

Political Representation of Future Generations¹

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1. Introduction

A quite straightforward way to secure future generations' interests seems to be to include them in the decision-making process. In representative democracies, this amounts to representing them in the same way as presently living citizens are represented in the decision-making process. But future people do not exist yet. How could we represent them? Such a proposal raises practical questions, such as: how many representatives should there be for future people? How would they be selected? But it also raises deeper ethical issues. This chapter aims to provide an overview of the political and philosophical debates on the representation of future generations. But before, a couple of clarifications are in order.

First, on representation. Future people may be represented at various stages of the decision-making process: at the legislative stage, at the executive stage and at the judicial stage. This chapter attempts to consider all of these because, depending on particular institutions, one stage might have more importance than others. On representation more generally, not all accounts of representation fit with future people as representees.

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Accounts that require representees to *be there* will not be compatible with the idea of representing future generations. Hence this chapter will consider whether and how we should broaden the understanding of political representation.

Second, on future generations. In the public debate, future generations often refer to young generations, that is, already existing or soon to come children and young people. This is especially striking in debates on the pension system. But this chapter will rather focus on distant future generations, that is, unborn future generations, because their representation raises specific issues.

The chapter is structured as follows. *First*, it provides the main philosophical arguments in favour of the representation of future generations and discusses potential major objections. *Second*, it describes existing concrete proposals that have been made in the literature. An *appendix* provides a detailed overview of the existing models of representation of future generations as well as a discussion of the concrete attempts to implement representation of future generations at the international level.

2. Why should future generations be represented?

The political representation of future generations is far from uncontroversial. Interference with the existing democratic institutions, proliferation of bureaucracy, trade-offs between present and future needs, and even the costs of such institutions are among the arguments opponents can advance against the official representation of future generations. This section aims to discuss the philosophical issues at stake in this discussion.

2.1 Two normative justifications for the political representation of future generations: justice and democracy

It is important to distinguish between requirements of justice and requirements of democracy. Both democracy and justice raise substantial issues in political philosophy and have led to a significant body of literature. I have no space to properly address these issues and this literature here. I shall thus stick to slightly simplified accounts that should help to cover some of the important issues political representation of future generations raises. Democracy, in a simple and straightforward understanding, characterizes a political system combining majority rule, universal suffrage and free voting (Van Parijs

1996, 2). Justice (that is, distributive justice) refers to the (morally) right distribution of benefits and burdens within a society, both within and across generations. Political representation for future generations might actually be justified from each of these perspectives. The *justice-based justification* amounts to the claim that representation of future interests is instrumental to the achievement of intergenerational justice. The *democracy-based justification* amounts to the claim that all interests should be taken into account in the democratic process, including the interests of future people.²

(i) *Intergenerational justice*

Suppose considerations of distributive justice do apply to relations between generations. There are many accounts of intergenerational justice and there is no space here for an extensive discussion of the various merits of each of these. Some accounts suggest are sufficientarian and hold that each generation should have access to a sufficient level of advantages. Egalitarian accounts hold that each generation should have access to an equal level of advantages. These advantages can be assessed in various ways, such as resources or primary goods, productive opportunities, capabilities, democratic capacities (Thompson 2010) or welfare.³

Rawls's account of intergenerational justice is a well-known example, but any account that is sufficiently demanding for "business as usual" to be problematic should do. According to Rawls (Rawls, 1999: §44, 2001: §49), intergenerational savings should be such that:

- (i) As long as a society has not reached the material wealth needed to secure just institution (the *accumulation stage*) and the fundamental political and social liberties, savings are compulsory.
- (ii) Once a society is wealthy enough to secure just institutions (the *steady-state stage*), savings are not compulsory any more, though they are permitted.

The capital to be accumulated and preserved consists in the material conditions for just institutions. It comprises natural resources and environmental goods, machinery and means of production, technologies and knowledge, investments in education and health

² See Beckman (2013) on this distinction.

³ For overviews of distributive theories of intergenerational justice, see: Gosseries (2008a); Meyer 2016.

care, a set of well-functioning political institutions as well as a social security scheme, a cultural heritage.

It is beyond the scope of this chapter to diagnosis whether and to what extent current economic, social and environmental policies violate our criterion of intergenerational justice. But suppose the way our institutions currently operate is likely to inflict serious harms to future generations. Even if scientific progress allows us to predict more and more accurately the effects of our actions and policy choices on the environment, health and wealth of future people, implementing policies that would prevent future injustices seems politically unfeasible, given the characteristic short-termism of current political and economic system. Democracy, at least as it is organized *now*, tends to be “presentist” (Thompson 2010; Caney 2016). The inadequacy of democratic institutions to face a society’s obligations towards future people is due to the fact that decision-makers are mainly accountable to present voters and interest groups (Thompson 2010). Whatever discourse they may have on the importance of future generations, they are constrained by the electoral cycle. Decision-makers have few incentives to sacrifice their current constituents’ interests for the sake of future people. As the Brundtland Report puts it:

“We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions”(WCDE 1987)

Additional factors worsen the inability of current democratic systems to fulfil intergenerational obligations: the dispersion of causes and effects and the fragmentation of agency in the case of challenges such as climate change (Gardiner 2013), the contemporary consumerist culture, the rising age of the median voter (Van Parijs 1998, 296), epistemic and motivational factors such as uncertainty, procrastination and overestimation of our capabilities (Caney 2016, 143-5), national sovereignty as an obstacle to international cooperation to deal with issues such as climate change, lobbyism of short-termist interest groups such as fossil fuels and automobile industrials (e.g. Crowley 2013).

There are at least two methods to secure long-termism in democratic institutions. The first one is to change behaviours through education, environmental education for instance). But this is quite difficult, since we tend to be very weakly motivated to care

for distant faceless future people (Birnbacher 2009), since those can neither threaten us nor trigger our sympathy (see chapter 9 in this book).

The second method does not rely on future-friendly attitudes, but calls for institutional design. This is what Van Parijs terms the “Rawls-Machiavelli program” (Van Parijs 1998). It is “Rawlsian” in that the guiding objective of institutional design is a publicly justifiable conception of distributive justice, and “Machiavellian” in that it assumes individuals are only moved by their own private passions and interests. Institutions would be designed in such a way that they generate the right outcome in terms of intergenerational justice, and this without any transformation of the attitudes of possibly selfish and short-termist citizens. The new incentive structure would shape individual behaviours and actions exactly in the same way as their lacking sense of (intergenerational) justice would do.

Institutional options to secure future generations’ interests include many proposals.⁴ Different proposals address different sources of short-termism (MacKenzie 2016): constitutional provisions (e.g. Gosseries 2008b); alternative indicators such as generational accounting (Kotlikoff 1993) or ecological footprint (Ponthière 2013); alternative franchise systems such as granting children the right to vote (this right being exercised by parents or guardians) (e.g. Van Parijs 1998, 308-314; Hinrichs 2007) or age-differentiated voting rights (Van Parijs 1998, 301-308; Wallimann-Helmer 2015); economic incentive schemes (for example tying the long-term outcomes of decision-makers’ decisions to their pension plans (Wolfe 2008)). Caney has proposed a “five-fold package” combining several long-termist reforms with a parliamentary committee inspired by the Finnish Committee for the future (see: Appendix A2.(i)) (Caney 2016).

