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This is a copy of the accepted author manuscript of the following article: Smith, G. (2019) Enhancing the legitimacy of offices for future generations: the case for public participation, Political Studies. The final definitive version will be available from the publisher Sage at:

<https://uk.sagepub.com/en-gb/eur/political-studies/journal202479>

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**Enhancing the legitimacy of offices for future generations:
the case for public participation**

Graham Smith

Abstract

Independent offices for future generations (OFGs) are rare amongst institutional designs that aim to ameliorate short termism in democracies. Drawing on the experience of OFGs in Israel, Hungary and Wales, the paper argues that such institutions face at least three challenges to their legitimacy. First, the capacity of an unelected agency to constrain government and law-making. Second, the ability of a single office to adequately represent the plurality of interests within and across future generations. Third, their political fragility and vulnerability. The article develops the counterintuitive argument that OFGs can enhance their democratic legitimacy through embedding systematic public participation in their activities, in particular through the institutionalization of deliberative mini-publics.

Introduction

Democracies are beset by short-termism that is often harmful to the interests of future generations. Lack of action on climate change is perhaps the paradigmatic case of failure to consider the long-term, to the point where terms like 'crisis', 'breakdown' and 'emergency' are becoming commonplace. Solutions to the long-term storage of nuclear waste materials are postponed. Technological advances, such as biotechnology, cybertechnology, robotics and artificial intelligence, promise enormous economic and social benefits, but little attention is given to the long-term deleterious effects they may bring to economic and social life and the environment. In more traditional areas of social and public policy, governments continue to obfuscate in the face of ageing populations that will place significant stress on pensions and health and social care; and fail to invest strategically in infrastructure, undermining the future reliability of utility distribution systems, transport networks and the availability of housing stock. Our democratic systems appear to be structurally dysfunctional in their capacity to deal with the costs and political risks associated with long-term issues and to consider the interests of future generations in any systematic manner. Critics point to a range of explanations for 'democratic

myopia', including: individual-level psychological traits; characteristics of the political system such as short electoral cycles, the actions of entrenched social and economic interests and the lack of presence of future generations to defend their interests; and dynamics of contemporary capitalism (e.g. MacKenzie, 2017a; Caney 2019).

A number of institutional remedies to ameliorate harmful short-termism within democracies have been proposed and, in some cases, implemented (Boston, 2016; González-Ricoy and Gosseries, 2017). Most attention has been placed on reforms to the established institutions of contemporary democratic polities, namely the constitution and the structure and practices of the legislature. Clauses that specify the rights of future generations and/or nature or particular long-term ends such as environmental sustainability are increasingly incorporated within constitutions. They aim to constrain the actions of governments and other social actors and/or give citizens procedural participatory rights, particularly around environmental decision making. Legislative proposals have focused on mitigating particular drivers of harmful short-termism: longer terms of office to reduce the impact of short electoral cycles, guaranteed legislative (proxy) representation for future generations and reductions in the electoral power of older generations, either by removing their voting rights or giving greater weight to the votes of young people. The Finnish Parliament is unusual in the establishment of a relatively influential Committee for the Future, a cross-party body that deliberates on parliamentary documentation, makes submissions to other committees and engages in scenario modelling.

This paper takes as its point of departure the growing interest in a relatively new piece of institutional architecture: offices for future generations (OFGs). OFGs have moved from proposal to institutionalization in a small number of polities, most prominently Hungary, Israel and Wales. A shared characteristic of OFGs is their independence, but they can take on a diversity of structures and powers, operating within or across legislative, executive or judicial branches of government. While OFGs have been empowered to delay or suspend actions, their function differs from proposals for guardian-type bodies that sit above democratic politics (Brennan, 2016; Shearman and Smith, 2007).

OFGs are not an institutional 'silver bullet' for dealing with harmful short-termism in contemporary democratic politics. The Israeli OFG was abolished after one parliamentary term and the powers and status of the Hungarian body diminished. However, careful analysis of the workings and fate of this institutional phenomenon offers insights into how such institutions might better protect the interests of future

generations in democratic polities. The article argues that to be effective in their work, OFGs need to respond to a number of challenges to their democratic legitimacy, namely the right of an independent body to constrain the actions of the legislature, their political vulnerability and their capacity to come to robust judgements about the interests of future generations. These legitimacy challenges raise both normative (the extent to which OFGs act in accordance with democratic ideals) and sociological (the legitimacy of the institution in the eyes of the public) concerns (Mansbridge, 2012; Beetham, 2013).

The article draws on a comparison of the practices of three OFGs in Hungary, Israel and Wales. Having laid out the characteristics of each OFG, we move to an analysis of the deficits of legitimacy faced by these institutions. We then turn to a counterintuitive solution to these legitimacy deficits: systematically embedding public participation in the working of an OFG can enhance its democratic legitimacy in both normative and sociological terms. Such a strategy is counterintuitive because public attitudes and practices are typically recognized as one of the key determinants of short-termism. However, well-crafted public participation can, first, improve the capacity of an OFG to distinguish and balance the plurality of perspectives on the interests of future generations so as to prioritize action and, secondly, increase the political standing of OFGs, thus reducing their vulnerability within the political system. The final section of the paper offers evidence to suggest that amongst participatory designs, deliberative mini-publics are particularly well-suited to encouraging long-term thinking and judgements.

