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The Rights of (Future) Humans Qua Humansⁱ

Abstract

Human rights are rights held ‘simply in virtue of humanity’. In unpacking this claim, it becomes apparent that theories of human rights disclose (i) something about what we understand a minimally decent human life to be, and (ii) who we consider to belong within a community of rights-bearers. In this article I reflect on the implications of these two points for future human beings and environmental human rights. I address two inter-related questions: When and why do future persons have standing as rights-bearing members of a shared moral community? Are the rights held by future generations best expressed in the ‘greening’ of existing rights, or in a new distinctly environmental right? Given that human rights express both a sense of a minimally decent life, and thus, implicitly, a vision of what it is to be a human, I argue that human rights theorists miss an important element of the human qua human if they take ecological embeddedness to be contingently rather than necessarily relevant to human rights. I therefore argue that there are reasons to favour a new distinctly environmental human right.

Human rights, it is said, are rights held by humans simply in virtue of the rights-holder’s humanity. Formulations akin to this can be found in the International Bill of Rights and in many philosophical defences of human rights. Much discussion in the latter context has focused on unpacking and defending the justificatory element of this claim. In this article, I do not pursue this justificatory side to the argument, though I find it both interesting and important. Here I am concerned with what human rights theory and legal practice disclose

about the understanding of ‘humanity’ that plays a justificatory role in the idea of human rights, and the bearing this understanding has on the scope of a community of rights.

A comprehensive survey of either the theory or practice of human rights is beyond the scope of this article. My aim here is draw out the argument that (i) implicit in any defence of human rights is a more or less particular vision of what it is to be a human being, and that (ii) generally, the vision that one finds in much contemporary human rights theory is one of a socially embedded agent, but not an ecologically embedded agent. A slightly different story emerges when one considers recent developments in human rights law, which I discuss here briefly, but my primary focus is on the implications of this absence of an ecologically embedded agent in human rights theory for the idea of environmental human rights. This gives rise to two further points: The first is concerned with the possibility of justifying human rights held by future generations. I argue that this is necessarily a political project as much as a philosophical one. The second point relates to the question of whether the environmental human rights persons may have are already implicit in, and best defended via, existing human rights, or whether a new, specifically environmental human right is needed.

The argument is structured as follows: I begin by teasing out the idea of humanity as it is invoked in the justificatory claim, ‘humans have human rights simply in virtue of their humanity’. Here I try to explicate the significance of what I call ‘a community of rights’, a phrase familiar from Alan Gewirth’s work, though as will become clear my interpretation is somewhat different from his. In the second section of this article I address the question ‘when and why do future persons have human rights?’ I will argue that the rights of future generations are particularly environmental rights. In the final section I consider whether such rights are best expressed as a new right or are better understood as the greening of existing rights. Whereas in previous workⁱⁱ I have remained open to either option, here I argue that the rights of future generations imply a new distinct environmental right.

Human rights held ‘in virtue of humanity’

Philosophers have expended considerable energy and ink trying to elucidate the qualities of humanity alluded to in human rights held in ‘virtue of [the right-holder’s] humanity’.

Interestingly, in recent years, some human rights have been legally recognised as extending to non-humans.ⁱⁱⁱ This development suggests that the conception of humanity that operates in grounding human rights is not strictly correlative with the biophysical category ‘human being’ – other factors determine our legal, and also our moral, judgments as to who is and is not held to be a human being in the sense of being a holder of human rights.

It was ever thus. I do not make any claims here about the origins of human rights. But we can say that the first declarations of rights that had a character recognisably similar to contemporary human rights declarations were the late 18th century American Bill of Rights and the French Declaration of the Rights of Man and the Citizen. Evident in these declarations is a commitment to the idea that only a life lived in freedom – to identify and pursue one’s chosen ends, to express one’s conscience and faith, to associate with one’s chosen fellows, and free from tyranny, oppression, arbitrary detention – is a life befitting the dignity of human beings. As both friends and critics of the concepts of natural and human rights have noted, this vision of a free life, a life of dignity, etc., implicit in these declarations, is markedly shaped by the norms of those in the relatively privileged positions necessary to have the means (in terms of time, education and opportunity) to write the declarations at all (MacPherson 1962, cf. Hunt 2007). This is an unremarkable claim – human rights declarations, being created rather than discovered, could hardly be otherwise than shaped by the people who made them. To accept this much need not entail accepting any kind of relativism about human rights – one can assert that there are minimum standards of treatment to which all human beings are entitled whilst remaining sceptical about the full validity of

early institutional expressions of those standards and retaining a degree of humility about the likelihood of current human rights law or theory representing the final word on the matter. Indeed, there is quite a bit of diversity in both the former and the latter.

