What are Future Humans Really Owed?
Climate Change, Democracy and The Right to Justification

by

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WHAT ARE FUTURE HUMANS *REALLY OWED?* CLIMATE CHANGE, DEMOCRACY AND THE RIGHT TO JUSTIFICATION

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Against traditional meanings of *justice* (protection of liberty, communitarian obligations and reciprocal cooperation), I argue that recognizing future-persons as *political agents* is only possible by defining justice as *the opposition to arbitrary rule*. Following Rainer Forst, I explore an approach to intergenerational justice that is grounded on such meaning. For Forst, the first step toward a just society is the institutionalization of *the basic right of all* humans to demand reasonable justifications for the multiple power-relations to which they are subjected. Following this right to justification to its ultimate conclusion, I show that it leads to the notion of a *basic human right to democratic advocacy*—which, unlike other approaches to advocacy, retains the political agency of future-persons. My conclusion is that creating just intergenerational relations requires little more than existing efforts to secure synchronic transnational justice. I use the UN’s *Climate Summit 2014* as case study.
Para Elsi y Gerardo, mis padres.
Porque de ella aprendo que la razón sin corazón es incompleta y de él que la perseverancia es la forma humana del valor y el coraje.
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Son cosas chiquitas. No acaban con la pobreza, no nos sacan del subdesarrollo, no socializan los medios de producción y de cambio, no expropián las cuevas de Alí Babá. Pero quizá desencadenen la alegría de hacer, y la traduzcan en actos. Y al fin y al cabo, actuar sobre la realidad y cambiarla, aunque sea un poquito, es la única manera de probar que la realidad es transformable.

These are little things. They can’t end poverty; can’t take us beyond “developing;” can’t socialize the means of production and social change; can’t expropriate the caves of Alí Babá. But maybe they can unshackle the joy that comes with doing something and translate it into action. Because in the end, acting on reality and changing it—even if only a little—is the only way of proving that our reality can be transformed. (My translation)

Eduardo Galeano
CHAPTER 1
INTERGENERATIONAL JUSTICE: A SURVEY OF THE DEBATE

Case Study: UN Climate Summit 2014

In September 2014, UN Secretary-General Ban Ki-moon summoned world leaders to develop a plan of action to avoid catastrophic and irreversible anthropic changes to the global climate system. The Climate Summit 2014 gathered 100 heads of state and more than 800 leaders from business, finance and civil society to set the ground for a “meaningful universal climate agreement [to be launched] in Paris in 2015 and to galvanize transformative action in all countries to reduce emissions and build resilience to the adverse impacts of climate change.”¹ From the perspective of strategic-action, the Summit was a success: concrete goals and commitments were established on the areas of emission-reduction; market mobilization; carbon pricing; resilience strengthening, and the creation and mobilization of coalitions.² However, it seems to me that in spite of the praiseworthiness of these commitments, there is an important sense in which the Summit 2014 failed: it failed to ground or at least supplement its concrete practical aims with corresponding normative considerations. To put it simply, my claim is that although the Summit set into motion the necessary actions to avoid climate catastrophe, it did not do it for the right reasons. More importantly, as I explain bellow, lacking these “right reasons” is problematic in two ways: Firstly, because grounding effective climate actions on wrong or incomplete reasons leads to laws and choices that are unjust for future-generations. Secondly, because thinking of climate change solely as a technocratic problem leads to a type of strategic paradox where the same type of principles that generated the problem—mostly economic ones—of anthropic climate change are employed to resolve it.

The approach that I take to elucidate and work through these problems is that of critical theory. A critical theoretical perspective offers theoretical tools to explain why and how the normative superficiality of the Summit’s reasons-for-action is worrisome. But why

¹ “2014 Climate Change Summary - Chair's Summary - UN Climate Summit 2014.” UN News Center.
² Ibid.
should one care for what critical theory has to say about this discourse—especially in light of the concrete achievements of the Summit? And, moreover, why should one be concerned if the decisions made at the Summit were not guided by careful and in-depth normative considerations? I think and want to show that there are good reasons to be concerned about the lack of such normative ground, but before—and in order to do so—I want to say a few words about the perspective from which the lack of this ground illuminates itself: critical theory. In a way, identifying the lack, deficit and inappropriateness of normativity within public discourses is the first task of the critical-theoretical perspective—a task of justice.

Critical Theory and Justice

Typically, critical theorists trace the foundational impulse of their discipline back to the socio-political project of the Enlightenment; or, more precisely, to the way in which Kant described it in 1784 in his essay ‘An Answer to the Question: What is Enlightenment?’:

*Enlightenment is man’s emergence from his self-imposed immaturity. Immaturity is the inability to use one’s understanding without guidance from another. This immaturity is self-imposed when its cause is not in lack of understanding, but in lack of resolve and courage to use it without guidance from another. Sapere Aude! — “Have courage to use your own understanding!” – that is the motto of enlightenment.*

Since then, critical theorists have interpreted and reinterpreted Kant’s answer in different ways. Nevertheless, in spite of the plurality of recently available methodologies, the normative goal of critique is still the same that Kant articulates above: the emancipation of human autonomy by way of the reflexive exercise of reason, that is, reason reflecting back on itself and its social-manifestations. For example, to cite a theorist who does not work within an explicitly Kantian framework, this is how Foucault explains this normative coherence of the critical-theoretical perspective:

> [It is] in the care brought to the process of putting historico-critical reflection to the test of concrete practices. I do not know whether it must be said that the critical task entails faith in Enlightenment; I continue to think that this task

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3 Immanuel Kant, *Perpetual Peace and Other Essays*, trans Ted Humphrey, Hackett Pub (Indianapolis 1983), 41
requires work on our limits, that is, patient labour giving form to our impatience for liberty.⁴

As Foucault notes in this passage, the epicenter of a critical theory of the emancipated society is not the articulation and pursuit of a final social good (liberty, equality, solidarity, recognition, etc.), but the "patient labour giving form to our impatience for liberty:" in other words, the on-going work (or process) of translating and refining what one could call the raw human yearning for rational autonomy.

Although this positive description of the unifying normative ground of critical theory might seem vague, its undeniable clarity and concreteness comes forth if one puts it in negative terms, for example, as Adorno does. As he puts it, the task of the critical theorist is not to "know what the absolute good is or the absolute norm, [for] we might not even know what man is or the human or humanity."⁵ Nevertheless, he concludes: "what the inhuman is we know very well."⁶ To put it plainly and simply, the normative ground of critical theory is precisely that ground that is universally, directly and undeniably revealed through its absence: the basic capacity of human beings to use their "own understanding" (Kant) to accept, reject or negotiate the socio-political structures to which they are subjected. The exercise of this evaluative capacity is what is meant by criticism. ‘The inhuman,’ which as Adorno points out we all know very well, is thusly intimately linked to the exercise of criticism: on one hand, people’s demand for the power and freedom to criticise the norms and institutions to which they are subjected reveals the inhumanity—i.e. the oppressiveness—of such norms and institutions; on the other hand, the exercise critique carries with itself a deepening and expansive momentum: a local critique of religious oppression, for example, empowers people with concepts and ideas that uncover the inhumanity of other contexts such as the state, the global market, gender, etc.

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⁶ Ibid (italics)
Reflecting on this link between ‘the inhuman’ and ‘criticism’ within explicitly socio-political contexts leads to the concept of justice: the recognition of this most basic human need—freedom for criticism—is the first demand that persons make of those (or on behalf of those) with whom they share a common world. To put it negatively—and again, in more revealing terms—the demand to have the freedom and opportunity to critically evaluate and create one’s shared socio-political contexts is a demand to not be subjected to a certain fundamental form of injustice. As such, the many constellations of methods and approaches that constitute the tradition of critical theory ultimately congregate in the question of justice as the human, collective and on-going emancipatory project of rational autonomy.

Justice and Criticism

It is this link between (in)justice and criticism that illuminates the danger of superficial public discourses. This danger is especially worrisome in the case of official public discourses, as in the case of climate change and The Summit 2014. There, the lack of a critical perspective obscures what one might call the essential meaning of climate change as an issue of global politics: the only reason that present-persons have to regulate the long-term effects of their environmental impact by way of an institutionalized “meaningful universal climate agreement” is the intention (whether partial, absolute, direct, or indirect) to not act unjustly—regardless, at this level of analysis, of who is seen as the primary claimant or recipient of such intention (e.g. future generations, past generations or present generations). In short, from a socio-political perspective, climate change is first and foremost an issue of justice; or, more precisely, of intergenerational justice. Yet, such deep and proper considerations of justice for future persons are lacking in the Summit’s discourse on climate change. The most telling evidence of this lack is the set of ‘reasons to care about climate change’ that the UN chose to publicize in the

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7 This demand will be articulated and elaborated in the following chapter. At this point, it is enough to recognize its existence as type of fundamental social instinct or impulse.
Summit’s official website⁹ under the title “Why should you care about climate change? 18 Experts Explain.”¹⁰ Here are some of such reasons:

- “The longer you delay action, the more expensive it becomes.”
  Helen Clark (Administrator of the UN Development Programme):

- “If we don’t act on climate change it means that we are sort of living at the expense of what we shall leave to our children.”
  Michel Jarraud (Secretary-General of the World Meteorological Organization)

- “The cost of inaction is much higher than the cost of action to build low-carbon and more resilient development.”
  Rachel Kyte (World Bank Special Envoy for Climate Change)

- “If we don’t find an efficient and fast way to start solving it, we will pay a price that we simply cannot afford.”
  Durwood Zaelke (President and Founder of the Institute of Governance & Sustainable Development)

- “The countries that pollute the least will suffer the most on the business-as-usual scenario.”
  Kandeh Yumkella (Special Representative for the Secretary-General’s Initiative Sustainable Energy for All)

- “If we act on climate change we actually will have more productivity, we’ll have better health and the world will be altogether better.”
  Dr. Andrew Steer (President and CEO of the World Resources Institute)

- “Acting on it brings us all kinds of good things. It brings us jobs, livelihoods and profits.”
  Michael Jacobs (Senior Advisor of Institute for Sustainable Development and International Relations in Paris)¹¹

At first glance, it is clear that these “reasons to care” are not about justice or ‘doing the right thing’ but about economic considerations—mainly, in the form of comparative cost-benefit analysis of different response-times. This economic epicenter is worrisome and I will come back to it shortly; however, what I find most troublesome about these justifications is that they display what one might call normative myopia: an inability to

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⁹ Ibid.
¹¹ Ibid (Italics)
identify the first or proper addressees of normative considerations whenever they are situated beyond one’s zone of immediate normative perception—the immediacy of this zone is measured in spatial-temporal terms, but also in relation to the ethical issues with which one is immediately concerned. The Summit’s reasons to care about climate change (as listed above) construct the issue in a way that places corporations, governments and “our children” in the role of “the” victims of potential environmental disasters. This role casting is inaccurate—and more importantly, in a way that will become clear below, unjust.

At first glance, the characterization victim\textsuperscript{12} refers to recipients of wrongdoings. However, the notion of wrongdoing or ‘moral wrong’ is not homogenous. There are at least two presently relevant senses in which an action can be said to be wrong. Firstly, the impersonal sense in which it would be wrong for me to graffiti “justice for future generations” across the AGO’s collection of The Group of Seven. This sense of wrongdoing is interpersonal because it would apply to my vandalism even if at the moment of acting I could not think of anyone in particular who would be harmed (in whatever way) by it. In other words, whereas I might be aware that other people would be affected by my action, it would be at least intuitively unclear to me whether my action would also wrong any person in particular. The second way of defining victimhood refers to cases in which one person wrongs another. For example, the sense in which I would wrong you if I made public a secret I swore to you I would never divulge. This second sense of wrongdoing is sometimes called interpersonal and, to my mind, reflects a stronger moral denunciation. It is precisely this type of strong moral denunciation that is conveyed by the word victim.

When I say that characterizing present states and corporations and even our children (who might not exists right now but are at least included in the immediate interests of

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\textsuperscript{12} Impersonal and Interpersonal are the two senses of moral wrong that Rahul Kumar explains in ‘Wronging Future People: A Contractualist Proposal,’ in Intergenerational Justice, p. 251-271. Kumar’s distinction between impersonal and interpersonal wrongs is similar to Derek Parfit’s differentiation between person-affecting and non-person-affecting principles.
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present-persons)\(^{13}\) as the victims of climate change is inaccurate, what I mean is that, within the political discourse of climate change, they are not the group of persons who stand to be wronged in the strongest moral sense. To my mind, the real victims of climate change—those who stand to be wronged by present and past generations in the strongest sense—are those people who 1) did not contribute to its emergence, 2) are not able to prevent it, and 3) stand to experience its most severe effects; namely, the generations who will inherit this planet in the distant future.\(^{14}\)

This is the essential political meaning of climate change that, I claim, is absent from the UN’ Climate Summit 2014: as an issue of global politics, climate change is first and foremost an issue of justice for future generations; or more precisely, the proper reason that should motivate political institutions (private, public, national or transnational) to respond to the climate change challenge is to avoid treating future persons inhumanely. Here, critical-theory is not the only perspective that can reveal the normative lack of the climate change discourse; however, its focus on the emancipation of the politically oppressed—and, to anticipate: the miss- or under-recognized—makes it an especially fruitful point of departure for my work.

**That Might be True in Theory… Fulfilment vs. Transfiguration**

A foreseeable response to my contention to the Summit’s approach to climate change is to dismiss it as idealistic or merely theoretical. After all, one might point out that the Summit successfully set in motion an array of concrete environmental policies at various

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\(^{13}\) Furthermore, given the timeline of climate change, it is inappropriate to think of our children as future-persons in the relevant sense: In the absence of additional and radical mitigating action, the most severe effects of climate change are foreseen to emerge around the year 2050. Most of the people who are meant by ‘our children’ will have become present-persons by then.

\(^{14}\) My thesis’ supervisor, Karen Houle, is right to point out that according to my explanation of the category “victims of climate change,” other beings should be included alongside human persons. I agree. Vegetable and Animal beings (to stay in a somewhat uncontroversial position) ought to be included in the group of victims of climate change. However, the argument I am constructing functions within what I have been calling political contexts. These contexts are here understood as systems of norms and institutions that represent the political power-relations of persons. Vegetal and animal beings are not included in these relations because their powers (abilities) do not include rational autonomy. Whether their interests are protected by the critical theory of justice I advocate in this thesis is both a most pressing question and one that requires careful and specific reflection. In the nascence of space for such careful reflection, I restrict my present reflections to the more modest question of human justice.
socio-political levels. Let’s call this claim the practical objection: “the UN’s climate change discourse might be politically and normatively deficient but it got the job done. Whatever you call the essential political meaning of climate change is a theoretical idea that has no consequences for real, practical politics.” I disagree with the practical objection.

One way of explaining the practical relevance of my theoretical remarks is by applying to the climate change discourse the distinction that Seyla Benhabib makes between two ways of approaching socio-political change, namely, what she calls fulfilment and transfiguration critiques.15 Payrow-Shabani explains these approaches as follows:

Fulfilment refers to a critique aimed at changes... toward “a better and more adequate form” of society in which “emancipation is realizing the implicit but frustrated potential of the present” (Benhabib, 1986:41). Transfiguration, on the other hand, entails a utopian break with the status quo that enables a move beyond some aspects of the present.16

The approach of the Summit reflects a fulfilment critique of climate change: the strategic action-plan that it seeks to mobilize relies on the very same logics, narratives, institutions and ideologies that created the problem they seek to eradicate, that is, the economic immediate self-interest of current generations. Accordingly, my resistance to the Summit’s fulfilment approach to climate change action is more than plea for morality or ideal politics; rather, it reflects a concern regarding the prudence of attempting to get oneself ‘out of a problem’ by following the same steps that got one ‘into that very problem’—or to put it in the wisdom of proverbs: It questions the prudence of “fighting fire with fire.”

One of the general aims of this thesis is to show that, in light of what can be referred as the practical-logic of climate change action, such action can only be effectively constructed from a transfigurational perspective—or, to put it differently: climate change poses a kind of temporal transfigurational challenge to the systems of the present. This is

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a point that Daniel Innerarity elaborates in *The Future and its Enemies: In Defense of Political Hope*:

Currently, with debates about climate change, nuclear energy, genetic engineering, and the management of financial risks, the future has forced its way into the politics of the present. This means that political decisions now extend beyond the classic framework of spatial and material questions. The model institutions that designed the future of the constitutional democracies no longer command attention in this debate. This includes scientific determinism as well as economics, which tend to see the future as just another resource. *It also includes the legal system that, seeing justice as the end result of a contract between contemporaries, does not have any means of anticipating the rights of those who come later.* In fact, none of these systems is currently equipped with procedures to understand and regulate a temporal environment in which the future plays a decisive role.  

Accordingly, the following reflections on climate change and intergenerational justice are part of a larger critique of status quo, traditional, and currently dominant ways of understanding justice. These traditional notions and procedures of justice, as I argue below, get in the way of a direct and fair engagement with “the future”—i.e. the challenges posed by intergenerational relations. Against these traditional notions of justice, I put forth a *transfigurational critique of intergenerational justice*—a critique that, to anticipate my argument, is modeled after what I earlier called the fundamental, critical meaning of justice: the emancipatory drive of rational autonomy. This is an important point that will be elaborated below; at this juncture, it suffices to say that my critique of intergenerational justice—vis-à-vis a critique of an official climate change discourse—seeks to uncover *the essential bond between justice and critique*—even or especially as it might appear in *the present*’s relation to “the future”. More concretely, the transfigurational force of this critique reveals that the practice of reasonable justification is the core of justice and, from that vantage point, tries to show that within (at least some) political contexts (such as inter- and trans-national negotiations regarding climate-change-action) there are no reasonable justifications for not considering future-persons as fully empowered and equal political agents.

