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Future-Related Interests: What and How to Represent?

Abstract

This paper is part of a larger project that seeks to examine the potential of rights-based argumentation in future-related political decision making. Since future persons cannot be regarded as holders of actual rights of interests, what can (and should) be represented are present people's rights and interests with regard to their posterity. In terms of the possible forms of representation, the main requirement is that concerns regarding posterity be directly formulated in most public discourses possible. The paper concludes by looking at this form of representation at the European and global levels.

1. Introduction

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 and other human activity (see Jonas, 1984). 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, see e.g. Elliot, 1989). In legal and political debates, rights can only be counterbalanced by rights, interests by interests: a voice for posterity will be only heard 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 (see e.g. Gosseries, 2008; Tattay, in the present volume). 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.

It is for this reason that in the present paper I shall start by suggesting 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, I argue, present people's rights and interests in respect of their posterity. As for the form of political representation of future-related interests, I shall first examine some recent proposals and formulate another one myself, based on the insight that concerns regarding posterity should be directly formulated in most public discourses possible. In the final part of the paper, I look at this form of representation at the European and global levels.

2. Future and Rights

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 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.

¹ For some conceptual distinctions concerning future generations, see Gosseries (2004).

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 present rights of those not-yet-existing persons and, furthermore, the latter 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 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 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

² Feinberg (1981, 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.

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” (see Rainbolt, 2006, xiii, emphasis in the original).

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, relegating 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 years from now and that it will contain human beings who are very much like us” (see Feinberg, 1981, 139). What follows from this is that we may reasonably assume that future people are going to have largely the same interests as we do,³ which may allow for “the coherence of present talk about their rights” (see *ibid.*, 148). 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 non-existent 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” (see *ibid.*).

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

3 See also Kavka (1978, sect. III), speaking of “relative ignorance” but “a high degree of certainty” in terms of future people’s needs.

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” (see Parfit, 1987, 363, emphasis in the original).

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” (see *ibid.*, 352). 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” (see *ibid.*, 361). 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 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” (see *ibid.*, 451).

3. What to Represent?

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.⁴

4 In terms of political communities, see the often quoted statement of Burke (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.”

While these ideas are usually attributed to the philosophical current known as communitarianism,⁵ they are not irreconcilable with liberalism either.⁶ 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 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 (see cf. Thompson, 2009, pp. 39–40). 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" (see O'Neill, 1993, 34), 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 "collective" 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

5 One of the starting points of communitarianism in the 1980's was the criticism of the liberal conception of the self, see e.g. Sandel (1981), Taylor (1989). On the trans-generational self and political communities, see e.g. O'Neill (1993) and Thompson (2009).

6 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, 1999, 111). Cf. Hubin (1976), focusing on family ties but speaking about obligations between contemporaries with regard to future generations rather than inter-generational ones, and Könczöl (2012), seeking to accommodate other community identities within the framework of Rawls' "original contract."

to contribute to maintaining of these values. Since, at least according to the fundamental doctrine of communitarianism, membership *per definitionem* implies that 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.

4. How to Represent?

In an essay published some twenty years ago, Andrew Dobson (1996) proposed a model for the representation of future generations in democratic decision making. 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 (see *ibid.*, 134).

A modified version of Dobson's model was offered more recently by Kristian Skagen Ekeli (2005). 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 rep "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.⁷ 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 (see Ekeli, 2005, 434).

7 E.g. labour unions and employers' organisations could be excluded (see Ekeli, 2005, 438).

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.⁸ Ekeli makes this assumption explicit: while he is aware that there may be theoretical 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* (see *ibid.*, 444).

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.⁹ 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 (2000), Ekeli claims that the “communicative presence” of representatives can contribute to the “imaginative presence” of future generations (see Ekeli, 2005, 447). This seems to be an important insight that deserves consideration when looking at the possible forms of representation.

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.

8 See also the caveats of O'Neill (2001).

9 See, however, Beckman (2013), emphasising that “justice and democracy may conflict” here.

Still focusing on legislation, an alternative to the members of the assembly may be a 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.¹⁰ 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.¹¹ 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 need 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 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

10 For essays on the implementation of the political representation of future generations and documents related to the Israeli and Hungarian ombudsmen (Parliamentary Commissioners), see Jávör and Rácz (eds. 2006), Fitzmaurice (2009, pp. 148–153).

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

of other public debates) aware of their interests and leave it to them to advocate their own competing views in terms of these interests.

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 worthwhile 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.

5. Representation at Supra-National Levels

Proposals for a democratic representation of future-related interests are usually meant to work within a nation-state context. My above proposal, I have to admit, is no exception in that respect. By way of conclusion, I briefly consider the problems raised by different contexts. This needs to be done, since it would be difficult to deny that decisions influencing the life circumstances of future people are not necessarily made at the national level. But even if they are, their effects may well go beyond national borders, and it is therefore necessary to address these at a supra-national level.

