

***Intergenerational Justice and the Need for a Sustainable  
Society: What are the Implications for Rawlsian  
Liberalism?***

Brian McBride BSc

OU Personal Reference Number W9479728

A dissertation submitted for the degree of MA in Philosophy in September 2006.

## ABSTRACT

Sustainability is a topic of growing political significance because of increasing concerns that human activity is damaging the planet. This motivates an inquiry into whether democratic liberalism as set out in Rawls's justice as fairness supports sustainability. The main ideas of sustainability are examined and it is suggested that it be conceived as a topic of intergenerational justice. The concept of intergenerational justice is defended against several criticisms including the charges that future persons do not exist and therefore cannot have rights, that intergenerational justice is incompatible with justice for contemporaries, and that the non-identity problem entails that we have no obligations to future persons. Justice as fairness is described briefly and its just savings principle is analysed. Agreeing with Bell, it is argued that the just savings principle provides some, though incomplete, support for sustainability. Wissenburg's restraint principle, a principle which might extend justice as fairness to fully support sustainability, is described and criticised for being too restrictive. A hypothetical fair consumption principle which would be preferable to the restraint principle is posited and four properties it might possess are discussed. It is argued that such a principle is compatible with justice as fairness and political liberalism and would be preferred to the restraint principle in the original position. This dissertation concludes with suggestions for further investigations into the fair consumption principle and other aspects of the relationship between liberalism and sustainability including population management and international justice.

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This dissertation is the sole work of the author who gratefully acknowledges the guidance and support of his tutor, Peter H. Lamb. Neither the whole nor any part has been submitted for a degree or any other qualification of the Open University or any other university or institution.

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## 1. INTRODUCTION

This dissertation is about the relationship between liberalism and sustainability, a topic that grows in importance as humans come to realize that their current practices may have effects that are catastrophic for future generations. An example is the effect on climate. So called green houses gasses, such as CO<sub>2</sub> and methane, absorb more infrared radiation from the sun than other atmospheric gases, trapping heat in the atmosphere and raising the atmospheric temperature. In 2002, as a result of burning fossil fuels, about 1.1 tons of carbon in the form of the green house gas carbon dioxide (CO<sub>2</sub>) was added to the earth's atmosphere for each person on the planet (Marland, Boden et al. 2005a). In per capita terms some modern liberal democracies were amongst the worst offenders. The United States added 5.49 tons per person and the United Kingdom added 2.53 tons per person. China, which is not a liberal democracy, added 0.73 tons per person, whereas India, which is, added 0.32 tons per person (Marland, Boden et al. 2005b). CO<sub>2</sub> emissions from all sources are higher, the United States emitting 19.87 tons per person and the United Kingdom 9.1 tons per person (UNSD. 2005).<sup>1</sup> It is reported that with rapid industrialization China's emissions are growing rapidly and are expected to overtake those of the United States by the middle of the twenty first century (BBC 2005). With their rapid industrial growth, some other developing nations are likely also to be significant contributors to atmospheric pollution in the future.

Unchecked, these green house gas emissions are predicted to cause significant changes in the global climate including raising average temperatures by up to 5.8°C by the year 2100 (IPCC. 2001: 8)<sup>2</sup>, melting significant amounts of the polar icecaps, flooding costal regions, and turning fertile lands into deserts (Hillman 2004: 15-22). It has been suggested that as the global temperature rises, the permafrost of the Siberian tundra will melt releasing into the atmosphere large amounts of methane, a gas whose greenhouse effect is

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<sup>1</sup> UNSD is the United Nations Statistics Division.

<sup>2</sup> IPCC is the Intergovernmental Panel on Climate Change.

more potent than that of carbon dioxide, causing further increases in temperature. The depredations of climate change and resource shortages are likely to lead to war and social upheaval which will undermine the stability of societies.

Since some of the liberal democracies are major emitters of damaging greenhouse gasses, the question arise whether such unsustainable behaviour is compatible with liberal ideals. The dominant modern theory of liberalism, *justice as fairness*, was first set out by John Rawls in *A Theory of Justice* (Rawls 1971). He later updated this work in *Political Liberalism* (Rawls 1993a) and *Justice as Fairness: A Restatement* (Rawls 2001). In this dissertation I argue that sustainability can be conceived as an issue of intergenerational justice, that justice as defined in justice as fairness requires some measure of sustainable behaviour, and that justice as fairness must be extended if it is to require fully sustainable behaviour. I suggest that such an extension might take the form a principle of fair consumption and describe four properties such a principle might have.

My approach is neither a comprehensive nor a radical treatment of green issues. It is not comprehensive because sustainability is only part of the green agenda which also includes the rights of animals, preserving the environment for its own sake, preserving biodiversity, and the ethics of genetic engineering. My approach is not radical compared to what Andrew Dobson calls *political ecologism*. For Dobson, political ecologism is an ideology which can be compared with liberalism and socialism (Dobson 2000: 2-4). Political ecologism calls for a radical change in human values and institutions. Political ecologists are concerned with the intrinsic value that things, such as animals, mountains, and ecosystems, have of themselves (Dobson 2000: 37). This distinguishes political ecology from other ideologies such as liberalism in which value is determined by what persons value. Porritt and Winner (quoted in Dobson 2000: 9) wrote:

The most radical [green aim] seeks nothing less than a non-violent revolution to overthrow our whole polluting, plundering and materialistic industrial society and, in its place, to create a new economic and social order which will allow human beings to live in harmony with the planet.

For Dobson this more radical approach is significant because it challenges the dominant ideology and offers an alternative for societies based on a failing industrialism. My goal in this dissertation is much more limited. I aim only to suggest that sustainability is an issue of intergenerational justice and that Rawls's justice as fairness can be extended to require sustainable behaviour and the limits on personal liberty that this entails. In selecting this goal I do not mean to suggest that a more radical approach should not also be pursued, but that before embarking on such a project, it is prudent to understand how well liberal ideology can support green ideas. In chapter 2 I discuss different conceptions of sustainability and suggest that it be conceived as an issue of intergenerational justice. I also defend the idea of justice between generations against various objections. In chapter 3 I describe Rawls's treatment of intergenerational justice in justice as fairness and consider the extent to which it requires sustainable behaviour. I also consider Marcel Wissenburg's restraint principle (Wissenburg 1998: 123) as a possible extension to Rawls's justice as fairness. In chapter 4 I suggest a new principle of justice that would ensure sustainable behaviour and discuss its compatibility with Rawls's justice as fairness and whether it is preferable to the restraint principle. In chapter 5 I summarize my conclusions and suggest further investigations.

## 2. PROBLEMS OF SUSTAINABILITY AND INTERGENERATIONAL

### JUSTICE

I begin this chapter with a discussion of the meaning of sustainability and suggest that it be conceived as a just distribution of resources between generations over time. I then defend the idea that questions of justice can arise between parties from generations that are widely separated in time.

#### *The Main Ideas of Sustainability*

Conventional economic theory and practice assumed that infinite exponential economic growth was possible (Jacobs 1999: 44). However, in 1972 an international group of scientists called the Club of Rome published a report on a series of computer simulations that suggested that the earth might reach the limits of economic, industrial, and population growth within a small number of decades (Meadows, Meadows et al. 1972). The report suggested that the then current behaviour of human beings was not sustainable.

Fifteen years later, the terms ‘sustainability’ and ‘sustainable development’ first gained political authority and widespread recognition with the publication of the so called *Brundtland Report* (WCED. 1987).<sup>3</sup> The concept of sustainability defines conditions that must be met for something to be described as sustainable. Sustainable behaviour is behaviour that meets these conditions. Sustainable development is a form of sustainable behaviour. Balancing the requirements for protecting the environment and economic development, the Brundtland report established the concept of sustainable development as the key principle underlying environmental policy. At the United Nations Conference on Environment and Development in 1992, the so called Earth Conference, sustainable development was formally endorsed by more than 150 national governments (Jacobs 1999: 21).

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<sup>3</sup> The WCED is the World Commission on Environment and Development



Whilst I have referred above to *the* concept of sustainable development there are in fact several. Brundtland defines it as development which meets the needs of the present without compromising the ability of future generations to meet their own needs. The 'caring for the earth' definition is improving the quality of life whilst living within the carrying capacity of supporting ecosystems (Jacobs 1999: 23).

According to Jacobs concepts like 'sustainable development' are contestable concepts. They have two levels of definition. The first level is vague and describes the core ideas of the concept. Second level definitions are the subject of debate. As the key ideas are refined different second level conceptions of the broad concept are defined.

Jacobs writes, consistently with others such as Pezzey (1992: 48), that the core ideas of sustainable development are (Jacobs 1999: 26-7):

1. Environment-economy integration: ensuring that economic development and environmental protection are integrated in planning and implementation.
2. Futurity: an explicit concern about the impact of current activity on future generations.
3. Environmental protection: a commitment to reducing pollution and environmental degradation and to the more efficient use of resources.
4. Equity: a commitment to meeting at least the basic needs of the poor of the present generation (as well as equity between generations).
5. Quality of life: a recognition that human well being is constituted by more than just income growth.
6. Participation: the recognition that sustainable development requires the political involvement of all groups or 'stakeholders' in society.

Since these are the ideas that distinguish sustainable from non-sustainable development I take them also to be key ideas of sustainability. Later, I will define a second level conception of sustainability that is compatible with these key ideas.

My subject concerns the implications of sustainability for Rawlsian liberalism. The ideas of environment-economy integration and participation are concerned with the practical politics of bringing about sustainability and not its philosophical foundations. I will therefore have little to say about them. Rawls's justice as fairness deals, in part, with the distribution of primary goods which are a means of enabling persons' plans for life and include rights, liberties, opportunities, and self respect as well as wealth. Justice as fairness thus already recognizes that there is more to quality of life than income growth and I will therefore say little more about that either.

From an environmentalist's perspective environmental protection is motivated by a concern for the well being of current and future persons. From an ecologist's perspective environmental protection is necessary because of the intrinsic value of the environment (Dobson 2000: 37). Jacobs distinguishes between weak and strong interpretations of 'environmental protection'. In the weak interpretation economic growth must be balanced with environmental protection. In the strong interpretation environmental protection places limits on economic growth so that at least the same level of use of the environment may continue indefinitely into the future. In neither of these interpretations does Jacobs suggest that the environment should be protected for its own sake. Therefore Jacobs is suggesting the environmentalist interpretation as a core idea of sustainability. This is consistent with my approach as I am not arguing for a radical change in human values. The core ideas of sustainability with which I am concerned are futurity, equity, and the environmentalist's interpretation of environmental protection.

