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## RESISTING THE ALLURE OF FUTURE GENERATIONS' "RIGHTS"

**Abstract:** *The language of future generations (FG) has become prominent in climate litigation; they are increasingly being treated as present rightsholders. Using a constitutional perspective, the paper argues that FG cannot function as present rightsholders since the category is legally vague, conceptually unstable, and epistemically indeterminate, preventing identification of rightsholders, specification of the scope of rights, and their operationalization in adjudication. The paper further shows that reliance on FG rights is neither necessary nor effective in tackling climate change, risking the shift of attention away from present duties and responsibility. Constitutional rights frameworks already contain objective norms and state duties that can safeguard future conditions without attributing rights to non-existing individuals. The paper argues we should resist the allure of FG rights and focus on legally coherent tools capable of advancing inter- and intragenerational justice.*

**Key words:** Climate Discourse, Climate Litigation, Future Generations, Rightsholders, Fundamental Rights, Objective Dimension of Fundamental Rights.

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## 1. INTRODUCTION

This paper examines whether future generations (FG) can plausibly and desirably be treated as present fundamental rightsholders.<sup>1</sup>

In the face of the worsening climate crisis, the use of “future generations” and “rights’ to future generations” to legitimizing and grounding climate litigation is growing. Few would dispute the urgency of protecting the planet for those who will live in the future, and of taking immediate measures to tackle climate change. In contrast, the legal consequences of advancing a vague or inconsistent notion of “future generations’ rights” on standing, justiciability, remedies, and institutional responsibility, remain insufficiently examined.

Legal literature devotes attention to various aspects of FG: there is substantial analysis developed especially by legal philosophers, internationalists and human rights scholars.<sup>2</sup> As seen in the dialogue between Margaretha Wewerinke-Singh, Ayan Garg, Suhubhangi Agarwalla, Peter Lawrence, and Stephen Humphreys, it is intuitive to advance the discourse on “future generations’ rights”. On the other hand, as carefully pointed out by Humphreys, the matter claims deeper legal research.<sup>3</sup> This need is especially acute in constitutional or fundamental rights reasoning, where rights-talk must remain operationally compatible with adjudication, enforceability, and democratic legitimacy. Further development is necessary not only for strengthening the legal and political efforts for urgent climate action, but also to ensure that these measures take rights seriously.

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- 1 For a first approach to this discussion, see Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023, In Defence of Future Generations: A Reply to Stephen Humphreys, *European Journal of International Law*, Vol. 34, No. 3, pp. 651–668; Lawrence, P., 2023, International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys, *European Journal of International Law*, Vol. 34, No. 3, pp. 669–682; Humphreys, S., 2023, Taking Future Generations Seriously: A Rejoinder to Margaretha Wewerinke-Singh, Ayan Garg and Shubhangi Agarwalla, and Peter Lawrence, *European Journal of International Law*, Vol. 34, No. 2, pp. 683–696; but also, among many others, Cordonier Segger, M. C., Szabó, M., Harrington, A. R., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press; Gosseries, A., 2008a, Constitutions and Future Generations, *The Good Society*, Vol. 17, No. 2, pp. 32–37; Linehan, L., Lawrence, P., (eds.), 2021, *Giving Future Generations a Voice: Normative Frameworks, Institutions, and Practice*, Cheltenham, Edward Elgar Publishing.
  - 2 Due to length limitations, a review of this literature will not be presented in this paper. Plenty of indication can be found in the references in the footnotes.
  - 3 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023; Lawrence, P., 2023; Humphreys, S., 2023.

The appeal for FG “rights” raises various legal questions not yet satisfactorily answered in the literature. For example: is it helpful to distinguish between present and future generations regarding protection against climate change? Is it possible to consider all future possible individuals as belonging to one homogenous category, with similar rights and obligations? Is FG a well-defined and suitable legal category able to function as a present rightsholder? Which rights do/should FG presently have? Who speaks for FG? Do we need to grant FG present rights in order to tackle the climate crisis, or are there other legal means more appropriate for protecting FG and addressing climate change?

Taken together, these questions concern both conceptual coherence (who counts as FG, and with what rights) and institutional operability (who can invoke those rights, and with what legal effects). These questions show that a more systematic approach to FG as (present) rightsholders still seems to be lacking, especially regarding constitutional rights theory (or even human rights theory).<sup>4</sup> This article does not aim to exhaust the topic or provide a comprehensive survey of case law<sup>5</sup> and domestic legal orders.

In this paper, I focus on approaching what I consider the most important inconsistencies in the current use of FG rights in the climate discourse.<sup>6</sup> The analysis is centered on two issues: (i) the definitional difficulty of identifying FG as a coherent legal category, and (ii) the constitutional challenges posed by granting present rights to subjects who do not (yet) exist. While the discourse on FG spans moral philosophy,

4 As timely noted by Nolan, “the effects of the lack of clear definitions of FG for the purposes of constitutional law in many jurisdictions should not be underestimated.” (Nolan, A., 2024, Children and Future Generations Rights before the Courts: The Vexed Question of Definitions, *Transnational Environmental Law*, Vol. 13, No. 3, p. 542).

5 So much has been written on climate litigation that it is a herculean task to select references. For a recent special issue, with many references, see Mayer, B., Asselt, H. van, 2023, The Rise of International Climate Litigation, *Review of European Community & International Environmental Law*, Vol. 32, No. 2, pp. 175–184.

6 I have been working on the issues addressed here for some time and have previously published earlier and more limited versions of some of these arguments in Netto, L., The struggle is now: why we should be cautious about granting present rights to future generations, in: Izyumenko, E., (ed.), 2025b, *Verfassungsbooks*, Berlin, Max Steinbeis Verfassungsblog gGmbH, pp. 47–60; Netto, L., 2024, Resisting the allure of future generations’ rights: the ECtHR’s approach to climate action in KlimaSeniorinnen, *Völkerrechtsblog*, 19 April, (<https://voelkerrechtsblog.org/resisting-the-allure-of-future-generations-rights>, 18. 4. 2026). The present contribution offers a substantially more developed and systematic account, advancing additional arguments, engaging more extensively with the literature, and situating the analysis within a broader constitutional framework.

human rights and international law, this paper deliberately adopts a constitutional and fundamental rights perspective, within which justiciability, correlativity and institutional enforceability are decisive analytical criteria. Building on these two points, I also ask the question whether granting present fundamental rights to FG is an adequate means to tackle the worsening climate crisis, or whether relying on FG rights risks obscuring other, more consistent legal strategies. In the analysis I take into account that, on the one hand, many praise the advancements made by relying on FG in climate litigation and reinforce the need to enhance this discourse and its symbolic and emancipatory force.<sup>7</sup> On the other hand, I have doubts whether this strategy of using FG “rights” is capable of addressing the causes of climate change or environmental degradation, and whether it might, on the contrary, even reinforce power relations that are deleterious for vulnerable social groups and for our planet.

The argument proceeds in four steps: (i) the definitional instability of FG; (ii) the legal difficulties of attributing present rights to non-existing subjects; (iii) the limited explanatory and instrumental value of FG rights for tackling climate change; and (iv) the mistaken assumption that law lacks future-oriented tools absent FG rights. On this basis, I argue that treating FG as present fundamental rightsholders is neither conceptually coherent nor legally viable within the current constitutional rights frameworks.

## 2. RIGHTS TO FUTURE GENERATIONS?

### 2.1. FUTURE GENERATIONS?

The use and appeal to talk about and on behalf of FG seems to be increasingly present in newspapers, scholarly publications, politics, legislation,<sup>8</sup> and litigation.<sup>9</sup> For the purpose of this paper, I will refer to this broad discursive field as the climate discourse. In this discourse, FG often appear as a given, as an established concept. Yet the apparent self-evidence of the category conceals significant legal indeterminacy once FG are invoked as potential rightsholders. It may be counterintuitive and quite unpopular to look critically at this “almost-becoming-sacred entity” – the

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7 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023.