This diversity is in significant part a reflection of the expansion in categories of persons held to be rights holders, and, therefore, fully human, since those early declarations. What is salient in this history for my argument is that from the very beginning of human rights in its recognisably modern guise, human rights in theory and in practice disclosed an idea of the good life for humans that reflected the norms of those who fell within the scope of equal moral concern and respect. Their status as falling within that scope is indicated by their being recognised as rights-bearers. In this sense, they constitute a community of rights. Enslaved Africans, non-Europeans generally, and women, were not so recognised in the 18th century, nor were children, nor people with a mental illness, nor even white men who lived in (relative) poverty. As these and other groups of previously excluded humans successfully pressed for recognition of their right to be accepted as rights-bearers, so the content of rights recognised as human rights also expanded, and thus, the implicit vision of the minimum conditions of a good or decent life – a life befitting a human being – also evolved.

If this is right, then there is a putative lesson in this for arguments defending human rights held by future agents with correlative duties that oblige agents now. Unless and until the current political community integrates into its thinking on human rights the idea that future generations fall within the scope of moral concern – i.e., have the status of being rights-bearers – then neither the theory nor the practice of human rights will be likely to fully reflect the genuinely rights-relevant interests of future generations. It matters, then, whether duty-bearers think of future humans as falling within the community of rights.

I do not pretend to offer here a complete theory of how it is that excluded or disenfranchised groups move from a state of exclusion to a state of inclusion in the relevant

sense, i.e., in the sense of being recognised as rights-bearers whose specific rights-relevant interests are thus reflected in understandings of human rights and can be discerned in the vision(s) of the good life that are implicitly disclosed in these understandings. Indeed, I do not believe a complete theory reflecting the diverse history of this process has yet been formulated. Nevertheless, I note the impact of earlier political struggles on the reforms to the character of the idea and the practice of human rights. For example, following the feminist struggles of the late 18th, 19th and 20th centuries, not only are women now recognised as rights-bearers, the right not to be discriminated against on grounds of gender is recognised as a human right. That is not to say that women experience full equality or respect for their rights anywhere in the world, but it is to say that the idea of human rights has integrated the claim that women are human beings. Similar stories can be told with respect to other previously excluded groups.

One might seek to explain this in terms of an inner logic to human rights, whereby the excluded group points to its possession of the qualities held to be constitutive of ‘humanity’ (or ‘citizen’, or ‘man’ in the 18th century context) and on that basis demands recognition of its equal status with those already included in the community of rights, as, for example, did Mary Wollstonecraft in her 1792 *Vindication of the Rights of Woman*. Certainly, this pattern is noted in the history of the granting of rights to Protestants and then Jews in Revolutionary France (Singham 1994). If one is to uphold the idea of human rights and be consistent in defending its universality, then, so the argument goes, one has no choice but to accept its extension to all those who meet the moral criteria of being ‘human’. This is also a credible explanation of courts granting some human rights protections to non-human animals on the basis of their interests being comparable to those of humans, thus including them within the community of rights. But, of course, future humans do not (yet) exist. So, questions arise both

about the degree to which we can be certain about their interests, and their standing as putative rights bearers. I will return to these issues below.

Here I want to say more about this community-delineating sense of rights. This function, and the content of human rights recognised from their inception, suggests that there is an inherently social character to the vision of the human being at the centre of human rights. This observation may seem to fly in the face of the often-made claim that human rights are overly or inherently individualistic – a complaint first raised by Edmund Burke, later by C.B. MacPherson, and more recently in the Asian values debate. One might mean different things by the ‘individualistic’ claim, e.g., that rights are rights held by individuals, or that this is because individuals are the primary unit of moral concern. Human rights understood in these terms have been criticised as promoting a ‘Western’, ‘atomistic’ vision of the human in which the individual stands in antagonistic relation to the community, as opposed to being necessarily formed and nurtured by the community and thus being under an obligation to promote, as far as possible, harmonious community relations. I do not want to engage these debates here^{iv}, but I will say that I think it is valid to claim that human rights presuppose the idea that the good of the individual cannot be sacrificed for the good of the community.

Note, however, that rights to freedom of association, as well as rights of protection against the power of governments, imply both that humans are creatures who are vulnerable to one another, and that humans are creatures for whom being able to live in community with others will be important. Human beings, as we find them in human rights declarations and in philosophical justifications of human rights, are socially embedded beings. This is evident whether one takes a will theory or an interest theory approach to human rights. In will theory, one’s right is connected to one’s power of choice with respect to the right of others to interfere with or frustrate our projects (Hart 1967). In interest theory, only our interests that

are of sufficient weight to generate counterpart duties in others are those that are the subject of rights (Raz 1986).

Alan Gewirth's (1982) account of human rights systematises this social feature for human rights, such that it forms a justificatory foundation of rights, rather than being simply a central feature of universal human interests. His work explicitly recognises that the agent's understanding of herself as belonging to a community of rights-bearers as crucial to the justification of the agent herself, and equally all other agents, having rights at all. By claiming rights against other agents, the rights-bearer must recognise them as agents, and thus, as entitled to the rights she claims for herself in protection of her agency. The sense of community here is clearly very thin indeed. It is conceptually necessary, but it does no further work in explaining the moral claim that persons to whom one might be vulnerable, and thus against whom one might wish to call for the protection of rights, are deserving of equal moral concern and respect. That judgment seems to be reached by the Gewirthian agent on prudential grounds alone. For Gewirth, this moral minimalism is an attraction, in that it can generate a justification for rights that would protect persons' most important interests without relying on thicker moral arguments that would frustrate the universality of the claim. The community of rights is thus a formal device in Gewirth's argument.

