

Constitutions, Democratic Self-Determination and the Institutional Empowerment of Future Generations: Mitigating an Aporia

by Michael Rose

Abstract: *Is the self-determination of future generations impeded by lasting constitutions, as Thomas Jefferson suggests? In this article it is not only argued that the opposite is true, but also that the question misses the point. It is demonstrated that the very demand for future generations' full self-determination is self-contradictory, and that it is impossible to achieve. Applying the all-affected principle to future generations, it is shown that we will always affect them, and that we should employ an attitude of "reflective paternalism" towards them. With the help of institutions reviewed in this article, the interests of future generations could be in-*

roduced into today's political decision-making process. The role of constitutions is to provide the prerequisites for democratic self-determination and potentially also to facilitate the institutional empowerment of future generations.

Introduction¹

Lasting constitutions and the self-determination of future generations are said to be in conflict, since future generations will be bound by laws they had no voice in and that can only be modified by super-majorities, if at all.² Hence the democratic self-determination of future, i.e. yet unborn generations³ is a fragile value, for they will be affected by the policy impacts we bequeath them. To restore future generations' sovereignty, Thomas Jefferson unsuccessfully insisted on limiting the legal force of laws to 19 years from their adoption onwards, including the constitution.⁴

Before confronting Jefferson's controversial claim, as I intend to do here, we first of all should analyse the underlying issue of future generations' self-determination in greater detail. To this end, the so-called "all-affected principle" is employed to specify the notion of democratic self-determination regarding its normative democratic-theoretical basis, and the principle's applicability to future generations is discussed. Showing that future generations indeed are affected by today's laws and policies and that their right to self-determination is thereby infringed, Jefferson's proposition is taken up again and finally rejected. This is done by arguing that the perceived tension between constitutional and political stability on the one hand and the self-determination and sovereignty of future generations on the other is misplaced. On the contrary, at least stable constitutions can be understood as presuppositions of the self-determination of both present and future generations. It is argued that the demand for future generations' full self-determination is inherently contradictory, for it presupposes the very ethically universalistic standpoint it seems to reject. Making this universalistic standpoint explicit in turn helps to make the case for enduring constitutions. Furthermore, building on the analysis of the all-affected principle, it turns out that full self-determination is per se impossible, resulting in an aporia, i.e. an insoluble problem that can be worked on and mitigated, nonetheless. Recognising this fact and shaping its consequences by mitigating the aporia is what I call "reflective paternalism".

Following this, so-called "democratic presentism" is briefly introduced as the main barrier to mitigate the aporia. Given democratic presentism and employing the all-affected principle, scholars and activists call for institutions to introduce the interests of future generations into today's political decision-making process.⁵ In the second part of the article I will give a brief review of the relevant approaches and present selected real-world institutions. Moreover, I will examine the potential roles of constitutions and civil society actors in institutionally empowering future generations today and give some advice regarding possible real-world applications. Taking the Jefferson debate as a point of departure, I thus will firstly establish the aporia of future generations' self-determination and secondly review approaches to mitigate it by institutionally empowering future generations today, thereby focusing especially on the (potential) role of constitutions.

Stable constitutions can be understood as presuppositions of the self-determination of both present and future generations.

Specifying democratic self-determination: the all-affected principle and its application to future generations

A fruitful specification of democratic self-determination is the so-called "all-affected principle". This principle is central in democratic theory, especially in participatory, deliberative and also representative models of democracy. The all-affected principle claims that everyone who will be affected by collectively binding decisions should be considered in these decisions.⁶ Or, as Nadia Urbinati and Mark E. Warren state with reference to modern political theorists like Dahl, Gould, Habermas, Held, and Young: "democracy [is] any set of arrangements that instantiates the principle that all affected by collective decisions should have an opportunity to influence the outcome."⁷ "Democracy [therefore] means *empowered inclusion of those affected by collective decisions*", as Warren and Castiglione define democracy.⁸ For Anton Pelinka, the all-affected principle, as a defence against heteronomy, is an essential part of the basic ethics of democracy.⁹ The battle call of the American War of Independence "no taxation without representation!" is an instance of the virtue of the all-affected principle, both in the history of ideas and in the history of the real world.

Is the all-affected principle applicable to future generations? The provisional answer is yes. Future generations will inevitably be affected by the collectively binding decisions made today, but they cannot raise their voice now, for the simple fact that they do not exist, yet. The members of future generations will be born tomorrow, or in one hundred years, and they will have to live with today's political decisions and their impacts. This can be demonstrated easily. Jonas, Birnbacher, Tremmel, Leggewie, MacKenzie and others show that the human scope of action has extended greatly since the 20th century.¹⁰ We live, as Paul Crutzen claims in *Nature*, in the era of the Anthropocene.¹¹ This is evident in the human capacity for global self-destruction with the help of NBC weapons, the human role in climate change, genetic engineering with irreversible impacts on the ecosystem, long-term effects of nuclear waste disposal, and much more. In general, it is not even necessary to evoke extreme cases such as those mentioned above. Indeed, every reasonable political decision will work into the future, and every law is made to bind the future.

First objection: future generations will be better off

Nevertheless, the application of the all-affected principle to future generations comes under pressure from two directions: In the first critique, Geoffrey Brennan questions the relevance of the problem by stating that "over the past three centuries or so it has been pretty much routine that each generation has done better than its predecessor."¹² The idea behind this statement is that future generations are only positively affected and that therefore the political consideration of future generations is dispensable. Having said that, even if there is an intergenerationally increasing prosperity, this does not suspend the all-affected principle and its application to future generations, for an empirical argument cannot invalidate a normative argument. This can be easily illustrated by an analogy: from the perspective of democratic theory, a well-intentioned dictator is not democratically justified by the fact that he successfully cares for the material well-being of his subordinate citizens. From the perspective of the all-affected principle, both dictatorship and the exclusion of an affected group imply a democratic deficit.

Nevertheless, if Brennan is empirically right, this would weaken the problem of

future generations' self-determination and the demand to mitigate it from an everyday-morality point of view. There are three points to be made here. First, even if Brennan's evaluation of recent history is right, this positive evaluation should not be universalised and extrapolated.¹³ Many philosophers as well as scientists do not share Brennan's optimism regarding the future.¹⁴ Second, the developments in recent history were contingent. The Cold War, for example, could have become much more dangerous and destructive than it did. And history shows no linear positive developments in all cultures. Third, if we apply our definition of current and future generations, Brennan's hypothesis does prove wrong if we refer t_0 to, for example, the year of 1933 in Germany. The political decisions of the current generation (people alive at t_0) did affect large parts of the first future generation (people born shortly after t_0) quite negatively.

Second objection: future generations will not be legally bound

In the second critique, Ludvig Beckman questions that future generations will be affected by policies in which they had no voice.¹⁵ For this purpose, Beckmann differentiates the all-affected principle into two versions, using two interpretations of "being affected": First, "A person is [...] affected by a decision to the extent that it has a causal effect on his or her welfare or opportunities", or second, "the decisions made by governments and legislatures define the entitlements, duties and benefits that *apply to the subjects as a matter of law*", i.e. being affected means being subject to a certain jurisdiction's legal order.¹⁶ Scholars like Thompson or Dahl seem to prefer the second, legalistic, interpretation, whereas Goodin vehemently argues for the first, i.e. causal, interpretation.¹⁷

Future generations will inevitably be affected by the collectively binding decisions made today, but they cannot raise their voice now, for the simple fact that they do not exist, yet.

