

### Review: Richard P. Hiskes: The Human Right to a Green Future - Environmental Rights and Intergenerational Justice

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Veröffentlichungsversion / Published Version

Rezension / review

#### Empfohlene Zitierung / Suggested Citation:

Burke, J. (2010). Review: Richard P. Hiskes: The Human Right to a Green Future - Environmental Rights and Intergenerational Justice. [Review of the book *The human right to a green future: environmental rights and intergenerational justice*, by R. P. Hiskes]. *Intergenerational Justice Review*, 1, 54-57. <https://doi.org/10.24357/igjr.5.1.489>

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larity that Mulgan correctly fears avoided for a moderate consequentialism, including, in part, an ideal code?

Thirdly, RC gives weight to our psychological make-up in attempting to identify the ideal code. It seems plausible that people could have a disposition towards complete theories, or at least, the veneer of completeness. If people prefer a theory that suggests it can account for everything this may undermine Mulgan's view of RC. His astute discussion of risk and uncertainty argues that their interrelated effect "justifies the Rule Consequentialist reluctance to seek more detailed moral conclusions than the complexity of the subject matter permits" (p. 254). Yet how can this be balanced with the possibility that people may desire not only "more detailed moral conclusions" but the appearance of a theory with all the answers. Giving the false impression of completeness may not be a problem for Mulgan's RC if it could be shown to lead to better results: "transparency [is] not necessarily a virtue" (p. 155). At times Mulgan seems to be advocating an esoteric morality in the vein of Sidgwick who himself said: ". . . on Utilitarian principles, it may be right to do and privately recommend, under certain circumstances, what it would not be right to advocate openly; it may be right to teach openly to one set of persons what it would be wrong to teach to others; it may be conceivably right to do, if it can be done with comparative secrecy, what it would be wrong to do in the face of the world; and even, if perfect secrecy can be reasonably expected, what it would be wrong to recommend by private advice and example" (1907, p. 489). If this is Mulgan's view, he certainly departs from Hooker's (2002, p. 85) perspective of RC: "Such paternalistic duplicity would be mo-

rally wrong, even if it would maximize the aggregate good." Mulgan, at least in this book, seems not to have offered us protection from the Noble Lie.

Lastly, Mulgan admits that the Realm of Necessity and the Realm of Reciprocity are not strictly separated: "The boundaries between moral realms are fluid...Any attempt to separate the two realms neatly and completely is bound to be an oversimplification" (p. 346). Accepting this, one may still query the nature of the division. We are told that RC is applicable in the Realm of Reciprocity, which prevails between members of a moral community whereby "the notion of moral community...is of a society of comparatively equal moral agents who can interact in mutually advantageous ways in pursuit of their goals" (p. 343). It seems to me the ideal moral code that RC would promote must include rules for distinguishing between those who can be considered part of my moral community and those who are not: One must know how to make this distinction in order to appropriately learn and apply the code. Hence the division of realms of morality itself must be acceptable as part of the code. The need to teach to people that there are two realms of morality as a result of two kinds of lives may be prohibitively costly for the code.

These issues aside, in *Future People* we have a solid piece of philosophical analysis which invigorates the debate on intergenerational justice by bringing a long needed robust consequentialist perspective on this topic. Moreover, Mulgan shows that the issue of intergenerational justice has important implications for public policy and the nature of morality itself. His work should take centre stage in further scholarship in this area.