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Humanitarianism and Justice

Above I mentioned that the economic emphasis of the UN’s “reasons to care about climate change” is worrisome but did not explain why that is the case. The main reason to be wary of these kind of economic justifications is their capacity to retrospectively distort one’s ontological understanding of climate change—that is to say, the type of event or phenomena that climate change is. The economic picture of climate change, on the one hand, concentrates on the foreseeable effects that drastic changes in the global climate system will have on the market. As such, here the success of mitigation and prevention is measured through complex cost-benefit analyses that escape most people’s knowledge and understanding of “the market.” Consequently, action plans for climate change mitigation and prevention are seen as the proper work of experts in economy and administration. But there is an essential part of climate change that is obscured by this picture: the part that brings us—living present-persons—face to face with our own responsibility for climate change. It is this avoidance of collective responsibility that I see as the biggest danger of the climate change discourse that guided the negotiations at the Summit 2014. In the absence of this normative dimension, the phenomenon of climate change gains as a false type of objectivity akin to that of natural disasters—as it does, for example, in the opening paragraph of the Summit’s website:

Climate change is not a far-off problem. It is happening now and is having very real consequences on people’s lives. Climate change is disrupting national economies, costing us dearly today and even more tomorrow. But there is a growing recognition that affordable, scalable solutions are available now that will enable us all to leapfrog to cleaner, more resilient economies.18

Under this sort of ontological characterization, no one is responsible for causing natural disasters and no one is responsible for their effects. To pursue this thought to its ultimate conclusion, to think of climate change as a natural disaster implies that since present-generations are not responsible for causing climate change, they are therefore unaccountable for the consequences that climate change will have on the lives of future-generations. Under this view, then, whatever relevant considerations present-generations do happen to have for the future can only appear as humanitarian aid. Nevertheless, this

picture clashes with the currently growing global awareness and recognition of the anthropogenesis of climate change—anthropogenesis at both the collective and individual level. This recognition of climate change as the (careless or ignorant) result of human-activity, not at all in character like a storm or tsunami, highlights the accountability of present-persons for the long-term consequences of their actions. Under this ontologically appropriate normative view, future generations do not appear as the beneficiaries of the altruistic choices of present-generations; instead, they stand as the potential victims of an intergenerational injustice. Lastly, contrary to the economic perspective on climate change, which relies on technical experts to devise proper action-plans, within what I claim is the proper ontological-normative perspective on climate change, the task of constructing an action-plan is opened to everyone who is involved in this potential injustice—viz. present and future generations as a whole.

The relevance of seeing climate change as a natural disaster or as an injustice is (again) not merely theoretical, but becomes real in a practical sense at the level of policy making. From the perspective of the future-victims of climate injustice, it would be not be enough to learn that today “there is a growing recognition that affordable, scalable solutions are available… that will enable us all to leapfrog to cleaner, more resilient economies.” More than solutions, the first and proper response to those who are subjected to injustices is to recognize them as such, that is: as the victims of wrongdoings. Within concrete procedures of justice—such as the creation of action plans to mitigate and

19 An interesting way of explaining the ontological ambiguity that makes climate change seem like a natural disaster is through Richard Hiskes’ notion of “emergent risks.” Hiskes claims that pollution is a risk of such type. As he puts it, the “emergent character [of such risks] refers to where these risks come from and how they are perceived by citizens. First of all, risks are "externalities " of social life, products of our living together that are negative in the same way as pollution is part of the price of collective and efficient production... Second, because risks emerge from our life together, it is often difficult even to locate the source of risk, and frequently impossible to identify who is "responsible" for creating risk. We could blame science generally, of course, but doing so is somewhat fruitless, since in areas like waste disposal we are also looking to science to provide the "technological fix" that will eradicate risk... Philosophically, risk has a murky ontological status: is it an action or the result of an action, or is it a property of a choice or option? This is an important question, since if it is the first then presumably one could locate an actor taking or contemplating a risky action. However, if risk is an attribute of a course of action or option, not all such actions are taken voluntarily or with full knowledge of the consequences.” Richard Hiskes, ‘Emergent Risks and Convergent Interests: Democratic Policy Making for Biotechnology,’ in Policy Studies Journal, Volume 17, Issue 1, pages 73–82, September 1988, 77

prevent climate change—the main consequence of this recognition is that whatever form justice takes, its appropriateness ought to be evaluated from the perspective of the oppressed. To construct justice otherwise—that is, unilaterally from the perspective of the oppressor—would amount to a double injustice or an injustice within justice. To offer what is admittedly an overly simple (yet illustrative) example, the fundamental demand of the feminist political-struggle is not for males to grant females equal statutes and resources, but for the latter to freely exercise their intrinsic and legitimate role as equal, active authors and addressees of the general statuses and resources that are available in society. In short, the fundamental demand of the feminist and any other social justice movement is to eradicate the arbitrary power-relations that ground and sustain the manifold ways in which injustices arise and are enacted within socio-political contexts in the first place.

The reason I reject the intergenerational appropriateness of (what I have been calling) traditional theories of justice has to do with this potential for injustice within the practice of justice. To be precise, my claim is that in order to include future-persons into present considerations of justice, these traditional theories—liberal, communitarian and contract-theory—necessarily conceive of future-persons (in the case of climate change, the potential victims of an environmental injustice) as passive recipients of the goods or statutes that present-persons unilaterally choose. In other words, within these traditional theories of justice, future-persons do not appear as equals and fully empowered agents of intergenerational justice—or, to relate it to the case of climate change, they fail to recognize future-persons as the victim of injustice: as those who are most vulnerably and stand to be directly affected by the trans-generational choices of present-persons. It is to these traditional theories of justice that I now turn.

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21 This distinction between “humanitarian aid” and “owed duties” is made by Rainer Forst in his Right to Justification (191-2). A similar distinction between “impersonal-wrongs” and “interpersonal-wrongs” is drawn by Rahul Kumar in “Wrongsing Future People: A Contractualist Proposal,” in Intergenerational Justice, ed. Alex Gosseries and Luka H. Meyer, Oxford University Press (NY, 2009) 252-272.
The aim of this chapter is to show that within current traditional and dominant ways of thinking about justice, future-persons are unable to appear as fully empowered and equal agents of justice. What I mean by the traditional and dominant ways of thinking about justice are the notions of 1) individual interest/choice protection, 2) duties owed to community members, and 3) reciprocity as the main condition of just cooperation. For heuristic purposes, I have chosen to present these notions in their more concrete forms as theories of justice; that is, respectively: liberal, communitarian and contract theories of justice. It is undeniable that a number of modern and sophisticated theories of justice escape this categorization—for example, the current overlap of liberal and contractarian principles of justice as they appear in the Rawlsian tradition. However, what is not equally clear to me is that what could be called our “general or public intuitions about justice” stand at the same level of sophistication and conceptual interbreeding. In any case, the characterizations of liberal, communitarian and contract theories that follow does not presume to be comprehensive, but rather, merely sufficient to highlight the intergenerational limitations of modeling justice on the notions of individual interest/choice protection, duties owed to community members, and reciprocity as the main condition of just cooperation.

Ultimately, what I hope to demonstrate through this analysis is the need to move away from these traditional ways of thinking about intergenerational justice in favour of what could be called a transfigurational approach to the question of justice between the generations: Rainer Forst’s Critical Theory of Justice. I call Forst’s theory transfigurational because, as I will show in chapter 3, it challenges the basic assumption that future-persons are a type of political others who require special statutes, considerations, and theories of justice.

22 By the term “contract theory” I refer to all social contract thinking—including the tradition of liberal social contract theorists that extends from Locke to Rawls and other contemporary figures. Basically, it refers to theories that understand justice as fair conditions of cooperation.
Liberalism

The grounding premise of liberalism is that freedom is normatively basic. Following this moral intuition, the focus of liberal theories of justice is to justify law and authority out-of and for-the-sake-of individual freedom. In light of this aim, liberal justice constructs a political system centered on the notion of individual rights. As Kant famously argued, from a liberal perspective, legal rights are the basic condition for the possibility of social coexistence insofar as they make the freedom of each person compatible with the freedom of everyone else. Kant’s point also helps to explain the minimal role that liberals assign to the state. As they see it, the function of the state is to articulate, guarantee, and enforce the rights of persons. As such, the ideal that liberal justice seeks to achieve is one in which individual liberty conditions social relations through the supra-structure of a minimal state the function of which is the enforcement of rights. For example, in one of the canonical texts of liberal theory, On Liberty, J.S Mill articulates what he sees as the appropriately minimal role of the state in terms of citizens’ rights to non-interference. To be more precise, Mill’s claim is that “the individual is not accountable to society for his actions in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people, if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct.” Conversely, what the individual is accountable for, in the eyes of both the state and her fellow citizens, are those actions that directly harm others—where Mill understands “harm” in primarily physical terms.

In light of these considerations, the plausibility of a liberal theory of intergenerational justice rests, first and foremost, on the possibility of ascribing rights to future-persons. The normative structure of liberalism complicates this possibility, for, as Gerald Gaus notes, insofar as liberalism takes individual liberty as its foundational premise, “the onus

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23 See Kant, ‘Theory and Practice’ in Perpetual Peace and Other Essays.
25 Ibid, 9
of justification is on those who would limit freedom.” Given that the purpose of rights-of-future-persons is to protect the freedom of future generations by restricting the freedom of present-persons, *the evaluative-justificatory criteria of these rights is ultimately the liberty of current generations*. The full relevance of this normative asymmetry will become clear in the discussion of communitarianism below; for now, it is sufficient to make note of it.

How could the *rights* of future-persons be justified? Political philosophers Steiner and Vallentyne work through this question in their discussion of ‘Libertarian Theories of Intergenerational Justice.’ Their first step is to translate the notion of individual freedom in terms of *full self-ownership*, that is, the intersubjective mode that obtains “just in case [persons] own themselves in precisely the same way that they can own inanimate objects.” (Steiner and Vallentyne 2009, 51) For example, nobody has the right to use my socks without my permission; however, I can transfer that right-of-use to someone else and, if I choose, require compensation for it. Analogously, to own myself fully means that I have exclusive rights over the use of my liberty; that I am the only person who can legitimately transfer the use of that liberty to someone else; and (but not necessarily) that I am entitled to demand compensation in the event of such a transfer. Moving on to the question of future-person rights, the criteria of full self-ownership equips Steiner and Vallentyne with a conceptual yardstick which they employ to determine the compatibility of the *aims of liberal justice* (i.e. protection of individual liberty) with the two most widely accepted *theories of the source and nature of rights*, namely: *choice-protection* and *interest-protection*. Their aim is to determine whether future-person rights are better and more parsimoniously justified through the idea of future-choice-protection or notion future-interest-protection.

According to the *choice-protection* view of individual rights, what justifies the latter is their capacity to safeguard the choice-making capacities of persons. The *interest-protection* view, on the other hand, grounds the normative validity of rights on their

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capacity to protect the interests of persons. As Steiner and Vallentyne note, these two theories make implicit claims about the type of beings that can be considered as rights-bearers. Under the choice-protecting view, only those beings that are capable of making choices (in the stronger sense of rational evaluations) can make legitimate rights-claims. Accordingly, within this cognitivist framework, animals, infants, some elders, comatose patients and severely developmentally challenged persons do not qualify as legitimate right-bearers. Moreover, as they note,

This conception has almost always been understood as implying that, for any given time, only those who are capable of then making choices then have rights. [For example,] normal young children who will eventually be able to make (rationally robust) choices as adults are deemed not to have rights when they are young. (Steiner and Vallentyne 2009, 55)

With respect to the issue of intergenerational justice, it is clear that, under the choice-protecting view, future-persons cannot be rights-bearers. Within the literature on intergenerational justice, the limitation of the choice-protecting view is sometimes articulated in terms of the classic non-existence challenge: the idea that obligations can only be owed (and rights ascribed) to persons who actually exist. Accordingly, it would be nonsensical for me to say that I owe something to my great, great, great grandmother, not because I never interacted with her but because she simply does not exist—to illustrate by way of caricature, it would be like saying that I have obligations toward a “ghost.” The non-existence challenge, therefore, places strict temporal boundaries on the ontological criteria for the ascription of individual rights.

There are, admittedly, a number of ways in which normative theorists get around the non-existence challenge in order to argue that future-people are legitimate candidates for right-bearing. Joel Feinberg in ‘The Rights of Animals and Unborn Generations’, for example, turns our attention to some of our legal practices and common-sense moral intuitions where the idea of having obligations toward non-existent beings (e.g. the practice of honouring the will of a deceased person) and/or beings who are incapable of rational-choice (e.g. instances in which animals are legally protected and represented by a
human proxy) is seen as unproblematic. Along similar lines, philosopher Joseph Mazor supports the view that “there is a justice-based obligation to conserve natural resources for future people that present people owe to each other.” In response to arguments of the type that Mazor advances, Steiner and Vallentyne note that although there might very well be justified indirect or impersonal obligations that involve future people, “since these are not duties owed to them, they are not duties of justice” — instead, these duties would reflect principles of benevolence or humanitarianism. In the case of Feinberg’s proposal for future-person rights, his argument hinges on a refutation of cognitivist requirements for the ascription of rights to advance the claim that “the sort of beings who can have rights are precisely those beings who have (or can have) interests.”

Steiner and Vallentyne sympathize with Feinberg’s approach. As they see it, the interest-protecting approach to rights circumvents the non-existence challenge by putting forth the claim that, insofar as the interests of future persons can be jeopardized by the actions of present-persons, they require the enforceable protection of rights. The idea that the actions of present-persons can conflict with the interests of future-persons, however, is a controversial claim in the intergenerational-justice debate. The basic form of this controversy is captured by what Derek Parfit has famously termed the non-identity problem.

The non-identity problem reflects the difficulty of evaluating the goodness or wrongness of two or more competing courses of action in the absence of a stable control sample. As a theoretical construct, the non-identity problem is a multilayered concept that must be explained through a series of complementary steps. Firstly), the non-identity problem reflects a specific form of normative evaluations; namely, questions of the type “Would choosing X make the quality of life of person B better/worse than choosing Y or Z?” —or

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29 Steiner and Valentine, 55
30 Feinberg, 375 (italics)
31 See Derek Parfit’s Reasons and Persons and On What Matters (Volume 2, part 5.)
what is the same, “would choosing X be better/worse for B?” In this type of questions, the meaning of better/worse is not restricted to pure normative evaluations (e.g. questions about moral principles or substantive notions of the good, etc.) but also implies a concrete comparison—e.g. between the quality of life of B prior to X and the quality of his life subsequent to X. Secondly), what makes this type of questions difficult is the fact that the normative comparison they try to make requires two substantive images of B as a person; that is to say, it requires notions of her identity prior-to-X and subsequent-to-X. Here, the main problem is not the obvious difficulty of predicting B’s future-person’s identity, but the fact that his concrete future identity depends on whether we choose X, Y, or Z. This is the case because (Thirdly) a person’s identity is the product of a singular, irreplaceable and concrete constellation of events. The singularity of this constellation, as Derek Parfit argues, extends as far back in a person’s life to include the exact moment of a her conception:

Consider some particular person, such as yourself. You are the nth child of your mother, and you were conceived at time t. According to one view, you could not have grown from a different pair of cells. If your mother had conceived her nth child some months earlier or later, that child would in fact have grown from a different pair of cells, and so would not have been you. According to the other main view, you could have grown from different cells, or even had different parents… But those who take this view, while believing that you could have grown from a different pair of cells, would admit that this would not in fact have happened. On both views it is in fact true that, if your mother had conceived her nth child at a different time, that child would not have been you, and you would never have existed.32

Lastly, to considerer the singularity of B’s identity in light of the question “would choosing X be better/worse for B?” uncovers a problem in the logical structure of the question: it is not possible to measure the value of X against the future identity of B because choosing X would nullify B by unfolding a casual chain that would replace him (as the individual that he is) with a different person (D). The non-identity problem is a way of referring to this logical paradox.

For an illustration of this paradox, we can turn to Parfit’s case of The Risky Policy in his

article ‘Future Generations: Further Problems;’ there, Parfit discusses the possible effects of two different types of environmental policy. The case goes as follows: to the best current and available knowledge, both policies are predicted to have no negative effects for at least 200 years. The difference between them, however, is that choosing one of these policies (“The Risky Policy”) would certainly increase the quality of life of human life for 100 years at the expense of predictable risks after such period. The difficulty, Parfit goes on to argue, is that it is not the case that the only immediate effect of The Risky Policy would be to increase the quality of human life for 100 years. Rather:

It is not true that, whichever policy we choose, the same particular people will exist two centuries later. Given the effects of two such policies on the details of our lives, it would increasingly over time be true that people married different people. More simply, even in the same marriages, the children would increasingly be conceived at different times. As we have seen, this would in fact be enough to make them not the same children. The proportion of those later born who would owe their existence to our choice of one of the two policies would, like ripples in a pool, steadily grow. We can plausibly assume that, after two centuries, there would be no one living who would have been born whichever policy we chose. There are, therefore, no people for whom choosing either policy would be better or worse. In their stead, there would only be people whose identity depends, in one way or another, on our choice of policy. Accordingly and consequently, questions of the form “would choosing X be better/worse for B?” are logically inappropriate.

The non-identity problem is the site of a vast and rich debate in normative theory. However, what concerns us here is the challenge that this problem poses for an interest-protecting justification of future-person rights. This challenge is neatly captured by what Krister Bykvist calls “the non-identity of desires.” The non-identity of desires highlights the intimate, direct and inextricable correspondence between a person’s interests and her identity—that is, the way in which any changes registered in a person’s identity translate into a different set of interests—in order to question the belief that a future-oriented choice can be normatively justified on its relation to the interests of future-persons. As she puts it, whenever we deliberate on future-oriented choices, “not only do we have to

33 Ibid, 114
34 Ibid, 115
35 Krister Bykvist, ‘Preference-Formation and Intergenerational Justice’ in Intergenerational Justice, 301-302
worry about which persons to create [i.e. their identity], we also have to worry about which desires to create [i.e. their interests].” In other words, the non-identity of desires foregrounds the complementary logical paradox of the question “would choosing X be better/worse for B?”; namely, the fact that asking questions of the form “would choosing X be better/worse for the interests B?” ignores the fact that the concrete content of such interests is directly dependent on our choice of X, Y, or Z.