Three cases: Israel, Hungary and Wales

The Commission for Future Generations was established in Israel in 2001 but lasted only for one term of office until 2006. The Commission had extensive rights to information and participation in the workings of the Knesset and other governmental bodies, in particular rights to: obtain information from all government entities; examine any parliamentary bill and secondary legislation where it judged potential harm on future generations; and request reasonable time to prepare an opinion from any parliamentary committee discussing a bill (Shoham and Lamay, 2006: 247; Shoham, 2010). While the right to information often generated material that would not generally be in the public domain, it was the power to request time to prepare an opinion that proved most significant since it generated the capacity to delay legislation. As the first (and only) Knesset Commissioner, Shlomo Shoham notes: 'The commissioner can introduce uncomfortable delays... on issues he deems critical – but in doing so, he risks drawing antagonism from all sides. Thus,

this authority was rarely invoked; when it was, it was done implicitly and behind the scenes rather than in a formal manner' (Shoham, 2010: 103). The Commission was empowered to engage on any subject on the parliament's agenda, excluding defense and foreign affairs, but aimed to select issues where it would have the most scope for effect, including education, health, environment, the national economy and budget and science and technology.

The Hungarian Parliamentary Commissioner for Future Generations was established in 2008, but lasted in that form only until 2011. It is the closest of the three OFGs to a classic Ombudsman. The powers of the Commissioner rested on Hungarian Fundamental Law that establishes that the state and every person is obliged to protect, sustain and preserve the environment for future generations. Again, only one Commissioner, Sándor Fülöp, has held this role. The Commissioner was empowered to conduct investigations on citizens' complaints and to appeal to the Constitutional Court or the Curia of Hungary (supreme court) in cases where national or local legislation may be in violation of the Fundamental Law. The Ombudsman Act, which was amended in 2007 to enable the establishment of the new Parliamentary Commissioner, included the power to suspend administrative actions where it was perceived to be in violation of the Fundamental Law. While this remained a threat, the Commissioner never actually used the power – both because it would have been difficult to sustain with its relatively small staff and on the philosophical grounds that the application of the right would have altered the nature of the body into a governing rather than oversight institution (Interview, 2017). The activities of the Commissioner stretched beyond classic ombudsman functions to parliamentary advocacy – aimed at ensuring that public policy and legislative proposals did not pose a severe threat to future generations – and strategic development and research in the areas of its competence (more of a 'think tank' function). Of the three OFGs, the Hungarian Commissioner had the narrowest remit, focusing primarily on environmental protection. In 2011, with a change in the Hungarian constitution, the Parliamentary Commissioner was converted into a Deputy Ombudsman for Future Generations under the General Ombudsman. In comparison to the original Commissioner the new institution has a tiny staff and no right of investigation or opinion without the agreement of the General Ombudsman. This paper will focus on the experience of the earlier Commissioner with its more extensive range of powers.

The third case is a more recent creation. The Future Generations Commissioner for Wales was established in 2016 under the Wellbeing of Future Generations (Wales)

Act 2015. The first holder of that role is Sophie Howe. Sustainable development is a core principle in the UK Act of Parliament that devolved powers to the Welsh Assembly in 1999; the Future Generations Act the legislative realization of this principle. The Wellbeing of Future Generations Act places a duty on government ministries and public authorities to consider future generations in their activities, laying out a number of ways of working (including long-term thinking) and wellbeing goals and sustainable development principles that it expects ministries and public bodies to embody. The Commissioner's role is to oversee that process, providing support and challenging short-term policies and practices. It is charged with encouraging the full range of ministries, public bodies and public service boards to take greater account of the long-term impact of their actions and to monitor and assess the extent to which wellbeing objectives are being met by these bodies. It has an array of powers, including: provision of advice, research, reviews of public bodies and recommendations for action and the publication of a Future Generations Report one year before an Assembly election that contains an assessment of the improvements public bodies need to take. Compared to its Hungarian and Israeli counterparts, it does not have equivalent parliamentary rights and powers: its focus is on the actions of the executive (the Welsh Government) and the 43 other public bodies and public service boards in Wales.

These three cases have been selected because they are the most prominent examples of independent agencies that have been designed and institutionalized specifically to defend and promote the interests of future generations in democratic polities. The diverse structure and practices of the three bodies provide an indication of how complicated it can be to classify this family of institutions, even if we do not extend the category to Commissioners and Ombudsmen for Children and the Environment which we find in other polities (Boston, 2016: 322). In all three cases, the OFGs have been designed and constituted explicitly to compensate for a particular dysfunctionality of political institutions: the structural tendency to give priority to the short-term. The ambition for these institutions is to provide a clear and specific voice for future generations within the political system, operating outside electoral-party motivations and independent from established interests.

The democratic legitimacy of OFGs

The promise of OFGs is that they bring a consistent, independent and impartial voice into the democratic polity that aims to protect and promote the interests of future generations. The normative legitimacy of OFGs rests on their capacity to reshape political decision-making such that endemic harmful short-termism is

ameliorated. In sociological terms, OFGs are well placed to enhance the perceived performance of government. Performance rests on perceptions of impartiality, non-discrimination and absence of corruption (Gilley, 2006; Dahlberg and Holmberg, 2014), qualities that OFGs can bring to bear in relation to governments' treatment of future generations. Experimental research by Alan Jacobs and Scott Matthews (2012; 2017) suggests that the public lacks trust in the capacity of political elites to deliver on long-term policy issues. This is driven by uncertainty linked to the high degrees of causal complexity of many long-term policy challenges and the lack of confidence in public officials to deliver the public goods they have promised, especially when such promises cut across electoral cycles. The presence of an OFG can play a role in ameliorating uncertainty, particularly as they represent the insertion of an impartial actor within the political process that can be trusted to continue the promotion of long-term issues over time – and importantly across changes in government.