8 Araújo, R., Koessler, L., 2021, The Rise of the Constitutional Protection of Future Generations, *LPP Working Paper*, No. 7. For another perspective, see Anthis, J. R., Paez, E., 2021, Moral Circle Expansion: A Promising Strategy to Impact the Far Future, *Futures*, Vol. 130, p. 102756.

9 For more references on this, see Nolan, A., 2024.

future generations.<sup>10</sup> I argue, however, that it is necessary to define this category more specifically in order to be able to use it consistently in the legal domain<sup>11</sup> and to address the issue of FG rights systematically.

The absence of a shared possible legal definition creates difficulty. To begin with, FG are frequently mentioned without further specification; in other cases, there is extensive discussion about what falls under FG: present children,<sup>12</sup> the next generation(s), or people not yet born in general.<sup>13</sup> To illustrate this, I recall Bridget Lewis description that FG is a “spectrum that includes children and young people today, through to generations to come”. She notes that the concept has both individual and collective dimensions, nonetheless, focusing primarily on generations “not yet born”, while also relying on children’s litigation as a way to advance the interests of FG. This is a good example of how in scholarly work the term shifts between children, unborn people, and individual and collective meanings, without settling on a defined legal category.<sup>14</sup> Such shifts may be analytically productive at a discursive level, but they pose difficulties for legal reasoning, which depends on stable categories of rightsholders.

Within the United Nations system, we find the definition that “[f]uture generations are ‘all those generations that do not yet exist, are yet to come and who will eventually inherit this planet’. While children and youth are part of present generations and not future generations, their lives extend further into the future than those of adults and they will be more affected by the short-term thinking and poor decisions being made today than the adults making them. This proximity to future generations means that children and youth are oftentimes referred to as ‘future decision makers’ or ‘future leaders’, but they alone should not bear the burden of representing future generations.”<sup>15</sup>

10 Humphreys, S., 2023; Lawrence, P., 2023. On the intuitive appeal of protecting the long-term future, as well as the extent to which law can and should protect it, with an interesting comparative perspective, see Martínez, E., Winter, C., 2022, *Cross-Cultural Perceptions of Rights for Future Generations*, *LPP Working Paper*, No. 6.

11 Legal scholarship should try to define “future generations”, in order to use the term with some legal precision. On this issue, see Herstein, O. J., 2009, *The Identity and (Legal) Rights of Future Generations*, *George Washington Law Review*, No. 77, p. 1173.

12 Daly, A., 2023, *Intergenerational Rights Are Children’s Rights: Upholding the Right to a Healthy Environment through the UNCRC*, *Netherlands Quarterly of Human Rights*, Vol. 41, No. 3, pp. 132–154.

13 This discussion and its importance can be seen, for example, in the development of the subsequent versions of the Declaration on Future Generations of the United Nations.

14 Lewis, B., *Protecting Environmental Human Rights for Future Generations*, in: Baber, W. F., May, J., (eds.), 2023, *Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges*, Cambridge, Cambridge University Press, p. 32.

15 United Nations System Chief Executives Board for Coordination, *United Nations System Common Principles on Future Generations*, UN doc. CEB/2023/1/Add.1 (4 May 2023).

From this definition, one might think that there is enough clarity to address FG as a legal category, however, when placed in time, the category rapidly loses its boundaries: every second, FG are becoming present generations, since babies are constantly being born. In addition, “all those generations” already implies a multiplicity of distinct generations within the broader category FG. The concept of “yet to come” remains largely abstract. Moreover, the language surrounding duties to the future and intergenerational equity often lacks clear distinctions, as illustrated in the excerpt: “Intergenerational equity can be addressed and understood through several different lenses, which offer diverse insights on balancing the rights and aspirations of current and future generations including children and youth.”<sup>16</sup> The boundaries are far from clear; as a result, the definition fails to delimit a legally operable group capable of bearing rights or correlating duties.

As Aoife Nolan shows, international human rights law frequently blurs children and FG, producing conceptual confusion about both categories. She notes that “in all of these contexts there have been increasing linkages made between the rights of children and those of future generations” especially in climate-related litigation, where environmental harms are framed as affecting children both in the here and now and as future generations. Nolan demonstrates that the very “status” of children in relation to FG is contested: while some argue that “children per definition embody and represent both current and future generations”, others warn that using children “as a proxy or [...] ‘shortcut’ for future generations” risks “an under-theorization of rights for future generations.” She further emphasizes that international bodies themselves lack clarity, noting that the UN Committee on the Rights of the Child is “not working with a clearly defined understanding of ‘future generations.’” The result, she argues, is that “where there is no clear definition of ‘future generations’ for IHRL, then there can be no clear answer to the question of who qualifies for FG rights claims.” Nolan’s analysis supports the conclusion that FG is a vague and unstable category in international human rights law, frequently conflated with children despite their distinct legal “status”.<sup>17</sup>

Mikkel Knudsen, Toni Ahlqvist and Amos Taylor likewise underline that FG is a deeply indeterminate category, both in theory and in prac-

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16 United Nations System High-Level Committee on Programmes (HLCP), Core Group on Duties to the Future, *Discussion paper: Duties to the future through an intergenerational equity lens*, Chief Executives Board for Coordination (CEB) (13 February 2023).

17 Nolan, A., 2022, *The Children Are the Future – Or Not? Exploring the Complexities of the Relationship between the Rights of Children and Future Generations*, *EJIL:Talk!*, 26 May, (<https://www.ejiltalk.org/the-children-are-the-future-or-not-exploring-the-complexities-of-the-relationship-between-the-rights-of-children-and-future-generations>, 18. 4. 2026).

tice. Reviewing core sustainable development instruments, they note that international documents use the term repeatedly but that “none of the documents defines future generations,” even though they are invoked to define sustainable development itself. Surveying future scholars and foresight experts, they find “remarkable variety” in their answers to who counts as FG, ranging from “children and youth already living today”, to people living in the next few decades, the next few centuries, or simply “future people whose lives will be significantly affected by our decisions”, and conclude that participants in law and policy debates “may not be discussing the same things” when they use the term FG.<sup>18</sup> This plurality suggests that references to FG often rest on unarticulated assumptions about time, risk, and responsibility, which differ significantly across actors.

A recent policy report on the legal “status” of FG in European law, prepared for a non-governmental advocacy organization, shows the difficulties of defining FG and the inconsistencies that result thereof. First, it asserts that “the rights and interests of children and future generations are distinct legal categories” yet immediately acknowledges “obvious synergies and overlaps” between them,<sup>19</sup> thereby blurring the boundary purportedly drawn. Second, the document constructs FG through multiple legal pathways: as beneficiaries of “solidarity between the generations” under Article 3(3) TEU, a concept traditionally applied to present age groups;<sup>20</sup> as unborn persons implicit in the Brundtland definition of sustainable development; and as younger cohorts suffering “age-based discrimination” or “birth cohort discrimination”.<sup>21</sup> Finally, the report uses several unclarified synonyms, including “posterity”, “later generations”, “subsequent generations”, and “future peoples”, interchangeably with FG,<sup>22</sup> despite their possible distinct legal meanings. These shifts suggest that FG functions as a vague and malleable category rather than a coherent legal subject.

Pedersen and Sulyok indeed underline how fluid and contested the notion of FG remains. They note that the symposium they introduce “draws on normative developments and case law featuring a range of future generations legal concepts” whose “conceptual contours have been in constant flux”. Alongside the principle of intergenerational equity they list

18 Knudsen, M., Ahlqvist, T., Taylor, A., 2023, Defining “future generations”: Epistemic considerations on conceptualizing a future-oriented domain in policy and law-making, *Journal of Futures Studies*, Vol. 28, No. 2, pp. 3–19.

