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

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In *The Human Right to a Green Future*, Richard Hiskes<sup>1</sup> argues for a human right to clean air, water and soil that should be recognised as being possessed by both present and future generations.<sup>2</sup> He presents a theoretical basis for justice across generations, arguing that environmental human rights, citizenship, identity and human relationships can provide the necessary reciprocity required by a theory of justice. In doing so, he attempts to utilise the “muscular language of human rights” to add ‘bite’ to environmental protection: it should not be about *altruistic acts* or *sympathy* to future generations; it is a matter of human rights and of justice. Thus, the text explores and pushes the boundaries of these terms and is as much about the foundational principles of human rights generally as it is about finding a theoretical basis for the human right to a green future.

This review proceeds in two parts. First, it offers a brief summary of some of the main themes and ideas that Hiskes considers when building his argument for justice, based on environmental human rights, for future generations (Chapters 1-5) and the way in which it can be implemented (Chapter 6). The review then offers some considerations on the content and style of the book, including its place in this particular field of research.

Chapter 1 introduces the difficulties of establishing a human right to a green future; difficulties that the rest of his book will have to deal with. Hiskes begins by adopting the ‘conditions of justice’ articulated by Hume, one of which is that there must be a ‘reciprocal relationship’: i.e. a ‘mutual advantage’ rather than mere sympathy towards another. Many philosophers (from Aristotle to Hume) have argued that having a reciprocal relationship with individuals that no longer exist (i.e. past) or are yet to exist (i.e. future) is a logical impossibility. Hiskes, however, rejects this impossibility and offers an interpretation of justice that includes future generations.

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<sup>1</sup> Richard P. Hiskes is Professor of Political Science and Senior Political Theorist at the University of Connecticut. He is the Editor of the Journal of Human Rights and Director of the Human Rights Minor.

<sup>2</sup> Hiskes at p. 70

Hiskes also addresses the issue that environmental goods can be conceived of as ‘distributional objects of justice’<sup>3</sup> raising the concern that environmental ‘goods’ are not ‘goods’ but ‘emergent risks’ or ‘bads’ that cannot be attributed to an individual person (arguing that this is the reason why environmental outcomes/goals have never been included in theories of justice from Aristotle to Rawls).<sup>4</sup> This prompts the question: ‘how can we claim to protect future generation’s claims to environmental goods if the present generation has no such claim?’<sup>5</sup>

In response to this problem, Hiskes argues that damage to the environment generates ‘environmental risks’ that can cause actual – or basic – ‘harms’: the type of ‘harms against which people should have rights’. Therefore, the present generation (and future generations) should have a claim to be protected from these ‘harms’ even if they do not have a claim to a particular piece of the environment *per se* (such claims to physical resources are prevalent in traditional theories of justice – e.g. Rawls). Furthermore, these environmental risks/harms will affect people differently, the burden being greater for some than for others. Thus, he argues that,

“Any theory of justice... must be careful to include environmental risks as a major element of distribution and participation. Not to do so threatens to make the whole project of a theory of justice irrelevant in an age characterized by pressing environmental concerns that confront all communities around the globe”.<sup>6</sup>

Having raised the challenges to intergenerational justice, Chapter 2 proceeds to consider the existence of ‘environmental rights’ or, as Hiskes refers to them, ‘emergent environmental rights’. He argues that human rights are grounded in human identity (and human relationships), with many different interpretations of that ‘identity’ (from philosophy, moral psychology, feminist theory and so on) insisting ‘on the relational, emergent nature of human identity... therefore our understanding of all human rights should include their ‘relational’ or ‘emergent’ side’.<sup>7</sup> This ‘relational’ nature means that society – or community – is essential to our present day understanding of human rights.

