

SPECIAL ISSUE ON LONG-TERM RISKS AND FUTURE GENERATIONS

# Protecting Future People's Future: How to Operationalise Present People's Unfulfilled Promises to Future Generations

Alberto Alemanno 

Jean Monnet Professor of European Union Law, HEC Paris, Paris, France; and Europe's Futures Fellow at IWM, Vienna, Austria  
Email: [alemanno@hec.fr](mailto:alemanno@hec.fr)

## Abstract

As societies become more concerned with their impacts on future generations, the question of how to translate that concern into greater consideration in contemporary decision-making is coming to the fore. Despite growing societal acceptance of the ethics of obligations to the future – as reflected in record-high number of future-sensitive constitutions and international treaties – present generations' promises to future generations remain unfulfilled. This article explains why and offers an alternative approach to future-proofing. After providing a systematic account of the multiple efforts at aligning the actions of decision-makers with the interests of future generations, it argues that achieving the inclusion of future generations' interests in contemporary policymaking requires more than their legal codification and the establishment of new and typically scattered institutions, mechanisms and procedures. It rather calls for a more holistic, future-orientated and proactive approach by all public authorities. These must increasingly be expected to create the conditions not only for policymakers to consider the temporal dimension of their decisions, but also for all stakeholders – including new dedicated institutions – to hold present people accountable to currently non-existent future generations. To do so beyond the environment and climate space is a matter of urgency. This is the spirit animating this Special Issue devoted to long-term risks and future generations: to nurture a more imaginative theorisation and operationalisation of the recognition of future generations' interests in contemporary policymaking beyond today's institutional and conceptual models.

**Keywords:** Accountability; foresight; future generations; intergenerational ethics; long-term risks; stakeholder engagement

## I. Introduction

There is mounting agreement that present generations pose a much greater danger to future generations than any past generation posed to the present generation.<sup>1</sup> Human activity has altered the Earth's system so profoundly and extensively that it can no longer be considered as part of the current geological era – the Holocene<sup>2</sup> – but of what it is

<sup>1</sup> See, eg, N Bostrom, "The Vulnerable World Hypothesis" (2019) 10 *Global Policy* 455–76.

<sup>2</sup> On the overwhelming evidence that human lifestyles have impacted the Earth's planetary boundaries, with profound impacts for generations to come, and their causes, see, eg, S Whitmee, A Haines, C Beyrer et al, "Safeguarding human health in the Anthropocene epoch: report of the Rockefeller Foundation-Lancet Commission on Planetary Health" (2015) 386 *Lancet* 1973–2028.

increasingly referred to as “the Anthropocene”.<sup>3</sup> This menace that present people hold over future people<sup>4</sup> is generally ascribed to a combination of unparalleled technological advancement,<sup>5</sup> the endless pursuit of economic growth<sup>6</sup> and the entrenched power of vested interests – such as fossil fuel and technological companies – that have benefitted from a status quo in which resource extraction, market expansion and hyper-consumption are the norms.<sup>7</sup> As present actions determine the economic and ecological capacity that future people will inherit, they can have an irreversible nature. As a result, long-term risks<sup>8</sup> ranging from new technologies (as epitomised by artificial intelligence) and decreasing biodiversity to environmental collapse<sup>9</sup> represent unprecedented threats to intergenerational equity<sup>10</sup> as well as to the structure of our democracies. The latter are increasingly confronted with intertemporal dilemmas, typically consisting of trade-offs between maximising social welfare in the present and taking care of the future.<sup>11</sup>

Yet, due to a strong presentism bias in our current modes of governance,<sup>12</sup> future generations rarely participate – be it through the youth or other representative devices compensating for their present non-existence – in decisions that affect them.<sup>13</sup> Already in 1987, the Brundtland Commission’s report “Our Common Future” pointed out that

<sup>3</sup> The term “Anthropocene” was coined by Paul Crutzen and Eugene F. Stoermer in the late twentieth century. Crutzen, a Dutch atmospheric chemist, first proposed the term in a paper published in 2000, and it has since been widely adopted by scientists and scholars to describe the current geological age, characterised by humanity’s impact on the Earth’s ecosystems. See, eg, PJ Crutzen, “The ‘Anthropocene’” in E Ehlers and T Krafft (eds), *Earth System Science in the Anthropocene* (Berlin, Springer 2006) pp 13–18.

<sup>4</sup> P Conceicao, “Urgency of inequality and climate change raised by COVID-19” in *Development Co-operation Report 2020: Learning from Crises, Building Resilience* (Paris, OECD Publishing 2020) ch. 2; H Clark, AM Coll-Seck, A Banerjee et al, “A future for the world’s children? A WHO–UNICEF–Lancet Commission” (2020) 395 *Lancet* 605–58; M Romanello, A McGushin, F MacGuire et al, “Monitoring climate change and child health: the case for putting children in all policies” (2021) 57 *Journal of Paediatrics and Child Health* 1736–40.

<sup>5</sup> See, eg, N Bostrom, *Superintelligence: Paths, Dangers, Strategies* (Oxford, Oxford University Press 2014).

<sup>6</sup> CI Jones, “Life and Growth” (2016) 124(2) *Journal of Political Economy* 539–78. See also L Aschenbrenner, “Existential risk and growth”, Columbia University, GPI Working Paper No. 6–2020.

<sup>7</sup> See, eg, S Rahman, *Democracy against Domination* (Oxford, Oxford University Press 2017); AJ Hillman, GD Keim and D Schuler, “Corporate Political Activity: A Review and Research Agenda” (2004) 30(6) *Journal of Management* 837–57.

<sup>8</sup> For the purposes of this article and the overall Special Issue, we define long-term risks as including both low-probability, high-impact events (such as volcanic eruptions with a global impact) and high-probability risks that are unlikely to materialize in the near term (such as climate change).

<sup>9</sup> P Dasgupta, *The Economics of Biodiversity: The Dasgupta Review* (London, HM Treasury 2021).

<sup>10</sup> John Rawls was the first to develop a systematic account of obligations to future people as a central element of a theory of justice. See J Rawls, *A Theory of Justice* (Oxford, Oxford University Press 1971; 2nd revised edition, Cambridge, MA, Harvard University Press, 1999), especially section 44; J Rawls, *Political Liberalism* (New York, Columbia University Press 1993) p 274; J Rawls, *Justice as Fairness* (Cambridge, MA, Harvard University Press 2001), especially sections 49.2 and 49.3.

<sup>11</sup> On timing as a dimension of policy choice, see, eg, AM Jacobs, “Policy Making for the Long Term in Advanced Democracies” (2016) 19(1) *Annual Review of Political Science* 433–54.