Political representation of future generations would secure future people’s interests by shifting the current balance of power, which leads to overdiscounting the future. Giving a voice to guardians of future people’s interests should mitigate the negative consequences of short-termist policy-making. Even if future generations’ interests sometimes coincide incidentally with other groups’ interests – parents, environmentalists, the young, the world poor –, it is not necessarily the case, given the

⁴ For a compilation of institutional proposals aiming at securing intergenerational justice, see : Gosseries and González-Ricoy (eds) (2016).

broad range of political issues that may affect the future. Moreover, even if citizens and legislators are in fact willing to fulfil at least their minimal obligations to their descendants, they might be victims of misperceptions or self-serving biases. Representatives of future generations are therefore perhaps the only group that could point out the effects of public policies on future people's interests to the public and the officials' attention. They could unite the various efforts for safeguarding future people's interests. Representatives or guardians for future generations could secure the coherence of policy decisions with expert evidence on what is the most likely to secure future people's interests (Van Parijs 1998, 321).

These discussions suggest current democratic systems negatively affect the fundamental interests of future people, which are the interests a theory of intergenerational justice aims to define and secure. On an interest-based account of rights, these interests ground rights when they are important enough to create obligations for others. In that sense, future generations have rights (e.g. Caney 2005) (rights of future generations and related conceptual issues are addressed in chapters 2 and 3 of this book). If political representation is a reliable means to secure future generations' rights, theories of intergenerational justice may derive a right to be represented for future people from these other rights.

It is important to understand that the justice-based argument in favour of representation of future generations does only justify such representation insofar as it increases the likeliness that resources and institutional goods will be distributed fairly between generations. According to the justice-based argument, representation of future generations is merely instrumental to the realization of intergenerational justice. It must thus be efficient in achieving this goal. If it is not, or if its costs outreach its benefits, it must be abandoned. Some have pointed out that altering the democratic process by modifying the composition of either representative bodies or the electorate itself for the sake of promoting certain desirable outcomes is problematic (e.g. Wallimann-Helmer 2015, 72).

(ii) *Democratic inclusiveness*

But there is another, normative reason, for granting future people a voice in the democratic process. The core idea here is that the democratic decision-making process is legitimate only if it gives a voice to representatives of future interests. The democracy-

based argument requires the redistribution of political power and the inclusion of future people in the *demos* because such inclusiveness is implied by a normative commitment to democracy.

Future people and the all-affected interests principle

One possible rationale for the claim that future people should be given a voice through representatives in democratic decisions for democracy to be legitimate is that future people will be affected by today's decisions. This rationale broadly corresponds to the all-affected interests principle : those whose interests are affected by the collective decisions to be made ought to have the right to take part to the democratic decision-making process. Here is a definition (Goodin 2007):

"All-affected interests principle: all those who have interests that will probably be affected by any possible decision under any possible political agenda should have the right to participate to the decision-making process."

Many political decisions are likely to affect future people, at least if we understand "affect" in a causal way (Beckman 2013, 779).⁵ A decision causally affects a person if this decision can have as an effect –be it intended or not – a change in what this person has an interest in (Interests may be framed in terms of needs, well-being, opportunities, rights, burdens, etc.). The claim that the legitimacy of the involvement of future people in the democratic process arises out of the fact that our decisions will impact them in the future appears in many contributions advocating the representation of future generations (Kavka and Warren 1983, 22; Dobson 1996, 132).

The absence of future people does not seem a good reason for excluding them from the democratic process. We know too well how dangerous it can be to exclude particular constituencies on arbitrary grounds. Nowadays, it seems plausible that the exclusion of women, Blacks or Jews from the decision-making process was, to say the least, a deep

⁵ Beckman suggests another reading of the all-affected interests principle, where « affect » is to be understood in a legal way. According to this reading, "affecting" a person is "[defining] the entitlements, duties and benefits that apply to [this person] as a matter of law." In a nutshell, Beckman argues that our decisions do not affect future people in the legal sense, since each generation has always authority to modify the laws it inherits from the past, at least as long as it follows the correct procedure according to the constitutional arrangements established by the preceding generations (Beckman 2013).

injustice, among other reasons because their interests were significantly affected by the decisions others made. As Goodin puts it, “the whole thrust of modern democratic theory is to reject arbitrary delimitation of the subjects whose interests are to be politically considerable” (Goodin 1996, 837). If legitimate democratic institutions grant the right to participate to those whose interests are being affected, and if future generations’ interests are affected in this way, in order to secure the legitimate character of our democratic institutions, we ought to include future people in the decision-making process, and this could be done through representatives.

But this conclusion leaves many questions unanswered. *Firstly*, since future people outnumber present people, following the rule “one voice, one vote” might give an excessive priority to the future over the present (Bergström 2005). We thus need further normative developments to justify giving future people’s voices a lesser influence on decisions while still granting them the right to participate according to the all affected interests principle. *Secondly*, one may ask what sort of influence future people should have. An alternative way to apply the all affected interests principle is not to expand the demos, but to limit the decision power of the actual demos, for example by granting representatives for future people a veto right.

Future people and deliberative democracy

The all affected interests principle provides a justification for including representatives of future people in the decision-making process. But another reason for including representatives of future people in democratic decisions is related to the ideal of deliberative democracy. We could thus distinguish between *aggregative* and *deliberative democracy* as well as between their rationale for representing future people’s interests. Theories of *aggregative democracy* takes individual votes as given and attempt to determine how they should be aggregated in a collective decision-making procedure so that the outcome of this procedure is as representative as possible of the set of individual votes. Theories of *deliberative democracy* consider the decision-making process as a way to form and transform conflicting individual preferences so that they become more compatible with ethical principles or general policy considerations everyone can accept. In order to be legitimate, democratic decisions should be the outcome of a discursive process where the affected individuals (or their representatives) have an equal opportunity to defend their position and the obligation to provide justifications for these

positions that others can accept. Because an open and free public deliberation is likely to improve the quality of the final collective decision, deliberation has a legitimizing force (Ekeli 2009). Deliberative democracy theorists argue that the outcome of such process can be expected to be more rational and impartial than the mere aggregation of votes. This is because of three mechanisms. *First*, as everyone should have the opportunity to participate in public deliberations (either directly or through representatives), the basis of information of decisions can be expanded and hence the epistemic quality of the final decision improved.⁶ Public deliberation exposes presently living citizens to a variety of perspectives and helps them to imagine what future generations' interests could be (Karnein 2016, 96). *Second*, the open deliberation prevents concentrations of power. Every proposal is open to public criticism and examinations. *Third*, having to justify publicly one's position induces one to internalize the others' perspectives and makes others' reasons to agree or not one's reasons. Every participant will start arguing as if she considered with respect her fellow citizens' claims and opinions. We can anticipate these mechanisms to occur because of the very analytics of interpersonal communication rather than because of speculative empirical hypotheses (Goodin 1996).

Deliberative democracy may require the involvement of representatives for future people in the deliberative process for three reasons. First, deliberative democrats are committed to the all affected interests principle (Ekeli 2005). Second, since the legitimacy of deliberative democracy itself depends on the epistemic quality of deliberation as well as on its ability to induce participants to adopt a more impartial perspective, representatives of future generations should participate because their presence could improve the epistemic quality of deliberation by providing arguments, information, proposals and perspectives that are different from the ones representatives of present people are interested in (Ekeli 2005; Niemeyer and Jennstål 2016). Third, the very fact that representatives of present people know they will have to justify their views to representatives of future people should induce them to take future people's interests into account in their proposals, and thus to "internalize" their interests.⁷ It should even induce them to be more impartial, since, according to the "law of large number" (Goodin

⁶ Let us note this is more an instrumental argument in favour of deliberation, rather than a normative requirement of democracy. I thank Marcus Düwell for having pointed out this to me.

⁷ This is for this reason that Goodin argues that deliberative democratic practices would be better suited to the defence of nature's interests (Goodin 1996).

1996), the broadest the public one has to justify her view in front of, the most likely one will take into account the general interest rather than particular, group or individual interests.