### *Problems with a Standard Definition of Sustainability*

I will now turn to a more detailed analysis of what is meant by 'sustainability'. What does it mean to sustain? What is it that is sustained? In 1992 Pezzey reviewed (1992: 55-62) fifty definitions of sustainability found in the literature; by 1998 Dobson was writing of there being three hundred and the number was still growing (Dobson 1998: 33). As

Dobson points out amongst such a confusion of definitions the cogency of any argument based on a single definition is limited to those who accept that definition. Dobson's strategy for increasing the cogency of his arguments was to construct a typology of conceptions of sustainability abstracted from individual definitions. My approach is similar. Rather than attempt a precise definition of sustainability I will abstract a key feature that conceptions of sustainability acceptable to liberals must have and base my subsequent arguments on that feature.

Lets us start from a 'standard' definition of sustainability synthesised by Pezzey from definitions he found in the literature (Pezzey 1992: 48):

utility (equivalent to quality of life) should not decline

Here utility is a measure of quality of life *per capita* which must never decline, that is it is monotonic (Pezzey 1992: 9-11; Beckerman 1999: 72). Consider two utility curves over time,  $U$  and  $U'$ .  $U$  is always greater than  $U'$ .  $U'$  is monotonic and  $U$  is not. Since  $U$  is always greater than  $U'$  it is rational to prefer the history described by  $U$  to the one described by  $U'$ . Here I take the measure  $U$  to take account of any decline in the morale of the population as a result of utility declining for other reasons (Beckerman 1999: 76). Thus a distribution that is better than another, sustainable, distribution is not sustainable. This undermines the claim that sustainability is a desirable quality of a distribution. What is needed is a conception of sustainability that is sticky. A distribution  $U$  that is always higher than a sustainable distribution  $U'$  should also be sustainable.<sup>4</sup>

This suggests a threshold conception of sustainability where a distribution  $U$  is  $k$ -sustainable if it is always greater than or equal to  $k$ . The question of which values of  $k$  are significant arises. It may be suggested that  $k$  should be the level of utility today, but what is so special about today or any other day? Such a choice is arbitrary and may be impossible as we might have increased our present level of utility to one that cannot be sustained (Beckerman 1999: 73).

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<sup>4</sup> I am indebted to my colleague Chris Dollin who suggested this approach.

Pezzey has defined *survivability* as setting  $k$  at the minimum level required for persons to survive (Pezzey 1992: 11). Survivability is not the same as Frankfurt's (1987: 37) doctrine of sufficiency in which each person would have enough that they are, or reasonably should be, content, for the amount needed for persons to survive may be considerably less than the amount needed for them to be content. Bare survivability is a dreary conception which does not, I think, express most people's conception of the good life implied by sustainability.

The value of  $k$  might be set at the maximum value that can be sustained indefinitely, let us say  $k_{\max}$ . There may be no such value because the laws of thermodynamics predict that a physical system such as the earth must decline and come to an end sometime, but let us ignore that problem and regard such an event as sufficiently remote that it need not concern us here. There is another problem. A distribution of utility that fell below the maximum level that could be maintained would not be considered sustainable even though all the core ideas of sustainability were addressed satisfactorily under that distribution. Sustainability need not require the maximum level that can be sustained.

So, the value of  $k$  should be set somewhere above the level of survivability but below  $k_{\max}$ . Yet there may be no specific level that can be justified as the correct level for sustainability. I will suggest a different approach in the next section.

### *Sustainability as Justice*

The definitions of sustainability that I have considered so far aim to capture the meaning of the term in a formula constraining the distribution over time of some metric. In doing so they lose the essential idea that renders the concept politically attractive. Following Bell (Bell 2002: 707-9) and others, for example (Barry 1999), I suggest that the essential idea underlying the concept of sustainability is not that some distribution must correspond to some formula but the idea that the distribution must be just. I suggest for example that it is because it would be unjust that many people would object to a few generations selfishly

plundering the planet for their own advantage thereby causing hardship to those who lived after them. It may be that sustainability attracts widespread political support because it is a just concept.

Justice is a necessary property of any conception of sustainability that is compatible with Rawls's theory of justice. Rawls wrote that 'the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity' (Rawls 1999a: 110) which can be the case between persons living at different times.<sup>5</sup> For example there may be enough oil to meet the needs of all generations but it is unlikely there is enough to supply all their wants. Rawls also wrote that justice is held to be the primary virtue of a liberal society's basic institutions (Rawls 1999a: 3). Since these institutions should be just and must play a role in whatever regulation is required to ensure sustainability, that regulation is constrained to be just.

Let us now turn to the question of what is to be distributed justly. In Pezzey's standard definition it is utility that is the subject of distribution. Utility is a measure of the well being, or welfare, of persons and so measures an end. Others suggest that sustainability concerns the distribution of resources, or *capital*; that is the means to achieve ends (Holland 1999: 50). This is an aspect of a modern debate concerning whether distributive justice concerns the distribution of functioning capabilities<sup>6</sup>, resources, or welfare (Arneson 2002: 93-100).

A conception of sustainability concerned with the distribution of capabilities or welfare does not provide any direct guidance on what should be done in practice to achieve a just distribution. The goal to make future persons happy or to have the capabilities they desire does not directly help decide what to do because we cannot know what will make them happy or what capabilities they will value. However, we can aim to ensure that future persons have the capital means to achieve their happiness. Goals expressed in terms

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<sup>5</sup> I assume that someone will advance the claims of future persons.

<sup>6</sup> Sen has proposed that what matters is the capability the persons have to be and do what they value.

of capital offer a basis on which policy can be based directly. So I will prefer a conception of sustainability that is concerned with capital rather than with ends.

Capital can be divided into *natural capital*, the capacities found in the natural world such as animals, plants, and minerals, and *human made capital* such as mines, factories, and farms as well as knowledge, skills, and culture. Since capital is a means to enable persons to achieve their ends some capital can be substituted for other capital. Capital, for which there is no substitute is known as *critical capital* (Holland 1999: 50-3). Capital may be critical because of its kind. There may simply be no adequate substitute for, for example, education. Capital may also be critical because of the quantity available. Whilst substance A may be substituted for substance B, substance B may nevertheless be critical because there is not enough substance A to substitute for B everywhere it is needed. I note also that whilst some capital, such as air and water, is likely always to be critical, some capital will be critical at some times and not at others. For example, in the twentieth century we had no substitute for oil. In the twenty second century technology may have advanced sufficiently that oil is no longer critical.

It may be argued that since we do not know what future persons' life plans are nor how technology will evolve, we cannot know what capital will be critical in future and consequently what capital to preserve and what capital may be safely used up. It is correct that there is uncertainty, but it seems to me that since capital often has multiple applications, a conception of sustainability as just distribution of capital is the more likely to be practically useful.

I have now reached the second level conception of sustainability that I will use in this dissertation which is that sustainability requires a just distribution of critical capital over time. Since there is a plentiful supply of substitutes for non-critical capital, the subject of the distribution that concerns us may be restricted to critical capital. This conception of sustainability relies on the idea of intergenerational justice. In the following sections I will defend the idea of intergenerational justice against a number of criticisms.

## *A Conceptual Framework for Intergenerational Justice*

I have argued above for a conception of sustainability as requiring a just distribution of critical capital over time. A successful challenge to the concept of intergenerational justice would likely also be a successful challenge to this conception of sustainability. A number of issues have been raised that challenge whether issues of justice can arise between parties from generations widely separated in time.<sup>7</sup> In the rest of this chapter I will defend the concept of intergenerational justice against such objections.

Authors on the topic of intergenerational justice use a variety of different terms. Meyer for example writes in terms of rights and obligations (Meyer 2003: 2.). On the other hand, Rawls expresses himself primarily in terms of principles of justice.<sup>8</sup> In order to relate the various concepts and terms used by the authors whose work I consider here, I will adopt the following conceptual framework and definitions.

When considerations of justice apply between parties one party may be viewed as holding *rights* against another and the other having corresponding *obligations* to the former. More specifically, this applies when the parties are from different and possibly non-contemporaneous generations and considerations of intergenerational justice apply between parties. A right is a justified claim (Rex 1998). There is a close relationship between the concept of rights and the concept of a theory of justice. A right may be justified by reference to a theory of justice and so it can be said that a theory of justice confers rights and obligations. For example, if a theory of justice demands particular constraints on the distribution of goods, rights, and obligations, then I will say that that theory confers the right that those constraints be respected.

I will use the following definitions for persons alive in the past, present and future. A *present person* is a person who is alive now. A *future person* is a person who will be born

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<sup>7</sup> See Meyer 2003 for an overview.

<sup>8</sup> Note, however, that his first principle of justice is expressed in terms of a right (Rawls 1999a:266).

after all present persons die. A *past person* is a person who lived and died before all present persons were born.

One might introduce the concept of harm into this framework by suggesting, as Carter does (2001: 436), that a key right is the right not to be harmed. However, care must be taken because there are different conceptions of what constitutes harm. With some definitions of harm a right not to be harmed may have unwanted consequences. For example some hold that an act *A* harms a person *P* if that act causes *P* to be less well off than some alternative possible act *A'*. Consider a society where the total amount of goods is fixed and they all are shared equally. Everyone in that society would be less well off when a child was born because to maintain equality they would have to give up some of their goods for that child. Thus it could be argued that under that society's theory of justice a right not to be harmed in this sense is incompatible with having children. Rather than stating that a person has a right not to be harmed, I will say that someone is harmed if their rights are violated.

### *Some Objections to Intergenerational Justice*

Having established a framework and terminology I can address some objections to the concept of intergenerational justice. The first is that asymmetries in the relationships between past, present, and future persons render the notion of justice between them untenable. Persons are unable to affect the circumstances of past persons but can have significant effects on the circumstances of future persons. Rawls described the *circumstances of justice* as being 'the normal conditions under which human cooperation is both possible and necessary' (Rawls 1999a: 109). Opportunities for cooperation between past, present, and future persons are limited. Cooperation between parties normally requires the active involvement of all parties and this is not possible between past, present, and future persons. So it could be argued that Rawls himself ruled out justice applying between generations.