But the dissolution of the Israeli Commission and the downgrading of its Hungarian counterpart cast doubt on the democratic legitimacy of OFGs. In both cases, the very existence of these institutions was brought into question by elected politicians. After its first term ended in 2006, the Israeli Commissioner was not replaced and a bill of annulment for the institution was brought to the Knesset. The Commissioner saw this as a 'backlash' from amongst Members of the Knesset as his power and influence increased within and outside parliament with the publication of opinions on Knesset legislation and attention from media bodies: 'The more the Commission's voice was heard, the more the criticism increased' (Shoham, 2010: 124). A Knesset Research and Information Center review suggests that 'Members of Knesset raised two primary reasons for dissolution of the Commission during deliberations on the topic: the cost of its operations and their feelings that the Commission received too much authority to interfere in their work' (Teschner, 2013: 3). Shlomo suggests that one source of antagonism was his authority to speak for future generations, in particular on the part of more religiously orthodox politicians who worried about what they saw as a secular bias in his interventions:

I have been asked – more than once – if we have the authority to make any kind of decision for future generations, and if so, where it comes from...

How do I allow myself to speak in the name of those who have not yet been born? How do I decide what policy is good or appropriate for them and what is not? (Shlomo 2010: 105)

Reflecting on the institution's fate, Jonathan Boston notes:

The early demise of the Commission offers a number of salutary lessons for policy-makers in other advanced democracies who might contemplate creating a similar kind of institution. Above all, it suggests that a statutory basis, a physical location in the heart of a country's main representative institution, and significant rights of access to information and to key decision-makers, although obviously helpful conditions, are not sufficient for success. (Boston, 2016: 330)

The fate of the Hungarian Commissioner shows some resonance with the Israeli case. The dominance of the right-wing Fidesz government led to the adoption of a new Hungarian constitution in 2011 which aimed to eradicate many of the state's checks and balances. Additionally, the Commissioner was vulnerable because it had found itself at odds with financially significant supporters of the governing regime in high profile actions. To the surprise of most commentators, the Commissioner had a partial stay of execution with the weaker Deputy Ombudsman for Future Generations established under the country's General Ombudsman. This change of mind appears to have been driven by a political reinterpretation of the protection of future generations and the environment in explicitly nationalist terms (Interview 2017).

Three challenges to the existence and practice of OFGs can be teased out from these criticisms of the Hungarian and Israeli OFGs that mix both normative and sociological aspects of democratic legitimacy. First, the legitimacy of a non-elected body intervening in the political process, particularly constraining the actions of the legislature or the executive. Second, the political vulnerability of a body that represents future generations. Third, the capacity of the body to make sound judgements about the interests of future generations.

Democrats are often suspicious of the legitimacy of unelected bodies when they are empowered to constrain the decisions of elected assemblies, governments and other public and private bodies. Taken in isolation, such independent bodies appear unaccountable and as such undermine democratic principles. But this is to misunderstand the political and legal status of such agencies. Pierre Rosenvallon is one of a limited number of democratic theorists who has given prolonged attention to the role and legitimacy of independent agencies. Such bodies have a long historical pedigree as a part of democratic architecture which can be traced back to the overseers, auditors, supervisors and public ombudsman chosen by lot or elected in classical Athens (Rosenvallon, 2008: 25). In contemporary democracies, such institutions are typically created by elected legislatures in recognition of 'risks

of dysfunctionality' within the political system (ibid: 74-5; for a similar argument, see Pettit 2012: 306). In the case of OFGs, this is a recognition of the tendency of democratic institutions towards harmful short-termism, where the effects of current policy on future generations is not given due weight.

OFGs are granted independent status and powers by law and thus have what Rosanvallon terms 'derivative legitimacy' (Rosanvallon, 2011: 87). As creations of statute, they can be held accountable by the legislature and their powers revoked, as was the cases of Israel and Hungary demonstrate. Much of the normative ire directed towards independent unelected institutions in democracies is focused on those bodies that have entrenched constitutional protection and which are able to wield power over elected assemblies, in particular the capacity of the judiciary in constitutional democracies to override government decisions (e.g. Waldron, 2006). No OFG has to date had this kind of constitutional status or power. Where constitutional protection for OFGs is suggested by some advocates (e.g. Ekeli, 2007), these bodies would be subject to removal, but the higher threshold for action on the part of the legislature raises normative concerns amongst some democratic theorists. Whatever the threshold, it is the capacity of the legislature to both create and revoke the powers of independent agencies that distinguishes such institutions from anti-democratic argument for guardians beyond the control of democratic politics (Brennan, 2016; Shearman and Smith, 2007)

Even if a sound normative case can be presented for the existence of such non-elected bodies in the democratic polity, in practice this is one of the grounds on which the status of both the Israeli and Hungarian OFGs were attacked. Their right to exist in a form that allowed them to materially affect political decision making was brought into question by elected politicians. Both the Hungarian and Israeli Commissioners lasted one full term only before their respective reorganization and annulment. The fate of these two OFGs raises a significant dilemma. Such bodies are created by governments in recognition of the structural tendency to favor the short over the long term. But then the self-same government, in finding itself frustrated by the activities of the OFG, abolishes the oversight institution with relatively few political costs. Institutions designed to challenge short-termism themselves become victims of short-term politics.