(iii) *The respective institutional implications of justice-based and democracy-based accounts*

The justice-based and democracy-based justifications for representation of future generations will use different criteria to assess devices to represent future generations. They will thus advocate different kinds of institutions. Intergenerational justice wants representation of future generations to be efficient in achieving a just distribution of advantages between generations. Law-making competence should be ascribed to future people's representatives only to the extent that it is needed by justice. If an advisory commission secures the same outcome, then it is fine from the viewpoint of intergenerational justice. While the democratic legitimacy rationale does not claim future generations should have access to their fair share of economic and social advantages, but to their fair share of power (even if there is arguably a connection between both). Therefore, once it is recognized that future people can be affected by current decisions, or that their participation to public deliberation through representatives enhances the quality of deliberation and therefore its legitimizing force, they ought to be included in decision-making processes through representatives. This might imply representatives of future people should have law-making competency exactly like representatives of present people have. Deliberative democracy might require all the modes of inclusion of future people to favour an open and free deliberation, such as a right to delay decisions (to trigger deliberation) or citizens' assemblies and juries.

2.2 Objections to the political representation of future generations

To provide a fully convincing case for the representation of future generations, we must address potential objections to it.

Objection #1: Inflation of Representation

The objection may be stated as follows. If we accept that future generations should be represented, why shouldn't the decision-making process also include other constituencies beside future generations, such as children, foreigners, past citizens,

animals, trees, stones.... If we decide to include future generations in the demos, we might open an endless Pandora Box.

But the underlying intuition conflates the normative justification for giving future people representatives (which are not arbitrary and do not all extend to other constituencies such as animals or foreigners) and the practical issues representing future people may raise (Dobson 2005, 35). Future people will be many. But it remains possible to conceive appropriate institutional tools to include them without threatening the functioning of democracies. Note this objection could be understood as contesting the use of representation as a good tool to represent future generations, by comparing future generations with other constituencies which, despite the fact that they are not directly represented, still have their interests taken into account in a way or in another.⁸

Objection #2: No Representation without Accountability Objection

Even if future people can be said to have interests in a meaningful sense, one may doubt these interests can be *represented*. This is because political representation involves a specific relationship between the representative and the constituent. *First*, the constituent *selects* (through elections for instance) the representative. *Second*, the constituent *communicates her will and her interests to the representative*, so that the representative can adequately represent her. *Third*, the constituent *monitors* the representative's actions. Future people can do none of these. Therefore, future generations cannot be politically represented, at least not in the usual sense of the term.

This objection could be addressed by broadening our understanding of the necessary conditions for representation to be meaningful. For example, Feinberg argues that the sole requisite for a person to have rights and hence to be represented in some way is to have interests (see Kavka and Warren 1983, 24; Dobson 1996, 132). According to Feinberg, neither the temporal remoteness of future people, nor the indeterminacy of their identity, preclude the fact that they have interests, fact that follows merely from their being humans (Feinberg 1980, 66). Let us add that, if representatives of future generations know that future generations will have interests and have some clues about what these interests require in terms of political action, they nevertheless cannot exactly follow their constituents' instructions. Hence they should act as trustees rather than as

⁸ See Kavka and Warren (1983) and Gosseries (2008b) for such an elaboration.

delegates. Instead of acting according to the preferences they constituents express (as a delegate does), a trustee follows her own well considered judgment about how to act in the best interests of her constituent (Dovi 2014).

But a potential objector might have two further concerns. First, what is in the best interests of people living in the (distant) future is highly uncertain. Second, how could representatives for future people be held accountable to their constituents (Wolfe 2008, 1923)?

The issue of uncertainty can be partly met if we grant the reasonably probable claim that there are some basic human interests people living even in very different circumstances from ours would still have. For instance, they should have the same physiological need for fresh air, clean water or food with adequate nutritional quality (Kavka et Warren 1983, 25; Ekeli 2006, 396- 398). Furthermore, insofar as our own preferences and values inescapably shape the preferences and values of the next generation (through education and the continuation of political, moral and cultural institutions), there is an extent to which one can predict the values and preferences the (closer) next generations are likely to develop.

The issue of accountability assumes that the interests of the representative necessarily conflict with the interests of the constituent.⁹ The representative may seek political power or economic gains. Hence the constituent must be able to control the representative through various institutional devices: electoral mandates that are limited in time, transparency requirements, and so on. Whereas future people are obviously unable to control their representatives. But is it really the case that the interests of the representatives necessarily diverge from the interests of the constituents? If not, actual monitoring of representatives would be unnecessary. We might, as suggested by Jane Mansbridge, opt for a “*selection model*” of political representation instead of a “*sanction model*”. Mansbridge discusses both models in the context of classical representation of present people, but the discussion can be fruitfully applied to the issue of the representation of future people. The “*sanction model*” is about control, the constituents invigilating regularly their representatives after they have elected them (Mansbridge 2009, 2). The “*selection model*” involves devoting more resources and attention to the selection of an adequate representative, that is, a representative whose motivations and

⁹ For a discussion of this assumption, see Mansbridge (2009).

objectives are in line with the constituent's ones (Mansbridge 2009, 4).¹⁰ Real-world cases where the selection model prevails include the selection of judges, academic faculty, nannies... In these cases, a lot of resources and time are devoted to check the reputation of competency and honesty of the representative, as well as her intrinsic motivation to act in the best interests of her constituents. The selection model avoids the accountability problem by securing from the very beginning the alignments of objectives between the representative's actions and future people's interests. Indeed real experiments as well as proposals for representing future generations have often involved criteria to select these representatives that were proxies for these representatives' self-motivation. The Israeli Commissioner had to be an expert in fields relevant for defending future generations' interests. The Hungarian Ombudsmen for Future Generations have to have a degree in law and demonstrate excellent academic achievements in the environmental field (see: Appendix A.2. (iii)). In order to avoid conflicts of interests, they should not have any other professional occupation or political office.

Objection #3: Moral Consideration Better than Political Representation

Another possible objection is that representation of future generations is not needed because we or at least some social groups (environmental lobbies, green political parties, parents, private companies) do already take care of them. However, it is probably not sufficient to protect future people's interests (Kavka and Warren 1983, 36). A more subtle version of this objection is termed the "Münchhausen problem of motivation" (Jensen, 2015): if it is true that presently living people do not take future people's interests sufficiently into account, then, insofar as presently living people are also the ones who will select and act as representatives for future people, we cannot really trust them for achieving well this task; if, on the other hand, presently living people already care enough for future generations, then extra representation of future generations is not really necessary. In addition, representation of future generations may have undesirable democratic costs that should encourage us to look for other alternatives to better take future generations' interests into consideration (Jensen, 2015).

¹⁰ This line of answer is closely related to Karnein's model of surrogate representation (Karnein 2016, 88-92), which is also inspired by Mansbridge's work. Surrogate representation requires the representative to demonstrate, either by her personal characteristics or by the positions she defends, she is suited to represent a particular group.

