

# 7 Citizenship for future generations

## The inclusion of future generations in welfare state considerations

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### Introduction

Since the early 1970s, concern for future generations has increasingly been included in legislative and policy measures at the national and global levels (Tremmel, 2021; UN Secretary-General, 2013). This policy turn has been motivated by questions about the consequences for social cohesion and individual opportunities if present generations transfer irreversible environmental damage to future citizens. This has happened in the context of a growing concern for persons who are not yet born, in contrast to the intergenerational relations between younger and older people living today. The present generations significantly influence future generations' welfare, while the people who are not yet born have no voice. In 1987, the UN World Commission on Environment and Development (WCED, 1987) wrote the following:

We borrow environmental capital from future generations with no intention or prospect of repaying. They may damn us for our spendthrift ways, but they can never collect on our debt to them. We act as we do because we can get away with it: the future generations do not vote; they have no political or financial power; they cannot challenge our decisions.

(No. 25)

Because of this combination – of the present generation's capacity to affect the future ecosystem and the future generations' lack of influence – many scholars have argued that today's generations have a responsibility to include the welfare of people who are not yet born in political decisions (Gough, 2017; Sen, 2013; Tremmel, 2021). Future generations are socially excluded from contemporary decisions that are important to their welfare. If we should consider people who have not yet been born in national welfare state considerations, how could we do this? Or, more specifically, considering this book's central theme, could we include future generations in the contemporary concept of citizenship, and if so, what would this mean?

To answer this question, I combine two strands of academic research: scholarship on citizenship and solidarity and on concerns for future generations. Moreover, I discuss the question within the framework of the democratic welfare state. Within this framework, being a citizen implies inclusion as a member of a political

community based on a certain level of solidarity (Banting & Kymlicka, 2017; Preuss, 2016). This means that the regulation of access to citizenship is decisive for how a welfare state defines the boundaries with whom the members should act in solidarity (Bauböck et al., 2006).

In this chapter, my focus is on national constitutions, and I apply a legal–political approach. Constitutions are meant to endure for many generations; they are the most important intergenerational contracts in democratic welfare states (Gosseries, 2008). Moreover, I evaluate the empirical relevance of the tools by examining Norway as an example of how around 30 countries have included ecological protection clauses for future generations in their constitutions (Tremmel, 2006, 2019). Greenpeace Norden Association and Nature and Youth Norway have taken legal action against the Norwegian government for violating this protection clause. I use this climate lawsuit as an intake to study the main arguments related to future generations. The analyses do not cover the whole lawsuit, and I do not evaluate the judicial arguments within a legal framework, but rather I analyse this from a political scientist’s perspective. My case study shows that such protection clauses are not always fulfilled in practice. An indication that they are not is that there have been 1,587 registered climate lawsuits worldwide between 1986 and 2020 (Setzer & Byrnes, 2020). Even though not all of them refer to future generations, many do. Such climate lawsuits are an excellent way to study the arguments concerning the inclusion of future generations in political considerations in constitutions.

In the following second section, I place my main question within the framework of how citizenship has a long history of expansion. In the third section, I review previous studies of future generations. I argue that these are not efficient analytical tools to examine what kind of concrete binding commitments to collective actions a concern for future generations calls for. In the fourth and fifth sections, I aim to contribute to filling this gap by combining the scholarly literature on future generations with those on citizenship and solidarity. In the sixth section, I discuss how constitutions are based on intergenerational solidarity. Although I present the Norwegian case and methodology applied in the empirical study in the seventh section, I analyse one contested issue in the Norwegian climate lawsuit in the eighth section. In the final section, I summarise and conclude.

### **Including new citizens**

Citizenship carries a core meaning as the formal membership of a legal and political entity with rights and obligations that distinguish the citizen from non-citizen (Hagedorn, 2001). In terms of a legal–political understanding, citizenship defines an individual’s membership in a political community (Preuss, 2016). As mentioned earlier, the regulation of access to citizenship is how a national state defines the boundaries of whom to include in the political community, and within a democratic welfare state, the community is based on solidarity (Stjernø, 2005).

The scholarship on citizenship often refers to citizenship as the sum of civic, political and social (welfare) rights. This definition is based on the well-known categorisation made by Marshall (1950), as is also discussed by Haug in Chapter 1

in this volume. Marshall saw the expansion of citizenship rights as a process of incorporating new groups (specifically the English working class) into society and the polity. Although civil rights emerged in the eighteenth century, the political right to vote originated in the nineteenth century. In the twentieth century, citizenship expanded along with social rights as a virtue of membership within the community (Marshall, 1950). Access to all these rights implies inclusion in democratic welfare states based on solidarity (Preuss, 2016).