OFGs are especially politically vulnerable compared to most other independent agencies that have a significant political constituency advocating for their establishment and continued existence. OFGs typically lack sustained political support within the polity because the very people whose interests they aim to

defend do not exist and 'few politically influential lobby groups will regard a generalist, future-oriented institution as a crucial vehicle for advancing their particular interests and concerns' (Boston, 2016: 331). As Boston continues:

As a result, any commission (or other public entity) for future generations runs the risk of having few friends and defenders. At the same time, it is bound to generate enemies. Among these will be all those with a vested interest in existing policy arrangements and who expect to be net losers from the kinds of policy investments advocated by a future-oriented institution. Ironically, therefore, such institutions are destined to encounter the same political challenges and temporal asymmetries that they are designed to alleviate. If they fail to meet these challenges, they will become yet further victims of the presentist bias. (Boston, 2016: 331)

OFGs are unlikely to sustain cross-party support in parliament – the nature of the institution means that it will continually challenge many of the core policies and projects of governing and opposition parties. As Rosanvallon argues, such independent agencies 'remain precarious, always open to challenge, and dependent on social perceptions of institutional actions and behavior' (Rosanvallon 2011: 7).

The third legitimacy challenge faced by OFGs is their capacity to make claims on behalf of future generations. OFGs practice a form of surrogate representation. After all, they cannot be authorized or held accountable by those they claim to represent (Karnein, 2017: 95). An extensive literature exists on the representation of future generations within moral and political philosophy. For example, the non-identity problem posits that present choices will not only affect the quality of life of future generations, but who actually composes those generations. Our current decisions effect who will or will not exist. In these existential terms, it is impossible to talk about the interests of future generations. Debates rage as to whether this philosophical conundrum can be overcome (e.g. Heyward 2008). But this way of conceiving our duties to future generations has little purchase in practical politics. Here the debate is whether a particular Commissioner is best placed to make judgements where diverse and competing political conceptions of the future exist, rather than whether such judgements are possible at all.

OFGs face a daunting challenge of selecting the issues on which to focus their attention: how to prioritize action across a broad policy landscape. This might seem like a purely scientific task: select those issues that have the most impact on future

generations. Putting aside epistemological challenges to our understanding of the causal relationships between our actions and future conditions, long-term issues are not purely scientific or technical in nature. Expert knowledge takes us only so far and over-extends itself in relation to the normative judgements that are typically at the core of long-term decision making. Additionally, these normative judgements are often required in areas of policy where public opinion – and arguably the judgements of political elites – is not well defined (MacKenzie and Warren, 2012).

A common tendency is to view future generations and their interests as an aggregate. But, as Simon Caney argues, this is deeply problematic, as it 'tolerates outcomes in which some lead appalling lives' (Caney, 2009: 171). Differentials of social and economic power are expressed within and between future generations and any policy choice will have distributional impacts across each generation – and this includes across current generations (Boston, 2016: 29-31). For example, those social groups that make up 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. Hence judgements by an OFG as to the (un)acceptable impact of policy cannot assume that future generations speak with one voice; rather it will involve balancing the variety of interests within and across future (and current) generations. Normative judgements are to be made.

Shoham attempts to sidestep the criticism that he promoted a particularly secular vision of the future in the Israeli Knesset by arguing that he 'sought to ensure that future generations would have the *broadest spectrum of choices possible*' (Shoham, 2010: 105). Sustainable development was adopted by the Commission as a 'conceptual platform' that 'provides a systematic rule, or measurement of action that needs to be carried out in the present time in order to do justice to future generations – leaving them the space for choice' (Shoham and Levy 2006: 255). But this is to circumvent the very political battles that rage over what sustainable development means in practice and what the boundaries of the 'space for choice' should look like, particularly where different religious and other interpretations of the good life are in play. Any 'systematic rule' only operates in fairly abstract terms. A similar challenge emerges for those who suggest that the focus should be on the relatively narrow and objective task of realizing critical or basic needs across generations (Ekeli 2007, Johnson 2007). While this approach again appears to offer a simple answer to how an OFG should come to judgements, it not only requires agreement on what constitutes basic needs, but also provides no guidance on how to manage the distributional challenges that arise when considering how these

needs are to be realized within and across generations when faced with a plethora of policy options.

Critics also raise the question of whether the representation of future generations should rest with a single individual. The worry here is the partiality of judgements. This could be read as a concern that individual Commissioners will use their position to advance their own interests in the name of future generations. But even if we do not have reason to challenge the motivations of a Commissioner, we can recognize that their judgements will be limited by their social perspectives. On the grounds of plurality, parliament could be seen as better placed to make these judgements. But this is to neglect that is the very failure of parliament to consider the long-term consistently – shaped and constrained as it is by electoral cycles and the power of special interests – that has led to the emergence of OFGs.

Rosanvallon recognizes the need for more plural perspectives in informing the judgements of independent agencies, arguing that the tradition of collegial panels in France – commissioners as opposed to a single commissioner – or the US practice of bipartisan commissions improves representativeness in the sense that agencies are then more structurally pluralistic (Rosanvallon 2011: 88), allowing for the development of a more collective intelligence (ibid, 92-4). Anja Karnein adds a twist to this argument for pluralizing Commissioners: 'There should be several of them (maybe separately assigned to represent different parts of the future: the near, the medium, and the long term, for instance) in order to include various possible viewpoints' (Karnein 20017: 94). While explicitly tackling the plurality challenge to the legitimacy of OFGs, the membership of such Commissions remains relatively restricted in terms of numbers and social perspective. Here the parallels with criticism of judicial review resonate: what is the normative basis on which one or a small number of undoubtedly socially privileged Commissioners can make political judgements about the interests of future generations?