I highlight Gewirth's thesis here as he aims to justify human rights from minimalist grounds. Other approaches to human rights theory which presuppose a thicker account of human interests (and which make varying claims for the minimalism of their premises) also defend rights that implicitly or explicitly recognise the human being as a socially embedded agent (see, e.g., Griffin 2008; Tasioulas 2012). The point here is that the vision of the human being, irrespective of methodological differences, includes the central assumption that humans are socially embedded. It could hardly be otherwise. The inherent vulnerability of human beings, which gives rise to needs that have found institutional expression in human

rights, is in significant part a function of our living sociably. Regardless of changes to the content of human rights as the community of rights has expanded, this feature of human rights has remained.

It is not so universally evident in thinking on human rights that humans are ecologically embedded creatures. The concept of ecological embeddedness is a familiar one in many strands of environmental thought, including eco-feminism (e.g., Mellor 1997) and eco-socialism (Benton 1993), and there will be different nuances of understanding of this term. Broadly speaking, what the idea of ecological embeddedness suggests is that the autonomy of the agent is to some extent constrained by, or more properly relational to, her ecological context. All human freedom, indeed, all purposive action, is underpinned by ecological support systems. Humans can integrate this into their thinking about what it is to be free and to act, or they can find ways to mask this fact from their self-understandings. The ecologically conscious understanding of the human agent's inherent condition is contrasted with the purported autonomy of the paradigmatically liberal agent. I would certainly agree that some (perhaps many) critics of liberalism have rather overstated the completeness of the autonomy enjoyed (demanded for) agents in liberal thought. Nevertheless, as I discuss shortly, there is a considerable body of scholarship exploring and exposing the anti-ecological thinking at the heart of the liberal tradition from which rights theorising has drawn a considerable inheritance.

In the International Bill of Rights we find references to material needs (food, shelter) and material vulnerabilities (torture), but there is little indication that there is an ecological context that is inherent to the social, political, economic and cultural activities that we engage in and that human rights protect. What is recognised is the right of self-determination, and the right of sovereign control over natural resources.^v These provisions reflect a legitimate concern on the part of recently post-colonial states to protect their natural resources and

national interests from further exploitation. But they are also, of course, consistent with, and expressive of, the idea of humanity as standing in a relationship of ownership towards the natural environment. A long tradition of environmental criticism holds that this attitude is deeply rooted in Western moral and political thought.

However, in more recent human rights law, particularly as this is codified in national constitutions, we find examples of explicitly environmental human rights: e.g., in the Portuguese constitution of 1976, the right to an ‘ecologically balanced environment’, and in the Norwegian constitution of 1992, the right to ‘an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained.’ The Norwegian constitution goes on to note, ‘Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.’ These are just two of many examples of jurisdictions that either directly or indirectly recognise environmental human rights (Shelton 2011).

Alongside these developments in law a body of theoretical literature defending explicitly environmental rights has emerged (see Woods 2016 for an overview). Nevertheless, in much of the philosophical literature on human rights, as opposed to that specifically addressing environmental human rights, the significance for human rights of the fact of human ecological embeddedness continues to be underplayed. For example, James Griffin, whose 2008 *On Human Rights* has justly proved to be influential, only mentions environmental issues on 3 occasions in 330 pages, each time this is in relation to potential conflicts between environmental rights and resource rights.

One might answer this point by adopting Henry Shue’s (1996) idea that human rights protect against ‘standard threats’ to the minimum conditions necessary for a decent life. If that is the sole or primary function of human rights, then one would expect to find that in conditions where environmental human rights impacts were not widely registered or known,

human rights law and thought would have little to say on environmental issues. Standard threats change over time, and as we now come to understand the environmental impacts of our economies, we would expect the concept of human rights to adapt to the significance of these threats, and that is indeed what we find.

There is something in this, but note that if we accept this line of argument we are also committed to saying that the environment is only contingently a human rights issue, rather than a necessary one. A long line of environmental theorists have highlighted the anthropocentric character of liberal thought, to which rights theory is deeply indebted (inter alia White Jnr 1967; Marshall 1995; Dobson 2000). The claim here is that from at least Descartes onwards, dominant ideas in Western philosophy have failed to take sufficient note of the bio-materiality of human life. One frequently discussed example is John Locke's account of natural rights to property. Locke's famous subsistence proviso holds that one must leave 'as much and as good' for others. This condition presupposes abundance in natural resources. To be fair to Locke, his 'spoilage' proviso commits the children of God (humans) not to squander the bountiful natural resources that He has provided. Moreover, Locke could never have predicted the exponential human population growth witnessed in the past century, which has had a significant impact on the sustainability of currently dominant patterns of production and consumption.^{vi} Nevertheless, the critical claim here is that it is because we have thought ourselves disconnected from the rest of nature (an attitude exemplified both in Locke's thesis and in the contemporary sovereign right of title to natural resources) that it has been possible to arrive at a place where our patterns of production and consumption are so destructive of the ecological systems on which they depend. This is a familiar claim in the environmental ethics literature – I do not have space to fully defend it here – but its salience for the present argument is that if we accept this claim then it matters very much whether we see environmental issues as being contingently or inherently related to the concept of human

