

## Justice and Youth Quotas: Comments from a Libertarian Perspective

Marcel Wissenburg

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**Abstract** (4000 characters)

Quotas are almost always evaluated from a broadly social liberal perspective. Quotas in representative political institutions for the young, suggested as instruments to ensure justice between generations in both present and future, are no exception to that rule. By unquestioningly adopting a social liberal perspective in the context of ‘temporal justice’, we run the risk of overlooking several dubious assumptions. If the assumptions are flawed, the standards by which we evaluate the desirability and permissibility of policies and institutions will be flawed too. In less abstract terms: if we want to know whether or not youth quota are a morally good idea, we need to be sure we measure right and wrong, just and unjust, by an arguably legitimate standard.

In my contribution I shall challenge, most of the time from a libertarian perspective, some of the assumptions that seem to define the temporal justice discourse. To mention just three out of the seven assumptions that I discuss: there is no duty to ensure the continued existence of humanity; planet Earth is neither any individual’s property nor that of the whole of humanity; and collective responsibility for future generations is a political convention not a moral obligation.

By revising or even abandoning these seven fundamental mistakes, justice between existing and future generations takes on an entirely different form. This will be a theory of temporal justice in which responsibilities are clear and cannot be shifted onto the shoulders of the weak and innocent. I shall (only) briefly sketch some outlines and general implications of such a theory. Having repaired the flawed social liberal perspective on temporal justice, I then return to where I began: to the question whether quotas for younger generations are just and moral.

While a libertarian perspective on temporal justice is helpful and utterly liberating, the libertarian theorist’s attitude towards quotas is predictable, unpractical and unhelpful – despite it’s being correct. Libertarians are vehemently opposed to any form or type of quota provision, first and foremost because any cooperative venture should be the result of free and unrestrained individual choices, secondly (and this applies more to deontological liberals than to free-market, utilitarian thinkers) because representative institutions have virtually no role whatsoever in a libertarian society – democratic decision-making is pre-empted by individual rights.

The problem is that libertarianism, like utopianism, assumes a context that does not yet exist; like the Baron von Münchhausen, libertarianism has to tear itself from the swamp by its own bootstraps. It offers a choice between ultimate good (libertarian society) and ultimate evil (everything else) but no guidelines for choices between the fifty shades of grey that our evil real-existing world offers.

I therefore opt for a more pragmatic answer to quotas. I will suggest that quotas for the young can be tolerable in the context of justice between existing generations, since they may, under the right circumstances, limit abuse of negotiation power, thus guarantee a fair representation of interests, and prevent the construction of exploitative (oppressive) institutions. Where justice towards future, non-existing generations is concerned, however, it is at the very least quotas protecting minimum representation of the elderly, and perhaps even exclusion of the middle-aged and young, that would be more appropriate. If the aim of a quota rule is to impartially represent the interests of absentees, the most sensible candidate for representation is, after all, he whose personal interests are least likely to be hurt by the represented. I shall finally suggest that even in a representative, deliberative democracy a better instrument than quota is available and is far more urgently needed: veto rights.

## Introduction

Quotas are on everyone's minds these days, both when we select people and when we elect them. When we, or at least the more or less experienced administrators and politicians among us, select members of a committee, we never ever pick people at random. We select them on the basis of knowledge and experience, political or social interests, gender, culture, ethnicity, any old trait or characteristic that might be relevant to the legitimacy and effectiveness of the choices that the committee is expected to make. These days, it does not happen often that groups have to publicly remind us of their exclusion – as a sort of pre-emptive strike against formal quotas, we have become our own thought police and have assimilated a directive demanding universally fair sociological representation as part of our standard operating procedure.

Quotas are also on the minds of many of us in the election booth, who, already having picked a party, subsequently find ourselves unable or unwilling to express a strong preference for any particular candidate. We the undecided then often ask ourselves whether we should vote for a women, for an academic, for someone from our home town or region or from a particular ethnic or religious group. And sometimes we really can't choose. I admit that I have once decided to vote for my party's most attractive female candidate, and on another occasion for the candidate most closely related to me by family ties – our present prime minister, with whom I share a four-times-great-grandfather. Any *random* criterion, however offensive, will do when no *relevant* criterion applies.