Beginning with the European context, the main problem here may be identified as the "democratic deficit" of the EU. Today, that means not so much the absence of an elected legislative body with real powers as the lack of a common public political discourse (see cf. Jakab, forthcoming, pt. II.9). It is therefore not too difficult to establish an ombudsman-like position for a speaker of the future generations. The problem is, rather, that the ombudsman may not find the discourse (s)he is meant to participate in.

In that sense, a European ombudsman either has the possibility to communicate with the governments of the member states concerned, and perhaps with NGOs working in those countries, or (s)he has to establish the discourse needed for the proper functioning of the office. In other words, we have to face the well-known dilemma of a "Europe of nations" versus a higher level of integration. As in other cases, the former (to which I shall come back presently) may lack efficiency,

while the latter may be difficult to achieve as it may conflict with the interests (or sensitivity) of national political actors.¹²

Having a common European political discourse on future interests may not be without problems in itself. A caveat formulated by Andrew Moravcsik in terms of referenda seems worth considering in that context, too. According to Moravcsik (2008, 340), "[i]n the context of low-salience issues, any future effort to induce greater participation is inherently condemned to generate (at best) continued apathy and (at worst) another explosion of plebiscitary populism." What follows from that is that discursive efforts should be aimed at provoking informed interest among European citizens (e.g. by making sustainability a salient issue while avoiding moral panic) rather than just making them participate by any means. Seen in this light, the second option, i.e. seeking to just bring some important messages to several national discourses, seems not so much an alternative to the former as an inevitable first step. Moreover, it is what happens (or what can happen) at the global level.

Throughout the paper, I have been referring to individual rights and interests, although I assumed that present people can be argued to have rights with respect to their posterity *qua* bearers of community identities (see cf. also Könczöl, 2012, pp. 134–135). It is important to see, however, that in discourses at supra-national levels, rights are often attributed to nation-states as well. While collective rights may be acknowledged by national legal systems, too, at the supra-national stage states (and sometimes other communities) are regarded as the actors *par excellence*: those making treaties, having disputes, etc.

In such a case, representation has a twofold meaning. On the one hand, it is the states who are primarily taken to represent their citizens' rights. Here, then, their internal, national discourses will determine what and how the state is going to represent. On the other hand, states' "rights" and "interests" may need to be represented, too, in international organisations or supra-national decision making bodies. Spokespersons dealing with future-related interests can have a key role in both cases. In terms of the national discourse, they can act as a corrective, by raising concerns not (or not adequately) considered by national political actors. Among international actors, in turn, they can do the job of a "national" ombudsman, reminding the parties, as it were, of their own interests.

12 Even though seeking to establish a common discourse may seem less "imperialistic" than a new institution with decision making powers, such as the European "economic constitutional court" suggested recently by Jakab (2015).

Recent research on international organisations has emphasised “the general shift from intergovernmental politics to global governance, and the increasing functional differentiation of international decision making, including the emergence of environmental policy as a distinct field of international politics” (see Biermann, Siebenhüner, & Schreyögg, 2009, 1). Given these developments, it seems that the possibility of a global representation of future-related interests can be meaningfully considered. I shall conclude by doing so, looking at the United Nations Environmental Programme (UNEP), which seems to be the most promising candidate for this kind of representation. Indeed, the UNEP has been in the focus of debates and plans concerning a possible reform of the global environmental governance system.

In a study published in 2009, Maria Ivanova analysed the strengths and weaknesses of the UNEP as the “anchor organisation” of global environmental governance (see Ivanova, 2009). While the UNEP was established exactly in order to serve as the centre of international efforts at providing institutionalised protection for the environment,¹³ it did not fulfil that expectation in every aspect of its work. Ivanova identified four factors responsible for that limited success. These were the UNEP’s legal status (programme instead of an agency), the structure of its governance and financing (the role of individual states), and its location (Nairobi, Kenya). Their constellation has led to a fragmentation of environment-related functions within the UN. In conclusion, Ivanova suggested that instead of trying to re-centralise environmental governance in the hands of the UNEP, “[a] more strategic, prioritised and long-term capacity development approach, drawing on UNEP’s comparative advantage as an information clearing-house and a policy forum, rather than an operational agency, could facilitate the implementation of multilateral environmental agreements” (see *ibid.*, 168).

What seems the most important point for us here is that according to Ivanova’s analysis, one of the main challenges an international organisation has to face is that of communicative presence. The UNEP’s perceived inefficacy was at least partly due to the fact that it did not “have a voice” (see *cf. ibid.*, 162) within the UN (due to its form), or that it did not have *one* voice (governance), or that the voice it had was sometimes not regarded as its own (financing), or, finally, that its voice came from a distance (location). This realisation seems to underlie most of the provisions of the document *The Future We Want* (see United Nations, 2012), and particularly those of paragraph 88, aimed at “strengthening and upgrading

13 See also the overview of the UNEP’s history in Ivanova (2007).

UNEP?”¹⁴ Whether or not the UNEP is going to be more efficient due to these changes is a question for the next years and decades. It seems clear, however, that discursive representation is at least one of the ways in which we should try to protect our posterity from ourselves.

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14 Para. 88 (c) actually uses the phrase “enhance the voice of UNEP”

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