

CHILDREN AND THE FUTURE: A FEW REMARKS ON INTERGENERATIONAL SOLIDARITY

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The German Experience

In Germany, until the middle of the 19th century, the spheres of life coming under our subject were primarily left to private initiative and society. In legal terms, that means they were entrusted to civil law, which constituted the family as an autonomous maintenance collective. Independent bread-winning activities were subject to occupational regulations. Dependent work was governed by labour legislation, which only gradually came to embrace the idea of workers' social protection. Children largely took part in the earning of livelihood – whether independent or dependent. Whoever was unable to make a living in this way found refuge in a minimum provision of poor relief. That also applied to children and the elderly. Elementary school education was compulsory and free of cost – an initial generalization of state concern for the opportunities of children. Restrictions of child labour accompanied this development. Conversely, secondary schools were attended on a voluntary basis and subject to fees. As from 1880, during the Bismarck era, the scene changed. Social insurance was introduced and further developed in the subsequent decades. The pension insurance system at first provided benefits to the disabled and the elderly, but later, like accident insurance, also to the widows and orphans of the deceased. These were the most important steps on the way to public, state responsibility for the needs of the various generations. Health insurance, in the course of time, covered also the family members of the insured on a non-contributory basis. As from the First World War, the protection afforded under labour law improved rapidly. Federal 'youth welfare' regulations served to generalize, beyond schooling, the state's attendant concern for the development of the younger generation. At the same time, however, the middle generation was

caught up in an ambivalent development: unemployment and the demand for labour began to alternate at short intervals.

After 1945, the immediate concern was to cope with the catastrophe wrought by the National Socialist regime. With the founding of the Federal Republic, however, the question of establishing a new social order gained more and more weight. Solutions were sought by further developing labour law and social benefit law. With full employment soon to set in, the situation of the dependent working population was comfortable in the medium-term perspective. New, tax-financed social benefit branches were set up to assist families: children's allowance, housing benefits, as well as the out-of-school promotion of children and adolescents. The free provision of learning aids (schoolbooks, etc.) was introduced in elementary and secondary schools. Attendance at all public schools, up to and including universities, was freed of charges.

Nevertheless, the decisive concept was coined in conjunction with the state pension reform of 1957, which also included a periodic adjustment of pensions to the general trend in earnings. The concept was labelled *Intergeneration Contract*. It is based on the idea that society consists of three generations. The old generation is taken care of because its members looked after the aged and raised children while they formed the middle generation. The middle generation is engaged in gainful employment, the proceeds of which are used to provide for the aged and to raise children. The youngest generation must be prepared for successfully assuming the tasks of the middle generation.

This image was broadly supported for a long time. The sciences, society, and politics were proud of the concept. In truth, however, it was full of discrepancies. To speak of a 'contract' was a pure illusion. For who were supposed to be the contracting parties? And how would these parties have concluded the contract or even been capable of doing so? Where were the penalties if one of the roles was not properly played? By individuals? Or by a whole generation? Both society and politics were increasingly willing to face this diversity. The ideal of 'individualization' was aimed at liberalization from predetermined roles. Social benefits were no longer only supposed to compensate for employment income that could not be earned; they were also to establish the freedom of not having to work. Alluding to Karl Marx, it was held that work was no longer supposed to be a commodity people were forced to sell. This model of 'de-commodification' was not conceived in Germany – yet it did manage to seep more and more into the German mentality. The most far-reaching flaw in speaking about the

Intergeneration Contract, however, was that the associative value of the image focused on the state pension system – which had become the field of the Intergeneration Contract's greatest normative force, while the rest of it vanished in the dark. Consequently, however, it lagged behind the problem that was supposed to be solved by the Intergeneration Contract: firstly, because the state pension system only affected the younger generation's relation to the other generations in terms of the marginal issue of orphans' pensions. Secondly, because the state pension system, though the most important form of old-age protection in Germany, is by no means the only one, and because the generational proportions differ for each of the forms.

