

FUTURE GENERATIONS AND DELIBERATIVE DEMOCRACY: WHAT AND HOW TO REPRESENT?

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Abstract

This essay discusses the representation of future people's rights and interests in present political deliberation. Future persons, it will be argued, cannot be regarded as holders of actual rights or interests, which poses a serious obstacle to their being represented in the present. Nevertheless, future generations do matter for members of the present generation, and it is this psychological fact that can be relied upon when looking for a suitable institutionalised way of avoiding generational egoism in public deliberation. What can, and should, be represented is, therefore, present people's rights and interest with regard to their posterity. The second part of the essay focuses on the form of this representation. After an examination of recent proposals made by A. Dobson and K. S. Ekele, it will be argued that there need not be several representatives of the future who participate in legislation in more or less the same way as 'ordinary' representatives do. What is important, instead, is that concerns regarding posterity be directly formulated in most public discourses possible.

The idea that future generations, their rights and interests, should be represented in present decision-making is an answer to the unquestionable insight that present decisions can heavily influence the life circumstances of future people. This has become particularly apparent in terms of environmental deterioration due to the fact that technological development was not (or at least not always) accompanied by an increase in the ability to foresee the consequences of industrial activity. But even if present people knew all the consequences of present policies with near-complete certainty, the problem of generational egoism would remain. To try to cater for future needs may require the adoption of policies that lead to sub-optimal results, or indeed serious sacrifices, in terms of the fulfilment of present needs. Therefore, it

seems that future people's interests tend to be largely disregarded unless they are 'given a voice' in present debates.

It may be for this reason that those trying to advocate sustainable environmental (and other) policies usually speak of the interests and rights of future people in the same way as we speak of rights and interests of present people (adding, to be sure, that these rights are possible rather than actual). In legal and political debates, rights can only be counterbalanced by rights, interests by interests: a voice for posterity will be heard only if it speaks a language decision-makers can understand.

There is, however, also a good deal of scepticism against this way of formulating the duty of the present generation to care for its posterity. While political positions in general may not be particularly sensitive to such theoretical problems as the concepts of rights and interests, a position that is formulated in order to change the now dominant character of decision-making may be less plausible if it rests on questionable theoretical grounds. This essay seeks to offer another, maybe less counter-intuitive approach: one that relies on the psychological fact that future generations do matter for members of the present generation. What can, and should, be represented is, it will be argued, present people's rights and interests in respect of their posterity.

The first part of the essay summarises some of the possible objections to the notion that future people have got rights and interests. The second part offers an outline of the approach focusing on present people's rights and interests and the representation of these. In the third part, recent proposals concerning the representation of future generations (made by A. Dobson and K. S. Ekelì) will be discussed, with yet another proposal formulated in the fourth and final part.

1. Rights and interests of future people are generally opposed to those of present persons, in order to protect the former from the harmful consequences of the latter's imminent actions. Future persons are by definition unknown to us. Indeed, the very basis of the concept is the separation of future generations from the present one. This separation can be interpreted in various ways, according to our understanding of 'present' and 'future'.¹ As for the present generation, it can be conveniently defined as the sum of persons living at a certain point of time. It is the

¹ For some conceptual distinctions concerning future generations, see Gosseries, Axel, *Penser la justice entre générations: De l'affaire Perruche à la réforme des retraites*, Paris, Aubier, 2004.

future that makes for the puzzle. Focusing on time, we may oppose to the present moment a series of future moments. In this sense, the major part of people living in the present is also going to be the major part of those living in the immediate future: a change of generations comes about gradually, according to the pace of human life cycle. If, however, it is the generation that we take as the starting point of our distinction, we have to take a look at the more remote future: at least as remote as the moment where no one of the currently living persons will be alive any more, but rather to the life time of the generation whose members will be all born after the death of all those persons living in the present, which means that their generation does not overlap with the present one. Our choice among the possible definition of future generations obviously has certain consequences in terms of the interpretation and justification of rights. Now, however, we have to examine on what conditions one can speak of rights of future generations at all.