Tim Mulgan (2006) *Future People. A Moderate Consequentialist Account of our Obligations to Future Generations*. Oxford: Oxford University Press. 384 pages. ISBN: 0-19-929220-X. Price £13.25

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## Richard P. Hiskes: The Human Right to a Green Future – Environmental Rights and Intergenerational Justice

*Reviewed by Joseph Burke*

Richard P. Hiskes is based at the University of Connecticut as a professor of political theory, some one thousand five hundred miles from the BP oil disaster site that began to haemorrhage on April 20th, 2010. Despite the distance, it seems fair to assume that the political implications of the slick black tide have drifted

north as far as the Nutmeg State. In the introduction of his book, *The Human Right to a Green Future – Environmental Rights and Intergenerational Justice*, Hiskes pre-empted the frustration Americans now feel in trying to hold the fourth largest company in the world to account: "Environmentalism needs a new and more muscular political vo-

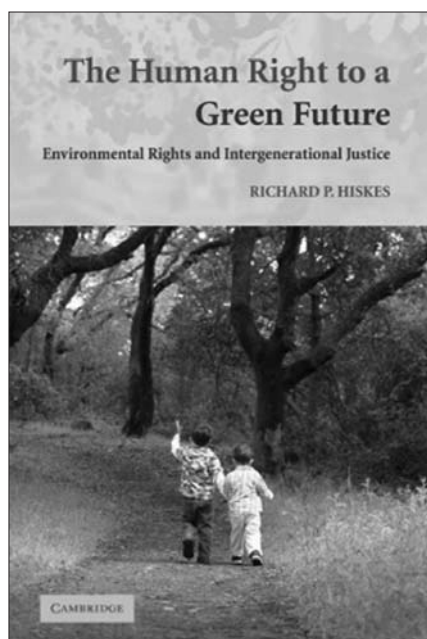
cabulary grounded in today's central political ideas of human rights and justice" (p. 2).

Consequently, Hiskes moves to develop a justification for environmental human rights, which he understands as the foundation for intergenerational environmental justice. This is, as he himself acknowledges, an ar-

duous task: environmental rights have often been seen as rights of less importance, particularly in comparison to first generation civil and political rights; such human rights may be incompatible with other rights; environmental human rights are deemed unable to handle the conflict between universalism and particularism. Trying to establish rights for future generations has equally troubling problems, most notably, their reliance on controversial collective rights and the unavoidable difficulty of reciprocity, or the lack thereof, between present and distant future peoples.

Cognisant of these threats to any attempt to give a rights-based vision of intergenerational environmental justice, Hiskes' main endeavour is to argue for three concomitant standpoints: Emergent Environmental Human Rights, Communitarianism and Reflexive Reciprocity. The common thread through these three is the way in which we understand the formation of human identity. As he is well aware, this is a dangerous move as identity politics has been a quagmire of philosophical unclarity, arguably because many of us do not have the solid sense of identity that theory often suggests we have. Nevertheless, Hiskes hopes that this approach will lead to a global consensus on intergenerational environmental justice. More specifically, this theoretical harvest bow is to ground an entitlement to clean air, water and soil, themselves chosen simply because "it is hard to imagine any rights more basic either to life or to all other rights than the rights to clean air, water, and soil" (p. 39). In order to fashion this, he weaves together a vast array of arguments from other authors. Unfortunately, the sheer number of positions in a book of this size cannot give each sufficient substance. The result is that nuances of individual authors melt away. Nevertheless, this need not be the sole determinant of the book's value.

Looking to human rights to protect us now, posterity and our environment is testament to the perennial appeal of the natural rights tradition of the seventeenth century. As Margaret MacDonald (in Waldron, 1984, p. 21) put it: "[The claim to 'Natural Rights'] tends in some form to be renewed in every crisis in human affairs, when the plain citizen tries to make, or expects his leaders to make, articulate his obscure, but firmly held conviction that he is not a mere pawn in any political game, nor the property of any government or rule, but the living and protesting individual for whose sake all political



games are played and all governments instituted." However, Hiskes wants to suggest that the 'emergent', or relational, character of rights enhances the intuitions of the natural rights tradition, which holds that from the firm, unchanging foundation of our human nature arises our eternal and inalienable rights.