These normative-logical considerations are essential for a full understanding of the theoretical ground of interest-protecting future-person rights. Steiner and Vallentyne, however, adopt a more explicitly political approach and bring out the basic objection that the general idea of interest-protection conflicts with the fundamental requirement of liberalism: full self-ownership (or individual liberty). As they put it, to view the essence of rights as the protection of people’s interests opens the possibility to “permit, and… even require, others to use force against an autonomous agent against his will, when it is for his own benefit (e.g., forcibly preventing someone from smoking, or forcing someone to participate in exercise programs). This point is specially relevant in the case of the interest of future-persons, since, in order to be protected, they must first be hypothetically determined by present-persons—that is to say, such interests would not properly and fully be those of future-persons.

Both Bykvist and Steiner and Vallentyne offer ways to by-pass the difficulties that arise from attempting to ascribe rights to future-persons (e.g. the problems of non-existence, non-identity, and non-identity-of-desires). The way they proceed, however, requires complex and sophisticated conceptual distinctions and logical analyses that transcend current publicly recognized notions of rights and justice. In other words, their

36 Ibid.
38 Steiner and Vallentyne, 56
39 Bykvist proposes a double distinction between, on the one hand, comparative and absolute desires, and on the other hand, desires for worthless and worthwhile things (Bykvist, 302). Steiner and Valentine offer what they call a choice-prioritizing theory of rights that, they claim, simultaneously protects choices and
approaches require a transfigurational critique of our normative status quo. As such, their strategies are not available to us here. Our goal in this section, on the contrary, was to evaluate the resources that a status quo liberal framework possesses to ground an approach to intergenerational justice. Thus, the insight to be drawn from this section is that a traditional liberal approach to justice is *prima-facie* unable to answer the question of intergenerational justice. A way of conceptualizing the common source of the manifold forms of this inability is through liberalism’s focus on the *form* rather than the *content* of individual freedom. For example, since the effects of atrophic climate change are likely to influence *the spectrum of life-choices available* to future persons but will not impair their *choice-making-capacities* (i.e. their liberty), it is at best difficult to see why and how, from a liberal standpoint, present-persons are morally obliged to *limit their liberty* for the sake of protecting the *possible interests* of their future counterparts. To focus on the *form* rather than the content of freedom is an attempt to create an equalized normative space in which rights and obligations are publicly distributed *impartially*. As I see it, however, this impartiality is an illusion: the normative logic of liberalism implicitly tilts the balance in favour of present-persons; for, as Gaus argues, to the extent to which liberty is normatively basic, “the onus of justification is on those who would limit freedom”—in this case, the future generations.

**Communitarianism**

Communitarian approaches to justice reject the idea that the protection of individual liberty should be the normative core of socio-political contexts. More specifically, they challenge the notion that the dignity or intrinsic value of persons lies in a type of particularity that can only be expressed through free choices. Instead of seeing persons as essentially rationally self-interested beings, communitarians support an ontological view of human beings as *primarily* social creatures: beings who are always and already embedded in and constituted by a manifold of *customs, narratives and intersubjective contexts*—e.g. familial, religious, ethnical, sub-cultural, political, etc. As they see it, it is the expression of this social essence, translated into mutually recognizable personal

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*interests and where “the protection of choices is lexically prior to the protection of interests.” (Steiner and Valentine, 56)*
identities that provide value and meaning to the lives of persons. For instance, Alasdair McIntyre famously writes:

I am someone’s son or daughter, someone else’s cousin or uncle ... I belong to this clan, that tribe, this nation. Hence what is good for me has to be the good for one who inhabits these roles. As such I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point.

**Alienation and Integrity**

The main objection that communitarians raise against liberal theories of justice can be called the *alienation* objection. The ground of this objection is the claim that the liberal ontological characterization of persons as *self-interested, individualistic rational choosers*—or, as Michael Sandel puts it “unencumbered selves”—is an *abstraction* of the real, fuller picture of human beings and, as such, does not do justice to the essentially ethical experience of being a self. A truer, fuller ontological conception of persons—communitarians claim—sees them primarily as social beings, that is, beings that are always and already inextricably embedded in multiple socio-cultural contexts. As communitarians see it, institutional frameworks based on liberal-individualistic principles (such as individual rights and liberty) *alienate* persons from their social essence.

The notion of alienation plays a crucial role in communitarian critiques of the liberal status quo; mainly, their critique is directed at the liberal notion of justice as *impartiality*. In its most basic, logical form, the idea of impartiality refers to a sharp ‘evaluative disconnect’ between an agent’s *choice* and the *objects* to which her choice is directed. Bernard Gert, for example, defines impartiality as follows: “A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced at all by which member(s) of G benefit or are harmed by these actions.”

Within traditional liberal discourses of justice—which, as we saw, aim to protect the liberty of individuals by placing constrains on its public exercise—impartiality is seen as the *political form* that is compatible with the maximum amount of personal autonomy;

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namely, *equality as universality*. The clearest example of this conceptual trinity is the most famous passage from the *United States Declaration of Independence*: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.” According to this view, therefore, political injustices are avoided by leaving *particularities* such as lineage, race, gender, cultural heritage, etc., out of the discourse of rights and, instead, grounding legal duties and protections only on those features that belong, *universally*, to human beings as such—for example, our *rational* capacity to *choose* or the fact that we have *interests*.

**The Critique of Universality: Ethical Life and the Common Good**

Communitarians reject the idea that *impartiality as universality* is the proper form of justice. A landmark example of this claim is Hegel’s critique of universal moral-political principles—which he articulates vis-à-vis Kant’s moral theory. The full reach of this critique is too rich and complex to discuss here—it involves contrasting claims about the nature of freedom, reason, the will, the complementary development of individual consciousness and socialization, etc.\(^{42}\) For our present purposes, I will focus on Hegel’s claims about the proper relation between individuals and society.

As noted above, communitarianism is grounded on an *ontological* view of human beings as primarily social creatures. For Hegel, this ontological gives rise to *normative* implications regarding the political organization of societies—i.e. the type of norms and institutions that constitute societies. This normative relation between individuals and their society is captured by Hegel’s notion of the *ethical life* (*Sittlichkeit*)\(^{43}\). Basically, here Hegel’s idea is that the *type of society* that allows human beings to lead meaningful, authentic *ethical lives* is the one where *political* norms and institutions reflect the socio-cultural (i.e. *ethical*) identity of the citizenry—for example, in the way that Christian values provide the language for the *United States Declaration of Independence*.

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Consequently, as Charles Taylor puts it, the ethical life of a society reflects the fact that “what is most important for man can only be attained in relation to the public life of a community, not in the private self-definition… of the individual”\textsuperscript{44}—here the community of which Taylor speaks is the state.

A simpler way of explaining the normative relation between individual and society contained in Hegel’s idea of the ethical life is through the communitarian notion of the common good. Instead of the invisible-hand-logic of self-interested rationality, communitarians seek to articulate and make manifest the dormant ethical bonds that have the potential to reconcile the lives of citizens with the wellbeing of the state. These bonds are what they call the common good. Contrary to the type of negative social relation that the liberal framework creates (e.g. rights as checks and individual protections), communitarians argue that to ground justice on the common pursuit of the good allows citizens to see their relationships to one another and the state in positive terms; namely, as a community that actively supports its members in the pursuits of those values, beliefs and traditions that they find meaningful. In light of this publicly recognized common pursuit of the good, the communitarian idea of “the just society” is one where laws and institutions reflect the ethical bonds and obligations that citizens owe to each other as members of the same political community (i.e. state) and as collaborators in the pursuit of a common good (e.g. democracy, a particular religious dogma, equality, etc.)

Two Approaches to Intergenerational Obligations: Membership and Common Pursuit of the Good

In light of these considerations, there are two prima facie ways of grounding a communitarian theory of intergenerational justice. The first one flows from the condition of being a member of a given political society. The second one is a qualified version of the membership argument that grounds political obligations on the active engagement in a shared pursuit of the common good.

\textsuperscript{44} Charles Taylor, \textit{Hegel and Modern Society}, Cambridge University Press, (NY, 1979) 93 (italics)
The argument from membership is grounded on the notion that all political communities are intrinsically intergenerational contexts—a notion that contrasts with the present-focused normativity of classic liberal criteria of right-ascription (i.e. choice-protection and interest-protection). Philosopher Jana Thompson, for example, argues that the citizens of any society:

Understand themselves and their political actions in a historical framework that connects the deeds of past generations to their own deeds and to aspirations for the future of their society… Their government makes agreements and incurs obligations which succeeding generations are supposed to honour… A nation for them is, in essence, a transgenerational polity: a society in which the generations are bound together in relationships of obligation and entitlement. (Thompson 2009, 25)

In spite of their intuitive force, attempts to derive a theory of intergenerational obligations from the notion of a transgenerational polity are vulnerable to the standard critique of communitarian attempts to ground synchronic duties of justice on the fact of membership; namely, the critique of contextualism. Margaret Gilbert, for example, deploys this critique by noting that this type of “analytic membership argument” (Gilbert 2006, 9) for grounding justice relies on a “definition of ‘political society’ such that a political society cannot be evil.” (Gilbert 2006). Gilbert’s criticism cuts through the communitarian idea that the moral judgments of a person are circumscribed by the customs, beliefs, and traditions into which she is born; or, to put it more precisely in the words of Rainer Forst, the communitarian belief that

*The context of justice* has to be a community that, in its historically evolved values, practices, and institutions—in its identity, in short—forms the normative horizons that are constitutive of the identity of its members and thus of the norms of justice. Only *within* these horizons of value is it possible to pose questions of justice and answer them with reference to what is good and valid for the community against the background of its evaluations and its self-understanding.

Thus, Gilbert’s criticism is that, if one assumes that judgments of right and wrong are directly and exclusively conditioned by the communities into which a person is born, it follows that rights and obligations of justice—in the relevant sense of non-oppression or

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non-domination—are only possible in societies that have been founded on principles such as equality, fairness, respect for the autonomy of persons, etc. History is quick to remind us of the nonexistence of such utopian social beginnings and of the progressive way in which justice develops. Take as an example the western notion of legal equality. In its inception, this notion only applied to property-owners (vastly constituted by European males). Throughout a long progression of political struggles, this notion has been slowly expanded to include non-Europeans, females, non-human animals, etc. Thus, the flipside of Gilbert’s critique of “analytic membership arguments” is a warning against the danger of confining the meaning of justice to the pre-existing ethical substance of a community. Namely, the danger of loosing the essential normative meaning of justice: the common, emancipatory name of the basic human opposition to oppression. In other words, this is the danger of a society that lacks normative standards and criteria to evaluate the justice of its own principles. Regarding intergenerational relations, the danger of grounding obligations to future-persons on “analytic membership arguments” is that of establishing a ‘transgenerational polity’ where laws and institutions are fixed by the self-understanding of present societies and are closed to future criticism.

Furthermore, the notion of transgenerational community raises the issue of justifying obligations owed to generations in the far or distant future. This is the issue of including future-generations—the preferences, values, traditions, and ethnic-cultural bonds of whom are always unknown—in the concrete notions of common-good and ethical-life that constitute present-communities. This difficulty increases when one considers the way in which present-day geo-political associations and cultural identities constantly and rapidly evolve alongside processes of ideological and technological globalization. For a theory of justice, what ensues from this ethical uncertainty is the insight that the form of present concerns for the interests of future-persons—that is, the ground of intergenerational obligations—cannot be grounded on substantive assumptions regarding their identity.

Communitarians can circumvent the contextualist-objection to the membership argument by justifying obligations-to-future-persons on the latter’s role as cooperative partners in
the *pursuit of transgenerational common good*. In the case of intergenerational justice, this type of qualified-membership argument is valid to the extent to which present persons see the life-projects of their future and past counterparts as extensions of their own. For example, present-persons have obligations to honour and further work through which their predecessors founded the democratic institutions that they cherish. Along the same lines, present-persons have duties toward future generations because the latter will inherit this same democratic project and, by so doing, engage with them in a common tradition of interaction. Here, however, the problem is that, as Thompson notes, the history of societies is punctuated by changes in ethical outlooks—that is, changes in the set of values that are publicly recognize in a given society. These changes, Thompson goes on to argue, are often felt as ‘breaks with the past:’ disruptions and divergences in what, up to that point, had constituted a shared, publicly recognized idea of what it means to be a good person or to lead a good life. In light of the likelihood and frequency of these ‘breaks with the past’ it seems that the idea of an *intergenerational pursuit of a common good* is too unreliable to serve as ground of intergenerational obligations. Furthermore, Thompson notes that a notion of justice derived from an *intergenerational pursuit of a common good* runs the risk of oppressing future-persons; for, as she asks in relation to past-generations, “should our obligations to make recompense for the injustices of our predecessors have to depend on whether we regard ourselves as morally similar to them?” (Thompson 2009, 32) Or, what is the same: should our duties to include the interests of future generations in present-decisions depend on how ethically similar to ourselves we foresee they will be? To take such a conditional approach to intergenerational duties undermines the dignity and autonomy of future generations, and, as such, forgets that one of the fundamental aims of justice is to protect persons from the suffering that ensues from being subjected to all forms of oppression and arbitrariness—including cultural and ideological oppression. For example, a saving bond created by present-persons to help future-families acquire housing must not rely on the notions and values through which present-persons understand the meaning of *family*. For all we know, the values that today inform our conceptions of the family might be perceived as out-dated and oppressive to persons from the next century—much in the same way that the strict patriarchal family structure of the early 1800’s appears to us today. As such, if said savings-bond puts forth
a concrete definition of the family, it runs the risk of indirectly oppressing those future-person who, in light of pressing financial difficulties might be forced to modify their ethical identities in order to qualify for financial aid.

**Contract-Theories of Justice**

The failures of both liberalism and communitarianism to secure just intergenerational relations can be understood as limitations of the normative *scope* of each theory. Liberalism’s commitment to *universal* normative standards looks past the particularity of persons to ground individual rights on the latter’s capacity to choose. Paradoxically, however, *the very logic of universalism excludes future-persons from the discourse of rights* for at least two reasons: 1) if the normative ground of liberal justice is respect for a person’s capacity to choose, it is unclear that the choices of present-persons can impair this *capacity* in future generations and, accordingly, that the liberty of future-persons requires protections; and 2) even if one accepts that the choosing-capacity of future-persons can be impaired by present-persons, it is difficult to justify limiting the liberty of present-persons for the sake of furthering the interests of non-existing future-persons—the preferences of whom, furthermore, are unknown.

Communitarians bypass this same problem by appealing to a *particularist* notion of the subject of justice: they ground justice claims on the attachments, commitments, and histories that constitute the life-projects of persons. Nonetheless, as we saw in the previous section, grounding political obligations on the fact of common membership (either to a political community or a shared pursuit of the common good) introduces a sense of conditionality into justice: the fact of *membership* restricts the scope of duties and obligations to those persons who are perceived to be sufficiently ethically similar to “us.” Consequently, from this communitarian perspective, obligations toward future-persons end at the point where the values and life-choices of future-persons diverge from those of present-communities.
In light of these problems of scope, one could argue that liberalism and communitarianism share a methodological flaw: their theoretical starting point is a utopian picture of the individual and society from which they derive principles of justice in the form of conditions of possibility. To put it simply and colourfully, liberals and communitarians put the “unicorn” before the cart. Contract-theories of justice, on the other hand, take as their point of departure the concrete, “realistic” practical challenges that disenchanted persons—that is, self-interested and instrumentally rational beings—face whenever they are forced to coexist in environments where resources are not unlimited. As such, the normative (but not moral) basis of contract-theory is the conviction that, under these realistic conditions, people invariably recognize that justified cooperation under mutual restraint is the most effective and sustainable strategy for advancing their particular interests. Here, therefore, the aim of a theory of justice is twofold: 1) to articulate the rules and procedures presupposed by such strategy and 2) to ensure that those rules and procedures are generally and publically justifiable.

A distinguishing feature of contract-theory is the employment of formal procedures. For instance, insofar as contract theory sees cooperation as the most efficient response to the problem of resource-allocation under conditions of scarcity, it represents a form of distributive justice. It is in accordance to this aim of just distribution that this family of theories defines the who and what of justice. More precisely, for contract-theories, the legitimacy of justice-claims refers to the conditions of mutuality and reciprocity that, as they see it, characterize just relations of cooperation. As David Heyd puts it in ‘A Value or an Obligation? Rawls on Justice to Future Generations,’ “just cooperation takes place only where human beings are mutually vulnerable as well as capable of benefiting each other.” (Heyd 2009, 168)

In light of these remarks, the appropriateness of the contractarian model of justice to the intergenerational sphere corresponds, not only to the possibility of intergenerational

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49 A further condition may be added to those of reciprocity and generality; namely, the enforceability of reciprocity.
cooperation, but, most importantly, to its possibility under conditions of reciprocity and mutuality. This notion of cooperation, to be sure, is different from the communitarian notion of active engagement in the pursuit of a substantive notion of the common good, since it does not require or presuppose that cooperative parties share common goals or values.50

Cooperation and Reciprocity

Cooperation is a type of a collective action problem. To cooperate means to join one’s activity with that of others in the pursuit of common interests. The way in which cooperation is a problematic type of collective action is best captured by the famous prisoner’s dilemma. To illustrate this dilemma, let’s use climate change action, where the collective goal is to reduce the negative effects of human activity on weather patterns. Since the worst effects of climate change will only affect future generations, the goal of reducing the impact of present human activity on weather patterns is not strictly necessary for the wellbeing of present generations but rather, from their perspective, it represents something like a preference. Let’s assume that all it takes to achieve this goal is 1) for all presently living persons to install an emissions-reduction device on their vehicles and 2) that the individual cost of this device is $50. Under these circumstances, cooperation is rational from a collective perspective: each and all individuals prefer the benefits of reducing the impact of human activity on weather patterns over both 1) the long-term consequences of unchecked environmental human impact and 2) not incurring a $50 cost. It is in light of these preferences that one can assume that present persons are willing to cooperate with each other to achieve the goal of collective emission-reduction. However, the prisoner’s dilemma arises when one realizes that under these same circumstances not to cooperate is also rational. All it takes to see this paradox is to shift one’s perspective from that of the collective to that of the individual. In other words: from the individual perspective of each present-person, it is rational not to cooperate under these conditions.51 This is so, because, in cases where (a) strict collective cooperation is a necessary condition for the achievement of a desired goal (b) which is not necessary for

51 This, however, does not imply that cooperation in this case is also irrational.
the wellbeing of prospective cooperators, the (c) the absence of enforcement procedures
to guarantee collective cooperation is a sufficient reason to assume that at least some
persons will choose not to cooperate. To return to the example of climate change action,
in light of this reasonable assumption, the strategy that is most likely to maximize the
benefit of present individuals is not to incur the $50-cost of purchasing an emitions-
reduction device—lest others refuse to cooperate and actual cooperators incurs the $50-
cost in vain.