19 Sulyok, K., 2024a, *Protecting the Interests of Future Generations by the European Union: An Overview of the Existing Powers and Legal Bases in EU Law*, Brussels, Jesuit European Social Centre, p. 10.

20 *Ibid.*, p. 17.

21 *Ibid.*, p. 8.

22 *Ibid.*, pp. 7, 8, 9, 10, 11, 14.

“the rights and interests of future generations, their needs (which lie at the heart of the sustainable development concept), intergenerational justice, solidarity, and various domestic doctrines”, while conceding that these interests or rights “should be distinguished doctrinally from distinct categories, such as the rights of children and intragenerational equity,” yet that “such a clear distinction [...] is sorely lacking in the judicial practice.”<sup>23</sup> They further emphasize that legal systems adopt different “temporal configurations” of the group, ranging “from several centuries to much shorter time spans,” and that “the concept of future generations may include present-day minors or denote only generations not yet born.”<sup>24</sup> Rather than resolve these tensions, they expressly decline to “narrow down the temporal configurations” or “choose any one of these temporal conceptualizations,” treating them all as acceptable so long as they counter “the presentist focus of the prevailing legal paradigm.”<sup>25</sup> Even proponents of FG litigation, therefore, acknowledge that FG functions as an intentionally open and heterogeneous legal category, with blurred boundaries in particular vis-à-vis children. From a constitutional perspective, however, such openness is not a neutral feature but a source of legal uncertainty.

In the Maastricht Principles, which are increasingly being referred to, the concept of FG is framed as being part of a “continuum”. This acknowledges that FG consist of “those generations that do not yet exist but will exist and who will inherit the Earth.” This category includes persons, groups, and peoples yet to be born, thereby situating them within an ongoing succession of generations. This expansive framing immediately raises questions about legal coherence and right-holding capacity. At the same time, the Principles emphasize that children and youth hold a distinct and immediate place within this “continuum”: they are “closest in time to generations still to come” and therefore “occupy a unique position” with a crucial role in the transition toward long-term, intergenerational governance. Their perspectives and participation in decision-making concerning long-term and intergenerational risks must thus be given special weight. From another perspective, considering the moral and legal complexities associated with defining the legal “status” of the not-yet-born, the Principles explicitly clarify that “nothing in these Principles recognizes any rights of human embryos or fetuses to be born” and that they do not impose “an obligation on any individual to give birth to another,” nor may they be interpreted as permitting any interference with the bodily

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23 Pedersen, O. W., Sulyok, K., 2024, Future generations litigation and transformative changes in environmental governance, *Transnational Environmental Law*, Vol. 13, No. 3, p. 468.

24 *Ibid.*

25 *Ibid.*, pp. 468–469.

autonomy of women, girls, or others who can become pregnant. While this boundary is understandable for clear normative and ethical reasons, it also exposes a technical tension in legal coherence: the framework aspires to protect FG as rightsholders in a “continuum” yet necessarily excludes *nasciturus*-based rights to avoid conflicts with established reproductive autonomy and human rights norms.<sup>26</sup> This tension is central to any analysis of the rights of different rightsholders in legislation, policy design and adjudication. The exclusion of *nasciturus*-based rights the Principles does not seem to be a systematic solution for this tension.

Still analyzing the aspects brought about by these Principles, it is important to reflect on the recurrent appeal to indigenous peoples’ worldviews as a way to base the idea of FG. This inspiration is valuable, but it also requires contextual nuance. In many indigenous traditions, FG are not conceived as a separate class of rightsholders in conflict with the present, but as part of a collective continuity that binds together the past, present, and future, forming the integral whole of the people’s identity. This is apparent in the oral proceedings before the International Court of Justice in the advisory opinion requested under UNGA Resolution 77/276. In the hearings of 2 December 2024, speakers repeatedly referenced FG alongside past and present ones. Cynthia Rosah Bareagihaka Houniuihi spoke as “the living embodiment of the voices of our people, past, present and future,” describing land as a “living, timeless place where generations past, present and future converge, interconnected and sustained in an unbroken cycle of life. It is upon our land that our values and principles are rooted, preserved and transmitted across generations.”<sup>27</sup> Such formulations seem to show that, in this context, FG are embedded in a relational and communal worldview, rather than in a legal category of distinct rightsholders. Transposing such conceptions into positive law without careful adaptation risks mischaracterizing both the worldview itself and the legal effects it is meant to support. Nevertheless, this inspiration is increasingly taken up in global climate discourse, sometimes in forms that seem to oversimplify the underlying worldview. This borrowing may unintentionally contribute to further definitional complexities, including vague references to group

26 Office of the United Nations High Commissioner for Human Rights (OHCHR), *Maastricht Principles on The Human Rights of Future Generations* (3 February 2023). Procreative rights certainly should be discussed. The point here is to illustrate, through a discussion on procreative rights, how complicated the situation might become if the present rights to FG were to be recognized. For discussion, see Campbell, T., Kolk, M., Mosquera, J., 2023, Universal Procreation Rights and Future Generations, *Journal of Applied Philosophy*, Vol. 40, No. 1, pp. 3–22.

27 ICJ, *Obligations of States in respect of Climate Change (Request for Advisory Opinion)*, Oral Proceedings of 2 December 2024, Statement of Cynthia Rosah Bareagihaka Houniuihi, ICJ Verbatim Record, Doc. No. 187-20241202-ORA-01-00-BI, p. 115.

or “peoples” rights when transposed into legal or policy settings. These additional ambiguities surface in the Maastricht Principles, in which there is a mix that spans collective values, group-based principles, and purported individual rights. This bundling of heterogeneous categories underscores that even expert-driven initiatives do not resolve the underlying uncertainty – whether FG are to be understood as peoples, groups, and/or individual rights-bearers.

A more detailed analysis of the language and usage of FG and FG “rights”, and of possible (in)accurate references to legal documents and case law, cannot be undertaken here. I deemed it necessary, however, to begin with some illustrative examples. To further demonstrate the inconsistent use of FG, I refer to the record carefully assembled by Aoife Nolan, who, while investigating the relation between children’s rights and FG before courts, pointed out the lack of precision and definition of FG. Based on extensive research, she draws on literature, legal texts (including soft law), various documents of UN bodies, and domestic and international case law. From these sources, she concludes that FG is not a defined category in constitutional law. Moreover, she affirms that “[t]he specific scope of FG and the extent to which they benefit from protection under IHRL [international human rights law] has always been unclear.”<sup>28</sup>

The examples given above illustrate that the term FG is used in varied and sometimes contradictory ways, ranging from a broad political ideal to an alleged legal subject, highlighting the need for a more careful and systematic approach in legal argumentation. The goal of this article is not to read scholarly work in a bad light or to distort it. The lack of clarity seems undeniable even considering the discourse on FG as based on the best intentions. Scholars, lawyers, and activists are genuinely striving to build legal theory and push policies in favor of FG. I recognize the importance of speaking and taking action in favor of FG. On the other hand, I contend that we should critically assess the enthusiasm around FG “rights” and pursue a more systematic and analytically adequate approach to climate change and to protecting the interests of FG. This article is, thus, an invitation to approach the present use of FG in legal discourse from a critical and systematic perspective, especially considering that beyond an inconsistent use of this category it carries significant definitional difficulties.

The difficulty in defining FG becomes particularly evident in climate litigation because of the growing protagonism of children and young people and the inconsistent use of these concepts, sometimes separating children from FG, sometimes treating children as part of FG.<sup>29</sup> Serious

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28 Nolan, A., 2024, p. 533.

29 See Nolan, A., 2022; Nolan, A., 2024.

questions arise regarding how to reconcile the recognition of rights of FG with the rights of present children. These questions concern not only representation, but also potential conflicts of priority, scope, and institutional protection. The difficulties increase when one considers, for example, that children are not entitled to political participation or special representation. Moreover, children's rights benefit from an existing legal framework, are time-bounded, and might not always resonate with alleged FG rights.