And here we are discussing quota for the young, specifically quota in representative political institutions – for the sake of simplicity I shall say that we're talking about quotas in parliament. We have in fact been discussing two different types of quota (as so excellently described in Juliana Bidadanure's paper). One refers to intergenerational justice between *existing* generations or age cohorts, to ensure the proper representation of the presently young, which I shall refer to as intergenerational justice. The other type of quota would have to allow the young to represent future generations – I'll call this justice towards future generations. When I refer to the two together, I shall use the term temporal justice.

Quotas are almost always developed and evaluated from a broadly social liberal perspective – that has happened here as well. That is to say, many among us assume that societies ought to be broadly speaking constitutional liberal democratic societies, that they should have governments controlled by representative institutions, that governments have tasks other than defense against enemies abroad and at home, and they, you, we, assume that there is a sort of collectively owned hoard, a stock of resources that has to be distributed over society in a fair, just and impartial way, so as to enable all of us to enjoy the greatest freedom to live our lives in accordance with our own convictions, as long as that freedom is compatible with a similar freedom for others – in John Rawls's words. I usually share these convictions, at least on week days, but this weekend, for the sake of academic sincerity, I will take some distance from these views and adopt a more libertarian perspective on society and politics. I choose a libertarian perspective over other popular schools in political philosophy, because libertarianism comes closest to functioning as a conscience for social liberalism.

My argument tonight will be that, by unquestioningly adopting a social liberal perspective in the context of temporal justice, we run the risk of importing and overlooking several quite dubious assumptions. Now if the assumptions of a model are flawed, then the standards by which we evaluate the desirability and permissibility of policies and institutions will be flawed too. In less abstract terms: if we want to know whether or not youth quota are a morally good idea, we need to be sure that we measure right and wrong, just and unjust, by an arguably legitimate standard.

I shall identify seven such dubious, usually unseen and unquestioned assumptions – and for brevity's sake I shall refer to them as misunderstandings. Some of these have to do with intergenerational justice, some with justice towards future generations, and some with the way the environment is conceived of in the temporal justice discourses. Having shoved these seven dwarfs aside, we discover

we are left with a perhaps theoretically consistent, intellectually challenging and morally sincere view of temporal justice – but also one that is highly unpractical. So I will end by developing a more pragmatic analysis of our two-headed sleeping beauty, quotas for the young.

### Seven misunderstandings about temporal justice

The first and most important misunderstanding in temporal justice theory is that there must be future generations. It is very common to assume that humanity will, indeed must, procreate. (Pieter Vanhuyse's paper suggests something similar: for him, children are a collective, public good for which their creators should be rewarded.) The command to ensure the survival of humanity is, quite tellingly for our cultures, the topic of one of the most classic flirtation strategies and even more, it is part of the ultimate and most definitive rejection: 'I would not go out with you even if you were the last human being on Earth...' In circles more directly related to my own sub-discipline, green political theory, it was Hans Jonas in *Das Prinzip Verantwortung* (1979) who effectively put justice towards future generations, particularly environmental justice, on the political agenda – and it was also Jonas who explicitly stated that humanity has a duty to ensure the continued existence of the species. The grounds Jonas quotes for this duty remain a bit vague but the gist of his argument is that it is a Christian duty, a divine command implicit in our creation.

Most current authors in the field of temporal justice, even those working on questions of population growth, do not take the trouble to offer an argument but simply assume that humanity must continue to exist, simply by never discussing the alternative, the passing or fading out of humanity. Whether or not religion has a place in polite society – that's a moot point, but it will be clear that this idea has no place in a social liberal context. For social liberals, there can be no recourse to religious or other unreasonable doctrines as foundations of the public good. And that precludes the possibility of arguing that there can be a duty to ensure the continued existence of humanity. To whom, after all, would we owe this duty? Let's take a moment to consider this question.

First, it cannot be a duty towards future generations or future individuals themselves – that would be straight out of the handbooks circular reasoning. Secondly, it cannot be a duty towards our fellow citizens either – that would make our reproductive organs, our wombs and testicles, their property, to be used at their discretion – by majority vote or government directive. More precisely, it would make our bodies the property of the collective, and thereby turn us into mere tools and test tubes, into slaves.

Thirdly and finally, ensuring the continued existence of humanity, a.k.a. having children, cannot be a duty to ourselves either. That would imply one of the most invasive paternalistic limitations imaginable on the individual's freedom to formulate and execute his or her own authentic plan of life and theory of the good. By making parenting a necessary element of a life worth living, it would also be an insult to, and a failure to recognize the existence of, those who cannot procreate – as much as those who are by law excluded from parenthood. I mention in that connection in particular more or less civilized people like the Russians who opt for openly supporting a truly antediluvian, barbaric attitude towards homosexuality in their societies.