Enhancing democratic legitimacy through public participation

Suggesting that forms of public participation offer a way of enhancing the democratic legitimacy of OFGs may seem counterintuitive, given that the disposition of the public towards the long-term is widely recognized as a fundamental determinant of short-termism in politics (MacKenzie, 2017a).

Psychologists and economists highlight how individuals' perceptions, judgements and decisions are affected by positive time preferences and discounting of the future (Frederick et al, 2002). From a sociological perspective, everyday social practices 'locked-in' to unsustainable systems of provision, such as energy,

transport and food systems, reinforce immediate consumption over longer-term rhythms and time scales (Pahl et al, 2014: 379). Whichever conceptual approach we take to understanding the perspectives of the public, it does not appear that public engagement would be fertile ground for long-term thinking.

But this is an oversimplification. Citizens' perspectives on future generations are highly structured by the context in which they are articulated. In making immediate and everyday decisions, a long-term perspective is rarely taken (although 'life transcending interests' (Thompson, 2009) do motivate some). But that is a very different context from engaging with an institution such as an OFG, particularly where that engagement is structured to orientate citizens explicitly towards consideration of the long-term and future generations.

What is it then that participation might offer to overcome legitimacy deficits? While public participation cannot fully overcome the challenges to legitimacy experienced by OFGs, it can potentially ameliorate these vulnerabilities in two related ways. First participation can enable more inclusive judgements about the interests of future generations. Second, participation can enhance the political standing of OFGs.

The potential for public participation to bring in a diversity of voices and perspectives on the interests of future generations offers a creative response to the temporal plurality problem and develops feminist insights about the significance of social positionality. If the politically and socially excluded are not present, decisions made in their name are unlikely to respond to their concerns (e.g. Phillips, 1996; Young, 1996). Since the non-presence of future generations cannot be overcome, a second-best solution is needed. Social positionality remains significant when we recognize that, in drawing on their diverse social, political, economic and environmental experiences and identities, social groups within current generations are likely to come to different judgements on what is in the interests of future generations. Thus, ensuring the widest participation of social groups – especially those whose voices are often not heard – in coming to public judgements provides a diversity of perspectives on what those different future interests may entail, allowing us to understand where there is agreement and divergence across groups. This is not to discount the importance of legal and scientific expertise and advice; rather to recognize that richer normative judgements that better reflect the plural character and interests of future generations will emerge from public participation strategies that engage with and across diverse communities.

Participation – especially where it engages with the most politically vulnerable – can also be seen as an important source of normative legitimacy for those concerned about the status of (quasi-)independent sources of power within democratic polities. Participation embeds a different form of accountability to traditional electoral processes, but a form with normative force.

While good normative reasons exist for encouraging more plural judgements, participation can have significant sociological impacts. Rosanvallon, for example, suggests that the ‘representativeness’ of independent agencies can be strengthened:

in a *pragmatic* sense if it is open to social input and attentive to the aspirations and demands of citizens. To be representative then means to be attentive to social problems, conflicts, and divisions. It also means to be concerned about diversity and to show particular solicitude for those citizens likely to have difficulty in making their voices heard. Finally, it means being attentive to certain specific social needs and willing to accord society’s least visible members their rightful place and dignity. (Rosanvallon, 2011: 88)

Public participation is the obvious means through which such ‘social input’ and attentiveness ‘to the aspirations and demands of citizens’ is realized.

Given the lack of an extant constituency to bolster the political standing of an OFG, participation strategies that enhance attentiveness to the diversity of public concerns is one strategy to embolden the perceived legitimacy of an independent body. For the public, responsiveness can distinguish the practices of OFGs from other political institutions that are perceived to be ‘out of touch’ and ‘elitist’. It is an avenue for what Colin Scott (2000) terms ‘downward accountability’ – directly from independent agency to citizens. Designed well, public participation can be a strategy for enhancing impartiality, non-discrimination and anti-corruption, practices that are key to judgements of procedural performance (Gilley, 2006; Dahlberg and Holmberg, 2014). The public support that participation can engender increases the political capital of OFGs in the eyes of elites, making these agencies less vulnerable to political attack when they challenge short-term electoral motivations or the power of vested interests.

The participation practices of OFGs

The actual practice of OFGs is instructive in the ways in which participation has been enacted to build aspects of normative and sociological legitimacy. In his account of his experience as the Knesset Commissioner, Shoham uses the term

'enhancing participatory democracy' to capture some of the Commission's practices (Shoham, 2010: 107). But this appears to be a misnomer for what he describes under this heading is better understood as a public communication rather than participation strategy. The Commission was clearly concerned to build its legitimacy in the eyes of the public and parliamentarians, seeing the value of interaction with the public as 'an opportunity to introduce the Commission's parliamentary power' and to shape public discourse around the concepts of future generations and future thinking (ibid).