In addition to the difficulties in defining FG in legal discourse, it is a challenge to determine the boundaries between generations, which reinforces the hurdles for possible legal definitions of FG. If FG were to be considered a category of rightsholders, one would need to separate different FG and treat them as distinct categories (for example, generations to be born in 10 years, in 100 years, *etc.*). These distinctions would affect the rights (risks, damages, reparations, *etc.*) concerned, which would not necessarily be the same and could even come into conflict. It seems practically impossible to draw clear boundaries between generations;<sup>30</sup> their existences are strongly marked by overlapping.

Amid these deadlocks, there seems to be a trend to approach FG as individuals who are not yet born,<sup>31</sup> as appointed above. This would define a group, but further quantitative and qualitative<sup>32</sup> specification about the members of this group appears complicated: we simply cannot know whether they will be poor or rich, illiterate or digitally fluent, environmentally engaged or indifferent, religiously tolerant or not. We can barely foresee what kind of exercise of their rights they will ultimately want and be able to perform. What content they will choose to assign to a dignified life remains unknown, as does the kind of political organization they

30 Daly, A., 2023.

31 See, for example, the Declaration on Future Generations of the United Nations (President of the United Nations General Assembly, REV3 of the Declaration on Future Generations (23 September 2024)), and The Maastricht Principles (Office of the United Nations High Commissioner for Human Rights (OHCHR)), *The Maastricht Principles on The Human Rights of Future Generations* (3 February 2023).

32 As Gosseries notes, “[i]t is another to argue that if humankind continues to exist, its members will have rights that should be taken into consideration today. My argument presupposes the latter, not the former. [...] The first constraint – directly derived from such a conditional nature – is that we should not use this very condition (existence) as an object for such rights. [...] A right can only be granted if the relevant individual actually exists. [...] A second and related constraint is that as the number of future people is currently unknown, rights involving a quantitative dimension (e.g. in terms of a budget calculation or a natural resources index) will have to take into account uncertainties with respect to population change.” (Gosseries, A., 2008b, On Future Generations’ Future Rights, *The Journal of Political Philosophy*, Vol. 16, No. 4, pp. 446–474, 456–457).

might endorse. The specific circumstances in which they will live also cannot be defined.<sup>33</sup>

We must acknowledge epistemic limitations: there are serious limitations to predicting the future, especially as it concerns individuals, their lives, their exercise of rights, and the societal variables and specific living conditions on Earth that will shape them.<sup>34</sup> There are so many variables involved in the future existence of potential rightsholders that we do not have the knowledge of to make reliable predictions reasonably useful in adjudication.<sup>35</sup> This assertion about our epistemic limits is relevant to understanding that even if it were possible to agree on a shared definition of FG for legal purposes, working with that definition would not overcome the problems related to possibly granting (present) "rights" to FG.<sup>36</sup> In addition, relations between different generations would still need to be addressed. These epistemic limits directly affect the legal feasibility of attributing present rights, a problem examined in the next section.

For the sake of argument, if one considers FG as groups, one might say that it is possible to advance some probable assertions: they will exist, the planet will be warmer, coastal areas will disappear. This might be true (highly probable) for FG as a group, but for individuals within this group, the specific circumstances remain unpredictable. We must also consider the idea of generations and the lack of homogeneity among their members: the composition of such a group remains unclear. There is no homogeneous and cohesive group that could be labelled FG just as there is no present generation homogeneously equipped with real possibilities to exercise rights or with significantly convergent interests.<sup>37</sup>

These differences between individuals or groups within generations are often pointed out in literature when considering the impact of climate change, which can be unequal depending on various circumstances and vulnerabilities. Nonetheless, I believe these considerations are not suffi-

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33 On these uncertainties, see Krämer, L., Time to Think: Sustainable Development, Future Generations and the Individual, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., 2021, pp. 211–224.

34 On epistemic limits and the unpredictability of future persons, see Knudsen, M., Ahlqvist, T., Taylor, A., 2023.

35 On the indeterminacy of the future related to environment, see Cho, H., Pedersen, O., Environmental Rights and Future Generations, in: Tushnet, M., Fleiner, T., Saunders, C., (eds.), 2013, Routledge Handbook of Constitutional Law, Oxfordshire, Routledge, pp. 401–412.

36 Nolan, A., 2024.

37 For a defense of the FG "rights" based on equal protection, despite the arguments presented in the text, see Wright, R. G., 1990, The Interests of Posterity in the Constitutional Scheme, *University of Cincinnati Law Review*, Vol. 59, pp. 113–146.

ciently related to the discussion of “rights” of FG. At this point, it is important to note that difficulties or inequalities in effectiveness or enforcement are not reasons to assert that a right does not or should not exist in the legal system. However, the idea that a generation as such is entitled to certain rights, or that we must grant FG “rights”, can obscure the fact that the formal recognition of an interest as a legal right does not make it effective or enforceable for every individual or group. Formal recognition also does not erase radical inequalities in rights access, exercise, and protection. Moreover, formal recognition of rights does not provide clues to, for example, deciding concrete cases in which rights collide and depend on factual circumstances.

The discourse may suggest that, once granted (present) rights, FG will equally “inherit the planet” and have equal access to rights, at least to a “right to have rights” in the future. On the contrary, such discourse may veil patterns of intergenerational inequality or poverty.<sup>38</sup> The use of FG in political or legal discourse must not lead to the disappearance of concerns about serious social and economic cleavages and inequalities or of the need to guarantee, within present generations, the protection and promotion of fundamental rights in their universality.<sup>39</sup> Undoubtedly, intergenerational concerns about equity and justice must be accompanied by the same concerns within current generations.<sup>40</sup>

The heterogeneity within generations (and presumably also among different FG) must be seriously addressed if we are to consider measures for tackling climate change in light of equity and justice. Certainly, these measures will primarily involve states, but they may well spill over to businesses, other private entities and even individuals. Consider, for example, the restrictions on various individual freedoms frequently noted in public debates. To be coherent, such restrictions would need to be placed in a broader context: how much of the global population actually flies?

38 Duque, M., McKnight, A., Understanding the Relationship between Inequalities and Poverty: A Review of Dynamic Mechanisms, in: Bucelli, I., McKnight, S., Summers, K., 2020, *Understanding the Relationship between Inequalities and Poverty: Policy Toolkit*, London, Centre for Analysis of Social Exclusion, LIPpaper 7. See also Cooper, E., Bird, K., 2012, Inheritance: A Gendered and Intergenerational Dimension of Poverty, *Development Policy Review*, Vol. 30, No. 5, pp. 527–541.

39 On the argument that appeals to FG rights are not necessary as grounds for climate urgency, which may instead be articulated through existing state duties and attention to present (socio-economic) inequalities, see Netto, L., 2026, The Struggle is Now: Climate Urgency in the Bonaire Judgment, *I-CONnect*, 19 February, (<https://www.icconnectblog.com/the-struggle-is-now-climate-urgency-in-the-bonaire-judgment>, 18. 4. 2026).

40 Humphreys, S., 2023.

How many members of FG will be able to fly? Who flies? Considering these questions, we must ask how serious a restriction on flying would be for present and future individuals (in constitutional terms: what weight should these freedoms have in a balancing process?). Does it make sense (in terms of equity or justice) to compare and oppose generations, or should we look instead at individuals?<sup>41</sup> To challenge mainstream reasoning further: if we were to restrict meat consumption, how is meat consumption distributed globally and across social classes? What can we say about the availability of meat substitutes?<sup>42</sup> Perhaps such questions can be summarized in a reflective and provocative question: how close or cohesive, for legal considerations, are not-yet-born children in Sweden and in Guinea? In some scenarios it might make sense to group present generations in Sweden and Guinea together and oppose them to FG, for example regarding concerns about the (in)habitability of the planet. In other scenarios, it might be more difficult to justify such grouping; such an approach requires, in my opinion, a much more nuanced analysis and more convincing explanations.