This disparity between the initial normative appearance and the true normative effect of the Intergeneration Contract was underscored by the attendant institutional regime. In order to monitor the relationship between the trend in contributions and the trend in pensions, a competent institution was established and given the task of providing an annual set of accounting figures. This institution, too, deals only with the state pension system; it, too, knows nothing about the youngest generation's relation to the older ones. Other institutions deliver reports at irregular intervals on the situation of families, youth, and the educational system. Yet it never occurred to anyone to put these together to form an instrument for reviewing the *whole* Intergeneration Contract: for instance, by coupling an old-age protection report (and not merely a pension insurance report) with a family and education report to form an aggregate report on the status of the Intergeneration Contract's implementation. Instead, the Intergeneration Contract came to be identified with the contributions-to-pensions ratio of the state pension system. This was cemented by the fact that jurisprudence and the courts ultimately arrived at the conviction that pension claims are 'bought' through contributions and thus enjoy protection under the basic constitutional right of ownership, similar to other vested interests acquired through personal payments. A unique and daring attempt on the part of law to anticipate the future of society! But above all: what 'top-heaviness' of the Intergeneration Contract! The middle generation, beside its obligation to contribute, is left with at least some security in the event of invalidity and of death in respect of surviving dependents. The youngest generation is left with the orphans' pension. Otherwise, nothing is of comparable certainty. At the upper end of the age balloon, the Intergeneration Contract is supposed to attain the highest measure of legal certainty, while from there downwards uncertainty grows at a rapid and pressing pace. What kind of a 'contract' is that?

While constitutional law was thus seeking to anticipate the future of financial old-age protection, even the mere semblance of a balance which the term 'Intergeneration Contract' sought to insinuate began to go awry. On an increasing scale, the middle generation refused to assume the responsibility of child-raising. And so this generation increasingly changed within itself – and within its quantitative and qualitative relationship to the two other generations. The changes occurring in the world of work, and the migrations of capital and labour that went and still go hand in hand with globalization, led to rising unemployment. Simultaneously, the old were getting older. The duration of pension receipt was prolonged. This trend was accompanied by mounting expenditures for medical treatment and long-term care. For years now the state pension system has been faced by the permanent dilemma either of raising contributions, thereby progressively narrowing the incomes of the middle generation, or of lowering pension benefits to the older generation below the level that was long taken for granted. The illusion that the concept of the Intergeneration Contract is able to guarantee a self-supporting mechanism has imploded. The constitutional protection of ownership in respect of pensions has ceased to bear but a relative significance. Talk of the Intergeneration Contract has become sparse. It has been supplanted by the demand for *intergenerational justice*. This demand no longer tinkers with the image of a regulatory mechanism that enforces itself, but signifies the appeal to politicians to establish circumstances that are just for all generations.

Meanwhile, of course, the call for *intergenerational solidarity* has acquired a much broader meaning. In 1994, the following sentence (Article 20 a) was incorporated into the Basic Law of the Federal Republic of Germany (constitution): 'Mindful also of its responsibility toward future generations, the state shall protect the natural bases of life ...'. This sentence is primarily a response to the ecological challenges of our times. Yet it also implies that the 'responsibility toward future generations' is not limited to the 'natural bases of life' – that it goes beyond those, that it has a more general meaning. Nevertheless the connection is also indicative of the advice to introduce quite generally to 'intergenerational justice' that factor which has been developed in response to the ecological issue: *sustainability*. In the meantime, this term is believed to bear great normative significance. It appears self-evident to elaborate the meaning of 'sustainability' to embrace also the welfare state. Thus there are discussions on how the dilemma of the state pension system – swaying between inappropriate contribution burdens and inappropriate pension cuts – could be solved in favour of a 'sustainable'