However, as noted earlier, Rawls also writes (1999a: 110):

The circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity

and later (Rawls 1999a: 257):

The life of a people is conceived as a scheme of cooperation spread out in historical time. It is to be governed by the same conception of justice that regulates the cooperation of contemporaries

These and other remarks in his writings indicate that Rawls believed that justice applied across generations.

I will now consider an objection that questions whether intergenerational justice is compatible with justice for contemporaries. Consider a theory of justice that holds that all persons should have equal rights. Consider also that women in the United Kingdom at beginning of the 20<sup>th</sup> century did not have the right to vote whilst men of the same period did. It would be absurd to deny the vote to present women on the grounds that intergenerational justice required that present women have the same rights as past women. Thus, equal rights across generations may be incompatible with equal rights for the present generation. Barry concludes that the principle of equal rights has no direct intergenerational application (1999: 98). If the principle of equal rights does not hold between generations then intergenerational justice in general may not hold either.

One might counter that intergenerational justice is forward looking. As Barry writes later in the same paper (Barry 1999: 107) :

It must be conceded that the expression 'intergenerational justice' [...] is a sort of shorthand for 'justice between the present generation and future generations'. Because of time's arrow, we cannot do anything to make people in the past better off than they actually were, so it is absurd to say that our relations to them could be either just or unjust. 'Ought' implies 'can', and the only people whose fate we can affect are those living now and in the future.

Justice concerns the distribution of advantages and there is nothing that present or future persons can do to affect the circumstances, including the distribution of advantages, experienced by past persons. The same cannot be said of the relationship between present

and future persons. Present persons do affect the circumstances of future persons and so issues of justice do arise between present and future persons.

Turning to another objection, it has been argued that future persons do not exist now and therefore cannot be the subject of anything, including rights, now (Meyer 2003: 2.1). Meyer argues that although future persons do not have rights now this does not mean that their future rights cannot be violated now. I make the stronger claim that future persons can have rights now.

In making this claim I distinguish between two different conceptions of existence. There is the concept of corporeal existence, which I shall refer to as *c-existence*, which is having a physical presence in the universe for an interval of time. Future persons do not c-exist now, but they will. There is also a concept of existence which deems an entity to exist by being a member of a domain. The *domain* of a relation is the collection of entities related by that relation.<sup>9</sup> All future people are related to Cleopatra by the relation that their time of birth is later than or equal to her time of death. Thus all future people can exist in the domain of a relation. I will refer to existence in this sense as *d-existence*.

For a relation to exist between two entities in a domain it is sufficient that those entities d-exist in the domain of the relation. They need not c-exist. For example, despite having no corporeal existence the owl and the pussycat are related in that they are characters in the same book.

A party having a right is a relation between that party and that right. Such a relation can only exist if having the right is justified, possibly by a theory of justice. Neither the owl nor the pussycat has rights because there is no theory of justice, or other means, that justify them having any rights. As we have seen, the existence of a relation does not require the related entities to c-exist. The fact that a future person does not c-exist now does not preclude a ‘having a right according to theory T’ relation to exist between that future

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<sup>9</sup> Whilst I am using the term *relation* in its usual mathematical sense, I am using the term *domain* to mean the set of all entities related by a relation.

person and a right. Future persons having rights is more than just a theoretical possibility for there are theories that grant rights to future persons because they grant rights to all persons. For example, the theory that all persons have a right not to be deliberately killed after they are conceived is such a theory.

In summary, I have argued that the fact that future people do not physically exist now does not necessarily preclude their having rights. The reason is that having a right is a relation between a party and a right and, in general, relations can exist between entities that have no physical existence. So the argument that there can be no intergenerational justice because future people cannot have rights fails.

### *Objections to Intergenerational Justice Based on the Identity of Future Persons*

I will now explain how, given the facts of human biology and a view of the identity of human individuals, the actions of present persons can affect the identity of future persons. I will show that present actions can change which persons will exist in the future. I will then go on to address issues for intergenerational justice that arise from this observation.

In the discussion that follows I refer to possible worlds as a means of discussing different outcomes that could occur depending on future events and circumstances. As Carter says: 'One (not uncontroversial) way of elucidating counterfactuals and subjunctive conditionals is to employ the language of possible worlds' (Carter 2001: 434). A possible world is a world that could c-exist. At any time in the future many possible worlds may occur and exactly one of these will occur.

It is reasonable to consider that a person's identity consists, in part, of their genetic makeup. This claim could be denied and some conception of the identity of persons chosen that was not correlated with genetic makeup. For example, ignoring complications arising from new techniques such as human cloning and noting that twins are born at slightly different moments, one might say that a person is identified by being the  $n^{\text{th}}$  child

born of a mother. Under such a conception of identity, if C and D are both the  $n^{\text{th}}$  child of mother M, then C and D are the same person. Given this conception of identity, the same person may have both blue eyes and brown eyes, for in one possible world the first child of M may have blue eyes and in another possible world her first child, and thus the same person, might have brown eyes. From this we must conclude either that eye colour is not a property of a person in the sense of person identified as the  $n^{\text{th}}$  child of its mother, or that this means of identifying persons cannot be used across different possible worlds.<sup>10</sup> Such a conception of the identity of a person is not adequate for my purposes here. Later in this section I require a conception of the identity of persons with which it is possible to discuss whether or not the same person exists in different possible worlds. The genetic makeup of a person has such a profound effect on their nature, capabilities, physical characteristics, and station in life that it would be absurd to say that two persons with a different genetic makeup were the same person. Thus if two persons have different genetic makeups they are different persons.

Human beings reproduce when a spermatozoon fertilizes an ovum. The spermatozoon contains half the genetic makeup of the father and the ovum contains a complimentary half of the genetic makeup of the mother. Two different spermatozoa from the same father are very likely to have different genetic makeups as are two different ova from the same mother. The genetic makeup of a complete human being is formed by combining the genetic makeups from the ovum and the spermatozoon that fertilizes it. Thus it is highly likely that if a different ovum is fertilized or fertilization is by a different spermatozoon, or both, then a human being with a different genetic makeup, and thus a different person, will result.

Human females release a new egg for fertilization approximately every 28 days so it is highly likely that which month a woman conceives will determine, in part, the identity of

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<sup>10</sup> Here I am using (part of) Leibniz's concept of identity, that, where X and Y are entities, and '==' denotes the identity relation, if  $X = Y$ , then  $p(X) = p(Y)$ , for all properties p of X (Simons 1998).

her child. This is Parfit's second time dependence claim (Parfit 1984: 352). Human males release millions of spermatozoa at a time and it may be assumed to be unlikely that there is any correlation between the genetic makeup of a spermatozoon and its chances of fertilizing an ovum. It is likely that which spermatozoon fertilizes the ovum may depend on the exact time of fertilization, and so the identity of each child depends on the exact time of conception. This is Parfit's (1984: 351) first time dependence claim. Further, the time of conception may depend on many day to day factors such as the weather, the state of the evening traffic, and whether either parent had a particularly stressful day and so the identity of future persons depends upon apparently minor circumstances at the time of conception as well as the identity of their parents.

A consequence of this observation is that it may be argued that since rights belong to particular people and since given these facts of human biology we cannot hope to be able to identify future people then future people cannot have rights. But, as Meyer argues (2003: 2.2), this is not the case. A right is a justified claim so provided justifications do not rely on identifying specific individuals then future people can have rights. In principle this depends on the theory by which the rights are justified but it is not uncommon, as in human rights for example, for rights to apply generally and not require the identification of specific individuals.

There is a further issue concerning the identity of future persons that Parfit called the *non-identity problem* (Parfit 1984: 359). Kavka called it the *paradox of future individuals* (Kavka 1982: 93-5).<sup>11</sup> In essence the issue is that it is claimed that it is not possible for a policy to harm future persons because adoption of a policy will change the identity of the persons who will live in the future and therefore persons alive in the future are no worse off than they would have been had the policy not been adopted and so they cannot have been harmed by the policy.

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<sup>11</sup> See also (Schwartz 1978).

To illustrate in more detail here is an example based on one by Parfit (1984: 361-4). Consider a society choosing between two resource management policies, one sustainable and the other not.<sup>12</sup> If the sustainable policy is adopted a particular natural resource is conserved and the well being of members of the society continues to improve for thousands of years. If the unsustainable policy is adopted citizens are better off than under the sustainable policy for the next two hundred years or so and are considerably worse off thereafter when the resource has run out. Recall that the identity of future persons depends on apparently minor differences in circumstances which affect the exact time of conception. The choice of policy is very likely to affect the circumstances of conception and thus the times of conception and so the genetic makeup of the persons that constitute the next generation. Therefore the identity of many of the persons alive in the first generation after the policy choice will be different under the sustainable policy from those alive under the unsustainable policy. The second generation is more likely to be different because not only are there different circumstances as a result of the differences between the two policies but there are also differences because different persons were born in the first generation. After three hundred years of this it is highly likely that all the persons alive in possible worlds under the unsustainable policy have different identities to the persons alive in possible worlds under the sustainable policy.

If the society chooses the unsustainable policy then those alive in three hundred years will be considerably worse off than those who would have been alive had the society chosen the sustainable policy but the people actually alive are no worse off than they would have been had the sustainable policy been chosen instead as they would not have been alive at all under that policy. In Parfit's view they have not been harmed. If one takes the view that being brought into existence, provided one has a life worth living, is a

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<sup>12</sup> Parfit refers to these as the conservative and depletion policies respectively.

benefit then those alive under the unsustainable policy have not only not been harmed but have benefited from that policy.

From such arguments Schwartz concludes that ‘we’ve no obligations extending [...] terribly far into the future to provide any widespread, continuing benefits to our descendents’ (Schwartz 1978: 3). As Carter points out (Carter 2001: 438), the identity problem is also a problem for theories of intergenerational justice such as justice as fairness for unjust behaviour harms its victims and if it is not possible to harm persons in the far future, then it is not possible to behave in ways that are unjust to them.

