



The Democratic Case for an Office for Future Generations

Report

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Summary

An Office for Future Generations is an independent institution designed to promote long-term interests in the political process. A small number of examples exist in countries such as Hungary – and very soon Wales. This Report supports the development of such Offices, but stresses the importance of considering their *democratic* characteristics. Despite concerns to the contrary, independent oversight is a critical democratic function and one that can be carried out in a participatory manner. The legitimacy of an independent Office for Future Generations will be enhanced by the extent to which it is not simply a scientific or legal body, but meaningfully engages citizens in its activities and governance.

Introduction

It is a common refrain that democracies tend to privilege the short-term. Institutional solutions are needed to ameliorate such myopic tendencies. Offices for Future Generations (OFGs) – (quasi) independent bodies charged with promoting long-term thinking and the interests of future generations in the political process – are currently the focus of political interest at different levels of governance.

The Hungarian Ombudsman for Future Generations is the most well known example, the Israeli's recently decommissioned their equivalent body and a Commissioner for Future Generations has nearly completed its legislative progress at the time of writing in Wales. Such an Office need not be restricted to the level of the nation state: FSDS has itself actively participated in debates about the creation of a UN High Commissioner for Future Generations (FSDS/World Future Council, 2012).

There is something pleasingly counter-intuitive in this particular institutional design. For many, the idea of such independent oversight bodies has the ring of an *anti-democratic* reform: further advancing the regulatory state and taking power away from traditional democratic institutions such as parliament.

But, without assuming that the establishment of such an Office is *the* single institutional solution for realizing long-term thinking, there are good *democratic* reasons for giving this institutional design serious consideration.

One such reason is given by the French political philosopher Pierre Rosanvallon who argues that: ‘democracy can flourish *only if it acknowledges the risks of dysfunctionality and equips itself with institutions capable of subjecting its own inner workings to constructive evaluation*’ (Rosanvallon 2008: 74-5, italics in original). An OFG is one such institutional innovation that acknowledges and responds to the dysfunctions generated by short-termism in democratic systems.

An OFG may also have an important role to play in promoting opportunities for participatory engagement; its very legitimacy and institutional sustainability may in fact rest on such a strategy.

What is an Office for Future Generations?

I have chosen to use the term ‘Office for Future Generations’ (OFG) as a catch all term to include institutions referred to as Commissioners, Ombudsman, Ombudsperson or Guardian. Ombudsman, a popular term in the policy literature, has not been used: first because of its awkward gendered pedigree; second, it tends to be understood as referring to institutions that are charged with investigating and addressing complaints of maladministration and violation of rights on behalf of the public. Ombudsmen typically have retrospective/reactive functions where we may wish such an Office to also be more pre-emptive and strategic in its activities, reviewing areas of potential government action to better realize the wellbeing of future generations.

The term Guardian(s) is not used because of its highly paternalistic and often authoritarian overtones. In the hands of some environmental commentators (Shearman and Smith 2007), Guardians would have direct effect above the democratic process (for a parallel, think of the Office of the Supreme Leader in Iran). They are typically part of an argument for curtailing democracy because of its failure to realize environmental sustainability, whereas here the argument is that an OFG can play a critical democratic function in encouraging long-term thinking.

The World Future Council (WFC), having reviewed the practices of similar institutions across the world, argues that their key characteristics should be: independence; transparency; legitimacy; access to information; accessibility; and authority (World Future Council, 2014: 10; Göpel, 2012: 13-14). Independence, in particular, places an OFG outside the short-term effects of electoral cycles.

While WFC highlights important characteristics of such an Office, it does not include the important democratic principle of ‘inclusiveness’ – ensuring that citizens have a voice in setting the agenda of the institution and its ongoing activities. Current analysis tends to pay more attention to the scientific legitimacy of such institutions, rather than their democratic characteristics.

The democratic credentials of an OFG depend very much on how its role and functions are conceived.

