

# On Justifying Institutions for the Future

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## Intro

In recent years various institutions for future generations, such as Ombudspersons (Hungary 2008-2011) and Commissioners (Israel 2000-2006), parliamentary committees (Finland 1993-) and constitutional provisions for the future (e.g. Bolivia, Japan, Germany) have been installed in more than 50 countries (for an overview see Gonzalez Ricoy, 2016; Rose, 2018). Moreover, a wide array of proposals for further institutions for future generations has been developed (for indicative reading see Gonzalez-Ricoy & Gosseries, 2016).

This paper is concerned with the way the normative justification of such institutions is and should be framed. I distinguish, in line with Caney (2012), between a procedural and an instrumental approach to the justification of institutions. The procedural approach rests on some fundamental claims regarding democratic legitimacy in relation to our decision making and its effects on future people. The basis of such arguments is the definition of a 'relationship claim'. This is normally done through the 'all affected principle', which stated broadly ascertains that all those who are affected by a political decision should have some right to participate in its formation (Eckersley, 2004; Goodin, 2007). Following this, the procedural approach defines a 'procedural demand' – some participatory entitlement that is held by hold those who are part of the relationship claim. Such a demand could be full representation, or holding referenda, but it could also be receiving a justification, or being listened to. Institutions for future generations are accordingly justified on the basis that our decisions today will relevantly affect future people (relationship claim) and that they should have some say in our political decision making (procedural demand). This could be realised through being represented through an ombudsperson (Beckman & Ugglä, 2016; Göpel, 2012) or representation through future representatives in parliament (Dobson, 1996; Ekel, 2005; Wells, 2014). Note, that the procedural approach is not concerned with the outcome of the decision process, instead the focus is rather on input legitimacy.

In my paper, I provide three objections against the procedural framing of the justification of institutions for future generations. In short, the first argument shows that the application of the all affected principle yields counter-intuitive and indeterminate results, which make its application impractical and morally dubious. Secondly, I argue that a strict application of the procedural approach would justify a 'tyranny of the future' as the number of future people to be represented vastly outnumbers the currently living. Thirdly, I suggest that it is inappropriate to frame the procedural demand of future people as an entitlement to be represented. This is due to the unknown interests and preferences of future people (Karnein, 2016). Instead, I propose, in line with Jensen (2015) that we should rather think of our obligations to future people directly and ask how we can fulfil those.

In the second (shorter) part of the paper, I sketch an argument in favour of an instrumental framing of the justification of institutions for the future. I base my justification of institutions for the future on a minimalist account of human rights (rights to life, health, and subsistence) and show that even such a minimalist take on intertemporal justice gives us reason to reform our democratic institutions. This instrumental tack of justification has a number of advantages. Here, I discuss two. Framing the justification of institutions for the future instrumentally not only allows us to consider a more extensive array of institutional design options, but, as I show, also avoids the difficulties that arise for the procedural approach. I end this paper with a conclusion.

## 1. The Procedural Frame

### 1.1 Objection I: The All Affected Principle yields implausible and counterintuitive results in intergenerational settings

The first objection that I am concerned with regarding the procedural framing of the justification of institutions for future generations is concerned with the derivation relationship claims. In order to evaluate the all affected principle as a means to derive relationship claims, I will employ the following criteria:

C1 a) All citizens of the relevant society must be included.

b) Some future people are included.

C2) Intuitive reasonability.

C3) Practicality.

Let me say a few more things about these criteria. The relationship claim must include persons alive and people to be born.<sup>1</sup> It goes without saying that the demos needs to include at least all persons alive who are part of the relevant political entity. Furthermore, the relationship claim must include at least some future people, as it is their procedural demands that legitimate an institution for future generations in the first place. The legitimacy of such an institution will presumably be larger the more future people are included.

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<sup>1</sup> I do not consider the non-identity problem (e.g. Parfit 1984) here, albeit many of the relationship claims seem to entail what Parfit terms a 'narrow' person affecting view. I will deal with this problem in the following chapter of my thesis. However, I believe that the problem can be dealt with if we assume a 'wide' person affecting view (Heyward 2009).

