

REPLY TO MY CRITICS

Axel Gosseries

I am extremely grateful to Michele Loi, Nicholas Vrousalis, Siba Harb, David Alvarez and José Colen for having spent the time reading the short essay *Nações, gerações e justiça climática*. I will selectively react to their papers. I apologize for being unable to respond to each and every of their points, given space limitations.

1. Michele Loi's paper consists in two points focusing on generational savings during Rawls's steady state stage. *First*, Loi recognizes my departure from a prohibition on generational savings in case of unanimity on such positive savings, i.e. whenever there is no veto by the least well off. Loi argues that parties under the veil of ignorance know that they could be benevolent parents willing to sacrifice themselves for their children, and for the children of others too. They should therefore reject the prohibition on savings. What probably is at stake here is what risk-averse parties should fear the most: being benevolent towards the future more than towards one's contemporaries and ending up being prevented to act on such preferences, or being today's least well off and having to accept that what could make me better off will end up in the pockets of richer future persons. It is not clear why the former should be feared more than the latter. Loi's main argument here seems to be the following: not allowing for generational savings is illiberal and allowing for a departure from such a prohibition only in case of agreement of the least well off will not do, because "consent in actual circumstances cannot make intergenerational saving just, unless they are permissible to begin with" (p. 7, – also p. 10). However, one could easily

rephrase my view as “savings are permissible if and only if actual consent by the least well off obtains”. And preventing actual consent to play a role would amount to rendering the goods that people own non-alienable, which requires justification.

As to Loi's *second* point, it begins with the claim that the modified original position in which representative under the veil of ignorance find themselves enables them to justify positive savings. The question is: why would they not go as far as *requiring* such savings as opposed to merely *authorizing* it – in contrast to what happens in the accumulation phase? Loi's view is that while the priority of liberty might justify a requirement to save in the accumulation phase, the trade-off differs at steady state where basic liberties are guaranteed. In such a context, the trade-off is merely one between more material goods today vs. more material goods in the future, on which reasonable disagreement may exist. This justifies for Loi a rejection of a generational duty to save, even for those who do not endorse a prohibition on savings. I agree with Loi that this is a converging argument with my own rejection of a duty to save. It is in line with Rawls when he writes that greater wealth is, “beyond some point [...] likely to be a positive hindrance, a meaningless distraction at best if not a temptation to indulgence and emptiness” (*A Theory of Justice, Revised edition*, p. 258). While I agree with Loi on this second point, it seems to lose its importance once – contrary to Loi – one sticks to the defence of a prohibition on savings at steady state.

2. Vrousalis's paper returns to the issue of consent, this time in the context of the accumulation phase. He stresses two important points. *First*, when Rawls writes in *A Theory of Justice, Revised edition*, p. 132 that “It is only when social circumstances do not allow the effective establishment of these basic [liberty] rights that one can concede their limitation”, two questions remain open. First, since a concession amounts to a *permission*, invoking the priority of liberty to justify the violation of leximin still does not tell us why savings should be *compulsory*, as opposed to merely *acceptable*. Second, – and complementarily – there is no more reason to assume that the least well off will accept such a duty of generational savings in the accumulation phase if we also assume that they will not necessarily consent to the permissibility of savings in steady state.

Vrousalis is right. And this adds to other difficulties in Rawls's argument. For instance, there is a tension between institutional and distributive sufficiency in Rawls's own text when he writes that the first principle – equal liberties – “may be preceded by a lexically prior principle requiring that

basic needs be met, at least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise their basic rights and liberties" (*Justice as Fairness*, p. 44, footnote 7).^[1] This may actually be an extra reason for not saving at the earliest stage as distributive sufficiency may have priority over institutional sufficiency and may require, for the same reasons as those invoked in the case of *leximin*, a prohibition on savings. The outcome is that while I think that a full theory requires an accumulation phase – even if the fact that generations *happen* to have saved and that we now have institutionally enough might suffice in practice – it probably remains the hardest stage to justify for a two-stages view.

Second, insofar as Vrousalis's critique on my steady-state position is concerned, his case rests on a unanimity example that calls for the same sort of response to the one given to Loi's argument. Perhaps "impermissible unless the least well off agree" would be clearer than "impermissible in principle". But saying that "a generation should not saw more grass unless its least well off members agree" is definitely not analogous to saying that "an individual should not walk on the grass unless he wants to".

3. As to Siba Harb, she focuses on relational, coercion-based accounts of the grounds of justice, with special attention to the comparison between the global and the intergenerational realms. According to such views, egalitarian demands of justice only apply intergenerationally if mutual coercion obtains. One of the interesting issues is then to explore which kinds of practices may amount to coercion in the absence of co-existence beyond generational overlap, and whether such coercion may be said to be mutual. Clearly, forms of *forward coercion* may obtain if the concept is broadly understood. One can restrict the option set of future generations by depriving them of some options, e.g. through exploiting some non-renewable resources or imposing them forms of constitutional rigidity. This leaves us with several difficulties that would deserve closer attention. Depletionary threats by the current generation, while credible, only make sense if they aim at dissuading future generations from acting in certain ways. However, in the absence of overlap, since such threats necessarily will take place before the fact, such coercion, while possible, cannot be adjusted to what it aims at, i.e. making sure that future people act in one way or another. Sanctioning someone before having checked whether the rule has been violated is indeed a problematic practice.