Crucially, Hiskes views our own understanding of 'human nature' as having changed dramatically. He claims there has been a move away from conceiving the individualistic frenzied state of nature context as the source of natural rights. Instead, at the heart of human rights theory is a greater concern for the recognition and protection of human dignity as exemplified in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (p. 31). For Hiskes, the implication of this change over the course of four hundred years is to see that human rights are constituted by the social relations that facilitate conscience and dignity. This revitalised conception of 'human nature' follows the relatively recent work of Gilligan, Kristeva, Foucault, Taylor and Habermas. In these disparate thinkers' work Hiskes sees a common effect: the increased acknowledgment of the relational impact on our sense of human identity. What it means to be human, to fulfil the criteria necessary to be able to hold human rights, is formed in our interaction with others. It is not in isolation from society. For the author it is clear that rights are emergent when we consider

that human rights surface in concert with the types of harms that pertain at a particular time when society is at a certain technological level: "Environmental rights are human rights that have 'emerged' in a particular point in human history as the direct result of the growth of human interconnections" (p. 40). The distinct character of environmental human rights results from Hiskes' alleged fact that the most significant aspects of our natural environment shape and mould our interactions with each other and thus our self-understanding.

The duties that must correspond to such emergent rights require a very particular allocation of responsibility. In consideration of environmental harms we must employ collective responsibility among actors and defer from what he refers to as "strict causality" (p. 44). Collective responsibility materializes where there is the willing acceptance of benefits within a group we are a part of, and if the potential for serious harm is the result of accumulated and coordinated individual activities each of which may not, in and of themselves, constitute a harm. However, by enclosing responsibility within a moral community, Hiskes may be neglecting the significance of new types of transnational politico-economic actors.

Arguably, the centre-piece of Hiskes' book is his idea of reflexive reciprocity. A long tradition in political philosophy has viewed reciprocity as defining the cases in which justice is applicable or not. At least as far back as Epicurus, a strong line of thought has proposed that where the possibility of response to another's actions, at least the capacity to return like for like, is absent so too is the notion of justice. This has led some theorists to view some humans and all non-human animals as beyond the bounds of justice. Likewise, a future generation has, prima facie, no recourse to react in any way to the actions of non-overlapping previous generations. Consequently, to defend the plausibility of intergenerational *justice* theorists have had to deny reciprocity as a necessary requirement of justice or illustrate that justice does pertain because there *is* a reciprocal relationship between non-overlapping generations. Those who have taken the former road have had to challenge the weight of, most notably, the contractualist tradition. On the other hand, some have tried to offer suggestions for the grounding of such reciprocity, for example the ability to tarnish or reify the memory of previous generations.

Hiskes undertakes a mixture of both. To begin with he criticises an overemphasis on individualism in the tit-for-tat economic reciprocity attributed to Rawls and Gauthier and the asocial virtue ethics perspective represented by the work of Lawrence C. Becker. With this in mind, Hiskes presents his idea of reflexive reciprocity. The author argues that the environmental interests of present generations are shared with those of later generations and that the protection of the latter is symbiotic with the guarding of the former. A crucial, albeit long, quote illustrates the point: "Consider then that these are interests [to have clean air, water and soil] that by their very nature unite present and future in important ways. They exist, as it were, simultaneously now *and* in the future in one and the same time (...) We cannot protect the future's interests in environmental quality without simultaneously also protecting our own, and we cannot protect our own without protecting the future's. Our action therefore in protecting those interests is not only a duty to the future but also reverberates back on our own interests to protect them. In other words, if we recognise the environmental interests of the future as actual interests that we also share as equally basic to us, then our protection of them reciprocally protects our own interests" (p. 59-60). Again invoking the importance of the community in identity formation, Hiskes claims that human identity is formed in the community and this communal understanding of ourselves depends in part on future generations. Borrowing from De Shalit, Hiskes notes that communal self-identity involves daily interpersonal interaction, cultural interaction and moral similarity. While a present generation is incapable of satisfying the first two conditions with distant future generations, Hiskes concurs with De Shalit that it does in the case of the third: "part of what is shared within a strongly communal association is a sense of collective identity, an identity that can be 'constitutive' of individual identity as a member if it includes consideration of future members" (p. 66). Moreover, it is again the environment that takes a pre-eminent position as "our natural environment is the singular physical manifestation of our connectedness both with our contemporaries and also with those who in their future will inherit our space, our land, our water, and soil" (p. 66). Reciprocal relations between those of the same moral community are, thus, possible given that "we depend on

their environmental human rights to make as strong a case as possible for our own; that, it seems to me, is a degree of interconnection that makes our reciprocal dependence clear, and intergenerational environmental justice possible" (p. 66).