The “Münchhausen problem of motivation” assumes that the process of representing future generation does not affect the attitudes of presently living people. Either we care for future people or we do not, and representing future people will not change anything. Challenging this assumption allows us to address the objection. Some contributions in the literature suggest representing of future generations may affect citizens’ perspectives and motivations in such a way that they come to consider future people’s interests as their own; and this wouldn’t have occurred had future people’s interests not been explicitly represented in the decision-making process.¹¹ Including representatives of future people in public institutions induces citizens and law-makers to frame policy issues differently. In that sense, including representatives of future people in the deliberation might be seen as an “educative process” (Ekeli 2005, 448). Hence representation of future generations is not “representation” in the narrow sense outlined above. It rather amounts to the “incorporation” of future people’s interests in policy-making (as well as in the economic system). Consider the proposal Goodin makes for representing nature and animals (Goodin 1996). Goodin suggests that nature and animals’ interests are “encapsulated” in the interests of citizens who have sympathy for them, in the same way as children’s interests are encapsulated in their parents’ ones. This line of reasoning also applies to future generations. Therefore, as Goodin puts it, the whole point of the democratic process is to design democratic institutions in such a way that citizens come to internalize others’ interests, especially the interests of the voiceless animals, children and future generations. Goodin argues deliberative practices are more likely to induce the decision-making process to take into account such encapsulated interests. If we apply this line of reasoning to our issue, this means that representation of future generations, alongside with deliberative processes, may be part of the devices that encapsulate future people’s interests in ours.¹²

¹¹ Representation of future generations could also just provide already future-friendly people with the opportunity to reveal their future-friendly preferences through the decision-making process, without necessarily reshaping their preferences. I thank Mikael Cozic for having stressed this important point.

¹² Another possible objection involves a particular application of the non-identity problem (Parfit 1984, Part. IV). Suppose the representatives of future people are asked to vote between two policies, Resources Depletion and Ecological Conservation.¹² This choice will change many details of the present generation’s life, including the time of conception of their children. Hence the choice of each of these two policies will bring different individuals into existence. Hence, depending on the policy they will vote for, future people’s representatives will in fact represent different kinds of future people. This leads to the bizarre conclusion that, whatever they vote for,

3. Towards new proposals

As we have seen, future people cannot be represented in the same way as present people are: it is impossible to enfranchise unborn people. Various proposals have thus been made in order to overcome this difficulty. A first family of proposals consists in reserving some seats in legislative assemblies for representatives of future generation. A second category of proposals suggests creating a special agency. Before discussing these proposals in detail it is worth outlining the features all should have.

- (i) **A broad mandate** (Gosseries 2008b) – as it has been repeated many times in this paper, future generations' interests do not consist only in environmental interests. Representatives should be able to deal with all intergenerational issues such as the future of the welfare state, investments in education and in technologies, the maintenance of democratic institutions, the preservation of minority languages...
- (ii) **Knowledge and expertise** – even if future generations' interests are partly unknown, there are means to predict some of them. Representatives of future generations should have the concrete means to assess these interests as adequately as possible.
- (iii) **Motivation** – the selection procedure of future representatives should ensure that these representatives really care about future people's interests.
- (iv) **Pluralism and argumentative quality of the debates** – the institution representing future generations should be able to deal openly with competing views of what ought to be done for the future.
- (v) **Independence** – representatives of future generations should be capable of resisting pressure from short-termist entities (such as lobbies and interest groups, other elected officials...)
- (vi) **Balance between present and future** – institutions representing future generations' interests should be included in the existing democratic

they always speak for their representees' interests. Now, addressing this problem requires addressing the non-identity problem itself, which is beyond the scope of this chapter. For an introduction and a discussion of various possible responses to this challenge, see : Meyer (2016, § 3).

institutions in such a way that an adequate balance between present and future interests can be achieved.

- (vii) **Compatibility with fundamental rights** – representation of future generations should be compatible with presently living citizens' fundamental rights

3.1 Reserving seats in assemblies for representatives of future generations

Here I shall refer to future people's representatives by F-representatives and to present people's representatives by P-representatives.

Dobson's proposal: the environmental lobby as a proxy electorate and proxy representatives

Dobson (1996) has been one of the first to discuss the possibility to reserve some seats in legislative assemblies for F-representatives. F-representatives would be democratically elected, exactly like P-representatives. However, voters as well as candidates would be drawn from a group of citizens who has a strong concern for environmental sustainability. Environmental activism and lobbyism would thus be a proxy for the interests of future people. The successful F-candidates would sit alongside democratically P-representatives and have the same law-making competence. Dobson does not specify how many seats however (which leaves the question of whether F-representatives' power would be well balanced with P-representatives' power unanswered). Plurality of views among F-candidates would be secured to a certain extent, because groups who campaign for environmental sustainability may still hold different conceptions of it (from the Brundtland sustainability view to deep ecology). Dobson also considers depriving the F-electorate from its right to vote for P-representatives in order to avoid violation of the one person, one vote principle, which embodies democratic equality.

An objection to Dobson's proposal is that the environmental lobby does not have sufficiently diverse perspectives to be a satisfactory electorate to represent future generations (Ekeli 2005, 435- 7; Ekeli 2009, 446). According to Ekeli, the debate about what is in the best interest of future people ought to be left open. Indeed, it seems there is a trade-off here between two of the requirements outlined above, that is, between Pluralism and Motivation. Environmental activists are surely motivated to secure future people's interests. However, restricting future-oriented policies to their perspective

undermines pluralism. How could we select representatives that still care about future people without endorsing a very specific view of posterity's interests?

Ekeli's proposal: a double vote to make future people imaginatively present

Ekeli (2005) also proposes to reserve some seats in legislative assemblies for representatives of future generations (he suggests 5% of the seats). F-representatives would also have law-making competence. Moreover, a qualified majority of F-representatives would have the right to require delaying the enactment of a law, if this law is estimated harmful for future generations. The delay would be either for two years or until a new election. F-representatives would be democratically elected, not by a proxy electorate, but by all citizens. In other words, each citizen would have two votes, one for a P-representative and one for a F-representative. F-representatives would thus be accountable to citizens exactly like P-representatives. F-candidates would be drawn from F-political parties, that is, political parties created with the goal of protecting future generations. F-candidates would campaign exactly like traditional P-candidates, with a programme, etc. F-parties would include more than environmental parties. Hence Ekeli's proposal leaves more room for divergent interpretations of our duties to future people than Dobson's one. A problem is that traditional P-parties might profit from this absence of constraint to create pseudo F-parties in order to get additional voices in the assembly. Therefore Ekeli proposes that some legal norms should constrain the creation of such parties. Ordinary P-parties should not be authorized to create F-parties. Neither should interest groups whose members have short-term interests (such as companies lobbies, employers' organization or trade unions). These norms would be enforced by Constitutional or Supreme Courts.

Ekeli takes inspiration from deliberative democracy to defend this model. Even if this model is not the definitive answer to democratic short-termism, it has the advantage to encourage debates and information sharing about future issues, among citizens as well as among legislators. The model is designed with this deliberative purpose. For example, by slowing down decisions, F-representatives can create public awareness and debate about intergenerational issues.

A possible objection to the model is that it gives too much power to Courts, which have the final say on who is entitled to represent posterity. Another objection is that there is not guarantee that citizens will be less short-termist while selecting F-

representatives than when selecting P-representatives. That is, even if Courts make sure only F-candidates who really care about future people's interests can campaign, citizens may still vote for the F-party which endorses the view of posterity's interest that would involve less sacrifice of their short-term interests. Nevertheless, unless presently living people are consciously and fully selfish, the double vote might still at least partly work in performing an educational function. Biases may be overcome by changing the way political issues are framed, that is, by making vivid the distinction between present people's interests and future people's interests.