regulation. One proposition has been to create a set of figures referred to as 'intergeneration accounts'. Based on prognostic assumptions concerning population development, productivity, and so forth, these figures are to determine what individual age cohorts pay into the public funds under the given contribution and benefit law, and what they receive in the form of public benefits. Any imbalances are to be corrected by amending the respective contribution or benefit legislation. If the pertinent data change, the consequences are to be distributed equally among the different generations. The concept has numerous indistinct boundaries. Firstly, every change in assumptions may demand adjustments that cannot be calculated in advance; and all adjustments can lead to changes in behaviour that necessitate new adjustments. Secondly, the focus on monetary redistribution leaves open how institutional benefits and services, such as infrastructure, education, and health care, are included. Thirdly, the focus on redistribution via *public* funds leaves open how private and societal services, notably those provided by families, are included. Fourthly, migrations add horizontal developments to the vertical development of generation cohorts. Further examples could easily be added. To date, the concept of sustainability has only served to give fragmentary political decisions the legitimation of being guided by integral rational contemplation. Nevertheless, these decisions in turn have so far corresponded fully with the gradients immanent in the political system: the priority of monetary redistribution through public funds; the priority of voters (the adults of the middle and older generations) over non-voters (children); the priority of the common interests of the middle and older generations (in old-age protection) over the particular interests of the shrinking proportion of parents within the middle generation (in lightening the load of families and promoting their children), and so forth. How can a word like 'sustainability' contend with such entelechy?

GENERAL OBSERVATIONS

Regarding Intergenerational Solidarity

Intergenerational solidarity refers to an interpersonal stance that takes account of the particular possibilities and the particular disadvantages and risks inherent in individual phases of life. It is directed towards unfolding the potential of one's own stage in life as well as that of others, while helping to balance the disadvantages and risks facing others in different life

phases. This stance, in its elementary form, is fulfilled in the genealogical lines of the family. For it to be accomplished sufficiently, however, intergenerational solidarity must extend beyond familial bounds. That is due to the inevitable differences in family constellations, to the supra-familial nature of many life patterns that are essential both for unfolding individual potential and for guaranteeing interpersonal aid, and finally to the a priori trans-private, general and public nature of human life. In the course of civilization's development, the importance of supra-familial solidarity has increased more and more – and so has the responsibility of the state and law for ensuring the necessary diversity of federal systems, institutions, and practices. In this way, intergenerational solidarity ultimately came to be intertwined with politics.

In the course of the 19th century, the responsibility of the state and law for ensuring intergenerational solidarity was perceived with mounting clarity as an *element of the welfare state*. Securing economic existence became a prime concern of intergenerational solidarity. Accordingly, redistribution evolved into the essential medium of that solidarity. New outward forms were developed and later subsumed under the term 'social security'. In the wake of those developments, intergenerational solidarity was 'made' public – more precisely, it essentially remained *also* private, but its public share increased. Which at the same time meant that intergenerational solidarity was monetized, since public care for the living circumstances of individuals is provided with the least amount of friction through monetary benefits. In particular, the political dimension of intergenerational solidarity was realized through monetary redistribution. That not only corresponded to the democratic attractiveness of monetary giving; it also conformed to the interest, founded on the rule of law, in making sure of the provision. Correspondingly clear, on the other side, was intergenerational solidarity's political gradient between publicly organized monetary benefits – at the very top – and private (mainly familial) services and benefits in kind – down at the bottom – that is, simultaneously, between generality and individuality, between certainty and uncertainty.

After the Second World War, the industrialized countries of the 'free' world experienced a unique period of growth – both of their economies and their welfare state instruments. Among the most insistent features of this age was *the illusion that individual prosperity in the mid-phase of life could be extended into the phase of old age through 'social security' techniques*. The prolongation of life and the redistribution of capital, labour, and knowledge in a 'globalized' world have called this illusion into question.

At the same time it has become apparent that intergenerational solidarity must not be restricted to the economic basis of life – especially not to financial income. *Intergenerational solidarity must refer to all bases of life, notably the natural bases of life.* Finally, intergenerational solidarity must not focus on the relationship between the phases of gainful activity and old age. *The most important resource for every individual's life, for the life of all societies, and the life of humanity are human beings.* The most important thing a human being requires in all phases of life is his or her capability of living. Most recent experience has therefore proven that *intergenerational solidarity must be achieved in all phases of life.* If it were justified to attribute a special rank to one life phase, this would have to be the *phase of childhood and youth.* That is the *decisive phase for determining the capability of living and thus for achieving intergenerational solidarity with others.*

