

Generations in contexts of justice

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Overview

Approaches to intergenerational justice theory also draw on three sources: Aristotelian ethics, utilitarianism and Kantian moral theory. Therefore, in this article, the three renowned approaches from the aforementioned sources are presented first: Aristotle's theory of justice, Rawls Kantian theory of justice and Birnbacher's utilitarian intergenerational approaches. Subsequently, these theories are critically analysed in different contexts of justice according to Forst's theory.

Intergenerational justice

People are not only separated by their gender, age, occupation and class, but also by age groups. Large age groups of people have commonalities not only in view of culture and habits, but also through the legal determination of their financial situation in the face of tax sanctions and government austerity measures. These cultural and economic realities bind the age group together in the form of a generation. In the course of time, different generations are then formed which, among other things, form a spectrum between young and old in a given society.

This makes the gerontological meaning of intergenerational justice plausible, because it is about the lives of the old and their relationship with the young, but also with the generations not yet born. Intergenerational justice is a moral imperative. However, justice can also be legally binding in the form of a contract between the old and young generations. The term 'intergenerational justice' was already used by Rawls in his well-known work 'A Theory of Justice' in 1975. However, this term first found political resonance in the Federal Republic of Germany in the late 1990s as a result of the state's high financial debts. Earlier, the term was mainly used in an ecological context. Here one thinks of the consequences of environmental damage on future generations. Today, the financial perspective comes to the fore in connection with generational justice. But also in view of the use of resources, it is important to think of the next generations and to deal with them sensibly. In view of the current financial crisis and high national debts, the question naturally arises as to how a fair distribution of debts among several generations is possible.

According to Dilthey, "a generation forms a circle of individuals who, through dependencies on the same great facts and changes that occur in the age of receptivity, are united into a homogeneous whole, despite the diversity of other factors that come into play". The concept of generation seems to be an abstraction in this context. But as far as ¹legal provisions are concerned, these abstractions correspond to reality: how people in different age groups live in a society depends on their financial situation, whether they are employed, unemployed or pensioners, and how heavily they are burdened by legal tax rates. In a society with high debt, the young employed have to work more and pay more taxes and the elderly may have to give up their pension increase entitlements. Of course, one can also ignore the debt level by lowering taxes and increasing wages, pension benefits and unemployment benefits. But that would very likely lead to even more debt and be placed at the expense of the next generation, which are the young people in today's society. It is now fair that the next generation should behave in the same way as the previous one. But in doing so, the debt problem is shifted to distant generations and at some point society has to do something about it. However, it is not only about the debts, but also in the good times, the older generation must enable secure framework

¹ Dilthey 1957, p.37

conditions for a better life for their children and the next generation by saving. So that no generation feels disadvantaged, these framework conditions must be fair, in other words, it must be based on the principles of justice. But what are these principles and what is justice anyway?

Justice is the eternal longing in man for well-being, contentment and happiness. However, the happiness of one can result in less happiness or unhappiness for the other. Therefore, justice in society demands a fair deal for all. However, the term 'all' is problematic in itself: does it also include the individuals who have not yet been born? The individuals who already exist have different claims and perceptions of justice depending on their age group and generational affiliation. Under these circumstances, how can one talk about justice so that all generations feel happy? Happiness is a subjective feeling. "If justice is happiness, then a just social order is impossible as long as justice means as much as individual happiness." For this reason, utilitarianism strives to give justice an objective-collective content: If society as a whole is ²prosperous and happy, then justice is fulfilled. An important representative of the utilitarian theory of generational justice is Birnbacher, who published one of the first commentaries on generational justice according to Rawls in the German-speaking world in 1977. ³Rawls' theory of justice is based on universalist moral theory, which is supposed to provide the normative grounds for the principles of justice.