rights. I have argued here that human rights do more than protect against standard threats to a minimally decent life, they also implicitly disclose dominant views about what it is to be a human and to lead a decent human life. Insofar as that is true, the theory of human rights cannot be entirely divorced from their politics.

Let me sum up the argument thus far: Human rights are the rights of humans qua human – ‘in virtue of their humanity’. Human rights tell us much about what we think it is to be a human being. Human rights implicitly disclose a vision of the human as inherently social, but not, for the most part, as inherently ecologically embedded. Of course, recognition of the fact that humans are ecologically embedded beings does not in itself entail the claim that future humans have rights. In the next section I look at arguments defending this claim.

When and why do future persons have human rights?

Recent years have seen an expansion in calls for future humans to be recognised as bearers of human rights that would entail correlative duties on current humans. While some 90 or so states around the world recognise a constitutional right to a healthy, sustainable or ecologically balanced environment (the formulations vary), in only a handful of cases does this extend to a right held by future generations.^{vii} Nor are such rights generally recognised in current national or international law (Knox 2012).

Within academic debates on environmental and intergenerational ethics, there are many defenders of the claim that future generations do have, or should have, environmental or other human rights that place obligations on currently living agents (see, inter alia, Bell 2011; Elliot 1989; De-Shalit 1992; Feinberg 1993; Gosseries 2008; Hiskes 2009). Most would accept that on a will theory account, future generations cannot have rights, since there is no currently existing agent to exercise their will.^{viii} In will theory, the exercise of the right depends on the will of actual persons. In the case of future persons, clearly they cannot yet

exercise their will. If we are to respect their putative rights, then we can make a reasonable guess about what their will would be on the basis of their likely interests. However, what does the work here is not the claim that we must respect the will of the future agent, but that we ought to respect the right of the future agent to have their rights-relevant interests protected, so the will theory argument for future rights seems in effect to collapse into an interest-theory argument.

The more promising route, then, is an interest theory account. If it is true that human rights protect individuals against harm to their fundamental interests, and if it is also true that actions taken now in relation to issues such as climate change or biodiversity loss will negatively impact on the fundamental interests of future humans, then there is at least a prima facie case that such humans, qua humans, have rights to be protected from such harm. Many scholars find this case persuasive. Simon Caney (2005, 2010), for example, outlines the ways in which currently accepted rights to life, health and well-being will be severely negatively impacted by climate change in the future. From this he argues that future generations have rights not to be so harmed. The fact that the impact of the harm is not contemporaneous with the perpetration of the harm does not alter the moral conclusion. In the same way that a person who sets a booby trap wrongs the person who is harmed by it, even if that victim is not yet born at the time the trap is set, so too present persons who continue to contribute to climate change wrong, that is to say, harm, future generations. Thus, the argument goes, anthropogenic climate change violates the human rights of future humans.

Of course, it is plausible that such rights could conflict with the rights of actually existing present humans, and to many it is not obvious that the rights of future humans who do not currently exist could have the same normative force as the rights of humans in actual need right now. Hence, Joel Feinberg (1974), for example, speaks of the ‘contingent’ rights of future generations, which rights are compelling for us now, but are contingent on the

rights-bearer coming into existence. However, this sort of move, as well as weakening the apparent strength of the rights claim, falls foul of problems identified by Derek Parfit in his ‘non-identity problem’ (NIP).

The booby trap analogy discussed by Caney was originally put forward by Robert Elliot (1989) as a means of defeating the NIP as grounds for denying the rights of future generations. The NIP suggests that future persons cannot be harmed by actions that determine the identity of the future person who comes into existence. Were the purportedly harmful action not taken, the person said to have been harmed would not, in fact, have existed. So, the outcomes being compared are not ‘harmful’ outcome for person A, versus ‘benign’ outcome for person A, rather, they are outcomes where person A does and does not exist. Some theorists have argued that even policies that appear to have little to do with determining the identity of future persons are in fact affected by the NIP. Axel Gosseries writes,

if not all, at least a very large proportion of our actions and policy choices in fields such as transportation or energy production without any direct connection with procreation choices will still have an impact on the identity of our children, through modifying the timing of our daily activities, including procreative ones. (2008: 460, emphasis in original)

If this is right, then it is very difficult to argue that future persons have a right to environmental standards that might entail correlative duties for us that we amend our transport and energy policies, because the existence of such a right presupposes that our actions now can harm these future persons. What the NIP shows is that they cannot.