Regarding intuitive reasonability, I want to add the following. A relationship claim is intuitively reasonable if the verdict generally fits with our considered convictions (Rawls, 1971). It is employed to ensure that the relationship claims are not wildly out of sync with people's views. For example, one could defend a relationship claim where this would include all male future people but not female future people. While this would satisfy criterion C1 b) and would therefore in principle be useable as a foundation for the justification of F-Institutions, it is still not intuitively reasonable to use such a relationship claim as it unduly excludes female future people from consideration.

Third, a relationship claim is first of all an ideal and as such not necessarily 'practical'. I believe, that it is nonetheless necessary to use practicality as a minimal restriction to ensure that the relationship claim provides some grounds for its implementation. Thus, a relationship claim that includes an infinitely large *demos* or an indeterminate number of people will be ruled out. The relationship claim should serve as an ideal that one can aim at. In that sense, it must be *possible* to realise the relationship claim under ideal conditions.<sup>2</sup>

### 1.1.1 Procedural Justifications of Institutions for Future-Generations – Evaluation

In its simplest form, the all affected principle as a criterion of democratic inclusion may be stated as

All whose interests are actually affected by a decision should be able to participate as equals in the democratic decision-making process. (Owen, 2012, p. 131)

Let us call this the outcome view, as the criterion for inclusion is 'being affected by the actual outcome.' This version of the principle has been criticised in the discourse for employing a circular argument. Accordingly, Whelan (1983) argued against the principle in the following way:

The deeper problem is that before a democratic decision could be made on a particular issue (by those affected), a prior decision would have to be made, in each case, as to *who* is affected and entitled to vote on the substantive issue—a decision that is on the proper bounds of the relevant constituency. Moreover, how is this decision, which will be determinative of the substantive decision, to be made? It too should presumably be made democratically—that is by those affected—but now we encounter a regression from which no procedural escape is possible. (Whelan, 1983, p. 19; his italics)

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<sup>2</sup> A lot more could be said here about different notions of practicality and possibility, however, due to limited space, I will leave it with the final comment that possibility is understood here in the sense that something is possible in 'our-current-world.'

Let us call this the circularity objection. Here, the argument is that the all actually affected principle cannot provide grounds for determining who is in the demos since i) who is included in the decision-making process depends on who is affected but ii) who is affected depends on what policy options are chosen and iii) what policy options are chosen depends on who is included in the decision-making process. We seem to face an impasse and a vicious circularity. This interrelation can also be illustrated as shown in Figure 1.

This interpretation of the all affected principle, however, seems too narrow on closer inspection. For one cannot only be affected by the actual outcome, but also by *possible* policy

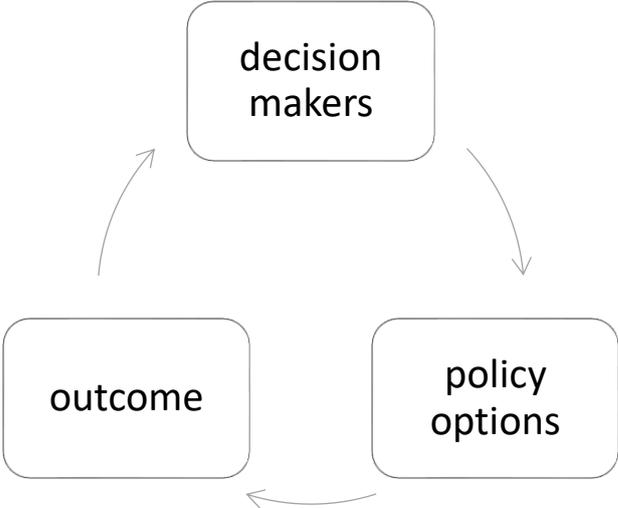


Figure 1 (own illustration)

options and *possible* outcomes (Owen, 2012, p. 132). Consider the following example. Due to the recent findings of micro plastic in many different goods, the mere fact that the relevant government institution is considering a ban on plastic bags may suffice for a producer of plastic bags to invest in research on substitutes for plastics in the production of bags. Thus, possible options and outcomes need to be considered as affecting, too. This may be called the process view.

Taking the process view means that not only those affected by the actual outcome of the decision are affected, but all those who could be affected by any of the options available in a decision process and by any outcome that could follow. This has also been pointed out by Goodin (2007, p. 54) who argues against the outcome view:

You are rightly said to be “affected,” not merely by the “course of action actually decided upon,” but also by the range of alternative courses of action from which that course was chosen. Furthermore, you are rightly said to be “affected,” not merely by what the consequences of that decision actually turn out to be, but also by what the consequences might have turned out to be.