Justice according to Aristotle

Justice as a philosophical debate finds its first tradition in Plato and Aristotle. The starting point and central subject of Plato's *Politeia* is justice as an indispensable constitutional principle of a well-ordered polis. This is the first leap in the concept of justice, as it is no longer considered merely an individual virtue. Two pillars of Plato's philosophy are the Socratic Ethics and the ontology of Parmenides. The synthesis of the two led to the doctrine of ideas. For Plato, a life is happy if one pursues general interests and strives to be virtuous or virtuous. All virtues (fortitude, prudence, justice, piety and insight/prudence/wisdom) are combined in him as a whole. For Plato,

² Kelsen 2000, p. 13

³ Birnbacher 1977, p. 385-401

justice is a secular phenomenon: even if he occasionally calls it divine, he does not mean religiously binding. The divine origin is replaced by a metaphysical element; the final ground of legitimacy is the idea of the good.⁴The idea of the good includes the idea of justice. This is the justice that almost all of Plato's dialogues aim to realise. Therefore, the question 'What is justice?' coincides with the question 'What is good' or 'What is the good'. Plato tries to give an answer to this question by means of various examples. But none of these attempts leads to a final result. If any definition seems to have been reached, Plato, through the mouth of Socrates, immediately declares that rather further investigation is necessary.⁵Therefore, one cannot find a theory of justice in Plato in a philosophical context.

Aristotle, as the first philosopher, dealt extensively with the question of justice and gives detailed answers to it. The fundamental questions that Aristotle formulates in connection with justice and the answers he gives to them are highly topical. Aristotle does not treat justice as a supra-personal value, as we are used to today, but as a personal virtue.⁶The universal and contingent nature of human beings is reflected in a universal and contingent notion of equality: the universal as the final or valid consequence of a contract and the contingent as equality based on interest, talent or ability. Universal justice is deductively derived from existing moral and legal norms. The norms can be useful (rule utilitarianism), be reflections of economic or social conditions (Marxism or sociology), express prima facie duties and self-evident insights (intuitionism) or stem from agreements (contract theory). Aristotle distinguishes between virtue of conscience and social virtue. Thus, justice as a social virtue is the link between ethics, economics and politics. The essence of justice is equality. Aristotle distinguishes between two concepts of equality: absolute equality and proportional equality. The principle of equality is the balancing of interests. Thus, he concludes that justice is the middle of claims and just action, both of which are determined by social norms. Ethical virtues have a higher status: they must be developed by the citizen (habituation and socialisation). The intellectual virtues (science, technology, insight, prudence, reason, wisdom) arise through instruction.

⁴ Höffe 2001, p. 20

⁵ Kelsen 2000, p. 28

⁶ Röhl 1992, p. 40

Virtue is conditioned by nature (physis), habit (ethos) and reason (logos).

The concepts of 'middle', 'gain', 'loss', 'equal', 'equality' and 'wanting more' are the supporting categories of Aristotle's discussion of justice, which, as part of the whole of virtue, is the justice of equality and compensation.⁷ According to Aristotle, the question of the concept of justice and injustice is to examine in which area the modes of action move, in which sense justice designates a middle, and which are the deviations between which the just lies in the middle. Aristotle now tries to find out the different levels and concepts of justice. According to Aristotle, the three main concepts of justice are: individuals towards each other (commutative justice), society towards individuals (legal justice) and individuals towards society (distributive justice).

Aristotle does not speak of generational justice, i.e. justice between society and its descendants. However, one can see that generational justice is supposed to be a special type of justice. It is true that there are different types of justice, all of which are considered virtues. However, there is still a justice apart from the whole virtue.⁸ Its anthropological-ethical presupposition consists in the assumption that people and citizens, legal-political order and moral instruction of life coincide into one in a good polis.⁹ Legal order means the written law of a particular polis (positive laws), as well as the unwritten, divine laws that are distinguished as natural.