So no duty to procreate then. What is instead consistent with a liberal worldview is the idea that having children can be part of an *individual's* plan of life, if he or she so *chooses*, and if the execution of that choice does not harm anyone else. It follows that if any social or political duty in relation to future generation exists, it is a *prima facie* duty towards the prospective parent: other things being equal, we may have duties (and I will assume that we do have those duties) to tolerate the wish to procreate, and to enable him or her (the parent) to enjoy the same liberties, to have the same opportunities and means to create a new human, that we grant to contemporary others.

Moving on more rapidly and succinctly to the second major misunderstanding in temporal justice discourses: there is no collective responsibility for future generations, or more precisely: any collective responsibility taken on on behalf of future generations is a political convention, not a moral obligation.

This follows logically from our observation that we have no duty to ensure the continued existence of humanity, only duties to give individuals who want to procreate as fair an opportunity to do so as others, including those who don't or don't want to. There are a couple of provisos that have to do with duties towards the incompetent and the abandoned. But in general the proper liberal attitude in the area of justice for future generations should be that it is the responsibility of the procreating parent or consenting parents to ensure their children will have a life worth living, and (contrary to Brian Barry's demand that they be no worse off than their parents, as quoted by Juliana Bidadanure) that does not even seem to have to include the option of enabling them to create a third generation.

Let me next discuss three misunderstandings that are relevant to both types of temporal justice, misunderstandings that have to do with environmental sustainability, or environmental management or however you want to call it.

Misunderstanding number 3 is to believe that, because planet Earth is not any individual's property, it would therefore be the exclusive property of humanity as a whole. Traditional libertarians stress that nature is unowned before what is called 'original acquisition', the appropriation by individuals of natural resources with an eye to using them. So-called left libertarians and virtually all social liberals assume that before exploitation, natural resources are the collective property of a people, a nation, a state or the whole of humanity.

The difference between these two positions is crucial: from the traditional libertarian point of view, any act of acquisition, any intrusion on sovereign nature, has to be positively justified – and though admittedly the average libertarian's standards for justifiable acquisition are abysmally low, they do *have* standards and are not *principally* opposed to raising them. On the collective ownership view, however, what has to be justified is not *that* nature is turned into resources but *how*, and for what purpose. It is assumed beforehand that there is a legitimate use for each and every bit of nature – the question is how to identify a precise legitimate purpose and legitimate user. Yet social liberals offer no justification for the primary assumption that a people or humanity are the initial owners of nature.

The social liberal position is internally inconsistent. Either property rights are derived from natural law, or they are conventions. If derived from natural law, then we must justify acquisition in broadly Lockean terms, assuming initial non-ownership. If property rights are based solely on convention, then nature is by definition unowned before appropriation. In either case, the onus of proof lies with whoever intends to exploit nature.<sup>1</sup>

More down to earth – the social liberal attitude towards nature does not protect nature itself against exploitation, which implies a bias towards turning nature into resources now rather than later, which in turn precludes future generations from developing other resources based on the now exploited rather than protected bits of nature. It is this attitude that, in the pursuit of improved welfare for the presently worst-off and their descendants, is for instance willing to sacrifice currently useless animal and plant species.

Mistake number 4: property rights, private or other, do not necessarily include the right to destroy with impunity. A property right to an object x is in fact a whole series of rights – rights to use x in this or that way, in this or that context, and to this or that purpose; rights to delegate and transfer, rights to mould and shape, and so on. But none of those rights is *a priori* absolute; they are all limited by other people's rights, including but not limited to property rights in other objects. And this implies that, while arguably the crucial difference between ownership and possession is the right to destroy x, that right too is *a priori* never unlimited. It furthermore implies that one of those limits may be a duty to provide compensation to those now deprived of the public benefits of the destroyed good X.

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<sup>1</sup> Aside from the question which collective (humanity, state, people, tribe, family) – collectives have to explain their intentions and justify their action just like any other 'legal person'. Note also that, by implication, property of one dead intestate reverts to nature, not by default to the state.

One typically social liberal objection to private property, and thus one classic argument for the legitimacy of taxation or collective ownership and government-controlled redistribution, is that individual owners can destroy their property with impunity, to the disadvantage of the rest of humanity – say, the owner of a gorgeous historic mansion can tear it down and replace it with a Koolhaas skyscraper. Not so, then. Plus, if the justification of taxation and redistribution is that private property would otherwise be destroyed for no good reason, it seems the same should apply to collective property – there too we risk wanton destruction by the owner to the disadvantage of the excluded, such as future generations.