Independence versus mainstreaming

At a 2014 conference on *Model Institutions for a Sustainable Future*,¹ there was some disagreement as to the desirability of an independent body. Critics contend that such institutions should be more formally embedded and connected to power: in other words, be part of the parliamentary (and/or executive) infrastructure. This would also ensure explicit democratic legitimacy for the body. For example, the permanent Finnish Parliamentary Committee for the Future has a specific remit to consider the long-term within the work of the Assembly.²

The Finnish Parliamentary Committee for the Future consists of 17 parliamentarians from all political parties. It deliberates on parliamentary documentation, makes submissions to other committees and engages in futures research modelling on issues that range from the domestic (e.g. health care and social capital) through to the international (e.g. relations with China, Russia and the rest of Europe). It has also actively promoted innovative engagement techniques such as crowdsourcing and held hearings to engage the broader public. The virtue of such a design is that it is embedded in the day-to-day work of parliament and the political parties.

The Finnish Parliamentary Committee is without doubt an important parliamentary innovation, not least because it is a rare opportunity for parliamentarians to engage across party lines within a time frame that extends beyond day-to-day politics and the normal electoral cycle. We can also learn much from its methods of working. The extent to which its impact in other parliamentary contexts is replicable, however, is an open question, especially where party cleavages are more prevalent and public confidence in parliament much lower.

It is also a mistake to underestimate the important democratic case for *independent* oversight within political systems. OFGs are creations of parliamentary legislation and thus have formal democratic anchorage. But it is their democratic function as an independent actor that is fundamental.

Such bodies have also long been a critical part of democratic architecture – think of the overseers, auditors, supervisors and public ombudsman chosen by lot or elected in classical Athens (Rosenvallon, 2008: 25). In *Counter-Democracy*, Rosanvallon offers a persuasive argument that the ‘organization of distrust’ within democratic settings has been a much-ignored topic within contemporary democratic thought and practice; one that is particularly pertinent in tackling the lack of confidence in the political class that affects contemporary democracies. He argues that throughout the history of democracy:

a complex assortment of practical measures, checks and balances, and informal as well as institutional social counter-powers has evolved in order to *compensate for the erosion of confidence, and to do so by organized distrust*. It is impossible to theorize about democracy or to recount its history without discussing these organized forms of distrust. (Rosanvallon, 2008: 4, italics in original)

¹ ‘The conference held in Budapest in April 2014 paid particular attention to institutions that share a family resemblance in promoting the interests of future generations (not all of which are OFGs as understood in this Report): such as, the Committee for the Future, Finland; Parliamentary Advisory Council on Sustainable Development, Germany; Office of the Auditor General of Canada; Welsh Commissioner for Sustainable Futures; Parliamentary Commissioner for the Environment, New Zealand; former Commissioner for Future Generations, Israel; Norwegian Ombudsman for Children, Norway; and Ombudsman for Future Generations, Hungary.

² <http://web.eduskunta.fi/Resource.phx/parliament/committees/future.htx>

Contemporary democratic theory and practice has developed an at times unhealthy obsession with electoral mechanisms and elected representatives (and potential supplements and replacements) and in so doing has overlooked the importance of *oversight* as a complementary aspect of democratic experience and practice. Rosanvallon continues:

democracy is defined not so much by popular election of leaders as by citizen oversight. In the modern era, however, elections became such a ‘total democratic institution’ that this duality eventually disappeared. By ‘total democratic institution’ I mean that elections were taken to be not just a technical device for choosing leaders but also a means of establishing trust in government and a system for regulating public action. (ibid: 87)

Our democratic imagination needs to extend beyond electoral politics to consideration of institutions that can oversee and regulate the activities of government, parliament and other centres of power – and, in so doing, potentially and indirectly generate confidence in their practices.

While it is no doubt important to establish parliamentary committees that consider future generations within the business of the legislature, it misunderstands the necessity of independent oversight where there are structural tendencies towards dysfunctionalities that generate short-termism. We may wish away such dysfunctionality and yearn for institutions of representative government that work ‘perfectly’, but this is to overlook the negative impact on long-term thinking – and politics more generally – of electoral party-political motives and the covert influence of vested interests, amongst other structural dynamics.

For Philip Pettit, the ‘only hope of guarding against such influence requires setting up unelected agencies that are appointed by elected representatives but do not serve at their pleasure’ (Pettit, 2012: 306). An OFG is one such agency.

Scope and powers

The extent and scope of the powers of an OFG and the relevant duties it is empowered to place on public (and other) bodies will affect the strength and impact of a long-term policy orientation.