Employing the process view – and thereby including everyone who could be affected in the relationship claim – has another benefit: it avoids the circularity objection that haunts the outcome view (Miller, 2009, p. 215). For once everyone who could be affected by the outcome is included in the decision-making process, it follows that all possible policy options need to be considered and thus all possible outcomes, too. All we need to know is ‘who might be affected’ and we can specify this without determining who is actually affected. And since we don’t need to know who is actually affected, the circularity posed by Whelan doesn’t kick in.

### 1.1.2 All Possibly Affected

Given this, let us now turn to such an alternative version of the relationship claim.<sup>3</sup> Robert Goodin offers a maximally inclusive principle (2007, p. 64) and argues that

[t]he democratic ideal ought ideally be to enfranchise “all affected interests.” Understood in a suitably expansive “possibilistic” way, that would mean giving virtually everyone everywhere a vote on virtually everything decided anywhere.

This sounds appealing when it comes to justifying institutions for future generations in the first place, for future generations would be included without any restriction. But who exactly is included? It would be all possibly affected living persons as well as all possibly affected future people. Thus, C1 is fulfilled.

Let us, hence, turn to the plausibility and practicality of the relationship claim. I believe that the all possibly affected principle is impractical and counterintuitive. To see why, let us take a closer look on who is included in the relationship claim exactly. The inclusion of all possible future persons opens up myriads of possible worlds where myriads of possible future people would exist. This would yield an extremely large relationship claim that is possibly infinite and that includes an unknown number of future people. Note also that the demos would largely be composed of future people that will never come into existence. Although this *demos* could therefore never really exist (for the existence of certain future people precludes the coming into existence of other future people), we may be able to imagine a virtual assembly of all these claim holders. This yields another startling insight. In such an assembly, future people would be in the majority (a problem that I discuss further in 1.2), but not only that. We may imagine different possible future people of different possible

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<sup>3</sup> In a longer version of this paper I also consider the all subjected to the law view that is argued for by Beckman (2013) and Fraser’s (2007, ch. 3) iterative approach to relationship claim making. However, I omitted these sections here due to limited space.

futures competing over the majority in such an assembly. One possible scenario here is that the majority of future generations would wish for an over-populated world, simply for the reason that this would be the only way to come into existence (this resembles Parfit's repugnant conclusion, 1984, ch. 17). Channelling this back into an institution for future generations with the intention of representing the interests of future generations would be highly problematic, for the interests of these various future people would diverge heavily (Bovenkerk, 2015; Karnein, 2016). In the end, their highest interest would be to be born without even considering the circumstances of their possible life.

Another jolting point is that we would never know in advance which possible people would come into existence and which would not. To include people in the relationship claim who will actually never come into existence and to use the interests and needs of these people who will never come into existence as a base for the justification of an institution for future generations may seem counterintuitive, or even, as Thompson (2005, p. 248) argues, 'incoherent'. However, Caspar Hare (2007, p. 517 ff.) convincingly argues that we do sometimes need to consider the interests of people who do not and who will never exist. For in some cases it is important not that a decision is better with regard to some actual person, but better in comparison to the person that would alternatively have been affected. This is why, to give an example, many people would say that Mary acted wrongly by conceiving Mariette although she had measles in the first months of pregnancy which causes Mariette to have a heart failure while Mary could have had a healthy child, Marion, if she had waited for three months. While I think that this example is rather convincing in dual choices, the problem with future generations is that there is not just one possible person that could come into existence instead. Further, it is not relevant at this point whether future people are objectively better or worse off than other people who would have been born instead, but whether their interests are met.

To conclude, it is impractical to include all possible future people in the relationship claim, for we cannot include an extremely large, but unknown and possibly infinite number of future generations in a relationship claim. Therefore, C3 is not fulfilled. Further, the possibilistic reading produces also counterintuitive implications. The scenario of people living a life barely worth living on an overcrowded world and in dire circumstances is after all quite likely as it would be backed by the interest of all those people who could only come into existence through this choice. Hence, C2 isn't met. Accordingly, the possibilistic formulations employed by Goodin and others (Eckersley, 2004; Ekeli, 2005) do not stand against the intuitiveness and practicality criteria.