Mistake 5 follows from the previous four: the collective has no rights over my property nor over my use of it in relation to my offspring. It is my duty to provide any offspring I choose to create with the means to live a life worth living, but anything above that is at my discretion – I am not morally obliged to provide for my neighbour's children, nor for my children's children, nor for future generations in general.

Moving on, let me address a final pair of mistakes specific for intergenerational justice.

The sixth mistake is to assume that there is a special relation between intergenerational justice and justice towards future generations. Hence the idea that specifically the young would be in a good position to represent future generations, and hence quotas.

Much of the literature on temporal justice assumes that justice between presently existing generations and justice between those generations and the one coming after is much the same. Those who are up and coming cannot speak for themselves but have to be represented, but what's the real difference between them and the 0-5 year olds who are basically equally silent? If we accept that the next unborn generation does not differ in any morally significant way from existing human larvae, putting all further future generations on a par with our youngest offers no further moral challenges, only practical ones – like how to predict their numbers, tastes and technologies. Or so one might think.

Yet as we have seen above, there is no duty to create future individuals; their existence is a choice, not a given. While we can procreate and thereby create duties that arise at the moment of birth, we cannot owe anything to non-existing entities as long as we can choose not to create them. And reversely, we *do* have obligations to the existing young and cannot 'unbirth' them.

The seventh and final mistake (also discussed by e.g. Juliana Bidanure and Dominic Roser) is to assume, as many democratic theorists seem to do these days, that egoism is either necessarily good or morally neutral. It can be, but it need not be; it can also be immoral. In defense of youth quota as an instrument of intergenerational justice, it is argued that quota can help guarantee that the *interests* of a potentially underprivileged or underrepresented cohort are protected and defended.

Now to understand democracy as the representation of interests is a very old and respectable, because aristocratic, view. It dates back to Aristotle, who defined democracy as mob rule, as rule by the many in their private interests rather than the interests of the whole, the community. It is precisely of its pure and undiluted promotion of egoism that philosophers throughout the ages have always rejected democracy, or in their most permissive moods have sought to counterbalance it by adding elements of rule by the neutral, the wise or the better – as indeed Aristotle already did. While Machiavelli was perhaps the first to appreciate egoism neutrally, it took until Adam Smith to develop a *positive* understanding of self-interest as 'enlightened self-interest', the rational man's understanding of his best interest given the necessities of social cooperation and of therefore having to take others' interests into account as well.

Now if we could trust the young to be *this* kind of egoists, this kind of enlightened individuals who define their self-interest on the basis of their needs as much as of those three or four generations that will come after them, *then* youth quotas will contribute to justice for future generations. But not only is the jury still out on whether or not they are in empirical reality sufficiently capable of doing this,

and more capable than others – it is also already in theory evident that the interests of distinct generations may not always coincide. It is in fact because of such conflicts of interests that cohort quotas have been suggested. However, if one sees youth quota as a means to defend the ‘partial’ interests of one cohort against others, one cannot at the same time task that lucky cohort with the ‘impartial’ defense of the interests of another generation, existent or non-existent.

### **Libertarian temporal justice**

With these seven mistakes eliminated, what room is left in libertarianism for quotas? At first sight, one would have to say: none whatsoever. I will analyse this first sight observation in detail momentarily, but please keep in mind that first sights are often deceptive.

Libertarian views on temporal justice leave little room for state intervention. Natural resources are not the state’s to distribute or redistribute, procreation and population policy is not their concern, and since government is there only to catch thieves and protect sovereignty, a parliament’s task will be light too. Instead, individuals have the clear, undivided and exclusive responsibility to decide on whether or not to procreate, limited only by the obligation to ensure a life worth living for their immediate offspring - and nothing more.

In such a world, it is true that quotas have no place. They would not just be redundant, they would be considered straightforwardly unjust and the expression of a deeply perverted morality.

Some libertarians of the consequentialist or utilitarian persuasion would argue that quota, if effective, are instituted when the cultural battle for recognition of an excluded group is already won, i.e., when they have become all but superfluous. Support for existing quotas thus shows their political legitimacy but not their philosophical, moral legitimacy. The consequentialist libertarian would warn us not to commit the democratic fallacy of believing that what a majority believes, must be true or good. It suffices to point to the 19<sup>th</sup> Century’s majority views on women’s rights, race, slavery, etc. to reject democracy as the fountain of ethics.

