

Conclusion

9.1 Introduction

The failure of existing forms of international law-making and global governance to adequately respond to the climate change crisis means that there is an urgent need to explore new forms of governance. Mechanisms involving proxy representation of future generations are one such form that can play a modest role in helping to ensure the long-term consequences of political action are incorporated in law- and policy-making. If this does not happen, the ecological consequences of inadequate action on climate change are at risk of becoming so dramatic that future generations will suffer massively from these effects. The current political and legal debates on how best to respond to the ongoing and worsening consequences of climate change can be understood as an attempt to address this question.

Representing Future Generations contributes to this discourse on possible theoretical and practical pathways. Our main argument is that the search for – and collective experimentation with – new forms of representation are immensely important elements of sustainable climate policy. Through proxy representation, future generations can be practically and institutionally involved in climate law and policy-making, considering both the vulnerability of future generations and their distinctive interests. By having a proxy reflect their concerns in the present, the medium- and long-term consequences of climate change can become politically manageable, leading to better climate policy.

Representation is a meaningful form of political governance because it is based in democratic theory. In this book, we have presented different understandings and practices of democracy and demonstrated that all consider representation as a central method of democracy. Some construe it narrowly, others more broadly; in all traditions, it plays an important role. Moreover, while recognising that the value of the democratic ideal at the international level remains controversial, we

argue that the normative ideal of democracy has received formal endorsement from the international community in a raft of international instruments (Chapter 2) and remains a valid ideal for the same reason it is justified at the national level, namely to avoid tyranny and abuse of power and also to maximise the likelihood of just outcomes in decision-making.

This concluding chapter is structured as follows. We first set out how the pragmatist approach has shaped the various elements of this book (Section 9.2). We then make an assessment of the book's value in relation to real-world international political processes (Section 9.3), before concluding with some suggestions as to fruitful directions for future research (Section 9.4).

9.2 Proxy Representation through a Pragmatist Lens

Consistent with the pragmatist approach of the book, we have not developed an ideal-theoretical justification of representation. Instead, we have identified representation as a central, inherent value of democratic practice and have explored how it can evolve in the face of ecological issues. This does not mean that representation only plays a role in democracies. It also does not mean that all countries and global politics must adopt a specific type of democracy as the basis for political governance. This would be an unrealistic proposal. Our goal is not to democratise the world but, rather, to utilise the idea of representation, which has its origins in various democracies (understood in a very broad sense). We propose reconstructing existing forms of proxy representation at the global level. We also consider how they can be convincingly further developed to facilitate representation of future generations as a means for addressing the climate crisis.

The question of who can (and may) be understood as a proxy is contentious. Some approaches suggest a narrow, actor-centred understanding. In this view, only individuals or clearly defined institutions, established through specific procedures and deriving legitimacy from them, can be understood as proxies. In current debates, the ombudsperson in the national parliamentary system is often mentioned: with clear legal foundations, an ombudsman can have, for example, an auditing or even a veto right over the legislative branch. The proxy then has a very clearly defined task and is, in turn, accountable to Parliament. Expressed broadly, the proxy is tasked with deciding as to whether a piece of legislation is problematic for reasons of intergenerational justice.

At the international level, there is no Parliament, although the United Nations General Assembly plays some of the roles of a global parliament, albeit with very limited powers. At the international level, the proposed UN Special Envoy for Future Generations (discussed in Chapter 8) is the international version of the ombudsman-style proxy mechanisms.

The theoretical considerations of this book, as well as the case studies, show that it is meaningful to broaden such a narrow understanding of proxy representation. In the political and legal fields, proxies for future generations need not only be individuals or narrowly defined (institutional) actors but can also comprise (open) networks, such as social movements, laws themselves, and even social or legal discourses that reflect the interests of the future in the present. Of course, these forms of proxy representation are underpinned by varying degrees of legitimacy: an elected ombudsman has higher legitimacy concerning traditional legal categories than does a social movement or a legal discourse. However, they can all have a significant impact on current political processes. If representation – as we have argued – depends on identifying a sufficiently large audience that shares and implements these concerns, various forms of proxy representation can be justified, even if their legitimacy in the strict sense is lower.