Beckman solely employs a strict *legalistic* interpretation of the all-affected principle and states that the current generation cannot legally bind unborn persons, who therefore cannot be affected by today's political decisions in this sense.¹⁸ An important underlying condition of this proposi-

tion is Beckman's understanding of liberal democracy. According to Beckman, the sovereignty is owned by the people, and the people exert its sovereignty, mediated through elections, through the majority of its representatives.¹⁹ So, future people will be democratically self-determined, and, as sovereign, they will have the right to actively or passively approve or change the law by majority vote (or some qualified majorities).²⁰ Beckman therefore argues that "the only laws that apply to posterity are those affirmed by future people themselves."²¹ He closes his argumentation with the following statement: "Generations cannot rule one another; hence there is no basis for introducing the political representation of the unborn following the legal version of the all affected principle."²²

As a result, the intuitive argument that a legal order always binds not only current but also future citizens, and that the current generation therefore wields power over future generations, is rejected by Beckman. However, Beckman's conclusion is implicitly based on the premise that the lifetimes of members of the current generation will not overlap with the lifetime of members of future generations. But this understanding of generations is not a general consensus; it is abstract and impractical, and at the very least it is in conflict with the definition of future generations employed in this article. If we employ this article's definition, we end up at a quite different evaluation of Beckman's argument.

Beckman equates the sovereign with the majority of the representatives, and, via the electoral procedure, with the majority of the voters, since democratic elections are the mechanism through which the majority of representatives, elected by the majority of voters, legitimately exerts the sovereignty of the people.²³ But every political decision, taken at t_0 , legally does not only bind the

population whose majority indirectly legitimised the concerned decision. It also legally binds people born after t_0 , living in that jurisdiction. Those who are born after t_0 are not part of the sovereign entity existing at t_0 . Furthermore, they will not become sovereign, that is democratically self-determined, for the time being, because they can neither actively nor passively make any majority decisions regarding the validity of the legal order adopted at t_0 . Solely a majority decision of the currently living is legitimate, according to Beckman.²⁴ For a legitimate majority decision of the future contemporary living, the people born immediately after t_0 will depend in large part on the future selves of current generation's members, because the people born immediately after t_0 will be a minority in the society existent soon after t_0 . Only after the point in time at which the people born after t_0 will outnumber the people who were already alive at t_0 will the former be allowed to exert their sovereignty. Up to that demographic turning point, the current generation will wield the same power over members of future generations that is negated by Beckman. Since every law is made to bind the future, at least those who are born timely after t_0 should be considered in the democratic decision-making process.

Having said that, if one remains in Beckman's shoes, one might still argue that the legalistic version of the all-affected principle should not be applied to later future generations that will come into existence in, say, 60 years.

Still, there is a further, rather empirical argument against Beckman's claim: Beckman's theoretical argument is far from realistic. In reality, politics is first and foremost inherited from the political ancestors, a fact that in turn strongly constrains the political scope of action of the present rulers.²⁵ The asserted self-determination of future people, be

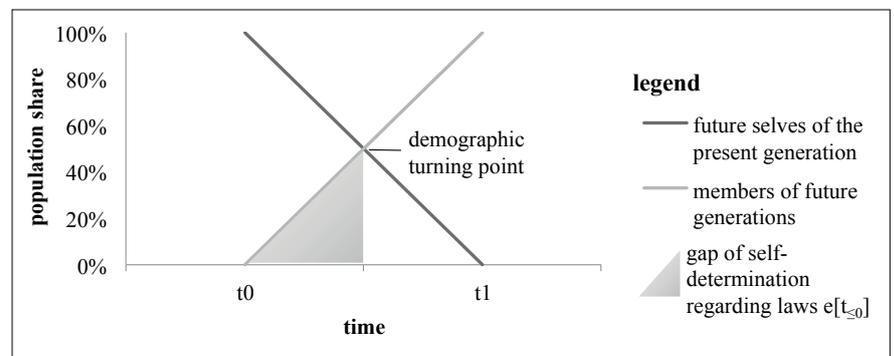


Figure 1: Gap of self-determination, applying the legalistic version of the all-affected principle. Source: own illustration

they born shortly or a long time after t_0 , is a very constrained form of self-determination from an empirical point of view.

[Politics] is first and foremost inherited from the political ancestors, a fact that [...] strongly constrains the political scope of action of the present rulers.

However, most of the literature on intergenerational justice refers, be it implicitly or explicitly, to the *causal* version of the all-affected principle, which seems to be not only more intuitive and demanding, but also ethically superior.²⁶ Policy outputs do not only have legal consequences for, but also causal impacts on future generations. Future generations will be affected by our political decisions, as we are affected by the political decisions of our ancestors.

Constitutions and the aporia of future generations' self-determination

According to the application of the all-affected principle to future generations, Jefferson was right in being concerned about future generations' self-determination. Limiting the legal force of laws (including the constitution) to 19 years is not a suitable solution, however.²⁷ Hence Madison and others objected that this would bring about political and social instability and violence and would thwart long-term investments, obligations and progress.²⁸ Furthermore, it is argued against Jefferson that in order to change the norms of a political community one should be able to rely on already-existing, not expired institutions that regulate this process.²⁹ Referring to Jefferson's calculation of the above-mentioned 19 years with the help of mortality tables, one could additionally argue that while citizens are mortal indeed, societies are not, or at least not in the same way.³⁰ The same should be true for society's fundamental institutions.

Jefferson's controversial claim illustrates the perceived tension between constitutional and political stability on the one hand and the self-determination and sovereignty of future generations on the other.³¹ It should have become clear in the preceding paragraphs that this tension is somehow misplaced. As several authors convincingly argue, constitutions can be understood as a necessary precondition for the self-determination of both present and future generations.³² Since constitutions establish the fundamental rights, obligations and insti-

tutions of democratic self-determination, destabilising those constitutions by temporally limiting their legal force purportedly for the sake of future generations' self-determination would also undermine the very value of self-determination we seek to save for them. We cannot create self-determination tomorrow by jeopardising the working of democratic self-determination today. Instead, if we want to facilitate the self-determination of future generations, we should perpetuate the basic institutions of democratic self-determination and protect them by constitutional law against their misuse or abrogation. The right of self-determination is an essential element of liberal democratic forms of government, and this form of government is usually enshrined in the nation's constitution.

The universalistic premise of the claim for future generations' full self-determination

Admittedly, this argument is based on the assumption that there are universal rights and values, one of these being "self-determination". Such universal rights are often placed beyond the reach of simple democratic majorities, since their source of legitimacy is not the affirmation by majority, but, for example for Jefferson, natural law, or other universalistic ethical concepts. From this point of view, it seems to be legitimate to bind current and future generations to these rights and values, and to establish basic institutions that are determined to guarantee them. Consequently, a special constitutional protection of these rights and institutions seems to be legitimate, too. However, both the very substance and the degree of abstraction of these constitutional commitments are disputed, and there are good reasons for keeping such constitutional regulations as parsimonious as possible in order to avoid *unnecessary* restrictions on future generations' right of self-determination.