Several strategies for overcoming this problem have been explored in the literature. Derek Bell (2011), for instance, distinguishes between the counterfactual notion of harm at work in the NIP, and a threshold notion of harm. He argues that the human rights duties that persons have today (that are correlative to rights held by future persons) are not dependent on

claims about the counterfactual harm that would be caused to individuals by a policy or action (which could affect their existence-identity). Instead, agents today have duties not to create conditions in which future persons would be likely to fall below a critical threshold that would constitute a violation of their human rights. The key claim is thus not that a person's life has been harmed relative to what it would otherwise have been, but that the person's life is lived in a context which has fallen below a threshold which constitutes a harmful condition, and a violation of her human rights. She has a right not to be exposed to conditions below this threshold; this right generates duties now.^{ix}

It is hard to see how this threshold conception really does disable the import of the NIP – presumably the action(s) – if identifiable – which cause the crossing of the threshold are on this account held to bring harm to the individual, whilst those preceding it do not, and we are then back in the realm of counterfactual notions of harm: The action that causes the rights-holder to fall below the threshold is judged to be wrong when compared with a different course of action that avoids this. Bell himself does not make matters clearer when he concludes his discussion of the threshold account by stating, 'Current persons have a duty not to undertake actions that will violate the rights of the actual future persons who will exist – even if those particular future persons would not have existed but for those very actions.' (2011: 110) This point notwithstanding, several scholars have adopted a threshold conception of rights of future persons.

However, as Jonas Brännmark (2015) points out, even if we accept that we can, because of the threshold model, discount the NIP, further problems arise. Here I will focus on two of those Brännmark raises: The first is that thresholds are 'context sensitive' (Brännmark 2015: 6). Whereas there are not thresholds with respect to a right to life – one is either alive or one is not – in the case of other rights, such as the right to health, subsistence, or a sustainable environment, the thresholds may be differently determined in different contexts.

This is the case in the operation of human rights today. The relevant thresholds for minimum moral standards of well-being in different measures are specific to different social and political communities. This problem is likely to be amplified across intergenerational contexts – certainly, many people today would not accept generally prevalent 19th century standards of health as meeting the right to health in areas such as the state-organised control of infectious diseases. There are absolute minimums, perhaps, but levelling down across communities (and times) would not be consistent with the spirit of human rights, which directs us towards minimum conditions for a decent life, rather than minimum conditions for being alive.

This problem of variable thresholds is not unknown, of course, in human rights theory more broadly (see, for example, Griffin 2008, who defends a threshold conception of rights to autonomy and well-being), nor in the particular case of environmental human rights. One of the earliest defences of the latter couched a right to a safe environment in terms of a threshold below which persons should not be exposed to environmental harms (Nickel 1993). It seems to follow from this that the same set of events that prompt an outcome which falls below the threshold set in community A, but not the lower threshold set in community B, is a human rights violation in the former but not in the latter. As a matter of human rights law, this is operationalisable with respect to many rights, but it is one of the distinctive features of environmental human rights that the conditions that are the objects of these rights will often not be within the control of one state or jurisdiction, because, of course, environmental impacts do not respect the borders of sovereign states. The setting of a threshold with respect to environmental human rights – e.g., in relation to issues such as climate change – will necessarily be a matter of international and intergenerational cooperation.

The second problem Brännmark raises is causal distance: Whilst it is undoubtedly true that present persons (collectively) have the power to seriously affect the human rights of

future persons, by acting or failing to act on environmental issues like climate change and biodiversity loss, it is also true that the actions of the persons – especially but not only governments – within future generations, will have significant power to affect the distribution of harms within that generation. We can see that this is true if we consider the distribution of wealth within the present generation. Whatever action or inaction is taken by the present generation, the precise fate of individuals within future generations is largely out of our hands.^x

It is for these reasons that Brännmark argues that while individual future persons cannot be said to have rights that have moral force now, future generations do have such rights, and these are akin to a certain type of group right. He suggests that we think of ‘generations as political communities with an interest in having as ample resources as possible available to them as a form of wealth to be distributed among their members.’ (Brännmark 2015: 18). On this view, we have duties now not to make it impossible for future generations not to meet the human rights of their contemporaries. Interestingly, Axel Gosseries (2008) comes to a similar conclusion in his defence of the future rights of future persons: For Gosseries, our actions today are constrained by an overlapping chain of obligation whereby I must not make it impossible for a person whose lifespan will overlap with mine to fulfil her human rights-based obligations to persons with whom her life will overlap, even if I am long dead before they (the third generation) are born. So the rights of generation A (to pollute, emit CO₂, etc.) are limited by the rights of generation B to have the means necessary to fulfil their obligations correlative to the rights of generation C.