Historically, but at different speeds and in different ways, citizenship has a long history of expansion within democratic welfare states (Bauböck et al., 2006). In most welfare states, this has usually followed the pattern of including all men, independent of their property, women by abolishing gender qualifications, younger groups by decreasing age requirements and immigrants with permanent residence. Moreover, over the last half-century, the scholarship on citizenship has described a process of less exclusionary definitions of national membership. This has been accompanied by a more pluralistic conception of national solidarity (Banting & Kymlicka, 2017; Bloemraad et al., 2019; Takle, 2018). Against this historical and theoretical background, the question is whether and how this process of including new members as citizens of a political community also applies to the inclusion of future people.

### **Who are the future generations?**

The concern for future generations is increasingly discussed in public debates, but what is meant by future generations? This term often refers to our children and grandchildren, perhaps also great-grandchildren (i.e., to specific descendants we can imagine). Future generations are also more abstract; they will be born but uncertain of who, where and when. They are people we know little about, beyond that they will live in the world we leave behind. We know what future generations will need in some basic terms, but we have limited knowledge of their preferences and technological abilities (Takle, 2020).

Previous studies have generally explained the growing concern for future generations as a pragmatic adaptation to new circumstances, where improved knowledge of the global limits of many natural resources and environmental degradation is central (Caney, 2018; Taylor, 2017). Although climate change is the current headline issue, biodiversity is increasingly important (IPPC, 2022; IPBES, 2019). There is a new awareness that the use of natural resources needs to be assessed in relation to what is left to future generations and that the contemporary way of life in large parts of the world will lead to escalating global environmental damage (Gough, 2017). Attention to future generations is also related to economic and political stability. One consideration is how one generation's national account budget deficits might inflict considerable disadvantages on subsequent generations (Graeber, 2011). Another is how current generations can transfer stable political institutions to the coming generations (Rawls, 1971).

The concern for future generations has mainly been discussed in the literature in the fields of political philosophy, legal research, welfare and development economics and political science. Political philosophy scholars have developed general

theories of justice between intertemporal generations, that is, people who lived in the past, present and future (Tremmel, 2009, 2021). Three principles are frequently used. Justice as impartiality is based on Rawls' (1971, pp. 284–310) original position theory: justice as equality and justice as reciprocity. Contributions from political philosophy typically provide abstract principles of justice.

Legal research concentrates on future generations' rights. At the national level, scholars analyse the legal and political consequences of including intergenerational justice clauses, ecological generational clauses or generational financial clauses (Fauchald & Smith, 2019; Gosseries, 2008; Häberle, 2006; Tremmel, 2006, 2019). These analyses of state practice and court cases based on protection clauses can illuminate the legal and political consequences of constitutional protection for future generations. At the global level, scholars analyse how commitments to future people are incorporated in international agreements and laws, for example, as a guardian, a common heritage of mankind and trusteeship (Aguis & Busuttill, 2013) and human rights extended to future generations (Lawrence, 2014; Taylor, 2017).

Welfare and development economics focuses on the well-being of those born in the future (Büchs & Koch, 2017). Two debates are of particular interest: (i) The discussion about forms of sustainability is crucial for the question of if and what the current generation should save for future generations (Tackle, 2020). (ii) There is an ongoing debate about whether we should focus on future generations' needs or capabilities (Gough, 2017; Sen, 2013).

Political science contributions focus on how democratic procedures can be both obstacles and tools to promote intergenerational justice (Caney, 2018; Jones et al., 2018). Among these obstacles are short-term interests connected to political elections (Taylor, 2017). Democratic procedures can promote intergenerational justice by proxy representations by, for example, giving extra votes to persons representing future generations (Kates, 2018). Although political science long ignored the problem of "presentism," in recent years, the research on institutions for future generations has gained more attention (MacKenzie, 2021; Smith, 2021; Tremmel, 2021).

Overall, these four strands of the literature generally capture the complexities and tensions underlying concerns for future generations while providing analytical approaches to studying these concerns. However, there is a need for theoretical discussions that can be used to understand the normative basis for including future generations as the citizens and members of a political community.

### **The extension of boundaries over time**

In this chapter, the question of access to citizenship for these unborn individuals is not defined in terms of whether and how they can have rights and duties. We can neither expect anything from them nor know what their preferences will be (Caney, 2018; Tremmel, 2019). Rather, the question is how the current generations, who influence political decisions, include future people in their policy considerations – as if future people were citizens already.

