

## 15. Voice and No Votes for Future Citizens

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**Abstract:** This chapter discusses an important distinction in conceptions of the representation of future people in democratic decision-making processes.

It thereby builds on the discussion of the All Affected Principle. Firstly, the authors argue that both of its predominant interpretations, the All Subjected Principle and the Principle of All Affected Interests, are complementing principles of democratic inclusion that correspond to different types of political representation. Secondly, the authors argue that the application of the All Subjected Principle can be further restricted under conditions of Political Modal Presentism. Political Modal Presentism prescribes that no hypothetical representative of an unborn person should hold more institutional political powers than is held by a representative of a living person with the same morally relevant characteristics. From Political Modal Presentism one can derive a narrow version of the All Subjected Principle.

Based on this line of argument, this chapter demonstrates that under a narrow conception of the All Subjected Principle, one should not grant voting rights to representatives of future citizens.

Modern democracies are representative democracies. Political decisions are taken by chosen representatives supposed to act in the interest of the people they represent. The representative element in modern democracies gives rise to the idea that future generations, whose lives and interests will be severely affected by present political decisions, should also be represented in present democratic processes.<sup>1</sup> It is not obvious, however, whether the representation of future persons can be rendered compatible with the

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1 On political representation in general, see Hanna F Pitkin, *The Concept of Representation* (University of California Press 1967); Laura Montanaro, 'Representation', *The Encyclopedia of Political Thought* (Wiley-Blackwell 2015); Suzanne Dovi, 'Political Representation', *The Stanford Encyclopedia of Philosophy* (Spring 2017) <<https://plato.stanford.edu/entries/political-representation/>> accessed 12 September 2021. On representation of future people, see the papers in Jörg Tremmel, 'Institutionelle Verankerung der Rechte nachrückender Generationen' (2004) 37 *Zeitschrift für Rechtspolitik* 44; Kristian S Ekeli, 'Giving a Voice to Posterity – Deliberative Democracy and Representation of Future People' (2005) 18 *Journal of Agricultural and Environmental Ethics* 429; Kristian S Ekeli 'The Principle of Liberty and Legal Representation of Posterity' (2006) 12 *Res Publica* 385; Ludvig Beckman, *The Frontiers of Democracy: The Right to Vote and its Limits* (Palgrave Macmillan 2009); Dennis F Thompson, 'Representing Future Generations: Political Presentism and Democratic

present basic understandings of democracy.<sup>2</sup> To clarify this issue, some key questions about the representation of future persons need to be addressed. Who should represent the still unborn, and who should be represented? What kinds of rights or entitlements should representatives of future people have in present political processes? Here, we will mainly be concerned with this last question, assuming that representation of the yet unborn in democratic societies can, in principle, be justified.

Our considerations rely on a very general principle. A hypothetical representative of an unborn person should not be endowed with more institutional political powers than held by a representative of a living person with the same morally relevant characteristics. That is, an actually existing person should *ceteris paribus* be at least as well represented as a person only expected to come into being. Let us call this the principle of 'Political Modal Presentism' ('PMP') because it prefers the actual over the merely possible, or actual over merely expectable existence. Based on PMP, theories of democracy can be used to limit the entitlements of representatives of future people. We restrict our considerations to those yet unborn and somewhat distantly future persons (for instance, persons born 30 years from now).

If we speak of future generations, we, therefore, refer to persons born beyond the horizon of traditional (and especially pre-climate-crisis) political planning. By reducing the overlap between current and future generations

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Trusteeship' (2010) 13 Critical Review of International Social and Political Philosophy 17; Ludvig Beckman 'Political Representation of Future Generations and Collective Responsibility' (2015) 6 Jurisprudence 516; Deryck Beyleveld, Marcus Düwell and Andreas Spahn, 'Why and How Should We Represent Future Generations in Policymaking?' (2015) 6 Jurisprudence 549; Axel Gosseries, 'Introduction: Representing Future Generations?' (2015) 6 Jurisprudence 492; Iñigo González-Ricoy and Axel Gosseries (eds), *Institutions for Future Generations* (OUP 2016); Lukas Köhler, *Die Repräsentation von Non-Voice-Partys in Demokratien: Argumente zur Vertretung der Menschen ohne Stimme als Teil des Volkes* (Springer Fachmedien Wiesbaden 2017).