<sup>12</sup> The causes of this presentism bias are many and varied. They can be found in cognitive biases and heuristics, such as the availability bias, at the personal level (see, eg, E Yudkowsky, “Cognitive biases potentially affecting our judgment of global risks” in M Cirkovic and N Bostrom (eds), *Global Catastrophic Risk* (Oxford, Oxford University Press 2008)); institutional frames, such as the four- to five-year parliamentary cycle (see, eg, A Healy and N Malhotra, “Myopic Voters and Natural Disaster Policy” (2009) 103(3) *American Political Science Review* 387–406) combined with an unbalanced policy process in which special interests are typically overrepresented (see, eg, T Stratmann, “Some Talk: Money in Politics. A (Partial) Review of the Literature” (2005) 124(1/2) *Public Choice* 135–56), as well as in insufficient, non-resilient mechanisms for cooperation at the global level (see, eg, M Boyd and N Wilson, “Existential Risks to Humanity Should Concern International Policymakers and More Could Be Done in Considering Them at the International Governance Level” (2020) 40(11) *Risk Analysis* 2303–12).

<sup>13</sup> A Karnein, “What’s wrong with the presentist bias? On the threat of intergenerational domination” (2023) 26(5) *Critical Review of International Social and Political Philosophy* 725–46.

... future generations do not vote; they have no political or financial power; they cannot challenge our decisions.<sup>14</sup>

It is no surprise that, by being politically disenfranchised and not enlisted among the relevant “stakeholders” routinely consulted by governments,<sup>15</sup> future generations cannot secure their interests in the social contract. Conventional economic evaluation and policy analysis methods also discriminate against the interests of future generations.<sup>16</sup> As a result, these interests remain neglected in governance, be they at the local, national or international level – with the latter giving priority to present net benefits at the costs of future ones. Paradoxically, this short-term bias appears particularly acute in democratic regimes characterised by electoral cycles, which are by design not only time-bound but also expected to respond to citizens’ immediate concerns.<sup>17</sup> This is particularly problematic in policy domains characterised by an extended timeframe, such as environmental sustainability, nuclear waste management or population control.

This might, however, be set to change.

A rapidly growing, increasingly self-aware and cross-cutting movement – both through academic disciplines and civil society – is making the case for rendering policymaking more sensitive to the interests of future generations.<sup>18</sup> For decades, some strands of moral philosophers have argued – in the name of the long-term value thesis<sup>19</sup> – that future generations should be given a similar weight to that of the well-being of those alive today.<sup>20</sup> Whilst some economists have denied such a possibility – by perpetuating the controversial practice of discounting the benefits accrued to future generations when weighing up the costs and benefits of a course of action<sup>21</sup> – now some of them (welfare economists) show a readiness to equate the well-being of future generations to that of present ones.<sup>22</sup> In the meantime, some legal scholars have argued – and have been

<sup>14</sup> Report of the World Commission on Environment and Development: “Our common future” (New York, UN, 4 August 1987).

<sup>15</sup> See, eg, A Alemanno, *Stakeholder Engagement in Regulatory Policy, Regulatory Policy Outlook* (Paris, OECD Publishing 2015).

<sup>16</sup> See, eg, E Padilla, “Intergenerational equity and sustainability” (2002) 41(1) *Ecological Economics* 69–83.

<sup>17</sup> See, eg, A Jacobs, “Policy Making for the Long Term in Advanced Democracies” (2016) 19(1) *Annual Review of Political Science* 433–54; A Jacobs, *Governing for the Long Term* (Cambridge, Cambridge University Press 2011).

<sup>18</sup> See, eg, T Ord, *The Precipice* (New York, Hachette Books 2020); R Krznaric, *The Good Ancestor: How to Think Long Term in a Short-Term World* (New York, Random House 2020); W MacAskill, *What We Owe the Future* (New York, Basic Books 2022). For a succinct yet sharp reconstruction of this movement, see also <<https://www.bigissue.com/news/un-takes-future-generations-movement-global/>>.

<sup>19</sup> This means that if you want to make the world better in an *impartial* way (ie without regard to people’s race, class or where or when they were born), then what most matters morally is that the future goes as well as it can for all generations to come.

<sup>20</sup> See, eg, C Kolstad, K Urama, J Broome et al, “Social, Economic and Ethical Concepts and Methods” in O Edenhofer, R Pichs-Madruga, Y Sokona et al (eds), *AR5 Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, Cambridge University Press 2014) pp 207–82.

<sup>21</sup> Discounting contains a built-in bias against future generations insofar as it devalues and practically removes from the analysis the impacts that occur in the distant future. Thus, projects with distant costs and immediate benefits are strongly favoured, whereas distant benefits are strongly devalued. Ultimately, the choice of a discount rate carries strong implications regarding the distribution of well-being between generations. For an early critique, see, eg, D Pearce and K Turner, *Economics of Natural Resources and the Environment* (New York, Harvester Wheatsheaf 1990).

<sup>22</sup> See, eg, G Arrhenius, “An Impossibility Theorem for Welfarist Axiologies” (2000) 16 *Economics and Philosophy* 247–66; MD Adler, “Future Generations: A Prioritarian View” (2009) 77 *George Washington Law Review* 1478–520; G Arrhenius, “Population paradoxes without transitivity” in G Arrhenius, K Bykvist, T Campbell and E Finneron-Burns (eds), *Oxford Handbook of Population Ethics* (Oxford, Oxford University Press 2020).

unexpectedly followed by constitution-makers<sup>23</sup> as well as some courts<sup>24</sup> – that future generations are new holders of legal interests – deriving from constitutions worldwide and international documents – to which correspond responsibilities of present generations.<sup>25</sup> Moreover, a community of social scientists, predominantly political scientists, has been working on the design and promotion of new future generations institutions<sup>26</sup> – be they ombudsperson, commissioners or parliamentary committees – entrusted to work for future people. Amidst the advocacy and support of a community made of non-state actors, ranging from non-governmental organisations (NGOs), philanthropic individuals/groups and other social change players, a growing number of governments are setting up these new dedicated institutions across the world. These future-orientated settings regularly gather within a formalised “Network of Institutions for Future Generations”,<sup>27</sup> which continues to expand. Wales<sup>28</sup> and New Zealand<sup>29</sup> are amongst several countries at the forefront of future generation policy reforms. These include Finland (Parliamentary Committee for the Future; United Nations Sustainable Development Goal (SDG)-aligned budgeting; Economy of Well-Being), Scotland (National Performance Framework) and Iceland (Well-Being Framework Indicators informing the Five-Year Fiscal Strategic Plan).<sup>30</sup> In the meantime, the pre-existing and broader foresight ecosystem – which is populated by a large community of actors typically mandated to assess technological developments – has continued to expand within and across Organisation for Economic Co-operation and Development (OECD) countries. Finally, in parallel to the emergence and diffusion of these initiatives, there are also sociologists and psychologists striving to gauge the desirability (ie the degree of support within public opinion) for future-orientated policies and ensuing institutional arrangements.<sup>31</sup>

These efforts suggest that although the idea of affording (some) consideration to future generations is gaining growing support<sup>32</sup> – being reflected in a large number of

<sup>23</sup> On the rise of future generations’ rights through a process of constitutionalisation and institutionalisation, see R Araújo and L Koessler, “The Rise of the Constitutional Protection of Future Generations” (30 September 2021). LPP Working Paper No. 7-2021.