The question that now arises is, what can (must) the current generation do to fulfil their obligation not to undermine the capacity of future generations to fulfil their human rights obligations, either to overlapping future generations in Gosseries’ argument, or to one another in Brännmark’s? Two factors shape our answer: One is that, given the comments

above about causal distance and the variability of thresholds across generations, there is a degree of uncertainty about how, precisely, future generations will understand their own interests, particularly in relation to the level of welfare they consider to be required to meet a human rights threshold. The other is that factors such as the development of technology, in particular around energy production and transport, and population increases, will have a significant impact on the resources that are necessary to meet that threshold.^{xi} Given these constraints, and what we now know about the limited resilience of global ecosystems, there are prudential reasons to be cautious about the substitutability of human and natural capital (Dobson 1999; Barry 2012). In other words, while we cannot know precisely what future generations will need to be able to fulfil their rights obligations, we can be pretty certain that they will not be able to fulfil those obligations without such basic environmental goods as breathable air, drinkable water, sufficient carbon sinks, enough biodiversity to sustain ecological systems and support food supply chains.

Gosseries' argument differs from Brännmark's in that he retains the individualistic framing of rights, whereas Brännmark thinks of generations as political communities. In neither case are these strictly speaking the rights of future humans qua humans – rather, they are the rights of future humans qua duty-bearers, who stand in a community of rights. It is not clear that agents have rights of the status of human rights to have the means to honour their human rights obligations, though if one accepts 'ought implies can', then perhaps the case for this can be made. Without attempting this argument here, one can certainly say that Gosseries' argument is the more robust of the two, in that the rights claim never depends upon an agent who will not (likely) exist at some point contemporaneously with the duty-bearer. In contrast, Brännmark's argument is not necessarily limited in scope in terms of the generations towards which one could have duties, though he only refers to foreseeable future generations as plausible rights holders. What the two approaches share, though, is a sense that

the community of rights can legitimately extend further than traditional readings of rights would suggest, even though both accept that the NIP renders a straightforward claim about the rights of future persons incoherent. The direction of rights and duties will not be mutual, but instead will point into the future. The content of human rights is importantly altered by this extension: The rights of future persons/generations protect interests that are deeply connected to recognition of humans as ecologically embedded beings. That this is so is evident from the kinds of goods that these rights will have to protect, even whilst leaving it up to future generations to decide for themselves how goods can and should be distributed. There is no expectation that intergenerational justice has work to do on deciding this distribution within generations. The sorts of goods that will be objects of rights not to be deprived of the means of fulfilling the rights of a future generational cohort are first and foremost environmental goods – a stable climate, carbon sinks, biodiversity, forests, grasslands, wetlands and reefs. This is as we would expect if rights theory were overtly cognisant of our status as ecologically embedded beings.

To return to the argument in the first section of the paper, we can now see the significance of the claim that future generations have rights. By extending the community of rights to an intergenerational one, we bring the fact of ecological embeddedness into primary focus and thus, again, refine the vision of the human qua human that is implicit in human rights. But I also argued above that the project of extending the community of rights is a political one as well as a philosophical one. In the final part of the paper I reflect on which of two approaches – promulgating a new environmental right, or greening existing rights – holds more promise in relation to this challenge.

A new right, or the ‘greening’ of existing rights?

While a few scholars have advocated new specifically environmental human rights (e.g., Hancock 2003, Hayward 2005, Hiskes 2009)^{xiii}, more have argued for the greening of existing rights. One interesting example of the latter is Simon Caney's switch from initially advocating a specific right against being exposed to the adverse effects of anthropogenic climate change (Caney 2005), to, in later discussions drawing out the ways in which anthropogenic climate change violates already accepted human rights to life, health and subsistence (Caney 2010). No doubt the latter approach is less controversial, and if an equally strong argument can be made from less controversial premises then there is obvious political capital in pursuing this. Moreover, rights scholars will be well aware of concerns about the proliferation of human rights claims – the greening of existing rights, instead of declaring a new right, potentially serves to deflect some criticism.

Yet, if it is true, as I have argued, that human rights express an implicit vision of what it is to be a human in the sense of having standing as a member of the community of rights, then, insofar as the rights of future generations will be environmental rights, it will matter whether the vision so expressed registers the ecological embeddedness of human beings as contingently or necessarily salient. If environmental issues are only contingently a human rights issue, then, in times of apparent environmental abundance, the rights of future generations cease to exist, and so to do future generations from the community of rights. As we now know (and to our own and future generations' cost), the time span of some environmental impacts can obscure the build up of environmental problems from a human point of view. Recognition of a specifically environmental right is one way of marking as immutable fact humans' standing in relation to the rest of nature. The relative silence on the significance of environmental goods for a minimally decent life in much human rights theory, and, until recently, human rights practice, is an indicator of the extent to which our

dependence on the non-human world has been absent from our thinking about justice and the nature of a good life more generally.

On the other hand, one could argue that the project of greening existing rights is precisely about drawing out the ways in which ecological embeddedness is a human rights-relevant fact, and though this had not been explicitly noted by earlier thinkers and practitioners of human rights, the rights-relevant human interest in a sustainable environment is nevertheless something that can and should be recognised and institutionalised within the human rights framework without recourse to a new stand-alone right, which could frustrate efforts to signify the interconnectedness of rights. Moreover, human rights are not a blueprint for a good life; they are claims that can be pressed against institutions so as to protect the minimum conditions required for a decent life. They are urgent and especially morally important claims. To advocate a new and distinct environmental right would be to miss opportunities to call attention to the ways in which favourable environmental conditions underpin the realisation of most substantive human rights, and thus any decent life.