A specialized second chamber of randomly selected citizens

Thompson's (2010) proposal is modelled on the Tribune of the Plebs in the Ancient Roman Republic. The Tribune of the Plebs did not participate to ordinary politics, but was missioned to defend the rights and interests of the plebs when these were at stake. It could "intercede in judicial proceedings", veto laws, and force legislators to consider its proposals. To represent future generations, Thompson prefers a citizens assemblies to a special commission, because ordinary present citizens are more likely to resemble ordinary future citizens than members of a special commission. Those citizens could be chosen randomly, that is, by sortation.¹³ Such a body should be established at the national and at the international level. Thompson outlines powers we might consider

¹³ Three other proposals to represent future people through randomly selected citizens should be mentioned. The first is suited for the British context and involves a non-elected assembly (Tonn and Hogan 2006). Tonn and Hogan argue that the House of Lords could serve as a guardian for future generations. The Lords would appoint a Committee on the Future of the United Kingdom to hold auditions and provide advices to the Lords. The House of Lords could decide not to approve bills that might harm future generations. Even if the House of the Commons has authority to bypass the House of the Lords veto after a Second Reading, such delay might increase the public opinion's awareness about this issue. Secondly, Bourg and Whiteside (2010, 94- 95) have proposed a Senate for the long-term, which would have a the power to propose laws and to veto those which would threaten the preservation of environmental goods. A third of this Senate's members would be randomly selected citizens, the two other thirds being randomly selected people from a list provided by environmental NGOs. Thirdly, MacKenzie also imagines a randomly selected second chamber to ensure representation of future interests. The selection procedure would use stratified random sampling to secure adequate representation of salient groups. Half of the chamber would be replaced every year. Members would be remunerated. The chamber wouldn't have legislative power, but only the power to review bills and require amendments from the first chamber (MacKenzie 2016).

attributing to this assembly without further specification. The assembly might be authorized to suspend temporarily the enactment of a law that could harm future generations. It might require posterity impact statements, as well as a democratic deficit impact statement, from the government. It might also establish age-differentiated political rights, a contingency trust fund to compensate future damages, or call for constitutional conventions. It could enter into agreements with other citizens assemblies representing future generations in other countries.

Why using randomly selected citizens as representatives for future generations? *First*, their social diversity might contribute to better take into account the probable diversity of their descendants' interests. *Second*, random citizens' career prospects are not tied to what short-termist electors might think of them. *Third*, "lottocracy" proposals are often complemented with carefully designed deliberative procedures in order to render decisions as impartial as possible. Some real-world experiments seem to confirm the capacity of citizens' assemblies to take into account sustainability issues. For example, the citizen jury missioned in the French region of Poitou-Charentes claimed the necessity to take into account future generations' interests and made concrete proposals on climate change and energy independence.¹⁴

However, some could worry that, contrary to special commissioners, citizens might lack the specific expertise needed to represent future generations' interests adequately. Second, one could wonder why random citizens would specifically care about the future. In fact, successful examples of randomly selected citizens' assemblies should not hide less convincing experiments. For example, in the American State of Maryland, in 2002, five of the eighteen participants in the citizens jury missioned to make recommendations on climate policies opposed a veto to the adhesion of the United States to the Kyoto protocol.¹⁵¹⁶

Submajority rules (Ekeli)

A submajority rule authorizes a minority to change a decision regardless of how other votes are distributed. Ekeli's (2009) proposal does not involve the selection of specific

¹⁴ The 2008 French jury's opinion is cited by Vergne (2010). At the time of the completion of this paper, the website of the Jury was not accessible.

¹⁵ <http://jefferson-center.org/wp-content/uploads/2012/10/Global-Climate-Change.pdf> (consulted on December 4, 2014), cited by (Vergne 2010).

¹⁶ For other possible critiques, see : MacKenzie (2016, 291-3).

representatives for future citizens. It involves giving specific powers to regular political representatives so that those of them who have long-term concerns can act upon them. Ekeli proposes that one third of the legislators would be authorized to make specific demands if they believed a given bill would be harmful to future generations. This submajority of legislators could demand that the enactment is delayed until the next election. Alternatively, they could demand a referendum on this bill. The public would be given one or two years to deliberate about the bill. The legislators who make these demands should prove that the law would harm future generations. Potential conflicts about whether the bill is harmful for future people or not would be solved by courts. Ekeli believes delaying votes on bills could promote more public awareness and deliberation about issues related to future generations.

3.2 Creating a special agency and/or appointing a Guardian

Instead of reserving seats in legislative assemblies to protect future generations' interests, one could consider establishing a special administrative body, which might either be attached to the Parliament (as it was the case in the Israeli model) or to the executive branch. Even if such agency does not necessarily have a law-making competence, if it bases its opinions on relevant expertise, it might perform an educative function by challenging false beliefs the public might hold regarding future issues (Van Parijs 1998, 321).

National agencies

Mank proposes to create a Superagency to protect the environment for future generations in the United States (Mank 1996). The Superagency would be a central executive agency. Its members would be appointed by the President, though not in a single term. The Superagency would coordinate individual executive agencies and oversee future generations-related regulations. The Superagency should have discretion to modify the agenda of individual agencies so that it can put long-term issues in priority. The Superagency's proposed regulations might be submitted to legislative revisions. The Congress would authorize the Superagency to act as a Guardian for future generations in courts. In addition, the Superagency should also promote public debates and awareness about issues posterity issues.

National and International Guardians

An international ombudsperson (Ward, 2013), a Guardian or a group of Guardians could represent remote future generations (Stone 2013). Stone considers various options where to house these Guardians. They might be housed in the United Nations (also proposed by Ward (2013)) or in separate international institutions such as the World Bank or the International Atomic Energy Agency. They could also constitute an independent body. Ward suggest this institutions could be established by a UN General Assembly resolution (Ward, 2013, 32). Ekeli rather looks at the judiciary institutions and proposes national and international courts should have competence to appoint a guardian to represent future generations (Ekeli 2006). What powers these international representatives might have? They could provide assistance to countries and be authorized to be heard by national parliaments and governments before those adopt bills having implications for future generations (Ward 2013; Stone 2013). They might advise international institutions on international law concerning future generations (Ward 2013). They could also intervene and counsel parties in multilateral conflicts involving future generations' interests or initiate legal or diplomatic action on future generations' behalf when future generations are threatened. They could receive complaints and resolve disputes (Ward 2013). Ekeli argues these Guardians should have *locus standi* for future generations in courts. They should have the right to initiate proceedings on behalf of future generations. Stone also considers Guardians could be authorized to waive the rights of future generations if circumstances require it. Who could be appointed as a Guardian? Ekeli suggests that courts should consider this matter on a case-by-case basis. The potential guardians might meet the following conditions: they should demonstrate that they care for future generations, they should have the relevant expertise to perform this function and finally they should also have access to the material resources needed to do so (Ekeli 2006, 392).

Special agencies, appointed guardians and ombudsmen lack coercive powers. According to Beckman and Ugglä, this particular feature strengthens the legitimacy of ombudsmen because, by contrast with the inclusion of representatives in decision-making bodies, it does not constrain us to run counter or significantly alter widespread understandings of democratic legitimacy. And, perhaps surprisingly, real-world experiments show that the fact that they do not have the powers to oblige and sanction does not jeopardize their effectiveness (Beckman and Ugglä 2016).

4. Directions for further research

This overview has shown that, if representation of future generations is neither philosophically nor politically unproblematic, it deserves our attention as a means to secure future generations' interests in contemporary democracies. In particular, we would like to emphasise what Ekeli suggests, that is, that representing future generations in the decision-making process can be a means to trigger changes in presently living citizens' beliefs and in motivations.

Further research may need to focus on policy proposals that take into account the possible effects of various devices to represent future generations on the evolution of citizens' beliefs, motivations, biases and values with respect to future issues. It could be fruitful to better articulate proposals to represent future generations at the political level with educational proposals, not only to ensure the efficacy of such representation, but also to ensure its stability (as real-world experiences such as the Israeli and the Hungarian ones, discussed in the Appendix, show, it is difficult to maintain the representation of future people if citizens and officials are not convinced that it is necessary).

So far discussions of the representation of future generations have focused on public institutions, be it at the national or at the international level. But further discussions should take into account the growing influence of non-governmental actors on environmental and economic problems. It is thus now time to consider whether and how future people should be represented in the decision-making body of organizations such as NGO, firms or educational institutions.