## 1.2 Objection II: The Tyranny of the Future

Let us suppose that you are not convinced by my first argument. Then I think that there are two further reasons why we still should not rely on a procedural framing when we justify institutions for the future. The second reason is concerned with the procedural demands of future people. Many authors, such as Ekeli and Dobson have argued that we should represent future people in our political decision making. I want to consider this argument in more detail. Let me begin this section then with a quote by Robin Attfield (2003, p. 120):

Just say proxies are appointed to decision-making assemblies to represent future generations. Should they wield an overwhelming vote, or even a veto, because of the magnitude of future needs and numbers?

The number of future people affected by our political decisions will in many cases greatly outnumber us. And they should therefore have an overwhelming majority in our parliaments if we would represent them there. However, consider two quotes of proponents of the representation of future generations discourse:

some seats in the legislative assembly (for instance 5%) should be reserved for future generation representatives (hereafter F-representatives). The F-representatives should be assigned law-making competence, and they should be democratically elected in much the same way as present generation representatives (hereafter P-representatives).

Ekeli (2005, p. 434)

And Tremmel (2015, p. 215) writes:

Assuming that only those born within the next 200 years from now were to have a say on energy policy in the next general election, all political parties would have to rewrite their programs in order to facilitate a much faster reduction in greenhouse gas emissions. State debt would also be reduced much faster than is currently foreseen.

It seems to me that there is a vast discrepancy between the number of future people that should be represented – even if we assume a view where only actual (instead of possible) people would somehow be represented – and the procedural demands that is granted to future people. We would

accordingly need to make an argument about proportionality that would somehow explain that future people's voice should after all be muted or weakened again.

Indeed, the all affected principle has some proportionality components that we may try to draw on. A threefold specification can be made with regard to the relationship claim. We can distinguish along the dimensions of object, magnitude and mode (Caney 2012). First, the object of the relationship claim can be identified by asking: 'what is affected?' Held (2004) has argued that we should distinguish between three kinds of features of persons that might be affected, namely: i) 'vital needs or interests', ii) capacities to take part in social life and, iii) lifestyle and consumer choices. He proposes different principles for each of these cases.

Secondly, the object of the relationship claim can be affected in different degrees. This is captured by the magnitude. So, a person's vital interests can be greatly affected by a government's decision, and her lifestyle can be weakly affected by a person's private decision.

Thirdly, the mode of affectedness can vary. We can ask 'how is someone affected?' Someone can be affected by a voluntary business decision that turns out badly and someone may have been coerced to perform an act that she did not want to perform. Many theorists use what has come to be known as the 'all affected principle, where this holds that those causally affected have rights to be included in the political process (e.g. Ekeli, 2005; Goodin, 2007). Others limit the demos to all that are subject to some form of coercion. This is called the all subjected principle (Fraser, 2009, ch. 8). On this view, being affected is insufficient. Rather what is required is being coerced (or we might say 'coercively affected') to be included politically. A third principle that is proposed is the subject to the law principle, here only those that are bound by the law of a certain country are part of the demos (Beckman, 2013; Miller, 2009; Thompson, 2005, 2010).

To illustrate the specification of object, magnitude and mode, let us consider the formulation of the all affected principle given by Ekeli (2005) in his defence of the representation of future generations. He writes:

In a number of cases, future generations are among the parties who are significantly affected by present democratic decisions. This seems to imply that at least democratic decisions that significantly bear upon the lives of posterity cannot be regarded as legitimate unless future people have been given a voice in the decision making process. Ekeli (2005, p. 443)

Ekeli's application of the all affected principle is quite nuanced. The object, magnitude and mode of the relationship claim are defined and the appropriate procedural demand is stated. As the lives of future generations (object) are 'significantly affected' (magnitude) through 'democratic decisions'

(mode), future generations should have a 'voice in the decision making process' (procedural demand). Ekele also explains how this procedural demand could be fulfilled.