We cannot create self-determination tomorrow by jeopardising the working of democratic self-determination today.

If we would leave our universalistic standpoint, we would eliminate the very problem of future generations' self-determination at the same time. The claim not to bind future generations at all for the sake of their right of self-determination is inconsistent and not thought through to the end.

First, if we would truly believe that we are not allowed to impose any of our values on future generations in order to allow them the full amount of self-determination, in doing so we would implicitly break our own rule and impose on them our values, specifically: the value of self-determination. How do we know that future people would like to be fully self-determined? Perhaps they will be happy with their heteronomy by their ancestor's constitution; maybe they will appreciate having less choice. Second, if we guarantee the full self-determination of the next future generation, how do we safeguard the full self-determination of later future generations? By not binding the next future generation at all, they will be allowed to decide for themselves to bind and affect their next future generation as they please.³³

Inevitable dependencies

What is furthermore often ignored is the fact that the problem of the self-determination of future generations is not so much a trade-off between different values or aims but an aporia, an insoluble problem that can be worked on and mitigated, nonetheless. Like the present generation, future generations will never experience the *full* amount of self-determination, since this would require a *tabula rasa* and the concurrency of all people. But since time flows unidirectionally, there is an asynchronicity of being, and this brings about dependencies of the present on the past, and of the future on the present, as was demonstrated in the analysis of the applicability of the all-affected principle to future generations. These dependencies include the very being and identity of future individuals (see non-identity problem³⁴) and the political, ecological, economic and social living conditions of future generations. We do affect the yet-unborn by our actions, policies, laws and constitutions, and there is no way out of this kind of paternalism. These manifold dependencies yield various responsibilities. Following Jefferson in focusing on constitutions as a perceived threat to future generations' self-determination hence may obscure our view on the actual broader issue at hand.

Reflective paternalism and democratic presentism

If we acknowledge these dependencies and the concomitant paternalism, we are free to work on the aporia and to establish something I would like to call a "reflective

paternalism” towards future generations. Reflective paternalism, reaching beyond the narrow constitutional problem, is an attempt to take into account future generations’ future right to self-determination today,³⁵ knowing that we will always affect their lives, regardless of whether we ignore or reflect that fact. What this could mean in practice will be elaborated on in the next sections.

From this perspective, democratic presentism, a rather unproblematic quality of modern democracies if we think that future generations will not be bound by us,³⁶ becomes an obstacle to intergenerational justice and hampers reflectively paternalistic politics which may mitigate the aporia. According to the theory of democratic presentism, “democracies are systematically biased in favor of the present.”³⁷ Democratic presentism has several mutually reinforcing causes: election cycles pressure the government to display political outputs, outcomes and impacts within the parliamentary term in order to increase their prospects of re-election.³⁸ Human beings as such are said to be short-sighted and to unduly discount the future.³⁹ Future generations are per se anonymous; we do not see them in our mind’s eye, and they are not able to affect us causally.⁴⁰ That is why the present generation has a first-mover advantage which allows it to optimise its own welfare without considering the consequences for future generations.⁴¹ Gardiner calls this with reference to Hardin the ‘real tragedy of the commons’.⁴² Furthermore, the complexity of long-term policies and the uncertainty about future economic, societal, natural and political developments, policy impacts, future problems and the interests of future generations as well as the lacking salience of future problems, foster democratic presentism.⁴³

Empowering future generations today

With reference to the all-affected principle, and facing democratic presentism’s disregard of future generations’ interests, many scholars demand to consider future generations explicitly in today’s policies.⁴⁴ Leggewie criticises an untenable spatial as well as temporal divide between decision-makers on the one hand and those affected by these decisions on the other hand.⁴⁵ According to Tremmel, this representation gap implies that conflicts of interest are decided by the majority of eligible voters, not by the majority of the affected.⁴⁶ At the same

time, democracy is said to be the only decision-making regime that incorporates obligations towards future generations in the form of the all-affected principle as a guiding principle.⁴⁷ It is the democratic all-affected principle that actually takes democratic presentism and reflective paternalism seriously, showing that the interests of future generations need to be taken into account already today, since they also are affected by today’s political decisions, but are usually politically neglected due to democratic presentism. In contrast, trying not to bind future people at all would be a mission impossible.

Reflective paternalism [...] is an attempt to take into account future generations’ future right to self-determination today, knowing that we will always affect their lives, regardless of whether we ignore or reflect that fact.

Is there any partial solution to this aporia of future generations’ self-determination? Consistent with the diagnoses above, several academics and activists call for democratic innovations designed to consider the interests of future generations institutionally. To meet the demands of the all-affected principle, the presentist institutional incentive system of the democratic decision-making process needs to be modified. Gregory Kavka and Virginia Warren put it like this: “[I]n current democratic systems, no special institutional mechanism exists to secure representation of future people’s interests, and representatives naturally focus their attention on promoting the interests of those who have the power to vote them into, or out of, office; that is, present citizens. [...] [T]he interests of the nation’s future citizens – whose lives will be critically affected, for better or worse, by present government action – [ought to be] directly represented in the democratic political process.”⁴⁸

Hence it is somehow surprising that up to now, intergenerational inequality has been widely uncared for in large parts of political science and the wider social sciences. It is only in political philosophy, facilitated largely by John Rawls’s *Theory of Justice*, that the issue of how the interests of future generations can be taken into consideration politically is discussed today – as is exemplarily evident in the quote by Kavka and Warren (see above) or in the more contemporary works of, for example, Dieter Birnbacher, Axel Gosseries, and Jörg Tremmel.⁴⁹

Proposals for institutions for future generations

Literature is actually replete with more or less specific conceptual proposals of how the interests of future generations could be institutionally considered by the political systems of today. Since future generations themselves are, by definition, currently not among us, this is only possible through proxies or specific procedures. I will review these briefly in order to elucidate the full spectrum of possibilities for politically empowering the affected interests of future generations today.

Ombudsmen, Guardians, Trustees, Commissioners, and Councils for Future Generations

The first category of proposals includes concepts of institutions that largely refer to the executive (i.e. the government) or have other, rather diffuse, addressees. They are called ‘Guardians’, ‘Ombudsmen’ or ‘Trustees’. One of the most famous approaches is laid down by Edith Brown-Weiss in her book *In Fairness to Future Generations*.⁵⁰ Here, she introduces three principles and five obligations of intergenerational fairness. For their implementation, she calls for the institutionalisation of a specific *Guardian* at the international level. Collins transfers this claim to the European Union.⁵¹ Brown-Weiss also argues in favour of *Ombudsmen for Future Generations*.⁵² These Ombudsmen are meant to review the implementation of laws that require the compliance to the three principles. They will act as complaints offices for citizens, exert investigations, and call attention to threats to the planetary heritage. Furthermore, they are to be established in order to generally introduce the interests of future generations into political decision-making processes and to inform both politics and society on their actions’ collateral impact on future generations. Ideally, the ombudsmen are to be established on all political levels, from local to international, and as special ombudsmen for different policy fields.