Appendix. Representation of future generations in public policy and public debates

This appendix reviews the existing legal and political instruments that can represent some of the future generations' interests, outlines existing models of political representation of future generations at the national level¹⁷ and summarises the debate

¹⁷ The World Future Council provides a complete map of the existing legal mechanisms recognising future generations' interests. See <http://www.futurejustice.org/resources/global-view-of-mechanisms-recognising-future-generations/> (consulted on November 10, 2014)

around the implementation of institutions aimed at the representation of future generations at the international level.

A.1 Existing legal and political instruments to represent future generations

Although quite a few countries directly represent future generations in democratic decisions, reference is made to future generations in numerous national constitutions, court decisions that have taken future generations into account and parliamentary or special commissions aimed at environmental protection.

(i) *Constitutions*

The rigidity of constitutions and their precedence over other national legislation make them an appropriate tool to secure future generations' interests (Ekeli 2007; Gosseries 2008b). Many national constitutions refer to future generations,¹⁸ among which the constitutions of Bhutan (Bhutanese Constitution, art. 5 clause 1), Czech Republic (Czech Charter of Fundamental Rights and Freedoms, preamble), Estonia (Estonian Constitution, preamble), Poland (Polish Constitution, preamble), Switzerland and Ukraine (Ukrainian Constitution, preamble). The Constitutions of Norway and of Japan even grant future generations rights. Other constitutions explicitly ascribe State institutions the obligation to protect future generations. This can be seen in the Constitutions of Armenia (Armenian Constitution, preamble), Bolivia (Bolivian Constitution, art. 9 clause 6), Burundi (Burundian Constitution, art. 35), Cuba (Cuban Constitution, art. 27), Germany (German Constitution, art. 20a), Sweden (Swedish Constitution, chap. 1 art. 2). National Constitutions often connect the protection of future generations' interests to the protection of the environment. This is the case of South Africa (South African Constitution, chap. 1 art. 24), Andorra (Andorran Constitution, preamble), Argentina (Argentinian Constitution, chap. 2 section 41), Brazil (Brazilian Constitution, art. 225), Ecuador (Ecuadorean Constitution, Title VII, chap. 2, section 1, art. 395, clause 1),¹⁹ Uruguay (Uruguayan Constitution, art. 47), France (LOI

¹⁸ For surveys and discussions of references to future generations in constitutions, see : World Future Council and CISDL (2014); Ekeli (2007); Tremmel (2006).

¹⁹ The Ecuadorean Constitution also protects the rights *of nature*, independently of human interests. Those rights also involves obligations to protect the environment, but on different normative grounds (and therefore it could imply different environmental policies).

Constitutionnelle N° 2005-205 Du 1er Mars 2005 Relative À La Charte de L'environnement). The protection of posterity has also motivated constitutional clauses for financial sustainability (see Tremmel (2006), 190–191 and 197).

(ii) *Court decisions*

At the national level, an important Philippine Supreme Court Case (Minors Oposa v. Secretary of the Department of Environmental and Natural Resources 1993) has opposed children, represented by their parents, and the state Department of Environmental and Natural Resources about timber cutting licenses. The parents acted as representatives of their children, who in turn represented unborn generations. They asked the Court to cancel existing timber license agreements and to cease allowing new licenses in the name of their right and the next generations' right to a healthy environment. Oposa, one of the parents and an environmental activist, referred to "intergenerational equity". The Court decided that the parents had *locus standi*, that is, that they were qualified to represent the not yet born Filipino generations. The Court ruled in favour of the children and of future generations (see also Allen 1993).

Future generations' rights or interests have been mentioned in international court decisions on some occasions. For instance, the dissenting opinion of Judge Weeramantry in the Nuclear Tests Case (Nuclear Tests (New Zealand v. France) 1974) cited "the Concept of Intergenerational Rights" (p 341) and suggested the International Court of Justice could act as a trustee for future generations:

"Having regard to the information before us that the half-life of a radioactive by-product of nuclear tests can extend to over 20,000 years, this is an important aspect that an international tribunal cannot fail to notice. In a matter of which it is duly seised, this Court must regard itself as a trustee of those rights in the sense that a domestic court is a trustee of the interests of an infant unable to speak for itself."

(iii) *Parliamentary and Special Commissions aimed at the protection of the environment*

Future generations' interests are to some extent tied to environmental issues and the preservation of natural resources. In that sense, institutions for environmental protection can be serve as a tool to represent future generations. For example, since 2004, the Brazilian *Comissão de Meio Ambiente e Desenvolvimento Sustentável* (Commission on Environment and Sustainable Development) is a permanent and independent agency

which chairs at the Brazilian House of Representatives.²⁰ The Commission's mandate covers the following themes: national environmental policies, environmental law, and legislation of the ecological defence, renewable natural resources, flora and fauna, desertification, sustainable development. With respect to these issues, the Commission has the power to deliberate and vote on the bills related to these themes, summon Ministers, receive citizens' petitions or reclamations, require assessments and reports, promote public debates, conferences and exhibitions.²¹

New Zealand provides another example. As required by the Environment Act of 1986, the Governor-General of New Zealand appoints a Parliamentary Commissioner for the Environment (*Te Kaitiaki Taiao a Te Whare Pāremata* in Māori) as recommended by the House of Representatives. The Commissioner is independent and has the power to investigate on environmental matters and to make recommendations. However, she can neither vote on bills nor reverse legislation.²² An example of activities the Commissioner carried out is the report on the impact of two nutrients pollutants, nitrogen and phosphorus, on water quality, which received a lot of public attention.²³ She also proposed an amendment to the National Policy Statement for Freshwater Management in order to prevent further decline of water quality, but the government only followed one of her five recommendations.²⁴

Other examples of Parliamentary and Special Commissions for environmental protection include the Canadian Commissioner of the Environment and Sustainable Development, the Chilean Commission on Natural Resources, Environment & National Resources, the German Committee for Sustainable Development or the Council for Sustainable Development in Hong Kong. The effectiveness of these instruments is

²⁰ See <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cmads/conheca-a-comissao/index.html>

²¹ Art. 24 and 32 of Regimento Interno da Câmara dos Deputados. http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/16119/regimento_interno_9ed.pdf?sequence=9

²² See <http://www.pce.parliament.nz/about-us/functions-and-powers/> and <http://www.legislation.govt.nz/act/public/1986/0127/latest/DLM98975.html>.

²³ The report is available at: <http://www.pce.parliament.nz/assets/Uploads/PCE-Water-quality-land-use-web-amended.pdf>

²⁴ See <http://www.pce.parliament.nz/assets/Annual-Report-for-the-year-ended-30-June-2014.pdf>.

variable. The environmental mandate is often too narrow to protect all future generations' interests. Some lack independency, institutional support or access to resources to fulfil their task (World Future Council et CISDL 2014, 8).

A.2 Existing models of political representation of future generations

Some countries have gone much further in defending future generations' rights and interests and have implemented institutions specifically devoted to the political representation of future generations. Recent experiments have been made in Finland, in Israel and in Hungary.

