by the present majority, then they need only join enough others to become part of a new winning coalition. If they are presently treated badly enough, then they will be willing to ‘sell’ their support cheaply, so should have little trouble finding

¹⁰ A. McGann, *The Logic of Democracy: Reconciling Equality, Deliberation, and Minority Protection* (Ann Arbor: University of Michigan Press, 2006), chapter 5.

coalition partners. According to McGann, minorities are better protected if only a simple majority is needed to form a winning coalition, since this makes it easier to do so. Conversely, if a supermajority is required, then the minority need to find more willing coalition partners.

This argument suggests that the ‘instability’ arising from Condorcet cycles may be a good thing, as it allows minorities to protect their fundamental interests by joining new winning coalitions against previous oppressors. The extent to which this happens depends on contextual features of the political culture. It must be the case that others are willing to enter into coalition with the minority in question, so this offers no protection to a despised minority that others refuse to bargain with, even on favourable terms. Furthermore, only groups with a vote stand to gain from the potential to join coalitions in this way. This argument gives us no reason to think that outside groups, such as foreigners or future generations, are better protected by simple majority rule. Future people are unable to join a present coalition because they do not yet exist.

This example highlights the presentism of contemporary debates about constitutionalism. Most of the arguments focus exclusively on what institutional arrangements protect the rights of present people. But, even if there was universal consensus on *this* question, it would still be an open question whether these arrangements also treat future people justly. We might think that, since future people do not have votes, they need some other extra-democratic protection, of the sort that might be afforded by judges. But, again, this would be too quick. There is no reason to assume that unelected judges would better protect the rights of future people than the electorate as a whole would.

Jeremy Waldron has argued that rights are only necessary as checks on majoritarianism if we assume that the majority will vote

in a self-interested fashion that ignores the interests of others.¹¹ If we suppose, instead, that voters will aim at something like the common good then they will already take the interests, and rights, of others into account in their deliberations. This, on its own, seems to show that constitutional rights may be *unnecessary*, but not that they would be positively bad. We could supplement Waldron's argument, however, by speculating that, in a society where judges are expected to protect rights, citizens may feel it less incumbent on them to attend to the interests of others. They may assume that they have the license to vote self-interestedly, confident that judges will protect justice. This possibility suffices to show that constitutional rights do not necessarily better protect people's fundamental moral rights.¹²

So long as ordinary voters are sensitive to the rights of future people, there is no reason to suppose that these rights will necessarily be neglected. However, one might equally say that 'so long as men are sensitive to the rights (or interests) of women, women do not themselves need the vote.' While we expect (or at least hope) that voters will consider the interests of others, we think that those others ought not to have to rely upon the goodwill of other voters. Women can and should be enfranchised, but this is impossible for future generations. Before concluding I wish to consider several (non-judicial) institutional

¹¹ J. Waldron, "Rights and Majorities: Rousseau Revisited" in J. Chapman and A. Wertheimer (eds.) *NOMOS XXXII: Majorities and Minorities* (New York: New York University Press, 1990), pp. 44-75.

¹² See Mulgan, *Future People*, pp. 253-4: "It is tempting to assume that, for any conceivable future threat, it would be possible to design a political system that perfectly avoids that threat, by embedding certain measures in its constitution [...]. [But] constitutional entrenchment, just like [majoritarian] democracy, is not infallible [...]. There is no good reason to believe that the present generation could design a constitutional system which would do a better job of finding the appropriate balance of responses to future threats than open public deliberation at a later date."

mechanisms that have been proposed to protect future generations.

V

Institutional Innovations

Future generations are a problem for democracy because they cannot be enfranchised. Perhaps we can tackle the problem the other way, by disenfranchising at least some of the present generation. Some have called for the disenfranchisement of the elderly.¹³ When we are making decisions with profound, long-term effects, it is unsurprising that the elderly may take a different, shorter-term perspective, than younger voters.¹⁴ Obviously, any disenfranchisement of the elderly, even over only a subset of decisions, would surely be controversial. Moreover, as Van Parijs notes, such a move may backfire. While the elderly have less to lose from present environmental degradation, they also have less to gain from present over-consumption.¹⁵ Perhaps, with less personally at stake, elderly voters are more likely to be swayed by ethical concern for future generations, whereas younger voters are more likely to privilege their own lifetimes.

Van Parijs' article surveys several other proposals, stopping short of disenfranchising the elderly, but intended to have much the same effect. One possibility is age-stratified plural voting. We

¹³ See P. Van Parijs, "The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice," *Philosophy and Public Affairs* 27 (1998): 292-333.

¹⁴ This can also be supported by other arguments, such as one from symmetrical treatment of the young and old; see J. Lau, "Two Arguments for Child Enfranchisement," *Political Studies* 60 (2012): 860-876.

¹⁵ P. Van Parijs, "The Disenfranchisement of the Elderly," p. 323.

might allow that all adults should have *at least* one vote, but think that those with longer to live should have a greater say over long-term decisions that will affect them more.¹⁶ Perhaps those aged between 18 and 27 should get three votes, those between 28 and 55 two votes, and those over 55 only one vote.¹⁷ Relative to ‘one person, one vote’ this over-represents the young, but the distinction reflects remaining life expectancy: each person should have one vote for each remaining 25 years of life expectancy. Another, more moderate, proposal is asymmetric compulsory voting, where the young but not the old are required to vote.¹⁸ In both cases, political power is shifted from the old to the young, but, again, this only serves intergenerational justice if the young are more sensitive to the needs of future generations.