How may we reply to Schwartz? It could be argued that there are utilitarian arguments for adopting the sustainable policy but, as Carter again points out, utilitarianism has problems dealing with future generations (Carter 2001: 432). Classical utilitarianism is usually interpreted as maximising the total amount of happiness. The problem is that this leads to the conclusion that it is better to have large numbers of pretty miserable people, provided they have lives worth living, than a smaller number of a happier, fulfilled people provided that the total amount of happiness is higher in the former than in the latter situation. This is known as the *repugnant conclusion* (Parfit 1984: 388). Other undesirable conclusions follow if the metric to be maximized is average happiness. In that case it is right to kill people who have below average happiness because it will increase the average.

To avoid these difficulties, some utilitarians have adopted the *person affecting principle* which, in one form, states that ‘only acts which affect or can reasonably be expected to affect (i.e. benefit or harm) the ongoing lives of particular individuals can count as morally significant’ (Partridge 2002: 81). However, this principle provides no escape from Schwartz’s argument which has this principle as a premise. Further Partridge views the non-identity problem as an *argumentum ad absurdum* of the person affecting principle. He argues that Schwarz’s conclusion that we have no obligations to future persons is absurd but is logically entailed by the person affecting principle and the non-identity problem.

Therefore one of these two premises must be rejected and since the non-identity problem appears to be empirically secure, it is the person affecting principle that must go (Partridge 2002: 82).

Meyer has suggested a response to the non-identity problem which preserves the person affecting principle. It is based on the *subjunctive threshold* concept of harm (Meyer 2003: 3.1):

An action (or inaction) at time  $t_1$  harms someone only if the agent thereby causes (allows) this person's life to fall below some specified threshold.

The threshold may be defined by a theory of justice such as justice as fairness. Therefore, if some theory of justice required constraints on the distribution of resources across generations and persons in some generation were denied their just amount of resources then they would have fallen below the threshold and therefore would have been harmed whatever their identity.

Woodward also suggests a response, arguing that conceptions of harm need not be consequentialist. He offers the example of a person called Smith who is denied a seat on an aircraft on racial grounds in violation of his rights. The aircraft subsequently crashes killing all on board and Smith is presumed to be better off for not being on it. Woodward argues that Smith was harmed regardless of the consequences to him because his rights were violated when he was denied a seat (Woodward 1986: 810-1). So if I am right that future persons can have rights then future persons are harmed when those rights are violated whether those persons are better off, worse off, or unaffected as a consequence of the act that violated their rights. Therefore future persons can be harmed whatever their identity.

Meyer and Woodward offer responses to Schwartz's argument which is therefore not fatal to the notion of intergenerational justice. In this chapter I have suggested that sustainability be conceived as requiring a just distribution of critical capital over time and thus as a concept defined in terms of intergenerational justice. I have then defended the



concept of intergenerational justice against a number of objections. In the next chapter I will discuss the application of Rawls's justice as fairness to this conception of sustainability.

### 3. SUSTAINABILITY AND JUSTICE AS FAIRNESS

In this chapter I apply Rawls's justice as fairness to sustainability conceived as a just distribution of critical capital over time. I begin the chapter with a brief introduction to justice as fairness followed by a more detailed analysis of Rawls's writings on justice between generations. Following this I discuss the extent to which Rawls's principles of justice ensure sustainability, taking into account differences, discussed by Derek Bell (2002), between Rawls's earlier and later writing. I argue that the principles of justice worked out by Rawls must be extended if they are to ensure sustainability. I describe Marcel Wissenburg's restraint principle as a possible extension and argue that it may be more restrictive than is necessary and so would not be agreed in the original position if a less restrictive but adequate alternative principle could be found.

#### *An Introduction to Justice as Fairness*

Roughly speaking justice means that different treatment must be justifiable by morally relevant reasons. This statement conveys little until more is known about what counts as morally relevant. Brian Barry suggests that it is an indicator of possible injustice that a person receiving different treatment cannot reasonably be expected to freely accept it (Barry 1999: 97). Rawls bases justice as fairness on this simple idea. As Rawls puts it (Rawls 1999a: 10):

The guiding idea [of justice as fairness] is that the principles of justice for the basic structure of society [...] are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.

The primary subject of justice as fairness is the basic structure of society or 'more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls 1999a: 6). The major social institutions include the constitution, the legal system, family arrangements, and private property.

Justice in justice as fairness is achieved in four stages. The first determines principles of justice to regulate the basic structure of society. In the second a constitutional convention designs a specific constitution. In the third a legislature passes laws. In the final stage administrators and courts apply those laws (Rawls 1999a: 171-6).

Rawls proposes that we imagine that the principles of justice are discussed and agreed in a hypothetical situation he calls the *original position*. Persons in the original position are assumed to be rational, motivated to further their own interests, disinterested in others, and to have a rational plan of life. To eliminate bias persons in the original position are assumed to be behind a *veil of ignorance* which ensures that whilst they possess general knowledge they know nothing of their own situation. They know nothing about their personal psychology, position in society, or about the development status or nature of their society. The assumption of rationality ensures that there are reasoned arguments for the principles agreed in the original position. The assumption of disinterest in others ensures that the agreed principles do not rely on unrealistic assumptions about the psychology of persons. The veil of ignorance ensures that the agreed principles are fair because, without information on their personal circumstances, persons in the original position don't have the information needed to bias the outcome in their individual favour (Rawls 1999a: 120-1) .

The original position is a rhetorical device. It is a metaphor that represents restrictions on the logical arguments that may be used to justify principles of justice. As Rawls puts it, the original position 'models [...] acceptable restrictions on the reasons on the basis of which the parties [...] may properly put forward certain principles of justice and reject others' (Rawls 2001: 80).

After much argument Rawls states (Rawls 1999a: 266) that the following principles would be agreed in the original position:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

2. Social and economic inequalities are to be arranged so that they are both:
  - a. To the greatest benefit of the least advantaged, consistent with the just savings principle<sup>13</sup>, and
  - b. Attached to offices and positions open to all under conditions of fair equality of opportunity.

Principle 2a is the *difference principle* which regulates the distribution of *primary goods*. Primary goods are ‘things that every rational man is presumed to want’ as they ‘normally have a use whatever a person’s rational plan of life’. Primary goods include rights, liberties, opportunities, income, wealth, and self respect (Rawls 1999a: 54). The difference principle is very different to the utilitarian principle of maximising overall benefit. It may seem that the obvious course for those in the original position is to choose principles that would maximize overall benefit since simple statistics tells us that, given the ignorance of persons in the original position of their personal circumstances, this would maximize each individual’s expectation of benefit. However Rawls argues that there are three reasons why persons in the original position would choose the difference principle. The first is that because of the veil of ignorance they are ignorant of the probabilities necessary to enable them to calculate which principles would maximize overall benefit. The second is that social and economic inequality is secondary to the first principle which concerns maximal liberty. It is not rational to risk the primary need of liberty for uncertain social and economic advantage. The third reason is that, provided the difference principle is acceptable and it is possible that other outcomes from the original position are intolerable, it is not rational to risk an intolerable outcome for uncertain and inessential social or economic advantage (Rawls 1999a: 134-5). Thus it can be argued that persons in the original position are risk averse when they are not able to calculate the probabilities of different outcomes.

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<sup>13</sup> I discuss the just savings principle in more detail below.

In *Political Liberalism* (Rawls 1993a) Rawls acknowledged that his account of the stability of a society conforming to justice as fairness relied on all citizens accepting a common comprehensive moral doctrine (Rawls 1993a: xviii-xix). It is an empirical fact that this is not the case in the kind of democratic liberal societies for which justice as fairness was designed. To address this Rawls proposed a new account of the stability of a regime under justice as fairness in which he introduced several new concepts. He clarified that justice as fairness is a political conception not a comprehensive moral or religious doctrine. A *political conception of justice* is one that is worked out for the basic structure of society only (Rawls 1993a: 11). *Political values* are values that apply to the basic structure of society. He introduces the idea of reasonableness. A *reasonable person* is one who recognises the value of social cooperation and is willing 'to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so' (Rawls 1993a: 49). *Liberal legitimacy* is the idea that state power may only be used 'in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse' (Rawls 1993a: 137). The *constitutional essentials* consist of the fundamental principles that specify the structure of government and the equal basic rights and liberties that all citizens are to enjoy. Legislatures must respect the constitutional essentials (Rawls 1993a: 227). *Basic Justice* consists of matters of basic distributive justice including 'freedom of movement, equality of opportunity, social and economic inequalities, and the social basis of self respect' (Rawls 1993a: 228). *Public reason* is reason that is based on political values that all free and reasonable persons might be expected to endorse and is conducted in public (Rawls 1993a: 226). Finally an *overlapping consensus* is a consensus of reasonable citizens with differing comprehensive doctrines (Rawls 1993a: 15).

Rawls argues that if the questions of constitutional essentials and matters of basic justice are determined by public reason alone they can be the subject of an overlapping

consensus of persons with reasonable comprehensive doctrines and the state then has liberal legitimacy and will be stable.

### *Rawls and Justice between Generations*

Having briefly introduced the main ideas of justice as fairness I will now examine Rawls's treatment of justice between non-contemporaneous generations. Rawls intends justice as fairness to address issues of justice between generations for he states (Rawls 1999a: 118-9):

Questions of social justice arise between generations as well as within them, for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature.

and (Rawls 1999a: 258):

The present generation cannot do as it pleases but is bound by the principles that would be chosen in the original position to define justice between persons at different moments in time.

He also writes (1999a: 252):

The appropriate expectation in applying the difference principle is that of the long-term prospects of the least favoured extending over future generations. Each generation [...] must also put aside in each period of time a suitable amount of real capital accumulation.

However, as Rawls points out, the difference principle cannot reliably justify a savings principle because, in a situation of long term economic growth and social development such as has been enjoyed by the western democracies in recent centuries, the least favoured at any time are likely to be the least favoured for a considerable time thereafter. In this situation the current generation is the least favoured and there would be no, or at best inadequate, savings. Yet in these circumstances a reasonable rate of saving is in almost everyone's best interests, for the benefit persons receive from the savings of those who have lived before them is highly likely to be greater than the cost to them. Something else is needed if savings are to be assured (Rawls 1999a: 253-4) .