The first problem is that of the subjects of these rights. Generally speaking, the rights usually attributed to future generations or individuals belonging to them are not specifically tailored to future persons, but are the same ones which currently living people are thought to have. The consequence of this is that the subjects of these rights cannot be defined in a positive way, by referring to a certain situation or characteristic, only through their lack of present existence. Thus, the group of subjects is not simply too narrow or too broad: it is infinite and non-existent at the same time. The problem is not due to any requirement of legal or moral theory according to which subjects of rights have to exist in the present: law and morals – like human existence itself – are directed towards the future. What is problematic here is that in this case we are speaking of those not-yet-existing persons and, furthermore, this is the only (negative) characteristic we know of them for sure.

And even if we accept that not-yet-existing persons can have rights, we still have to face uncertainty in terms of the content of these rights and the obligations they determine. This is all the more problematic, as the rights of future generations are apparently meant to provide the grounds for obligations of presently living people. For it seems clear in the case of such rights that they are not exerted in any sense: there is no pleading of claims, as it would not be possible with non-existing subjects of rights.² If we concentrate, in turn, on the (potential) future existence of future

² Feinberg, Joel, 'The Rights of Animals and Unborn Generations'. In William Blackstone, ed., *Philosophy and Environmental Crisis*, Athens (GA), The University of Georgia Press, pp. 43–68, now in

people, then their rights will be the rights of then existing persons, who exert their rights and base their claims on them in their lifetime – and not the rights of the then future generations. We reach the same conclusion, only on a shorter run, if we consider all persons who will live in any moment after the present one as members of the future generations: in exchange for certainty we have to sacrifice the possibility of saying something about the rights of the ever future generations.

Basically, there are two ways to circumvent these problems. It may be suggested – as it was in fact done by George W. Rainbolt, who opposed his own ideas to both the will- and the interest-based concepts of rights – that instead of these ‘substantive’ concepts that contain more or less justification, one should be content with a purely ‘conceptual’ one. According to this, the meaning of ‘right’ suggested by Rainbolt is limited to the notion that ‘a person has a right if and only if a feature of that person is a *reason* for others to have an obligation or impossibility. A person has a right if and only if a feature of that person is the justification of the obligations or impossibilities of others.’³ Although this undeniably corresponds to our previous observation, i.e. that the rights of (the members of) future generations are not intended to be exerted, and although Rainbolt convincingly shows that his concept of justified constraint may be smoothly applied for the rights of persons already dead or who do not yet exist, his suggestion seems to fail with the most sensitive question, that of justification. Or, more precisely, he eliminates it from the concept of rights, removing it to the field of substantive moral views. As a consequence, we either accept that our concept of rights allows for nothing more than explaining what we exactly mean by saying that ‘the (members of) future generations have rights’, but does not help to decide *whether they have any right or if we ought to attribute rights to them* – or we have to face a number of similarly puzzling problems.

Another way is relying on certain assumptions concerning both the existence and the identity (in the most general sense) of future persons. Indeed, it is not counter-intuitive to assume with Joel Feinberg ‘that there will still be a world five hundred

Ernest Partridge, ed., *Responsibilities to Future Generations: Environmental Ethics*, Buffalo (NY), Prometheus Books, pp. 139–150, at p. 147 claims that ‘[o]ur remote descendants are not yet present to claim a livable world as their right, but there are plenty of proxies to speak now in their behalf. These spokesmen, far from being mere custodians, are genuine representatives of future interests.’ It is difficult, however, to see how contingent future interests could have genuine representatives.