However, it seems that the inbuilt criteria of proportionality in the all affected principle cannot account for the vast differences in procedural demands that we see in proposals for institutions for the future. Drawing on mode, magnitude, and object will only support an argument for less than equal representation in a minor number of cases, where we can actually show that future people will be affected less. However, many of the cases relevant to the further future may affect future people at least as much as the currently living. Climate change is an example, the development of a super intelligence is another one. The argument for the weaker procedural demands of future people is thus lacking a claim for why future people's voices should be discounted. Without such an argument we would have to accept that they should be treated as political equals. And without such an argument we are facing what I would like to call a proposal for the 'Tyranny of the Future'.

For now, I haven't come across any argument that would give us reason to not consider future people as political equals. However, I also haven't come across a single argument for the full representation of future people. Were such an argument put to practice it would likely make political decisions impractical. Furthermore, it would, at least in my view, also be undesirable to give most of the political power to representatives of people who cannot be asked on what they want to be done. This again, turns already on the third argument against the procedural approach. I am going to present this next.

### 1.3 Objection III: Representing the unborn

There is a third objection to framing the justification of institutions for the future procedurally: Representation can be conceptualised in many ways. Most of these have in common that they assume some sort of authorisation of the representative through the representee(s) and accountability of the representative to the representee(s).<sup>4</sup> However, Future people lack the capacity to vote for their representatives or to hold them accountable. The relation cannot be made responsive in any meaningful way. We thus need to ask whether other sources of legitimacy can be tapped.

One source of legitimacy could be 'communion of interests' (Burke, [1792]1899, p. 293). In Jane Mansbridge (2003) empirical study of representation she found that some representatives not

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<sup>4</sup> However, see Rehfeld's (2006) conception of representation as an example of representation that is not relying on these factors, but only on 'acceptance by the audience.' However, he also accepts that this form of representation doesn't have to be legitimate, something that I will assume highly desirable in the further argument.

only represented their constituency, but also, due to their working-class background, or being lesbian, gay or a person of colour, the interests of this group. Mansbridge calls this 'surrogate representation.' Dobson's (1996) proposal for the representation of future generations through members of green NGOs as their representatives in parliament could be founded on this intention.

I am doubtful that a 'communion of interests' brings us much closer to the legitimate representation of future people. I have two reasons for this. First, while Mansbridge found that those 'surrogate representatives' were indeed representing the interests of a group outside of their home-district, it does not follow that this is legitimate. For whether we would call this legitimate cannot be reduced to the fact that a representative de facto works in the interest of someone else. It is on the representee to 'actively endorse a specific action (or way of being) the representative stands for' (Karnein, 2016, p. 90).

Secondly, '[t]he idea that the interests of one group can be represented by those of others was used to justify the representation of women by husbands and servants by masters' (O'Neill, 2001, p. 495). This argument is not decisive, in so far as future people are in contrast to women or slaves not able to represent themselves even if they wanted to. Thus, the historical use of this conception of representation doesn't need to spill over to our current question. What remains nonetheless is the doubt that the environmental NGOs or other groups claiming to speak for future generations, especially proposed representatives for future generations in parliament, have the 'same' interests as future generations.

Let us, thus, have a closer look at future people's interests and see whether we can legitimise their representation with reference to it. What representatives of future generations could claim, is that they, despite not having the 'same' interests as future generations, could still represent them on the basis that they would know what future generations interests will be. Here, the source of legitimacy is supposed to be epistemic (Eckersley, 2011) and is often coupled with care (O'Neill, 2001).

Indeed, I believe we can assume that future generations will, as humans, have some needs that current generations have, such as the need for water, food and shelter. However, we cannot know whether they will have a preference for opera houses or rugby, for inclusive schools or for specialised schools for the challenged. It is in order to differentiate her between needs, and preferences or interests.

Further, the interests of future generations are at least partly a function of our current decisions. Accordingly, we are not only responsible to future generations with regard to the effects of our choices on their lives, but also with regard to the interests and tastes they may develop. In this sense, the interests of future generations are moving targets (Karnein, 2016, p. 87).

The epistemic difficulty is further aggravated by the fact that future generations are not homogeneous (Bovenkerk, 2015; Karnein, 2016) and their interests and preferences may differ from one another gravely. This is not just the case within generations, but also across generations. Future people born in the next twenty years may have very different interest regarding climate change mitigation in comparison to those born in a hundred years from now. Accordingly, it is often not clear, what future generations would want their representatives to do even if we could ask them.