To address this problem, Rawls introduced the idea of a *just savings principle* (Rawls 1999a: 252). A just savings principle regulates how much capital accumulation each

generation should set aside for future generations. Despite a savings principle being in the best interests of all generations but the first it is not straightforward to explain why a savings principle would be agreed in an original position. Rawls adopts the *present time of entry* interpretation of the original position in which the original position may be entered by anyone at any time ‘simply by reasoning in accordance with the appropriate restrictions’ (Rawls 1999a: 119). Under this interpretation all persons in the original position know they are contemporaries (Rawls 1999a: 121) and since they are disinterested in the welfare of others and are motivated to increase their own share of primary goods they have no reason to set aside any of their capital for the benefit of future generations (Rawls 1999a: 254-5). The knowledge that all persons in the original position are contemporaries has the effect of sanctioning persons in the original position favouring their own generation at the expense of future generations. Thus the present time of entry interpretation allows reasoning about principles of justice that are unfair to future persons.

Perhaps this unfairness can be addressed by abandoning the present time of entry interpretation. Like Beekman (2004: 8), I cannot find a comprehensive explanation by Rawls of his reasons for adopting the present time of entry interpretation. For example, Rawls writes (1999a: 120):

The original position is not to be thought of as a general assembly which includes at one moment everyone who will live at some time; or, much less, as an assembly of everyone who could live at some time. It is not a gathering of all actual or possible persons. If we conceived of the original position in either of these ways, the conception would cease to be a natural guide to intuition and would lack a clear sense. In any case, the original position must be interpreted so that one can at any time adopt its perspective. It must make no difference when one takes up this viewpoint or who does so: the restrictions must be such that the same principles are always chosen.

He makes it clear the he has adopted the present time of entry interpretation but offers no explanation why the other interpretations would ‘cease to be a natural guide to intuition and would lack a clear sense’. That one can at any time adopt the viewpoint of the original position does not preclude an original position containing representatives from all generations. Such a perspective seems natural and intuitive, can be adopted at any time

and it makes no difference when one takes up this standpoint because the veil of ignorance precludes persons in the original position knowing to which generation they belong. Perhaps the non-identity problem and related issues discussed above offers the basis of an explanation (Beekman 2004: 8). Let us consider the two alternative interpretations suggested by Rawls.

First consider an original position which includes ‘everyone who could live at some time’. As I have argued in the discussion on the non-identity problem, if the choice of principles in the original position is to affect the policies of society it will affect the identity of the persons who will be born. Since there are vastly more persons who could live than will live the vast majority of persons in this kind of original position will never live and so may prefer to continue to debate in the original position than to give up all reasonable hope of any other kind of existence. My point is not that hypothetical existence in the original position is preferable to a vanishingly small chance of being born but that this sort of argument distracts and so undermines the usefulness of the concept of the original position as an aid to thinking and exposition.

Second consider an original position that includes everyone who will live at some time. There is an uncomfortable circularity in this conception of the original position for it is populated by persons who will live, yet the identity of the persons who will live is dependent upon the deliberations in the original position. Again such considerations distract and so undermine the value of the concept of the original position. It is better to avoid such distractions and adopt the present time of entry interpretation.

As I observed above, under the present time of entry interpretation there appears to be no motivation for persons to save. To address this, in the original edition of *A Theory of Justice*, Rawls added a further motivational assumption that each person in the original position cares for their immediate descendents (Rawls 1971: 255). However he withdrew this assumption in later works and, following a suggestion by Parfit, stipulated instead that the just savings principle is ‘subject to the condition that they [the parties in the original



position] must want all previous generations to have followed it' (Rawls 2001: 160).<sup>14</sup> The formal constraints on principles considered in the original position insist they be expressed in general terms (Rawls 1999a: 113) which, together with the stipulation, ensures that principles agreed in the original position affect future generations as the present generation would want to be affected. This rules out principles that discriminate against future generations. These changes are an improvement in that they allow Rawls to simplify the assumptions he makes about persons, relying only on their self interest for motivation, whilst being able to argue, as I will now explain, that persons in the original position would agree to a savings principle

Consider that a savings principle is proposed in the original position that each generation set aside according to some schedule capital for the building up of a just basic structure and suppose further that this principle is subject to the stipulation just discussed. Given a positive return on capital investment the schedule can be arranged so that each generation except the first is likely to gain at least as much from the savings of previous generations as it sets aside for the next generation.<sup>15</sup> Since there is only one first generation and presumably many thereafter it is rational for persons in the original position to agree to this savings principle because they are more likely to gain than to lose from it provided the consequences to the first generation are not so severe that the small risk of experiencing them outweighs the more probable advantages of being in a later generation.

Having established that the persons in the original position would agree to some principle of savings I come to the questions of how much and for what purpose they will save. As Rawls puts it, 'The just savings principle can be regarded as an understanding between generations to carry their fair share of the burden of realizing and preserving a just

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<sup>14</sup> In the revised edition of a Theory of Justice Rawls included both the motivational assumption and the stipulation (Rawls 1999a:255).

<sup>15</sup> I leave aside, as does Rawls, what principle to apply in a situation of economic decline when there is a negative return on investment. I assume that some principle constraining the allowable decline in the basic structure can be worked out.

society' (1999a: 257). Rawls offers no formula to determine the amount of savings, reckoning that to be impossible (Rawls 1999a: 255). The amount is that which would be agreed by persons in the original position balancing the benefits they will receive from the savings of earlier generations with the loss of benefit they will endure. The amount of savings will depend on the state of society. Less will be required of early, less well off generations than of later generations on whom the relative burden of a higher rate of savings is less (Rawls 1999a: 255). Rawls also writes (1999a: 255):

Eventually, once just institutions are firmly established and all the basic liberties effectively realized, the net accumulation asked for falls to zero. At this point a society meets its duty of justice by maintaining just institutions and preserving their material base. The just savings principle applies to what a society is to save as a matter of justice. If its members wish to save for other purposes, that is another matter.

Thus the purpose of saving in justice as fairness is the building up over time and then maintaining a just basic structure for society. Rawls states that 'justice does not require that early generations save so that later ones are simply more wealthy' (1999a: 257). I find this language hard to interpret. I take 'early generations' to mean all generations on the grounds that since justice is universal it should apply equally to all generations.<sup>16</sup> It is not clear whether Rawls means that justice places no constraints on the distribution of wealth amongst generations. Whilst the text rules out savings whose aim is to make later generations more wealthy it does not rule out savings whose effect is to make later generations more wealthy but is motivated by a different concern such as justice or equity. On balance, given the emphasis in the text that the purpose of savings is the creation and maintenance of a just basic structure, I think that Rawls does mean to say that justice as fairness places no other constraints on the distribution of wealth across generations.

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<sup>16</sup> The statement is vacuous for the last generation.

## *Rawls's Principles and Sustainability*

I come now to the main topic of this chapter which is whether and to what extent Rawls's principles ensure sustainability. Recall (p. 10) that sustainability requires a just distribution of critical capital over time. Recall also (p. 26) that Rawls claims that conservation of the environment is an issue of intergenerational justice and that just principles to govern justice between generations are those that would be agreed in the original position. However Rawls points out that he has not fully worked out these aspects of justice as fairness. He writes that 'We may think of these other questions as problems of extension' that can be discussed later, though when better understood they may 'require us to revise answers already reached' (Rawls 1993a: 20).

Rawls's justice as fairness makes some provision for sustainability as it places some constraints on the distribution of critical capital over time for, as we have seen, justice as fairness includes a just savings principle to provide for the creation and maintenance of a just basic structure. Unsustainable development can have catastrophic consequences. For example unchecked global warming may give rise to significant changes in climate that will turn fertile land into desert, restricting the availability of food and water. As such effects became severe people would die and thus be denied their right to basic liberties. The rule of law might break down as people fight for life's essentials. Since its primary goal is to develop and maintain a just basic structure, justice as fairness rules out unsustainable behaviour that leads to the failure of the just basic structure.

Derek Bell makes a similar point in a paper in which he discusses environmental issues in the context of Rawls's later works (Bell 2002: 705-10). In this paper he draws attention to the two kinds of arguments that political liberalism allows to justify policies. The first kind consists of public reason arguments which must be used to settle questions concerning basic justice and the constitutional essentials and should be used where possible to settle other political questions. Bell argues that public reason arguments are sufficient 'to justify a liberal commitment to a (a conception of) "sustainability"' (Bell 2002: 707-8). He

argues, quoting Rawls, that there must be limits to the amount of damage that political liberalism can allow to the environment if its ‘aim is to maintain a co-operative society of free and equal citizens “over time, from one generation to the next”’ (Rawls 2001: 5; Bell 2002: 708).

So far we have seen that arguing from either Rawls’s proposal of a just savings principle in *A Theory of Justice* or from a public reason argument suggested in *Political Liberalism*, justice as fairness supports some conception of sustainability. I will now argue that neither of these arguments is sufficient to ensure sustainability as I have suggested it be conceived. Consider the case of a substance S which is critical capital for some time interval T which is long enough that several generations will live and die during T. Let us assume that there is a total fixed amount A of S, that amount  $A_{bs}$  of S is necessary to maintain the basic structure of society and will be consumed when so used, and that additional quantities of S are required for persons alive during T to fulfil their rational plans of life. Let us further assume that conditions of moderate scarcity apply and that the total amount of S less  $A_{bs}$  is insufficient to enable all the persons who live during T to fulfil their plans of life. As is not unusual, a law of diminishing returns applies to the use of S. Further quantities of S, whilst still desirable, bring less incremental benefit to their owners than initial quantities. Now consider a distribution D in which the persons alive in the first half of T, in order to improve an already acceptable quality of life, use up the available S leaving just enough to maintain the basic structure through the second half of T? I suggest that the intuitions of most people would be that D is not just.

To decide whether D is just under justice as fairness it is necessary to determine whether D would be agreed in the original position. As this is a question of intergenerational justice, to ensure fairness between generations I stipulate that persons in the original position must want all previous generations to have followed whatever principal they agree governs the distribution of S over time. Persons in the original position know that under distribution D they will either have more than a fair share of S or

none. Since there is a fixed amount of S to be distributed amongst a fixed number of persons, statistics tells us that, because of the veil of ignorance, the expected amount of S to be received by a person in the original position is the same under D as under a distribution that is more equitable between generations. However, given that a law of diminishing returns applies to S it is not rational for persons in the original position to risk the high cost of having no S for the lesser advantage of having extra S and so, other things being equal, it would not be rational for persons in the original position to agree to a principle governing the distribution of S that allowed distribution D.