The Hungarian Commissioner embodies a more explicitly participatory approach through its ombudsman function. The capacity of the public to make representations acts as a mechanism for building public credibility and political capital, as well as a means of structuring the OFG's program of work. Fülöp, the first and only Commissioner, argues that 'we did not want to project our own vision. With over 200 substantive complaints per year, there was no need to invent new problems' (Interview, 2017). A complaints system ensures a degree of responsiveness on the part of an OFG, although this is not the most effective mechanism for ensuring the diversity of voices is heard as it tends to attract the already politically active and confident. The Commissioner was aware of the dangers of listening to those most active within the political system: 'We preferred to work direct with local communities rather than NGOs' (ibid). While one-term was not enough time to establish the necessary degree of sociological legitimacy to defend the institution against reform, the Hungarian Commissioner was following the pattern of previous ombudsmen where their representative function emboldens political status:

a number of cases... show how ombudsmen have managed to become politically important actors and effective defenders of citizens' rights even when they may have been created primarily as symbols, and in spite of the difficulty of promoting sensitive issues in a generally unfavourable context... It appears that it is the flexibility and versatility of the ombudsman, as well as its character as a representative of the citizens that gives it a potential for political prominence that may go beyond its formal powers. (Beckman and Uggla, 2017: 123)

Beyond its ombudsman function, the Hungarian Commissioner acted as a champion of public participation more generally across the polity. Drawing motivation from the Aarhus Convention,¹ the Commissioner consistently argued that the realization of the constitutional right to a healthy environment required

special attention to rights to environmental information and public participation (Hungarian Parliamentary Commissioner, 2011; 2012).

The importance of broadening public participation is also well expressed in the Welsh example. As part of the development of the Wellbeing of Future Generations (Wales) Act, the then Sustainable Futures Commissioner, Peter Davies (whose role it was to develop the legislation at which point the role was dissolved), led an extensive national conversation – ‘The Wales We Want’ – that engaged with communities, civil society organizations and others across the nation. One of the seven foundations for wellbeing of future generations established within the Act through this process states: ‘*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 Commissioner for Future Generations thus has the legislative basis to promote citizen participation across public bodies in Wales and to embed participation as a fundamental element of its own working practices.

The Commissioner appears to be taking this role seriously. It employed an active public participation strategy in the consultation process for its *Strategic Plan 2017-2023*,² engaging 1,300 people via an online tool, workshops and face-to-face conversations sessions. No details of the socio-demographics of those engaged or the depth of participation has been published, but the actions of the Commissioner both broadens the perspectives that will inform the Commission’s priorities and work program and raises the profile of the body amongst the public. Secondly, within the *Strategic Plan* there is an explicit commitment to: ‘Champion effective public involvement and engagement, challenging ourselves and others to better understand the needs of our communities, our people and their influence on the decisions that affect them’ (Future Generations Commissioner for Wales, 2017: 6).

The way in which the Welsh Commissioner has begun to reach out to communities and other stakeholders to develop its priorities points towards a more extensive embedding of public participation in the workings of the OFG itself. Such an approach would move beyond public communication and the promotion of public participation by other public agencies to embodying a two-way dynamic in its own institutional practices. This is the logical extension of the Welsh Commissioner’s commitment to ‘Walk the talk – challenging our team to be the change we want to see in others’ (Future Generations Commissioner for Wales, 2017: 8). The potential is there for the emergence of a novel form of independent and participatory agency

that is more effective in strengthening its normative and sociological legitimacy: a body that is able to respond to the challenges of temporal plurality and political vulnerability.

Designing participation for the long-term: the promise of deliberative mini-publics

Both the Hungarian and Welsh Commissioners have used public engagement to frame their activities and in so doing raise their public profile. The complaints system of the Hungarian Commissioner has a significant agenda-setting function and provides a mechanism through which individuals and groups can alert the Commissioner to potential breaches of the constitutional duty to protect future generations. Beyond that point, participation opportunities are fairly limited. The consultation processes in Wales have been undertaken as part of setting the broad objectives of the original Future Generations (Wales) Act and then establishing priorities for the Commissioner. Targeting the participation of community-based organizations means that the open consultation process moves beyond only hearing from those who are already politically interested and active on issues relating to future generations (e.g. environmental organizations who push that aspect of the long-term agenda). While this form of consultation engages a wider public, it tends to be rather broad brush, operating at the level of general principles and values, with little opportunity to explore complex issues and trade-offs in much depth. Conversations are also between community groups and the OFG: it is not a strategy that encourages sustained interaction and understanding across different social groups and communities and leaves the integration of the insights from different actors to the discretion of the OFG.

This sort of intelligence gathering, which can be enhanced by new forms of digital crowdsourcing techniques, can be critical for the work of OFGs, alerting them to malpractice or the way in which different parts of the community conceive of priorities for action. But other modes of participation will be necessary if the aim is to bring citizens into more strategic decision-making which will involve the more demanding assessment of the trade-offs often implicit within long-term policy challenges. Participatory designs will need to be able to deal with the cognitive and moral complexity of these issues and bring together a diverse body of citizens to ensure a plurality of perspectives are considered. Participatory designs typically only achieve one of those elements. For example, while participatory budgeting in Latin America has an impressive reputation for engaging large numbers of residents from across poorer neighborhoods, this has typically been in demand-

making forums for local investments. The more strategic policy forums have been the venue for experienced activists (Smith 2009). Similarly, policy councils and conferences in Latin America have brought citizens into strategic policy dialogues with actors from the public and private sectors and civil society organizations, but these have typically been those who have an established interest in the policy sector under consideration (e.g. health, environment, gender) (Avritzer 2009). While policy conferences and councils are afforded time to work through complex policy trade-offs, it is forms of stakeholder engagement that predominate, in which organized interest groups negotiate and collaborate with public authorities. While environmental groups often claim the mantle of protecting the interests of future generations, their perspectives rarely extend beyond environmental concerns, and they are generally faced with powerful interests looking to preserve the status quo. Realizing diversity and ensuring the time and space to work through cognitively and morally challenging issues typically pull in different directions within participatory designs (Fung 2003; Smith 2009).