The purpose of the preceding analysis was not to multiply examples, but to show that indeterminacy persists even in the most careful attempts to operationalize FG in law.

With the above considerations, I do not aim to create a political manifesto or to argue that current inequality problems should prevent us from addressing climate change. The aim is to avoid uncritical use of FG and to highlight the unequal responsibilities, capabilities, and consequences of climate change across states, communities, social classes, and individuals. These definitional and epistemic problems are not merely theoretical; they have direct consequences for how rights operate in constitutional law and

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41 To make the argumentation in the text more specific, it seems interesting to recall the Maastricht Principles, which read: “7. c. To meet their obligations to future generations, States must necessarily impose reasonable restrictions on activities that undermine the rights of future generations, including the unsustainable use of natural resources and the destruction of Nature. Such restrictions must not impair or nullify the enjoyment of human rights of present generations; must rectify the vastly disproportionate levels of control over and use of resources by some members of the present generation; and not impose disproportionate burdens on disadvantaged groups.” Office of the United Nations High Commissioner for Human Rights (OHCHR), *Maastricht Principles on The Human Rights of Future Generations*, (3 February 2023).

42 Comparisons of meat consumption per capita between countries like the United States of America and Ethiopia can be quite striking, likewise of CO<sub>2</sub> emissions. See for such inquiries: Global Change Data Lab, n.d., *Our World in Data*, (<https://ourworldkindata.org>, 18. 4. 2026). For an interesting but somewhat out-of-date approach on these issues, see Shue, H., 1993, *Subsistence Emissions and Luxury Emissions*, *Law & Policy*, Vol. 15, No. 1, pp. 39–60.

adjudication. The next section therefore examines what it would legally mean to recognize FG as present “rights” holders.<sup>43</sup>

## 2.2. WHICH RIGHTS TO WHICH RIGHTSHOLDERS?

The first reasoning point presented above is a broad one: the definitional problem of FG. In more specific technical terms, the identification of the rightsholders and their relationship with real circumstances is essential to operating with rights in practice. This requirement is particularly stringent in constitutional adjudication, where rights must function as legally operable parameters for decision-making. In this context, these circumstances have to be taken into account together with the normative elements in order to decide cases involving various rightsholders, various rights, other constitutional protected goods, the constitutionality of legislation, the legal basis to enforce state action, *etc.*<sup>44</sup> In constitutional theory and adjudication,<sup>45</sup> the questions posed above can be translated into the need to advance, for example, considerations on the weight of the rights possibly involved in a balancing process. It is necessary to be clear on these aspects if we want to deal with rights in a technically adequate, rational and legally justifiable way;<sup>46</sup> FG seems far too vague a category to be legally identified as a (present) “rights” holder.

At the intersection with legal philosophy, there is scholarly material analyzing the possibility of granting FG “rights” according to will theories and interest theories.<sup>47</sup> Well-founded concepts of international law, such

43 On these unequal effects, see Atapattu, S., Intergenerational Equity and Children’s Rights: The Role of Sustainable Development and Justice, in: Fenton-Glynn, C., (ed.), 2019, *Children’s Rights and Sustainable Development: Interpreting the UNCRC for Future Generations*, Cambridge, Cambridge University Press, pp. 167–191.

44 I do not disregard the need to take FG interests and foreseeable existence into account. It appears, however, that case law has found other ways of doing this than FG rights. Some aspects of case law will be pointed out in this article.

45 For a comprehensive approach on human rights (Griffin’s theory) and the need to seriously conceive rights as rights, see Tasioulas, J., 2010, Taking Rights out of Human Rights, *Ethics*, Vol. 120, No. 4, pp. 647–678.

46 As Kai Möller puts it: “[...] I will generally refer to ‘constitutional’ rights [...] it makes clear that we are concerned with *legal* (often justiciable) rights of a certain *elevated status* over that of ordinary legislation.” (Möller, K., 2012, *The Global Model of Constitutional Rights*, Oxford, Oxford University Press, p. 16, emphasis in original). His theory, as a reconstructive account of legal practice, is particularly helpful in explaining how constitutional rights operate in (constitutional) adjudication, which is a key aspect of the argument developed in this article regarding the complexities of recognizing present rights for FG.

47 Many of the articles that deal with rights of FG explore interest and will theories of rights. See, for example, Gosseries, A., 2008b.

as intergenerational justice<sup>48</sup> and equity,<sup>49</sup> are often used to ground such constructions.<sup>50</sup> These debates, however, frequently concern “interests” and “moral rights”. From a more specific fundamental or constitutional rights perspective, it becomes crucial to differentiate “interests”, “moral rights” and “legal rights”,<sup>51</sup> as well as “rights as objective norms” and “subjective legal positions” (entitlements). Legal philosophy may consider what ought to be a right, but constitutional law focuses on legal rights, on legislation concretizing or restricting those rights, on state obligations and on adjudication. This difference is not merely disciplinary but determines what kinds of claims can be institutionally processed as rights.

In addition to philosophical considerations, FG are also being closely investigated in the field of international law. A foundational strand of the climate discourse draws on Edith Brown Weiss’s theory of “intergenerational equity”, which does not seem to treat FG simply as present rightsholders but instead grounds obligations in a fiduciary relationship: the present generation receives the Earth “in trust” and must preserve it for those who come after. Weiss emphasizes that “each generation receives natural and cultural legacy [...] and holds it in trust for [...] future generations,” and that this fiduciary role gives rise to “planetary obligations” to conserve options, quality and access for the future.<sup>52</sup> Her approach therefore frames the issue in terms of duties owed by the living, rooted in equity, stewardship and the preservation of environmental conditions, rather than symmetrical, presently enforceable “rights” of future persons. This might stand in contrast to more recent formulations that invoke rights of FG as if these were already (or ought to be) part of existing positive international law, often without distinguishing between duties of present stewardship and the attribution of present rights to future individuals. Even if

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48 For a first approach with extensive literature, see Gosseries, A., 2008c, *Theories of Intergenerational Justice: A Synopsis, Surveys and Perspectives Integrating Environment and Society*, Vol. 1, No. 4, pp. 39–49.

49 Brown Weiss, E., 1989, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, New York, Transnational Publishers; Brown Weiss, E., *The Theoretical Framework for International Legal Principles of Intergenerational Equity and Implementation through National Institutions*, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., 2021, pp. 16–44.

50 See the debate: Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023; Lawrence, P., 2023; Humphreys, S., 2023.

51 On this difference in the context of FG, see Krämer, L., 2021.

52 Brown Weiss, E., 1989, pp. 2–3, 21, 45. For a contemporary account that builds on this duty-based structure within international law and emphasizes its influence on courts, see Quising, J., 2024, *Beyond Oposa: Courts reinforcing intergenerational equity as customary international law*, *European Law Journal*, Vol. 29, Nos. 3–6, pp. 422–444.

one were to construe her theory as implying “rights” of FG, these would be reflexive to present duties of stewardship and would have very specific legal meaning, not comparable to the broad, undifferentiated claims about “rights” of FG that seem to be circulating at the present. This contrast illustrates how duties grounded in stewardship and equity can operate without presupposing present subjective rights of future persons.