2 It has been argued that representation of future people in present democratic decision processes would undermine our democratic systems. See eg, Ludwig Beckman, 'Democracy and Future Generations. Should the Unborn Have a Voice?' in Jean-Christophe Merle (ed), *Spheres of Global Justice* (Vol 2, Springer 2013); Berenice Bovenkerk, 'Public Deliberation and the Inclusion of Future Generations' (2015) 6 Jurisprudence 496; Karsten K Jensen, 'Future Generations in Democracy: Representation or Consideration?' (2015) 6 Jurisprudence 535. However, such concerns need not be decisive for the limited representation we suggest. We thus operate under the assumption that limited representation may not derail present democratic systems and ask how it might be justified.

we attempt to emphasise the particular conceptual challenges of adjudicating between the living and the not-yet-born. The present generation accordingly comprises all living persons. The representation of distant future persons may be specifically relevant for climate policies or population ethics. The issue of their representation is sufficiently different from the representation of already living minors to justify separate treatment. Adolescent children, for instance, might be granted voting rights and thus can be represented through existing channels. Young children might be represented by their parents by giving them an additional vote per child. None of this makes sense for the distant unborn. The representation of yet unborn future people is, therefore, an issue which deserves to be approached in its own right.

Applications of PMP can build on the observation that different categories of presently living persons are represented in different ways and with different powers in democratic political processes. It follows that future people in analogous classificatory categories should not possess greater powers than their actually existing predecessors. Take, for instance, the right to vote for a legislative assembly. Presently, this right is usually restricted to the citizens of a state. Hence, representatives of future citizens of the same state might obtain voting rights in present elections for a legislative assembly, but as long as the traditional distribution of voting rights is considered legitimate, representatives of future non-citizens should not obtain voting rights because the corresponding present non-citizens lack such rights. At least, this is what PMP implies. We will discuss further implications in the present paper.<sup>3</sup>

It is not enough for our considerations to extrapolate from existing political practices. We want to offer a normative analysis, and the actual practices of democracies are therefore only relevant inasmuch they can be normatively justified. Consequently, we need to discuss how present persons can be justly represented in democratic communities.

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3 What so far has been said about 'present' persons shows that we count all potentially approachable people (eg, approachable with requests of consent) as relevantly present in the sense of Political Modal Presentism. Since we are concerned with democratic theory and not democratic practice, it does not matter much whether these are, in fact, approached. 'The absent' are people who cannot be approached, that is, mainly the dead and the unborn. PMP implies that representatives of the dead should not hold more power than representatives of analogous living persons. The too young, comatose, or mentally handicapped form a further category of concern for whom issues of representation arise. However, this class of people will not be discussed for the sake of simplicity.

### 1. Principles for the Ascription of Voting Rights in Democracies

It is widely assumed in political theory that being affected by certain state activities is a sufficient normative basis for demanding a say in the decisions that lead to these activities. The medieval juridical principle that all people should be allowed to have some say in matters that concern all (*quod omnes tangit, ab omnes approbari debet*) is an example in point.<sup>4</sup> Moral philosophers like Jürgen Habermas similarly assume that only those norms can aspire to be morally binding to which all persons affected by the norm can freely assent.<sup>5</sup> Such demands can be generalised to an 'All Affected Principle' ('AAP'), saying that whoever is affected by the activities of a state (or an institution or even an agent) should have a say in the decisions that lead to these activities.<sup>6</sup> AAP is a very broad principle and much in need of interpretation. It is, for instance, not immediately clear what being affected or 'having a say' is supposed to mean. Unsurprisingly, therefore, AAP has been subject to different interpretations. In any case, we regard AAP to be morally valid in at least some interpretation. AAP is at the heart of democracy, and those who accept (as we do) that people are entitled to democratic governance, must in some way endorse AAP.

Starting from this, two understandings of AAP may be distinguished, which apparently differ fundamentally. Some scholars regard the 'Principle

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4 On 'quod omnes tangit', see Gaines Post, 'Plena Potestas and Consent in Medieval Assemblies: A Study in Romano-Canonical Procedure and the Rise of Representation, 1150–1325' (1943) 1 *Traditio* 355; Gaines Post, *Studies in Medieval Legal Thought. Public Law and the State 1100–1322* (Princeton University Press 1964).

5 See Jürgen Habermas, *Moralbewußtsein und kommunikatives Handeln* (Suhrkamp 1983).

6 The AAP goes back to Robert A Dahl, *After the Revolution? Authority in a Good Society* (Yale University Press 1990); Robert E Goodin, 'Enfranchising All Affected Interests, and Its Alternatives' (2007) 35 *Philosophy & Public Affairs* 40; Robert E Goodin, 'Enfranchising All Subjected, Worldwide' (2016) 8 *International Theory* 365. See also Sfoia Näsström, 'The Challenge of the All-Affected Principle' (2011) 59 *Political Studies* 116; Zoltan Miklosi, 'Against the Principle of All Affected Interests' (2012) 38 *Social Theory and Practice* 483; David Owen, 'Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in Resolving the Democratic Boundary Problem' (2012) 5 *Ethics and Global Politics* 129; Ben Saunders, 'Defining the Demos' (2012) 11 *Politics, Philosophy & Economics* 280; Matt Whitt, 'Democracy's Sovereign Enclosures: Territory and the All-Affected Principle' (2014) 21 *Constellations: An International Journal of Critical and Democratic Theory* 560.