<sup>24</sup> High-profile climate litigation cases include *Urgenda v. The Netherlands* in 2019 and *Juliana v. United States* in 2015, as well as the 2021 Germany Constitutional Court decision that the government’s climate protection measures are insufficient to protect future generations and that the government had until the end of 2022 to improve its Climate Protection Act. See, eg, C Beauregard; D Carlson, S-A Robinson, C Cobb and M Patton, “Climate justice and rights-based litigation in a post-Paris world” (2021) 21(5) *Climate Policy* 652–65.

<sup>25</sup> On the meaningfulness and usefulness of ascribing rights to future generations, see, eg, A Gosseries, “On Future Generations’ Future Rights” (2008) 16 *Journal of Political Philosophy* 446–74.

<sup>26</sup> K Hubacek and M Volker, “Future generations: economic, legal and institutional aspects” (2008) 40(5) *Futures* 413–23; S Caney, “Justice and Future Generations” (2018) 21 *Annual Review of Political Science* 475–93; I González-Ricoy and A Gosseries (eds), *Institutions for Future Generations* (Oxford, Oxford University Press 2017).

<sup>27</sup> The Network defines itself as “a roundtable for sharing knowledge, experience and best practices of institutions from around the world. A platform for innovative ideas on the institutional protection of future generations and their environment” <<https://futureroundtable.org/web/network-of-institutions-for-future-generations>>.

<sup>28</sup> Commissioner for Wales, Well-Being of Future Generations (2015) Act, available from <<https://www.futuregenerations.wales/about-us/future-generations-act/>>.

<sup>29</sup> Te Tai Ōhanga. The Treasury. Current and Past Budgets (NZ Treasury, 2021), available from <<https://www.treasury.govt.nz/publications/budgets/current-and-past-budgets>>.

<sup>30</sup> All five countries are members of the Wellbeing Economy Governments Partnership (WEGo) Wellbeing Economy Alliance. See Wellbeing Economy Governments (2021), available from <<https://weall.org/wego>>.

<sup>31</sup> Sociologists and psychologists strive to gauge the degree of support within public opinion for future-orientated policies and ensuing institutional arrangements. See, eg, M Fairbrother, G Arrhenius, K Bykvist and T Campbell, “Governing for Future Generations: How Political Trust Shapes Attitudes towards Climate and Debt Policies” (2021) 3 *Frontiers in Political Science* 10.3389/fpos.2021.656053.

<sup>32</sup> On the nature of future generations’ consideration, see, eg, Gosseries, supra, note 25.

constitutions and international documents<sup>33</sup> – it remains a matter of debate as to how such considerations might look and be organised from both a substantive and a procedural standpoint. As the conceptual and practical proposals arising out of concern for future generations are numerous and scattered, this article intends to systematise the various strategies, approaches and models aimed at defending – both substantively and institutionally – the interests and sometimes rights of future generations. As we will see, these approaches are not mutually exclusive and typically operationalise – in different formats, models and procedures – a legal recognition of future generations’ interests, and sometimes even their rights.

The article is organised as follows: rather than focusing on *why* future generations must be considered – a debate we leave to the philosophers – it focuses on *how* by providing an historical, conceptual and systematic account of the multiple efforts at aligning the actions of decision-makers with the interests of future generations.

Section II offers a brief excursus of the genesis and evolution of the recognition of future generations’ interests over time.

Section III discusses some of the conceptual and methodological challenges behind any efforts at embedding future generations’ interests in policymaking whilst presenting the dominant approaches towards their legal recognition.

Section IV focuses on the codification of the recognition of future generations’ interests by presenting its main legal basis. Once it is recognised that proper consideration should be given to future generations, the question arises as to how to make that happen. In other words, how are we to do so *beyond* the mere citation of these interests in legal documents?

It is against this backdrop that Section V provides a taxonomy of the various models – be they mechanisms and/or institutions – available to embed future generations’ interests in policymaking. It does so by building upon past and present frameworks developed worldwide.

Section VI draws some conclusions regarding the state of play in future-making efforts by critically identifying their inherent shortcomings and calling for a renewed approach.

## II. The genesis and evolution of the recognition of future generations’ interests

The need to protect the interests of those yet to be born is far from new. Over time, various legal texts and documents have recognised the interests of future generations, providing precedent for taking them into account in decision-making. The very same concept of intergenerational equity, by finding roots both in moral and religious traditions, is deeply embedded in the history of human civilisation. Historically, for example, some Native Americans have recognised the obligation of present generations to take future generations’ interests into account.<sup>34</sup> Thus, the “seventh-generation” principle enshrined into the centuries-old oral constitution of the Confederation of the Six Nations of the Iroquois – the *Gayanashagowa* (or Great Law of Peace) – states that “[w]e . . . make every decision that we make relate to the welfare and well-being of the seventh generation to come . . . We consider: will this be to the benefit of the seventh generation?”<sup>35</sup> In his concurring opinion to the 1997 International Court of Justice case concerning the

<sup>33</sup> For an account of the “turbulent story of intergenerational equity from a comparative international perspective”, see D Bertram, “‘For You Will (Still) Be Here Tomorrow’: The Many Lives of Intergenerational Equity” (2022) 12(1) *Transnational Environmental Law* 121–49.

<sup>34</sup> The research for this paper focused on European, US and international sources and thus falls short of an exhaustive globally relevant comparative analysis.

<sup>35</sup> O Lyons (1980), cited in R Rydén, “Archivists and Time: Conceptions of Time and Long-Term Information Preservation among Archivists” (2019) 6 *Journal of Contemporary Archival Studies* 6.