Contracts solve the prisoner’s dilemma by guaranteeing collective cooperation: they
represent sets of publicly recognized, clear and enforceable rules of action that formalize
the conditions of mutuality and reciprocity between potential cooperators. The structure
of the prisoner’s dilemma elucidates the challenge of intergenerational cooperation: it is at best unclear that present and future generations are capable of entering into a shared contract. To be sure, this challenge does not imply that future-persons cannot be included
or protected by contracts made among and for present-persons: this is possible as in the
case of the proposed action-plan of the Summit. However, within such future-oriented-contracts between present persons future-persons appear as passive recipients of the benevolence of present-persons; or, to put differently, future-persons are excluded from
the class of contractors—which is to say that they are not considered to be equal agents
of justice.

Conclusion: Towards a Transfigurational Approach to
Intergenerational Justice

At this point, the normative limitations of theories of intergenerational justice based on
the traditional notions of liberty-protection, community-obligations, and reciprocal-relations have been revealed. More precisely, what we have seen is that in order to
include future-persons in procedures of justice, traditional theories have to import alien
assumptions that destabilize their conceptual integrity—for example, the tension between
the notions of future-interest-protection or future-advocacy and the liberal focus of
personal autonomy. Most importantly, we have seen that these traditional approaches to
justice share the common inability to include future-persons into present-justice procedures in such a way that the former appear as full and equal agents of justice. This shared inability is a good reason to turn our attention away from attempts to ground intergenerational justice in these notions toward ways of thinking of justice between generations that transcend the dominant normative-political intuitions of the present. These alternative ways of thinking about justice reflect what I earlier called (following Benhabib) a transfigurational critique of intergenerational justice.52 It is to this transfigurational critique that I now turn.

52 See this thesis, p.9
CHAPTER 2
RAINER FORST’S CRITICAL THEORY OF JUSTICE

Constructing a Criteria for a Theory of Intergenerational Justice

Having reflected on the strategies that liberal, communitarian and contract theories of justice propose to deal with intergenerational issues, it is time to gather our insights—or, more accurately, to use their shortcomings—to assemble the success-criteria that any truly humane theory of justice must satisfy in order to allow future-persons to appear as fully empower, equal agents of justice—that is to say, as autonomous co-authors of the norms and institutions that exercise power over them.

To start building these justice-criteria for future-persons, let’s recall the communitarian insight about “trans-generational community.” Thinking about this notion disclosed to us the unstable temporality of communal ethical identities. With regard to communitarian approaches to intergenerational justice, this condition of temporal instability raised the issue of linking the ethical identities of present-communities—which presuppose shared and concrete notions of the “good-life” and “the common-good”—to those of persons in the distant-future. Because it is not possible to perfectly predict the ethical identities of the latter, communitarian theories of justice cannot simply extend to future generations the context-dependent rights and duties they articulate for present-persons. In more general terms, the failure of this communitarian strategy of ethical extension suggests that the justice-criteria we are seeking—that is, one that highlights the political autonomy of future-persons—cannot derive rights and obligations of justice from particular ethical contexts. In other words, these criteria must understand justice as a context-transcending relation between all persons. At the level of theory-construction, this condition of context-transcendence requires a complementary conception of the subject of justice—a conception that similarly escapes the communitarian restrictions of membership and belongingness.
The type of context-transcendence that defines the subject of intergenerational justice, however, must steer clear from the type of exclusive-universality that, as discussed in the last chapter, handicaps liberal approaches to intergenerational justice. More precisely, the notion of context-transcendence for which we are searching must avoid imposing arbitrary ontological restrictions on the scope of justice. More precisely, it must not arbitrarily exclude certain kinds of persons (not only future persons, but also humans who are not immediately, directly, or presently capable of rational-choice or preference-formation) from the class of agents of justice. To ‘do justice’ to future-persons, a theory of justice must construct its definition of the subject-of-justice reflexively: it must turn the question of justice back onto itself in order to justify its own elements and prescriptions to whom it addresses—in particular, to those persons which it excludes from its scope. Nancy Fraser, for instance, speaks on this idea of normative reflexivity by urging theories of justice that focus “on questions of what is owed to community members” to “turn to disputes about who should count as a member and which is the relevant community.”

Proper answers to questions of justice and morality rarely follow dichotomous paths. Although the communitarian notions of common-good and ethical-identity respectively restrict the autonomy of future-persons and the temporal scope of justice, I don’t think that they should be dismissed altogether. The ethical force contained in these notions has the power to protect discourses of intergenerational justice from being reduced to economic or technical discourses—as I maintain was the case at Summit. Put differently, context-dependent normative considerations—e.g. a community’s relation to their land

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53 Nancy Fraser, *Reframing Justice*, Koninklijke Van Gorcum (Netherlands, 2005), 15
54 See Ch2 of this thesis, p 25-26. My use the communitarian notion of ethical-identity is meant to create a contrast with the classic liberal notion of abstract-universality as expressed by notions such as Sandel’s “unencumbered self” (see p. 26 of this thesis). In other words, by the ‘ethical identity’ I refer to the particular values, practices, beliefs and other kind of self-understandings that persons both identify-with and have reasons to preserve (e.g. queer, Asian, hippie, etc.) For my present purposes, it is not relevant whether the substance of a person’s ethical identity is drawn from social, cultural or religious sources. What is relevant, however, is to keep in mind that one’s ethical identity is derived from a manifold of ethical sources (e.g. religious, national, ethical, professional/vocational associations and value systems) that directly or indirectly links one to other persons who draw their respective ethical identities from the same ethical sources that feed one’s identity. This ethical links are what I here call ethical communities. In simpler words, ethical identity is what McIntyre foregrounds when he says that we are all “someone’s son or daughter, someone else’s cousin or uncle ... [We] belong to this clan, that tribe, this nation”—but also to this culture or sub-culture which is not geo-politically situated. (see this thesis, p.26).
and particular productive practices (fishing, traditional agricultural practices, etc.)—can reveal the irreducible normativity of future-oriented planning. To clarify, I am not claiming that these type of ethical/contextual considerations lead straightforwardly to proper considerations of intergenerational justice; rather, my claim is the more modest suggestion that ethical/contextual considerations have the capacity to foreground or reinvigorate the inherent normativity of future-oriented political discourses. This modest but indispensable normative potential is captured by the notion of context-sensitivity—a kind of middle term between context-dependence and context-transcendence.

A further element of the intergenerational-justice-criteria we are constructing is therefore context-sensitivity to the ethical identity of persons and groups. To begin to assemble these criteria, we can say that within a just approach to intergenerational justice, a context-transcendent characterization of the subject of intergenerational justice must not be gained at the expense of her ethical identity.

Lastly (and this point is subtle but important), unlike realistic or naturalized conceptions of “the just society.” —e.g. contract-theories’ conceptualization of persons as self-interested, rational choosers or that of sociality as mere productive bonds—, the theory that can truly and sincerely speak the language of intergenerational justice must be utopian—which here does not mean unrealistic. The etymological roots of u-topia are the Greek words ou- (no/without) and topos (place/where). Accordingly, a utopian theory of justice is one that, as Rainer Forst writes, “is nowhere fully at home”55—neither in an Edenic state of nature, nor in an Elysian society. Or, to put it somewhat metaphorically, the proper home or “site” of Forst’s notion of utopian justice is “nowhere”—where nowhere refers to the ontological-political situation of power-relations that implicate and affect persons from outside the boundaries of politically recognized contexts. Intergenerational injustices, as I explain below, are situated in this nowhere. But there is another—perhaps secondary—poetic-political sense in which utopian justice directly addresses and honours the ontological-political situatedness of future-persons: Forst

describes this nowhere where justice is fully at home as the without-place and without-time of human imagination and creativity; of non-conformity; of unfixable depths and horizons; of perpetual progress and work.\textsuperscript{56}

Together, these essential criteria for a theory of intergenerational justice—sensitivity to the normative/communicative power of ethical-contexts; a reflexive and context-transcendent conception of the subject of justice; and a utopian vision of the just society—represent the pillars of Forst’s Constructivist Theory of Justice. I call them pillars because, although they support a larger and more complex theoretical structure, they are themselves grounded in a common foundation: what Forst argues is the basic right to justification that all persons owe to each other. This second chapter offers an exposition of Forst’s theory of justice and explains such theory’s ability to make future-persons appear to present generations as full agents of justice—that is to say, as bearers of rights and obligations. The expository portion of this chapter proceeds through the following steps:

1) A brief explanation of the constructivist and, more specifically, Kantian-Constructivist approach to justice.

2) Turning our attention to Forst’s theory of Justice, we begin by addressing what he sees as the ground of justice: the practice of justification and the human faculty of practical reason.

3) For Forst, the practice of justification—or what is the same, the exercise of practical reason—implies a simultaneous awareness and recognition of the plural, complex constitution of the normative world. This double-insight of practical reason is explained in terms of context of justification.

4) Out of the discussion of these manifold contexts of justification, we will arrive at Forst’s argument for a single universal moral right to justification. Within a discursive theory of justice, this universal right is recursively reconstructed into the criteria of reciprocal (“i.e. without any of the addressees claiming certain privileges over others and without one’s own needs or interests being

\textsuperscript{56} This perpetual work of justice reflects the on-going task of critique. See CH1, p. 2-3 of this thesis. Other examples of injustices that exist nowhere may involve past-persons, aborted-persons, cadavers, and artificially intelligent beings.
projected onto others”) and general (“i.e. without excluding the objections of anyone affected”) justification.

5) For a theory of justice, this right to justification implies a reflexive articulation of the person and scope of justice—an articulation that, as Forst sees it, must be justifiable not only to those who are included in it but also, and most importantly, to those whom it might exclude. Similarly, this articulation must be simultaneously context-transcending—to respect the universal right to justification of all human beings—and context-sensitive—to be applicable within different contexts of justification.

6) Lastly, Forst’s vision of the just society comes into focus. In such society, justice operates at two complementary levels: fundamental justice and maximal justice. This chapter ends with the introduction of these two levels of construction and poses the question of their implications for intergenerational relations.

Justifying Justice: Three Strategies

Within our globalized world, political societies are increasingly confronted with what Rawls termed the fact of pluralism: the fact that no single comprehensive moral, ethical, religious or cultural doctrine “can provide a publically recognized basis for a conception of justice in a modern democratic state.” The challenges that this fact poses for a unifying conception of justice will only increase in the intergenerational sphere—as has already been suggested by our discussion of the idea of transgenerational polities. In the absence of a single given and publicly shared foundation, theories of justice that wish to engage with the reality of synchronic and trans-temporal ethical pluralism, must find an alternative conceptual strategy to ground rights and obligations. Generally, theorists of justice adopt one of the following three strategies:

58 Ibid.
The first strategy is to reject both the possibility and plausibility of independent normative foundations. For this type of (1) anti-foundational theories, laws and institutions draw authority and legitimacy from diverse, contingent, and often conflicting sources—such as historical events, metaphysical beliefs, customs and traditions, etc. Here, Richard Rorty’s hope to “substitute Freedom for Truth as the goal of… social progress”\(^{60}\) is a characteristic example. The second strategy also rejects the possibility of grounding justice on independent, comprehensive normative facts but tries to salvage the objectivity of normative principles by deriving them from minimal (or thin) moral standards that, they claim, are shared universally. An example of this minimal-universalist strategy is Michael Walzer’s claim that the manifold of comprehensive doctrines that co-constitute a given pluralist society really are held together by an underlying, reiterative thin-universal morality.\(^{61}\) More precisely, “Walzer argues that as maximal moralities [i.e. comprehensive doctrines] respond to challenges and interact with each other, we may get hint that there is some sort of common experience reiterated in different contexts.”\(^{62}\) In the context of intergenerational relations, the question that here arises regarding the temporality of this “common experience” of morality is this: is a common morality also revealed by different historical events and epochs? And if so, on what grounds can one argue that such shared moral foundation will remain constant in the distant future?

Lastly, constructivist theories of justice assert the plausibility and applicability of objective principles of justice within pluralized societies but claim that these need not be grounded on metaphysical arguments or discovered in the world. Rather, as Onora O’Neill puts it, objective principles of justice “must be constructed on the basis of plausible, no doubt abstract, assumptions.”\(^{63}\) These assumptions are commonly called the “substance” of constructivist theories and are often drawn from fairly unproblematic,

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publicly accepted facts about the nature of persons and the world—for example: the traditional conceptions of human beings as ‘rational’, ‘social’ or ‘linguistic’ animals.

But what does it mean for these facts to be constructed into principles of justice? Or, in technical terms, how does the constructivist build normative principles from descriptive facts? For theorists working within this framework, these publicly accepted ‘plausible assumptions’ represent “everyday understandings of objectivity” that, upon proper reconstruction, can function as “unbiased and impartial universal reasons for everyone.” Constructivists refer to the method by which they re-construct basic assumptions into principles of justice as “procedure.” Together, substance and procedure are what I here call the two architectonic elements of constructivist theories of justice. Then, as O’Neill puts it, to construct principles of justice consists in nothing more than

To reason with all possible solidity from available beginnings, using available and followable methods to reach attainable and sustainable conclusions for relevant audiences… [In other words, it means] starting from available materials, assuming only an abstract account of others’ capacities, capabilities and vulnerabilities that is appropriate to the restricted or inclusive scope of the reasoning in hand, taking account of the degree of coordination possible between ‘builders’, and working towards ‘buildings’ which all in the relevant domains can help ‘build’ and can ‘inhabit.’

Dropping the metaphor of construction, what O’Neill means by “attainable and sustainable conclusions for relevant audiences”—for our purposes, the relevant audience being future-persons—is that, for constructivists, principles of justice are valid and legitimate only insofar as they are justifiable to those who are subjected to them. Justifiability, as will become clear through our discussion of Rainer Forst’s theory of justice, is at the same time a critical criteria of justice: it allows one to uncover arbitrary (i.e. unjustified) power relations which may be hidden behind publically or officially accepted norms and institutions—for example, whereas some special privileges that certain religious authorities claim for themselves are accepted within a

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64 Peri Roberts, 7
65 Ibid.
66 O’Neill, 63-64
67 Here, I want to make a brief and anticipatory remark about the meaning of justifiability in Forst’s theory of justice; more precisely, about how he conceives of the relationship between the justifiability and acceptance of just norms. As will be elaborated bellow, Forst thinks of justifiability as the intersubjective and context-appropriate translation of the Kantian notion of universability into the discursive practice of demanding and offering general and reciprocal reasons to justify the norms and institutions that exercise power over persons within different socio-political contexts. This normative criteria of justifiability is at the same time a critical criteria of justice: it allows one to uncover arbitrary (i.e. unjustified) power relations which may be hidden behind publically or officially accepted norms and institutions—
Constructivism and Future Generations

What is the advantage of a constructivist approach to the question of intergenerational justice? On the one hand, as O’Neil suggests in the passage quoted above, constructivism responds directly to the fact of pluralism. Thus one can extend this response to temporal pluralism—by [1] assuming a notion of the person that is “appropriate to the restricted or inclusive scope of the [issue] in hand… [2] taking account of the degree of coordination possible between ‘builders’, and [3] working towards ‘buildings’ which all in the relevant domains can help ‘build’ and can ‘inhabit.’” On the other hand, and along the same lines, the logic of its normative epicenter, that is, the justifiability of norms, functions as the “sensorium of justice” by problematizing issues and relations that are often overlooked and under-theorized by other theoretical perspectives. For the issue of climate justice, the constructivist advantage works by supplementing the economic perspective taken by the Summit—namely, its focus on drafting an immediate plan of action to “reduce emissions and build resilience to the adverse impacts of climate change”—with what Rainer Forst calls the political perspective to justice: a perspective that focuses on the justifiability of power relations rather than questions of resource and goods distribution (e.g. fair rates of savings for the future or the just distribution of green house emissions). As Forst puts it: “It is not just a matter of what goods are to be legitimately distributed for what reasons in what amount and to whom… it is also a matter of how these goods come into the world in the first place, who decides on the distribution and how it is carried out.” My claim here is that it is only by combining this political perspective on justice with the constructivist method that future-persons can appear in present discourses of justice as something more than mere recipients of goods or

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68 O’Neill, 63-64
69 See this thesis, CH1, 1
70 Forst, The Right to Justification, 194
beneficiaries of altruism, that is, as approaching full agents of justice empowered with equal status within the basic structure of their society.\textsuperscript{71}

**FORST’S THEORY OF JUSTICE**

**CONTEXTS OF JUSTICE AND THE RIGHT TO JUSTIFICATION**

**Kantian-Constructivism**

Forst’s constructivism belongs to the Kantian tradition; which, as Rawls explains in ‘Kantian Constructivism in Moral Theory,’ “holds that moral objectivity is to be understood in terms of a suitably constructed social point of view that all can accept.”\textsuperscript{72} “Apart from the procedure of constructing the principles of justice,” Rawls goes on to claim, “there are no moral facts.”\textsuperscript{73} Kantian-Constructivists like Forst try to construct this generally acceptable suitable point of view by means of “an intersubjective and procedural interpretation of [1] moral autonomy and of [2] the public use of reason.”\textsuperscript{74} Here, [1] and [2] represent the two ‘architectonic elements’ of a Kantian constructivist theory: substance and procedure, respectively.