of All Affected Interests' ('PAAI') as a correct specification of AAP.<sup>7</sup> According to PAAI, people should have a say in all decisions that affect their interests. This still needs further clarification because we still do not know what 'a say' is supposed to mean, and the concept of interests also needs elucidation and, last but not least, it should be specified how interests can be affected. Depending on the answers to these questions, the class of people affected by state activities can become very large. Examples offer some clarification. In the 1980s, German environmental regulations allowed German industries to emit sulfur oxides which harmed Swedish forests (and thus, indirectly, Swedish citizens).<sup>8</sup> Being harmed by acid rain clearly affects a person's legitimate interests. According to PAAI, the Swedish citizens should therefore have had a say in the German decisions that led to the emission of sulfur oxides.

Yet, democratic states usually restrict influence on political processes to their own citizens, and these exert their influence mostly through political representatives rather than directly. Such practices might rely on an alternative understanding of AAP. According to the 'All Subjected Principle' ('ASP'), only persons who are subject to the laws and institutions of a state are entitled to full (and equal) political influence on the said laws and institutions.<sup>9</sup> Since Swedes are not subject to German laws, they need not be allowed to have 'a say' in German environmental decision-making. ASP corresponds much closer than PAAI to the actual practices of modern democracies, but this does not imply that it is normatively justified. PAAI appears normatively more plausible to quite a few observers. In fact, there is a lively dispute in political philosophy about which of the two, PAAI or ASP, is better suited to ground representation in democracies.<sup>10</sup>

Our own position is that PAAI and ASP are not strict alternatives. They should rather be regarded as complementary. That is, both are normatively valid, but they call for different representative entitlements. PAAI entitles persons to 'voice' in processes that lead to activities which affect the interests of the said persons. Hence, the affected persons or their representatives

<sup>7</sup> eg, Beckman, *The Frontiers of Democracy* (n 1); Goodin, 'Enfranchising All Affected Interests, and Its Alternatives' (n 6).

<sup>8</sup> Goodin, 'Enfranchising All Affected Interests, and Its Alternatives' (n 6) 49. For a discussion of the case from a negotiation-analytic perspective, see Cecilia Albin, *Justice and Fairness in International Negotiations* (CUP 2001).

<sup>9</sup> Goodin, 'Enfranchising All Affected Interests, and Its Alternatives' (n 6) 49; Beckman, *The Frontiers of Democracy* (n 1) 71; Näsström (n 6); Köhler (n 1).

<sup>10</sup> See the literature quoted in the preceding footnotes.

should be heard, and their arguments and demands should be seriously considered. It is not enough if the interests of affected persons are merely considered by the decision-makers without any chance for the affected to voice them themselves or via representatives. In our acid rain example, the affected Swedish citizens should be able to voice their concerns in German decision-making processes, eg, through spokespersons chosen by the affected Swedes.

However, should not *all* persons be allowed to speak in democratic processes, regardless of their affectedness? If democratic processes are regarded as vehicles for making good decisions (as theories of epistemic democracy claim), these processes should be influenced by the best of arguments, and since we do not know in advance who is going to proffer the best argument, we should listen to all comers. It seems legitimate to call for such a broad sweep, but it also appears legitimate to further differentiate. All sorts of people may exert their influence through free media and open public hearings, but it seems reasonable to institutionally grant persons whose interests are seriously affected by a decision a stronger voice. Their representatives may be allowed to voice their concerns and arguments in parliaments or even closed caucuses and thus exert a more direct influence on decision-making processes than the general public. However, we propose not to extend PAAI-grounded influence to voting at any level of the democratic process. We thus accept the standing practices of democratic states to a significant degree as morally legitimate. This specific meaning of our voice/vote distinction should be borne in mind. Claims that future people should have a voice in present political processes often include voting as a form of voice.<sup>11</sup> In our terminology, by contrast, voice and vote are alternatives. ‘Voice’ encompasses all forms of influencing decision processes merely by communication, whether directly or via representatives, ‘vote’ refers to a decision by a vote in or for political institutions.

Moreover, we suggest allocating voting rights according to a very restrictive understanding of ASP.<sup>12</sup> That is, voting in democratic assemblies should

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11 See eg, Ekeli, ‘Giving a Voice to Posterity – Deliberative Democracy and Representation of Future People’ (n 1); A Fung, ‘The Principle of Affected Interests: An Interpretation and Defense’, in Jack H Nagel J and Roger W Smith (eds), *Representation: Elections and Beyond* (University of Pennsylvania Press 2013).