This Chapter also considers the corresponding duties to these ‘emerging rights’ and *who* has these duties; as he rightly notes, this question presents a particularly difficult problem:

“The problem of who acquires assigned duties relating to prescribed rights is particularly pressing within the context of environmental rights, because responsibility for fulfilling duties in response to someone’s environmental rights seems diffuse at best, and at worst perhaps only a supererogatory obligation rather than a rights-based one.”<sup>8</sup>

Hiskes, however, attempts to overcome this concern. He begins with Shue’s idea that ‘harms generate rights’ – i.e. that ‘rights’ are used to protect individuals from significant harms. He then concludes, however, that most environmental harms are simply a ‘product of our life’<sup>9</sup> and ‘it is not always possible to identify a particular person or persons causally related to the harms’.<sup>10</sup> It is this aspect that renders environmental human rights as ‘emergent’: ‘the harms and duties to which they respond are emergent (diffuse across groups and time)’.<sup>11</sup> Just because they are ‘emergent’ or ‘diffuse’, however, does not mean that a collective duty cannot be imposed.

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<sup>3</sup> Hiskes at pp. 16-19

<sup>4</sup> Hiskes at p. 19

<sup>5</sup> Hiskes at pp. 18-19

<sup>6</sup> Hiskes at p. 21

<sup>7</sup> Hiskes at p. 46

<sup>8</sup> Hiskes at p. 41

<sup>9</sup> Hiskes at p. 43

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

Chapter 3 returns to the question of intergenerational justice. Hiskes recognises that other theories of justice (Rawls, Gauthier, Barry, Nozick) do not consider justice between future generations as possible because there is no reciprocal relationship; as previously noted, this is essential in order to ensure that duties are founded on ‘mutual advantage’ and not mere ‘sympathy’ (too narrow to establish universal obligations), as well as to ensure these duties satisfy Hume’s ‘circumstances of justice’. However, Hiskes suggests that reciprocity is possible between generations; ‘a reflexive reciprocity – respecting the rights of the future redounds to our [present day individuals] benefit in a kind of virtual reciprocity – reflexively strengthening our rights today’.<sup>12</sup> In other words,

‘...protecting and furthering the environmental rights of future generations enhances and adds strength to the same rights of the present generation’.<sup>13</sup>

It is this ‘reflexive reciprocity’ that Hiskes uses as a foundation for the recognition of emergent environmental rights and for a theory of intergenerational justice that can defend these rights.<sup>14</sup> He argues that reciprocity is ‘intrinsically part of communal living, and community itself is itself a product of such reciprocity’, recognising the ‘definitive cultural artefacts that citizens share both with their predecessors and their successors’.<sup>15</sup> In other words, ‘communities presume their own cross-generational existence as they revere their pasts and attempt to guarantee their futures’. This generates a shared ‘communal identity and responsibility’ – founded on shared interests and morals – which can ground a transgenerational obligation to respect environmental rights:<sup>16</sup> communities can indentify with both past (building on a previous identity and prior experiences) and future generations (passing cultural and moral identity onto future generations).<sup>17</sup>

Hiskes rightly identifies that when this reflexive reciprocity is applied to environmental justice, ‘communities are in a relationship of reciprocity with only their *own* future generations and not with *all future persons*’<sup>18</sup> (emphasis added). Hiskes cites Barry as having argued that this situation raises the possibility that specific communities will focus only on their successor generations and not those of other communities.<sup>19</sup> Chapter 4 of his book deals with this concern by considering three general topics: (1) the debate between moral cosmopolitanism and moral particularism; (2) acknowledging that rights will ultimately end up being legal (if they are to be enforced against the State), Hiskes addresses the question of whether “nations are properly viewed as moral communities capable of encompassing the obligations entailed by... rights of future citizens”,<sup>20</sup> and (3) whether nationalism is antagonistic to all moral systems. Hiskes argues that nationalism is not necessarily adverse to moral or human rights theory; an approach that not everyone will agree with.

Discussion of these topics leads to the conclusion that human rights theory and practice reveals a local versus global paradox: universal, global human rights are considered legitimate and are increasingly accepted whilst at the same time there is an insistence on ‘honouring the diversity of individual cultures and their right to maintain their historic norms’.<sup>21</sup> Yet Hiskes argues that a sense of ‘future generations’ exists in *all* cultures regardless of political and social differences. Chapter 5 is where Hiskes presents the argument that it is possible to ground a universal concern for the global environment and for *everyone’s* environmental rights in “the parochial communal attachments of

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<sup>12</sup> Hiskes at p. 49

<sup>13</sup> *Ibid.*

<sup>14</sup> Hiskes at p. 50-51

<sup>15</sup> Hiskes at p. 66

<sup>16</sup> Hiskes at p. 72

<sup>17</sup> *Ibid.*

<sup>18</sup> Hiskes at p. 69

<sup>19</sup> *Ibid.*

<sup>20</sup> Hiskes at p. 72

<sup>21</sup> Hiskes at p. 92

individual persons to their own culture and society”.<sup>22</sup> This part of his argument will also be controversial for some: can an approach where communities look out for their own interests really yield collective, cooperative and sustained success at the global level? Or will those with advantages (wealth, power, influence, control, reputation) win out against those who lack these advantages?