³ Rainbolt, George W., *The Concept of Rights*, Dordrecht, Springer, 2006, p. xiii.

years from now and that it will contain human beings who are very much like us.⁴ What follows from this is that we may reasonably assume that future people are going to have largely the same interests as we do,⁵ which may allow for 'the coherence of present talk about their rights.'⁶ These rights, however, are merely contingent ones. In the unlikely case all present people decide not to have children, '[n]o one can complain on behalf of presently nonexistent future generations that their future interests which give them a contingent right of protection have been violated since they will never come into existence to be wronged.'⁷

In addition to their existence, the identity (this time in a stricter sense) of future persons also seems to be contingent on present actions. In a way analogous to Feinberg's claim concerning the impossibility of harming people who are not going to exist, Derek Parfit pointed out some cases where it is not possible to speak of harming people who are actually going to exist, either. What he calls 'the Non-Identity Problem' arises, he explains, '*because the identities of people in the further future can be easily affected. [...] When we are choosing between two social or economic policies, of the kind I described [i.e. whether to deplete or conserve certain kinds of resources], it is not true that, in the further future, the same people will exist whatever we choose. It is therefore not true that a choice like Depletion will be against the interests of future people.*'⁸

The basis of this claim is the mere fact that '[i]f any particular person had not been conceived within a month of time when he was in fact conceived, he would in fact never existed.'⁹ If different policies influence people's decisions about marriage and having children differently, '[w]e can plausibly assume that, after one or two centuries, there would be no one living in our community who would have been born whichever policy we chose.'¹⁰ As it is not the same persons who will exist in the two cases, it cannot be said that opting for one policy rather than the other is going to harm future persons, even if our choice means that those existing in one case will be worse off than those existing in the other case. The Non-Identity

⁴ Feinberg, *op. cit.* (n. 2), p. 139.

⁵ See also Kavka, Gregory, 'The Futurity Problem' in R. I. Sikora and Brian Barry, eds., *Obligations to Future Generations*, Philadelphia, Temple University Press, 1978, pp. 186–203, sect. III, speaking of 'relative ignorance' but 'a high degree of certainty' in terms of future people's needs.

⁶ Feinberg, *op. cit.* (n. 2), p. 148.

⁷ Feinberg, *ibid.*

⁸ Parfit, Derek, *Reasons and Persons*, Oxford, Oxford University Press, 1984 (repr. with corr. 1987), p. 363, emphasis in the original.

⁹ Parfit, *op. cit.* (n. 8), p. 352.

¹⁰ Parfit, *op. cit.* (n. 8), p. 361.

Problem makes clear that 'we need a new theory of beneficence'. Unfortunately, however, Parfit does not provide such a theory. What we are left with in this case is the less than comforting advice that 'we should conceal this problem from those who will decide whether we increase our use of nuclear energy.'¹¹

2. In theories focusing on future people's rights and interests, as we have seen, it is the present and the future generations that are opposed with at least the present generation being regarded as homogeneous. A different approach should try to avoid the pitfalls of that opposition by recognising the internal division of the present generation on the one hand, and the continuity between generations on the other. This approach could then, at least to some extent, rely on ideas such as the trans-generational character of human projects and, consequently, of communities.¹²

While these ideas are usually attributed to the philosophical current known as communitarianism,¹³ they are not irreconcilable with liberalism either.¹⁴ Whether one emphasises the importance of communities for the shaping of human self, or the freedom to revise allegiances, it may be reasonably held that people do have identities composed of memberships in various communities and that therefore

¹¹ Parfit, *op. cit.* (n. 8), p. 451.

¹² In terms of political communities, see the often quoted statement of Burke, Edmund, *Reflections on the French Revolution*, Dodsley, London, 1790, pp. 143–144: 'Society is indeed a contract. [...] It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are to be born.'