*Gabcikovo-Nagymaros* project of locks and dams on the Danube River, Judge Christopher Weeramantry provides an exhaustive account of Indigenous people's commitment to promoting the welfare of future generations:

Examples may be cited from nearly every traditional system, ranging from Australasia and the Pacific Islands, through Amerindian and African cultures to those of ancient Europe . . . . These varied cultures were reflecting *the ancient wisdom of the human family which the legal systems of the time and tribe absorbed, reflected and turned into principles whose legal validity cannot be denied.*<sup>36</sup>

Fast forward a few centuries and this principle has long been established and recognised – through a variety of formulations and contexts across geographies. Future generations have been present in constitutions since the early days of constitutionalism in 1789, but their inclusion shifted over time in prevalence, form and substance.<sup>37</sup> This had also been influenced by the gradual, parallel recognition of future generations' interests in international law instruments. This started out with the United Nations (UN) Charter in 1945,<sup>38</sup> followed by the “most pronounced political recognition of the need to consciously and comprehensively protect the needs and interests of future generations”<sup>39</sup> – that is, the 1997 UN Educational, Scientific and Cultural Organisation (UNESCO) Declaration on the Responsibility of the Present Generations towards Future Generations.<sup>40</sup> Subsequently, upon the invitation of the Rio+ Summit in 2012, the then UN Secretary-General Ban Ki-moon prepared a report – “Intergenerational solidarity and the needs of future generations” – that, by embedding the idea of intergenerational equity into sustainable development, also prompted the UN to devise mechanisms aimed at bringing future generations to the negotiating table.<sup>41</sup> Last but not least, the most recent UN Framework Convention on Climate Change<sup>42</sup> represents the major international climate change initiative, which has significant ramifications for future generations' interests.

As a result of this gradual process affecting both national and international spheres, although until the 1970s no more than a dozen constitutions contained such references, today 41% of them do (as of 2021).<sup>43</sup> This sudden change occurred in the late twentieth century with the advent of new constitutions and growing environmental consciousness within the public. As a result, today a multitude of domestic as well as international sources acknowledge that the actions of present generations can endanger the needs of future generations. Most of these texts require that the interests of future generations should receive attention alongside those of present generations. In most cases, these

<sup>36</sup> *Gabcikovo-Nagymaros Project (Hung vs Slovak)*, 1997 ICJ 7, 107, 25 September (emphases added).

<sup>37</sup> Araújo and Koessler, *supra*, note 23.

<sup>38</sup> The UN Charter already recognised in 1945 its *raison d'être* to be the need “to save succeeding generations from the scourge of war”. Similarly, in 1946, the origin of the International Convention for the Regulation of Whaling can be found the recognition of “the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks”. Since then, over thirty international treaties and declarations covering a broad range of issues have been adopted.

<sup>39</sup> M Göpel, “Intergenerational environmental justice: tackling a democratic deficit with ombudspersons for future generations” (2011) 14 *Effectus Newsletter*.

<sup>40</sup> UNESCO and UN, “Declaration on the responsibilities of the present generations towards future generations” (1997).

<sup>41</sup> <<https://sustainabledevelopment.un.org/content/documents/2006future.pdf>>.

<sup>42</sup> The concept of sustainable development, by exemplifying the imperative of considering future generations' needs, acted as a catalyst in the recognition of a specific legal duty towards future generations. This was spearheaded by the Report of the World Commission on Environment (known as the Brundtland Report), which offered the reference definition of the concept of sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

<sup>43</sup> This figure represents 81 out of 196 constitutions. See Araújo and Koessler, *supra*, note 23.



provisions refer to the environment and natural resources; in some others, they refer to bioethical rights (protection of the human condition). Ultimately, they all deal with future generations as intrinsically related to the concept of sustainability, an all-encompassing principle mediating between economic and environmental (and more recently climate) interests. This gradual recognition marked not only a quantitative but also a qualitative change in constitutional referencing to future people.<sup>44</sup> Rather than being consigned to preambles amidst generic, declaratory language, today's constitutional references tend to identify future generations as bearers of legal interests.<sup>45</sup>

Yet the question of the material effects of both international and domestic recognition of future generations' interests – be it through reference to the principle of intergenerational equity or to that of sustainable development – remains largely open today.<sup>46</sup>

### III. Conceptual and methodological challenges in the recognition of future generations' interests

The formal legal recognition of the need to protect future generations' interests raises multiple questions, both normative and practical in nature.

The first to arise is: who are these future generations? Addressing this question inevitably entails determining their relation to present people. In other words, where they do begin and where do present generations end? This question can be addressed from multiple perspectives, such as by providing a definition of “future generation” (living versus non-living; human versus non-human), “place” (people residing in a given territory) and “time” (when does the future start?). When it comes to time, the number of individuals changes every time unit and cannot be captured as such. When it comes to place, the question is whether only residents in a given territory should be considered as future generations or also non-residents, thus rendering that concept extraterritorial in relation to a given state.<sup>47</sup> As argued elsewhere,<sup>48</sup> although cost-benefit analysis has been adopted and used with a predominantly domestic focus, this policy tool – due to its inherent rationalistic and welfare-maximising commitment – strives for comprehensiveness and has, by its own nature, a cosmopolitan vocation. It could therefore accommodate – and do justice to – future generations' interests, even when they stem from outside of the relevant jurisdiction. When it comes to the who constitutes “future generations”, there is an ongoing debate as to whether non-human life and non-human species should be included as well. Moreover, one might expect future technologies – notably biotechnologies – to “create” new creatures, thus complicating matters even further. Yet, despite all of these difficulties, defining the notion of future generations appears to be a prerequisite for the operationalising of any legal recognition of such a

<sup>44</sup> See *ibid* (referring to this phenomenon as “an increasingly prevalent novelty in constitutional texts even after the number of constitutions started to plateau”).

<sup>45</sup> *ibid*, at 14–15.

<sup>46</sup> In her seminal monograph devoted to the idea of equity governing the relations between generations, Edith Brown Weiss concludes that the translation of the expressed concern for future generations into normative obligations is unfinished business. See EB Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo, United Nations University 1988).

<sup>47</sup> In *Urgenda*, the Dutch government rejected the non-Dutch claimants, whereas the German Constitutional Court clearly acknowledged the existence of the German government's duty to take into account the extraterritorial impacts of its policies, as requested by the Nepali and Bangladeshi claimants.