We have argued that, in terms of their future legitimacy, all the proxies mentioned earlier can integrate the needs or interests of future generations in current political and legal mechanisms and have an impact in law- and policy-making. Our argument is: political decisions gain legitimacy only when they represent currently living people and their concerns *and* those of future generations. Legitimacy, therefore, needs to be expanded to include future legitimacy.

Our case studies demonstrate how proxies have already emerged, or are currently emerging, in the field of international law. In some areas, they have already had a pronounced impact, while in others, their impact remains diffuse. Difficulties in delineation arise in certain instances (e.g., between young persons currently living and future generations) which stem from the fact that human beings are temporal beings; thus, the relationship between present and future generations is constantly changing. The case studies show that, despite such challenges, a clear trend is discernible: many legal discourses, actors, and institutions are increasingly taking the concerns of future generations seriously, thereby becoming new forms of proxy representation.

The pragmatist approach underlying this book, inspired by John Dewey, interprets this constant change and expansion of forms of representation not as a problem but as potential. In contrast to other political-philosophical approaches that aim for the generalisability and extensive immutability of political and legal institutions, pragmatist approaches view political processes as ongoing processes. There is no ideal concept that could be deduced in advance for theoretical reasons. Instead, faced with complex problem situations, people have no choice but to experimentally adapt and improve their responses continuously. Politics and law are not fixed and ideal: they are not immutable. Rather, ideals, politics, and law must be tested – not just through ideas but also implemented in the real world to test the extent to which they ameliorate the human condition.

In this sense, the development of new forms of proxy representation can be understood: there is no final blueprint, no ultimate framework. Instead, there are normative heuristics, such as the acknowledgment that it is good and meaningful to take the vulnerability of future generations seriously and thus expand our understanding of justice based on solidarity with these future individuals. How this can be achieved politically or legally must be tested. These are new steps that require political courage and endurance because some developments may lead to dead ends and not be productive.

This does not mean that anything goes or that there are no criteria for evaluating how proposed new political or legal mechanisms or processes should be developed. In a fallibilistic sense, their legitimacy can be analysed and discussed for effectiveness. Both the development of the three normative principles (Chapter 4) and, correspondingly, the justification of proxy institutions in terms of legitimacy and effectiveness (Chapter 5) should be understood as involving criteria for evaluating the experimental process. It is through this constant readjustment and development that stable and effective institutions in the field of international law are possible.

This pragmatist approach seems to contradict some current interpretations of law in theory and practice. Does the law not stand for (timeless) stability and resist constant evaluations and transformations? This appears to us to be a truncated understanding of the law. The law also has no blueprint: it is not an absolute, timeless ideal. Instead, the law is to be further developed with a focus on both accepted procedures and normative considerations. This understanding does not imply a naïve legal positivism that struggles to adequately process normatively the perspectives of vulnerable groups and those without a voice. On the contrary, giving a voice to such groups through proxy forms of representation serves the goal of integrating future generations into the logic of law.

Our argument is that law-making is always an experimental process; the law needs to be further developed in response to important values, changing societal conditions, and global crisis phenomena. International law should not be conceived of from the perspective of rules made by all-powerful sovereign legal subjects but, rather, from the perspective of the vulnerable individual. Only then can it meet its own normative claim for justice and, in a compelling sense, meaningfully consider the interests of future generations by integrating them into legal institutions at all levels.

In this sense, international law is clearly not an absolute and timeless ideal. Rather, because global dynamics and problems are so complex and change rapidly, international law must constantly adapt to global circumstances to provide appropriate and reality bound responses to the crises of the time. In *Representations of Future Generations*, we demonstrate ways in which the concerns of future

generations can be understood not as an ‘external disruptor’ to international law but, rather – through the highlighted discourses, practices, and institutional developments – as an integral part of international law. Our goal is to mainstream the interests of future generations in international law. The forms of proxy representation outlined in the case studies, and their ongoing development, are crucial steps towards achieving this goal.