The only constraint that Rawls's two principles of justice place on the distribution of S between non-contemporaneous generations is that enough is saved to develop and maintain a just basic structure. Since D provides enough S for the basic structure the two principles of justice permit D with no compensating advantage and so do not ensure a just distribution of critical capital S and therefore are insufficient to ensure sustainability.

Bell argues there is another way that political liberalism can ensure sustainability. As well as arguments based on the two principles, political liberalism allows political questions other than those concerning constitutional essentials and the basic liberties to be settled by voting on proposals supported by arguments based on comprehensive doctrines, so long as those proposals are consistent with the constitutional essentials and basic justice. As Bell puts it (Bell 2002: 707):

A Rawlsian state can legitimately make policy on the basis of comprehensive reasons that have won out in the democratic process.

Justice as fairness allows a society's government to provide public goods over and above those necessary for justice if a sufficiently large number of citizens agree. As Bell points out there is a significant difference in what counts as 'sufficiently large' between *A Theory of Justice* and Rawls later works. In *A Theory of Justice* near unanimity of citizens is required. Rawls writes (Rawls 1999a: 250):

There is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses.

Later, in *Justice as Fairness: A Restatement* Rawls writes that a democratic vote is sufficient (Rawls 2001: 152 note 26):

For example, a bill may come before the legislature that allots public funds to preserve the beauty of nature in certain places (national parks and wilderness areas). Whilst some arguments in favour may rest on political values, [...] political liberalism with its idea of public reason does not rule out as a reason the beauty of nature as such or the good of wildlife achieved by protecting its habitat. With the constitutional essentials all firmly in place, these matters may appropriately be put to a vote.

So, as Bell argues, justice as fairness as revised in Rawls's later works allows a society to enforce environmental policies provided the necessary legislation is passed by the institutions of a just basic structure in accordance with the society's constitution. The legislature could pass laws that would, to the extent possible by a single society, forbid distribution D, or more generally, would support sustainability.<sup>17</sup> However, justice as fairness requires more than this. In justice as fairness questions of basic justice are to be settled by public reason alone without reference to comprehensive doctrines as is permitted in a democratic vote (Rawls 1993a: 224-5). Questions of basic justice include questions of basic distributive justice which includes questions of the regulation of economic inequalities (Rawls 1993a: 228). As justice as fairness is extended to address questions of intergenerational justice, questions of basic justice will include questions of distributive justice between generations which, according to Rawls, must be settled by public reason alone. It follows that sustainability conceived as a just distribution of critical capital over time is a question of basic justice between generations and so should be regulated by principles determined by public reason alone. It is therefore not sufficient to rely on a democratic process to ensure sustainability.

It may be objected that, as Ivison points out (1997: 141), Rawls wrote that many political questions 'for example [...] statutes protecting the environment and controlling

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<sup>17</sup> Many environmental issues are global in nature. Addressing them requires international cooperation.

pollution' (Rawls 1993a: 214) do not concern the constitutional essentials or questions of basic justice and so are not constrained to be settled by public reason alone. There is an important distinction between the principles of justice and the specifics of particular statutes. Whilst Rawls writes that specific statutes are not constrained to be settled by public reason alone, he also writes that the constitutional essentials and principles of basic justice are so constrained (Rawls 1993a: 214). Rawls writing that statutes need not be settled by public reason alone does not preclude principles of justice being determined by public reason alone.

As I wrote earlier, in justice as fairness the principles of justice are worked out in the original position, a constitution embodying these principles is designed at a constitutional convention, and laws are passed by a legislature that is constrained by that constitution. Rawls distinguishes between principles concerning constitutional essentials and principles concerning questions of basic justice. The constitutional essentials consist of the fundamental principles that specify the general structure of government and the equal basic rights of citizens (Rawls 1993a: 227-9). Compliance with the constitutional essentials may be determined through public reason by a supreme court (Rawls 1993a: 231-40). Gaining consensus on whether principles regulating the distribution of social and economic inequalities are complied with is harder, in part because, in addition to public reason, they call for difficult judgements. Rawls writes (1993a: 337) that experience suggests that these principles should not be embedded in the constitution. He suggests instead that effective representation of all citizens is a better means of ensuring just legislation. This raises the questions of whether and how future generations can be effectively represented in today's legislature and if they cannot what alternative means might be employed to ensure that the legislature respects principles of intergenerational distributive justice.

In this section I have argued that Rawls's justice as fairness as described in *A Theory of Justice* and his later works is insufficient to ensure sustainability. In the next section I

discuss the restraint principle that might extend the principles of justice to address this issue.

### *The Restraint Principle*

In this section I describe the *restraint principle* proposed by Marcel Wissenburg as a green principle that would ensure sustainability and could be adopted by most forms of liberalism. I will argue that the restraint principle may be too restrictive and would not be agreed in the original position if a less restrictive alternative could be found.

The restraint principle is that (Wissenburg 1998: 123):

No goods shall be destroyed unless unavoidable and unless they are replaced by perfectly identical goods; if that is physically impossible, they should be replaced by equivalent goods resembling the original as closely as possible; and if that is also impossible, a proper compensation should be provided.

To interpret this principle we must understand what is meant by ‘unavoidable’. To explain this Wissenburg uses the term ‘rights’ as ‘a catch-all phrase to describe all (im)material goods distributed in society’ (Wissenburg 2001: 24). He distinguishes between what he calls inalienable, unconditional, and conditional rights. Inalienable rights are those ‘that make a subject out of an object’, that is are necessary for a person to be a person. For example a person has an inalienable right to their brain. Unconditional rights are rights ‘that subjects need to meet the basic standards of their plan of life’, that is are necessary for a person to have a basic standard of living. For example the right to eat in order to live is an unconditional right. Conditional rights are ‘rights to everything beyond this category of basic needs’ (Wissenburg 1998: 115). Inalienable and unconditional rights take precedence over the restraint principle (Wissenburg 1998: 125). Because persons have an unconditional right to eat it is permissible to eat even the last food on earth in order to avoid starvation. According to the restraint principle destruction of goods is unavoidable if the destruction is necessary to exercise inalienable or unconditional rights. However, destruction of goods for the purpose of exercising conditional rights is avoidable and so forbidden by the restraint principle. The restraint principle prohibits destruction of goods



beyond that which is necessary for maintaining a basic standard of living and so the restraint principle would forbid distribution D of the previous section because the destruction of S that occurred in the first half of T was used to improve upon an already acceptable quality of life and so was not necessary.

A weakness of the restraint principle as stated by Wissenburg is that it does not distinguish sufficiently between the destruction of critical capital and non-critical capital. As I have interpreted it the restraint principle forbids all destruction of goods except that which is necessary to exercise inalienable or unconditional rights. It seems to me that this must be the correct interpretation of the principle as stated for if Wissenburg's intention was to allow destruction of goods that could be easily replaced it would have been a relatively simple matter to modify the expression of the principle as in, for example:

No goods shall be destroyed unless unavoidable *or* unless they are replaced by perfectly identical goods; [...]<sup>18</sup>

Is it necessary to forbid the avoidable destruction of goods that are easily replaced and where no harm is caused by their absence during the interval between their destruction and replacement? Through the destruction of such goods the ability of persons to achieve their plans of life may be enhanced and so it is not rational for persons in the original position to agree to the restraint principle as stated. We could imagine though, that the restraint principle might be reformulated to address this issue. A *modified restraint principle* would permit the destruction of easily replaceable resources, whilst forbidding the destruction of critical capital except where necessary for the exercise of rights which are either inalienable or unconditional. I will now argue that even this modified restraint principle places undesirable restrictions on the use of critical capital.

As discussed by Rawls, the subject of justice in justice as fairness is the basic structure of a single society where a society is understood as a 'cooperative venture for mutual advantage' (Rawls 1999a: 4). All persons in the original position are from a single society.

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<sup>18</sup> The expression of the remaining parts of the principle would also require modification.

On the historical evidence so far, societies are not everlasting but tend to fail after a few hundred years. It is highly unlikely that a society following the modified restraint principle will exhaust any critical capital before it comes to an end. For example a simple agrarian society that uses only non-critical resources could respect the inalienable and unconditional rights of all its citizens indefinitely provided the population level did not grow too high and so it is highly unlikely that a society that respects the restraint principle will run out of critical capital before the society comes to an end.

It might be objected that this claim assumes an isolated society whereas real societies do not exist in isolation. To secure the inalienable and unconditional rights of their citizens they have to provide for defence against hostile acts by other societies. The development of a capability to defend against a technologically advanced aggressor might require considerable destruction of critical capital.

A reply to this objection is that Rawls intended justice as fairness to be extended to address questions of international justice, referring in earlier works to the *law of nations* (Rawls 1999a: 331) and in later works to the *law of peoples* (Rawls 1999b). He proposed that principles of international justice could be worked out in a second original position of representatives of peoples. Rawls argued that in this second original position, eight principles would be agreed including “peoples ... have no right to instigate war for reasons other than self defence” (Rawls 1999b: 37). Thus, in ideal theory, persons in the original position need not be concerned by external threats.<sup>19</sup>

It could also be objected that it would be unjust for one society to consume an unfairly large amount of critical capital, impoverishing those who will live in societies that will exist after that society has ceased. A reply to this objection is to generalize the idea of international justice to inter-societal justice; that is justice between societies that are not contemporaneous. I suggest that justice as fairness could be extended to define fair

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<sup>19</sup> *Ideal Theory*, the primary focus of Rawls’s writings, assumes ‘that (nearly) everyone strictly complies with, and so abides by, the principles of justice’ (Rawls 2001:13).

principles that define justice between non-contemporaneous societies and that these principles will fairly distribute non-critical capital amongst societies. Since a simple agrarian society need consume little or no critical capital, there is likely to be additional capital that such societies could, according to the principles of inter-societal justice, justly consume. The modified restraint principle forbids the consumption of this capital because that consumption is not necessary. It would not be rational for persons in the original position to forgo the consumption of this capital which could be used to further the life plans of citizens.

I have argued that persons in the original position know that their society will come to an end and that if they follow the modified restraint principle there may be critical capital left unused that they might justly have consumed. Such critical capital might have been used to further the life plans of citizens of the society. It would be rational therefore for persons in the original position to prefer to the modified restraint principle a principle that is just and allows greater consumption, if such a principle could be found. This hypothetical principle is the subject of the next chapter.