¹³ One of the starting points of communitarianism in the 1980s was the criticism of the liberal conception of the self, see e.g. Sandel, Michael, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1981. Taylor, Charles, *Sources of the Self: The Making of the Modern Identity*, Cambridge, Cambridge University Press, 1989. On the trans-generational self and political communities, see e.g. O'Neill, John, *Ecology, Policy, and Politics: Human Well-Being and the Natural World*, London, Routledge, and Thompson, Janna, 'Identity and Obligation in a Transgenerational Polity', in Axel Gosseries and Lukas H. Meyer, eds., *Intergenerational Justice*, Oxford, Oxford University Press, 2009, pp. 25–49.

¹⁴ A liberal example may be John Rawls' motivational assumption, according to which the parties of his 'original contract' may be regarded as 'heads of families', who care about the well-being of their children and grandchildren: Rawls, John, *A Theory of Justice*, 2d ed., Cambridge (MA), Harvard University Press, 1999, p. 111. Cf. Hubin, D. Clayton, 'Justice and Future Generations' *Philosophy and Public Affairs* 6 (1976), pp. 70–83, focusing on family ties but speaking about obligations between contemporaries with regard to future generations rather than inter-generational ones, and Könczöl, Miklós, 'Future Generations: An Almost Rawlsian Perspective' in Miodrag A. Jovanović and Bojan Spaić, eds., *Jurisprudence and Political Philosophy in the 21st Century: Reassessing Legacies*, Frankfurt, Peter Lang, pp. 130–136, seeking to accommodate other community identities within the framework of Rawls' 'original contract'.

people have a legitimate interest in the continuity of their respective communities. If present members of a community have an interest in their past, it is this interest that can be referred to in order to protect the life stories (or narrative selves) of past members of the same community from malicious slander.¹⁵ Someone already deceased cannot continue his or her own story even if (s)he had an interest in its good continuation while (s)he was alive. Presently living persons, however, can do so and if they share the values of their predecessor, they will be interested in the adequate continuation, and consequently their interests will be harmed by any present action aimed at the contrary. The same applies to the interests present people have in the future of their community. If any action jeopardises the well-being of potential future members of a community, it necessarily harms present members of the same community. Moreover, present interests in respect of a community's future include interests in being able to do something for posterity and to attempt, in the words of John O'Neill, 'to ensure that future generations do belong to a community with ourselves',¹⁶ i.e. to maintain the values of one's community by way of passing them on to subsequent generations. It is these latter interests that form the basis of community rights, like e. g. the right of using minority languages.

Members of the community who share the interest in its future, have the right to participate in such debates and deliberation, and their lifetime-transcending interests have to be considered as legitimate reasons. Moreover, all members of the community who share its values and consider membership as their good, have to contribute to maintaining of these values. Since, at least according to the fundamental doctrine of communitarianism, membership *per definitionem* implies that the members of a community share the interest in its future and also share its values and consider membership as their good, those not taking the well-being of future members into account at all must be failing to do so because of ignorance in terms of the nature of their community. The best way to persuade these people, as others, is through democratic deliberation.

3. In an essay published in 1996, Andrew Dobson proposed a model for the

¹⁵ Cf. Thompson, *op. cit.* (n. 13), p. 39–40.

¹⁶ O'Neill, John, *Ecology, Policy and Politics: Human Well-Being and the Natural World*, London, Routledge, 1993, p. 34.

representation of future generations in democratic decision-making.¹⁷ Focusing on legislation, he suggested that a certain number of members of the legislative assembly should function as dedicated representatives of future generations. These representatives would be elected by a group of citizens functioning as a proxy for future generations, and also the candidates running for these seats in the assembly could only come from the same group. Members of the proxy would thus have two votes each, one to cast on 'ordinary' representatives and one on those of future generations, but Dobson also contemplates the possibility of maintaining equality by giving the proxy generation only one vote for future generations.¹⁸