9.3 Real-World International Political Processes

One initial value of our approach will be evident from the previous discussion: namely a perspective that connects climate change and development issues. Through proxy representation, the concerns of future generations should not be pitted against those of currently living individuals and vice versa. Politically formulated, climate and development policies need to be thought of together. The impacts of climate change affect both people living today and in the future, particularly those who are poor and vulnerable. Therefore, connecting these two perspectives is necessary – including in the design of representation mechanisms, which can involve a fresh perspective on sustainable development, of which inter-generational equity has always comprised a key component.

This is well illustrated with the example of human rights as international legal practice. The consequences of climate change need to be addressed, especially where climate impacts restrict, or make impossible, a decent life. Studies on climate change clearly show that, even with an immediate halt to all greenhouse gas emissions, there will be massive negative consequences that continue into the future. The consequences of climate change already complicate access to basic food and clean water in developing countries. Therefore, climate change already poses a serious threat to human rights. Both climate mitigation and adaptation are thus two necessary conditions to uphold the human right to a decent life. This entails securing basic needs in developing countries, rather than luxury needs in industrialised nations (Shue 1993).

The question of the conditions influencing the satisfaction of basic needs is also central to development policy. Aligning climate policy with human rights, therefore, brings a closer connection between climate and development policy (see Comim 2008). United Nations’ institutions have been intensively addressing this intertwining for two decades. Against the backdrop of ever worsening climate change, such integration of development and climate policy is only possible if we strengthen the potential for people living in poverty to exercise agency. This is the foundation of the idea of self-determined development and, at the same time, the most effective means to reduce vulnerability to climate change and increase the ability of vulnerable groups to cope with its inevitable consequences

in a dignified manner. Conflicts of interest may arise between the interests of current and future generations, for example, when developing countries have an increasing need for energy. Politically, strategies must be sought that allow for climate protection and sustainable development, while also respecting the needs of future generations and the imperatives of freedom. To ensure the enactment of climate-friendly energy policy, transfers of low-carbon energy technologies will play a crucial role.

Despite our best efforts, conflicts can still arise – including between different dimensions of human rights themselves. Freedom and equality, for example, may lead to different (political) demands in shaping climate policy. For instance, the right to independent development includes a right to energy for emerging and developing countries, which can, in turn, have a negative impact on climate protection goals and the interests of future generations. Politically, a wise combination of various strategies (technology transfer, adaptation support, and linkage with development measures) is needed to allow developing and emerging countries to actively participate in climate protection without diminishing their chances of widespread economic development and poverty reduction. In resolving such conflicts, one dimension of human rights should not be given exclusive priority – as is the case in the approaches outlined earlier. The strength of human rights lies in their ability to establish a legal and ethically meaningful practice that can bring together different beliefs into a coherent framework. Justice, solidarity, and the overcoming of vulnerability form the starting point.

As we have seen earlier, these principles provide a powerful rationale for developing proxy-style mechanisms to represent future generations. Such institutions can be seen as integral to the promotion of sustainable development, which in its classic Brundtland (1987: 43) formulation involves ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’. This close connection between sustainability and intergenerational justice provides a further rationale for proxy representation of future generations as a means for ensuring that their interests are properly factored into policy-making. As we have seen (Chapter 5), UN mechanisms developed to protect particularly vulnerable groups (such as children, disabled persons, and women) have, to date, been justified using normative arguments that have always included elements relating to development. Similarly, for new proxy-style mechanisms to represent future generations (such as a UN Special Envoy for Future Generations), normative arguments that gain the support of developing countries will be an important precondition of their success. Moreover, such arguments will need to include international, intragenerational, and intergenerational dimensions interacting constructively – not being traded off against one another.

It is also important to remember that, as we have demonstrated (Chapter 5), proxy-style mechanisms already find expression in several areas of international law, including in relation to the European Convention on Human Rights (ECHR). This is important because it means that further development of new proxy-style mechanisms involves incremental reform rather than a radical revolution in terms of international legal mechanisms and institutions.