The powers of the Hungarian Ombudsman for Future Generations rest on the Fundamental Law that establishes that the State and every person is obliged to protect, sustain and preserve the environment for future generations. The Ombudsman conducts investigations and can appeal to the Constitutional Court or the Curia of Hungary in cases where national or local legislation may be in violation of the Fundamental Law. The Ombudsman also plays a monitoring role, ensuring that public policy and legislative proposals do not pose a severe threat to future generations.

Ombudsman-like powers allow an OFG to review legislation and policy in its own right and provide a vehicle for vigilant citizens (and groups) to make official representations, especially in polities such as Hungary that have relevant constitutional clauses that explicitly aim to protect future generations. The scope of responsibility can be extended beyond core state institutions (parliament, executive and administration) to public sector activity more broadly and even to the practices of private bodies. Typically such powers extend only to moral pressure – the presentation of official reports, and an expectation that relevant bodies will comply and respond publicly within a given time period. However, there is no reason that an expectation to respond cannot be legally enshrined, as is the

case with the *Wellbeing of Future Generations (Wales) Bill* that will establish a Commissioner for Future Generations.

Taking the idea further, we can imagine an OFG having delaying powers,³ or more controversially powers of veto, under certain defined circumstances.⁴ Evidence from practice indicates that at times such institutions have had informal veto powers, and can wield the threat of critical public judgment. Existing OFG-like institutions have also typically incorporated a prospective role, engaging in reviews of areas where it perceives policy or legislative developments may be necessary: the capacity to launch inquiries or investigations into areas that the government or parliament has not deemed worthy of consideration.

Science and inclusiveness

The legitimacy of oversight bodies tends to rest on their scientific expertise; their capacity to marshal technical knowledge. Raising the status of scientific knowledge and understanding within the political process is unquestionably a critical function. However, there is a real danger that independent agencies become highly technocratic institutions with relatively little resonance with the broader public. This is a particular challenge for an OFG that will deal with complex scientific and technical issues that are characteristic of long-term issues: an example being the Climate Change Committee in the UK.

While existing OFG-like institutions generally provide for petitioning from citizens, democratic arguments can be brought to bear for making citizen participation even more constitutive of the work of an OFG: embedding participation in the development and assessment of future scenarios and coming to judgments on petitions from fellow citizens.

First, long-term issues are not purely scientific or technical; they involve normative judgments, often in areas of policy where public opinion is not well defined (Mackenzie and Warren, 2012). An OFG thus has a role to play in promoting more considered public judgements that can inform its activities.

Second, future generations do not speak with one voice: they will have a plurality of interests. Not only will there be social, political and economic inequalities *within* any generation, but there will often be differences *across* future generations: for example, near and far generations (and those in between) will be differently affected by climate change and the costs and benefits of investing in mitigation and adaptation strategies. Whilst unable to adequately reflect future views, ensuring the widest participation of social groups at least provides a diversity of perspectives on what those different interests may entail.

Third, involving citizens in the work of an OFG builds political capital for the body. Providing evidence that citizens are willing and able to deal with complex issues and to consider broad time horizons, further enhances the democratic legitimacy of the OFG's activities and actions. Participation – and the broader public support this can engender – is one way for an OFG is to build a strong political profile. If the 'default' position of citizens tends to be a positive time preference,

³ Ekili (2009) suggests such delaying powers within sub-majority rules within parliamentary procedures.

⁴ See Thompson (2010: 31-34) for a discussion of the potential powers and activities of such an institution – eg suspensive intervention, posterity impact statements, democratic balance sheets.

then providing evidence that time horizons shift when citizens consider long-term issues collectively is critical: to ensure resonance with the public, counter sectional interests and build pressure on political decision-makers.

Fourth, such a participatory approach provides an avenue for what Scott (2000) terms ‘downward accountability’ – from the agency to citizens – again potentially strengthening the legitimacy of the OFG and its interventions.

OFGs and participatory governance

It is one thing to argue the case for participatory governance in the activities of OFGs, another to specify how it should be organized. OFGs could embed a number of different modes of democratic engagement. Thinking creatively about the design of such engagement is critical. Citizens are *not* future-orientated *per se*: their attitudes and practices are implicated in the very dysfunctionalities of democratic short-termism, but under certain institutional conditions long-term thinking is more readily engendered through participatory and deliberative engagement.