Including future generations as citizens implies an extension of national solidarity boundaries. The concept of solidarity with future generations differs from

solidarity with contemporaries because the boundaries are not only drawn in relation to territorial space and administrative units, but stretching these boundaries also requires an extension into time. We constantly develop our relationships between the past, present and future and combine them with territorial spaces and administrative units (Elias, 1987; Koselleck, 1989). Within the framework of the nation-state, the past is crucial. National solidarity is based on a sense of timeless continuity with past generations transmitted to future generations, who are understood as future citizens of the nation-state (Elias, 1989).

Although national welfare states are based on bounded solidarity, these exclusive boundaries are more problematic in relation to solidarity with future generations. One reason is the increasing knowledge about how actions in one part of the world directly affect people's lives in other regions. This implies that the ability of the state to function as an adequate shelter for its citizens is reduced, and principled reflections on justice are not only confined to domestic political settings but also require a global approach (Sjursen, 2020).

A global concept of solidarity emphasises how contemporary challenges cross national borders and require global solutions (Stjernø, 2005, 2015). Can we conceive of cosmopolitan solidarity for future generations grounded in the universalism of human rights? This implies that states have the same responsibility for upholding the welfare of all future people, not exclusively their future citizens, thereby eroding the national boundaries of solidarity. Although national boundaries are essential, there are signs of mutual responsibility for future generations that point to solidarity at the global level (Taylor, 2017).

In emphasising solidarity with future generations, one would accentuate the future, rather than the past and historical traditions, to define the boundaries of solidarity. This concept is forward-looking. It emphasises that today's actions have a significant future dimension because those people who will be born in the future will have become increasingly dependent on current decisions because of ecological limits (Kverndokk, 2020). The cosmopolitan model, as discussed by Falch-Eriksen in Chapter 2, provides a better way of connecting the past, present and future that would help us approach the concern for future generations. Still, its foundation is weak because it lacks the constitutionally defined national welfare state boundaries that determine with whom one should act in solidarity.

### **The inclusion of future generations in constitutions**

Applying a legal-political understanding of solidarity makes self-imposed binding in constitutions evident. According to Habermas (2015, p. 24), solidarity is a political concept based on confidence in the form of reciprocity guaranteed by legally organised relations. Political community members are the coauthors of the laws, and the political order is an expression of their collective will. The praxis of citizens who exercise their civil and political rights forms a legal and politically constructed solidarity (Habermas, 2001, p. 76).

In common with Habermas, Preuss (2016) argued that solidarity is a modern concept not based on prepolitical communities and that the concept of solidarity

unites two seemingly contradictory elements. On the one hand, solidarity includes duties of care nurtured in *Gemeinschaft*-like communities. On the other hand, these duties are directed towards aliens and implemented in *Gesellschaft*-like kinds of communities. Thus, solidarity can be understood as institutionalised reciprocity that combines feelings of sympathy in line with *Gemeinschaft*-like types of communities with modern institutions based on *Gesellschaft*-like kinds of communities.

This paradoxical combination is enshrined in the institutions of contemporary welfare states. The rights and duties within a national solidaristic community are mediated through state institutions and are inherently linked to the basic principles of constitutionalism (Preuss, 2016). The most important are the principle of legal rights, the connected concept of an independent judiciary, the separation of powers and the principle of equality before the law. These principles are based on the idea that all forms of governmental power, including a majority in parliament, are subject to critical substantive limitations.

The idea of constitutionalism expresses limitations on democratic decisions. The constitution places restrictions on the legislative powers to preserve the fundamental freedoms of individuals. Constitutions are meant to place certain questions beyond the reach of the simple majority. Most written constitutions are difficult to change because they often require legislative supermajorities, concurrent majorities of different legislative houses and/or legislative majorities in two consecutive parliaments.

Therefore, national constitutions are self-imposed political and legal bindings for current and future generations (Häberle, 2006). Moreover, constitutions are meant to endure for many generations and are the most important intergenerational contracts in modern welfare states (Gosseries, 2008); they function as a guarantee of confidence in the form of reciprocity over time.

More specifically, protection clauses in national constitutions intend to set limits for democratic decisions to secure the well-being of future generations. Jörg Tremmel (2006) distinguished between three types of protection clauses: (a) General clauses refer to general considerations of future conditions of prosperity, but not specifically to future generations. (b) Financial clauses mean that one should not transfer debt to future generations. (c) Ecological clauses point directly to the need to ensure ecological conditions for those who come after us. According to Tremmel (2006), around 30 countries have included ecological protection clauses for future generations in their constitutions. A report by the UN Secretary-General (2013) also emphasised the importance of such clauses for future generations and mentioned six examples: Bolivia, Ecuador, Germany, Kenya, Norway and South Africa. A study by Dirth (2018) showed that 120 countries have clauses referring to the environment and sustainability, but only 37 explicitly point to future generations. This variation in numbers shows that there are different ways of counting protection clauses.