12 This stands in contrast to authors who in the wake of Andrew Dobson, ‘Representative Democracy and the Environment’ in William M Lafferty and James Meadowcroft (eds), *Democracy and the Environment – Problems and Prospects* (Edward Elgar Publishing Limited 1996) already regard being affected as a sufficient condition for

be restricted to the elected representatives of people who, in a restrictive understanding, are subject to the laws and institutions of a state (or political community). The restrictiveness in question concerns the interpretation of the clause 'being subject to the laws and institutions of a political community'. In a straightforward sense, migrants who seek asylum or try to enter a state at the state's borders are subject to the state's laws.<sup>13</sup> They are surely treated according to these laws when they are allowed to enter and when they are rejected. It, therefore, seems to follow from ASP that migrants should have voting rights in the state to which they try to gain access. In fact, many persons who are not citizens of a state may claim voting rights in a community if we understand ASP as 'Simple ASP'.<sup>14</sup>

- *Simple ASP*: Persons have a moral right to vote for the legislative and political decision-making institutions of a political community if and only if the persons are subject to the laws of the community in the sense of being treated in ways specified according to these laws.

Against this, it may be objected that voting rights should only be granted to people who have no choice in being subject to the laws of a political community. According to this restrictive view, voting rights should only be granted to persons who, in a juridical sense, are subject to the laws of a political community without having the alternative to opt out. Persons able to evade subjection to the laws of a community simply by leaving the territory of a state or moving away from its borders are, on this view, not deeply enough subject to the coercion of law to be granted voting rights. This objection touches upon an important point. From a restrictive and if you like conservative perspective, voting rights to the main legislative or executive institutions of a state are such powerful vehicles of political influence that they should be granted only to people who are bound to feel the consequences of their decisions for the community. Whoever is allowed to make decisions of utmost importance for a community should, as far as practicable, also have to bear the consequences of their decisions, and negative consequences in particular. Moreover, from the restrictive perspective, we advocate that not any kind of consequence is relevant for the allocation

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having a right to vote, and others who assume such rights on the basis of a generously applied ASP (see below).

13 See Claudio López-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (OUP 2014); H De Schutter and L Ypi, 'Mandatory Citizenship for Immigrants' (2015) 45 *British Journal of Political Science* 235.

14 See Goodin, 'Enfranchising All Subjected' (n 9); De Schutter and Ypi (n 13).

of voting rights in sovereign political communities. The consequences that matter pertain to the basic tasks of states (or sovereign political communities), such as the provision of internal and external security, civic freedoms and basic welfare. Since voters decide upon the provision of these goods, they should also not be legally allowed to evade the consequences of their decisions in this respect. If we accept these considerations as the basis for the ascription of democratic voting rights, Simple ASP fails because it grants voting rights to persons who at any time may legally dissociate themselves in crucial respects (subjection to police force, taxation, war) from the community in which they have voting rights.

Of course, citizens may, to some extent, evade the consequences of their votes by living abroad as expats.<sup>15</sup> However, expats remain subject to key laws of the state of which they are citizens. They may be taxed and thus remain potentially accountable for spending they caused by voting in their country of origin. They may also be drafted for military service and thus be held accountable for security policies they supported. Hence, modern states may, at least from a juridical point of view, establish a reasonable congruence of influence and legal affectedness for their citizens, even if the citizens live abroad.

What about resident non-citizens? Some resident non-citizens may lack the resources to leave a state, and some may even be barred from returning to their state of origin.<sup>16</sup> Hence, they also become willy-nilly subject to the decisions a community takes with respect to the basic tasks of states. For such reasons, communities may be obligated to take care of needy non-citizen residents, and communities may have good moral reasons for offering citizenship to practically permanent residents. However, an offer of citizenship is not the same as offering voting rights to non-citizens. The right to dissociate themselves from a community and its fundamental concerns, which resident non-citizens have even if they may at a given point in time lack the means to exercise this right, may therefore constitute the main guiding principle for a denial of voting rights to non-citizens.

This is not to say that this perspective is morally without alternative. More generous criteria, like Simple ASP, can coherently be postulated and used for the ascription of voting rights to resident non-citizens or even

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15 On expats see eg, Claudio Lopez-Guerra, 'Should Expatriates Vote?' (2005) 13 *Journal of Political Philosophy* 216.