A modified version of Dobson's model was offered recently by Kristian Skagen Ekeli.¹⁹ Rather than letting citizens vote for one sort of representatives only, Ekeli seeks to preserve equality by giving two votes to each member of the electorate, thus having the entire present generation act as a proxy for future generations and elect its own representatives at the same time. As for the candidates, they need not come from the ranks of 'the environmental sustainability lobby', but have to be nominated by dedicated political parties (who could not nominate 'ordinary' candidates, as 'ordinary' parties could not nominate candidates for the seats reserved for representatives of future generations). The right to form such parties, however, should be restricted to people and organisations that can be expected to genuinely represent future interests.²⁰ While these representatives could participate in legislation in the same way as their 'ordinary' colleagues, they would also have the right to 'demand that the final decision about a law proposal should be delayed—either for 2 years or until a new election has been held', provided their qualified majority supports the motion.²¹

As is the case with most advocates of the representation of future generations, both Dobson and Ekeli take it for granted that future people can be represented.²² Ekeli makes this assumption explicit: while he is aware that there may be theoretical

¹⁷ Dobson, Andrew, 'Representative Democracy and the Environment', in W. Lafferty and J. Meadowcroft, eds., *Democracy and the Environment: Problems and Prospects*, Cheltenham, Edward Elgar, 1996, pp. 124–139.

¹⁸ Dobson, *op. cit.* (n. 17), p. 134.

¹⁹ Ekeli, Kristian Skagen, 'Giving a Voice to Posterity – Deliberative Democracy and Representation of Future people', *Journal of Agricultural and Environmental Ethics* 18 (2005), pp. 429–450.

²⁰ E.g. labour unions and employers' organisations could be excluded: Ekeli, *op. cit.* (n. 19), p. 438.

²¹ Ekeli, *op. cit.* (n. 19), p. 434.

²² Cf. the caveats of O'Neill, John, 'Representing People, Representing Nature, Representing the World', *Environment and Planning C: Government and Policy* 19.4 (2001), pp. 483–500.

objections to this kind of representation, he finds comfort in the fact that acknowledging the moral standing of future people is now the *communis opinio*.²³

The suggestion according to which present rights and interests regarding posterity, rather than those of future people, should be represented in democratic decision-making, has by necessity some consequences in terms of the form of representation. Given that the persons represented in this model are not separate from but identical with the present members of the political community, having a group of dedicated representatives in the legislative assembly would seem pointless.

While this apparently contradicts the models proposed by Dobson and Ekeli, it does not question what may be called the 'discursive aim' of representation. Alongside the principle of *Quod omnes tangit ab omnibus approbetur*, there are at least two further aspects of the justification Ekeli provides for his model, all related to the nature of deliberative democracy. On the one hand, representation of posterity can bring in a perspective otherwise (at least potentially) absent from public deliberation. On the other hand, the representatives 'can make relevant information [...] available to the participants' of the deliberative process. Drawing on the distinction originally made by Robert E. Goodin,²⁴ Ekeli claims that the 'communicative presence' of representatives can contribute to the 'imaginative presence' of future generations.²⁵ This seems to be an important insight that deserves consideration when looking at the possible forms of representation.

4. As said above, present rights and interests may not need dedicated representatives in legislation, yet they need to be represented. Moreover, as political debates in a properly working deliberative democracy are not confined to the legislative assembly, also the representative(s) need to be present in other discursive spaces as well. It may, of course, be open to question whether this kind of presence really needs to be achieved by way of a state organ (rather than NGOs for instance). At any rate, Ekeli is certainly right in claiming that a formalised presence is of key importance in influencing democratic deliberation.

Still focusing on legislation, an alternative to the members of the assembly may be a

²³ Ekeli, *op. cit.* (n. 19), p. 444.

²⁴ Goodin, Robert E., 'Democratic Deliberation Within', *Philosophy and Public Affairs* 29.1 (2000), pp. 81–109.

²⁵ Ekeli, *op. cit.* (n. 19), p. 447.

spokesperson in the strict sense, who does not participate in legislation through voting but who can contribute to the preceding debate, either directly, by way of adding his or her *ceterum censeo* to the discussion of proposals (s)he finds relevant from the perspective of sustainability, or indirectly, by providing background information for the representatives that allow for a well-informed decision. Between the walls of the parliament, this task might as well be fulfilled by a standing committee comprising members of the assembly, who in this respect would work as a proxy for future generations; but an effective representation also requires presence outside these walls.