### **Citizenship for future generations**

By including the protection of future generations' access to a healthy natural environment in constitutions, the current generations have committed themselves to considering future people in contemporary welfare state considerations. As such, protection clauses are self-imposed institutional bindings made by the present

generation for the sake of welfare for persons who are not yet born. This implies an extension of the boundaries of solidarity over time. However, solidarity is based on reciprocity over time, and regarding future generations, reciprocity among equals is impossible. Because we cannot expect anything from people who have not yet been born, authors have suggested indirect reciprocity, in which each generation receives from its predecessors and contributes to later generations (Lawrence, 2014; Page, 2006). In this respect, constitutions represent an institutional guarantee of solidarity with future generations.

Including future generations in the contemporary concept of citizenship requires that we have future people in our policy considerations. The current generations can act in solidarity with future generations by extending boundaries in terms of whom we are concerned over as equal members of a political entity in current policy decisions.

Protection clauses in constitutions are within the framework of national states and have a limited scope of application. Although they include future national generations, they do not provide global rights in terms of territorial spaces or administrative units. It follows from international law that each country is responsible for environmental damage from its territory. Although protection clauses have national jurisdiction, ecological damages are global and require global solutions. A crucial question is how boundaries with which one should act in solidarity could be extended to all current and future people of the world and what kind of challenges these conflicting approaches raise.

### **The Norwegian Constitution**

The Norwegian Constitution of 1814 is one of the world's oldest constitutions still in force. An amendment to the Norwegian Constitution requires a two-thirds majority in the Storting (Norwegian Parliament), and changes can only be adopted after a new election. Many of the provisions of the Norwegian Constitution are relatively short and aim to specify general rules (Fauchald & Smith, 2019). This also applies to the environmental protection clause, Article 112 of the Norwegian Constitution:

Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles.

(Stortinget, 2018)

Greenpeace Norden Association and Nature and Youth Norway have taken legal actions against the Norwegian government, represented in court by the Office of the Attorney General, for violating the Norwegian Constitution's Article 112. The central issue is the Norwegian government's decision on 10 June 2016 to award licences for searching for petroleum in the Barents Sea. Because of climate change and the vulnerability of areas in the High North, environmental organisations argue that the country should not search for more petroleum in these areas and should also phase out petroleum production. The environmental organisations succeeded neither in the first trial in the Oslo District Court in November 2018 nor in the second trial in the Borgarting Appeal Court in November 2020. In December 2020, the Supreme Court concluded that such decisions must be made by politicians in the Storting.

In December 2021, two organisations and six young Norwegians filed the case with the European Court of Human Rights (ECtHR). They argued that the Norwegian state violates its fundamental human rights by issuing new oil drilling licences in the Arctic. The ECtHR has characterised the case as a potential "impact case" and requested that the Norwegian government respond to the application. This is where the case stands in October 2022.

The following empirical analysis is based on primary documents in the climate lawsuit within the Norwegian context. The research includes primary documents from environmental organisations (Greenpeace Norden Association, 2016, 2018, 2019, 2020) and government representation in court by the Office of the Attorney General of Norway (Attorney General of Norway, 2016, 2018). Moreover, it includes the judgements made by the District Court (2018), the Appeal Court (2020) and the Supreme Court (2020). As mentioned in the Introduction, my focus is on future generations, and the analysis does not include assessments of all the aspects of the lawsuits and court decisions.

### **Future national citizens or all unborn people**

The climate lawsuit has revealed contestations over whether, based on Article 112, one should assess only the environmental damage associated with oil and gas production in Norway or if the assessments also include greenhouse gas emissions related to combustion outside Norway. In the following, I concentrate on this contestation in the lawsuit to examine the ideas expressed by experts, politicians and judges and which political and normative assessments they make. The reason for highlighting this issue is because it reflects conflicting views about whether the concern for future generations should include the future citizens of the national political community or whether it should include all persons in the world who have not yet been born.

Environmental organisations require an overall assessment, including the future risk of traditional ecological damage in the Barents Sea and greenhouse gas emissions associated with both production in Norway and combustion outside Norway. One central argument is that, in a situation of catastrophic global warming, Norway has a global responsibility that must be assessed because the country is a significant oil exporter.