9.4 Further Research

Our train of thought up to this point indicates that the representation of future generations in international law and institutions constitutes a meaningful political pathway to implement intergenerational justice and solidarity, both politically and legally. At the same time, theoretical considerations, combined with our case studies, show that, from this standpoint, there are still some open questions that require further research. We suggest some key areas of research desiderata below.

We based our *effectiveness criteria* on the objectives of the *Paris Agreement* (2015) and included as a criterion the extent to which mechanisms address sources of harmful short-termism (Chapter 4). This is clearly an area where further research is needed. One obstacle in tackling such research is the extent to which it is feasible to measure the effectiveness of institutions designed to make a difference over the long term. Yet, this challenge can be overstated. For example, if we consider the effectiveness of a UN Special Envoy for Future Generations, we can analyse the effectiveness of comparable institutions, such as the UN High Commissioners for human rights or refugees or special envoys created in the past in relation to other subject areas (Boston 2016). This is not to understate the significant challenges of untangling the causes of short-termism, then analysing the potential impact of new international mechanisms. Assessing the latter may pose challenges because of the way such international institutions operate in conjunction with national institutions. Future research projects will need to be designed in ways that recognise these complexities. In designing such research projects, the theory of proxy representation elaborated in Chapter 3 – which breaks proxy representation down according to its representational, compliance, and norm-entrepreneurial functions – provides a valuable framework to help ensure that such research will be nuanced in terms of the context in which proxy representation takes place.

Another field where further research is needed is the *proxy representation of nature* and the international legal order. Many of the arguments justifying representation of future generations are synergistic with the arguments justifying representation of nature (Lawrence 2022). Nevertheless, there are significant differences, with a range of complex questions to be addressed, including whether all of nature

should be represented, or species, or ecosystems. A further challenge is whether a consensus can be developed to support global institutions to represent nature, given the range of world views concerning the relationship between human beings and non-human nature. Despite these challenges, this is a crucial area of research and reform, given the dependence of all human beings on nature and the strong bias in existing international institutions against the interests of non-human nature.

The *case studies* incorporated in this book are necessarily limited. Further case studies that could usefully test the normative framings proposed here include examining the possibility of representation of future generations through the processes and procedures of the Inter-American Court of Human Rights. As we have already observed, there is also a need to closely examine UN climate treaty processes, as well as non-state and substate climate law-making processes, as a vehicle for proxy representation of future generations.

A further serious gap in the existing research is the interaction between global mechanisms to represent future generations and Indigenous approaches. With other scholars, we suggest that such approaches could be a valuable source for the ICJ's forthcoming Advisory Opinion on Climate Change (see Chapter 6; Wewerinke-Singh et al. 2023).

Legitimacy not only plays a central role in democracies but also in global politics in general and in international law. We have also seen that the question of legitimacy is answered differently, depending on whether one looks at decisions from an input or output perspective. In terms of input legitimacy, we can ask, 'Who must consent to or acknowledge a decision for it to be considered legitimate?'. If the decision implies long-term consequences, it seems logical to inquire about the – at least hypothetical – consent of those affected by these decisions in the future. Various strands of democratic theory explicitly develop this argument, such as deliberative democratic theory, which conceptualises future generations as discourse partners in democratic settings. The concept of 'future legitimacy' (Chapter 4) would encompass this situation under the concept of legitimacy, thus requiring the consideration of future generations within this fundamental concept for politics and law.

The same applies to output legitimacy. This is because the ecological consequences of political decisions, including long-term consequences for future generations, are currently not given sufficient attention. In this context, a modification or extension of the concept of output legitimacy is necessary in order to take the long-term ecological consequences of climate change for future generations into account. The concept of 'future legitimacy' implies a critique of such short-term thinking. Regarding output, decisions can only be considered legitimate if decision makers recognise the interests of future generations and take these into account in current decisions.