Hiskes also raises the argument that it is *democratic politics* that best generates a sense of community and can be the foundation of a “shared realm of meaning” defined by nationality.<sup>23</sup> And, as “community members of democratic nations... citizens have the obligation to consider the welfare of their successor citizens”.<sup>24</sup> Indeed, his argument rests on *citizens* and not simply *human beings*: “all humans therefore possess environmental rights as (and only as) citizens of their own transgenerational national communities”.<sup>25</sup> The importance of citizenship and ‘nationality’ is considered in practical terms in Chapter 6.

Indeed, Chapter 6 offers some practical application of the theory outlined in Chapters 1-5, arguing the importance of national constitutions as multigenerational cultural and political manifestations of a nation (‘community’). Thus, Hiskes proposes that national constitutions should be amended to include environmental human rights protecting future (and present) citizens, on the theoretical basis outlined in Chapters 1-5 of his book. The result would be procedural environmental rights that are,

“...the mechanism with which to ‘balance’ the power relationship individually between living citizens and their successor generations who exist as groups...”<sup>26</sup>

It is regrettable that Chapter 6 does not go into considerable detail as to how this might work or what specific rights people would – or could – obtain.

The foregoing brief summary of *The Human Right to a Green Environment* cannot do justice to the book itself; it simply raised some of the themes and issues that Hiskes considers in his argument. It does reveal that the book is immersed in theory, attempting to find a theoretical basis for intergenerational human rights and justice. Whilst Chapter 6 starts to apply this theory, it does so in a limited context (Hiskes relies considerably on the U.S. Constitution; greater analysis of other constitutional examples would have been welcome) and in little detail. For that reason, readers wanting a more practical discussion may be disappointed.

This is unfortunate because one of the reasons why Hiskes has written his book is because he wants “to offer the concept and muscular political languet of environmental human rights...”<sup>27</sup> and to provide “a new language with which to bring politics and environmental protection together in the service of preserving for future generations a legacy of clear air, water, and soil.”<sup>28</sup> It is certainly true that a strong theoretical argument is necessary for these objectives to be achieved; but equally important is the practical consideration of how *legally* such an argument would work on a *global* scale. Chapter 6 does not do justice to the theory behind the book. Indeed, other texts – such as Weiss’s *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity*<sup>29</sup> – offer greater practical detail and discussion as well as potential methods of implementation.

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<sup>22</sup> Hiskes at p. 93

<sup>23</sup> Hiskes at p. 90

<sup>24</sup> Hiskes at p. 91

<sup>25</sup> Hiskes at p. 144

<sup>26</sup> Hiskes at p. 140

<sup>27</sup> Hiskes at p. 151

<sup>28</sup> Hiskes at p. 1

<sup>29</sup> Weiss *In Fairness to Future Generations (Innovation in International Law)* (Transnational Publishers Inc.: United States, 1989)

*The Human Right to a Green Future* does provide a good survey and application (to environmental concerns; to provide a language of justice and human rights for future generations) of political and philosophical thinkers and their reflections on justice and human rights. The survey is let down, however, by the fact that Hiskes' writing style does not fully explain his arguments; often they are asserted briefly with references to posterior sections of his book, which sometimes renders his argument difficult to follow. Furthermore, the subsequent sections often do not provide the necessary detail for students or academics coming to these issues for the first time: it is not a useful introductory text. The reader requires a good understanding of the philosophers, thinkers and academics he references and some of the issues surrounding environmental justice, in order to fully appreciate his argument and to follow it uninterrupted. Despite these concerns, the book is a welcome addition for researchers considering issues of environmental human rights from a theoretical and multi-disciplinary perspective.