In contrast, the government draws national boundaries and argues that emissions from the combustion of Norwegian petroleum outside Norwegian jurisdiction are not covered by Article 112. The government states that the constitution does not provide global rights and has a limited scope of application and jurisdiction in terms of persons and territory. Moreover, the government refers to the fact that international and national climate policies are based on each state being responsible for its national emissions, and Norway has committed itself to reducing its emissions through international agreements. According to the government, it is only relevant to assess the consequences for the climate in Norway.

The District Court concluded in line with the government, while the Appeal Court argued that emissions from the combustion of fossil fuels after export should also be included. However, the arguments were vague:

This involves, in the same way as the principle regarding solidarity across generations, a moral principle that can have major significance in the work on reducing climate changes. However, in contrast to the principle on solidarity with future generations, the principle has not been expressed in the wording of Article 112, nor have any clear references been made to the principle in the preparatory works. The key will therefore have to be the effects arising in Norway.

(Appeal Court, 2020, p. 22)

The Appeal Court concluded that global environmental harm must be considered in line with environmental organisations' cosmopolitan ideas for future generations. Still, its primary concern corresponded with the government's drawing of national boundaries.

The Supreme Court concluded in line with the government's argument that Norwegian climate policy is based on the division of responsibility between states that comply with international agreements. However, in the judgement, the Supreme Court stated that the state has a duty under the constitution to refuse to approve plans for developing and operating petroleum deposits when considerations of climate and the environment otherwise require them. The Supreme Court presupposed that the climate impact of exported combustion emissions would be included in such assessments (Supreme Court, 2020).

The case has been followed up not only by the ECtHR but also by the Norwegian National Human Rights Institution (NIM), which is an independent institution established to strengthen the implementation of human rights in Norway by the Norwegian Constitution, the Human Rights Act and international human rights law. In a report to the Ministry of Petroleum and Energy, the NIM argued that the state has a duty to assess plans for developing and operating petroleum deposits in relation to climate and the environment (NIM, 2022). These assessments should include both national and exported combustion emissions. It argued that the state has a duty to refuse to approve such plans when approval gives rise to combustion incompatible with limiting global warming to 1.5 degrees Celsius. According to NIM (2022), the future generations' right to a liveable climate must be integrated into the ministry's assessments.

## Conclusion

The theme of this chapter is what it would mean to take into account people who have not yet been born in national welfare state considerations. The main question discussed is whether we could and, if so, what it would mean to include future generations in our concept of citizenship. The analysis has been made within the framework of the democratic welfare state and uses a combination of scholarship on citizenship and solidarity that concerns future generations. The point of departure is that future generations will have to deal with the consequences of today's political actions. Still, they have no influence on contemporary political decisions that are important for their welfare. Hence, they are socially excluded.

The questions of inclusion refer to the current generations' policy considerations regarding the welfare of future generations as citizens. Because this implies expanding the understanding of solidarity in terms of time, national constitutions are central to the analysis. They represent self-imposed political and legal bindings for current and future generations and are meant to endure many generations. Moreover, national protection clauses are even more binding because they intend to set limits for democratic decisions to secure the well-being of future generations. However, the most critical challenges emphasised regarding the welfare of future generations are environmental damage, which requires global solutions.

The inclusion of Article 112 in the Norwegian constitution is an excellent example of a global issue because it reveals conflicting ideas about whether to impose political and legal bindings on current generations, thereby acting in solidarity with future generations. Moreover, the Norwegian climate lawsuit reveals the tensions these bindings might lead to. I concentrate on one contested issue. Based on Article 112, the contested issue is whether one should assess only the environmental damage associated with oil and gas production in Norway or if the assessments also should include greenhouse gas emissions associated with combustion outside Norway. This issue reflects conflicting ideas about whether the concern for future generations should consist of the future citizens of the national political community or whether it should include all persons in the world who have not yet been born.

The climate lawsuit has revealed how global environmental challenges to the welfare state lead to contestations over national boundaries and cosmopolitan ideas for future generations. Only environmental organisations have applied a cosmopolitan approach to solidarity with future generations. This is, as the government argues, not in line with the constitution's national jurisdiction and international law and treaties and, therefore, is problematic to apply. Nevertheless, the Appeal Court, the Supreme Court and NIM have considered how Norwegian petroleum production leads to consumption and emissions in other countries. Because environmental damage is global, these emissions will have consequences for the Norwegian environment and, thus, future generations in Norway. This must be considered if one is to act in solidarity with future generations.

I conclude by suggesting that we would be better equipped to understand what a concern for the welfare of people who are not yet born requires of us today by including future generations in our concept of citizenship and analysing what

intergenerational solidarity means in practice. By such inclusion, we may bring future challenges closer to our lives.

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