A further distinction becomes apparent when comparing international and domestic constitutional law. Considering international law, on the one hand, it has an unavoidable programmatic or utopian dimension, and this is one of its strengths. On the other hand, the problems of legal remedy (or access to justice), enforceability and justiciability present themselves in a specific way regarding international law.<sup>53</sup> These peculiarities may explain the different consequences for international and domestic constitutional law concerning the effectiveness of human rights norms in comparison to constitutional norms that codify fundamental rights.<sup>54</sup> In national contexts, granting rights entails other aspects.<sup>55</sup> It is vital that constitutional and legal provisions are assured by sanctions and institutional guarantees, and that some degree of justiciability is present; otherwise, rights risk losing their legal specificity and undermining the coherence of the domestic legal system. Rights enshrined in the constitution bind the three branches of government, imposing legislative and administrative action, being judicially enforceable and commonly working as parameters for judicial review<sup>56</sup> or another kind of parliamentary

53 Tasioulas, J., Verdirame, G., 2022, Philosophy of International Law, *The Stanford Encyclopedia of Philosophy*, (<https://plato.stanford.edu/entries/international-law>, 18. 4. 2026).

54 Here I want to focus on the dogmatic legal aspects of the distinction and on legal practice. For a good analysis, see Palombella, G., 2006, From Human Rights to Fundamental Rights: Consequences of a Conceptual Distinction, *Archiv für Rechts- und Sozialphilosophie*, Vol. 34, No. 3, pp. 396–426.

55 For example, the understanding of rights holders in international law seems broad, extending beyond individuals to include, inter alia, states and “peoples” (e.g., in the context of self-determination and the protection of groups, such as in genocide), in contrast to constitutional law where, although certain rights have a collective dimension, rights holders remain predominantly individuals, reflecting differences in adjudication, enforceability, and access to justice (see above).

56 A critical awareness of the symbolic force of rights is essential. As Marcelo Neves argues in his theory of “symbolic constitutionalization”, rights matter even when their enforceability is limited: they shape expectations, frame political discourse, and create spaces for contestation, while simultaneously risking the production of a constitutional façade that substitutes rhetorical affirmation for substantive implementation. This ambivalent role of rights – promptly enabling mobilization and masking structural deficits – remains highly relevant to contemporary constitutional debates (Neves, M., 2022, *Symbolic Constitutionalization*, Oxford, Oxford University Press).

review. It therefore seems necessary to address the problem of FG rights from a more specific fundamental or constitutional rights perspective. As Aoife Nolan makes clear, “[o]ne cannot balance effectively or accord an appropriate priority to interests/rights the scope of which and the bearers of which one cannot identify.”<sup>57</sup>

The theoretical and simultaneously technical question that arises is indeed which rights to which rightsholders are we talking about. This is neither a superfluous nor a merely theoretical issue. It is also not the same question as when new content is recognized as a human or fundamental right<sup>58</sup> nor when, for example, a river is entitled to rights. The issue here is whether we ought to recognize a present subjective position (as a fundamental rightsholder) to subjects (human persons) who do not presently exist (the so-called nonexistence argument)<sup>59</sup> and grant them presently the same rights held by living individuals (living human persons).<sup>60</sup> This issue is not metaphysical but institutional: it concerns the conditions under which legal rights can meaningfully exist and operate connected to legal subjects.

Because fundamental and human rights have gained such a central place in all legal orders following the Second World War and formal decolonization, and they touch pivotal issues related to the state, community, and the individual, they interact with almost every political or societal de-

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I discuss this ambivalence in greater depth in my forthcoming article, where I argue that symbolic recognition can perform meaningful constitutional functions, but must be accompanied by institutional pathways toward effectiveness in order to avoid dilution and instrumentalization (Netto, L., 2025, *Rights beyond the Constitution: Evolution and Symbolism between Text, Function and Content*, ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=6176983](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6176983), 18. 4. 2026)).

57 Nolan, A., 2024. Of course, many substantial and procedural advancements can be made in the direction of imposing goals and controlling state actions, in accordance with FG interests and needs.

58 Netto, L., 2021, *Criteria to Scrutinize New Rights: Protecting Rights against Artificial Proliferation*, *Journal of Constitutional Research, Revista de Investigações Constitucionais*, Vol. 8, No. 1, pp. 11–75.

59 Gosseries, A., 2008b. See also Campos, A. S., 2019, *The Rights of Future Persons under Attack: Correlativity in the Non-Identity Problem*, *Philosophia*, Vol. 47, No. 1, pp. 625–648; Tremmel, J. C., *The Four-Branches Model of Government: Representing Future Generations*, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., 2021, pp. 754–780; Könczöl, M., 2023, *Rights and Future Persons: The Promise of Arguments from Present People's Identity*, *Public Governance, Administration and Finances Law Review*, Vol. 8, No. 2, pp. 29–40; Beckerman, W., Pasek, J., 2001, *Justice, Posterity, and the Environment*, Oxford, Oxford University Press. The analysis of these challenges points toward legal protection for FG rather than its absence. One of the ways pointing forward is to delve into the possibility of assigning duties that are not directly connect to (present) rights. This is also explored in Staviti Gosseries, A., 2008b.

60 Gosseries, A., 2008b.

cision. As Tasioulas, Hanun and others point out, there seems to be an understandable tendency to draw on a rights-framework to address these decisions and to try to resolve acute political, economic and social problems.<sup>61</sup> It is thus appealing to think that rights will offer the answer to climate and environmental problems. Nonetheless, the rights legal framework might not be capable nor suitable for such a herculean task; some issues demand different approaches in the legal, political, economic, and social arenas.<sup>62</sup> The attraction of rights language should not obscure its limits as a legal technique.<sup>63</sup>

In the climate discourse it is very often unclear whether the references to FG concern “rights” that exist (positively recognized, codified: legal rights) or rights that, according to the authors or claimants, ought to exist (moral rights, a claim to positivize/codify such rights).<sup>64</sup> Indeed, many references to FG are quite unspecific or non-technical, because they discuss “rights” without specifying whether they refer to interests, moral rights or legal rights (fundamental constitutional rights or legal entitlements), existing positive rights or claims to codify them. In addition, legal (authoritative) texts and case law are frequently invoked as if they grant or recognize present rights for FG, when in reality this might not be so or they are not binding legal sources (aspirational texts, soft law, *etc.*). This slippage allows normative aspirations to be presented as if they are already legally settled.

In the first example, as pointed out above, there seems to be growing attention for the Maastricht Principles on the Human Rights of Future Generations. The Principles are not binding, but they are increasingly influential in the interpretation of international instruments and, indirectly, in domestic constitutional orders.<sup>65</sup> They are being invoked as a founda-

61 Hiskes, R., 2008, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice*, Cambridge, Cambridge University Press, pp. 5–25.

62 For an interesting approach on these issues, see Hannum, H., 2019, *Rescuing Human Rights: A Radically Moderate Approach*, Cambridge, Cambridge University Press; Tasioulas, J., 2019, Are Human Rights Taking Over the Space Once Occupied by Politics?, *The New Statesman*, 26 August, (updated 08 Sep 2021), (<https://www.newstatesman.com/politics/2019/08/are-human-rights-taking-over-the-space-once-occupied-by-politics-2>, 15. 1. 2026). See also Düwell, M., Bos, G., Why ‘Rights’ of Future People?, in: Düwell, M., Bos, G., Steenbergen, N. van, (eds.), 2018, *Towards the Ethics of a Green Future*, London, Routledge, pp. 11–12.

63 Netto, L., 2021.

64 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023. The contribution of the article is incontestable; it refers to various legal instruments, case law and scholarly material. Nonetheless, using these varied sources, the article enables one to see the fluidity of the use of FG in climate discourse.

65 For the recent commentary on these principles, see Basson, G. *et al.*, 2025, Commentary to the Maastricht Principles on the Human Rights of Future Generations, *Human Rights Quarterly*, Vol. 47, No. 4, pp. 754–1006.

tion for the claim that FG possess the same rights as present individuals. This raises further questions regarding the scope and potential conflicts of such rights. Recognizing FG as present rightsholders would also require addressing conflicts between present and future rights, as well as between the rights of distinct FG. The invocation of such principles thus risks escalating aspirational claims into the set of enforceable rights without a corresponding legal foundation.