16 On non-citizen residents see *ibid.*; Lopez-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (n 13); De Schutter and Ypi (n 13), which hold a contrary position to ours.

representatives of migrants. We only insist that the extent to which a person needs to be subject to the laws of a community in order to ground voting rights is subject to competing interpretations. There is a considerable bandwidth of reasonably tenable interpretations, some being more inclusive or restrictive than others. If states opt for a restrictive interpretation, as they presently do by only granting voting rights to citizens, they remain normatively blameless as long as they act within the confines of reasonably adoptable interpretations. Therefore, states may adopt a reasonable interpretation of the ASP, which understands subjection to laws as juridically ineluctable subjection. Critics, of course, may legitimately try to politically change this state of affairs and push for a different moral majority opinion, but this does not render the existing practices of states morally wrong. In any case, here we will apply Political Modal Presentism based on the actual ascription of voting rights in modern democracies, which we regard as morally defensible. Consequently, we will rely on:

- *Narrow ASP*: Persons have a moral right to vote for the main legislative and political decision-making institutions of a political community if and only if the persons (a) are subject to the laws of the state in the sense of being treated by the state in ways specified by the laws, (b) cannot legally evade such subjection, and (c) a core set of their legitimate life concerns, which the state is supposed to effectively safeguard, is seriously affected by the laws.

Conditions (a) and (b) of Narrow ASP have already been discussed and justified. Condition (c) only spells out what has also been indicated above. There are clusters of concerns for the satisfaction of which people unite and form political communities. The concerns that the respective communities are supposed to secure or support in the European tradition are life, liberty, property, basic welfare, and protection against arbitrary violence, to name only the most prominent traditional issues. According to the narrow interpretation we adopt, only these concerns matter for calibrating ASP.

However, condition (c) also directs our attention to issues of environmental depletion and, above all, the emerging climate crisis. Since the environmental policies of states affect core concerns of human life on a global scale, one might think that condition (c) of Narrow ASP grounds demands of voting rights of all affected persons in existing states or even

grounds calls for a world state.<sup>17</sup> Yet, this view relies on PAAI, not ASP. The affected persons are often not subject to the laws of the existing states in question (conditions (a) and (b)) but only affected by their policies and, if you like, by the outcomes of their laws' application to other persons. Moreover, as long as no alternative institutions exist that all reasonable persons ought to entrust with the task of safeguarding their core concerns of security, freedom, and welfare, nobody needs to abandon the state as a trustee of such concerns. All else may be a utopia, whether a remote or a more nearly realisable one, and nobody needs to entrust the foundations of their lives to untried institutions with uncertain viability and effectiveness. Hence, Narrow ASP can be upheld in the world as it is, and nothing more is required for our argument. Note that we do not deny the problematic global effects of state legislation. If procuring the core concerns of a decent life is the main constitutive reason for forming a political collective that does the job, states cannot succeed on their own, at least as far as climate policy is concerned. However, if no political organisation is available here and now, which may trustworthy implement responsible climate policies, we can, at best, have a moral duty to strive for one. In the meantime, the state need not be abandoned as a decision-maker because it still procures security, freedom, and welfare and can also be tasked with climate change mitigation.

If we start from the assumption of a predominantly state-based international order and regard it as morally legitimate to grant only citizens voting rights in states, Political Modal Presentism may be used to delimit the voting rights of future persons. Since future persons are not to be put in a better position than the presently living, only future citizens of existing states might, by proxy, attain voting rights. It suffices to discuss this category of future persons to determine whether future persons should be represented with voting rights in present democracies. However, before

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17 AAP is sometimes used to argue for a 'world government' or a 'global democracy' (eg, Torbjörn Tännsjö, 'Future People, the All Affected Principle, and the Limits of the Aggregation Model of Democracy' in Toni Rønnow-Rasmussen and others (eds), *Hommage à Wlodek: Philosophical Papers Dedicated to Wlodek Rabinowicz* (Department of Philosophy Lund University 2007); Goodin, 'Enfranchising All Subjected' (n 9), and thus for abandoning the still prevailing statist international order. If such demands are considered as utopian and infeasible for at least the near future, the question arises how the representation of future people might be normatively justified under the political auspices of non-ideal, existing democracies. This is the question that preoccupies us here.

we deal with this issue, let us look at PMP a bit more closely to see why it is warranted. At first glance, PMP seems to privilege presently living persons over absent past and future persons by taking them as a standard for judging moral legitimacy. This view, however, is misleading. PMP is consonant with equality between persons regardless of the period in which they live.<sup>18</sup> In fact, the assumption of such equality is its driving concern because equality implies that we should only grant a future person a right under conditions XYZ if we also grant the same right to a presently living person under conditions XYZ. Simple logic then demands that if we deny a presently living person a right under conditions XYZ, a future person should also lack that right under the same morally relevant circumstances – and this is Political Modal Presentism.