<sup>48</sup> A Alemanno, “Is There a Role for Cost-Benefit Analysis Beyond the Nation-State?: Lessons from International Regulatory Co-operation” in MA Livermore and RL Revesz (eds), *The Globalization of Cost-Benefit Analysis in Environmental Policy* (Oxford, Oxford University Press 2013).

concept in contemporary policymaking, hence the attempt to provide working – often competing – definitions.<sup>49</sup>

Second, any recognition of future generations' entitlements stumbles upon the so-called non-existence challenge: that is, the present non-existence of future persons. This offers both a theoretical (how are we to confer entitlements or ascribe rights to merely potential people?<sup>50</sup>) and a practical (who would be able to invoke those entitlements and rights?) conundrum. Although one could argue that there might be present rights that do not have present bearers,<sup>51</sup> for any type of right its conferral can only be done if the bearer is able to exercise it. When it comes to future generations, this cannot be guaranteed insofar as exercising such a power presupposes one's existence. There are at least two ways to overcome these arguments denying the possibility to confer entitlements such as rights to future people. One consists of ascribing rights to *present* rather than future people (such present rights would then be ascribed to individuals different from those whose interests are at stake). Although this option would guarantee that the interests of future generations would be preserved through successive and overlapping generations, it would not necessarily ensure an alignment between present and future generations' interests. This is because acting on behalf of future generations would involve exercising these people's rights without being the holder of the corresponding interests constituting the underlying justification for these rights. Hence, there is a need to explore a second option in order to guarantee the legal recognition of future generations. This consists of conferring future rights to future people. Here, the right-holders coincide with the interest-holders, but – of course – the exercise of such rights presupposes the existence of their bearer.

Third, in the same way as with present generations' interests, those of future generations also need to be defined.<sup>52</sup> Since, future generations are unable, by definition, to express their preferences in contemporary policymaking, their interests must be constructed.<sup>53</sup> For them to play a role in contemporary policymaking, a legal fiction needs to be established or future generations must be represented to allow and facilitate their participation (see the paper by Jale Tosun in the present Special Issue).<sup>54</sup> Yet any attempt at identifying future generations' interests is bound to occur within present people's perspectives, which raises major ethical questions in itself.<sup>55</sup> But there is more: any procedure aimed at capturing future generations' interests is bound to face an immanent conflict of interest between present and future generations (inter-generational)<sup>56</sup> as well as those conflicts of interest existing within them (intra-generational).

Fourth, one may wonder about the extent to which future generations (as previously defined together with their interests) can rely on the existing legal regime. This is because the consequences stemming from long-term risks, be they climate change or a volcanic eruption with a global impact, may have the capacity to interfere with an array of rights.

<sup>49</sup> See, eg, A Dobson, "Environmental Sustainabilities: An Analysis and a Typology" (1996) 5 *Environmental Politics* 401–28.

<sup>50</sup> See, eg, R Elliott, "The rights of future people" (1989) 6(2) *Journal of Applied Philosophy* 159–69.

<sup>51</sup> *ibid.*

<sup>52</sup> J Boerema, "How to Prepare for the Unknown? On the Significance of Future Generations and Future Studies in Environmental Policy" (2001) 10(1) *Environmental Values* 35–58.

<sup>53</sup> See, eg, D Bromley, "Reconsidering Environmental Policy: Prescriptive Consequentialism and Volitional Pragmatism" (2004) 28(1) *Environmental and Resource Economics* 73–99; Padilla, *supra*, note 16.

<sup>54</sup> See, eg, K Hara, R Yoshioka, M Kuroda et al, "Reconciling intergenerational conflicts with imaginary future generations: evidence from a participatory deliberation practice in a municipality in Japan" (2019) 14 *Sustainability Science* 1605–19.

<sup>55</sup> S Anand and A Sen, "Human Development and Economic Sustainability" (2000) 28 *World Development* 2029–49. See also, eg, Gosseries, *supra*, note 25.

<sup>56</sup> "Intergenerational conflict" refers to the collective tension, strain and antagonism between older and younger generations over what constitutes the fair distribution of public resources across age groups as well as the tension between present and future people.



These include, but are not limited to, the rights to life and human dignity, to property, to health, to privacy, to water and to food. This begs the question as to whether generations that do not exist yet can have legal rights at all, especially given the non-existence challenge described above. In fact, according to some moral philosophers, the non-existence of future people is no reason not to attribute rights to them. Even assuming that this holds true for legal rights and not only for moral rights, the question also remains as to whether the effects stemming from the manifestation of such long-term risks are *sufficient* to constitute a violation of human rights today, given the absence of a duty of absolute prevention of such extreme events and their consequences for human health. As will be discussed below, it can be argued, however, that the fact that future generations may be harmed in the future should suffice, and that therefore the state has a duty to take action to do as much as possible to prevent catastrophic effects of inter alia climate change by adopting a strong climate policy to limit the emission of greenhouse gases or by limiting artificial intelligence through governing its use both by the market and the state.

Let us examine the main approaches that were developed over time to operationalise the consideration of future generations' interests in an attempt at addressing the abovementioned conceptual challenges.

#### IV. The codification of future generations' interests from a legal basis

The most common approach to integrating future generations' interests into contemporary decision-making is through the establishment of duties to do so.<sup>57</sup> It is possible to identify two types of duties, depending on whether they are imposed on individuals or society (often referred to as civic) or on the state. However, out of the eighty-one constitutions referencing future generations, twenty-eight impose duties on the state, whereas only a handful impose civic duties.<sup>58</sup> Yet one might wonder whether duties can make sense without correlating rights.

Hence, an alternative approach to integrating future generations' interests into contemporary decision-making is through the conferral of rights to future generations and to deriving the legal obligations of present generations from these rights. The philosophical underpinning of such an approach lies with most theories of intergenerational equity.<sup>59</sup> These theories stipulate, in essence, that all generations (past, present and future) have equal needs to use the natural and cultural resources of the Earth. As a result, there is no basis for preferring the present generation over future generations in their use of the planet.

This is the case of Japan's constitution (since 1946), as well as of Iran's of 1979, followed by Norway (1992),<sup>60</sup> Malawi (1994) and South Africa (1997), the latter of which being particularly explicit on this point:

Everyone has the right to the environment protected for the benefit of present and future generations, through reasonable legislative and other measures ...<sup>61</sup>

As every duty has as a matter of principle a corresponding right, it might be argued that a duty towards future generations could mean that future generations in turn enjoy a right.

<sup>57</sup> Approximately thirty-two constitutions out of the eighty-one referencing future generations do impose a duty. See Araújo and Koessler, *supra*, note 23.

<sup>58</sup> *ibid.*

<sup>59</sup> For an overview, see, eg, A Gosseries, "Theories of intergenerational justice: a synopsis" (2008) 1(1) S.A.P.I.E.N.S. [Online] <<http://journals.openedition.org/sapiens/165>>.

