

“THE ENFORCEMENT OF MORALITY
AND FUTURE GENERATIONS”

KAI NIELSEN

John King-Farlow indeed puts probing questions to me over matters which have received little attention from either moral philosophers or legal theorists. They plainly need careful and detailed consideration. There is, however, nothing in his essay, as far as I can ascertain, which conflicts with anything I claim or presuppose in “When Are Immoralities Crimes?”. I did not have the questions he raises in mind when I wrote it and my essay does not contain anything which would conflict with what he suggests would be a proper moral response to these questions. In talking about when immoralities should be taken to be crimes, I was not concerned simply with presently existing individuals. I was concerned generally with societies, anywhere and anywhen, and in saying “that from a moral point of view, everyone’s interests are to be considered. . .” I did not have in mind simply presently existing persons. (pp. 134-6).

The following seems to me evident enough: If Y ought to be done by X, it ought to be done by anyone else as well, if he is in the relevant respects like X and in relevantly similar situations. For any point in time T that X is in t_1 and Z or anyone else is in t_2 does not, simply because the individuals in question are in another point in time, constitute a relevant difference such that they are in the relevant respects different or are in relevantly different situations. This should be evident if we will but reflect on how our moral discourse works and the rationale behind it. Consider first an individual. If he is rational

and indeed moral, he will care as much about his welfare in ten years time as he will for the next six months unless he has good reason to think that he is very unlikely to be alive at that time or that there will be something very much out of the ordinary (such as his becoming a mental defective) which will make his life very different at that time. A reflective moral agent will be concerned with the whole of his life and not just with his present or immediately future states. If he knows that something is a good for him (say liberty), he must also admit that it is a good for other human beings as well with similar wants and needs. That a man exists at some later time does not in itself give us grounds for believing that he will have different wants and needs. So where a moral agent knows or has sound reasons for believing that men will exist at some future date with relevantly similar wants and needs to his own and to men presently existing, he must, morally speaking, acknowledge that what is good for him will be good for them too and what we can expect in the way of moral treatment they will have a right to expect as well. In this way moral considerations should be as time-independent as they are 'culture-independent'. That there are often context-dependent features which are morally relevant does not gainsay this, for then there must be something about the situation of the people in question other than the fact that they happen to live in a different place and time which makes these differences morally relevant.

These points should be recognized as commonplaces and I do not mean to suggest that simply noting them will solve the knotty problem of 'future generations', but failure to keep them in mind will lead to a muddle here, and these commonplaces were presuppositions I was operating with in my "When are Immoralities Crimes?"

One central reason why King-Farlow's questions cannot be answered by an appeal to such moral commonplaces is that we cannot be as certain about the existence and needs of future generations as we can about the existence and needs of the pre-

ENFORCEMENT OF MORALITY

sent generation. We plainly should concern ourselves with the world such that it will in the future be a habitable place and indeed, if possible, an improved place. But while that, in addition to our above commonplaces, needs saying, it is also the case that we do not have the same stringent moral obligations to *possible* persons we have to *actual* persons. Moreover, while we can murder or malign actual persons we cannot murder or malign possible persons. We surely must (morally speaking) care about what the world will be like after the death of the present generation, but it would not seem to be the case that we would be justified in allowing (say) mass starvation in Asia and Africa rather than use methods of agriculture which might very well make much of the world eventually uninhabitable so that drastic steps would have to be taken to limit births such that there would be far fewer people in the future. A world with fewer people in it than at present does not seem to me to be at all a moral horror. Indeed if their lives would be richer, more self-fulfilling, it would seem to me plainly a better world than our present one or a world with more people experiencing less satisfaction of desire. Growth in population, no more than growth in gross national product, is not something desirable in itself. More fundamentally still, while 'People must be treated in a certain way' has a categorical stringency linked to it, 'There must be future generations' or 'The human race must not die out' does not (morally speaking) have the same plain categorical stringency. There were people after the Second World War, reflecting on its barbarism and mass genocide, who came seriously to wonder whether it would not be better if the human species with all its bestiality and cruelty, both to its own kind and the rest of the animal kingdom, might not better die out. I am not suggesting for a moment that we take this option, but it is a moral alternative while there is no moral alternative to having a respect for persons.