To meet the demands of the all-affected principle, the presentist institutional incentive system of the democratic decision-making process needs to be modified.

The figures of the Ombudsman and the Guardian are taken up by many proposals. For example, the Science and Environmental Health Network (SEHN) – together with the International Human Rights Clin-

ic at Harvard Law School (IHRC) on the basis of a brief analysis of existing institutions – has developed a blueprint, as it were, of such a guardian or ombudsman.⁵³ According to their proposal, the Ombudsman for Future Generations would be obliged to ensure that all kinds of policies protect and promote the juridified environmental interests of future generations.⁵⁴ In order to fulfil these tasks, impact assessments are to be conducted.⁵⁵ The Ombudsman, appointed by the government, would furthermore be allowed to access all necessary information and to speak before all relevant decision-making bodies.⁵⁶ The affected parties compulsorily would have to answer the Ombudsman's evaluations and reports in written form, and the Ombudsman in turn would have to be given the opportunity to respond to their answers.⁵⁷ The figure of the *Guardian*, also sketched by SEHN and IHRC, is quite similar to that of the ombudsman.⁵⁸ The *Guardian* is understood as more of a legal custodian who would be allowed to legally represent future generations before governments and courts, however.⁵⁹ The concept of an ombudsman or guardian for future generations is also promoted by the World Future Council, which advocates their institutionalisation at the UN, the EU, and nation state levels.⁶⁰ The task of this *Ombudsman* would be to introduce citizens' requests concerning future generations into the political decision-making process and to take action him- or herself. The office and the incumbent would have to be legally independent, transparent, allowed to decide legally enforceable issues, and should be enjoying public support and access to information and to all relevant stakeholders. Van Parijs, in particular, promotes the institutionalisation of a *Guardian* to represent the interests of future generations in the political decision-making process at the national level.⁶¹ This *Guardian*, in turn, is meant to be heard primarily by political actors and should be supported by a staff of independent scientists. Padilla argues in favour of *Keepers of the Rights of Future Generations* for all political levels.⁶² Those *Keepers* are intended to serve as agencies that monitor and sanction sustainability practices of the government and the economy. They are also tasked to manage financial compensations for the benefit of future generations and to promote and fund several sustainable practices.

Birnbacher promotes the *Advocatory Representation of Future Generations* in or-

der to introduce their interests in political planning decisions.⁶³ Tremmel as well as Hubacek and Mauerhofer call for Advocates that are appointed to represent the rights of future generations nationally and internationally.⁶⁴ Gesang calls for *Future Councils* which are to be authorised to initiate referendums and legislative initiatives and to gather and publish information.⁶⁵ Furthermore, they will have suspensory or extensive veto powers. The Councils' staff is to be nominated by, *inter alia*, environmental groups, universities and journalists' associations and is expected to be voted into office by the regular electorate for a term of eight to ten years. Their task is to introduce future generations' interests in today's legislative process.

Since future generations themselves are, by definition, currently not among us, [taking them into consideration institutionally] is only possible through proxies or specific procedures.

Thompson develops the concept of a *Trustee* which could be institutionalised in the form of a commission (tribunate for posterity) or a constitutional convention.⁶⁶ Echoing this article's focus on the value of self-determination, the Trustee's task is to represent the interest of future generations in the maintenance of the democratic process itself. Thompson suggests that the Trustee may intervene if the future capacities of the democratic process are endangered and that the Trustee may be allowed to request the government to assess the expected impact of its policies on posterity's democratic capacities. Furthermore, Thompson proposes that the Trustee may convene constitutional conventions in order to adapt democratic rules to current needs, thereby constraining the dominion of the past over the present and the future. Shlomo Shoham, former Parliamentary Commissioner for Future Generations in Israel, calls for the institutionalisation of a "*Sustainability Unit*", consisting of two entities for substantial analysis and political action, respectively.⁶⁷ Along the same line, Spangenberg and Dereniowska develop a so-called "archetype", an independently funded Future Council with suspensory veto power against laws that are expected to be harmful to the future.⁶⁸ Minsch et al. argue in support of a *Minister of State for Sustainability* at the Federal Chancellery.⁶⁹ Monaghan and Welburn add the idea to appoint an *EU Commissioner for the*

Future whose task it would be to examine the long-term impact of the Commission's proposals.⁷⁰ For the UK, Roderick suggests to instate an advisory "*Office for Future Generations*" within the executive.⁷¹

For Germany, Rehbinder proposes an Ombudsman for future questions and an advisory *Sustainability Council*.⁷² The latter's task would be to generate and organise future knowledge and to facilitate a societal discourse on the values and interests in relation to the future. The Council is supposed to consist of scientists and politicians who are appointed in separate procedures for a rather long term. Additionally, the Council could be equipped with suspensory veto power for certain bills. The German Advisory Council on Global Change (WBGU) opts – in its flagship report 'World in Transition' – for the idea of *Deliberative Future Chambers*, whose members are to be selected by lot.⁷³

In the 1990s, additional proposals for so-called *Ecological Councils* were making round in Germany. Those Councils, as representatives of future generations with the task to safeguard natural resources, were meant to be independent and predominantly advisory in form. Manifold variants of the ecological council were developed by Kirsch, Minsch et al., Rennings et al., Rux, and Weppeler.⁷⁴ Today, the German Foundation for the Rights of Future Generations (SRzG) advocates a *parliamentary representation of future generations*.⁷⁵ In Norway, the youth organisation Spire has campaigned for the institutionalisation of an *Ombudsperson for Future Generations* since 2012; and in the Netherlands there is a similar initiative, too.⁷⁶

Parliamentary and electoral reforms

Besides guardians, ombudsmen and councils, there are also concepts that are especially tailored to the legislative. In 1996, Andrew Dobson proposed the idea of a proxy electorate of sustainability experts that might elect a selection of candidates into parliament.⁷⁷ A similar approach is promoted by Wells.⁷⁸ In his concept, charitable NGOs with a membership number above 50,000 act as trustees of future generations and jointly constitute 10% of the electorate. Wells hopes that this would force the political candidates to indirectly attract the votes of future generations. According to Ekeli, 5% of the parliamentary seats ought to be reserved for representatives of future generations, either elected by the citizens or ap-

pointed by the president.⁷⁹ A qualified majority of these *special representatives* would be allowed to postpone harmful bills up to two years. A very similar suggestion was already made by Gregory Kavka and Virginia Warren in 1983, who also proposed to reserve a share of parliamentary seats for *Representatives of Future Generations* to be elected either by the people or appointed by the Head of State.⁸⁰ For South Korea, Yongseok likewise recommends to reserve 20% of the parliamentary seats for delegates of future generations.⁸¹ Those parliamentarians are meant to have a regular MP-status and are to be elected via separate party tickets. Every single voter would then have two votes, one for his own present generation and one for future ones. As an alternative, Ekeli introduces the idea of *sub-majority rules*.⁸² According to this proposal, a qualified majority of all regular Members of Parliament would be allowed to suspend bills that are expected to harm the future until the next election, or alternatively be permitted to initiate a referendum on the issue at stake.