A rare and promising design that combines diversity and cognitive rigor is deliberative mini-publics (DMPs): bodies in which randomly-selected citizens learn, reflect and deliberate on often complex and controversial areas of public policy before coming to recommendations. Examples include citizens' assemblies, citizens' juries, consensus conferences, deliberative polls and planning cells (Grönlund et al 2014;; Setälä and Smith, 2018; Smith, 2009).³ DMPs have been commissioned to take on a range of tasks, a number of which are explicitly long-term: consensus conferences organized by the Danish Board of Technology on diverse emerging scientific and technological developments; citizens' juries and panels on urban and other forms of planning in Canada, Australia and beyond; and a recent citizens' assembly on the future of social care, organised by two select committees in the UK parliament.⁴ Experiments with citizens' juries in Australia (Hobson and Niemeyer 2011), Canada (2011), the United States⁵ and the international World Wide Views project (Rask et al 2012) provide an indication of their potential to consider aspects of climate change. The direct action movement Extinction Rebellion has raised the stakes, with its demand for a national citizens' assembly in the UK on the climate and ecological emergency; and the move by six select committees in the UK parliament to run a citizens' assembly on climate change indicates the extent to which the model is considered to be particularly well suited for such a challenging and complex set of concerns (Smith 2019).

While more systematic analysis of the temporal orientation of DMPs is needed, evidence from the practice of DMPs suggests that they outperform more traditional democratic institutions in orientating participants to consider long-term implications, often in areas where preferences are not well formed (Hobson and Neimeyer, 2011; MacKenzie and Warren, 2012; Niemeyer and Jennstål, 2017; Parkhill et al, 2013).

The combination of random selection and facilitated deliberation makes DMPs a particularly apposite design for public participation on long term issues with potentially significant impacts on future generations. Random selection plays two functions. First, it generates a socially and cognitively diverse group. Apart from deliberative polls (which bring together hundreds of participants for a weekend of deliberation), most DMPs apply quota sampling to ensure that the selected body broadly reflects the social and cognitive diversity of the population. Common quotas include demographic characteristics such as gender, ethnicity, age, education and/or social class and, for some designs, salient political attitudes. Often minority groups are over-sampled to ensure a larger presence within the body. This increases the likelihood that disempowered voices are heard and considered and builds confidence amongst politically marginalized groups to articulate their perspectives. This in-built diversity of DMPs is critical to ensure that a variety of perspectives, drawn from different social positions within society, are present amongst participants. DMPs are arguably the most socially and cognitively diverse of any democratic institution with contemporary polities.

The second function of random selection recalls the practices of ancient Athenian democracy, where sortition (along with rapid rotation) provided a defense against asymmetries in social and economic power (Owen and Smith, 2018). Sortition was introduced in Athens as a bulwark against powerful warring families. Given that one of the drivers for short-termism is the power of entrenched interests, a DMP creates a space in which participants are relatively protected from their influence and actions. Randomness is a protection against strategic action from those with structural power who benefit from current social and economic arrangements that privilege the short-term.

The second key design element – facilitated deliberation – orientates participants towards consideration of the long-term. Within DMPs, participants have the opportunity to learn about the issue at hand, hear from and question a cross-section of experts and advocates, reflect on what they have heard and listen to the views of other participants. Facilitation promotes equality of voice across a diverse group that differs significantly in terms of confidence and experience and

engenders respectful interactions amongst participants with very different interests and perspectives. DMPs approximate the type of communicative rather than strategic motivation celebrated by deliberative democrats. Such conditions are particularly apposite for encouraging considered judgement (Smith, 2009) or collective intelligence (Landmore, 2013) that is sensitive to the interests of future generations. Where DMPs are tasked to consider aspects of long-term policy making, questions of intergenerational equity are made salient to participants and they have time and space to reflect on the long-term consequences of social choices, informed by the variety of perspectives offered by fellow participants (Niemeyer and Jennstål, 2017: 248). As Michael Mackenzie argues: ‘any short-sighted claims that are self-serving at the expense of future publics are weaker claims for that very reason, and can thus be challenged or rejected on those grounds in robust deliberative environments’ (MacKenzie, 2012: 165; see also MacKenzie 2018). For Claus Offe and Ulrich Preuss, deliberation is not only ‘*fact-regarding* (as opposed to ignorant or doctrinaire)’ and ‘*other regarding* (as opposed to selfish)’, but also ‘*future regarding* (as opposed to myopic)’ (Offe and Preuss 1991: 156-57).