However, it is very likely that there will be future generations and we must, as moral agents, now act so that we

will not make their lives intolerable or even, where we can help it, diminish their human possibilities.

I do not think there is “a shattering lack of rational consensus concerning this”, though there is a rather pervasive thoughtlessness about this. But when pressed most people will generally evince an interest in the ‘fate of mankind’ and there is no *rational* alternative to saying that for any time X and for any time Y, if the only difference between X and Y is that X and Y occur in different periods of time, then there can be no justification for giving X and Y a different moral weight. Just as P deserves protection because P is a member of my tribe, but S does not because S is not a member of my tribe, will not, except in very rare and very special circumstances, be morally acceptable, so we can equally substitute ‘is in my generation’ for ‘is a member of my tribe’ and still make a true statement.

There is not much consensus about what our moral commitments to future generations are for at least two reasons: (a) there is what Kierkegaard would call rank forgetfulness about it, and (b) there is often just a lack of factual information about what we can do and indeed, in the light of a very ‘open future’ with all sorts of scientific change possible, what we should do. But whether or not there is a cross-cultural or even a cultural consensus that we should not make our planet uninhabitable, it is certainly arguable that there is a *rational* consensus that this should not be done, if it can be avoided without vast present starvation and misery. That is to say, knowledgeable people who will dispassionately reflect on what is involved here will agree that this should not be done.

If there is such a rational consensus, even though there is not a consensus, for many simply irrationally avoid facing such considerations, we are justified *ceteris paribus*, where this can be done, in enforcing unpopular laws concerning environmental destruction and the like to avoid making our planet uninhabitable. Making it uninhabitable in such circumstances is an immorality and by my criteria it should be a crime punishable by the criminal law because (a) there is a *rational* consensus

ENFORCEMENT OF MORALITY

concerning its immorality, (b) it causes harm, (c) its prohibition is enforceable law and enforceable without greater harm resulting from its non-enforcement. The reason I placed a '*ceteris paribus*' qualification there is condition (c) above. Such a very unpopular law might conceivably be so unpopular that one would need a tyrannical and brutally repressive regime to enforce it and thereby produce such suffering that it would be morally questionable whether we should enforce it.

Such a qualification is necessary, for with such a legal enforcement of morality there are deep moral and conceptual problems, for both a utilitarian account and an account which would invoke Rawlsian contractors, which I do not deceive myself into believing I have solved or even know how to solve. There are here crucial moral and baffling conceptual problems which moral philosophers need to face and we should be grateful to John King-Farlow for having raised them for us. It seems to me that in wrestling with them we must constantly keep in mind two truths: (1) All human beings, everywhere, everywhen, must be treated with respect, must have their needs and interests taken into consideration. (This ranges over time as well as over cultures.) (2) Actual persons, capable of suffering and self-fulfillment, are not on the same moral footing as *possible* persons who do not suffer or experience self-fulfillment. (After all possible persons are not persons.) If we know S will come into existence at some later date, then S, everything else being equal, deserves, when he comes into existence, the same treatment as a presently existing individual. But, of course, as things are, we usually, and perhaps even never, *know* that some S will be a member of a future generation. Yet there are immoralities concerning future generations. The American destruction of the environment in Indo-China is a repulsive and dramatic example. And it is certainly arguable that if there was any way of enforcing the sanctions that this immorality should be made a crime.

There is very much that we need to think through and say concerning crimes to future generations, but I see no reason for

KAI NIELSEN

believing that any of it will depart from the criteria I set out in "When Are Immoralities Crimes?", though it is evident, on reflecting on such cases, how difficult it will be in many situations to attain a *rational* consensus concerning what is morally required of us. Yet where *that consensus* does not obtain the law should stay its hand.

THE UNIVERSITY OF CALGARY
CALGARY 44, ALBERTA
CANADA
RECEIVED: 31 JANUARY 1973