However, special seat shares and alternative electorates are not the only ways to reform parliaments for the assumed benefit of future generations. Roderick presents several options to modify the British Parliament.⁸³ First, one could establish a *Third Parliamentary Chamber for Future Generations* with veto powers. Second, one could institutionalise a *Parliamentary Committee for the Future* that participates in regular law-making. Third, Roderick proposes a Parliamentary Commissioner for Future Generations with comprehensive competences. Institutionalising a strong Parliamentary Committee for Sustainability is also suggested by Minsch et al. for Germany.⁸⁴ Monaghan and Welburn call for a committee within the European Parliament with the task of reviewing policies regarding their impact on future generations.⁸⁵ And Tremmel suggests expanding the three-power-model by a *Fourth Power*, a so-called future power which would represent future generations.⁸⁶ According to his idea, this fourth power should merge the already-existing sustainability bodies at the German federal level, which are the German Council for Sustainable Development, the German Advisory Council on Global Change, the Parliamentary Advisory Council on Sustainable Development and the German Advisory Council on the Environment. Instead of exercising only veto powers, the fourth power would even be allowed to initiate bills.

Constitutions, courts, and criminal law

The conceptual proposals presented so far focus on the executive or the legislative. But of course constitutions and courts may also play important roles in empowering future generations today. There are many proposals of how to lay down the rights of future generations in constitutional articles.⁸⁷ Doleman and Sandler consider the proposal to codify quantified standards of natural goods that are to be sustained for future generations in the world's constitutions.⁸⁸ Similarly, Ekeli advocates the constitutional codification of the preservation of critical natural resources for the benefit of the physiological needs of future generations.⁸⁹ Göpel as well as Jodoin furthermore argue the case for the statutory offence of a "*Crime Against Future Generations*" that is expected to be prosecuted as a human rights violation.⁹⁰ These crimes are military, economic, cultural or scientific activities that were carried out or authorised despite the knowledge of their harmful and irreparable impacts on the health, security or survival of future generations, or conscious of their threat to the survival of whole species or ecosystems. Pelinka calls for a *Judicial High Council* that reviews parliamentary majority decisions regarding infringements of the basic interests of future generations.⁹¹ For the US, Tonn, as well as Pollard and Tonn, propose a Court of Future Generations which would be granted the right to file indictments to the Supreme Court.⁹² Following Brown-Weiss, Birnbacher argues in favour of an International Court for the Future, based on an interpretation of the UN's Universal Declaration of Human Rights that extends the declaration into the future.⁹³ And finally, Iliescu makes a case for a *Jury for Intergenerational Justice* that reflects and weighs up for specific policies the interests of the current generation with the impacts on future generations.⁹⁴

Proposals beyond the three branches of government

Some authors imagine the political consideration of future generations beyond the executive, legislative or judiciary. Thompson and Massarrat think about how to empower (international) *NGOs* that take long-term responsibility for long-term goals, engage in democracy and environmental protection and strengthen international civil society.⁹⁵ Monaghan and Welburn ask the EU to support groups which promote the interests of future generations.⁹⁶ And Robert E.

Goodin hopes that voters and politicians could internalise the interests of future generations into their own preferences and consider them internally-deliberatively in their own reflections.⁹⁷

Meta-policies

Besides the institutionalisation of organisations, the interests of future generations may also be taken into account by *meta-policies*, i.e. special provisions that apply to the political decision-making process. MacKenzie is concerned with *Policy Impact Assessments* for future generations.⁹⁸ Krishnakumar calls for a "*Representation Reinforcing Framework Statute*" that would commit the US Congress to review the impact of bills on, *inter alia*, future tax payers.⁹⁹ Hinrichs explains how to measure, with the help of *Intergenerational Accounting*, the impact of policy intentions on intergenerational fairness regarding public debt, taxation and redistribution, i.e. the net payments of present and future citizens.¹⁰⁰ Roderick would like to legally require the UK to conduct comparative Intergenerational Analysis for all policies.¹⁰¹

Proposals for extensive revisions to our democratic institutional systems

In addition, there are proposals for extensive revisions to our democratic institutional systems. For the US, Mank describes a so-called "*Superagency*" within the executive to cast influences on all public authorities.¹⁰² The agency's task would be to represent future generations and to send legal representatives to all organisations and assemblies. Tonn's approach is even more radical by designing a future-oriented government almost from scratch.¹⁰³ In his proposal, the already-existing American institutions are to be supplemented with a *Court for Future Generations* (diagnostic function), a *Future Congress* (decision function), a *Future Administration* (information and support function), a *Coordination- and Mediation-Service* (implementation review and conflict management) and a *Commission for Future Problems* (issuing directives). In 2006, Tonn and Hogan put forward a proposal for the reform of the British House of Lords and the establishment of a *Special Committee for the Future* that has a reporting function and is equipped with suspensory veto power.¹⁰⁴ The new House of Lords shall be responsible for the heirs of the United Kingdom. Read would like to institutionalise a third parliamentary chamber, a *Council*

of the *Guardians for Future Generations* in the UK.¹⁰⁵ The Council would be allowed to veto bills, analyse laws, review their implementation and initiate bills by itself. Its members would be elected by lot for a single term, and they would enjoy an advanced training for their task.

Besides the institutionalisation of organisations, the interests of future generations may also be taken into account by meta-policies, i.e. special provisions that apply to the political decision-making process.

Even for the US state of Hawaii there is a separate proposal of a *Fourth Branch* which would be responsible for future generations.¹⁰⁶ This fourth branch is designed to research the future, develop social targets for Hawaii as benchmarks for law-making, initiate public discourse, and generally watch out for the interests of future generations. Its members are to be selected equally by elections and by lot. Moreover, Caney develops a five-fold package of institutions for the political representation of future generations: A *Governmental Manifesto for the Future* (presentation of long-term trends, challenges and options), a *Parliamentary Committee for the Future* (reporting and evaluation of policies), a '*Visions for the Future*' Day (critical and public review of the Manifesto for the Future), an Independent Council for the Future (impact analysis and long-term trends; staffed by natural scientists, social scientists and relevant humanities scholars) and *Performance Indicators*, employed by the Council and government bodies to document the attainment of long-term targets and to evaluate long-term performance.¹⁰⁷

A brief assessment of the proposals

It comes as no surprise that not all of these numerous conceptual proposals are suitable mitigation strategies from a political science point of view. It is conspicuous that some of the proposals are rather insensitive regarding the conditions of and effects on the political system they are addressing. For example, *ombudsmen* are demanded for all kinds of political levels and different nations, including Germany, but some countries (like Germany) do not have any tradition of high-level ombudsmanship to build upon. Furthermore, ombudsmen traditionally are persons or functions that usually receive complaints by affected parties (in most cases ordinary citizens), investigate them, and

submit them to the respective government bodies. Since future generations cannot make any complaints today, the notions of a “guardian”, “trustee” or “advocate” as examples also found in the literature are much more appropriate than the notion of an ombudsman, notwithstanding the fact that the competences and characteristics of ombudsmen – such as the right of investigation, information, evaluation and independence – may be expedient. Admittedly, some of the ombudsman concepts, referring back to the original idea, indeed want the ombudsman first and foremost to receive petitions of the citizens regarding the rights and interests of future generations. In these cases, however, it should not be taken for granted that ordinary citizens are more qualified and legitimised to speak in the name of future generations or are less presentist than any other actors.