(i) *Finland: Committee for the Future*

The Finnish Committee for the Future was created in 1993, after a major economic crisis in the early 1990s induced the Parliament to ask the Government to present strategies for the future.²⁵ The Committee for the Future enjoys a permanent status since 2000. It comprises 17 members of the Parliament who represent different political parties. This free-standing entity defines its tasks independently from the current Government's agenda. The purpose of the Committee's deliberative and research task is to appraise the long-term effects of political decisions and thus inform the Parliament and the Government accordingly. The Committee has no authority to prepare legislation or to review the budget proposal made by the Finnish government. But it has the power to comment on all parliamentary documents referring to future issues and to make submissions to other Parliamentary Committees. The Committee also produces research reports on future issues. Therefore, its mandate includes, but is not limited to environmental issues. Its areas of interests comprise the economy, employment, energy, health, population issues, science and technology. Since its creation, the Committee has been engaged in a very active dialogue with the Government on the following topics: the future of Finland and Europe, the Finnish economy, employment and technology, the Finnish people's well-being, regional development with a special focus on demographic development, employment and productivity, population policy and the age structure, scenarios for Russia. Each time, the Government has submitted a report to

²⁵ Cf. <http://web.eduskunta.fi/dman/Document.phx?documentId=qs29514121521311&cmd=download>

the Committee (Tiihonen 2006). The Committee auditions experts and drafts a report in response to the Government's one. The propositions made by the Committee are then debated by the Parliament. So far they have been rarely fully rejected (Tiihonen 2006). The implementation of policies is also monitored by the Committee. The current Committee is working on seven special issues: Sustainable Growth (how to increase economic growth while resolving the problem of sustainable development?), An Inspired Society (how to develop a social environment that supports growth entrepreneurialism?), Acquiring New Knowledge (what kind of skills and knowledge young people will need in 20 years?), Can the Welfare Society Endure? (how to define the welfare state of the future?), Black Swans (what future "black swans", that is, rare and unanticipated events that have major impacts when they happen, could be?), Crowdsourcing (how to render the Committee more present in the medias?) and Radical Technologies (what future technologies will be?).²⁶ Although the Committee for the Future is only a Parliamentary Commission with little legal authority, the Finnish Parliament seems to pay a close attention to its recommendations.

(ii) *Israel: the Knesset Commission for Future Generations (2001-2006)*

The Israeli Parliamentary ("Knesset") Commission for Future Generations was an instrument specifically designed to represent and defend the rights of future generations. The Commission operated from March 2001 to 2006. In 2006, no new Commissioner was appointed to replace Judge Shlomo Shohan and the Commission ceased to function. In 2010, the Knesset voted a bill dissolving the Commission, arguing that the Commission was too costly and that it had too much power to interfere with their work (Minutes of the 18th Knesset, third parliamentary session, booklet 10, meeting 189, 13 December 2010, cited by Teschner 2013).

The Israeli Commission for Future Generations was a unit within the Knesset and was financed from the Knesset's budget. It had two main purposes: first, it provided opinions on laws concerning the interests of future generations, and, second, it advised Knesset members on issues relevant to future generations' interests and rights. The Knesset Commissioner for Future Generations was appointed by the Knesset Speaker,

²⁶ Cf. <http://web.eduskunta.fi/dman/Document.phx?documentId=ur13212161619593&cmd=download>.

from among the candidates selected by a “Public Committee”. The Public Committee comprised six members, three of them being Knesset members and the three others faculty members from higher education institutions and experts in fields that were deemed relevant for future generations (Knesset Law (Amendment no. 14), 5761-2001, clauses 36 and 38, cited by Shoham and Lamay 2006, 263).

The Knesset Commissioner for Future Generations had a broad mandate, including any issue “of particular relevance for future generations”, that is, issues that “may have significant consequences for future generations, in the realms of the environment, natural resources, science, development, education, health, the economy, demography, planning and construction, quality of life, technology, justice and any matter which has been determined by the Knesset Constitution, Law and Justice Committee to have significant consequences for future generations.” (Knesset Law (Amendment no. 14), 5761-2001, clause 30, cited by Shoham and Lamay 2006, 263). The Commissioner had the following powers. He was allowed to participate in Knesset debates and to give the Knesset recommendations on the issues he deemed relevant for future generations (according to the definition above). He had authority to evaluate and comment on bills and secondary legislation he considered being particularly relevant for future generations. The Commissioner had also the right to be given enough time to prepare his evaluation and comments. This gave him *de facto* the power to delay the legislative process. By using this authority, it was indeed within the Commissioner’s power to block out votes on the State’s budget, which would have forced the Knesset to organize new elections. The Commissioner had thus an important bargaining power he could use to fulfil his duties. And indeed he used this power to force the government to enact a law concerning the integration of children with special needs in the educational system (Shoham and Lamay 2006, 248). Moreover, the Commissioner could request almost any information,²⁷ document or report from a list of institutions including ministries, local authorities and State-owned corporations, including information these authorities had no desire to make publicly available. The former Commissioner took this opportunity to request data on water pollution from the Water Commissioner of the Ministry of Infrastructure. When the governmental plant of Electrochemical Industry was discovered to contain hazardous materials which rendered the employees sick, the

²⁷ Unless it put the security of the State or public safety at risk.

Commissioner requested the medical files of the plant's employees as well as safety regulations (Shoham and Lamay 2006). The Commission initiated conferences and workshops such as a conference on clean air, and it published an opinion supporting a bill on Clean Air, which was attached to the bill (Shoham 2010, cited by Teschner 2013).

(iii) *Hungary: the Ombudsman for Future Generations*

The institutions discussed so far play (or played) mainly a consultative role, though they enjoy some power thanks to the willingness of decision-makers to listen to them, to their material means to investigate future generations-related issues or, as in the Israeli case, to delay decision-making. The Hungarian Ombudsman for Future Generations had gone a step further in the sense that he really participated in political decision-making. The institution of the Ombudsman escapes to some extent the problem that representatives for future people cannot be elected by those they represent, since an Ombudsman or Parliamentary Commissioner is nominated.

In November 2007, the Hungarian NGO Védegylet (Protect the Future)'s lobbyism for a bill establishing the institution of a commissioner for future generations was finally successful.²⁸ An amendment to the 1993 Hungarian Act on the Parliamentary Commissioner for Civil Rights (the "Ombudsman Act") established the office of the Ombudsman for Future Generations. The first and unique Ombudsman, Sándor Fülöp, was elected in May 2008 and held the office till August 2012. The Hungarian experiment inspired the World Future Council, a non-governmental organization which, among other proposals, campaigns for an Ombudsman for Future Generations at all institutional levels. The new Fundamental Law (Constitution) of Hungary, which entered in force on 1 January 2012, suppressed the Offices of the four Hungarian Ombudsmen, including the Ombudsman for Future Generations,²⁹ and replaced them by the Office of the Commissioner (Ombudsman) for Fundamental Rights. The Ombudsman for Future Generations is now a Deputy of the general Commissioner for Fundamental Rights. His office is held by Dr. Marcel Szabó. The Deputy is elected by the Parliament, on a proposal by the general Ombudsman (himself elected by the Parliament on a proposal by the President of the Republic).

²⁸ For a detailed description of the campaign for the establishment of an Ombudsman for Future Generations, see Jávör (2006).

²⁹ Act 111 of 2011 on the Hungarian Commissioner for Fundamental Rights

What are the functions and authorities of the office of the Commissioner for Fundamental Rights with respect to future generations? According to the New Fundamental Law, it is the obligation of the Hungarian State and citizens to protect, maintain and preserve natural resources and cultural heritage for future generations (*The Fundamental Law of Hungary* 2011, Article P(1)). The Ombudsman for Fundamental Rights himself is assigned the task to provide an opinion on draft laws affecting the interests of future generations as defined by the Fundamental Law. He may also propose amendments of these laws (*Hungarian Act on the Commissioner for Fundamental Rights* 2011, chap. 1, Section 2 (2)). His Deputy responsible for the protection of future generations' interests can also propose the adoption or amendment of laws concerning future generations (*Hungarian Act on the Commissioner for Fundamental Rights* 2011, chap. 1, Section 3(1.g)). In addition, he is assigned the task to monitor the enforcement of the interests of future generations (*Hungarian Act on the Commissioner for Fundamental Rights* 2011, chap. 1, Section 3). This means he ought to inform the general Ombudsman for Fundamental Rights as well as the concerned institutions and the public on violations or potential violations of future generations' interests as defined by the Constitution. He has authority to propose that the general Ombudsman institutes proceedings against these violations, or that he turns to the Constitutional Court. He can also participate in investigations led by the general Ombudsman. Finally, he is assigned the task to promote representation of future generations at the EU and at the global scale.