Quotas are also immoral, from the deontological libertarian’s point of view, for the simple reason that any cooperative venture should be the result of free and unrestrained individual choices. Democratic decision-making, majoritarianism, is dictatorship, tyranny, unless and so long as a decision is unanimously, voluntarily and in full reason agreed to. (And even then the deontological libertarian would hesitate to accept voluntary slavery, because that is, obviously, what democracy is.) A self-proclaimed democracy where collective choice can be pushed through with the support of *over*represented groups, is even more evidently tyrannical. In a genuinely libertarian society, democratic decision-making is pre-empted by individual rights.

Now... While a libertarian perspective on temporal justice is helpful and utterly liberating, the libertarian theorist’s attitude towards quotas is also predictable, unpractical and unhelpful – no matter that it is, as far as I am concerned, correct. The problem is that libertarianism, like utopianism, assumes a context that does not yet exist; like the Baron von Münchhausen, libertarianism has to tear itself out of the swamp by its own bootstraps. It offers a choice between ultimate good and ultimate evil, between a perfect libertarian society where autonomous individuals know their responsibilities, take them seriously, and respect those of their neighbours; and every other world, each of which would be equally perverse and perverted. Like utopianism, libertarianism offers no guidelines for choices between the fifty shades of grey that our evil real-existing world offers.

### **The Pragmatic Libertarian on Quotas and Rights**

I therefore opt for a more pragmatic answer to quotas. I will suggest that quotas for the young can be tolerable in the context of justice between existing generations, since they may, under the right

circumstances, limit the risk of abuse of power in negotiations, thus guarantee a fair representation of interests, and thus prevent the construction of exploitative (i.e., oppressive, not Marxian unprofitable) institutions.

What then is the lesser evil in temporal justice? First, as far as intergenerational justice is concerned, we must recognize quotas for what they are: on the one hand vessels of Smithian comprehensive egoism, to which no libertarian can object; on the other hand, an unrealistic (unrepresentative) redistribution of bargaining power. If there can be an argument in favour of deliberately misrepresenting the distribution of power in society, it cannot be an argument in favour of youth quota specifically – it would have to be one in favour of any cohort or group deserving a bit of help. Perhaps that implies a permanent special provision for those born from 1990 to 1999; and perhaps in fifteen years those born between 1960 and 1970 turn out to deserve an advantage. The question is of course if there is such an argument, i.e., is there a reason why a libertarian, forced to live in a parliamentary democracy under the tyranny of social liberalism, could tolerate cohort quotas. And there may actually be one such argument, though only for some libertarians: a deontological libertarian might accept skewed representation of group interests if that creates a level playing field – that is, if quotas help to protect the inalienable rights of autonomous individuals against abuse of power advantages, that is, given any starting point (baseline), the involuntary creation of circumstances under which the relatively powerless no longer have a viable exit option back to the baseline.

Where justice towards future, non-existing generations is concerned, however, it is at the very least quotas ensuring a minimum representation by the elderly, or more precisely and better still the elderly without offspring, that would be more appropriate; probably outright exclusion of the middle-aged and young would also be defensible. If the aim of a quota rule is to represent the authentic interests of absentees, then it would be rational to seek to remove all temptation to deviate from their, the absentees', enlightened self-interest. Given that the interests of generations may always clash, that points *beyond* any form of representation by the potentially self-interested. The most sensible candidate for representation is, after all, he whose personal interests are least likely to be hurt by the represented. And that is the man or woman on his or her way out, with no offspring to be partial to. This said, the libertarian would still maintain that representing future generations in the process of resource distribution puts the horse behind the cart.

Even under the yoke of social justice, a libertarian will argue that there are better, more legitimate, instruments available to protect the interests that particular groups in society feel deserve protection. The interests of future generations are like the interests of endangered species, a beautiful landscape, a language, a religion or an art form: they are private preferences. And private preferences can and will be defended, without illegitimately infringing on or prescribing other people's tastes and preferences, as long as anyone cares about them, by the execution of individual rights. He who wants to protect a forest against development can join forces with others, buy it and thereby veto any development plans even if supported by a majority; he who wants to protect resources in general on behalf of a future generation or Hobbit culture or Christ or any other private fancy, is free to do likewise.

So endeth this lesson.