Against this view, one of the few to put forward a sustained case in favour of a new environmental human right is Richard Hiskes (2009), who sees environmental rights as ‘emergent’ rights held by future generations of a specific political community, rather than future humans in general. For Hiskes, human rights are rights that future people hold as citizens(-to be) of specific polities: ‘it is difficult to see how empathy can be extended toward future generations unless it is alloyed with a national community attachment’ (Hiskes 2009: 143-4). This position embraces a much thicker notion of community than others discussed here, and harnesses the motivational resources this thicker conception offers. Without this, on Hiskes’ view, the political project of extending the community of rights to future generations is fundamentally flawed.

In part the difference at stake here reflects broader positions held with respect to debates about the relationship between the thickness of the sense of community that is necessary for a commitment to a given conception of justice. For example, Avner de-Shalit (1992), who is broadly communitarian in orientation, sees intergenerational environmental obligations as essentially an extension of welfare rights, and argues that these can only be sustained politically where we are invested in each other, as we are in a welfare state. But the investment in future generations of one's own nation or state is of a different kind than the investment that one makes in one's fellow citizens: Whereas the latter can be reciprocal the former cannot. Of course, many environmental thinkers have found affinities with Burke's idea of an inheritance from future generations that is entailed for the future – the good environmental citizen is a steward, after all, and on the communitarian version this stewardship refers not just to the natural wealth but also to some human capital in terms of constitutional rights. But future generations can do whatever they choose with either of those inheritances.

de-Shalit, like Hiskes, casts the rights of future generations in terms of the rights held by a particular polity against their forebears rather than by and against the world at large. Many will find this argument to be at odds with the spirit of the idea of human rights – and indeed the claim with which this paper began, that humans have rights 'simply in virtue of our humanity'. This statist approach does of course reflect, to some extent, the institutionalisation of human rights in contemporary legal practice – states are the primary bearers of human rights-related duties, and it is with respect to our own states, and not whichever state we choose, that we have these rights. But I do not have these rights because I am a citizen of a particular state, I have these rights because I am human, and it is a matter of accident that this particular state is the relevant duty-bearer with respect to my right.^{xiii} By putting the (intergenerational) community so firmly at the centre of his argument, Hiskes

moves the state from being the accidentally assigned duty-bearer correlative to a right justified by my status as human being, to being the justificatory source of the right itself, i.e., it is because I am future citizen of this state that I have a right at all; were I a future citizen of another state I would have no right on this argument. These intergenerational rights are not properly human rights at all, rather, they are constitutional rights, and indeed though he sometimes uses the language of human rights, it is constitutional rights held by future citizens that Hiskes defends.

It might be argued that the rights the human has qua human, if recognised as a socially embedded being, and an ecologically embedded one, are not ultimately distinct from the rights granted to (future) humans by their status as members of a particular social context. But I find the move to rights specific to a social context troubling. Were this all that human rights really amounted to, then there would be very limited resources for saying that a community is wrong with respect to the good of its members. My claim is that humans are by their nature social creatures, thus I am committed to a (thin) account of human nature, which, of course, one could feasibly deny on the communitarian model. The point is not, as the communitarian contends, that the social context constitutes the human (in diverse ways), but that the human being is inherently a social being (as well as an ecologically embedded one). But I do not want to wade deeply into liberal-communitarian debates. Indeed, I am sympathetic to those who have argued that the claim of a very strong divide between these two perspectives is somewhat overstated.^{xiv}

In contrast to the communitarian position, the arguments of Gosseries and Brännmark do not depend upon our having particular affinities with ‘our own’ future generations, as it were. That said, Brännmark (2015), who does not discuss Hiskes’ proposals, does acknowledge that there is work to do in fleshing out how, exactly, a generation can be considered a ‘political’ community, which it must be in a formal sense for his group rights

model. Gosseries' (2008) argument, on the other hand, stays true to the individualism of traditional human rights theorising. To recap, his account of rights depends upon a chain of obligation to ensure that future generations can meet their human rights related duties to subsequent generations. However, it strikes me that this account presupposes what it sets out to demonstrate, namely, that future generations do have rights.

An idealised version of the argument runs like this: The rights of persons in generation B, which ground claims against persons in generation A, only exist in virtue of their (B's) obligations to generation C. A and B will overlap at some point in their lives (while A and C will not), so this makes the rights claim that B has against A concrete in the sense that both A and B are (or will be contemporaneously) actually existing agents with identifiable interests that ground their rights. But it remains the case that A must regard B's duties to C as equivalent to A's own duties to contemporaries within A and B in order for the argument to hold. A must regard B's interest in being able to fulfil their duties to C as being of sufficient weight to generate a duty on A. In other words, A must regard C as belonging within the community of rights, even though Gosseries seeks to avoid having to claim that C, who does not yet exist, has rights pre-existence.