Ekeli and others propose to elect a certain number of *representatives of future generations* to the parliament, or to employ certain sub-majority rules. Again, the political conditions and effects of the proposal do not receive full consideration by the authors. The institutional incentives that affect these representatives of future generations do not differ significantly from the ones of regular MPs, and the additional (suspensory) veto rights and other instruments may lead to political gridlock and will not necessarily help future generations. The latter is a significant danger of all approaches that aim to establish additional veto points and players, such as proposals to establish new chambers with veto power or to *extensively revise the democratic institutional system* of a country. Such undertakings may lead to even more “inheritance without choice” (Rose 1992) and constrain present and future democratic self-determination. Anyway, due to political-institutional inertia, such massive modifications are highly unlikely to be implemented in contrast to humbler, incremental approaches.

It is conspicuous that some of the proposals are rather insensitive regarding the conditions of and effects on the political system they are addressing.

On the downside, institutions that are too weak, having little resources and competences – such as mere *advisory bodies* – are at risk of becoming a substitute for the actual consideration of future generations' interests in the political decision-making

process. Designing institutions to mitigate the aporia thus is a challenging balancing act and needs to take into account the specific political context.

Employing *meta-policies* to introduce future generations' interests into the political decision-making process may fit smoothly into already-existing institutional arrangements, but may require back-up staff-wise and competence-wise to be implemented, for comprehensive additional tasks such as sustainability impact assessments are quite resource-consuming if done properly. This is also why it might be wise to combine different institutions in order to mitigate the aporia. This may also include approaches that focus on the *judiciary*, which have their merits in being rather disengaged from presentist pressure. However, these approaches also may contribute to an undesirable politicisation of the judiciary.

Examples of actual institutions for future generations

The list above shows that there are numerous specific concepts of how to politically consider future generations today. Many of these concepts have models in the real world. One of the most famous institutions is the *Hungarian Parliamentary Commissioner (Ombudsman) for Future Generations*. The office of the Ombudsman was established in 2008 and was downgraded by the right-wing Orbán administration to a sub-office at the end of 2011, in the course of a constitutional reform.¹⁰⁸ The Ombudsman looked especially after environmental issues and had several options to influence the political decision-making process: he was allowed to give his view in front of the parliament, to propose bills and to review and partially suspend certain political decisions and administrative acts. He had to be consulted for all policy initiatives that concern the environment. Moreover, he could bring to court already-existing laws that endangered the right to a healthy environment. He received petitions from citizens, was able to initiate investigations and made recommendations that had to be answered by the affected parties. He also maintained a large team and connected with the media and with NGOs.¹⁰⁹ Today, the Ombudsman for Future Generations is still an important institution, but the position has lost its independence, as well as some of its staff and competences.¹¹⁰

The second model institution is the *Knesset Commission for Future Generations*. The

commission existed between 2001 and 2006 in Israel and was officially abolished in 2010, officially due to budget constraints. Unofficially, MPs increasingly found it problematic that an expert commission should be powerful enough to intervene in genuinely political decision-making processes.¹¹¹ The Commissioner was allowed to review almost all bills and decide autonomously which bills were of concern for the interests of future generations. He could also join most of the debates in the Knesset Committees and issue written recommendations that were able to delay the law-making process considerably. The Commissioner also participated actively in drafting new bills to the assumed benefit of future generations and enjoyed a permissive access to state information. Further tasks were public relations activities and collaboration with academia, civil society and media actors.¹¹² Since this year Wales has a *Future Generations Commissioner for Wales*. The Commissioner is provided with four kinds of political instruments. Firstly, advice, help, and support of public bodies regarding the attainment of Wales' sustainable welfare targets. Secondly, research on sustainable development and welfare. Thirdly, investigations of public bodies regarding their activities in preserving the possibilities of future generations to fulfil their needs and in considering their actions' long-term impacts. Based on her investigations, the Commissioner can issue public recommendations that have to be answered by the addressed public body. The binding recommendations are limited to the realm of measures in accordance with the welfare targets and the sustainability principle. Fourthly, the Commissioner is tasked with issuing several reports to the government and the parliamentary assembly.¹¹³

There are numerous specific concepts of how to politically consider future generations today. Many of these concepts have models in the real world.

A further, (at least formally) rather strong institution is the *Belgian Federal Council for Sustainable Development*. Established in 1997, the Council consists of representatives of civil society, environmental groups, development assistance groups, academia, and federal and regional governments. The main task of the Council is to issue recommendations on sustainable politics at the request of state secretaries, the House

of Representatives, or the Senate. Alternatively, the Council can prepare recommendations on its own accord. The government has to report to the Council how it has implemented the recommendations, and in case of deviations the government needs to justify its alternative line of action. Moreover, the Council serves as a discussion forum on sustainable development, conducts scientific research on questions of sustainable development, and promotes the participation of public and private organisations in achieving objectives of a sustainable development.¹¹⁴

Noteworthy, finally, is the so-called Sustainability Check of the German Land (state) Baden-Württemberg. As a meta-policy, it legally prescribes in detail the assessment of the long-term impacts of regulatory initiatives. For this purpose, the sustainability indicators and targets of the regional sustainability strategy are employed, and the results of the assessments are published.¹¹⁵

The role of constitutions in the institutional empowerment of future generations

Democratic presentism usually is a bar to the political consideration of future generations today. Constitutions as well as institutions such as those described above therefore may serve as credible commitments of the present politicians and citizens – i.e., as self-binding tools against the incentive *not* to consider the interests of future generations in today's political decisions due to democratic presentism.¹¹⁶

Several countries include provisions for future generation in their constitutions.¹¹⁷ However, as Chilton and Versteeg recently discovered, constitutional rights are more likely to be respected if they are organisational rights, i.e. if they help to establish organisations that have both the means and the incentive to protect the respective rights and thereby making them self-reinforcing.¹¹⁸ Since future generations themselves are not here today, it is plausible to establish institutions that at least partially compensate this drawback and help enforce their constitutional and/or moral rights. If the existence of such institutions is prescribed in the constitution, as was at least indirectly the case in Hungary, the future rights of future generations as well as the enforcing institutions gain both a solid super-majoritarian legal basis and normative power in relation to other political actors. Constitutional entrenchment then would

strengthen the commitment of politics and society towards future generations without substantially further reducing the amount of direct self-determination future generations will enjoy. Constitutions thus could have two supporting roles in mitigating the aporia: first, to provide the very legal and institutional prerequisites for present and future democratic self-determination (however constrained), and second, to authoritatively enshrine the rights of and obligations to future generations and thereby backing up other institutions that are designed to introduce the interests of future generations into today's decision-making process. The existence of such institutions may also be laid down in the constitution.

Constitutions [...] may serve as credible commitments of the present politicians and citizens – i.e., as self-binding tools against the incentive not to consider the interests of future generations [...].