<sup>60</sup> Norwegian Constitution, Art L 110b, al 1, as amended in 1992.

<sup>61</sup> Art 24 of the South Africa Constitution, 1997 (emphasis added).

Conversely, it might be argued that the conferral of a right entails the existence of a corresponding duty. Yet there exist rights whose exercise does not correlate with obligations incumbent on the state, such as the constitutional right to free speech. Ultimately, choosing the language of rights still leaves a wide margin of appreciation in terms of normative content.<sup>62</sup> The truth is that the substantive nature of these multiple provisions integrating the interests of future generations can only be ultimately defined through litigation by courts.

In any event, the gradual constitutional upgrading of future generations references from preambles to their main texts makes them – at least potentially – judicially actionable: that is, allowing these duties and/or rights to be invocable before courts.<sup>63</sup>

This is what occurred in Germany in the *Klima-Beschluss* judgment by the German Constitutional Court,<sup>64</sup> probably the most far-reaching conclusion ever made in an intergenerational equity case by a court. The German Constitution's reference to future generations is contained in a provision protecting the environment (Article 20a) that was introduced in 1994. After a lively political and legal debate over whether such a provision should enshrine an individual right to a healthy environment or merely as a state duty, it is the latter that found political support. After being unsuccessfully invoked in the framework of environmental litigation to contest inter alia waste disposal sites, Article 20(a) – the state duty towards future generations – has suddenly been found justiciable by the Constitutional Court in its first climate protection case. The complaints were brought mostly by young people from Germany and applicants from Nepal and Bangladesh, as well as two environmental NGOs, who alleged violations of the right to life and physical integrity (Article 2 paragraph 2), property (Article 14) and an unspecified fundamental right to a dignified future, based on Article 20(a). The Court recognised such a provision as requiring the State to pursue climate protection (well beyond its targets), and it even serves as a basis for a general obligation to decarbonise the economy in line with the Paris Climate Change Agreement. Needless to say, this obligation is tightly connected to the protection of future generations, so that those “who wish to continue preserving these foundations are not forced to engage in radical abstinence”.<sup>65</sup> This judicial decision followed the famous *Urgenda* rulings in the Netherlands (finally decided by the Dutch Supreme Court in 2019),<sup>66</sup> which established that governments may have a legal duty to prevent dangerous climate change and other long-term risks looming on the horizon. This approach has essentially been confirmed by several other high courts, such as those of Nepal and Colombia.

Ultimately, constitutions have not only increasingly referred to future generations over time but also assigned them stronger protection, typically in the name of the principle of intergenerational equality as stemming from either domestic or international sources or both. As has been noted, the conceptualisation of certain interests – in this case, those of future generations – as rights is meant to give them more weight.<sup>67</sup> Yet the protection of these newly created rights remains largely underdeveloped in terms of both doctrinal elaboration and case law. Thus, despite some courts' best efforts, the need to balance the

<sup>62</sup> On this point, see, eg. Gosseries, *supra*, note 25.

<sup>63</sup> For a reconstruction of the most recent intergenerational litigation before both international and domestic courts, see Bertram, *supra*, note 33.

<sup>64</sup> *Neubauer, et al v Germany* [2021] Federal Constitutional Court BvR 2656/18/1.

<sup>65</sup> BVerfG, Order of the First Senate of 24 March 2021 – 1 BvR 2656/18 – paras 1–270 <[http://www.bverfg.de/e/rs20210324\\_1bvr265618en.html](http://www.bverfg.de/e/rs20210324_1bvr265618en.html)>.

<sup>66</sup> Supreme Court of the Netherlands, 20 December 2019, ecli:NL:HR:2019:2006, English translation ecli:NL:HR:2019:2007.

<sup>67</sup> A Jakob, “Sustainability in European Constitutional Law” (1 July 2016). Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2016-16, available at <<https://ssrn.com/abstract=2803304>>.

rights of present and future generations and the reality of finite resources makes future generations' interests more aspirational statements than judicially enforceable obligations.

Although it remains too early to assess the effectiveness of future generations' rights in contemporary constitutionalism, we have seen how – amidst the rapidly spreading climate litigation movement – a growing number of jurisdictions have not hesitated to consider state duties as well as rights justiciable. As illustrated above, the emerging litigation against climate change bases itself upon the mobilisation of future generations' rights (or mere state duties) and suggests that the recognition of those rights can be consequential in acting against threats to the future of humanity.

When it comes to international law, no binding international instrument exists to grant future generations enforceable rights. Rather, their references to intergenerational equity are generally considered as guiding principles in the interpretation of both international and domestic texts.

After examining the evolution of the recognition of future generations' interests and their legal operationalisation as well as judicialisation, the next session intends to shed light on the various models (mechanisms and institutions) available to embed future generations' interests in policymaking.

## V. A taxonomy of the mechanisms and institutions for protecting future generations' interests

Over the last two decades, in an attempt to operationalise the growing number of formal recognitions of future generations' interests in legal texts, several governments have launched a variety of initiatives. Their establishment has led to some level of experimentation that has sparked a lively literature, notably focusing on the institutions for future generations.<sup>68</sup>

Yet future-orientated initiatives come in a variety of forms with different natures, mandates and functions.

No taxonomy of all of these initiatives exists or has even been attempted.<sup>69</sup> By taking as a starting point their common “future-regardingness”, it is possible to organise them according to their actual nature by indicating for each of them their underlying theory of change (or rationale) and the resources required.

First, the most prominent initiatives are *institutional* in nature. They can entail the establishment of a new, specialised institution – be it an ombudsperson or a commissioner for future generations – or the modification or adaptation of an existing institution – be it through the creation of a specialised second chamber or a parliamentary committee for future generations.<sup>70</sup> Virtually all institutional interventions are meant to change the perspectives of policymakers – be they parliamentarians, public officials or members of government – by confronting them with a future perspective. As such, their newly acquired exposure may induce them to deepen their understanding of the future. These interventions tend to be amongst the more costly as they require not only the setting up of

<sup>68</sup> See, eg, I González-Ricoy and A Gosseries (eds), *Institutions for Future Generations* (Oxford, Oxford University Press 2016); J Linehan and P Lawrence (eds), *Giving Future Generations a Voice: Normative Frameworks, Institutions and Practice* (Cheltenham, Edward Elgar Publishing 2021).

<sup>69</sup> For a thorough analysis but limited to institutional proposals for future generations, see González-Ricoy and Gosseries, *supra*, note 68.