For the sake of normative objectivity, Kantian-Constructivists are concerned with demonstrating that the ‘substance’ of their theories is neither arbitrarily nor contingently adopted. Instead, their strategy is to look for basic-assumptions in what Christine Korsgaard calls ‘inescapable activities;’ for example, rational agency, action, communication or deliberation. Grounding a theory of justice on this type of seemingly universal activities equips it with two productive resources to engage with intergenerational issues. First, it secures the normative authority of constructed principles; for, as Korsgaard claims, “[t]he only way to establish the authority of any

\begin{thebibliography}{99}
\bibitem{71} Ibid, 192
\bibitem{72} Rawls, ‘Kantian Constructivism in Moral Theory,’ The Journal of Philosophy, Vol. 77, No. 9 (Sep. 9, 1980), pp. 515-572, 519
\bibitem{73} Ibid., 519. It can be argued, however, that Rawls admits the existence of moral facts such as a person’s sense of justice; capacity to conceive of the good (whatever such individual conception turns out to be); reasonableness; and autonomy. These moral facts are nevertheless constitutive parts or necessary assumptions of what Rawls calls above “the procedure of construction” and, as such, to my mind they are contained within it. I am grateful to my adviser, Karen Houle, for pointing out this ambiguity.
\bibitem{74} Forst, The Right to Justification, 80 (italics)
\end{thebibliography}
purported normative principle is to establish that it is constitutive of something to which the person whom it governs is committed… [Accordingly,] a constitutive principle for an inescapable activity is unconditionally binding.”⁷⁵ In terms of intergenerational justice, unconditionally binding principles derived from inescapable activities keep discourses of justice from ‘getting stuck’ on unproductive normative analyses such as disagreements over the reciprocity (or lack thereof) between generations or the impossibility of predicting the preferences of future persons. Second, the idea of inescapable activities make a strong case for the context-transcendence and universal scope of morality, since, as Andrea Sangiovanni points out, “if activities like acting, reasoning, or deliberating are inescapable, and if the Kantian can convincingly demonstrate that the moral law… is a constitutive standard for those practices, then morality itself would be inescapable as well.”⁷⁶ Consequently, the very act of deliberating, reasoning, or thinking (perhaps the very fact of becoming aware) of the long-term effects of present-actions throws one into a moral relation with the future in such a way that the future, as a category of reflection, becomes an intrinsically moral space.

**Justification and Practical Reason**

As Forst sees it, the ‘inescapable activity’ that can simultaneously (1) legitimize the normative authority of constructed principles of justice and (2) elucidate the objectivity of morality is that of justification: the essentially human and properly social practice of demanding, offering and evaluating reasons for those actions that affect oneself and others. In agreement with Korsgaard, Forst claims that the practice of justification derives its logic and structure from what Kantians see as the ‘inescappable’ faculty of human being: practical reason understood as “the basic capacity to respond to practical questions in appropriate ways with justifying reasons within each of the practical contexts

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⁷⁶ A. Sangiovanni, ‘Scottish Constructivism and the Right to Justification,’ in Rainer Forst’s *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue*, p. 43 (italics)
in which they arise and must be situated.” As such, justification and practical reason function as the two-fold substance (or double ground) of his theory.

The currency of justification is *justifying reasons*; namely, the type of reasons that people give to answer ‘why?’ questions about norms and actions. In technical terms, these are the kind of reasons that belong to *practical contexts*. *Practical contexts* are differentiated (i.e. distinct and singular) intersubjective spaces within which the criteria for the appropriateness and validity of reasons, along with procedures of reason-giving, are determined in accordance to particular aims and expectations. For instance, while ‘being tired’ is a *good* reason to skip a family function, it is a *bad* reason to miss a workday. The ‘goodness’ or ‘badness’ of a reason corresponds to the extent to which it *justifies* a person’s absence in light of familial or professional standards. Similarly, Catholics might regard patriarchy as an acceptable norm within the church while, at the same time, denounce it as *unjustifiable* within public institutions. These and other ways of determining the appropriateness of reasons in accordance to the practical contexts in which they arise are called *validity criteria*. Because, as we have seen, constructivism is a *non-metaphysical* way of building principles of justice for *pluralist* societies, Kantian-Constructivism implies a *discursive* and *intersubjective* re-construction of the classic Kantian *validity criteria* for norms and actions, namely, the test of *universality*: “act only in accordance with that maxim through which you can at the same time will that it become a universal law.” Yet, for Forst, a proper re-construction of this classical Kantian validity criteria implies the conceptual translation of universality into *justifiability*: practical reasons are valid *within* specific practical contexts *only if they can be freely recognized and accepted by all pertinent agents and where acceptance is defined in terms of a reasonable, accessible and generally accepted procedure of deliberation*. This reconstruction, Forst claims, is the only way of turning Kant’s categorical imperative “from [its] transcendental head onto [its] social feet.”

77 Forst, *The Right to Justification*, 15 (italics)
78 Ibid, 14-18
80 Forst, *The Right to Justification*, 48
Furthermore, as mentioned above, these social feet must stand on the pluralized grounds of post-metaphysical societies where public disagreement is presupposed—especially, in relation to the proper form and content of public deliberation.

The awareness of this unavoidable disagreement compels Forst to articulate the criteria of justifiability in ‘negative’ terms: justifiable norms and actions are those that rest on reasons that cannot be reasonably rejected by the ‘directly affected.’\textsuperscript{81} Operationalized as a rule for discursive deliberation, the meaning of “reasonable rejectability” becomes general and reciprocal rejectability: justifiable norms and actions rest on reasons that “cannot be generally and reciprocally rejected.”\textsuperscript{82} As Forst puts it,

[T]he former [generality] means that nobody claims special privileges and everyone grants others all the claims one raises for oneself, without projecting one’s own interests, values or needs onto others and thereby unilaterally determining what counts as a good reason; the latter [reciprocity] means that no affected person’s objections may be excluded to achieve general agreeability.\textsuperscript{83}

**Contexts of Justice**

As mentioned above, Forst argues that the practice of justification is grounded on the human faculty of practical reason. To reason practically, Forst goes on to claim, means not only to think about the reasons that justify norms and actions, it also presupposes an insight into their contextuality. More precisely, as Forst explains, to reason practically “implies a differentiated understanding of the contexts in which practical questions are to be answered… and an understanding of how these [contexts] are connected, the differentiation of which is not to be understood in the sense of a disjunction.”\textsuperscript{84} Within Forst’ theory of justice, the totality of the normative world is constituted by four practical

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\textsuperscript{81} Forst adapts his notion of non-reasonable-rejectability from Scanlon: “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the regulation of behaviour that no one could reasonably reject as a basis for informed, unforced general agreement.” *What We Owe to Each Other*, p. 153

\textsuperscript{82} Forst, *The Right to Justification*, 48

\textsuperscript{83} Ibid, 66

contexts: the ethical, the legal, the political and the moral.\textsuperscript{85} Each of these contexts functions as a distinct context of justification within which the application of the ‘single’ discursive criteria of reciprocal and general justification is informed by a corresponding conception of the person; the form of her autonomy; and the scope of the different communities to which she owes justifying reasons. From the perspective of justice, Forst stresses that practical contexts (or contexts of justification) do not represent a normative order or hierarchy. To anticipate his conclusion without rushing past his argument, it is enough for us to keep in mind that Forst believes that a just society is one that makes possible and facilitates what he takes to be the central practical task of persons: to freely and fully integrate their social existence as simultaneously ethical, legal, political and moral beings.\textsuperscript{86}

From a critical-theoretical perspective, this differentiated model of justification is an essential component of what Forst calls the political approach to justice. On the one hand, it compels normative reflection to take on an expansive, complex perspective; for, as Forst’s argues, the activity of practical reason is not restricted to evaluative judgments (viz. good vs. bad reasons) but necessarily includes a prior moment of categorical reflection through which reasons are set within and against different practical context in order to identify their proper validity criteria. Often, as will be explained below, a given action, reason, or norm can belong to multiple practical contexts simultaneously. The capacity to make this simultaneous belonging of norms and actions explicit is what I mean by the problematizing potential of the idea of justifiability—or, what is the same, its capacity to identify and expose injustice. On the other hand, and closer to the issue of intergenerational justice, this differentiated model of normativity foregrounds and brings into dialogue the multiple normative threads that connect persons (in the present case, present and future generations) beyond strict moral obligations. To understand this “dialogical” potential of Forst’s differentiated account of justifiability, it is necessary to follow him through the four practical contexts he uses to map out the normative world.

\textsuperscript{85} Unfortunately, Forst’s hasn’t addressed the way in which these context unfold within the transtemporal or intergenerational context. The closest he has gotten to this interception of context are his reflections on transnational justice—which will be discussed bellow.

\textsuperscript{86} Ibid, 274
Independently of their joint expansive and dialogical potential, the logic of each of these practical contexts poses interesting questions regarding the practice of justification between generations. As we move through these contexts, I briefly discuss some of these issues.

The Ethical Context

The ethical context refers to “discourses of self-understanding of an “existential” nature,”\(^{87}\) that is to say, “questions of the good life of a person as a member of particular communities, with whose history the unique life-history, the narrative of the self—its past, present, and future—is connected.”\(^{88}\) Instances of ‘discourses of self-understanding’ include culture-specific expressions of gender identity and roles, religiously informed practices for the ceremonial disposal of human remains, etc. Upon closer examination, one sees that Forst sees the ethical context as a three-dimensional space of justification where the validity criteria of reasons refers to (1) life-decisions that one makes “with others, but must ultimately be [justified] for and by oneself;”\(^{89}\) (2) “questions of appropriate behaviour toward persons to whom one has particular ties;”\(^{90}\) and (3) questions “that members of an ethical community (e.g. religious community) ask themselves [to define] what the good\(^{91}\) is for them, that is, [to] assure themselves of their own identity.”\(^{92}\)

Ultimately, a norm or action is ethically justified when it is supported by reasons that cannot be generally and reciprocally (i.e. reasonably) rejected by 1) oneself as the first caretaker of one’s own personal wellbeing; (2) particular others to whom one owes special obligations \textit{and} as members of a relevant ethical community; and (3) all members’ of a relevant ethical community in their capacity as co-authors of a shared notion of the common good. Regarding intergenerational issues, an interesting

\(^{87}\) Forst, The Right to Justification, 65
\(^{88}\) Forst, Contexts o Justice, 259 (italics)
\(^{89}\) Ibid.
\(^{90}\) Ibid.
\(^{91}\) My emphasis
\(^{92}\) Ibid.
consequence of this three-dimensional model of ethical justification is that it requires justifiability not only toward oneself and one’s immediate temporal-spatial community (for example: The Guelph Curling Club in the 2015-16 season)—which is for most practical purposes only an abstract notion—but to particular ‘special-others’ such as one’s children, siblings, partners, friends, etc. Ethical justification thus requires evaluating one’s choices of values, identities and allegiances from the perspective of those people who are intimately affected by them. To put it bluntly, it requires being able to look at one’s children and explain to them, in ways they can both accept and understand, how certain of our “personal choices” (such as a working on the oil sands or not voting—and thus not contributing to the future of democracy) respect their ethical well-being as well. This type of intimate reflection on the consequences of one’s acts are a productive supplement to the kind of universalist or abstract justifications that are too often given in support of intergenerational justice.

The Legal and the Political Contexts

The legal context, as Forst sees it, “constitutes the “outer” framework of “negative liberty” that both enables and limits, in the form of a “protective cover,” the positive liberty of “self-realization.”93 Ultimately, the function of the justificatory criteria of reciprocity and generality in questions regarding the legitimacy of laws and institutions is, therefore, to protect the ethical autonomy of persons. Legal autonomy thus requires that all ‘legal persons’ (1) justify their actions “with reference to the lawfulness of these actions under the terms of established law”94 and (2) respect “the legal personality of all, and thus their equal right to an identity “of their own.” The reciprocity and generality of the law can thus be understood in terms of ethical neutrality and equality.

For Forst, there is an internal connection between the legal and the political context—or what is the same, between law and democracy. This connection, he claims, points to the ‘double responsibility’ that members of political societies bear in relation to the laws and institutions that govern their lives in common: the idea of a just(ified) political society

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93 Forst, Contexts of Justice, 263
94 Ibid, 264
implies that the same legal persons, who are “responsible before the law,” are also “responsible for the law” in their role as citizens. Political autonomy, as such, refers to the “autonomous self-legislation of citizens;” or, what is the same, to the simultaneous right and duty of citizens “to justify to one another the legal norms under which they live.”

If being an addressee of the laws of a given democratic state presupposes a corresponding role as author of the same laws—that is, political autonomy—does it mean that future-persons, who will be bounded by the same laws that bind present-persons, have a legitimate role as co-authors of laws created in the present? If so, how should the political autonomy of future-persons be respected (or actualized) in present processes of law formation? In a way, this are the questions that a just approach to intergenerational justice foregrounds. At this juncture of the argument I lack the necessary resources to answer these questions. For now it suffices to note them; they will be recalled and elaborated bellow in Chapter 3.

The Moral Context: A Second-Order Practical Insight and The Right to Justification

Moral justification, Forst argues, is the fundamental modality of all forms of human sociality. This fundamentality follows from what he claims is a “second-order practical insight” that is built into the phenomenon of perceiving a ‘human’ being. In Forst’s words, this is an insight that

[C]onnects the descriptive and the normative meaning of the concept “human being”: Human beings are to be treated humanely. The type of moral perception in question can be understood… such that the perceptual “seeing” of a human being at the same time corresponds to a practical attitude toward him, an attitude “toward a soul.” Cognizing a human being as a human being thus means recognizing him in a practical-normative way and reacting in a “human” way to his utterances… as utterances of a human being and without asking for a further “reason” or “ground” for this attitude… [I]n the present context, [this second-order practical insight implies] a human form of reaction and that means,
primarily, recognizing the practical claim to justification from other human beings who are not “soul-less” automata.98

The moral context, therefore, refers to the most basic form of response and recognition that all persons “owe to each other”99 as ‘human’ beings—that is to say, as finite, vulnerable, and essentially social beings, the distinctiveness of which (i.e., their humanity) rests on their vulnerability and capacity to reason practically.

This second-order practical insight is one of the features that make Forst’s theory suitable to the question of justice between generations. Unlike the restrictive criteria of liberalism, or particularistic criteria of communitarianism, or the contingent-conditional criteria of contract-theory, for Forst, the criteria for the ascription of basic rights and duties is that of being cognized (i.e. mentally identified, recognized, categorized, imagined) as a human being. Accordingly, all that is theoretically required to ascribe moral rights to future-persons is that whenever one thinks about them, one thinks of them as human beings. Practically, of course, these moral rights must be concretely translated. To be sure, the consequence that Forst draws from the second-order practical insight is not that morality simply ‘happens’ always-and-already between human beings. Rather, his claim is that moral responsibility “is at once antecedent and yet must still be accepted”100 every time one deliberates about human issues. In short, what follows from this practical insight, Forst believes, is an immediate awareness of the complementary moral right and duty to justification between all human beings.

Universability and the Moral Right to Veto: Intergenerational Advocacy

Because moral reasons are relevant to all human beings, their justificatory-criteria is that of universability—or, what is the same, absolute generality and unconditional reciprocity. For Forst, however, universability implies neither the actual consent of all human beings

98 Forst, The Right to Justification, 41 (Italics)
99 Ibid, 44. Regarding the notion of morality as that which “we owe to each other,” See Scanlon, What We Owe to Each Other. (my emphasis)
100 Forst, The Right to Justification, 59
nor a type of hypothetical consent—which, to Forst’s mind, is always a “fiction.”

His claim is that universalizable reasons are those that are “sharable” (viz. non-reasonably-rejectable) for anyone who evaluates their validity from a strictly human standpoint—or, in other words, anyone who takes the stand of a representative of the human community. To actualize this notion of moral justifiability within the discursive exercise of justice, Forst translates the criteria of universability into a universal “moral right to veto” any norm or action that disregards the humanity of any human being, anywhere and at anytime—where the validity of such veto is determined by the criteria of reciprocity and generality. In simple words, the by-product of this moral-universal right to veto is a moral right to universal advocacy: namely, the right to demand general and reciprocal justifications for actions and norms that affect any human being, anywhere in space and time. Forst redeems this advocatory potential of the right of justification in the equivalent language of a duty to help others whenever they are subjected to arbitrary power-relations.

As he puts while explaining the implications of this duty to help within the international context:

As a moral person, a member of the human community of all human beings, one is a ‘world citizen’ insofar as one has not only the duty to respect the human rights of others, but also the duty to help them when their rights are violated... This moral duty to help victims of flagrant injustice translates into a “mediated” positive duty to construct institutions that effectively guarantee that such violations of rights are recorded, fought against, and prevented.

The institutional implications of this duty to help will be discussed below. For now, it suffices to note that, unlike other theories that understand intergenerational advocacy in terms of humanitarian or supererogatory aid, when applied to intergenerational issues Forst’s notion of the moral right to veto translates into the duty of present-persons to institutionalize and uphold the right to justification of future-persons—and by doing so, guaranteeing that flagrant intergenerational injustices are recorded, fought against, and prevented.

101 Ibid, 50
102 Ibid.
103 Ibid, 224
104 Ibid.
To be sure, this moral right to intergenerational advocacy is restricted to the ‘formal’
demand to recognize the demand to respect the dignity and autonomy of future-persons;
that is to say, it does not yet imply any ‘substantive’ forms of recognition (e.g. cultural or
ethnic) or equality (e.g. economic or political). But how can a representative of the
human community act to protect the right to justification of future-persons? What exactly
is the role and powers of such representatives? Or, what is the same but more generally,
what does it mean to be a moral person.