The first meaning of justice is in the context of law and justice. With his expositions on justice as part of virtue, Aristotle discovered and addressed for the first time a certain material realm and a formal aspect of social-ethical-political reality.¹⁰ "Since, then, the unlawful was an unjust man and the law-abiding a just man, it follows that everything that is lawful is in a certain sense also just [...] So, in one sense, one calls just that which produces and maintains happiness and its constituent parts in the state community."¹¹ Aristotle relativises the legal definition of justice by distinguishing between two types of justice: Legal justice as universal and that as part of

⁷ Bien 1995, p. 160

⁸ Aristotle 1130b6ff

⁹ Bien 1995, p. 135

¹⁰ Bien 1995, p. 138

¹¹ Aristotle 1131aff

the whole virtue as partial or particular justice. Since (according to commonly held notions and uses of the word) we considered the violator of the law to be unjust and the observer of the law to be just, obviously everything legal is just and right in a certain sense.¹²

Aristotle distinguishes between two different compensatory justices: Exchange justice (voluntary) and corrective judicial justice (involuntary). In exchange justice, everything that is exchanged must be comparable in a certain sense. Money, for example, has such a function. Money as a measure of all things establishes equality among them. Without exchange there would be no community and without equality there would be no exchange and without comparison (commensurability) there would be no equality.¹³ The second type of compensatory justice, judicial, is based on the involuntary level: it is the task of the judge to provide compensation in unequal cases and in the case of unjust distribution of gain and damage. Another concept discussed in Aristotle's philosophy of justice is the ability (virtue) to decide and act correctly in individual cases of failure of the written law: The just man is of the kind that he wills and realises such right, and that he does not pursue his right in petty exactness until it becomes wrong, but, although the law would be on his side, is inclined to be satisfied with a more modest part. Such a moral attitude, equity, is itself a kind of justice.

As far as intergenerational justice is concerned, one can imagine a justice of exchange between the living generations, in which the old and the young participate as representatives of the different generations. Depending on which generation is disadvantaged, the young can give to the old or the old to the young. The only question is what normative basis should make this exchange possible or what criteria come into question here. Aristotle's theory of virtue cannot provide an answer to this question.

Generational justice according to Rawls

¹² Aristotle 1129b11ff

¹³ Aristotle 1133b14ff

The idea of contract is first discussed in Plato's dialogue *Kriton* as agreements and obligations in society, which are often regarded as fictitious contracts. However, since the Enlightenment philosophy, the idea of contract takes on a new content. A political order is legitimate if and only if all those who live under this order have agreed to it as free and equal in a contract (original contract) or agree again and again (implicit contract) or could agree in principle (hypothetical contract). Rawls is a representative for the primordial contract, for the implicit contract: the primordial contract is the only legitimate form of establishing the state, but it must be renewed again and again. Hobbes and Kant can be mentioned as representatives of the hypothetical contract.¹⁴ The moral subject in the contract model of justice is a hypothetical self behind the veil of unknowing. The contracting parties place themselves in a state in which they have no information about their own social situation. In such a state, a fair contract can come into being. Rawls' theory is a justification of ethical norms in the Kantian tradition. His theory is not as general as Plato's, since it is applied to individuals and aims to ensure efficiency, coordination and stability. Two of Rawls' criteria of justice are:

- Equal rights within the most comprehensive overall system of equal fundamental freedoms.
- Economic and social inequalities are intended to bring the greatest possible advantage to the least advantaged.

A contract is concluded in different stages: In the first stage there is a complete veil of ignorance. The contracting parties know nothing about their own situation and about advantages in society. In the second stage, the constitution is worked out, the veil is now to be lifted and the contracting parties know a little about the essential characteristics of their society, e.g. the information about resources, economy, etc. In the third stage, the fictitious characteristics of that decision-making situation are made known which is constitutive of just legislation as the result of rational choice. And finally, in the fourth stage, the rules received are to be applied by the administration and the judiciary and by citizens in general to individual cases. As can be seen, no contract is concluded in the original state. The original state in Rawls is only a thought experiment to avoid the self-interests that can cause conflicts. In this sense,

¹⁴ Ballestrem 1993, p. 26

the contract model promotes an operationalisation of the moral standpoint through a fairness filter.¹⁵

In Rawls' theory of justice, certain inequalities are permitted. Social and economic inequalities should be such that they can reasonably be expected to serve everyone's advantage. This principle admits of two interpretations: The phrase 'to everyone's advantage' can on the one hand be understood in the sense of the optimality principle, in the sense of the criterion of Pareto optimality commonly used in normative economics,¹⁶ but can on the other hand also be specified in the light of a principle that Rawls calls the difference principle.