Having suggested that whatever foundations that may exist are found in the changeable currents of human communal interaction, it may appear that Hiskes is diving in for rights particularism and abandoning universalist principles. However, Hiskes rejects the inclination to consider the global/local dichotomy as a zero sum game and tries to integrate the robustness of the former with the reasonableness of the latter. Therefore, on the one hand he states "...we are entitled morally to be *more* concerned with the rights of some future persons than with those of others, and that our preferred future subjects are the future generations of our own moral community" (p. 73). This is defended on the grounds that those within one's community are especially vulnerable to one's actions. Nevertheless, this does not permit full scale local bias because the "moral bindingness of vulnerability" is not absolute (p. 81). Hiskes' use of Goodin's thesis on vulnerability is an interesting one but it does not sit easily with the distinct nature of the environmental harms he warned of us earlier. The significance of these new technologies is precisely because they make us vulnerable to activities beyond our borders, moral or geopolitical, to an unprecedented degree. If local vulnerability is strong enough to prioritise local moral concern, even if not entirely, this seems enough to undercut the claim of distinct environmental human rights.

Hiskes envisages the most appropriate and coherent conceptualisation of the moral community as the nation. Why not the religious group, the sports team or the company as our moral community? There is a pragmatic and theoretical justification of seeing it as the most appropriate category to bolster a human right to a clean environment. The nation(-state) is the best equipped entity to act as the addressee of human rights because human rights are "creatures of national governments" being "both protected and potentially violated at that level" (p. 70). The more developed argument offered by Hiskes leans on J.S. Mill and Rawls to ground a nation focus on a communally held concept of identity and the special obligations arising out of shared citizenship (p. 83). Hiskes argues, following Yael Tamir and David Miller, that the legitimate fears

around extreme nationalism have inhibited a realistic account of the morally obligating features of a milder form, which could be pivotal in securing environmental human rights. In circumventing the chance of encouraging intolerant government through support of nationalism, Hiskes presents democracy as a crucial balancing mechanism (p. 84). Consequently, tempered nationalism can "provide the communal ties that both elevate concern for one's compatriots to the level of moral obligation without at the same time moving the community toward totalitarian commitment" (p. 86). Yet placing such emphasis on the nation state is certainly questionable. Many social activists may claim that the state as arbitrator of our human rights is only possible *because*, and not in spite, of supranational enforcement mechanisms.

How should the nation act to protect such rights? Constitutional provisions, more specifically the incorporation into every national constitution of the environmental human right to clean air, water and soil, are the strongest option (p. 126). Their legal clout, coordinative guidance and capacity to "restrain actions by narrow (or narrow-minded) majorities that might be deleterious to long-term environmental protection..." are all powerful reasons in favour of using constitutions to defend such human rights (p. 132). Building these environmental human rights into constitutions not only helps guard substantive rights but also supports procedural ones to ensure freedom of information and the right to participate in decision-making around the environment (p. 133). As such, this option reinforces the very grounds for a human right to a healthy environment, our democratic communal identity: "democratic politics turns nations into communities and deliver the citizens into a shared realm of meaning within which freedom is possible" (p. 90). It is as a result of this freedom that our moral obligations emerge feeding our sense of self in a community. A virtuous circle.

How strong is this argument of Hiskes? First, Hiskes has defended *that* constitutional provisions are appropriate but, crucially, their content would still require filling in. Also, it is unsure why he places such faith in participatory democracy to respect the environment. Why should we expect greater civic participation to lead to greater protection of our environment for present and/or future generations? Our notorious discounting of the future could be seen as a reason

to avoid such means of protecting our water, air and soil.