In national law, it can be very problematic to positivize rights that cannot function as rights in a legal sense, *i.e.*, that cannot be brought before the courts by individuals and held justiciable, even to a minimum extent. To recall the Dworkinian expression, rights must be taken seriously precisely because they function as trumps in the domestic legal order.<sup>66</sup>

There are jurisdictions and court decisions that have flirted with the language of “rights of future generations”, but even in those cases, the practical operation of such rights often relies on duties, living present rightsholders, or institutional representation rather than on enforceable subjective rights held by non-existing individuals. In this scenario, recognizing fundamental rights of FG is everything but simple.<sup>67</sup> Besides justiciability, fundamental and constitutional rights evoke central discussions on the separation of powers and on democracy and policy design, which would also be influenced by granting rights to FG.<sup>68</sup>

The landmark decision of the Philippine Supreme Court in *Oposa v. Factoran* (1993) is widely cited in environmental and climate literature as a foundational FG case. Recent scholarship continues this reading: Quising states that *Oposa* “gave legal standing to minors and unborn generations invoking their constitutional right to a balanced and healthful ecology” and that the Philippine Supreme Court held that the minors’ ability to sue “on behalf of succeeding generations is based on ‘intergenerational responsibility,’” classifying the case among those that have recognized the

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66 Dworkin, R., 1978, *Taking Rights Seriously*, Cambridge, Harvard University Press. I make a reference to Dworkin, but it does not mean I entirely subscribe to his rights theory. For a valuable understanding of rights, see also Möller, K., 2012.

67 As Könczöl notes: “The language of rights undoubtedly has a strong persuasive function: it is meant to give weight to the interests one wishes to protect. Using the concept of rights, however, makes it necessary to be consistent with some theoretical constraints, or otherwise our usage becomes counterproductive, losing much of its credibility. There seem to be two such fundamental requirements: to be able to attribute a right to a subject, and to be able to define the content of that right.” (Könczöl, M., 2023, p. 30).

68 I do not deny that changes on the theory of separation of powers and other pillars of the rule of law are to be pursued, as proposed by Sulyok, K., 2023, *A Rule of Law Revolution in Future Generations’ Litigation – Intergenerational Equity and the Rule of Law in the Anthropocene*, *re:constitution*, Working Paper, Vol. 14.

principle of intergenerational equity and granted standing to “youth and generations yet unborn.”<sup>69</sup>

The inspirational legacy of *Oposa* in global climate litigation has indeed been highlighted by many. Wewerinke-Singh and coauthors, assert: “This not only fostered long-term policy reform in the Philippines but also inspired courts (and other actors) across the world to explore the potential of the law to advance climate justice over time. Several cases from around the global South have since adopted and developed *Oposa*’s understanding. A particular trend that courts have been following, at least since *Oposa*, is of reading the rights of future generations into their constitutions. The growing inclusion of future generations’ rights in constitutions worldwide, and especially in the global South, signals that many more courts and other actors in the litigation process are about to join, diversify and enrich this global conversation.”<sup>70</sup>

Despite this widespread framing and (possible) symbolic meaning, the judgment itself seems to be more restrained: the Court recognized the standing of the minors and grounded their ability to act “for the succeeding generations” in the notion of intergenerational responsibility, rather than clearly conferring present subjective rights on unborn persons. As the Court put it, “[t]his case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned” (*Oposa v. Factoran*, G.R. No. 101083, 30 July 1993). A careful reading suggests that in *Oposa* the Court focused on the minors’ constitutional right to a balanced and healthful ecology and on their standing, based on intergenerational responsibility, to act on behalf of succeeding generations, rather than clearly articulating unborn persons as present rightsholders.

There are even scholars who remain deeply skeptical about *Oposa*.<sup>71</sup> Perhaps *Oposa* has been mythologized: far from recognizing enforceable

69 Quising, J., 2024, pp. 1–2, 12.

70 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023, p. 660.

71 For a critical assessment of *Oposa*, see Gatmaytan, who argues that the decision’s celebrated intergenerational reasoning was largely “obiter” and that the case produced minimal practical environmental impact (Gatmaytan, D. B., 2003, The Illusion of Intergenerational Equity: *Oposa v. Factoran* as Pyrrhic Victory, *Georgetown International Environmental Law Review*, Vol. 15, No. 3, pp. 457–486).

rights of unborn persons, it relied on the rights of living minors and on a symbolic appeal to intergenerational responsibility. *Oposa* illustrates the distinction between (i) standing granted to present individuals, and (ii) the attribution of present rights to hypothetical future persons – a distinction that much of the climate litigation literature tends to blur. This blurring has significant consequences for how courts are understood to reason and what future claims they are thought to authorize.

An inconsistent reliance on FG “rights”, and to some extent an inaccurate discourse, can also be noted, for example, in scholarly references to the *Urgenda* case that portray it as a decision where FG rights were central: “Others turn to general human rights safeguards, such as in the *Urgenda* litigation, [...] The Supreme Court reasoned that the government’s GHG reduction commitments failed to protect these specific rights of future Dutch citizens against climate threats.”<sup>72</sup> “Examples of recent case law (the *Urgenda* case) show that courts are willing to expand the duty of care to protect the rights of future generations, even though these are still rather undefined.”<sup>73</sup>

Contrary to these interpretations, the Dutch Supreme Court did not rely on FG “rights” to decide the *Urgenda* case; it upheld the reasoning of the Court of Appeal: “4.7 Based on the aforementioned facts, the Court of Appeal concluded, quite understandably, in para. 45 that there was ‘a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life.’ The Court of Appeal also held, in para. 37, that it was ‘clearly plausible that the current generation of Dutch nationals, in particular but not limited to the younger individuals in this group, will have to deal with the adverse effects of climate change in their lifetime if global emissions of greenhouse gases are not adequately reduced.’”<sup>74</sup>

In this context, those abovementioned references to the *Urgenda* case are relevant: they do not demonstrate that FG presently hold subjective rights, but rather that case law references often conflate state duties, precautionary principles, interpretative trends and future-oriented obligations with the recognition of present legal rights of FG,<sup>75</sup> which are neither explicitly codified nor judicially recognized. Taken together, these formulations con-

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72 Sulyok, K., 2023.

73 Coomans, F., 2020, *The Precautionary Principle and Its Relevance for the Protection of the Human Rights of Future Generations*, Maastricht Faculty of Law Working Paper.

74 Supreme Court of the Netherlands, *State of the Netherlands v. Urgenda Foundation*, Judgment of 20 December 2019, ECLI:NL:HR:2019:2007.

75 Coomans, F., 2020; Lewis, B., 2018, The Rights of Future Generations within the Post-Paris Climate Regime, *Transnational Environmental Law*, Vol. 7, No. 1, pp. 69–87; Sulyok, K., 2023.

flate at least three distinct legal sets: (i) present human or constitutional rights held by existing individuals; (ii) state duties of care or precaution; and (iii) the idea that FG already hold subjective rights, without clearly specifying which of these is at stake. These examples illustrate the conceptual and legal ambiguity surrounding claims that FG hold present rights.

In constitutional law literature there are also many kinds of references to “rights” to FG. Nonetheless, Renan Araújo and Leonie Koessler looked at the rise of the constitutional protection of FG and concluded that although many constitutions mention FG, the prevalent form is a duty imposed on the state rather than the recognition of FG rights. So, we might say that many indications advocating that a great number of constitutions recognize and protect FG “rights” in reality identify different types of constitutional provisions, with a prevalence of provisions imposing duties on the state and/or mentioning the “needs” or “interests” of FG, not explicitly codifying or recognizing FG “rights”.<sup>76</sup>

This finding stresses two points: (i) the inconsistency in differentiating between interests, moral and legal rights; fundamental and human rights; and state duties without correlative rights; and (ii) the lack of clarity regarding which rights FG have or ought to have.