According to Rawls, we cannot define justice by the characteristic of Pareto-optimality, since just distributions are always only a subclass of Pareto-optimal distributions.¹⁷ Therefore, Rawls argues for the difference principle. The difference principle is a permission criterion for socio-economic inequality. It states that the better prospects of the advantaged are only just if they, or the socio-economic circumstances that make them possible, contribute to improving the prospects of the least advantaged members of society. The idea behind this is that the social order may only establish and secure more favourable prospects for the favoured if this benefits the less favoured. Rawls calls the order characterised by the difference principle a system of democratic equality and distinguishes it from the systems of natural liberty and liberal equality, which are to be rejected.

The moral subject in contract theory is a self-interested subject who decides according to the maximin rule.¹⁸ With this rule, subjects follow a strategy of least risk minimisation in which the worst is to be expected. That is, decisions are ordered according to their worst possible outcomes and the best of the worst is taken.

¹⁵ Ballestrem 1983, p. 51

¹⁶ Pareto optimality: Assuming at least one individual j prefers ($j=1\dots,n$) alternative A to alternative B and no individual has a counter-preference. Then an individual i will morally prefer alternative A to alternative B.

¹⁷ Kersting 1993, p. 55

¹⁸ Rawls 1975, p. 179

For Rawls, the question of justice among different generations is a question of the just savings principle. According to this, each generation receives its fair share from its ancestors and in turn fulfils the fair claims of its descendants.¹⁹

Each generation must not only preserve the achievements of culture and civilisation and the just institutions that have been attained, "but must also always engage in adequate capital accumulation. This saving can take various forms, from net investment in machinery and other means of production to investment in education."

²⁰This means that justice among different generations is only granted when each generation sets something aside for the next generation through an equitable savings principle.

The question, however, is how this savings principle can be regulated when it concerns not only the living but also the not-yet-living generations who have no representative in society. The contract theory, according to Rawls, "now looks at the problem from the point of view of the original state and demands that the parties involved should decide on a workable principle of saving. [...] When the difference principle is applied to the question of saving across generations, it results in either no saving at all or not enough saving to improve social conditions to the point where the total equal liberties for all can take effect. If an equitable principle of saving is followed, each generation gives to the later and receives from the earlier. The later generations have no means of helping the earlier ones in their less fortunate situation."²¹Therefore, the difference principle is not applicable in the context of intergenerational justice and another solution must be found. According to Rawls, a fictitious economic exchange between generations in the original state is the only way to be able to decide on a just savings principle. In this state, the parties involved do not know which generation they belong to or what level of civil status their society has. Rawls sets the following conditions for a fair outcome of a savings principle:

- The participants are representatives of descendant lines whose descendants are not indifferent.

¹⁹ Rawls 1975, p. 322

²⁰ Rawls 1975, p. 320

²¹ Rawls 1975, p. 321

- The principle adopted must be such that they may wish all previous generations to have followed it.
- The veil of ignorance prevents those involved from making decisions beyond their own interest.²²

In order to be able to come to a fair contract on the savings principle between generations with respective self-interest, the self-interest is to be eliminated by the veil of ignorance. This thought experiment serves to justify the contract theory. With the veil of ignorance, the relationship between subjects, in this case generations, can be seen symmetrically in Rawls' contract theory. As a result of the unanimity of the participants alone, principles can find their recognition. The principles of justice are derived linearly and deductively in a contract. This means that the existing norms, which have themselves come about through contracts and agreements, are to support the derivation process as generally valid principles (fairness principle). The principles thus obtained then have a finality and universality for society as a whole and its generations.