<sup>70</sup> For an initial review, see, eg, E Dirth and N Kormann da Silva, *Building Our Common Future: The Role of the Network of Institutions for Future Generations in Safeguarding the Future* (Cologne, ZOE Institute for Future-fit Economies 2022); A Martínez-Zemplén, “Acting Today for a Better Tomorrow”, Network of Institutions for Future Generations 2018 Report.

new apparatus – be it within the legislature, executive or outside of government – but also new skillsets that are generally not present in public service.

Second, some other future-orientated reforms are *procedural* in nature. Contrary to institutional interventions, their contribution to future-making takes place through new mechanisms – not institutions – that, in turn, adapt systems that have not per se been designed to promote far-sightedness. Future-orientated procedural initiatives may, in turn, impact the legislative, electoral and judicial systems. When it comes to the policy process, one may envisage a “future impact assessment” of legislative budgeting processes or, more broadly, participatory future-making processes,<sup>71</sup> which either individually or collectively incentivises (or constrains) policymakers by establishing new methods of coordination and collaboration, such as parliamentary committees (see, eg, the article by Vesa Koskimaa and Tapio Raunio in the present Special Issue), and questioning the status quo (see, eg, the article by Marco Almada and that by Sébastien Fassiaux in the present Special Issue). A relevant illustration comes from Portugal, where public authorities self-imposed the integration of an Intergenerational Fairness Framework into policymaking.<sup>72</sup> As for the electoral system, one may consider extending suffrage to children, be it through the lowering of the minimal voting age, proxy votes for parents or storable votes<sup>73</sup> or more innovative democratic innovations as alternatives to representative democracy such as lottocracy, as epitomised by deliberative citizen participation<sup>74</sup> as well as proxy democracy (see, eg, the article by Manon Revel in the present Special Issue).<sup>75</sup> Finally, the judicial system could also be amended to become more future-sensitive by granting standing to younger and future generations, allowing new forms of vicarious representation (eg granting locus standi to younger members of society or to future generations’ institutions) or simply becoming more responsive to future generations’ demands (see, eg, the article by Till Steinkamp in the present Special Issue).

What these procedural interventions have in common is their expanding of the imaginative capacity of policymakers – and citizens, when involved – by bringing the future into the picture. Thus, for instance, in deliberative citizen participation future generations may be represented by an empty chair<sup>76</sup> or, more conventionally, younger generations. Ultimately, most procedural interventions may also provide a new set of mechanisms to render policymaking accountable to the people. These procedural interventions typically require participation capacity across a number of groups and stakeholders as well as additional funding for operational support. For instance, deliberative citizen participation may require funding to compensate citizens for their time input and experts for facilitation of this participation.

Another category of future-orientated initiative is *evaluative* in nature, having to do with metrics and other indicators of success. As these standards (notably as they apply to national accounts) dictate how we define success as a society, indicators can be altered to

<sup>71</sup> Under this scheme, as a part of each new programme for government, the government runs a participatory national future-visioning design process, bringing together citizens in a way that is representative of the demographic distribution and diversity of society.

<sup>72</sup> Framework for Intergenerational Fairness created by the Calouste Gulbenkian Foundation and School of International Futures, which can be found at <[www.soif.org.uk/igf](http://www.soif.org.uk/igf)> and <<https://gulbenkian.pt/de-hoje-para-amanha/>>.

<sup>73</sup> On the conceptual side effects of suffrage to children, see, eg, J Wall, *Give Children the Vote: On Democratizing Democracy* (London, Bloomsbury Publishing 2021).

<sup>74</sup> OECD, *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave* (Paris, OECD Publishing 2020).

<sup>75</sup> For an analysis of the representation of future generations in the political process, see, eg, DF Thomson, “Representing Future Generations: Political Presentism and Democratic Trusteeship” (2010) 13(1) *Critical Review of International Social and Political Philosophy* 17–37.

<sup>76</sup> See, eg, G Chroust, “The empty chair: uncertain futures and systemic dichotomies” (2004) 21 *Systems Research* 227–36.

include long-term aspects of societal development. Examples include generational accounting,<sup>77</sup> the ecological footprint<sup>78</sup> or genuine savings accounting.<sup>79</sup> Virtually all of these future generation-sensitive indicators are set to replace short-term ones. Some of them are long-standing, such as Bhutan's Gross National Happiness Index or Singapore's Centre for Strategic Futures. In addition, many countries now include well-being measures in national statistical collections. been created to strengthen policy coherence for the implementation of the SDGs. What all of these evaluative interventions have in common is their capacity to alter the motives of policymakers by reframing goals. Their acceptance and operation require relationships of trust and mutual understanding within institutions, departments, units and other actors that would be a part of the process.

The last category of future-orientated initiatives aimed at considering non-obvious stakeholders consists of *public policy* interventions. The most illustrative example is provided by pension schemes being redesigned to consider intergenerational concerns. Under such interventions, the level of contributions due may be adjusted according to the number of children of the contributor. Similarly, public policy governing insurances regimes, by transferring risk and compensating victims of losses, can also act to prevent or finance losses caused by low-probability, high-impact disasters to the benefit of future generations (see the article by Michael Faure and Qihao He in the present Special Issue). This is equally true, at a broader scale, of policy investments in domains such as financial regulation, public health, climate (see the article by Bas Heerma van Voss in the present Special Issue) and international terrorism (see the article by Zachary Kallenborn and Gary Ackerman in the present Special Issue).

Virtually every paper gathered in the present Special Issue falls under – and contributes to – one (or more) of the models examined above.

## **VI. Conclusion: how can present people eventually realise their unfulfilled promises to future generations (and do so beyond the environment)?**

This article revealed how different the various future-orientated initiatives are – in terms of nature, format and functions. It also identified what they have in common: that is, their individual and collective commitment to expanding the moral relevance of future people. In the same way that humans have expanded their moral circle beyond their family – beyond their immediate social circle and territory to include the whole of humanity, animals as well as the environment<sup>80</sup> – they now show readiness to acknowledge the moral relevance of future generations. Similarly to what occurred in the expansion of humanity's moral circle, our governance must adapt as well.

This transformative journey follows a familiar script and includes three main phases.

The first step entails the legal recognition, generally through constitutionalisation, of the new beneficiaries of moral recognition. The second step consists of codifying such a recognition through the design of a legal basis – be it a duty imposed on present people

<sup>77</sup> Generational accounting is a method of measuring the fiscal burdens facing current and future generations. Generational accounting considers how much each adult generation, on a per-person basis, is likely to pay in future taxes net of transfer payments over the rest of their lives. See, eg, AJ Auerbach, G Jagadeesh and LJ Kotlikoff, "Generational accounting: a meaningful way to evaluate fiscal policy" (1994) 8(1) *Journal of Economic Perspectives* 73–94; AJ Auerbach, LJ Kotlikoff and W Leibfritz (eds), *Generational Accounting Around the World* (Chicago, IL, University of Chicago Press 2007).