#### 4. THE FAIR CONSUMPTION PRINCIPLE

Previously I have suggested that sustainability is an issue of basic intergenerational justice. Therefore, according to justice as fairness, sustainability should be ensured by a principle that would be agreed in the original position. I have argued that consumption restrained only by Rawls's two principles of justice is not sufficiently constrained because it permits an unjust distribution of resources between generations. I have also argued that the modified restraint principle may be more constrained than necessary and so more constrained than persons in the original position would agree to. In this chapter I posit the existence of a *fair consumption principle* to regulate the distribution of critical capital between non-contemporaneous generations over time that would be agreed in the original position subject to the stipulation that all previous generations had followed it.

The fair consumption principle ensures sustainability because it addresses the question of the distribution of critical capital and because principles agreed in the original position are just. The fair consumption principle is to constrain consumption more than is done by Rawls's principles of justice alone and less than by the restraint principle.

Whilst I do not propose a full specification of the fair consumption principle, I suggest that it would have the following properties:

- a) It would favour the consumption of non-critical over critical capital; for example renewable over non-renewable resources.
- b) It would allow the consumption of critical capital so that persons could enjoy their basic liberties.
- c) It would forbid the consumption of resources, including consumption of critical capital, that resulted in damage to the basic structure at any time, unless damage to the basic structure is unavoidable in which case consumption that damages the basic structure is permitted provided the expected condition of the most disadvantaged persons over time is maximised.

- d) It would allow the consumption of critical capital other than that required for enjoyment of the basic liberties or maintenance of the basic structure provided that consumption maximised the expected condition of the least well off at the time of, or later than, the time of consumption.

Where there is conflict between these properties, earlier properties take precedence over later ones.

Some notes on the nature and purpose of these properties are in order. Property a) ensures that critical capital is not destroyed when there is some alternative non-critical capital that might be consumed in its place. Property b) expresses a similar idea to that of Wissenburg's suggestion that maintaining inalienable and unconditional rights has priority over enjoying conditional rights. This property would ensure that it was permissible to eat, even at the cost of damaging the basic structure, if eating was necessary to avoid starving. I take inalienable and unconditional rights to be defined under justice as fairness by the constitutional essentials and basic liberties.

Property c) expresses an idea similar to that of the just savings principle and the priority of the basic structure in securing justice. The main clause of property c), which forbids consumption that damages the basic structure, is already implicit in Rawls's two principles of justice. Note however that property c) does not forbid all consumption that damages the basic structure. Circumstances might arise where damage to the basic structure cannot be avoided and deliberate actions that harm the basic structure of society may be taken to avoid greater harm. In such circumstances where different courses of action are possible, the question arises of how to choose between them. Property c) does not minimize harm to the basic structure, but instead minimises the expected harmful effects on persons. In keeping with justice as fairness and in a manner similar to the difference principle, the fair consumption principle does not minimize some measure of the harm to all persons but maximises the expected condition of the worst off persons over time.

Property d) ensures that the fair consumption principle is a principle of intergenerational distributive justice. It regulates the consumption of critical capital that is not required for the development and maintenance the basic structure of society but which is used instead to further the life plans of citizens. Property d) allows consumption that would be disallowed by the modified restraint principle for it permits consumption to improve the condition of the least well off even though that consumption is not necessary. Further, recall from the previous chapter (p. 33) that Rawls two principles of justice permitted distribution D in which earlier generations consume more than their fair share of some critical capital, leaving subsequent generations worse off than the earlier generations. Property d) rules out this distribution because, other things being equal, distribution D fails to maximize the condition of the worst off. Therefore, property d) ensures that the fair consumption principle is less restrictive than the modified restraint principle and more restrictive than Rawls's two principles of justice alone.

Property d) allows consumption as a form of investment. A few generations might be permitted to use up more than an equal share of a resource in limited supply, such as oil say, if such consumption were to lead to a more active economy that was able to invent and develop a more sustainable alternative such as fusion power that conferred greater benefits on succeeding generations than eking out the oil.

### *Objections Due to Uncertainty*

It may be objected that the fair consumption principle is not a suitable basis for the design of constitutions or specific policies because there is too much uncertainty associated with it. Property d) and the last clause of property c) require that whether or not some consumption of critical capital is just depends on whether some other consumption of that resource would improve the condition of the worst off over time. This information cannot generally be known with any certainty and therefore, it may be argued, the fair

consumption principle has no place in justice as fairness which is intended to provide a philosophical foundation for actual societies.

There are two main sources of uncertainty affecting the fair consumption principle. The first is that it is uncertain which capital will be critical to future generations since capital that is currently critical may not be so in the future. As noted earlier when describing the difference principle (p. 24), persons in the original position will prefer certainty of justice over uncertain economic advantage. Therefore, since there is a possibility that capital that is critical now will remain critical in the future, capital that is critical now should be treated as if it will be critical in the future. There remains uncertainty about capital that is not critical now but may become so in the future.

The second main source of uncertainty is the uncertainty in determining the effects of a particular consumption or policy of consumption over time. To address this issue in part properties c) and d) are expressed in terms of the expected rather than the actual condition of persons. The question remains whether such expectations can be a suitable basis for deciding on policies of consumption. Some expectations provide reasonable guidance for policy. A good example can be found in *The Limits to Growth* (Meadows, Meadows et al. 1972) where, as mentioned earlier (p. 10) repeated computer simulations with different assumptions all lead to a similar outcome. The authors of *Limits to Growth* wrote:

The model we have constructed is, like every model, imperfect, oversimplified, and unfinished.

In spite of the preliminary state of our work, we believe it is important to publish the model and our findings now. (...) We feel that the model described here is already sufficiently developed to be of some use to decision-makers. Furthermore, the basic behaviour modes we have already observed in this model appear to be so fundamental and general that we do not expect our broad conclusions to be substantially altered by further revisions.

In spite of uncertainty, the authors believed that their predictions would be useful to policy makers and so it has turned out. Nevertheless, other uncertainties remain for we cannot know what we have still to learn about our planet. An example is the unexpected discovery that excess green house gasses in the atmosphere cause global warming.

Without this knowledge, steps taken to address the issues identified in *The Limits to Growth* could make conditions in the future worse rather than better if they caused more carbon dioxide to be added to the atmosphere. Further, there are limits to the precision with which future conditions can be estimated. Whilst the simulations reported in *The Limits to Growth* predict a general trend they cannot predict details with much precision. For example, they cannot predict how badly off future persons will be or which of two different policies will render future persons least worst off. It could be argued that property d) requires such accuracy.

There are two parts to my answer to this objection. The first is that the fair consumption principle is a valuable component of a conception of justice despite uncertainty because it defines an aim for a just society. The fair consumption principle provides a goal which is supportable by public reason and which governments of just societies should design their policies to achieve. Policies can be designed using human judgement and agreed through a legitimate political process as the best way to achieve this goal given the unavoidable uncertainty of predicting the future.

The second part of my answer is that whilst it is not always possible to determine whether a particular consumption or policy of consumption is necessarily best for the worst off, it can sometimes be known that one is definitely not. For example, distribution D discussed above, other things being equal, is definitely not best for the worst off, that is later generations. So the fair consumption principle can be used to forbid policies that are known to be unjust.

Finally, I note that Rawls accepts that principles of justice may be based on measures which are uncertain and subject to human judgement and interpretation, for in his discussion of the constitutional essentials (Rawls 1993a: 228-9) he argues that the difference principle should not be a constitutional essential because of uncertainty determining whether its standard has been achieved.



My conclusion from this discussion is that the fair consumption principle can be a valuable guide for policymakers despite the uncertainty of our predictions for the future.

### *Alignment with Justice as Fairness and Political Liberalism*

In this section I will begin a discussion of how well the fair consumption principle aligns with the core ideas of justice as fairness and political liberalism. These core ideas include society conceived as a system of cooperation for mutual advantage over time, the distinction between a political and a comprehensive conception, liberal legitimacy, and the idea of an overlapping consensus. In later sections I will discuss the acceptability of the fair consumption principle in the original position and the reasons why justice as fairness may be part of a stable conception of justice.

Justice as fairness is built on the idea of a society as a ‘fair system of cooperation from one generation to the next between free and equal citizens’ (Rawls 2001: 77). The idea of cooperation is important because the arguments that support justice as fairness are built in part on the assumption that it is in everyone’s best interests to cooperate and so rational persons will do so. The fair consumption principle regulates behaviour between persons who are not contemporaneous and so it may be argued that they cannot cooperate with one another and so justice as fairness does not apply. However, by cooperation Rawls does not mean ‘merely socially coordinated activity’ but activity that is ‘guided by publicly recognised rules and procedures’. A citizen who follows the rules of society can expect to benefit directly from the reciprocal actions of other citizens. Rawls specifies this idea of reciprocity as (Rawls 1993a: 16):

All who are engaged in cooperation and who do their part as the rules and procedure require, are to benefit in an appropriate way as assessed by a suitable benchmark of comparison.

Nothing in these concepts of cooperation or reciprocity requires that the participants be contemporaneous. All can benefit from the fair consumption principle in an appropriate way according to a benchmark and so it is a basis for reciprocity.

The phrase ‘from one generation to the next’ is also important because it suggests that whilst cooperation and reciprocity may be possible between non-contemporaneous persons the concept of society may be limited to be contemporaneous. However, we have seen previously that Rawls anticipated that justice as fairness could be extended to address issues of intergenerational justice (Rawls 1993a: 244) and that in his later justification of the just savings principle he showed how principles of intergenerational justice could be justified in the original position by stipulating that persons in the original position must want all previous generations to have adhered to principles agreed there. Thus the fact that the fair consumption principle is a principle of intergenerational justice is no barrier to the principle being compatible with Rawls’s theory.

Another central idea of political liberalism is the idea of liberal legitimacy. The power of the state is coercive power. In a democracy that power is the power of its citizens as a collective body. Liberal legitimacy is the idea that the power of the state is only legitimate when it is exercised “In accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” (Rawls 1993a: 137).

Rawls sets out to show that whilst it would not be possible for all citizens to conform to a single comprehensive doctrine without the illegitimate use of state power, it is possible to achieve a stable agreement on the basic structure of society, that is an agreement on the domain of the political amongst citizens with various and incompatible reasonable comprehensive doctrines. Rawls called such an agreement an overlapping consensus (Rawls 1993a: 15). In order to achieve an overlapping consensus the subject of the principles of justice must be restricted to the domain of the political and they must be neutral amongst the many reasonable comprehensive doctrines found in a democratic society. The question arises therefore, whether the subject of the fair consumption principle can be restricted to the basic structure and whether the principle is neutral amongst reasonable comprehensive doctrines. Let us examine each of the properties.