According to Rawls, the fairness principle has two characteristics:

- Duty of fairness: Rights and duties arise from the reciprocity of benefits, whereby benefits must not be understood as the weighing of benefits of individual undertakings, but denote a general framework.
- Fairness itself: Fair (just) is everything that has been decided under fair (equal for all) conditions, where fair conditions denote a state in which all participants are equal and free.

Rawls tries to simplify the concept of generational justice as much as possible with the principle of savings in order to achieve agreement between the parties. He assumes that different people have different conceptions of justice, but that the principles are always the same. His idea is therefore to imagine a simple state of affairs and to formulate the principles of justice in such a state of affairs.

First, Rawls puts forward theses and hypotheses on a primordial state. To him, it seems reasonable to assume that people are equal in the original state, in the sense

²² Rawls 1975, p. 323

that they have equal rights in the choice of principles and everyone can make proposals and put forward reasons for them. These are the essential conditions that everyone can imagine under a primordial state. These conditions constitute equality between human beings as moral subjects. In this, man is a being with a sense of justice who has an idea of his good.²³

According to Rawls, the conception of justice in the original state is acceptable to all parties and generational representatives. In this state, the basic agreements reached are fair. "The concept of the primordial state belongs to the theory of behaviour, but that does not mean that there need be any real states similar to it."²⁴ is necessary that the recognised principles play a role in moral thought and action. The recognition of these principles presumably constitutes a psychological law. "My ideal, at any rate, is to show that it is the only possibility compatible with the complete description of the original state."

Rawls shows that among many concretisations of the initial state "[...] there is a concretisation of the initial state which, on the one hand, best expresses the conditions widely held to be reasonable for the choice of principles, and which, on the other hand, at the same time leads to a conception which corresponds to our well-balanced judgements in the equilibrium of consideration".²⁵

Generational justice according to Birnbacher

According to Birnbacher, the norms of intergenerational justice are a matter for ethics. There are norms that apply to ideal actors and are called ideal norms and those that apply to non-ideal actors and are norms of practice. "If norms of practice are to be considered justified rather than arbitrary, they must be derivable from valid ideal norms."²⁶ Ideal norms make no concessions to or provision against the cognitive and motivational fallibilities of their potential users. Practical norms, on the other hand, take into account the fallibility of their addressees. It should be noted that Birnbacher is moving in the ethical space here, and ideal norms are not related to

²³ Rawls 1975, p. 37

²⁴ Rawls 1975, p. 142

²⁵ Rawls 1975, p. 143

²⁶ Birnbacher 1988, p. 16

moral universalism.²⁷ This means that the difference between ideal and non-ideal agents is not related to the difference between ethical and moral persons, but is to be understood in a utilitarian context. Utilitarianism sees the rightness of an action according to the usefulness of its consequences. Action utilitarianism sees the exclusive binding force of ideal norms and regards practical norms as merely rules of thumb "which, under real conditions of application, give an initial indication of the course of action required by the basic utilitarian norm."²⁸

Within the utilitarian tradition, a distinction is made between average utility utilitarianism (DNU) and sum-of-utilities utilitarianism (NSU). DNU maximises the average utility of all individuals. NSU, however, maximises the sum total of the utility of all individuals. Birnbacher advocates the NSU because this is the only way to consider utility simultaneously according to quantity and quality. The DNU only considers the average quality of life. For him, seventy good years, for example, are no better than thirty good years. For the NSU, the optimal life span is the one "for which the maximum sum of benefits is obtained over all phases of life."²⁹ Also in relation to irreversible changes with regard to future generations, Birnbacher says, a benefit calculation should be made that includes three dimensions:

1. "the benefit and harm from the condition itself brought about by the irreversible change,
2. the benefit and harm from the subjective lack of freedom of later generations to reverse the irreversible state of affairs,
3. the damage from the involuntariness of this bondage."³⁰

Accordingly, the irreversibility of a change is not a reason for not making it. Rather, the total sum of benefits for later generations should be the yardstick.