These considerations point towards an alternative model, which may be called the 'ombudsman model', following the way such spokespersons are often referred to in practice.²⁶ Ombudsmen are usually appointed to represent public interests threatened by the violation of rights. A particularly important domain of such activity is those aspects of human life where citizens are likely to be unable to vindicate their own rights.²⁷ In terms of rights related to future generations this may be due to two things: either the lack of information, or the lack of motivation. As in the case of other specialised ombudsmen, a speaker of posterity-related rights has to deal with both problems, by providing information on the circumstances of individual decision as well as by making people aware of their rights and interests through education.

Finally, a possible objection and a question needs to be considered. What makes Ekeli's model of parliamentary representatives appealing from the perspective of deliberative democracy is partly that the plurality of views concerning future interests may be better expressed by a plurality of representatives. A single spokesperson (or a strict limitation of the organisations that can nominate candidates, as in the case of Dobson's model) would necessarily fall short of that

²⁶ At present, there are ombudsmen (Commissioners) for sustainability/environment in New Zealand and Wales (the latter was appointed in 2011, after the funding of the UK's Sustainable Development Commission was withdrawn). In Hungary, the tasks of the former Parliamentary Commissioner for Future Generations were taken over in 2012 by one of the Deputy Commissioners for Fundamental Rights, a considerable step backwards in terms of 'communicative presence'. In Israel, no new Commissioner for Future Generations was appointed after the first Commissioner's term ended in 2006. For essays on the implementation of the political representation of future generations and documents related to the Israeli and Hungarian Commissioners, see Jávör, Benedek and Rácz, Judit, eds., *Do We Owe Them a Future? The Opportunities of a Representation for Future Generations in Europe*, Budapest, Védégylet, 2006.

²⁷ E.g. children's rights, information rights, or the rights of ethnic or religious minorities.

ideal. This is certainly true if we assume that it is only these representatives who care for posterity. Yet if we look at the spokesperson as representing everyone's posterity-related rights and interests (as opposed to other rights and interests) rather than future people's rights and interests (as opposed to the rights and interests of the present generation), then it may be more reasonable to think that the spokesperson only has to make the members of the legislative assembly (as well as the participants of other public debates) aware of their interests and leave it to them to advocate their own competing views in terms of these interests.²⁸

While ombudsmen normally work with a team of experts and other assistants, just as members of the legislation do, they have the advantage that they represent the respective rights and interests in their own person, which allows for an efficient communication. Thus, if the spokesperson feels it necessary to take a definite position on a certain issue, rather than just bringing it up as a question for public deliberation, then (s)he is much better situated to do so than a number of representatives who may even disagree among themselves.

A related question is how the spokesperson should be selected. Ombudsmen are usually elected by the legislative assembly or appointed by the government, but other ways can be imagined as well. It may be worth while considering a regulation that provides for at least a mandatory consultation with what Dobson calls the 'environmental sustainability lobby', and also establishing certain incompatibility rules for candidates.

But important as these questions of regulation are, the most important factor in the success of representation is the commitment of the political community to protect its own future, which is expressed by the very existence of such institutions of representation. If there is sufficiently strong political intention to establish a system of representing posterity-related rights and interests, then a representative (of any kind) is likely to find a responsive audience. Clarifying the theoretical background of representation must be the first step towards raising political support for the idea.²⁹

²⁸ Apart from this function, the spokesperson also may have to take on the role of a 'living conscience' or that of a censor in the Roman sense, by calling attention to views or decisions that are unacceptable from the point of view of sustainability.

²⁹ I owe a debt of gratitude to Ms Kinga Debisso for her help with the bibliography.