<sup>78</sup> The ecological footprint is an accounting method that focuses on land appropriation. It provides a means for measuring and communicating human-induced environmental impacts on the planet Earth. See, eg, M Wackernagel and W Rees, *Our Ecological Footprint* (Gabriola, New Society Press 1996).

<sup>79</sup> E Neumayer, "The World Bank's Genuine Savings Accounting" in *Weak versus Strong Sustainability* (Cheltenham, Edward Elgar Publishing 2010).

<sup>80</sup> See, eg, P Singer, *The Expanding Circle* (Oxford, Clarendon Press 1981).

and/or public authorities and/or a right to future generations. The third and last step implies the adoption of one or more of the available future-making models – be they institutional, procedural, evaluative or policy-based in nature, or a combination of those – in order to fully operationalise the recognition of future generations’ interests in contemporary policymaking.

Yet, as of now, none of these approaches – be it through ad hoc future generation institutions (such as a commissioner or ombudsperson), evaluative frameworks (such as generational accounting) or procedural mechanisms (such as intergenerational litigation) – appears able alone to do justice to the societal and legal recognition of future generations’ interests.

Paradoxically, each of these mechanisms and institutions seems to approach the challenge of integrating future generations’ interests through a *short-term* perspective. These interventions – be they institutional, procedural or evaluative in nature or policy-based – tend to be temporally bound to their context of operation. As such, often being mere tweaks at the margins of existing mechanisms and institutions, they prove incapable of deepening our understanding and consideration of the future. It is no surprise that, despite the almost thirty-year findings of the Brundtland Report and widespread legal codification of future generations’ interests, there has been a continued decline in social equity and environmental quality.<sup>81</sup> Nothing could be more self-defeating than this incremental and essentially ineffective approach, as it may fall victim to the same problems it tries to fix. This holds true also for what appears to be the most promising and compelling model for advancing future generations’ interests: that is, the rapidly growing phenomenon of intergenerational litigation, notably around climate litigation. Being reactive in nature, remedial and partial, the impact of intergenerational litigation on overall future-making governance remains limited. Moreover, its sudden advance epitomises how, behind today’s growing efforts towards the integration of future generations’ interests into policymaking, there is one and fundamentally only one concern: that of the most pressing environmental threat of climate change. Yet, as highlighted by a lively literature, societies are today facing the prospect of multiple, often intertwined long-term risks whose policy resolution also requires – with a similar degree of urgency – an inter-temporal approach.<sup>82</sup>

It is against this backdrop that today’s existing initiatives and approaches towards the integration of future generations’ interests into policymaking appear inadequate for generating meaningful change in terms of the ways in which present people envision and craft the future. This can be ascribed to various factors ranging from the scattered, marginal and essentially short-term approach chosen thus far to a lack of demonstrable political will on many levels.

But there is more.

Achieving the inclusion of future generations’ interests in contemporary policymaking requires more than their codification and operationalisation through the establishment of institutions, procedural mechanisms, processes or other institutional tweaks. It also requires a broader, more holistic and proactive approach by all public authorities to create the conditions for all stakeholders to deepen their understanding of the future and act on that new awareness.

Seen from this perspective, both policymakers and courts have failed to recognise that any commitment towards future generations is inherently linked to the principle of equality, notably that of substantive equality. Once we recognise – in line with the dominant theories of intergenerational justice – that all generations (past, present and

<sup>81</sup> C Sneddon, RB Howarth and RB Norgaard, “Sustainable development in a post-Brundtland world” (2005) 57 *Ecological Economics* 253, at 254.

<sup>82</sup> See, eg, Ord, *supra*, note 18.



future) have equal needs to use the natural and cultural resources of the Earth, the principle of equality can and should be extended to future generations. According to a substantive reading of such a principle, efforts should not be limited to the formal recognition of the existence and relevance of future generations' interests (and sometimes rights). Rather, they must entail the adoption of proactive steps to ensure that future generations have the same opportunities and access to resources as current generations,<sup>83</sup> and that any inequalities or disparities that may exist are actively addressed and eliminated. This may inevitably entail taking steps to address not only environmental issues but also major social questions – from pensions to healthcare,<sup>84</sup> poverty<sup>85</sup> and, more broadly, public spending and public debt.<sup>86</sup> Although this approach can be detected in the most recent intergenerational litigation, it remains largely limited to the environmental and climate space.

This article argues that a substantive interpretation of the concept of political equality might be a necessary procedural condition for the realisation of future generations' interests within and across contemporary policymaking. It is submitted that such an understanding of political equality as applied to ongoing efforts at integrating future people in today's decision-making could unleash a renewed vision of the role that present people and their institutions must play in ensuring the concretisation of the principle of intergenerational equity.

For this “quantum leap” to occur, however, a more holistic approach to policymaking and, more broadly, our democratic operation might be needed. Ultimately, only a “future-making policy mix” of multiple, complementary mechanisms and institutions might prove capable of establishing accountability from one generation to the next, and for this to happen well beyond the environmental sphere, including all social policymaking.

Hence, this article and the entire Special Issue represent a call to nurture a more imaginative theorisation and operationalisation of the recognition of future generations' interests in contemporary policymaking beyond today's institutional and conceptual models.

**Competing interests.** The author declares none.

<sup>83</sup> For a reading of the principle of intergenerational equality as entailing substantive obligations, see Weiss, *supra*, note 48; EB Weiss, “Implementing intergenerational equity” in M Fitzmaurice, DM Ong and P Merkouris (eds), *Research Handbook on International Environmental Law* (Cheltenham, Edward Elgar Publishing 2010).

<sup>84</sup> KM Kiang and C Behne. “Delivering environmental sustainability in healthcare for future generations: time to clean up our own cubby house” (2021) 57(11) *Journal of Paediatrics and Child Health* 1767–74.

<sup>85</sup> See, eg, ME Rogge, “Children, poverty and environmental degradation: Protecting current and future generations” (2000) 22(2/3) *Social Development Issues* 46–53; J Best, “Redefining Poverty as Risk and Vulnerability: Shifting Strategies of Liberal Economic Governance” (2013) 34(1) *Third World Quarterly* 109–29.

<sup>86</sup> WG Bowen, RG Davis and DH Kopf, “The public debt: a burden on future generations?” (1960) 50(4) *The American Economic Review* 701–06.