Empirically, the constitutional entrenchment of institutions empowering future generations is rather vague, if it exists at all. In *Hungary*, the Ombudsman referred to the constitutional right to a healthy environment, since future generations were not explicitly mentioned in the Charter of Fundamental Rights. Nonetheless, the Constitutional Court decided that the state is obliged to sustain the quality of the natural living conditions for future generations. Furthermore, it claimed that the fundamental right to live and human dignity generate an obligation for the state to provide institutional protection for the living conditions of future generations.¹¹⁹ In *Israel*, the legal basis of the Parliamentary Commission for Future Generations was laid down in the Knesset Law that regulates the modes of operations of the Israeli parliament. In contrast, the Future Generations Commissioner for *Wales* is specified in the Well-Being of Future Generations (Wales) Bill, which is a regular statute.¹²⁰ In the first bill regarding Welsh Devolution, it is codified that the Welsh Assembly has to develop and track a sustainability plan.¹²¹ The same is true for the Government of Wales Act of 2006.¹²² In Belgium, the Council also works on the basis of a regular statute.¹²³ Nevertheless, the *Belgian* constitution (art. 7) generally states that the government strives for sustainable development and considers the solidarity between the generations. The sustainability check of *Baden-Württemberg*

is legally based on the standing orders of the government and an administrative regulation.¹²⁴

Mitigating the aporia with institutions for future generations

As I have already mentioned, the full self-determination of future generations is an impossible endeavour, for we always will affect future generations with our present-day political decisions, independent of whether or not we are aware of this. More basically, looking at world history and longer time frames, both the value of self-determination and democracy should not be taken for granted, so their long-term promotion and stabilisation seems to be a necessary endeavour, and constitutions can be seen as useful tools in doing so.

Furthermore, to approximate the normative standard of the all-affected principle nevertheless, I suggested the concept of reflective paternalism. Therefore we need to consciously consider the interests of future generations in today's political decision-making process. For that purpose, many concepts and some real-world cases of institutions empowering future generations today were presented briefly. I argued that constitutionally prescribing the existence of such institutions would foster the impact potential of the respective institutions and facilitate at least proxy self-determination of future generations. From these perspectives, constitutional and institutional self-binding and the binding of future generations seem to be legitimate and, to paraphrase a *bon mot* of Churchill, to be the worst form of future generations' self-determination, except for all the others, as aporiae are not fully dissolvable.

When it comes to institutionalising a specific institution for future generations in a specific country, there are no one-size-fits-all-models but a variety of more or less suitable components that became visible in the descriptions above. In *competitive political systems* like many majoritarian democracies and in countries with a dominant culture of a separation of powers, independent oversight agencies with monitoring tools and suspensory vetoes might be a good idea, as long as they do not lead to a gridlock of the system. In contrast, internal deliberative parliamentary committees with a right to initiate bills may work in *consensual democracies* that emphasise cooperation. On the other hand, to install an ombudsperson for future generations in a country with

no tradition in *ombudsman schemes* might hamper the acceptance and the influence of the new institution. In *economised political systems* that rely on expert panels, impact assessments and cost-benefit-analysis, advisory bodies such as councils and meta-policies such as sustainability checks and intergenerational accounting may fit into the system. The design of the institution should also take into account which of the three powers is politically dominant in a particular political system in order to get *sufficient access to the political decision-making process*. Furthermore, a *sufficient provision with financial, staff and knowledge resources and infrastructures* is crucial, since the tasks to research the interests of and the impacts on future generations are especially challenging because of to the high level of uncertainty.

When it comes to institutionalising a specific institution for future generations in a specific country, there are no one-size-fits-all-models but a variety of more or less suitable components [...].

Overall, it also may be promising to include *non-profit civil society* actors in the overall design of the empowerment of future generations, for they could alleviate democratic presentism and support the generation of a broad acceptance of the institutionalised idea of politically considering future generations already today. They may also be helpful to give more attention to the issue of intergenerational justice and may help to hold institutions for future generations accountable. *Youth participation* may yield some legitimising symbolic power, since the future selves of the young share many well-understood self-interests with the first future generation. However, it should be noted that young people are not per se less presentist than the old ones.¹²⁵

Empirically, civil society organisations sometimes play a central role in promoting institutions for future generations, for example in Hungary where the NGO Védjegylet (Protect the Future) finally succeeded with its long-standing campaign to institutionalise the ombudsman.¹²⁶ In Wales and in Baden-Württemberg there were broad participation processes that were initiated by the governments. The Belgian Federal Council is staffed with many representatives of civil society organisations. In contrast, the Knesset Commission was launched by a single Member of Parliament who convinced his fellow MPs completely

without any civil society support.¹²⁷ However, this remains an exception.

Notes

1 The author would like to thank the two anonymous IGJR reviewers for their valuable comments. Parts of the research were supported by a PhD scholarship of the graduate programme Linkage in Democracy (LinkDe), Institute of Social Sciences, University of Düsseldorf.

2 See, e.g., Auerbach/Reinhart 2012: 19; Dreier 2009: 27.

3 An elaborated discussion of the terms of future generations and intergenerational justice can be found, e.g., at Tremmel 2009, ch. 3. Therefore it is not necessary to repeat this exercise. I agree with Tremmel that it is most reasonable to say that a generation should be "referred to as a 'future generation' if none of its members is [not yet] alive at the time the reference is made" (Tremmel 2009: 24, bracketed words added by the author). Who is a member of a future generation depends on the timing of the observer's speech act, in the following referred to as t_0 . Whoever is born immediately after t_0 (in the following referred to as "first future generation"), or, e.g., a hundred years later (in the following referred to as "later future generations"), is a member of future generations. Intergenerational Justice then is "justice between people who lived in the past, people alive today, and people who will live in the future" (Tremmel 2009: 22), whereby in the context of this article we will not discuss our moral relationship with the dead, but the one with people who will be born in the future.

4 Jefferson 2000.

5 This presupposes that future generations have interests which are to be understood as transtemporal (Feinberg 1980: 167; Kavka/Warren 1983: 24). This means that interests depend on the *existence* of interest holders, but not on their continual co-existence. As long as the interest holders exist or will exist in time and space, their interests can be affected even if they do not yet exist at the time when the respective effect is initiated or emitted. In this article I focus primarily on the *procedural* dimension of the issues in question. Therefore I will not discuss the substantial interests of future generations or the question of what (and how much) to pass on to them.