Intergenerational Justice

In terms of *distributive justice*, this means that 'rights' and 'obligations' are spread out unevenly over the individual life phases. While the mid-phase is typical of giving (or at least of being supposed to do so), the child and youth phase as well as that of old age are typical phases of taking (largely of having to do so). In terms of *retributive justice*, this means that giving (also having to do so) in the mid-phase is justified by having taken in the child and youth phase, which is resumed in a 'right to take' in the phase of old age. *Intergenerational justice* therefore means that society, the state, and law should not only comply with the possibilities and needs of the individual phases of life, but that the burdens of the mid-phase must find adequate compensation in the 'rights' of the child and youth phase, as well as in the 'rights' of the old-age phase. In other words: the 'rights' of the child and youth phase must be in reasonable proportion to the burdens of the mid-phase, as must the 'rights' of the old-age phase. In the process, distributive and retributive justice will of course assume unequal proportions. The life assistance rendered in the child and youth phase cannot be made to depend on what will be given in the mid-phase of life. Its purpose is absolute: to provide the opportunity for young life to develop. Distributive justice *must* prevail. The life assistance granted in the phase of old age, by contrast, can very well be made to depend on what was achieved in the mid-phase. Retributive justice *can* prevail. *Intergenerational justice* therefore finds expression in a *sequence*: in the

child and youth phase it above all takes the form of distributive justice to provide opportunities to young life; in the *mid-phase* it comprises both distributive justice in accordance with personal performance as well as retributive justice in favour of the young and the elderly; and in the *old-age phase* it involves distributive *and* retributive justice depending on prior performance in the mid-phase and on the needs of old age.

The *hopeless complexity* of these interrelations has long become evident. Notwithstanding, they must be extended by yet another *two dimensions*. The *one* consists in the *endlessness of the generational chain and its relationship to the limitedness of resources*. Every generation has the responsibility to leave behind sufficient *regenerative* resources for the following generations – enough to support them if they make prudent use of their potential for replenishment. And every generation has the responsibility to leave behind sufficient *non-regenerative* resources to support the following generations – to enable all succeeding generations to go on living (at least) on the same level as earlier generations.

The *other dimension* consists in the *common ground of this earth* whose resources are not a priori and forever distributed across self-contained societies. It consists in the fact that it does not suffice for a certain society to sustain for its later generations the resources now available to it; rather, the earth's resources must be safeguarded for all generations who will live on this planet. And finally, it consists in the fact that it cannot be left to the discretion of a society or its members to abrogate the responsibility of another society for the resources of its territory – neither through the migration of people, nor through the utilization of resources.

Intergenerational justice is not only conceivable along national lines; nor, however, is it absolutely and directly conceivable on a global scale either. If one visualizes generational sequences vertically and resource distribution horizontally, and if one bears in mind that concrete constellations of allocating people to resources have developed on a country or perhaps also regional basis, this always means that concrete constellations of intergenerational solidarity will have developed as well. And when one considers that along the horizontal line the distribution of people and, via the markets, of resources can change as a result of human migration, it becomes evident how very much these changes (and above all human migrations) may potentially alter the conditions of intergenerational solidarity and the normative concepts of intergenerational justice. Of what import *sustainability* could be to these global and continental challenges is hard to see.

Normative Concepts?

Neither intergenerational solidarity, nor intergenerational justice, nor sustainability are self-evident and self-fulfilling normative concepts. Even within the *national realm*, the complexity of intergenerational justice and the uncertainty of sustainability tend to multiply themselves. The difficulties of achieving an *international order* are even much farther away from any solution.

Adverse developments in the *national realm* are first of all attributable to the fact that the overall problematic nature is only gradually coming into focus and being analyzed. The solutions adopted hitherto have been unbalanced. This not only shows that full awareness of the given problems has only recently improved and that the limits to their solutions have only become visible in the course of experience; it also highlights differences in the political assertiveness of groups and interests, as well as in the political and technical attractiveness of problems and their solutions. All this is augmented by societal and political misjudgements of facts and effects, institutions and instruments. It is of utmost importance to know that intergenerational solidarity can only be fulfilled within the interrelationship between the state and society, within the private and the public sphere. Societal developments are, however, hard to steer (as evidenced not least by demographic data). The reactions of individuals, families, groups, and organizations to legally and administratively set data – notably in their massive interdependence – are scarcely foreseeable; indeed, they are not seldom surprising.