Whether we are thinking of the determinants of short-termism in psychological or sociological terms, the combination of random selection and facilitated deliberation ameliorate short-term dynamics. In psychological terms, deliberation promotes a form of ‘slow thinking’ (Kahneman, 2011) that encourages reflection amongst participants, moving them away from the more automatic, fast thinking that guides most of our daily actions and choices. In sociological terms, DMPs remove participants from their everyday practices that structure thought and action and into a space in which collective consideration of the future is encouraged. From both perspectives, the combination of task, diversity and deliberation within DMPs encourages reflection and judgements that incorporate the interests of future generations and protects participants from the short-term determinants of electoral, party and interest group politics.⁶

While DMPs may be a promising institutional space within which participants are able to come to judgements that better take account of the interests of future generations, the number of participants remains relatively small compared to the broader population. But even with such small numbers, emerging research suggests that DMPs generate sociological legitimacy: the public have trust and confidence in their decision making – either because DMPs are made up of ‘ordinary citizens’ or because there is a recognition that members have gained a

level of expertise through the process (Warren and Gastil, 2015). These are promising insights and may offer a way in which trust and confidence on an OFG can be built. Recalling the work of Jacobs and Matthews (2012), public perceptions in the capacity of governments to respond effectively to long-term issues is undermined by the causal complexity of long-term problems and a lack of credibility in government action. We have already suggested that the presence of an OFG that works across electoral cycles may enhance credibility. The work of DMPs may contribute to ameliorating concerns about causal complexity, given the time and learning that occurs in these participatory spaces.

DMPs could be integrated into the work of OFGs in a number of ways that enhance the legitimacy of the independent body. Where OFGs have ombudsman functions (as in the Hungarian case), DMPs can play the role of 'contestatory court' (Pettit, 2012), judging the veracity of complaints. Similarly, as politically controversial issues emerge, DMPs can be employed to bring a considered citizens' perspective to bear. Faced with numerous issues that affect the long-term, DMPs can be integrated into the prioritization process, providing guidance on which issues should be given priority in the OFGs work. The Citizen Council at the National Institute for Health and Care Excellence (NICE) in the UK played such a role,⁷ although its influence was rather limited (Davies et al, 2016) and it was not given the time or resources to engage in detailed analysis.

DMPs can be more or less empowered and more or less institutionalized within the workings of the OFG. In terms of empowerment, emerging practice from Poland provides guidance: municipal mayors have committed to implement any decision that emerges from a citizens' assembly where support is above 80 percent. Between 50 to 80 percent, then the mayor has discretion (Gerwin, 2018; Smith 2019). And in terms of institutionalization, mini-publics could be embedded within the everyday practices of an OFG, rather than leaving them to the discretion of a Commissioner to decide when they take place. The terms under which mini-publics are embedded is critical to ensuring their timing, framing and outputs have import on decision making. The potential for more extensive and deeper deliberative engagement in organizational governance is yet to be fully exploited by independent oversight bodies. Advocates of mini-publics have bemoaned their lack of institutionalization (Neimeyer, 2014; Owen and Smith, 2015; Setälä, 2017; Setälä and Smith, 2018)⁸: integrating them into the workings of an OFG would show how they can be consequential in the democratic system. Where mini-publics have effect as part of the everyday activities of an OFG, we can reasonably expect

decisions to emerge that reflect the plurality of perspectives on future generations and an increase in publicity and visibility that would embolden the legitimacy of OFGs as respected actors within the political arena. The democratic legitimacy of OFGs would be enhanced in both normative and sociological terms.

Conclusion

OFGs are a rare example of an institution created to articulate the interests of future generations in contemporary democratic polities, where the motivation too often is towards the short-term. Given the record of OFGs has not been promising – two out of three of the main exemplars lasted for only one parliamentary term; and the third is only in its early years of operation – creative thinking is needed to develop strategies to bolster the legitimacy of these bodies. Intriguingly public participation may offer a creative strategy for emboldening both normative and sociological legitimacy. Although it is still in its early stages of establishment, the legal framework and activities of the Welsh Commissioner suggest tentative steps in this direction. Whether it will be creative in its adoption of designs such as deliberative mini-publics is an open question, but if OFGs are to respond effectively to the challenges of temporal diversity and political vulnerability, experimentation and institutionalization of participatory designs may prove critical.

Acknowledgements

I would like to thank Peter Davies, Sándor Fülöp, John Lotherington, Andrea Westall and other trustees at the Foundation for Democracy and Sustainable Development (FDSD) as well as Michael MacKenzie for the many conversations that have shaped this paper. An early version of the argument was published in the report 'The Democratic Case for an Office for Future Generations' by FDSD in 2015. Drafts of this paper have benefitted from the ideas and insights of participants at a number of conferences and workshops. The Institute for Advanced Sustainability Studies (IASS) in Postdam provided me with a conducive environment to work on aspects of the argument.

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² <https://futuregenerations.wales/wp-content/uploads/2018/11/2018-01-03-Strategic-Plan-FINAL.pdf> [accessed 2 October 2019].

³ See the work of members of Democracy R&D for the variety of designs and applications of deliberative mini-publics <https://democracyrd.org/> [accessed 2 October 2019].

⁴ The Democracy R&D platform provides links to the work of the Danish Board of Technology Foundation, Involve (UK), MASS LPB (Canada) and NewDemocracy (Australia) amongst others that have organised DMPs on aspects of long-term policy. See <https://democracyrd.org/> [accessed 2 October 2019].

⁵ <https://jefferson-center.org/rural-climate-dialogues/> [accessed 2 October 2019].

⁶ It is these qualities of mini-publics that has led theorists such as MacKenzie (2017b) to make the case for a randomly selected chamber to promote long-term thinking within the legislative branch. For a critique of this simple 'replacement' approach, see Owen and Smith (2019).

⁷ <http://www.nice.org.uk/Get-Involved/Citizens-Council> [accessed 2 October 2019].

⁸ Although see Lafont (2015) and Böker (2016) for opposing views that mini-publics reduce the democratic legitimacy of the system – and Setälä and Smith (2018) for a critical response.