In terms of the environmental goods that are the object of rights, there may seem to be little to choose between the greening of existing rights and the defence of a new specifically environmental right: For example, the human rights implications of climate change can be explicated by either approach. But if we eschew the communitarian view of rights being tied to a specific intergenerational political community (as advanced by Hiskes and de-Shalit), then it seems to me that the challenge of demonstrating that future generations have standing as members of a community of rights – that is, that they are bearers of the rights held by humans qua humans – is made easier by overtly accepting the claim that humans are ecologically embedded beings.

This makes a difference to future generations. The greening of existing rights leaves the standing of future generations, and the recognition of the significance of environmental goods for a minimally decent life, as contingent human rights issues, rather than necessary ones. I said above that recognition of the fact that humans are ecologically embedded beings does not in itself entail the claim that future humans have rights. Nothing I have subsequently argued challenges that. I have suggested here that the arguments advanced to justify rights held by future humans succeed in fairly limited ways: Given the problems identified in relation to causal distance and the variability of human rights thresholds across places and times, the most that the current generation can reasonably do to facilitate the future rights of future humans is to ensure that environmental conditions do not impede the fulfilment of other rights. If that is the primary human rights duty that we have with respect to future generations, then it is reasonable to hold that the principal rights of future humans qua humans are environmental rights, and if we recognise these as being human rights then we continue the process of extending the community of rights that has been a feature of human rights practice for quite some time.

Let me conclude by briefly summarising the case I have sought to defend. Human rights are, I hold, rights held ‘simply in virtue of humanity’. Insofar as it is true that theories of human rights disclose (i) something about what we understand a minimally decent human life to be, and (ii) who we consider to belong within a community of rights-bearers, then, given ecological timescales and our capacity for environmental destruction, it matters whether future generations belong in our community of rights for us to fully integrate the fact of our ecological embeddedness into the idea of human rights. But I have argued here that the ways in which future generations can stand in a community of rights with us differs, to an extent, from the ways in which those contemporaneous with us can and do. Moreover, the character of the rights held by future generations is, on this argument, distinctly

environmental. Moreover, this calls forth a distinct right. Human rights theorists miss an important element of the human qua human if they take ecological embeddedness to be contingently rather than necessarily relevant to human rights, and this, if nothing else, gives us reason to favour a new environmental human right, rather than the greening of existing rights. Whereas in the ‘greening’ route, environmental rights are parasitic upon other rights, in fact, in the long run, all other rights are dependent upon the fulfilment of environmental human rights. These are the principal rights of future humans.

Endnotes

ⁱ I am grateful to Marcus Düwell and Richard Hiskes for the opportunity to contribute to this symposium and for their thoughtful and insightful comments on previous drafts. I am also grateful to audiences in Trondheim and Leeds for their questions and feedback.

ⁱⁱ See Woods (2006) and Woods (2010).

ⁱⁱⁱ In 2014 an Argentine court upheld a claim by the Argentine Association of Professional Lawyers for Animal Rights (Afada) that an orang-utan held in a Buenos-Aires zoo was legally a person, not a thing, and thus entitled to some protections granted to humans.

^{iv} I have previously discussed these debates in Woods (2014).

^v Article 1.2 of both the Covenants states that, ‘All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.’

^{vi} To insist on the relevance of population – the sheer numbers doing the consuming – is not to deny that the lifestyle choices of those doing the consuming is also hugely significant. I thank Joachim Spangenberg for pressing me on this point.

^{vii} In addition to Norway, mentioned already, there is Japan, Bolivia, Ecuador.

^{viii} An exception is Gosseries (2008), who argues for the future rights of future persons, rather than currently existing rights of future persons, and who suggests that this argument can be sustained from either a will theory or an interest theory perspective, though he has more to say about the latter.

^{ix} Bell is building on Caney’s (2010) argument, which similarly frames future rights in terms of thresholds. This has proved an influential approach.

^x There are exceptions to this – the fate of future citizens of Pacific Island States, for example, could (most likely will) be significantly affected by the current generation.

^{xi} In accepting that technological development is a relevant factor here, I am not mean to imply that a ‘technological fix’ to environmental problems can or should be expected. Indeed, I would reject both the imprudence of this strategy and the dysfunctional orientation towards human – non-human relations this kind of response facilitates. (For further discussion, see Barry (2012)).

^{xii} The formulations vary: a ‘safe’ environment, a ‘clean environment’, a ‘decent’ environment. I do not take a position here on what the precise formulation or content of an environmental human right should be, I am simply interested in the question of whether a distinct environmental right is preferable to the greening of already accepted rights.

^{xiii} It is true that the content of some of my rights (as currently existing citizen) varies according to the state under whose jurisdiction I fall: The content of my human right to welfare, say, will be different in a wealthy country than it is in a developing country, but it remains the case that that the moral (if not the legal) source of my right is my being a human being rather than my being a citizen.

^{xiv} See, inter alia, Caney (1992).

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