Researching future legitimacy would mean theoretically expanding the concept of legitimacy. It would require consideration of the narratives and argumentative figures through which this could happen, as well as the specific legal or political practices to which such an expansion could be applicable. An interdisciplinary perspective for such research is essential, as are connections to best practices in this field. *Representing Future Generations* contributes to this task. How this concept can be further developed in theory and practice, and thus politically and legally implemented, undoubtedly requires further research.

Science plays a central role in the current climate debate. Over recent decades, scientists (as individuals), scientific entities in the form of journals, institutions (such as universities and funding organisations), and organisations at the intersection of science and politics (such as the Intergovernmental Panel on Climate Change (IPCC)) have all had an important impact on the climate debate. Scientists and their academic discourse have increasingly included links between the physical processes of climate change and its ecological impacts and impacts on human societies (Beck 2018). Combining both the natural and social sciences, a distinct transdisciplinary field of 'climate science' has emerged. In this field, researchers from various disciplinary backgrounds research the impacts of rising greenhouse gas emissions, their causes, and fair forms of burden-sharing and adaptation in sustainable climate policy.

Science has, in many ways, become a proxy for future generations in that scientists, by analysing and bringing the effects of climate change on future generations into the political discourse, have brought the distinctive interests of this group into focus. There has also been increasing research on the political role of science, especially climate sciences. Jürgen Habermas, in the 1970s, engaged with John Dewey and philosophical pragmatism, raising questions about how to conceptualise the relationship between science and politics. Dewey was sceptical of the idea that politics dictates both goals and means for scientific research and vice versa. Instead, he advocated for a deliberative experimental practice in which science and politics jointly agree on publicly meaningful steps. Such Dewey-inspired perspectives also play a significant role in public discourse and the self-perception of scientists and politicians. Others, such as Kowarsch and Edenhofer (2015), emphasise the distinctiveness of politics and science and argue for cooperative understanding between the two from a pluralistic perspective.

Behind the question of the relationship between politics and science in the face of climate change is also the question of whether, and to what extent, science can be understood as a form of proxy representation: who, exactly, is the proxy, and how does representation work? Science gains legitimacy, for example, not so much through law and morality, but by producing true or evidence-based insights.

Must the criteria of legitimacy, therefore, be expanded? And in what forms does representation take place?

These important questions are only just beginning to be explored. Their urgency lies in the fact that climate discourse and the question of long-term consequences for future generations are undoubtedly heavily influenced by science – and will continue to be so in the future. Therefore, the crucial question of science as a proxy for future generations warrants further exploration.

After the fall of the Berlin Wall in 1989, political science entered a new phase of globalisation. This has posed challenges for various disciplines to rethink relationships between national and supranational actors. In the 1970s and 1980s, theories were often developed that did not adequately consider the relativity of social reality. Global structures were described as a rigid system of individual elements and primarily seen as the creation of nation-states. These theories are now outdated because the globalised world consists of different relations on various levels (Rosenau 2003), including subnational and non-state actors, such as, cities, intergovernmental organisations (IGOs), non-governmental organisations (NGOs), industry, and industry associations.

In response to this insight, the concept of *global governance* emerged, in an attempt to develop new ways of understanding world politics in the era of globalisation. Since the 1990s, global governance has become an important paradigm in both theory and practice, aiming to describe and explain global structures and dynamics in an appropriate manner. Scholars such as Dirk Messner (2000) and Michael Zürn (2018) explicitly place their research within this paradigm. Global governance theories typically first provide a description of global relationships and their resulting structures using various disciplines. In a second step, they inquire whether and how this complex structure can be controlled. A governance understanding is thus developed which departs from the nation-state concept of governance and emphasises dynamic mutual influence. ‘Governance without Government’ has become the central message of this newly developed paradigm.