In 2013, the Deputy investigated or participated in the investigation of more than 400 complaint, commented more than 50 legislative proposals and was involved in two court cases (Gosseries 2012). The complaints included several complaints related to environmental protection (Székely and Kovács 2014, 36). The Deputy's proposal to institute proceedings ex officio for the general Commissioner (Ombudsman) for Fundamental Rights was accepted (Székely et Kovács 2014, 100).

One may point out that the Deputy's mandate is too restricted in scope. Besides environmental protection and the preservation of cultural assets and natural resources, other areas of concerns are relevant for intergenerational justice, especially the sustainability of the economy and of the Welfare State. In addition, since the constitutional reform of 2012, the independent Ombudsman for Future Generation Office has been replaced by a Deputy depending on the general Ombudsman for Fundamental Rights Office, depriving in principle the main representative of future

generations in Hungary from the powers to decide which cases should be dealt with and to speak by himself – he must speak through the main Ombudsman’s voice (Read 2012, n.13 p 30).

A.3 Towards the international representation of future generations: proposals and debates

(i) Future generations in international agreements

At the international level, the reference to future generations in international agreements could be a basis for the establishment of political representation for future generations.^{30,31} The preamble of the United Nation’s Charter settled in 1945 mentions the interests of future generations: the “peoples of the United Nations” shall be, according to the Preamble, “determined to save succeeding generations from the scourge of war”. In 1946, the International Convention for the Regulation of Whaling mentioned that present nations have an interest in “safeguarding for future generations the great natural resources represented by the whale stocks”. In 1972, the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage referred to “the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage” (Article 4). The publication of the Report “Our Common Future” by the Brundtland Commission (World Commission on Environment and Development) in 1987 outlined the core principle of sustainable development (development should be such that present and future generations will be able to meet their needs), which constitutes the Principle 3 of the Rio Declaration (United Nations Conference on Environment and Development 1992). After 1992, many international conventions started to mention the interests of future generations: the United Nation Framework Convention on Climate Change (1992), whose Article 3 states that “the Parties should protect the climate system for the benefit of present and future generations of humankind”, the Convention on Biological Diversity (1992), the Rio Declaration on Environment and Development (1992), the Vienna Declaration and Programme of Action (1993). In 1997, the UNESCO proclaimed

³⁰ This paragraph is partly based on the account proposed by Jávör (2006, 284-285)

³¹ See Ward (2011, 33- 34) for a complete list of the references to future generations in international instruments.

the Declaration on the Responsibilities of the Present Generations towards Future Generations, stating that “It is important to make every effort to ensure, with due regard to human rights and fundamental freedoms, that future as well as present generations *enjoy full freedom of choice* as to their political, economic and social systems and are able to preserve their cultural and religious diversity.” (UNESCO 1997, Article 2). The International Law Association agreed on the New Delhi Declaration of Principles of International Law Relating to Sustainable Development in 2002, stating that States policies concerning the use of natural resources must take into account the needs of future people and avoid any wasteful use of these resources. The interests and rights of future generations are also mentioned by many regional agreements, such as the North American Agreement on Environmental Cooperation (1994) or the Aarhus Convention (*Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* 1998). Moreover, the precautionary principle can be understood as a principle required to avoid harming future people. The precautionary principle states that, whenever it is possible that a given action will be harmful in the future, as long as there is no scientific consensus on the existence and the importance of that future risk, the burden of the proof should be on the shoulders of those who want to take such action. The Rio Declaration states that “where there are threats of serious and irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (United Nations Conference on Environment and Development 1992, Article 15). This principle appears in the Bamako Convention for the conservation of living natural resources (1991), in the United Nations Convention on Biological Diversity (1992), in the United Nations Convention on the Law of the Seas Straddling Stock Agreement (1995). The precautionary principle is invoked by the Article 191 of the Treaty on the Functioning of the European Union and has informed many European policies with respect to environmental protection, but also to genetically modified organisms for instance.

(ii) Attempts and proposals to establish the representation of future generations at the international level

The idea that future generations’ interests ought to be protected has made its way in international agreements. Yet the proposal that future people should have their interests represented by specific institutions remains quite controversial. In 1992, delegates from

Malta unsuccessfully submitted to the preparatory committee for the Rio Earth Summit (1992 United Nations Conference on Environment and Development) the following proposal: the world community should establish a guardian to represent future generations in various international institutions. This guardian “would not [...] decide”, but would “plead for future generations, [and counter] the firmly established attitude of our civilization [to discount] the future” (Preparatory Committee for the United Nations Conference on Environment and Development 1992 cited by Stone 2013). In 1994 the UNESCO’s Future Generations Programme organized a conference on the theme *A Guardian for Future Generations: Status Under International Law*. The World Future Council also campaigns for an “ombudsman for future generations” (similar to the Hungarian model) who would be appointed at the global level. Other campaigners for the representation of future generations at the global level include the Foundation for Democracy and Sustainable Development and the Alliance for Future Generations. During the preparatory negotiations for the Rio +20 Summit in 2012, the establishment of a High Level Representative for Future Generations at the UN was considered. This proposal appeared in the “zero draft” outcome document of the 2012 Rio+20, *The Future We Want*. Despite strong support from the EU, many countries opposed this draft. The outcome of the negotiations was a much weaker text, where reference to the high level representative had disappeared, even if the UN general secretary Ban Ki-Moon was expected to announce the appointment of a special representative for future generations (see Ward (2011) for a description of the negotiations). The attempts made by defenders of the proposal finally failed. Why did the negotiations fail? Opponents advanced the following arguments: international representation of future generations would (i) threaten national sovereignty, (ii) encourage the proliferation of bureaucracy and (iii) excessively favour the future over the present (Weeramantry, Khosla, and Elworthy 2012).

For now the following proposals are currently investigated.³² A first proposal is to replace the now inactive United Nations Trusteeship Council, whose purpose was to protect the interests of the people of Trust Territories placed under the Trusteeship system, by a Trusteeship Council whose purpose would be to protect the interests of future generations (Sand 2004 cited by World Future Council and CISDL 2014, p 19). But the legacy of the UN Trusteeship Council is questionable (it made Nauru a trust territory

³² This section draws on the World Future Council and CISDL's overview (2014, 19-25).

in 1948, Australia becoming the de facto administrator of Nauru, which allows Australian and British industries to keep the control of the phosphate resources in the island, leading to serious environmental damages (McDaniel and Gowdy 1999, 136)). A second proposal suggests to establish an ombudsman or an inspector in international organizations and projects that could impact future people's interests. For example, since 1999 the International Finance Corporation (IFC) which belongs to the World Bank Group has a Compliance Advisor/Ombudsman. The Compliance Advisor/Ombudsman provides assessments of the IFC's compliance with its environmental and social goals, counselling to the managers of the IFC related to these goals, as well as a mechanism for handling complaints from persons who are affected by the IFC's policies. A third proposal is to establish the office of a Special Rapporteur (or Working Group) on the Rights of Future Generations. The Commission on Human Rights could provide material support for it. Similarly to the national Commissions for the environment and/or future generations existing in New Zealand and Finland, the functions of the Special Rapporteur would be mainly advisory and investigatory.

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