With regard to the question how such claims to knowledge by the representatives of future generations could be evaluated, two ideas have been brought forward. Eckersley (2011) has argued that such representatives<sup>5</sup> should be held accountable by the current generation. Different interest groups will use different arguments and perspectives in order to evaluate the claims made by the representatives of future generations. According to Eckersley (2011, p. 253), '[o]rdinary processes of public democratic deliberation provide the best check upon nature advocacy.'

Karnein (2016) elaborates further on this question and argues that legitimacy of representatives could be established over time by evaluating their performance in the light of what can reasonably be expected of them with regard to the proper justification of their actions to future generations. This idea is based on the conception of representation as claim making by Saward (2010) and is supposed to explain how representation despite formal authorisation and accountability can still be legitimate. The argument is, that legitimacy can be acquired over time, through comparing the representative's decisions against the interests of the representee. Accordingly, we could judge representatives of future generations by evaluating their performance against what we could reasonably believe future generations would want us to do. However, Karnein is cautious as she knows about the epistemic difficulties attached to the question of future generations interests. She, thus, argues that

[i]t seems safe to assume that future generations could not possibly think it was justified if we decided that promoting our own interests (in keeping costs low, for instance) is more important than their having to live with the devastating effects of a radically destabilized climate (as a consequence of keeping costs low). Likewise, it seems clear that they could not possibly think it was treating them with equal respect if we chose, for the sake of convenience, to be careless and negligent about disposing of our nuclear waste.

Karnein (2016, p. 93)

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<sup>5</sup> Eckersley is actually interested in the representation of nature. However, I believe, the point is the same with regard to future generations.

We could then evaluate the decisions of representatives of future generations on the basis of whether we think that they gave sufficient consideration to the interests of future people. Or, as Karnein puts it: 'The important point is that we would have to justify our decisions to future generations as if they were present today' (Karnein, 2016, p. 93).

I am doubtful that this approach is as fruitful as presented. My reason is this: As we have seen before, future generation's interests are a rather vague and underspecified concept. The danger in this uncertainty is that it opens room for the pursuit of partial interests and corruption. For many things can be defended having future generations on the lips, while having one's own interests in mind. Indeed, Ekei (2005, p. 439) himself points out that F-Representatives might not promote future generations' interests. We may thus find that representatives of future generations 'end up invoking the interests of future generations in order to bolster their own controversial agendas against, for instance, immigration or against providing more aid to the contemporary global poor' (Karnein 2016, p. 95). This thought finds further support in the point that representatives of future generations would have the same incentive to be re-elected as ordinary representatives.<sup>6</sup> Thus, it is likely that at least part of their decisions reflect the interests of current generations (Jensen, 2015).

Furthermore, it seems to me that the mechanism of legitimisation proposed by Karnein and Saward are actually a disguised instrumental approach to justification. Let me explain. When we would try to see whether a politician had sufficiently 'justify our decisions to future generations as if they were present today', we need some standard of evaluation. The reference to the interests of future generations is nebulous as Karnein has shown herself. What we can however still judge a politician's work against is whether she has given sufficient consideration to future generations when taking a decision. However, how would we evaluate whether she did indeed take future generations into account sufficiently? I think that such an evaluation would necessarily invoke a principle of intergenerational justice. Hence, I am inclined to call the procedural justification of the representation of future generations a disguised instrumental justification.

Let me shortly restate what I have argued for in this chapter. I have shown that the all affected interest principle produces indeterminate and counterintuitive results when applied in the intergenerational realm and is therefore ill suited to define practicable relationship claims. Furthermore, I have discussed the procedural entitlements and have shown that representing them would ensue the tyranny of the future, if we cannot give any reason why we should discount future generations voices in the political discourse. However, I can see no reason why we should be allowed to mute their voices. Thirdly, I discussed the legitimacy of the representation of future generations. It

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<sup>6</sup> If one assumes them to be elected at all. Some (Tremmel 2018) point out that it might be advantageous not to elect them for this reason.

seems that we can observe here that the procedural frame is switched into a (disguised) instrumental justification while maintaining the cover of the procedural approach.