Property a) is designed to reduce the risk that unexpected circumstances will result in a more unjust distribution of critical capital than is necessary. It encourages the husbanding of critical capital when it is possible to do so, so that if there is an unexpected shortage of critical capital, it is likely the shortfall will be less than it would have been without property a).

However it is unlikely that for any critical capital there is an exact non-critical substitute. Consider, for example, making a dining room table from easily replaceable pine wood or a rare hardwood from the Amazonian rainforest. Whilst the two tables may be functionally equivalent, there are at least aesthetic differences between them. Therefore it may be argued that since property a) restricts the aesthetic choices open to citizens its subject cannot be restricted to the basic structure.

A reply is that an overlapping consensus requires that the subject of a political principle be the basic structure but does not require that the principle has no effect outside the basic structure, for the basic structure has wide reaching effects on people's lives. For example, the difference principle affects the distribution of economic and social advantage and so has many effects on people's lives outside the domain of the political yet it is a political principle because its subject is the basic structure. Similarly, a principle with property a) can be political because its subject can be the basic structure.

The other three properties have topics that are appropriate for the institutions of the basic structure. Property b) concerns ensuring that citizens can enjoy their basic liberties. Property c) concerns developing and maintaining the basic structure itself. Property d) concerns distributive justice. Therefore a principle with all four properties can have the basic structure as subject.

Are these four properties neutral amongst reasonable comprehensive doctrines? It is important to clarify what kind of neutrality is necessary. Rawls distinguishes between three kinds of neutrality; procedural neutrality, neutrality of aim, and neutrality of effect (Rawls 1993a: 191-3). A procedure is neutral if it can be justified without reference to any

moral values. Justice as fairness is a moral conception and is therefore not procedurally neutral. A principle has neutrality of effect if its effect is neither to advantage nor disadvantage any reasonable comprehensive doctrine. Rawls claims that neutrality of effect is impossible to achieve and is not required by political liberalism or justice as fairness (Rawls 1993a: 194). Justice as fairness as an example of political liberalism hopes to satisfy neutrality of aim which is that there should be no intent that a principle should advantage or disadvantage a particular reasonable comprehensive doctrine. As I have just discussed, the four properties of the fair consumption principle are designed to develop and maintain a just basic structure and are thus neutral in their aim.

Since it can have the basic structure as its subject and since its properties have neutrality of aim amongst reasonable comprehensive doctrines, the fair consumption principle can be a political principle.

### *The Fair Consumption Principle in the Original Position*

Without a fuller specification of the fair consumption principle, it is not possible to provide a complete argument that it would be agreed in the original position. However, I can present reasons why the properties of the fair consumption principle that I have described could be agreed in the original position and why a principle with these properties could be preferable to the modified restraint principle.

Considering the first of the four properties of the fair consumption principle, as I noted earlier (p. 43), whereas predictions based on general truths such as those in *The Limits to Growth* (Meadows, Meadows et al. 1972) can be reliable, it is not possible to predict the future consumption of critical capital accurately. Husbanding critical capital where possible is more likely to ensure that when there is an unexpected demand for critical capital that capital is available. Other things being equal, a person in the original position will agree to property a) because it reduces, at no significant cost, the risk to them of an inadequate supply of critical capital. As noted above, there is unlikely to be an exact

equivalence between the effect of consuming critical capital and a non-critical alternative. There may for example be aesthetic differences. Property a) states that consumption of non-critical capital is favoured over consumption of critical capital but makes no statement about the strength of that preference. It is a matter for further investigation whether the strength of the preference can be worked out in the original position or whether, in a manner similar to the schedule of payments for the just savings principle, the strength of the preference is a matter for the constitutional convention or later in the political process.

Property b) would be agreed by persons in the original position because they agree to the priority of basic liberties over regulating the distribution of economic and social inequalities (Rawls 2001: 46). Thus critical capital may be consumed as necessary to enable all citizens to enjoy their basic liberties.

Turning to property c), persons in the original position give priority to the basic liberties and a just basic structure is essential to their being able to enjoy the basic liberties. They will therefore forego the economic and social advantage resulting from consumption of critical capital that causes damage to the basic structure and thus will agree to property c).

The argument that supports property d) being agreed in the original position is that a principle with property d) is preferable to the available alternatives. Recall that property d) rules out distribution D. It is rational for persons in the original position to prefer a principle that rules out distribution D because those from later generations are considerably worse off than they would have been under an equitable distribution and it is irrational to risk such a condition for the marginal benefits gained by those in earlier generations. Property d) is also preferable to the modified restraint principle because it permits the consumption of resources to enable persons to achieve their plans of life without endangering persons' basic rights and liberties. This consumption would be prohibited by the modified restraint principle. This completes the argument that a fair consumption principle could be agreed in the original position.

## *The Fair Consumption Principle and Stability*

The final topic in this discussion of the compatibility of the fair consumption principle and Rawls theory of justice is the effect of adding that principle to the two principles of justice upon the arguments for the stability of a society whose basic structure conforms to justice as fairness. Rawls proposes three conditions for a stable constitutional regime (Rawls 2001: 115-6):

1. The basic rights and liberties of citizens must be fixed and given priority
2. It should specify a clear basis for public reason
3. It should encourage the cooperative virtues of political life

The fair consumption principle does not affect the fixing of citizens' basic rights and liberties and the four properties are arranged to ensure the priority of those rights and liberties so the first condition is still satisfied if the fair consumption principle is added to the two principles. Provided it can be expressed clearly, there is no reason why the fair consumption principle cannot be a clear basis for public reason.

Rawls states that his two principles encourage the cooperative virtues of political life in part by removing from political debate the most divisive issues such as the rights and basic liberties of citizens, and through providing a clear basis for public reason. They also encourage these virtues by incorporating 'the ideal of citizens as free and equal persons into public life' (Rawls 2001: 117).

The fair consumption principle does not undo the work of Rawls's principles of justice in removing contentious issues and providing a clear basis for public reason. In considering a question of intergenerational justice it extends the notion of citizens as free and equal persons to citizens who will live in the far future. Rawls also writes that the principle of reciprocity is crucial and, as we have seen earlier (p. 45), the fair consumption principle is reciprocal, as defined by Rawls, between present and future citizens. Therefore, the two principles of justice with the fair consumption principle added continue to promote the cooperative virtues of political life.

So adding the fair consumption principle does not undermine Rawls's arguments for the stability of a society organized according to justice as fairness. Further, the stability of a society would be undermined if it did not support the fair consumption principle. Rawls writes that citizens develop the trust and confidence in the basic structure necessary for stability when others do their part in just or fair institutions (Rawls 2001: 196). The implication is that if citizens do not do their part in such institutions, the stability of their society is undermined. Therefore, if citizens recognize the justice of the fair consumption principle and fail to act in accordance with it, they undermine the stability of their society.

In this chapter I offered the fair consumption principle to regulate the distribution of critical capital between generations. I have defended it against objections that uncertainty renders it useless and argued that it is compatible with Rawls's justice as fairness. In the next chapter I will present the conclusion to this dissertation.

## 5. CONCLUSION

I began with the observation that due to its unsustainable behaviour, the population of this planet is facing disaster. I set out to examine the extent to which the leading theory of liberalism, Rawls's justice as fairness, supports sustainable behaviour and to propose extensions should that be necessary.

In chapter 2 I argued that sustainability can be conceived as a just distribution of critical capital over time and is thus a topic of intergenerational justice. I also defended the concept of intergenerational justice against a number of objections.

In chapter 3 I examined Rawls's proposal of a just savings principle, a topic of intergenerational justice, and the arguments he deployed to support it. I examined the extent to which Rawls's two principles of justice provide for sustainability and agreed with Bell that they require at least that people not behave in a way that will result in the failure of the basic structure of society. I discussed Bell's assertion that Rawls's later writings such as *Political Liberalism* allow a society to enforce sustainable behaviour on its population subject to approval through the appropriate democratic process. I argued that this position is inadequate; that a just distribution of critical capital over time is a matter of basic justice and should constrain the actions of a democratic liberal state. I also discussed whether Wissenburg's restraint principle might extend Rawls's two principles of justice to ensure sustainability and concluded that the restraint principle may be more restrictive than is necessary and would not be agreed in the original position if a less restrictive principle that ensured sustainability were available.

In chapter 4 I posited the existence of a fair consumption principle that was less restrictive than the restraint principle but nevertheless ensured sustainability. I suggested four properties that principle might have. I argued that the fair consumption principle is consistent with Rawls's liberal theory, suggesting reasons why such a principle could be agreed in the original position and would not undermine Rawls's later arguments for the stability of a state conforming to the ideals of justice as fairness.



Much remains to be done to understand the relationship between sustainability and Rawls's liberal theory. I offered only a brief sketch of some properties of the fair consumption principle. The implications of such a principle could be worked out in more detail which could reveal further properties it might have and how it might be more fully expressed. This might reveal whether a precise formulation in the original position is possible or whether, like the just savings principle, the details of the fair consumption principle can only be settled at a later stage of the constitutional process than the original position. It would be interesting to understand to what extent the fair consumption principle would satisfy those with varying green comprehensive doctrines and also to determine whether, together with Rawls's two principles of justice, it entails the precautionary principle (UN 1992: principle 15).<sup>20</sup> It would also be interesting to explore mechanisms for representing future persons in the democratic process.

The fair consumption principle can at best only be a part of integrating liberalism and sustainability. Two other significant areas could be addressed. The first is the question of population management for the greater the population the more consumption is necessary to sustain society (Rawls 1999b: 108). To what extent, under what circumstances, and how, if at all, can liberal societies regulate their population? The second is sustainability and international justice. Sustainability is a global problem; a single society cannot ensure sustainability on its own. Global warming, for example, is a threat to the entire planet, but is largely caused by the actions of a relative small number of societies. In the *Law of Peoples* Rawls extended justice as fairness to define principles of international justice. Further work could study whether these principles are sufficient to ensure the cooperation between states necessary for global sustainability.

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<sup>20</sup> The precautionary principle states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

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