Contexts of justice

²⁷ Ethics has a descriptive and hypothetical character, while morality has a normative and categorical character.

²⁸ Birnbacher 1988, p. 22

²⁹ Birnbacher 1988, p. 66

³⁰ Birnbacher 1988, p. 77

Based on the Kantian difference between hypothetical and categorical imperative, Habermas distinguishes between ethics and morality ³¹: while in moral questions reason and will together achieve autonomy, in ethical questions they behave in a contrary way. Moral statements are universal and have a categorical character and their justification is normative. Ethical statements, however, are hypothetical and their justification is based on the descriptive level. Moral norms are ostensibly about being reciprocal and universal. "Reciprocity means that no one may deny his or her counterpart certain demands that he or she himself or herself makes (reciprocity of content), and that no one may simply impute his or her own values and interests to others - not even by recourse to higher truths that are not shared (reciprocity of reasons). Finally, generality means that reasons for generally applicable, fundamental norms must be shareable among all concerned." ³²

Starting from the difference between morality and ethics, Forst developed a theory in his work 'Contexts of Justice' on the basis of which the questions of justice can only be posed contextually within a community. A community with its historically grown values, practices, institutions and identity forms a normative horizon that is constitutive for the identity of its members and for the norms of justice.³³ Forst derives four different concepts of person from his debate on communitarianism and deontological theories: The ethical person, the legal person, the citizen and the moral person. These four persons correspond to different modes of normative justification of values and norms in different justificatory communities: The ethical person corresponds to the constitution of the self, the legal person to the neutrality of law, the citizen to the ethos of democracy, and the moral person to the conception of a universalist moral theory. These four levels of person and community are interrelated but not reducible to each other. ³⁴Legal persons are responsible as individuals before the law, citizens are collectively responsible for the law. Citizens create and realise law in which ethical persons are recognised as legal persons. It is ³⁵important

³¹ Habermas 1991, p. 100-118

³² Forst 2007, p. 15 u. 34

³³ Forst 1996, p. 14

³⁴ Forst 1996, p. 347

³⁵ Forst 1996, p. 353

to understand that moral, ethical, legal and political autonomy form an internal connection and occur simultaneously in one person.

Generations in contexts of justice

The Rawlsian theory of austerity is indeed a fair option in the good times. In the times of debt, however, the focus is on debt reduction. However, the agreement of representatives of the old and new generations in the original state on a principle for the amount of debt reduction seems much more difficult and unrealistic, especially if the debt has not been incurred continuously as a result of an economic crisis. In that case, it would be fair to take the debt-free old generation as an example and oblige the living generations to completely reduce their debts. However, this is impossible in the concrete situations. This means that representatives of all generations must distribute the debts over the coming generations. In the original state, however, only the living generations are represented and they cannot, in the 'veil of ignorance', eliminate the knowledge about the debts of other living generations in each case or take the earlier debt-free generations living in a completely different situation as an example. Rawls solved the representation problem of the distant generations by the savings principle, according to which the contracting parties do not know which generation they belong to, but have an interest in their descendants. One can call this proposition in a negative context 'debt reduction principle'. However, the actual interest of each generation is to save less, or to spread the debt reduction over several generations, which is fair in itself. After all, in the example of an economic crisis, the debt has been caused by older generations. Rawls' normative demand is now that each generation should have an interest in the well-being of its descendants. But this demand presupposes that the descendant exists, which is not the case at the given time. That is, the absence of distant generational representatives seems to be an unresolved problem in Rawls' generational justice in the concrete sense. In general, Rawls assumes the universalistic validity of moral principles: Moral norms do not apply to a particular generation, but have a general character that is considered invariant in time. The moral norms that were valid 1000 years ago are still valid today and will remain valid for the next 1000 years. In contrast, the ethical values in society are changing. Now, in Rawls' primordial state, individuals are 'moral persons', whereby the veil of non-knowledge is meant to