Assuming we reject these reforms, we may seek to improve democratic performance by altering the decision rule, rather than the electorate. Ekeli suggests that future generations can be protected by sub-majority rules. He proposes that, where a *prima facie* case can be made that a proposed law can inflict risk of serious harm on future people, then a minority of legislators (one-third) should have the power to block the final enactment of that law until there is either a new election or a referendum on the proposed law.¹⁹ This falls short of an absolute block on proposed courses of action,²⁰ so is arguably more democratic than constitutionally entrenched rights. Nonetheless, while a majority

¹⁶ That the more affected should have more power is suggested by H. Brighouse and M. Fleurbaey, “Democracy and Proportionality,” *Journal of Political Philosophy* 18 (2010): 137-55.

¹⁷ P. Van Parijs, “The Disenfranchisement of the Elderly”, p. 305.

¹⁸ *Ibid.*, p. 306. I have proposed something similar, though with a different rationale, in my “Tasting Democracy: A Targeted Approach to Compulsory Voting” *Public Policy Research* 17 (2010): 147-51.

¹⁹ K. Ekeli, “Constitutional Experiments”, p. 449.

²⁰ *Ibid.*, p. 456.

may still proceed, if they wish, they are required to pause long enough for concerns about future generations to be heard. The temporary check prevents a majority from acting *hastily*.²¹ If, after due consideration, they still wish to press ahead then at least it is clear that this really is the considered preference of a wide section of the population.

This proposal is no guarantee that the rights of future generations will be taken into account but makes it more likely. Moreover, it has the advantage, over proposals such as those considered by Van Parijs, that it does not privilege any particular members of the electorate.²² While some would prefer to trust the young, or those appointed by environmental pressure groups, to protect future generations, Ekeli's proposal allows *any* significant minority of legislators to act on behalf of future generations. Furthermore, while entrenched constitutions or attempts to disenfranchise some sections of the population may justifiably be regarded as departures from democracy, Ekeli's proposals can be construed as offering *more democracy* as a solution to the problem of future generations. A minority may temporarily frustrate the wishes of a majority, but only long enough for democratic deliberation.

What mechanisms best protect future generations is an empirical question and the answer is likely to differ in different circumstances. My point, however, is that there is no need to abandon democracy in order to protect future generations, since democracy has the necessary resources to take future generations into account. I shall conclude by considering the alternative.

²¹ *Ibid.*, p. 456.

²² *Ibid.*, p. 453.

VI

If Not Democracy, Then [...] What?

The people of Mulgan’s broken world regard democracy as “dangerous, future-destroying anarchy” and “dare not even ask whether democracy has any place in [their] broken world” (p. 199). But, if we reject democracy, what is the alternative? We do not know what form of government the broken world operates under, though presumably power is concentrated in the hands of relatively few people.

One traditional argument for monarchy was that it would serve the long-term interests of the nation. Elected politicians rarely look beyond the next election, but a lifetime monarch – assuming that s/he wishes to rule over a prospering nation – has reason to look to the longer term when making decisions. Further, in a hereditary system, s/he will presumably want to bequeath a flourishing kingdom to his/her descendants. Thus, monarchs may better serve the people’s long-term interests than elected politicians. But this is an idealizing argument. We may agree that an *ideal* monarch would be better than actual democracy, but we must either compare two well-functioning ideals or, perhaps more relevantly, two realistic likelihoods. Maybe the best that we can say for democracy is that, even when it operates imperfectly, it is generally less bad than one person’s dictatorship.

Let me close by noting that whatever political system operates in Mulgan’s broken world is also biased towards their present. As noted in the introduction, “whatever we do, our descendants cannot hope to enjoy even the quality of life that we ourselves take for granted [...]. Although we show far greater concern for our descendants than affluent people did, we still tend to keep a disproportionate share of resources for ourselves, sacrificing our

descendants to save our contemporaries” (p. 11). Societies in the broken world must, through necessity, employ ‘survival lotteries’ to determine who lives and who dies when times are hard (pp. 10-11).²³ Though the details are unclear, it sounds as if as many present people as possible are saved, even if this predictably leads to more deaths among future generations. The people of the broken world get by the best they can, but they, like us, leave their descendants a worse world than the one that they inherited.

Those in the broken world might reply that we are the ones responsible for their dire circumstances, but that one generation has been wronged by its predecessors does not mean that they are entitled to rob their own descendants to make up for the shortfall in their inheritance. The non-democratic arrangements in place in the broken world are, like our affluent democratic institutions, regimes to manage the world *for present people*. The harsh realities of a broken world may make non-democratic government necessary, but this does not mean that such government is any better at respecting the rights of *future* people.

What is true of future people seems true for us too. Suppose that some of us are concerned that our societies are acting unjustly towards future generations. Assuming that we cannot stage a *coup d'état* and impose ourselves as philosopher-rulers for the greater good, what options do we have? Either power is held by the masses or it is held by a few. Neither group is accountable to the future, so neither can be assured to treat future generations justly, but at least a (liberal) democratic society allows us to speak

²³ It seems that these are not *literally* lotteries: “most societies distribute food partly on the basis of age or health, so that people are not kept alive once they can no longer make a productive contribution” (p. 10). On the nature and justification of lotteries, see G. Sher, “What Makes a Lottery Fair?”, *Noûs* 14 (1980): 203-216, my “The Equality of Lotteries,” *Philosophy* 83 (2008): 359-72, and P. Stone, *The Luck of the Draw: The Role of Lotteries in Decision Making* (New York: Oxford University Press, 2011).

on behalf of future generations. As the history of non-democratic regimes has shown, once we abandon democracy, there is no guarantee of the right to dissent, much less of being heard. Democracy may not be perfect, but it is arguably less dangerous to the future than any feasible alternative.

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