A Reflexive Theory of Justice: The Person, Scope, and Task of Justice

For Forst, the universability of moral action and reflection does not imply the reduction
of persons to their abstract or formal properties (e.g. their liberty or rationality). On the
contrary, he thinks that the type of reasons that can properly justify moral norms must not
only be universally “sharable”—viz., valid for all human beings anywhere and
anytime—but they must also be valid “for each concrete person [, here and now.] who is
their addressee, so that he or she can understand him- or herself at the same time as [their]
author.”105 This ‘double validity’ of moral reasons—both abstract and intimate—brings
Forst’s notion of the moral person away from the classical Kantian transcendental self
and closer to the image of a situated human being who, from the particularity of her
ethical, political and legal identity, is nevertheless cognitively compelled106 to recognize
and respect the human-dignity of all persons—including her own.

Regarding the questions of justice, as mentioned above, Forst argues that his conception
of a simultaneously context-immanent and context-transcendent morality (that is, an
‘inescapable’ and all-pervasive moral response-ability) does not make it

Necessary to accept reciprocally and generally justifiable reasons as more
objective or more true than one’s ethical convictions, or the reverse, to regard
general norms as mere compromises; it just [requires] that one knows when what
kind of reasons are appropriate.107

105 Forst, Contexts of Justice, 178 (italics)
106 See Forst’s notion of a ‘second-order practical insight’ above, 20
107 Forst, The Right to Justification, 174
For example, moral reasons become *appropriate* within *concrete public discourses of justice* only at the point where “ethical values and bonds are not sufficient to recognize the legitimate claims of moral persons.”\(^{108}\) This is the case because, following the logic of context-immanent universability, the idea of public justification implies a principle of *political legitimacy* according to which “those democratic decisions are best that express the community’s values in the most authentic sense.”\(^{109}\) In the case of intergenerational relations, this interplay between moral and ethical justifications, where moral (universal) justification functions as a ‘safety net’ for ethical (contextual) justification, interestingly echoes current trends in climate change science where researchers are turning away from the global perspective to start focusing on localized (viz. regional) impacts and mitigation capacities. A recent instance of this localization can be found in Hoesung Lee’s first press release as chair of the *Intergovernmental Panel on Climate Change* (IPCC) in October 2015. According to Lee, “the next phase of [IPCC’s] work will [be to] increase our understanding of regional impacts, especially in developing countries, and improve the way we communicate our findings to the public.”\(^{110}\) One can anticipate that the political side of this new perspective in climate-change science will be a turn toward region-specific mitigation policies based on individual state accountability. These localized policies, however, must be accompanied by properly localized moral considerations such as the bearing of the complex history of international development on regions in different ways, and the insight that currently ‘developed’ countries owe a significantly larger burden of accountability when it comes to reducing global green-house-gas emissions.

**Three Levels of Justice: *Fundamental, Full and Maximal***

The practical-order between ethical and moral justification is not one-dimensional. Beyond and underneath their explicitly *discursive application*, moral reasons constitute the core of what Forst sees as the *fundamental task of justice*: to “construct a *basic structure of justification*… that assures all citizens an effective status “as equals,” as

\(^{108}\) Forst, *Contexts of justice*, 215

\(^{109}\) Forst, *The Right to Justification*, 172

citizens with opportunities to participate and wield influence”¹¹¹ within each of the four practical contexts. More precisely, his vision is that, within pluralized societies fundamental justice¹¹² “be laid down in a recursive and discursive manner by reference to the necessary conditions of fair justification opportunities.”¹¹³ Thus, the first task of justice is to institutionalize the moral right to justification for all persons, everywhere and at all times. In concrete political terms, fundamental justice refers to the translation of the moral right to justification into a basic human right to justification—that is, a universal right to demand general and reciprocal reasons to justify the various power-relations that implicate them and affect them within each of the four practical contexts. In other words, this basic human right is a universal human right to democratic-discursive self-determination, the main function of which is to resist and abolish unjustified ethical, political and legal power-relations.

Forst’s hope is that this human right to justification would provide a kind of “central morality”¹¹⁴ to guide the higher-level construction and upkeep of “justified basic structure[s]:”¹¹⁵ socio-political contexts where “members have the means to deliberate and decide in common about the social institutions that apply to them and about the interpretation and concrete realization of their rights.”¹¹⁶ This higher-level construction of publicly justified systems of discursive justification (e.g. institutions of discursive democracy) is the task of what Forst calls “full justice.” A useful way of explaining the difference between fundamental and full justice is by noticing that whereas the core of the former is the context-transcendent moral right to justification, the latter is strictly context-sensitive: its task is the localized (viz. geo-cultural-social-historical) re-construction of basic human rights into concrete laws and institutions dedicated to actualize, protect and further the practical autonomy of citizens on the ground—that is, in their particular geo-temporal locales.

¹¹¹ Forst, Justification and Critique, 35-36
¹¹² Ibid, 36
¹¹³ Ibid, 37
¹¹⁴ Forst, The Right to Justification, 212
¹¹⁵ Forst, Justification and Critique, 36 (italics)
¹¹⁶ Ibid, 65
These two levels of construction are part of the unified exercise of justice: fundamental justice constructs the framework of basic human rights that legitimize and protect ongoing and expansive higher-level constructive-processes of democratic and discursive social self-determination. Concrete public disagreements must be discursively resolved at the level of full justice through democratic procedures that distinguish and re-integrate the often-overlapping practical contexts within which such disagreements emerge. Lastly, to this dynamic and multidimensional model of justice corresponds a complex notion of the person as the subject of justice; namely, one that is not just a moral person—nor just an ethical, legal, or political person but rather, “all of these [four persons] simultaneously in a different way.” To put it simply, this notion of the subject of justice relies on a basic normative conception of human beings as vulnerable and essentially autonomous beings, the social wellbeing of whom depends on the intersubjective practice of offering and receiving reasonable justifications. This notion of being human is precisely what is conveyed by what Forst calls the “second-order-practical insight” that necessarily accompanies the act of cognizing a human being: to cognize (viz. perceive, imagine, notice, become-aware-of) a human being is to re-cognize her moral claim to justification.

This dialectical relation between the immanence of full justice and the transcendental core of fundamental justice has two consequences for the discourse of intergenerational justice. First and foremost, it requires the present institutionalization of the basic right to justification of future-persons. Within concrete intergenerational discourses (e.g. issues between developed and developing countries regarding the sustainable distribution of the atmosphere’s present capacity to store greenhouse gas emissions), the properly justified institutionalization of this basic human right of future-persons would require an insight into the differentiated practical identity of future-persons—put differently, it requires that present norms and actions that directly affect future-persons be justifiable to them not only morally but also ethically, politically, and legally. To use to the case of climate-change discourse as illustration, such differentiated notion of justice for future

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117 Forst, Contexts of Justice, 240
118 See this thesis, p. 19-20
generations requires that the (political) institutionalization of a special environmental right for future-persons is not only justified by political reasons but also includes corresponding reasons to justify the future moral, ethical and legal implications of such political right. To isolate the ethical context, the present (political) institutionalization of environmental rights for future-persons would require present-persons to carefully construct relevant notions of environmental sustainability with enough openness and flexibility to accommodate possible radical shifts in value systems and models of political and material organization—from new housing models such as earthships (radically environmentally low-impacting and energetically self-sustainable green buildings) which minimize the environmental impacts of building and housing by combining principles of green-building, self-sustainability and community living\textsuperscript{119} to the rapid expansion of post-consumerist ideologies in post-industrial economies.

To summarize the key elements of Forst’s theory of justice: 1) \textit{the notion of the person at the center of Forst’s theory of justice is a vulnerable, context-immanent} human being who is capable of \textit{context-transcending} reasoning; 2) \textit{the scope of justice is both universal} (includes all human beings everywhere in space and time) \textit{and normatively differentiated} (in accordance to the different practical-contexts in which they act); thus, 3) \textit{the task of justice is the two-fold work of constantly translating the moral right to justification into a political basic structure of justification} (i.e. fundamental justice) to serve as a “substantive starting point of procedural justice” (i.e. full or maximal justice).

\section*{Moral and Political Constructivism}

Because they are concerned with two different levels of “discursive construction,”\textsuperscript{120} Forst refers to fundamental and full justice, respectively, as processes of \textit{moral} and \textit{political construction}.\textsuperscript{121} The basic human right to justification that Forst locates at the center of any justified basic structure is the political face of “the” \textit{moral right} that no


\textsuperscript{120} Forst, \textit{The Right to Justification}, 213

\textsuperscript{121} Ibid.
person, under any circumstances, can reasonably (generally and reciprocally) deny to any human being anywhere and at any time; or, in other words, it “express[es] a fundamental, absolutely binding subjective claim that cannot be denied intersubjectively.”¹²² Needless to say, the socio-political efficacy of such right does not hinge on the moral character of persons alone but requires the effective-power of concrete juridical systems—that is to say, it is protected and enforced by parallel legal instruments¹²³. This double character of the human right to justification as simultaneously moral and legal both implies and presupposes established procedures of political construction: the discursive, democratic process through which basic rights are “concretely justified, interpreted, institutionalized and realized as basic rights in given historical and social contexts.”¹²⁴ In the end, moral and political constructivism are the two mutually dependent conditions for the possibility of a “fully justified basic structure”—what Forst calls maximal justice.¹²⁵

A number of interesting issues emerge from the interception of Forst’s two-fold model of justice-construction and the project of intergenerational justice. Of particular significance for this thesis, are the difficulties that unfold when the notion of climate justice is set in conversation with the concept of democracy. In what follows, I conclude this chapter by joining this on-going conversation from Forst’s perspective. To anticipate its trajectory, my contribution to this theoretical dialogue is to make explicit the democratizing resources that Forst builds into his proposal for a basic human right to justification. To put it simply, my main claim is that the basic human right to justification contains a second (but not secondary) practical dimension as a basic human right to universal democratic advocacy. This second, democratizing dimension of the human right to justification, I argue, dissipates the two most common objections to democratic approaches to intergenerational justice, namely: 1) that the logic of democracy is incompatible with the project of transgenerational justice, and that 2) since it is

¹²² Ibid, 210
¹²³ In Chapter 3 of this thesis I argue with Forst that the basic human right to justification can and ought to be embedded in both national and trans-national legal instruments.
¹²⁴ Forst, The Right to Justification, 213
¹²⁵ Forst, Justification and Critique, 66
impossible to enfranchise future-persons, democracy cannot create legitimate laws and policies for them. It is to these two objections that I now turn.
CHAPTER 3
CLIMATE CHANGE: DEMOCRACY AND JUSTICE FOR FUTURE GENERATIONS

Climate Change Science: How Bad Is It?

It is safe to assume that most people in developed democracies recognize the reality, severity and urgency of the climate change challenge.\textsuperscript{126} Similarly, it is not far-fetched to assume that they also acknowledge that human activity is one of the main causes of the climate change phenomenon.\textsuperscript{127} Nevertheless, in the face of such wide agreement, intra- and inter-national debates about proper climate-change mitigation strategies remain highly controversial.

Largely, this controversy ensues from the radical measures that have been proposed as \textit{necessary} to avoid severe environmental disasters. In its 2014 report, the \textit{Intergovernmental Panel on Climate Change} (IPCC) determined that in the absence of further mitigation measures, predictable “global mean surface temperature increases in 2100… range from 3.7°C to 4.8°C” above the pre-industrial average\textsuperscript{128}—that is, from the 1850 to 1900. According to the IPCC research, the foreseen consequences of a global temperature rise of such a magnitude are devastating:

\begin{quote}
The risks associated with temperatures at or above 4°C include substantial species extinction, global and regional food insecurity, consequential constraints on common human activities and limited potential for adaptation in some cases…
\end{quote}

\textsuperscript{126} According to The University of Texas at Austin’s latest biannual \textit{Energy Poll} (September 2015),” More than 3 out of 4 Americans (76 percent) now believe that climate change is occurring.” http://www.utenergypoll.com/wp-content/uploads/2014/04/October-2015-UT-Energy-Poll-Final2.pdf
\textsuperscript{127} Referring to the same \textit{Energy Poll}, the NCSE (National Centre for Science and Education) notes that although “the poll did not directly ask whether respondents attribute climate change to human activity[,] it is suggestive that, among those who agree that climate change is under way, a majority selected deforestation, oil, and coal as significant or very significant contributing factors (“natural forces” was also offered).” (http://ncse.com/news/2015/10/latest-poll-climate-change-0016702) Similarly, according to a poll that CTV News / NANOS released on November 2015 “just over seven in ten Canadians believe that the science of climate change is irrefutable.” (http://www.nanosresearch.com/library/polls/POLNAT-S15-T661.pdf) This science, of course, concludes that “human influence on the climate system is clear, and recent anthropogenic emissions of green-house gases are the highest in history.”—IPCC (Intergovernmental Panel on Climate Change) \textit{Climate Change 2014 Synthesis Report for Policy Makers} (http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf)
Some risks of climate change, such as risks to unique and threatened systems and risks associated with extreme weather events, are moderate to high at temperatures 1°C to 2°C above pre-industrial levels.\textsuperscript{129}

To avoid these potential disasters, the IPCC’s research team advises a two-fold mitigation target: First and foremost, (1) it is necessary to achieve “40 to 70% global anthropogenic GHG emissions reductions by 2050 compared to 2010;”\textsuperscript{130} furthermore, (2) this radical trend of global-GHG-emissions-reduction must culminate in “emissions levels near zero or below in 2100.”\textsuperscript{131} To put it in more relatable figures, a 40-70\% global reduction in GHG emissions translates to an “80-95\% reduction in \textit{per capita emissions in developed nations} compared with emissions levels in 2000.”\textsuperscript{132}

\textbf{Climate-Change Policy: Honey, I won’t be Home for Christmas.}

So, according to current science, you and I have close to 35 years to adopt a new way of living in which we use approximately 10\% of the GHG emissions we currently cause. What would the institutionalization of this radical reduction of GHG emissions mean for those of us who expect to be alive by 2050? The implications of such policy would be felt beyond those areas in our lives that are typically considered to be environmentally relevant. For example, a policy of this kind would have direct implications for the way we understand and live out current family dynamics and expectations. Here is my somewhat roundabout explanation:

Aviation is a significant and growing source of GHG (accounting for 4-9\% of the total anthropogenic climate change impact to date\textsuperscript{133}), making air travel a predictable target for a radical GHG emission-reduction policy. To restrict public access to air travel (either by forcing airlines to reduce the number of available flights or by increasing taxes on air-

\textsuperscript{129} Ibid.
\textsuperscript{130} Ibid.
\textsuperscript{131} Ibid.
\textsuperscript{132} Allison I, et al., \textit{The Copenhagen Diagnosis: Updating the World on the Latest Climate Science} (The University of New South Wales Climate Change Research Centre 2009) (italics)
fare), would mean that family members who reside in different countries could not see each other as often as they do today. To push this example a bit further, restricting air travel in favour of climate change mitigation would make it difficult for people to seek employment or education away from their hometowns—a trend that is becoming increasingly unavoidable in a globalized and unstable job-market. Along similarly economic lines, air-travel regulations of this type would have devastating impacts on developing communities that rely on tourism for their subsistence and on the general spheres of commerce, trade, and technology—all of which require face-to-face meetings and/or air freight shipping. Lastly, such restriction of air travel would weigh heavily on the value that people place on exploring the world and experiencing different forms of human existence.\textsuperscript{134}

The point of this example is not only to illustrate the burden that present-persons must incur for the sake of future-persons, but most importantly, the multiple and diverse practical context within which policies for the radical reduction of GHG emissions must be justified in order to become legitimate for present-citizens of democracies. As this example suggests, one of the reasons that compel political philosophers and scientists to dismiss the plausibility of a democratic approach to intergenerational justice is the sheer demandingness of currently available mitigation strategies. But if the goal of the intergenerational discourse is justice, should demandingness appear as a relevant consideration, and if so, what is its proper relevance?

**Democracy and Intergenerational Justice: It’s Not That Simple**

**Rights of Future-Persons: Environmental vs. Democratic Interests**

Here is one way of looking at the tension between democracy and intergenerational Justice. On one side of the scale weigh the lives and basic wellbeing (e.g. access to food,

\textsuperscript{134} Paradoxically, to reduce people’s access to air travel in the name of justice for future generations might be detrimental to the overall cause of justice through a narrowing of the scope and depth of people’s global and inter-cultural perspective. Beyond the force of universal moral principles, our sense of justice is intimately related to feelings of sympathy and empathy—feelings that are too commonly stirred when people from developed countries travel to (so called) developing countries.
clean air and clean water) of future persons. On the other side, the rights of present-citizens of democracies to make their own choices, pursue their own interests, and assert their own preferences.\textsuperscript{135}

Thus, what this tension reflects is ‘a conflict of interests’ between two groups and, more specifically, a conflict in which the interests of one group \textit{morally} outweigh those of the other: most people would accept that the interests of future-persons to have access to food and clean water and air should be prioritized over the interests of present-persons to be allowed to fly to distant places to visit family or making a living out of the gas and oil industry. To \textit{justify} this prioritization in favour of future-persons, one could next argue that, as most people see it, human beings have a basic moral obligation to avoid harming each other. After all, the principle of \textit{harm avoidance} plays an essential and long-standing role in the ethical and political self-understanding of trans-temporal democratic societies (think, for example, of John Stuart Mill’s claim that preventing people from harming each other is the only legitimate justification for state-intervention on citizens’ lives.\textsuperscript{136}). In the case at hand, one might argue further and claim that \textit{the principle of harm avoidance is fully justified at least in those cases where “the cost of refraining from harm is manageable and significantly less than the cost of inflicting harm.”}\textsuperscript{137}

Applying the logic of harm avoidance to the climate change discourse points to the notion of special \textit{environmental rights of future-persons}. Within democratic societies, these rights would protect the basic environmental interests of future-persons (essentially, their interests in having access to food, clean air, and clean water) by placing restrictions on the choices of present-persons, or, in more relevant terms, they would place external conditions on the democratic autonomy present-generations. What I want to highlight here is the \textit{extra-democratic power} that these rights would seem to exercise over present generations. In light of their alleged extra-democratic status, the institutionalization of

\textsuperscript{135} Here, I am following the IPCC projection that, without additional and radical mitigating action, the catastrophic effects of climate change will manifest around the year 2050.