The background of this theoretical development is the observation that the process of globalisation is changing traditional forms of national governance. Governance is increasingly taking on a transnational character (Reder 2009), altering the conditions for (transnational) governance in terms of both its origins and legitimacy. Three characteristics play a particularly significant role. First, there is a significant proliferation of actors at the global level involved in this governance action (Rosenau 2003). With this increase in actors, debate about the legitimacy of transnational forms of governance also expands because legitimacy is generated through the involvement of diverse actors and not limited to the realm of formal political institutionalisation. Secondly, the forms of control have also multiplied. Transnational governance action is therefore referred to as governance, rather than

government. This means that numerous actors (private and public institutions, as well as individuals) exert influence, resulting in control structures that aim for a balance of influencing factors. This has been evident in the global climate regime which features not just governments but also industry and industry associations, NGOs, and subnational actors, such as cities (Kuyper et al. 2018). These structures cannot be captured by the traditional concept of government.

In the face of this analysis, global governance implies less a direct control of political processes by institutions and more a complex system of influence and regulation arising from the plural interaction of different actors: ‘Governance is the totality of the numerous ways in which individuals as well as public and private institutions regulate their common affairs. It is a continuous process through which controversial or different interests are balanced, and cooperative action can be initiated’ (Commission on Global Governance 1995). World politics can only be interpreted as a multilevel system, with special consideration given to the multitude of actors and mechanisms.

Earth Systems Governance emerged as an interdisciplinary project in the early 2000s, in an effort to bring together physical scientists working on the science of earth systems with social scientists to examine how global governance (and, indeed, governance at every level) could be brought into line with the needs of the ecosystem (Biermann 2007). The idea was to bring together social sciences analysing how human beings respond to Earth system transformation, with the aim of steering human development in a way that ensured ‘safe’ co-evolution with natural processes (Biermann 2007). From the start, inclusiveness – including the participation of non-state actors – was an essential element of this project (see Bierman et al. 2019; Earth System Governance, ESG 2024).

The impact of environmentally harmful behaviour on future generations provides a good example to illustrate the global dimension of politics and the multiplication of actors beyond the nation-state (Kuyper et al. 2018; Kuyper & Bäckstrand 2016; Angstadt & Betsill 2021). From this perspective, the representation of future generations can be understood as one element of a sustainable global governance strategy. Proxy representation of future generations can both be a counterbalance to state governance and take forms constituted by states (such as a UN Special Envoy) and also be outside the state, such as NGOs or the IPCC (science as representation of future generations). More research is clearly needed on the potential interactions between proxy representation of future generations at different levels of governance, and also proxy representation of non-human elements of nature.

The *multilateralism* expressed in these theories, both in theory and practice, has come under significant pressure in recent years. Inward-looking nationalist-oriented political forms are on the increase worldwide. This has been accompanied

by a rise in authoritarian states that seek to act more hegemonically than multilaterally. In many deliberatively oriented forms of multilateral cooperation, this trend continues to be clearly felt, with a political retreat to national issues. However, the considerations outlined in this book clearly show that sustainable attention to future interests should – and, indeed, can only – be globally oriented in tackling the global ecological crisis of which climate change is a part.

The interests of future generations should, in theory, be incorporated in decision-making by the state. But where this ‘mainstreaming’ does not happen, the interests of future generations can be taken up by a range of non-state or substate actors, including IGOs, NGOs, and scientists. *Representing Future Generations* has only begun to scratch the surface of the full range of possibilities here. Recent scholarship on the involvement of non-state actors in the global climate regime demonstrates that there can be both advantages and serious difficulties in terms of climate action taken by substate or non-state actors, for example, in ensuring accountability for pledged action on climate change (Kuyper & Bäckstrand 2016).

Unfortunately, multilateralism is also under pressure in the research sphere. Although international law as a research discipline stands against this in terms of its subject and spirit, this narrowing is felt in philosophy, for example. For years, publications on explicitly global issues have been declining, which is highly problematic. How multilateralism can be conceived of and justified in the face of complex global crises, how political science, law, and philosophical arguments about the future design of the multilateral order can be connected and strengthened, especially against the backdrop of a surging inward nationalism, is an urgent and important field of research. We envisage this book as a partial response. There is still much work ahead in designing and implementing mechanisms to represent future generations in the global legal order. Future generations deserve nothing less.

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