Note that PMP is only *ceteris paribus* valid, i.e., it holds unless a moral difference between periods can be established. If it could be shown that a different global political order ought to be normatively presupposed in the future, we would not be entitled to argue on the basis of the present predominantly state-based international order and democratic institutions which grant voting rights only to citizens. It is, therefore, important that a different political order (eg, a world state or stronger international institutions) might, at best, be *ideally* demanded. By contrast, we engage in non-ideal considerations. Given that it cannot be concluded that an assumed ideal order would be achieved if all people do what is non-ideally morally required of them, we cannot presuppose that a world-state or stronger international institutions can and ought to be presumed at the future time we consider. PMP then encourages us not to speculate asymmetrically in favour of future persons. Future persons should not have more rights than analogously positioned present persons just because they might live under more ideal moral conditions. Unequal treatment needs to be justified by moral differences, which are not merely speculative and should not rely on risky bets on a better future.<sup>19</sup>

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18 This claim does not preclude that at different times, different morally relevant conditions may hold. Eg, future societies may be much richer than presently existing ones and therefore grant more welfare rights. However, if we hold morally relevant conditions constant, a mere difference in time should be morally irrelevant. In other words, there should be no pure moral time preference.

19 Here, we assume uncertainty in the sense of lacking reliable numerical probability assessments. If it could be shown that a particular institutional arrangement will exist in the future with a reliable high probability  $p$ , it might become normatively authoritative (for instance, if  $p$  amounts to what traditionally is called 'practical

## 2. Narrow ASP and the Voting Rights of Future Citizens

We may expect that future persons will be affected by the consequences of present policies and laws, although it is less clear what kinds of people will be affected and to which extent. For the future effects, eg, of current greenhouse emissions, some broad categories of harm should nevertheless be foreseen. Hence, PAAI may be used to argue for the representation of future affected persons in present democratic processes.<sup>20</sup> However, we only admit to representation with voice. Consequently, representatives of future persons of which nothing more is known than that they are affected, future persons should, at best, have a voice but no voting rights in present political processes. However, there is a category of future persons which we may, as things stand, expect to fall under ASP. These are the future citizens of states.

If we operate under the premise that present states exist as sovereign political agents in the future, it may plausibly be assumed that they will have significant citizen populations. However, the conditional first part of this sentence, of course, engenders some uncertainty. It is, as outlined, possible that in the more or less distant future in which our future persons live, states are no longer the most important political agents in the international system. Global institutions may encroach on most of the traditional roles of states, including the procurement of basic concerns of life, and therefore global institutions might be the political units to whose laws the descendants of present citizens of states will be subject. Moreover, for European states, the EU might be the future political unit to which ASP refers. Yet, as argued, such possible political futures should not be used to

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certainty'). However, we need not cater for this complication because distant political futures cannot be predicted with reliable high probability.

20 There is a worry whether future people can be affected by the policies of present states at all (Tannsjö (n 17); Clare Heyward, 'Can the All-Affected Principle Include Future Persons? Green Deliberative Democracy and the Non-Identity Problem' (2008) 17 *Environmental Politics* 625) especially in light of uncertainties about their effects and problems arising from the so-called *Non-Identity Problem* (see eg, *ibid.*; Bovenkerk (n 2)). However, there is a broad stream of literature showing that *NIP* does not rule out duties of justice towards future people (Melinda A Roberts, 'The Nonidentity Problem', *Stanford Encyclopedia of Philosophy* (Fall edn, 2019) <<http://plato.stanford.edu/entries/nonidentity-problem/>> accessed 12 September 2021 for an overview, and Rudolf Schuessler, 'Non-Identity: Solving the Waiver Problem for Future People's Rights' (2016) 35 *Law and Philosophy* 87 for the view of one of the present authors) and the discussion may be restricted to confidently expectable consequences (eg, flagged out as such in IPCC reports).

increase the political powers of future persons unless the relevant political developments can be predicted with high confidence. In this respect, it also needs to be accounted for that an assumed transition to alternative political systems would deprive present states of the obligation to cater for future people due to ASP. After all, future persons will, under this condition, not be subject to the laws of precursor states once a transition to new political systems has occurred.

For implementation in present states, accordingly, only voting rights for representatives of future citizens of these states need to be contemplated. One may object that the continued existence of the states in question cannot be taken for granted even if the international order remains state-based. Some states may simply cease to exist. Some regions of states may become independent or join another state (or be annexed). Against this, we maintain that states are persistent entities. Once created, most states persist for historically long periods. Most importantly, however, states operate under a legal fiction of their own persistence. International law does not proceed under the assumption of an expected decay of states but without temporal limits for their existence, and this assumption is commonly considered morally legitimate. For this reason, the possibility of a state's dissolution does not impugn our considerations concerning the rights of distant future citizens.