\textsuperscript{136} See John Stuart Mill, On Liberty, esp. Ch4: On the limits to the authority of society over the individual

special rights for future-persons is a controversial topic among political philosophers and scientists.

Ludvig Beckman, for example, brings an interesting perspective into this controversy by pointing out that “introducing constraints on democratic institutions may sometimes conflict with the democratic interests of the generations to come.” Beckman’s worry is that our perspective on issues of intergenerational justice as a matter of satisfaction of basic needs is dangerously narrow. As he puts it, “although we are becoming increasingly aware of our obligations with respect to the welfare of future generations, much less attention has been given to the obligations we may have in securing political freedom for the unborn.” As he sees it, it is equally safe to assume that future-generations will have an interest in having the capacity for democratic self-determination that present-persons enjoy. That capacity—or, what he sees as the same thing, a system of democratic institutions—Beckman goes on to argue, is vulnerable to being weakened (or ‘strengthened,’ one would imagine) by the political choices of present-persons.

More precisely, Beckman’s objection is two fold: On the one hand, he claims that the democratic potential of future generations is weakened whenever any restriction is placed on the current exercise of democracy; on the other hand, he claims that even if the institutionalization of special rights for future-persons ensues from present proper democratic procedures, such rights will eventually appear as extra-democratic restrictions on the democratic autonomy of future generations. In Beckman’s words:

What is at one point in time a self-imposed restriction to the benefit of future peoples may later be a restriction imposed by the past on the living. In the process of protecting the unborn from the consequences of our short-sightedness, we may therefore end up weakening the power of future people to protect themselves.

This perceived tension between the well-being/environmental and democratic interests of future generations is what Beckman calls the _democratic problem of future generations:_ the difficulty of correctly assessing the relative importance of the environmental and

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139 Ibid.
140 Ibid, 614
democratic interests of future generations. To put it in moral terms, the problem that Beckman highlights is the difficulty that present-persons face when confronted with two, seemingly incompatible expressions of the principle of harm avoidance regarding future generations: environmental and political.

Forst’s theory of justice helps us see past this problem. As noted above, Forst argues that the most basic form of human moral responsibility—that is, the most fundamental moral obligation that human beings owe to each other—is not ‘harm avoidance’ but respect for the autonomy of persons. This fundamental form of moral respect is expressed by what he calls the basic moral right to justification of all persons. Seen from this angle, both dimensions of future ‘recognition’; namely, environmental and political, are reconciled by what Forst sees as a unifying conception justice: the idea that justice signifies a demand for the reasonable justifiability of power-relations, where reasonableness is measured through the criteria of reciprocity and generality. So, regarding Beckman’s claim that our concern for the environmental interests of future persons overshadows our concern for their democratic interests, Forst could respond by arguing that “all… forms of ‘misrecognition’ (i-recognition and under-recognition) fall under the category of ‘injustice’ that can be rejected with reciprocally and generally justifiable reasons.”

Consequently, the real justice-question regarding the tension between the environmental rights of future-persons and the future wellbeing of democracy is not about which interests (environmental or political) future persons might choose to prioritize. Rather, as Beckman himself later admits, from the perspective of justice, the question is “whether we may reasonably expect future people to accept [or, to use a more appropriate term, to-not-reasonably-reject] [environmental restrictions on democracy] even if they raise the costs for effective self-determination.” It is only through the idea of justifiability, Beckman goes on to claim, that present-persons can respect the political autonomy (i.e.

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141 Forst, *Justification and Critique*, 118
142 Ibid, 616
democratic self-determination) of future-persons. 

This last point of Beckman’s about respect and justifiability is echoed by Forst in the following passage:

If one regards persons as subjects of justification, then they appear as active beings, not as passive entities to be acted upon, or as needy suffering beings. They are this, too, but their essential justice-based claim is not the claim to receive the goods necessary for a life “worthy of a human being” or a “good” life; their claim is to be recognized as subjects of justification when what is at stake is the political determination of the basic structure [of their society]. Even when persons lack the corresponding capabilities, they should be respected as autonomous beings who are never just objects but also subjects of justification.

Ultimately, I think that Forst would agree with Beckman’s claim that “respecting future people as self-determining persons is to owe them a justification of our actions and decisions, not to protect at all costs the institutions of unconstrained self-determination.”

Justice, for both writers, ought to be directed to persons, not to institutions. Democratic institutions are undoubtedly set in place to actualize the political autonomy of persons, but this deeper moral autonomy is neither co-extensive nor circumscribed by the former.

There are two further insights to gather from this reflection on Beckman’s point about the tension between the environmental and democratic interest of future-persons: 1) this tension, along with any other that might ensue from the many possible interests of future persons can be resolved by the notion of justifiability, 2) in this particular case, the notion of justifiability reveals that the institutionalization of special rights for future persons is not necessarily incompatible with democracy, insofar as our conception of the latter is expanded beyond its institutional dimension to encompass the practice of asking and offering justifications for the power-relations that govern the lives of persons.

Thus, if the idea of democratic justice for future generations is not implausible, a new question arises: what, if any, is the proper role of this aspect of democracy within the climate-change discourse?—and, more importantly, within general discourses of intergenerational justice?

143 Ibid, 618
144 Forst, Justification and Critique, 118
145 Beckman, 618
Democratic Theories of Intergenerational Justice

I want to introduce another objection to the project of democratic justice for future generations. Michael Kates is interested in current attempts to redesign democratic procedures to include the interest of future generations—for example, the notions of representative proxies, differential voting schemes, and counter-majoritarian devices. As Kates sees it, all these attempts share a fundamental weakness which renders them ineffectual: they “all assume that despite the fact that democracy is by its very nature ill-equipped to secure intergenerational justice, it is nevertheless possible to rely on democracy to solve this problem in the first place.”\(^{146}\) One argument that Kates offers to support his claim about the fundamental weakness of intergenerational democracy hinges on the idea that one of the core normative intuitions of democracy is that democratic rules can only apply to their actual makers.

At its core, democracy makes reference to a determinate set of persons or citizens who are collectively self-governing with respect to their common affairs. Democracy holds, in other words, that the authorization to exercise coercive political power is morally legitimate only insofar as it issues from the very people who are governed by it.\(^{147}\)

In a way, this claim about the legitimacy-community of democracy is very intuitive. For instance, even if all Canadian citizens vote in favour of a law that prohibits the military occupation of one country by another, such law would be illegitimate from the point of view of other countries. This law cannot force France, for example, to withdraw its troops from Syria because the democratic will of Canadians does not have legitimate power over French sovereignty. Kates point about democratic legitimacy and actual consent applies this same logic to the transgenerational sphere: If generation-A is comprised of citizens XYZ and generation-B is comprised of citizens PQR, then the democratic will of generation-A does not have legitimate power over the sovereignty of generation-B—or, in

\(^{146}\) Kates Michael, “Justice, Democracy and Future Generations,” *Critical Review of International Social and Political Philosophy*, 2015, 18:5, 508-528, 508. This claim of Kates’ about democracy follows a structure similar to my earlier claim about the taking technocratic and economic approaches to climate-change mitigation: since climate change is the result of human’s hyper-focus on economic and technocratic development, it seems unclear that effective climate change action ought to follow along similar technocratic-economic tracks. Kates claim is in fact of a different type: his objection is not about using the very notions (democracy) that caused a problem (intergenerational injustice) as tools to solve the problem. Rather, his claim is about what he sees as the general and inherent anti-future bias of democracy.

\(^{147}\) Ibid, 510-511
other words, whatever rules X ensue from generation-A’s democratic processes are illegitimate for generation-B, because citizens PQR did not actually consent to X.

As Kates put it, this lack of common sovereignty across different generations—even when they form part of the same transgenerational community—follows form the simple fact that “it is just simply not possible to enfranchise future persons.”\textsuperscript{148} Thus, against the concept of the transgenerational community,\textsuperscript{149} Kates contention is that not only “does democracy distinguish between those who are as opposed to those who are not members of a particular political community, but also, even within that former group, between those who do as opposed to those who do not currently exist.”\textsuperscript{150}

The idea that intergenerational democratic processes are illegitimate because it is impossible to obtain the actual consent of future-person is a version of what is known in democratic theory as ‘the boundary problem’: the issue of clearly defining the group or groups of people that ought to be included in particular democratic processes of self-determination. As suggested above, one way of answering the boundary problem is by enforcing a strict principle of democratic sovereignty according to which “the authorization to exercise coercive political power is morally legitimate only insofar as it issues from the very people who are governed by it” (Kates)\textsuperscript{151}—these ‘people,’ as Kates suggests, refer to the living, voting citizens of a state who can actually consent to rules. According to this answer, intergenerational democratic procedures are simply illegitimate. I disagree with this way of answering to the intergenerational challenges posed by the boundary-problem. To explain my disagreement, I want to show that answering the boundary problem through the notions of democratic coextension based on actual consent narrows democracy to state-centered, synchronic procedures. Such a narrow view of democracy should be rejected in light of the following two reasons:

\textsuperscript{148} Ibid.
\textsuperscript{149} See Chapter 1 of this thesis.
\textsuperscript{150} Kates, 510
\textsuperscript{151} Kates, 508
Here is the first one. But before jumping into this reason, a point of clarification: Kates’ remarks about the boundary problem belong to his discussion of intergenerational justice. As such, his dismissal of democracy is not restricted to the latter’s institutional/procedural capacity to legitimize political rule, but includes democracy’s potential to bring justice into the intergenerational realm. If we recall Forst’s insight regarding the fundamental meaning of justice, however, we can see that Kates seems to conflate the question of ‘political legitimation’ with the question of ‘justice’. As Forst argues, the core meaning of the concept of justice expresses the human refusal to be subjected to unjustified or arbitrary rule: “whether it be arbitrary rule by one individual or one part of the community… or particular structures that conceal and reproduce privileged, or social contingencies that are accepted as fate.” Within properly political contexts—viz. “orders of justification” that are generally regulated by norms and institutions—Forst refers to the notion of arbitrary rule as domination. Thus, within political contexts, the goal of justice is to emancipate those persons and groups who are victims of domination—or, to be more precise: those persons and groups who are subjected to the rule of unjustified norms and institutions.

By stating the question of democracy for future-persons as a question of justice (instead of as a procedural or institutional issue) and by keeping the fundamental meaning of justice in mind, it is clear that Kates’ objection misses the real issue in here: the question about democracy for future generations is not actually about the possibility or impossibility of enfranchising future-persons; rather, it is a question about the potential of democracy to emancipate future-persons from those unjustified power-relations that originate from present norms and institutions. This question leads to my second reason for disagreeing with Kates.

As noted above, his view is that “democracy holds… that the authorization to exercise coercive political power is morally legitimate only insofar as it issues from the very

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152 Forst, The Right to Justification, 4
153 Ibid.
154 Ibid, 1
people who are governed by it.”\textsuperscript{155} Furthermore, he specifies that these people, “must be coextensive with the members of the particular political community that comprise the democratic decision-making body in question.”\textsuperscript{156} Here, my disagreement is both with (1) the ontological claim that the model of democratic justice only applies within political communities that have already been ‘bonded together’ by the practice of collective-decision-making and (2) the normative consequences of such claim. To anticipate my conclusion, I think that Kates’ condition of democratic coextension is (1) inappropriate to the actual state of contemporary politics, and as such, (2) fails to track the thick web of power-relations that dominate persons from outside and underneath established political communities. To be sure, the structure of my objection is what could be called “by proxy”. As I see it, trans-temporal politics poses a highly complex challenge to most theories of democratic justice. What I want to show is that insofar as democracy is seen as a justice-procedure (viz. something like the necessary condition for the possibility of a just society), an actual-consent condition for democratic legitimacy is inadequate not just for trans-temporal politics, but rather, for all contemporary political contexts. If this is the case, then the notion of actual-consent is simply inappropriate to the contemporary project of democratic justice in general—and to the idea of democratic justice for future-generations in particular.

Here is the first part of my counter-objection (1). Within contemporary synchronic politics, the type of political bindingness and co-extension conditions that Kates places at the heart of democracy are, if not totally lacking, at least increasingly scarce. First of all, it seems to me uncontroversial to claim that the high degree of globalized interdependence in the contemporary world has made it almost impossible to isolate exclusively domestic political contexts. Take Canada for example. Think of relations of trade, production and labour within that state: for the most part, they are constituted and ruled by transnational companies. Think of Canada within the environmental context: the dangers and causes of climate change are indisputably and essentially transnational. And the lists goes on: think of global institutions to which Canada belongs: from the UN to the

\textsuperscript{155} Kates, 510 (italics)
\textsuperscript{156} Ibid.
IMF to the G7 to Greenpeace. Think of global treaties and obligations in which Canada is involved: from NAFTA to The Universal Declaration of Human rights. Think of relations of military cooperation, technological interdependence, relations of migration, etc.\textsuperscript{157} At the very least, these examples suggest that a realistic view of contemporary politics cannot take the bounded nationally-demarcated domestic context as its default measure but rather, must highlight the \textit{transnational context} as one of the most relevant political contexts.

To return to Kates’ point about political bindingness and democratic co-extension, the following question comes to mind: in light of the contemporary prevalence of transnational politics, does it make sense to premise the possibility of democratic justice on the pre-existence of well defined, democratically bonded political communities? I don’t think it does anymore. Forst discusses this same issue in his response to Eva Erman’s objection to his solution to ‘the boundary problem.’\textsuperscript{158} In that discussion, Forst begins by stating \textit{the fact of transnational injustice}: the transnational context, he claim, is one that “we could only very euphemistically call a system of ‘cooperation’. Rather, it is a system of asymmetrical burdens and benefits that all too often serves to reproduce these asymmetries.\textsuperscript{159}” Transnational relations of domination, of course, are situated across, underneath and beyond national borders in ways that escape the notions of political bindingness and democratic co-extension. This asymmetry between transnational context of domination and established political communities leads Forst to argue that, from the perspective of justice, the boundary problem cannot be solved by re-invoking the criteria of political-bindingness and co-extension. To put it simply, starting from the fact of transnational injustice, these criteria make it impossible to direct justice where it is needed the most:

> From th[e] substantive empirical presupposition of a democratic community, a moral-political argument for locating a context of democratic justice where domination needs to be corrected such that those subjected \textit{can become co-}

\textsuperscript{157} These basic examples of transnational relations are borrowed from Forst, \textit{The Right to Justification}, 256
authors looks like a pale construct because of the lack of the ethical-political bindingness condition.\textsuperscript{160}

To put it somewhat axiomatically, my objection to proposals to articulate a solution to the boundary problem in terms of political bindingness and democratic co-extension can be stated as follows:

1) The goal of political justice is to emancipate those who are subjected to domination—i.e. arbitrary rule.
2) Relations of domination characterize the transnational context.
3) The transnational context is the most over-encompassing and least normatively regulated context of contemporary politics.
4) Consequently: It is reasonable to assume that relevant contemporary theories of justice should be able to engage directly with the question of transnational domination.

Applying this conclusion to democratic theories of justice leads to the following corollary: if democracy is conceived in a way that renders it applicable only to already existing, well defined political communities, then it simply does not make sense to think of it as a workable, relevant practice of justice for the contemporary world. Thus, if one dismisses the possibility of trans-temporal democratic justice on the grounds of conditions of political-bindingness and co-extension, one must bite the bullet and recognize that those same grounds invalidate the possibility of synchronic democratic justice in general. Insofar as Kates is concerned, my hunch is that he would rather dodge that bullet.

To push this point about the relationship between democracy and justice to its ultimate conclusion, and to return to the question of intergenerational justice, it is necessary to unfold Forst’s theory of justice to the point where it can offer a satisfactory response to the so-called “boundary problem”. As noted earlier, Forst argues that from the emancipatory, fundamental meaning of justice—viz. opposition to arbitrary rule—it follows that the first question of justice is “the question of the distribution of justificatory-power,”\textsuperscript{161} or, to be more precise, the two-fold question of identifying and overturning

\textsuperscript{160} Ibid, 203
\textsuperscript{161} Forst, The Right to Justification, 248 and this chapter, 25-27
unjustified power-relations. What ensues from this first question of justice is that—as Forst puts it— the first task of justice:

Is to establish political structures in which arbitrary rule can be banished and in which those who are subjected to rule or domination, be it economic, political or legal in nature, can bring the force towards the better argument to bear against those who exercise such rule or domination."162

The first task of justice is therefore inherently poietic and archaeological. It is archaeological because unlike goods-centered views of justice, which focus on the transformation of existing, visible or exposed systems of goods-distribution, Forst’s theory of justice targets what one might call ‘invisible sites of injustices:’ un- or under-recognized power-relations that often extend outside and underneath existing norms and institutions such as states, corporations and international organizations. The task of justice in a critical sense consists largely in constructing structures of justification that force these invisible sites of injustice out into the visible public-space.

As we saw above, Forst embraces a power-relations-centered (in contrast to a goods-centered) approach to justice—this approach is what he calls the political approach to justice.163 To the extent that political justice “tracks power as rule and domination,” and (as revealed by our earlier discussion of the transnational context) contemporary relations of rule and domination for the most part dwell underneath beyond established political orders, there is a sense is which the sites or loci of (in)justice are not only invisible but also displaced—they exist without being localized, which is to say that they exist nowhere. This displacement that characterises actual contemporary injustices is precisely why Forst claims that justice (or at least his critical approach to justice) must adopt a utopian perspective. Of course, by utopian he does not mean ‘imaginary’ or ‘unattainable’. On the contrary, as our discussion of the transnational context makes clear, Forst’s utopian approach to justice—as a type of politics of no-where—is nothing more than a direct and appropriate response to the reality of contemporary politics.