PERSPECTIVES

The Comprehensive, Complex Responsibility

Intergenerational solidarity denotes a problem area of far-reaching dimensions and extreme complexity. Solving these problems is the object of elementary and urgently needed interpersonal, societal, political, and legal responsibility.

The Incomplete, Open Normative Approaches

Such concepts as ‘intergenerational justice’ or ‘sustainability’ (in its current sense) are impulses on the way to analyzing the problem area,

defining the problems, and evaluating the solutions. 'Intergenerational justice' can lead to a systematic ordering of the problems and their solutions; it cannot, however, order the concrete solutions. The concept of 'sustainability' serves as a guideline for viewing the problems and embarking on solutions. Even less so than 'intergenerational justice' does 'sustainability' produce the contents of the concrete solutions. No doubt seldom in the history of law has a single word been normatively overestimated as much as 'sustainability'.

The Knowledge of the Matter

One of the major reasons why intergenerational solidarity is achieved only deficiently is the incomprehensive awareness of the problems and of feasible approaches towards finding solutions. A further-going rational investigation into the 'nature of the matter', into that which is meant by intergenerational solidarity, is therefore imperative if the responsibility for intergenerational solidarity is to be duly met. That requires reliable, honest fact-finding and reporting, academic research, and rational discussion. Society and the state must act in unison to fulfil these requirements. It does not suffice simply to gain new insights; these must also be conveyed. Hence, conveying comprehensive systematic knowledge on the matter of intergenerational solidarity constitutes an additional important demand in keeping abreast of the responsibility for intergenerational solidarity.

The Forces of Achievement

New insights will not lead to achievements of their own accord. These require forces that adopt the insights along individual, social, political, or legal lines. Generally it will be those forces whose value concepts or interests conform to the insights. Yet there is no guarantee that these forces' understanding of the insights, or their use of them, will do justice to what would be commensurate with an order and a reality of intergenerational solidarity that is right in its entirety. Consequently, the political and legal system must be specifically structured so as to merge the particular forces to achieve the right measure of order.

Imbalances, however, also arise from the fact that certain values and interests are only weakly or not at all represented. For this reason, the political and legal system must ensure that these values and interests are safeguarded by way of stewardship. That can occur through normative

precepts and limitations (state objectives, fundamental rights, etc.). And that can occur through mandates of stewardship (ombudspersons, 'authorized agents', etc.). In many cases, freely formed groups (initiatives, non-governmental organizations, etc.) are respected as mandataries. In the private sphere, such mandates will be accorded to individuals (in their long-standing legal recognition as guardians). In general, normative rules, mandates of stewardship, and state responsibilities will have to complement each other. Proceeding thus to establish a balanced order that comes close to the ideal of 'the right kind of intergenerational solidarity' is certainly anything but simple.

One Example: Children

Among the most difficult problems here are the concerns of children. Children are dependent upon their family, notably their parents. Externally, they share common interests. But only parents have a fully valid mandate for safeguarding these interests. And forged into this one mandate are the parents' own individual interests. Thus it is up to parents to decide how to resolve conflicts if, say, as voters they give preference either to their own interests through one political party or to those of their children through another. Yet even if they wish to give preference to the 'party of their children', they do not have as many votes as they have children, but only their own one vote. Internally, parents and children also have different interests. Resolving these conflicts likewise lies within the responsibility of the parents. The number of factors thereby coming to bear, as well as the question of how and why such resolution occurs or does not, occurs adequately or inadequately, cannot and need not be outlined here. Other than in the case of the external relationship, the polity and law, perhaps also societal forces, will of course intervene in this internal sphere: youth authorities and courts, guardians, organizations that care for neglected and vulnerable children, neighbours, and others. In their educational function parents do not stand alone as it is. Schools and out-of-school youth facilities accompany both children and parents. And society, too, has a highly manifold impact on children: peers, the media, the large offer of merchandise and entertainment, and the like. All this can advance as well as jeopardize child development.