prevent them from being influenced by their interest and generational affiliation. Nevertheless, when it comes to concrete decisions that have long-term consequences for generations not yet born, such as those concerning pension systems, ethical and legal decisions are necessary. While these ethical and legal decisions are compatible with general moral principles that are independent of generations, they have a concrete character that is specific to each generation. This means that, because of different contexts of justice in the ethical, legal, moral, but also in the civil sense, for the fulfilment of Rawlsian generational justice, the presence of the generations not yet born in the primordial state is necessary, but not at all possible. On the other hand, it should be noted that it does not seem at all realistic to align our moral and ethical decisions with distant generations, since from experience human life is always provided with new surprises such as natural disasters, war and crises, so that every such crisis usually means a new beginning for a generation.

Another dimension of intergenerational justice is the equitable use of resources: How should the living generation deal with resources so that later generations do not face resource scarcity?³⁶ The fact is that existing resources are not infinitely available. Therefore, it is important to determine the framework conditions for the use of resources in view of future generations. On the other hand, by expanding the notion of 'saving' in the negative (debt reduction), positive (investing money) and material (resources) contexts, one can extend Rawlsian theory to circumvent the aforementioned criticism. This would mean that individuals in the primal state decide on the savings rate in moral, ethical and legal contexts. This means that not only moral principles regarding the savings rate for the next generations are derived from the original state, as Rawls expects, but also concrete ethical decisions that have an intergenerational effect but are not necessarily just for the other generations. The representatives of the generations in the original state are simultaneously ethical and moral persons. Moral obligation is ultimately conceived as ethical obligation. The ethical action of one generation may be just for the living generations in a society, but unjust for the later generations from the perspective of universalist moral theory. The intergenerational contract thus has a hypothetical nature and no moral

³⁶ On this see also: Unnerstall 1999, p. 414

principles can be derived from a hypothetical contract that can be considered morally justified for all other generations.

Utilitarianism can justify many disadvantages of citizens as permissible, as long as these disadvantages are not directed against the collective interests. A major shortcoming of utilitarianism is that in certain cases it denies minorities the respect that it gives to the majority. Therefore, the utilitarian approach in the narrower sense is not a theory of justice, since, among other things, injustice is also permitted as long as it serves to maximise utility. This is why Birnbacher does not speak of justice in his explanation.

The utilitarian approach neglects the inequalities in the distribution of happiness. It is the aggregate amount alone that counts, regardless of how unequally it is distributed. While we may be interested in happiness in general, we will be concerned not only with 'aggregate quantities' but also with the extent of inequality in the distribution of happiness. The utilitarian approach does not attach any intrinsic value to rights and freedoms. Values are valued only indirectly and only insofar as they have an influence on utility. It is plausible to consider happiness, but we do not necessarily want to be happy slaves or intoxicated vassals. Our desires and our abilities to create pleasure adapt to the circumstances at hand, especially when we want to make our lives bearable in adverse situations. The utilitarian approach, Sen argues, can have an extremely unfair effect on those who are permanently disadvantaged, just think of the inevitable underclasses in hierarchical societies or the ever-oppressed minorities in intolerant communities.³⁷

However, in the context of generations, utilitarianism can provide the necessary justification for fairness among generations in concrete ethical contexts: Where individuals act ethically but still seek intergenerational justification. This situation, as mentioned earlier, may be the case in Rawls' primal state.

From this perspective, utilitarian approaches can be seen as an ethics of the majority, which find their justification in very concrete cases for one generation. Whether these decisions are also ethically justifiable for the next, not yet present generations,

³⁷ Sen 2000, p. 83

remains open. Because justice, as already mentioned, occurs in different ethical, moral, legal and civil contexts, intergenerational justice loses its moral justification for the distant generations that are not present. In addition, of course, rapid technological development is an important factor: a comparison between present and past generations leads us to the conclusion that our energy needs are much greater today than in the past. Already today, for example, billions are being invested in nuclear fusion as a new source of energy for electricity generation. This means that future generations will not be able to compare with present generations.

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