A further difficulty is that laws change more regularly and more often than states lose their legal authority. Certainly, legal systems also operate with a fiction of continued validity of laws without presuming any regularity of 'decay'. Yet, such fictions only make sense if they are not utterly unrealistic. In the case of state continuity, reality tendentially confirms the fiction. For laws, empirical studies are needed to show whether we can reasonably expect that distant future citizens (eg, born thirty years or more in the future) will live under the sway of present laws. Lacking such information, we may simply analytically distinguish between more and less persistent kinds of laws. Constitutional laws will probably belong to the former category.<sup>21</sup> In any case, ASP may only justify voting rights for future citizens with respect to laws which can reasonably be expected to be persistent. We should, therefore, at best, grant voting rights to representatives of future citizens in some domains of legislation but not in all.

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21 Axel Gosseries, 'Constitutions and Future Generations' (2008) 17 *The Good Society* 32.

The practical application of this condition may appear difficult. In order to restrict voting rights for future citizens to persistent kinds of laws, an independent body must determine which laws can ultimately be deemed persistent. Given the encompassing consequences, decisions upon a law's persistence should then be made cautiously and by carefully safeguarding institutional integrity.

This caveat, however, only becomes relevant if we do not reject voting rights for representatives of future citizens altogether. In fact, we will now proceed to show that representatives of future citizens should generally not be endowed with voting rights. If Narrow ASP is accepted, its conditions (b) and (c) exclude future citizens from the domain of people who might claim voting rights by virtue of the principle.

Admittedly (b), the non-existence of a right to opt out appears complicated. For any given law, it is for future citizens expectably not more legal to evade being subject to the law by leaving the territory of a state than for presently living citizens. Thus, they seem in the same way subject as present citizens to condition (b) of Narrow ASP. However, we should remember that the underlying issue is that voters should not be able to avoid the coercion resulting from a law they pass, especially not if they impose the burden of the law on others. An issue of equality, therefore, becomes relevant here, which does not arise as long as Narrow ASP only applies to contemporaries. In this case, all persons subject to the law have an analogous and equal position with respect to the coercion that the law potentially exerts. However, this equality is violated for future citizens. Future citizens can abolish a law and thereby get rid of the coercion it implies, although present citizens have been subject to it.<sup>22</sup>

At first glance, this inequality may be considered as not very different from the inequality young and old persons face with respect to being subject to laws. At any point in time at which a law is abolished or changed, a younger person will expectably have been less long under its coercion than older persons. However, this is a fact that young people can hardly strategically exploit because at any time they abolish a law, they also abolish it for older persons. The situation is different if future citizens become represented by presently living caretakers. The representatives may be pivotal in introducing a law that is onerous for the presently living. Future citizens may then free themselves from the law as soon as they come to decide on

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22 A similar argument against the binding force of present laws for future people is made by Beckman (n 2) 781.

it. Thus, representatives of future citizens with voting rights can exploit an asymmetry of power in favour of their future constituents. The said representatives may inordinately burden presently living persons who are subject to a law, knowing that their clients will in the future be able to throw off the burden.

We may conclude that an asymmetry of options for legally ridding oneself of subjection to laws exists between present and future citizens. Future citizens should, therefore, not be granted voting rights if the equality between all persons subject to a law is to be salvaged.

Condition (c) is beset by similar problems of asymmetry. The condition ensures that the persons falling under Narrow ASP form a community whose members are co-dependent on each other with respect to their chances of leading good lives. These chances are usually safeguarded by the core activities of states which traditionally comprise the provision of internal and external security (police and military), health care, old-age pensions, education, and basic social welfare. Taxation is the main instrument for financing the respective tasks, and thus the persons falling under Narrow ASP are also the persons that form the permanent tax base of a state. Narrow ASP claims that only persons who are in this way co-producers, co-beneficiaries, and risk sharers of basic activities of the state ought also to be co-deciders in the state's political processes. It is, therefore, important to note that future citizens are not subject to the mutual interdependence of deciding and being affected by the core tasks of the state, which characterises the community of present citizens. As persons that do not yet exist, future citizens cannot stand in the reciprocal relation to present citizens, which characterises the state as a community that shares benefits and risks from decisions concerning basic tasks.

The consequences of this asymmetry can be momentous. Representatives of future citizens might pave the way for decisions on the internal and external security of a state which might be of relatively small consequence for future citizens but affect the presently living momentously. The same is true for economic and welfare policies. Of course, it is plausible to assume that future citizens will in some way be also affected by the respective decisions, but the crucial point is that they will expectably be affected in crucially different ways than the presently living. There will therefore exist a massive asymmetry in consequences so that the persons falling under Narrow ASP would no longer form a co-dependent community with their presently living predecessors. Take the example of going to war. If we talk about an enemy that might destroy or impose heavy post-war burdens on a

state, like in WWI or WWII, the decision to engage in war is existential for the presently living citizens. Their lives will expectably be severely affected by the war. The same does not necessarily hold for future citizens of the state. Wars like WWI and WWII had significant social and cultural impact. However, at the same time they had merely small long-term negative effects on the economies of the countries involved. Their economic success or relative failure was determined by factors that were, in the long run, independent of the wars. After WWII, the defeated and occupied aggressors, Germany and Japan, emerged as economically more powerful than ever.