The order provided by the state for the relations between children, parents, and all 'co-educators' is not directly influenced as such – that is, as an

order – by the children. Political co-determination lies in the hands of the parents, who, however, share this right with all non-parents. They share it not only with the non-parents of ‘their’, the middle, generation, but also with the non-parents (and parents) of the elder generation. And in competing with all the others in the political arena, parents only have their own single vote.

That is all the more difficult since – as shown by the examples of schools, kindergartens, and other day-care facilities – political decisions that concern the accompaniment of parents in their child-raising work affect people’s value and life concepts in highly different ways. What, in effect, is intergenerational solidarity? To be sure, we encounter a similar problem with the older generation. Caring for the elderly is an irremediably difficult problem. Policy-makers thereby focus on monetary benefits, which is what society expects from them. Negligence in the care is acquiesced in case of doubt, despite all the complaint voiced every now and then. Granted, for old persons a dignified evening of life is at stake. But for children, it is a whole lifetime – including the contribution each of these children can make on behalf of all others, also on behalf of their elder and younger compatriots.

Regardless of all else that could be said, the obvious fact is that a political system ensuring intergenerational solidarity also on behalf of children has not yet been found.

The Other Example: The Future

This becomes even clearer when addressing the anticipation of the future: current consumption to the detriment of future generations (e.g., state indebtedness – a ‘gambling arrangement’ founded on the hope of extraordinary growth that will someday make repayment possible), irretrievable losses (e.g., fossil fuels), or the risk of having to disappoint some and/or exploit others (e.g., unrealistic old-age provision). That these problems *also* go to the expense of children demonstrates once again how inadequately developed intergenerational solidarity is, precisely for them. That these problems *also* go to the expense of the endless succession of coming generations nevertheless illustrates even more dramatically the responsibility incumbent on this day and age.

The threat to all future interests constitutes a problem of the political system. Democracy is characterized by the temporary mandate. That applies not only to the mandataries, but also to the mandate itself, its scope. If a mandatory is appointed for a certain period, it will be in the nature of

the relevant institution to give preference to tasks that lie within the term of the mandate. Put differently: in a democracy the future dimension atrophies; election cycles chop it up.

The future proves to be not only a weakness of democracy. It is a dilemma. A political system that must take due account of the future is not only confronted with the heightened risk of failure. For even a correct forecast is subject to the danger of circumstances developing differently from those taken as a basis for the projection. The more the 'temporary mandate' includes the future – its appraisal and its guidance in conformity with that appraisal – the more democratic legitimation will be at the mercy of human fallibility. On the one side lies false appraisal, on the other usurpation – arbitrary decision-making under abusive reference to the necessities of the future. To ease this dilemma, the ascertainment, analysis, and evaluation of the relevant criteria, as demanded above in general terms, is of utmost importance, as is simultaneously a form of politics that seeks to handle circumstances of the present in such a way that they can be adjusted to the challenges of the future.

Three 'Golden Rules'

In this situation of yet great uncertainty about how intergenerational solidarity can be provided in normative and institutional terms, three 'golden rules' ought to be followed to narrow down the risks:

First, top priority should be given to the qualification of young persons. They should be sent on their way with as much competence as they are able to attain individually. They should be made capable of caring for themselves and others. And their dependence on collective systems should be reduced as far as possible. This capability should accompany them until they reach old age, and in making provision for and adjusting to old age.

Second, living in the present should be economized. Every burden on the future must be avoided at all cost, unless a temporary burdening of the future (not the present) is imperative for securing an advantage that would otherwise be irretrievably lost.

Third, the factual circumstances and their development require extensive and differentiated investigation and depiction, scientific research into their regularities, as well as a rational discussion of their evaluation. Only if the observation, prediction, and guidance of long-term developments is thus learned, could regulatory mechanisms of 'intergenerational justice' and 'sustainability' become feasible. Nevertheless, to forestall

these regulatory mechanisms would amount to negligent or deliberate deception. Very much more realistic is the endeavour to create the prerequisites for duly formulating and adapting individual, societal, political, and legal strategies of 'intergenerational justice' or 'sustainability' through an improved culture of acquiring, understanding, and evaluating the quintessential facts and their development.