6 Beckman 2013; Goodin 2007; Tännsjö 2007; Thompson 2005.

7 Urbinati/Warren 2008: 395.

- 8 Warren/Castiglione 2006: 18, original emphasis.
- 9 Pelinka 2009: 188.
- 10 Jonas 1984; Birnbacher 1988; Tremmel 2009; Leggewie 2011; MacKenzie 2013.
- 11 Crutzen 2002.
- 12 Brennan 2007: 277.
- 13 Lagerspetz 1999: 152.
- 14 See, e.g., Gardiner 2006; Jávora 2009; Pellegrino/Di Paola 2014.
- 15 Beckman 2013.
- 16 Beckman 2013: 779, my emphasis.
- 17 Thompson 2005: 245; Dahl 1989: 120; Goodin 2007.
- 18 Beckman 2013: 781.
- 19 Beckman 2013: 783.
- 20 Beckman 2013: 785.
- 21 Beckman 2013: 781.
- 22 Beckman 2013: 786.
- 23 Beckman 2013: 783.
- 24 Beckman 2013: 783.
- 25 Rose 1990.
- 26 Goodin 2007: 49, 53-55.
- 27 Jefferson 2000.
- 28 Kley 2003: 511-512; Muniz-Fraticelli 2011: 386-388; Wolf 2008: 14.
- 29 Muniz-Fraticelli 2011: 387.
- 30 I borrow this argument from Lagerspetz (1999: 149), who brought it up in the context of the question whether discounting of future benefits is allowed in social long-term decisions.
- 31 This tension is mentioned in, e.g., Auerbach/Reinhart 2012: 19; Dreier 2009: 26-29; Gosseries 2008a: 32.
- 32 Gosseries 2008a; Muniz-Fraticelli 2011: 387; Thompson 2005: 245.
- 33 See also Muniz-Fraticelli 2011: 387.
- 34 The non-identity problem states that future individuals cannot be morally wronged by us since their very identity depends on today's public policies, inasmuch as these policies indirectly causally contribute to the compilation of genes that determines the specific future individual that will come into existence. According to this proposition, which specific sperm fertilises at what time which ovum depends on many factors, some of which are influenced by policies. Therefore, even if we massively compromise the quality of life of future individuals by, let's say, damaging the environment, these specific future individuals would not even come into existence without our damaging policies, and that is why they cannot be wronged if they still live a life that is worth living (Kavka 1982; Parfit 1982; Schwartz 1979). However, literature provides several good arguments how to uphold the moral relevance of future generations in the face of the non-identity problem. See, for example, Ariansen 2013; Heyward 2008; Reiman 2007; Tremmel 2013a.
- 35 There is a discussion on whether future people do have rights, as they do not yet exist (Beckerman 2004, 2006). At least, it can be argued that they will have rights once they will exist, and that these rights are to be safeguarded today (Gosseries 2004, 2008b; Tremmel 2009: 48; Unnerstall 1999).
- 36 Beckman 2013.
- 37 Thompson 2005: 246.
- 38 Thompson 2010: 19.
- 39 Thompson 2010: 17-19; Lagerspetz 1999: 149.
- 40 Birnbacher 2008: 29-30.
- 41 Doeleman/Sandler 1998: 1.
- 42 Gardiner 2001.
- 43 Jacobs/Matthews 2012; Lagerspetz 1999.
- 44 Cf., e.g., Thompson 2010: 18; Tremmel 2015: 214-115, 219-220.
- 45 Leggewie 2011: 26.
- 46 Tremmel 2013b: 2.
- 47 MacKenzie 2013: 133.
- 48 Kavka/Warren 1983: 21.
- 49 Rawls 1971; Kavka/Warren 1983; Birnbacher 1988, 2008, 2014; Gosseries 2008a, 2008b; Tremmel 2006, 2015.
- 50 Brown-Weiss 1989.
- 51 Collins 2007.
- 52 Brown-Weiss 1989: 120-126.
- 53 SEHN/IHRC 2008b.
- 54 SEHN/IHRC 2008b: 25.
- 55 SEHN/IHRC 2008b: 26-27.
- 56 SEHN/IHRC 2008b: 26.
- 57 SEHN/IHRC 2008b: 27-28.
- 58 SEHN/IHRC 2008b: 30-33.
- 59 SEHN/IHRC 2008b: 31.
- 60 Göpel 2010, 2014; Göpel/Arhelger 2011; Nesbit/Illés 2015.
- 61 Parijs 1998: 319.
- 62 Padilla 2002: 80.
- 63 Birnbacher 1988: 266-268.
- 64 Tremmel 2009: 52; Hubacek/Mauerhofer 2008: 419.
- 65 Gesang 2015.
- 66 Thompson 2005, 2010.
- 67 Shoham 2010: 76.
- 68 Spangenberg/Dereniowska 2015.
- 69 Minsch et al. 1998: 273.
- 70 Monaghan/Welburn 2012: 8.
- 71 Roderick 2010: 37-38.
- 72 Rehbinder 2008: 136.
- 73 WBGU 2011: 228.
- 74 Kirsch 1996; Minsch et al. 1998: 263; Rennings et al. 1996: 55-56; Rux 1999, 2003; Wepler 1995: 33-39.
- 75 SRzG 2015.
- 76 Sandnaes 2013; Worldconnectors 2015.
- 77 Dobson 1996: 132.
- 78 Wells 2014.
- 79 Ekeli 2005: 434.
- 80 Kavka/Warren 1983: 34-35.
- 81 Yongseok 2015.
- 82 Ekeli 2006; 2009.
- 83 Roderick 2010: 27.
- 84 Minsch et al. 1998: 268-269.
- 85 Monaghan/Welburn 2012: 8.
- 86 Tremmel 2015.
- 87 See Doeleman/Sandler 1998; Gründling 1990; Padilla 2002: 78; Pleschberger 2007; Raffelhüschen 2008; SEHN/IHRC 2008a; Tremmel 2004, 2005.
- 88 Doeleman/Sandler 1998: 12.
- 89 Ekeli 2007.
- 90 Göpel 2009: 16-17; Jodoin 2011.
- 91 Pelinka 2009: 193-194.
- 92 Tonn 1991; Pollard/Tonn 1998.
- 93 Brown-Weiss 1989; Birnbacher 2014.
- 94 Iliescu 2015.
- 95 Thompson 2005: 258-259; Massarrat 2003.
- 96 Monaghan/Welburn 2012: 8.
- 97 Goodin 1996, 2000.
- 98 MacKenzie 2013: 194-195.
- 99 Krishnakumar 2009.
- 100 Hinrichs 2002: 54-55.
- 101 Roderick 2010: 34.
- 102 Mank 1996: 494-496.
- 103 Tonn 1996.
- 104 Tonn/Hogan 2006.
- 105 Read 2012: 9.
- 106 Kim/Dator 1999: 8-9.
- 107 Caney 2015.
- 108 OCFR 2013.
- 109 Ambrusné 2011; PCFG 2012.
- 110 OCFR 2014.
- 111 Lavi 2014.
- 112 Shoham 2010; Shoham/Lamay 2006; The Knesset 2003.
- 113 National Assembly for Wales 2015a.
- 114 CFDD 2014; Premier Ministre 2014.
- 115 Ministry of the Environment, Climate Protection and the Energy Sector Baden-Württemberg (MUKE) 2015.
- 116 Birnbacher 2008: 34-36.
- 117 This applies especially to Japan, Norway and Bolivia. For a comprehensive overview see Gosseries 2008b: 448; Häberle 2006; Tremmel 2012: 107-111; World Future Council 2012: 5-10.
- 118 Chilton/Versteeg 2016.
- 119 Ambrusné 2011: 22.
- 120 National Assembly for Wales 2015b.
- 121 Parliament of the United Kingdom 1998, art. 121.

- 122 Parliament of the United Kingdom 2006, art. 79.
 123 Premier Ministre 2014.
 124 MUKE 2015.
 125 Vehrkamp et al. 2014.
 126 Ambrusné 2011: 20-21.
 127 Shoham 2010.

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