One may, of course, object that such asymmetries between present and future citizens are precisely what representatives of future persons are supposed to balance. They might counterbalance the self-serving bias that the representatives of the presently living implement at the cost of future generations by overspending and turning a blind eye to environmental degradation.<sup>23</sup> On the whole, as might be argued, pro-present and pro-future biases counterbalance each other and thus produce a more or less fair result. This, however, is in no way warranted. A balancing effect is only to be expected in a few fields in which the interests of present and future citizens meet. The thrift of representatives of the future, for instance, might counterbalance the spending mania of present parliamentarians. Yet, in many respects, the interests of present and future people are not aligned and may well combine to produce lose-lose outcomes. Representatives of the future may, for instance, neglect present military security in favour of environmental protection. Representatives of the present may prefer the opposite. It is not clear, however, whether political logrolling can be expected to create a reasonable compromise by balancing these tendencies. Logrolling may lead to war *and* environmental depletion.

A particular problem exists with respect to social justice. Future citizens have no immediate interest in social justice for the presently living. Their representatives might vote for economic and environmental policies which favour the well-being of future generations regardless of the possible unfairness of these policies for the less well-off today. The political representatives of the worse-off thus face a political battle on two fronts, against economic neoliberals who do not care much about social policies and against representatives of the future who also do not care. There is no counterbalancing

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23 On the assumption of intertemporal myopia in standard economics, see eg. Shane Frederick, George Lowenstein and Ted O'Donoghue, 'Time Discounting and Time Preference: A Critical Review' (2002) 40 Journal of Economic Literature 351.

here. Voting rights for representatives of future citizens straightforwardly lead *ceteris paribus* to a deterioration of the position of the socially weak. Hence, the expectation is unfounded that voting rights for representatives of future citizens would lead to a net gain of justice in present democracies. Counterbalancing may be expected for myopia concerning debt accumulation and environmental protection. However, this comes at the price of a devaluation of security and social policies in present societies. There is no accepted metric that might show whether these countervailing tendencies in sum produce a net gain or loss. It is not even possible to claim that environmental concerns should prevail because they amount to a life-or-death threat for humanity as a whole. Security issues invoke the same threat. A global nuclear war might also lead to the extinction of humanity. Therefore, in final consideration, we have no good reason to assume that a balancing of interests between present and future persons, which might justify the acceptance of inequality between them with respect to Political Modal Presentism, is possible.

### 3. Conclusion

We have shown why ASP should not be used for granting voting rights to representatives of future people. The version of ASP we apply is restrictive, reflecting legitimate present practices of allowing only the citizens of existing states and their representatives to vote in the major political institutions of a state. Future citizens of existing states are, by extrapolation from these practices, the only future people that might be given voting rights. However, this would violate two conditions of our restrictive Narrow ASP. Future citizens are, contrary to condition (b), asymmetrically able to evade subjection to laws of present political communities simply by changing the laws. Moreover, present and future citizens of states fail to share the basic risks and burdens of the provision of basic goods such as security, liberty, and help in need (condition c). Therefore, they do not form the sort of community to which ASP should be applied (hence, we also assume that *Simple ASP* is not a sufficient criterion for forming a demos).

In contrast to some other sceptics concerning the political representation of future people, we do not reject all kinds of their political representation. Distinguishing between voice and vote, we argue for institutionalised rights of voice for future people. PAAI is the adequate norm for granting rights to be listened to (with a suitable calibration of affectedness). However, PAAI

should not be used for granting voting rights to representatives of future persons because, as PMP implies, this would lead to unacceptable consequences. PMP appeals to us as a very plausible principle, which claims that future persons should not have rights or entitlements which presently living persons with analogous roles or characteristics lack. Hence, Simple ASP and PAAI should not be applied to future persons without applying them to the presently living, and application today would lead to a huge extension of the electorate for the legislative and executive institutions of present states. Not only migrants who have no realistic chance to attain decent living conditions unless they migrate to a wealthy state would be entitled to a vote in this state. Military interventions would automatically entitle insurgents in the state in which the intervention occurs to vote in the intervening states. To sum up, a democratic order as we know it would have to be abandoned if voting rights were granted on the basis of Simple ASP and PAAI. Narrow ASP is the only principle that is consonant with current democratic practices, and it does not grant voting rights to representatives of future people.