Forst’s notion of political justice expresses a *radically intersubjective* approach to justice in which the power and responsibility to eliminate relations of domination is not placed on states or supranational organization, but dis-placed among all human beings. More specifically, Forst places the task of justice first and foremost in the hands of *those very people who are subjected to domination.* Ultimately, the first task of justice is to empower people so that they can construct basic structures of justification that reveal and overturn invisible relations of domination. *It is precisely this intersubjective, discursive democratic task (viz. fundamental justice) that catalyzes the emergence of recognizable political communities and boundaries.* When I said that fundamental justice is a *poetic* task, I was referring to this intersubjective act of political self-creation.

In light of the archaeological and poetic elements of his theory of justice, this is how Forst proposes to solve the boundary problem: As we have seen, Forst’s notion of *fundamental justice* refers to the basic structure of justification that emerges wherever the basic-moral right to justification is politically translated into a *basic human right to justification.* The essence of such human right consists in its ability to bring out and strengthen the inherent intersubjective power of people (everywhere and at all times) to demand and offer *reasonable* (viz. general and reciprocal) and *appropriate* (viz. context-sensitive) justifications for the various power-structures that constitute their political *society.* *Thus, in its most basic form, Forst’s basic human right to justification is a human right to democratic self-determination.* (Here the proper way to conceive of the relationship between justice and democracy continues to sharpen its focus: democracy, as Forst argues, “*is not instrumental to justice; it is what justice demands*”166). For the so-called boundary-problem, this means that every human person is always-and-already empowered by a *human right to democratic self-determination.* To explain Forst’s solution differently, his claim is that democracy finds and establishes its own political community—a community that is both bounded together by common struggles against

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164 It is in virtue of this intersubjective turn that *political justice* avoids turning *victims of injustice* into *recipients of humanitarian aid.* I will come back to this point below.
165 Forst, *The Right to Justification,* Part 2, Section 8
166 Forst, ‘Justifying Justification: a Reply to my Critics,’ in *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue,* Bloomsbury Academic (UK, 2014), 201 (italics)
particular structures of domination and co-extensive with those same unjustified structures. Or, in Forst’s own words: “a *demos*… exists where a context of rule or domination exists, and such contexts are often not co-extensive with established political communities.”167 Thus—and to reiterate—one can say that democratic procedures of justification ought to be coextensive with those people who are subjected to corresponding relations of rule.168 In the lingo of ethical and political philosophy, this answer is a version what is known as the *all affected principle*.169 As Forst puts it:

Democratic rule is a discursively justified form of rule, which means one in which there are structures of justification that are adequate to the scale of the rule exercised. This already extends the question of democratic rule conceptually beyond national borders, depending on what relations of rule a state is embedded in, whether as ruler or as ruled (or, in complex systems, as both simultaneously to different extents)…170 [Practically, this means that] where existing supranational, international, and transnational organizations reproduce specific relations of domination, they can only provide the starting point for more participatory and reflexive political forms.171

In light of this general solution to the boundary problem, we can see the emerging contours of a solution to the *boundary problem of intergenerational democracy*.

**The Boundary Problem of Intergenerational Democracy: Democratization**

Our puzzle is still lacking one piece: the issue is no longer a normative consideration regarding who should be included or excluded from democratic procedures—we already know that every person who is subjected to contexts of rule anywhere and at any time has a corresponding right to democratic participation within such contexts—but rather, the methodological question of how to identify those “context[s] of rule or domination that… are often not co-extensive with established political communities”172—or as I called them above, invisible relations of domination. We can call this last question ‘the new boundary

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167 Forst, ‘Justifying Justification,’ 201
168 Ibid, 204
169 Forst, *The Right to Justification*, 14-18
170 Ibid, 679
171 Ibid, 678
172 Forst, ‘Justifying Justification,’ 201
problem.’ As I see it, this methodological consideration is the real block on the road to democratic justice for future generations.

To my mind, working through the ‘new boundary problem’—namely, the problem of how to make visible invisible sites of injustice or domination—is to work through the idea of democratization\textsuperscript{173}: the process through which the practice of democracy expands and reproduces democratic institutions—a process that, as Forst beautifully articulates, exists “wherever privileged actors are forced to give up their prerogatives because these have lost their legitimation within a system of justification and counter power is mobilized.”\textsuperscript{174}

Forst notes that it is at the level of democratization, that a theory of justice meets the limits of pure theory. The task of identifying and exposing invisible relations of domination points to what Forst calls the empirical component of a critical and realistic approach to justice.\textsuperscript{175} As he puts it, this empirical component consists of making “an inventory of the precise contexts in which... rule or domination is exercised.”\textsuperscript{176} To explain by way of an example, this is how Forst applies the empirical pre-condition of democratization to the transnational context. The process of democratization, he claims:

\begin{quote}
Must begin by reconstructing the most important economic, legal, and political relations of rule or domination, formal or informal. In this context, national, regional, transnational as well as international and supranational contexts should be connected in the right way, both in an empirical analysis and in the corresponding conception of justification structures.\textsuperscript{177}
\end{quote}

Ultimately, the essence of this empirical pre-condition for democratic justice can be captured by the act of asking one simple question from different perspectives (economic,

\textsuperscript{173} My use of the term democratization in this thesis follows Forst’s conceptualization of the term as a part of the general process of “recuperating relations of domination in relations of justification.” More precisely, democratization refers to this general process whenever it “gives rise to structures that curb arbitrary rule—even if it is still a long way to their complete containment, for example by constitutional means.” (Forst, “Justice and Democracy in Transnational Contexts, p. 680)


\textsuperscript{175} Ibid, 676

\textsuperscript{176} Ibid, 677. To connect this point to my exegesis of Forst’s theory of justice, it is at this juncture that the notion of multiple contexts of justification shows its relevance for a critical theory of justice.

\textsuperscript{177} Ibid. 678
ethical, social, legal, etc.) and truly listening\textsuperscript{178} to the answers it elicits: who dominates whom?\textsuperscript{179}

Needless to say, the first voices that should be heard when this question is asked are those of the oppressed themselves. However, sometimes their voices are too weak to be heard, sometimes they are muted by fear and, some other times, they are uttered from far-off places and times. To my mind, one of the most powerful features of Forst’s proposal for a basic human right to justification is that the normative force of this right is not limited to self-referential demands for justice. Instead, this human right also equips its bearers with the power to demand justifications for-others: to ensure that wherever and whenever human beings subject each other to rule, the power-relations that comprise such rule are justifiable to them. Here, it is important to note that at the level of fundamental justice, the aim is not to achieve a fully justified basic structure, but rather, the more modest goal of establishing basic structures of justification that translate the criteria of moral justifiability—expressed in terms of reciprocity and generality—into the basic human right to justification. In other words, at the level of fundamental justice the relevant question regarding those people who are unable to exercise (or to be heard or seen as exercising) their own basic human right to democratic self-determination is not “what rules and institutions would the oppress choose for themselves?,” but instead: “what rules and institutions could they not reasonably reject, given that they are autonomous beings just as we are?”

From the perspective of theory, the groundwork for democratizing invisible sites of domination follows the same logic: it does not require one to presume to understand others’ particular experience of oppression, but simply to ask oneself if a particular relation of rule is grounded on general and reciprocal processes of reason-giving. Most

\textsuperscript{178} Anthony Simon Laden, makes an important observation about the type (or picture) of reason that best reflects the aims of Forst’s intersubjective picture of justice. Laden’s claim is that “this kind of reasoning requires a set of skills that are not always associated with reasoning. The skills include listening to and understanding others, allowing their words to matter, as well as, when appropriate, being able to trust others, which may require being open to being vulnerable to them.” (Laden, ‘The Practice of Equality’ in Forst, 	extit{Justice, Democracy and the Right to Justification}, p. 111)

\textsuperscript{179} This is what Forst terms the D-question which, as he sees it, ought to replace the B-question (that is, the traditional question about the proper boundaries of democracy) Forst, ‘Justifying Justification,’ 205
importantly for the question of intergenerational justice is that the right to justification’s potential to demand justice for-others signals an unexplored normativity within Forst’s theory of justice, namely: the fact that his notion of a basic human right to justification entails a basic human right to democratic “advocacy”—alongside this same right’s dimension as a basic human right to democratic self-determination.

Democratic Advocacy for Future Generations

The point of this excursion through the concepts of justice, democracy and democratization has been to show that a basic human right to democratic advocacy both follows directly from, and is contained in, what Forst sees as the fundamental meaning of justice: the human opposition to arbitrary rule. Beyond the conception of human beings as autonomous and vulnerable beings, no problematic or substantive presuppositions are included in this right. This modest ground, moreover, allows this human right—which, to reiterate is the logical counterpart of the basic human right to justification that Forst proposes—to move freely and unchanged across different political contexts: it exercises the same normative force, follows the same logic, and applies equally to all human beings at all times, under all circumstances and within all socio-political contexts. This is why, as I see it, Forst’s theory of justice is the best available avenue to establish just transgenerational relations in a way that makes future-persons appear as agents of justice—rather than, at best, mere recipients of humanitarian aid.

The archaeological and poetic work of establishing fully justified power-relations between present and future generations is undoubtedly vast and challenging; nonetheless, the necessary groundwork has already been initiated at both the theoretical and practical levels. On the former level, Forst’s work on the democratization of spatial invisible-sites of domination (viz. transnational injustices) equips us with a basic conceptual framework that can be applied to temporal invisible-sites of domination. As has been shown, Forst’s proposal of a basic right to justification to protect and effectuate the inherent justificatory of all human persons across the four practical context represents a “basically monistic
approach regarding the overarching principles of justice.” Following this monistic approach, the concept of justifiability functions as a common normative measure for different types of power-relations: social, transnational, economic, intergenerational, etc. Thus, to the extent that the notion of intergenerational injustice still poses a “special” challenge within the general project of establishing a fully justified basic structure, it should no longer be understood as a particular kind or area of justice, but as part of the general task of democratization through advocacy: a task that follows the same principles in both synchronic-transnational and transgenerational contexts—a task that, more importantly, begins with the same question in both context: what power-relations, in the forms of norms and institutions, could the invisible-oppressed not reasonably reject, given that they are—cognized and re-cognized as—human (that is, vulnerable and autonomous) beings just as we are?

A serious engagement with this question requires that the work of democratizing invisible sites of domination begin with the empirical condition that Forst noted above: “an inventory of the precise contexts in which… rule or domination is exercised.” In the case of the international discourse of climate change, beginning from such context-sensitive approach would avoid the narrow and one-sided economic criteria through which the UN’s Climate Summit 2014 determined its own success. For example, an inventory of the contexts of domination that underlie the issue of climate change would reveal that, alongside questions about the “costs of mitigation for future-persons,” questions such as Kates’ about the democratic interests of future persons or questions regarding the way in which mitigation policies affect the ethical heritage of future persons (recall my example of restrictions on air-travel and its impact on family values) also require appropriately justifiable answers. To be sure, these added contexts of justification do not alter the fact that in order to avoid environmental catastrophe, present generations must cut their emissions by approximately 60% by 2050. What does change, however, are the form, focus and spirit of mitigation strategies (from strategies that rely

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181 Forst, ‘Justice and Democracy in Transnational Contexts,’ 677
on new technologies, to strict approaches to population control, to proposals to concentrate on farming practices, to policies that encourage de-urbanization, etc.) Whatever these form and focus end up being, what matters from the perspective of justice is that they are chosen because they are supported by contextually-differentiated reasons that non person, from the standpoint of a representative of the human community, can reasonably reject—this is the basic theoretical work that is needed to include future generations in present democratic processes.

Ensuring this basic form of democratic autonomy (i.e. justifiability) for future generations, however, requires practical groundwork. Like I mentioned before, this ground-work also has been initiated already. There exist today a vibrant international network of associations that advocate the interests of future generations from different perspectives—environmental, economic, cultural, etc.182

As Forst never tires of explaining, if a theory of justice hopes to avoid arbitrarily imposing its principles, it must subject itself to the logic of justification—this exercise of self-reflection is what earlier was called reflexivity.183 Regarding the general question of domination (who dominates whom?), for example, a reflexive theory of justice begins by determining “who actually poses this question and who has the authority to answer it?”184 Within trans-temporal power-relations, future-persons are obviously unable to ask this question even though they hold the authority to answer it. Luckily, advocacy groups actually pose this question—but to what extent can they answer it without undermining the autonomy of future persons?

182 For example: The World Future Council—An organization made of “50 eminent global change-makers from governments, parliaments, civil society, academia, the arts and business… [that works] to pass on a healthy planet and just societies to our children and grandchildren with a focus on identifying and spreading effective, future-just policy solutions.” (http://worldfuturecouncil.org); Future Generations—an international non-profit civil society organization that uses “action, research, and education to extend innovations in community change and conservation” (www.future.org); and The Canadian Youth Climate Coalition—“a united front of youth from across Canada tackling the biggest challenge of our generation, the emerging climate crisis” (http://www.ourclimate.ca/wordpress).

183 Cf. Forst, ‘Justice and Democracy in Transnational Contexts,’ and his introduction to Justification and Critique.

184 Forst, Justification and Critique, 1 (italics)
Like Forst, John Dryzek is aware of the dominating potential of the un-reflexive deployment of the language of justice in advocacy work. To illustrate this potential, he discusses the case of celebrity activists who depict ‘the poor’ “as claimants on the conscience and charity of the rich, but with no agency of their own.”\(^{185}\) Such depiction only reinforces existing systemic global injustices, since, as Dryzek moves on to note: “such agency for the poor is not recognized in the world dominated by global elites (such as the G8 or G20 groups of large economies) targeted by celebrity activists who implicitly claim for themselves the formative role of determining what justice should mean, and for global elites the role of primary agents of justice.”\(^{186}\) In the case of spatial relations of transnational rule, this type of injustice of justice can be easily corrected: all it requires is to empower (normatively and materially) the poor to answer the question of domination directly—for Dryzek, this means that pro-poor advocacy groups must work to “create a constituency that could validate the[ir] claim” to representation. In the case of trans-temporal relations, this option is obviously not available.

Fortunately, this type of direct representation is not the only alternative. As mentioned above\(^{187}\), Forst claims that the duty to help victims of injustice that befalls all members of the human community translates into a “mediated positive duty to construct institutions that effectively guarantee that [such injustices] are recorded, fought against, and prevented.”\(^{188}\) In the case of intergenerational injustices, the first of such institutions would be, to my mind, an effective political right to veto\(^{189}\) policies that future-persons could reasonably reject—that is, policies that lack general and reciprocal justifications. In a concrete political sense, advocate groups can avoid normatively dominating future-persons by focusing their efforts on the institutionalization of such right to veto. In a less concrete way, they can also exercise what Dryzek calls formative agency within public


\(^{186}\) Ibid.

\(^{187}\) On Forst’s notion of a moral duty to help others see p. 22 of this thesis.

\(^{188}\) Forst, The Right to Justification, 224

\(^{189}\) See this Thesis, p. 21 and Forst, Right to Justification, 214. To be sure, Forst claims that such right to veto unjustified power-relations (which is the discursive, political actualization of the basic moral right to justification) is shared universally by all human beings.
intergenerational discourses—such as that of climate change. As Dryzek explains it, “formative agents of justice are those who give shape to the normative principles of justice that should be adopted in a particular situation, drawing on more general ideas about justice, recognizing the specifics and circumstances of the issue at hand.” This type of formative advocacy work, however, must steer clear from the type of un-reflexive claims that characterized Dryzek’s example of pro-poor celebrities. As I see it (and still following Forst), advocate groups can deploy their formative agency responsibly by enforcing the criteria of justifiability of norms in the negative terms of non-reasonable-rejection and foregrounding the need for appropriate and practically differentiated justifications (e.g. through what Forst argues is the empirical groundwork of democratization)—these two ways of exercising normative agency capture what I meant earlier when I spoke of the problematizing potential of Forst’s theory.

**Conclusion**

In the end, the first step toward a more just world (transnationally and transgenerationally) is to make people feel safe and empowered to ask each other this question out loud and in the open: *who dominates whom?* In turn, what is required to open this safe-discursive-space is the guarantee that whenever a person’s demands for justification are silenced or ignored, those demands will be echoed and amplified by the voices of other human beings who, perhaps from different places and times, are engaged in the same universal struggle against domination. Ultimately, this is all that a non-oppressive approach to intergenerational justice can do: to create institutional conditions—political, legal, social and ethical—that echo and amplify the distant justice-claims of future-persons in such a way that it is no longer possible for anyone, anywhere and at anytime, to ignore, dismiss, or obscure them.

To close this thesis, I want to resurface the notion of transfiguration that I introduced in chapter 1. What I hope to have shown throughout this work is not only the inability of

190 Ibid
191 See this thesis, 54
192 Ibid. 10
traditional ways of conceptualizing de meaning of justice (viz. justice as [1] the protection of individual interests or choices, [2] duties owed to community members, and [3] reciprocal cooperation) to foster non-dominating intergenerational relations and, along the same lines, the emancipating, democratic advantages of Forst’s critical approach to justice which make it appropriate to the trans-temporal context. More essentially than this theoretical contention, my general aim has been to show that following Forst’s definition of the fundamental meaning of justice as opposition to arbitrary rule, the supposed complexities that frames the question of intergenerational justice as a ‘special type’ or ‘separate area’ of justice disappear—e.g. the non-identity problem, the boundary problem of democracy, the difficulty of ethically linking present and distant-future communities through the notion of a transgenerational community, etc. Quite paradoxically (or perhaps ironically) the point of writing these 100 pages of arguments and reflections is to show that ensuring that future generations are treated justly is simpler than we thought. From the recognition of this simplicity, clarity and a reinvigorated sense of hope will follow.
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