The homogeneity of 'community' through time is likewise problematic. The International Organisation of Migration (2010) estimates that there were some two hundred and fourteen million migrants in the world in 2010 and this reflects a sharp increase even since the 1980's to include all regions of the world. Take a more specific example; since the late 1990's, a natural increase has been bolstered by a net international migration into the UK from abroad. Between 2001 and 2004, almost two thirds of the increase in population in the UK was due to net in-migration (UK National Statistics, 2005 (a)). By the period 2028-2033 the UK's increase in population, an estimated 1.8 million, will be 50:50 concerning net migration to natural increase (UK National Statistics, 2009). In 2001, 4.9 million (8.3 per cent) of the total population of the UK were born overseas. This is more than double the 2.1 million (4.2 per cent) in 1951 (UK National Statistics, 2005 (b)). Hence, when we are imagining the members of our future nation, who are we thinking of? It cannot only be my, or my neighbours', great grand children. Maybe the future members of my community will be the posterity of the current citizens of very distant countries. If this is accepted, on Hiskes' framework, then I should be *substantially* concerned with the environmental human rights of those other communities. Yet how am I supposed to know which one(s)? Should I attend to the empirical facts and scientific projections? Should I direct my energies to those who are morally like-minded today, or likely to be tomorrow? Indeed,

how far forward should one envisage? The main point is that, unless one wishes to advocate very tight migration policies, the moral community I conceive of as my future one is unlikely to be made up of people from my moral community today. This would undermine my authority to justify showing greater concern for those with whom I have direct interconnections in the present.

A second point of concern revolves around the nature of the rights that we are left with following this complex theoretical endeavour. Even though Hiskes suggests that we have moved from a natural rights perspective, what we get from this communal identity foundation are three biological needs-based rights, that is, a right to clean air, water and soil. Admittedly, he provides for a set of accompanying procedural rights but we must be careful when justifying the law that it is sufficiently motivating. It may be that in this case there can be greater intuitive appeal to our universally shared biological need for clean air, water and soil.

Lastly, flaring, the burning of gas released as a by-product of oil exploration, in Nigeria results in severe health effects for nearby inhabitants and serious environmental damage both locally and globally. The abhorrent Deepwater Horizon oil disaster has received extensive mainstream media concern. Flaring has not. Hiskes has provided a clear and important book grounding a human right to a healthy environment in communal national identity. He has certainly avoided the chauvinistic excesses people often fear in nationalism. Moreover, he details an argument that will, undoubtedly, be influential for scholars and activists in their efforts towards

achieving recognition of environmental human rights. However, I am still drawn by the intuition that our national biases, both for our own particular nation and certain other ones, while likely representing some natural tendency in human beings, is, nevertheless, appropriately labelled a moral failing. I fear his theory might not be able to fully provide for this intuition.

*Richard P. Hiskes (2009): The Human Right to a Green Future. Environmental Rights and Intergenerational Justice. Cambridge: Cambridge University Press. 171 pages. ISBN: 978-0-521-87395-6. Price £45.00*

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## Announcements and Interna

### Upcoming Conference: What type of legal responsibility towards future generations?

Universities of Versailles and Poitiers are organizing a colloquium about legal responsibility towards future generations on December 10th and 13th, 2010.

At present, there are no existing constitutio-

nal or legal mechanisms to hold present generations liable before a court of law for damage caused to future generations.

Certain scientific disciplines have theorized the responsibility of present generations towards future generations: Philosophy, Economics, Sociology, Bioethics, etc, but not Law. There are a number of obstacles to im-

plementing legal responsibility which will have to be overcome:

- What type of fault can be held against the present generations, while recognising their right to their share of hedonism?

- What type of damage can be taken into account, bearing in mind that if current law allows the compensation of future damage