## 2. Sketch of an Instrumental Justification

Having discussed three objections to the procedural approach at length, I would like to turn to the instrumental approach now. Space only permits me to sketch an instrumental justification here. An instrumental justification of institutions for the future could run as follows:

Instrumental justifications of F-Institutions begin with a definition of a principle or ideal that should be realised. This can be some value such as security, peace, or a principle; such as a principle of justice. This value or principle can be specified to different degrees. While one can, for example, begin the justification from a very nuanced version of luck egalitarianism, one can equally start from some kind of broad socialist or liberal principle. Lastly, one can assume that a number of principles and values are of importance when considering the moral legitimacy or one can assume that a certain value is the only guiding principle for the design of some institution.

An instrumental justification for an F-Institution could run as follows. First, it specifies a certain kind of goal. I assume that a central principle for the relation between generations is 'enjoyment of human rights' by all generations. Following this, I can make the observation that not all future generations will be able to enjoy human rights due to political decisions taken by current generations. Thus, current generations fail to realise the ideal of 'enjoyment of human rights' with regard to future generations. When considering the political decisions of the current generation I note that these are characterised by an over-discounting of the future. This is caused by 'presentism' (Thompson 2010) or 'harmful short-termism' (Caney, 2016). In order to realise the enjoyment of human rights by future generations, it is necessary to overcome presentism. Changing the set of political institutions is a viable option for this.

Let me provide some more depth regarding the step from 'harmful short-termism' to the need to establish institutions for the future. We can observe that it is likely that not all future persons will enjoy human rights, even if we assume a basic rights view that only comprises a right to life, health and subsistence (no wonder if not all currently living persons enjoy them). For the enjoyment of human rights by future generations is heavily threatened by climate change (Caney, 2010) to name but one threatening factor. Caney shows with reference to the fourth IPCC assessment report and other empirical studies of climate change that the human rights to life, to health, and to subsistence are breached by climate change as of today. Note that there are various further risks that may have disastrous effects for future generation's human rights, such as threats from biotechnology, pandemics or plagues, but also from artificial intelligence or failure of nuclear

plants and nuclear wars (Bostrom & Ćirković, 2013). Thus, our current political decisions do not reflect our obligations towards future generations. Current generations will violate the rights of future generations.

The rights of future generations are discounted in the political discourse due to a focus on the short-term. Harmful short-termism is caused by a number of factors which are partly anthropogenic and partly institutional (Caney, 2016; Michael K. MacKenzie, 2016). As it is hard to change anthropogenic characteristics of humanity the only drivers of presentism that can be altered in the short-run are institutional. In order to weaken harmful short-termism institutions for the future are needed. In other words, without such institutions the current generation will continue to violate the rights of future generations. It is therefore an obligation of current generations to change the set of institutions in such a way as to ensure the rights of future generations will not be infringed.

Framing the justification in the way sketched above has a number of advantages in comparison to a procedural framing of the justification. Let me name a two here. First, there is no reason to assume, that any of the three objections discussed above are undermining the instrumental justification of institutions for the future. There is no need to democratically decide who is part of the relationship claim and who is not. Second, the approach is not concerned with giving future people an appropriate procedural demand, it instead ensures that future people will be able to enjoy their human rights, therefore, we do not need to make an argument for the discounting of future people's voices or try to legitimise a deficient conception of representation.

Furthermore, the instrumental framing has the advantage that it allows us to consider all sorts of institutional design that could effectively ensure that future people will enjoy their rights. We are not limited by ways that can be understood as institutions that would fulfil future generations's procedural demands (if this is possible) but can instead also look at other mechanisms such as sustainability assessments or intergenerational funds or education (for an overview of the wide array of possibilities here see Gosseries and Gonzalez-Ricoy, 2016). This does not entail a step away from democracy. To the contrary, many proposals for institutions for the future use means of deliberative democracy, such as randomly selected third chambers (Michael K. MacKenzie, 2016; Niemeyer & Jennstal, 2016), in order to ensure a sufficient consideration of future people's rights (Jensen, 2015). I thus believe that there is much to gain from focusing further work on an instrumental justification of institutions for the future.

### 3. Conclusion

In this paper, I have discussed three objections to the procedural framing of the justification of institutions for the future. The procedural approach is ill-equipped to deal with these arguments and

we should consequently refrain from framing our justification of institutions for the future procedurally. Instead, we may use an instrumental justification which I have sketched briefly in section 2. This framing is advantageous not only insofar as it avoids the objections to the procedural view, but also with regard to the various design options that it allows us to pursue.

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