1 I am indebted to Adrian-Paul Iliescu for having attracted my attention to this passage

This leads to a *second* – and related – problem. *Ascending coercion* is also an option as future generations could e.g. decide to destroy part of the legacy of earlier generations to which they know they attached importance. Future generations can let architectural treasures decay, or forms of know-how fall into oblivion. But this is again a threat that, while credible, will not really affect earlier generations that do not care about what will happen after they die. While mutual coercion is not necessarily *impossible*, it is not sure that such coercion can be *meaningful* if one has to coerce the future without knowing whether one has good reasons to do so (pre-natal sanction), and coerce the past without knowing whether destroying part of a legacy will really “affect” earlier generations (post-humous harm). The possibility and meaningfulness of intergenerational coercion is definitely an issue. The difficulties it raises may invite us to consider alternative accounts of coercion. However, they should also encourage us to consider the non-relational accounts of justice as well as the relational ones for which coercion is not central.

4. David Alvarez looks at several aspects of the “nations/generations” comparison. For instance, he stresses the fact that Rawls introduces a concern for one’s offspring in *A Theory of Justice* and a responsibility for one’s land in *The Law of Peoples*, both pointing in the same direction. I will focus here on two of Alvarez’s claims. *First*, he seems to be willing to defend the view that a significant role should be played by trans-generational accountability. I fully agree with the need to question the legitimacy of a situation in which some nations have inherited more than others, including benefits from past GHGs emissions at the costs of others. Does it follow that we should rely on rectificatory justice to address this? I think that defending a distributive view through insisting on the mere arbitrariness of one nation inheriting more than another is both more philosophically robust, and possibly more demanding in some cases than a rectificatory approach. This is so if we agree that one should not be held morally responsible for actions against which we were unable to do anything, that some major harms may lead to small benefits, which may render a compensatory approach insufficient, and that objective liability may only play a dissuasive role if it is announced before the fact. These are some of the reasons why we should rely as much as possible on a straightforwardly distributive approach that insists on the arbitrariness of the baskets that each nation inherited from its ancestors, including the distribution of burdens and benefits associated with past GHG emissions.

Second, Alvarez is right to point at possible disanalogies between the nations and the generations settings, insofar as transit duties are concerned. Transit duties should definitely be much more extensive in the case of generations than in the case of nations. However, interestingly enough, this might be compensated by another difference that points in the opposite direction: perhaps our responsibility towards our descendants is stronger than our moral duties towards our neighbours. Attempts at showing it on causal responsibility grounds (parents are causally responsible for the existence of their children, not for the one of their neighbours) may fail. But if one were able to show it, the fact that intergenerational transit duties are more burdensome could actually be compensated by the fact that our intergenerational duties could be more demanding than our global ones.

5. Finally, I won't be able to do full justice to José Colen's essay. I don't think that we should reject the idea of duties – in the standard sense – towards future generations. I don't think that the first part of the proposal “neither savings, nor dissavings” disregards the importance of avoiding to sacrifice the present in the name of tomorrows that sing. I think as well that the bottomless pit objection to which Colen alludes is not specific to the intergenerational realm. This being said, I totally agree on the need to articulate an ideal theory with second-best, third-best proposals, both at the substantive and at the institutional level. Moreover, Colen is right when he claims that the metrics of intergenerational justice should consider both material and immaterial goods.

Let me however clarify one point. In both sections 2 and 5, Colen seems to conflate in one sentence the concepts of “birth-cohorts” and of “age-groups”. This is so when he insists on the risk that generational savings might entail sacrificing the elderly, who, given their age, are unable to adjust, whereas younger people may still be able to adjust to changes. There is probably an implicit reference to the pension reform debate here, a debate especially vivid in Portugal. The theoretical answer to this dilemma is simple though. When it comes to pension reform, we should consider the full opportunity set that each *birth cohort* at stake is likely to have benefitted from by the end of its life, under each scenario, in all dimensions of its life. It is only if we adopt this cohortal perspective, that we can find out whether a given pension reform is intergenerationally fair or not. Birth cohorts should be the units of reference here, not age groups. And taking

into account our differential ability to react to change is of course also relevant from such a *cohortal*, complete-life perspective.^[2]

The scepticism that drives Colen's concern rests perhaps on the following observation: there does not seem to be in the "nation" case an equivalent to the "age group" - "birth cohort" distinction. However, as it is the birth cohort dimension that is central to intergenerational justice, this disanalogy may be of no significant consequences from a normative perspective.

2 See: A. Gosseries & M. Hungerbühler, "Rule Change and Intergenerational Justice", in J. Tremmel (ed.), *Handbook of Intergenerational Justice*, Cheltenham: Edward Elgar, pp. 106-128 (2006); A.-F. Colla & A. Gosseries, "Discrimination par l'âge et droit transitoire. Réflexions à partir de *Commission/Hongrie* (C-286/12)", *Journal des tribunaux du travail*, 43 (1149): 69-81 (2013).