The Wales We Want National Conversation helped shape the Well Being of Future Generations (Wales) Bill. In particular it established seven foundations for wellbeing of future generations (Welsh Government 2015)⁵. One of these foundations is ‘*Greater engagement in the democratic process, a stronger citizen voice and active participation in decision making is fundamental for the well-being of future generations*’. The new Commissioner for Future Generations thus has the legislative basis to promote citizen engagement, voice and active participation as a fundamental element of its working practices.

A petitioning system would enable those citizens who do hold a concern for future generations – those with ‘life transcending interests’ (Thompson, 2009) – to take up a contestatory stance towards existing policy and practice that they believe undermine the interests of future generations. This is a mode of engagement that mirrors the practices of many currently existing Ombudsmen.

A second form of democratization could be specifically constituted mini-publics that enable citizens to play a deliberative role in investigating and judging the veracity of such civic complaints. Contestatory courts (in the language of Pettit) do not have to be the sole preserve of legal or technical specialists appointed by the OFG. There is plenty of evidence that citizens are capable and willing to deal with complex issues within deliberative forums. Randomly-selected mini-publics in particular typically outperform more traditional political institutions in terms of orientating decision making towards the long-term (Smith, 2003; 2009; Hobson and Neimeyer, 2011; Parkhill *et al*, 2013; Mackenzie and Warren, 2012).

Broader modes of citizen engagement, including the use of new technologies such as crowdsourcing, could be central to policy reviews and assessments (retrospective or prospective) undertaken by OFGs, although, without significant mobilization strategies, these are likely to be the preserve of those citizens predisposed to considering the interests of future generations. The public consultation that led to the development of seven wellbeing goals in the Welsh Government’s *Wellbeing of Future Generations (Wales) Bill* is one example of how this might be managed.

⁵ Welsh Government (2015) *The Wales We Want Report: A Report on Behalf of Future Generations*, Cardiff: Welsh Government

We might also consider how citizens could play a more direct role in the governance of an OFG. The Citizen Council (a standing mini-public) that provides recommendations on the values that guide the activities of the independent National Institute for Health and Care Excellence (NICE) is one, albeit rare, example of such a strategic body;⁶ the potential for more extensive and deeper deliberative engagement in organizational governance is yet to be fully exploited by independent oversight bodies.

Taking on these kinds of engagement activities would see an OFG acting in line with the small, but growing number of what Bherer and colleagues (2014) term ‘autonomous public organizations dedicated to public participation’ (APOPPs) that have the right to define and implement participation exercises around controversial developments (Bherer *et al*, 2014). Examples include the Tuscany Participatory Authority (TPA), the French National Commission on Public Debate (CNDP) and the Danish Board of Technology – the latter being particularly well known for its engagement of citizens (typically through consensus conferences) in the public assessment of highly complex scientific and technical developments, many of which have had a strong element of potential future risk.

The idea here is that an OFG acts as a champion for systematic public engagement on future-orientated policy assessment, in so doing increasing its legitimacy in the eyes of the public and political decision makers. Enhancing such an agency’s standing is critical for its capacity to effectively challenge the myopic dysfunctionalities of democratic systems.

Arguably one of the failings of the Israeli Office was that its legitimacy rested too heavily on the personality of the Commissioner: a change in administration meant that the individual, and thus the Office, fell out of favour. In Hungary by contrast, the legitimacy of the Office rests on its scientific and legal competence, although it is unclear how far its work and activities resonate with the wider public.⁷ The proposed focus on a more participatory approach suggests a way of enhancing and sustaining the legitimacy of an OFG based on its democratic practices.

Conclusion

While there is a great deal of commentary on why democracies tend towards the short-term and a worryingly authoritarian strand of thinking emerging in response, less energy has gone into thinking about how the impact of democratic myopia can be mitigated in order to deal more effectively with long-term sustainable development policy issues.

This Report reviews one potential institutional proposal – the Office for Future Generations – but unlike previous justifications for such a body, places the emphasis on its *democratic* constitution. The argument is not that an OFG is the single institution that will fix democracy’s ills; rather that with an extensive set of powers and creative modes of citizen engagement, an OFG could respond to aspects of democratic myopia. While such an unelected independent body might not be the immediate choice of democrats, there are good democratic reasons to support such a design.

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⁶ <http://www.nice.org.uk/Get-Involved/Citizens-Council>

⁷ The same could be said for the Climate Change Committee in the UK.

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