Regarding which rights FG have or ought to have, it is possible to find the underlying notion that defending FG rights means they have (or should have) “minimum” rights, *i.e.*, rights that guarantee the possibility of having rights in the future, such as a right to a healthy environment.<sup>77</sup> Yet this formulation already shifts from rights as subjective positions to conditions necessary for the future enjoyment of rights. In addition, delimiting these “minimum” rights would suffer from the same vagueness as FG: what is the scope and content of such rights? Are we talking about rights or about factual conditions of existence, requirements for future enjoyment or rights objectively recognized in the legal order?

My understanding takes into consideration that rights are legal norms that entail subjective rights (subjective advantage positions) with content, holders, and addressees, and hold some degree of justiciability, imposing respect, protection and promotion. The conception advanced in this paper affirms the unviability of granting present rights to FG. Even if one could surpass the definitional and nonexistence hurdles, it remains unviable to operate, theoretically and practically, with the fundamental/constitutional rights of FG within the current legal framework. If we consider some of the possible conflicts involving rights and situate them in all the uncertainty

76 Araújo, R., Koessler, L., 2021.

77 Fairhurst, K., 2022, *Our Obligations to Future Generations: A Human Rights Approach in the Case of Neubauer et al. v Germany*, LLM thesis, Universitat Pompeu Fabra.

regarding the future, we realize we cannot even figure out which conflicts would exist. The recognition of present rights to FG would, moreover, possibly lead to hierarchizations between rights with possible deleterious effects of specific rights, for example social rights needed by vulnerable groups and individuals. These questions would lead us into infinite entangled legal discussions.<sup>78</sup> These dynamics risk diluting the normative clarity, institutional force, and practical operability of fundamental rights.<sup>79</sup>

Recent climate case law confirms the concerns and prudence of this conclusion. Rather than extending rights to FG, courts have anchored intergenerational concerns in the protection of present rights, intergeneration burden-sharing, and the imposition of urgent state duties. This is evident not only in the proportionality-based reasoning of the European Court of Human Rights in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (GC, Judgment of 9 April 2024), and in the restraint shown by the International Court of Justice in its 2025 Advisory Opinion<sup>80</sup>, but also in the explicit framing adopted by the District Court of The Hague in the *Bonaire* climate case, which emphasized both the present reality of climate harm and the immediacy of the obligation to act, while declining to recognize FG as autonomous rightsholders. The *Bonaire* judgment is particularly illustrative because it articulates climate urgency through equality and positive obligations toward present vulnerable communities, foregrounding historic and persistent intragenerational inequalities rather than constructing FG as autonomous rightsholders.<sup>81</sup> These decisions collectively illustrate that intertemporal justice can be meaningfully operationalized through existing legal concepts, urgency, due diligence, and positive obligations, without diluting the normative clarity and institutional force of fundamental rights by attributing them to FG.

### 2.3. THE NECESSARY DISTINCTION BETWEEN RIGHTS AS OBJECTIVE NORMS AND RIGHTS AS SUBJECTIVE POSITIONS

At this point, it is necessary to distinguish between rights understood as concrete subjective advantage positions – held by identifiable rightsholders and exercisable in legal practice – and rights understood

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78 For a discussion on these difficulties, see Düwell, M., Bos, G., Steenbergen, N. van, 2018.

79 Gosseries discusses these problems especially focusing on the issue of constitutionalizing rights for FG (Gosseries, A., 2008b).

80 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, I.C.J. Reports 2025.

81 District Court of The Hague (Rechtbank Den Haag), *Stichting Greenpeace Nederland and Eight Residents of Bonaire v. The State of the Netherlands*, ECLI:NL:RB-DHA:2026:1347, Judgment of 28 January 2026.

as abstract legal norms, *i.e.*, as objective elements of the legal order, independently of their concrete invocation by individuals. This distinction is foundational for constitutional reasoning, particularly where rights are invoked beyond their traditional defensive function and projected into broader temporal, structural and institutional contexts. This distinction is essential for assessing claims that seek to project rights into the future by attributing them to non-existing subjects.

A central premise of modern constitutionalism is that the codification of fundamental rights is not merely an instrument for the immediate protection of existing individuals, but a constitutive act through which a legal order defines its normative identity and moral orientation over time. This premise also underlies the post-Second World War reconstruction of international law, which has a mutual influence *vis-à-vis* constitutional domestic orders. Fundamental rights are codified precisely because they are meant to endure: they are designed to stabilize and entrench core commitments, most notably the protection of human dignity, while allowing for democratic change on the margins. Although constitutional orders remain open to revision through evolution and amendment, norms codifying fundamental rights function as relatively stable reference points, anchoring the legal order to commitments that transcend particular political moments. It is in fact common to include constitutional rights in some sort of eternity constitutional clause; they are legal guarantees intended to endure.<sup>82</sup>

In this sense, fundamental rights cannot plausibly be understood as norms addressed exclusively to present generations or existing individuals. Rather, their codification reflects an understanding of the legal order as a temporally extended project, one that seeks to preserve the conditions under which human beings, present and future, can live a dignified life, as rightsholders within a morally grounded legal framework of a democratic political society. Disagreements about which moral values should be constitutionalized, or about the scope and content of particular rights, do not undermine this deeper point: fundamental rights express the self-understanding of a legal order as one committed to purposes that are meant to last.

This temporal endurance of fundamental rights, however, must not be confused with the attribution of present subjective rights to future individuals; arguing otherwise conflates two analytically distinct dimensions of fundamental rights: their existence as objective norms of the legal order and their function as subjective legal positions held by concrete subjects. The fact that fundamental rights are meant to endure does not require the

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82 Netto, L., 2021.

recognition of rights vested in non-existing persons; it renders this unnecessary. Rather, it entails that the legal order must preserve its fundamental normative structure objectively, so that when new subjects come into existence, they do so within a framework that already and still recognizes and protects them as rightsholders. In this sense, the objective dimension of fundamental rights operates across time: it structures the legal order in such a way that every person who comes to exist under it can enjoy fundamental rights as subjective positions. Recognizing this distinction allows for a more precise and conceptually coherent account of intergenerational justice, one that avoids fictitious rightsholders while preserving the enduring normative force of fundamental rights.

The German constitutional doctrine offers a particularly refined account of this distinction. German fundamental rights theory has long emphasized that constitutional rights cannot be understood solely as subjective defensive positions, but that they also operate as objective norms of the legal order. Following the *Lüth* judgment, the German Federal Constitutional Court described the catalogue of fundamental rights as containing, beyond defensive rights, an “objective value order” that functions as a constitutional basic decision guiding legislation, administration, and adjudication. This conception has been subject to sustained criticism, particularly where it was understood as positing a comprehensive and substantive objective moral order binding all state actions. These concerns, especially regarding judicial overreach and democratic legitimacy, are well known and have been articulated with force in German constitutional theory. Nonetheless, the distinction between the subjective and objective dimensions of fundamental rights has not been abandoned in doctrine or practice. Rather, it has been refined and constrained, retaining the insight that fundamental rights also function as objective constitutional norms, while avoiding an exaggerated or unmediated appeal to a fully determined moral order.<sup>83</sup>

Building on this framework, Robert Alexy develops a distinction between norms that grant subjective rights and norms that impose obligations on state authorities without correlating them to concrete rightsholders. A subjective right exists where a norm establishes a triadic relation between a rightsholder, an addressee, and the object of the right, such that the addressee is obligated vis-à-vis the rightsholder to perform, or refrain

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83 Alexy, R., 1990, Grundrecht als subjektive Rechte und als objektive Normen, *Der Staat*, Vol. 29, No. 1, pp. 49–68. The extensive and nuanced German debate concerning fundamental rights as subjective rights and objective norms is considerably richer than can be addressed here and will therefore not be explored in its full theoretical depth. For this discussion, see Möller, K., 2012.

from, a certain action. By contrast, a norm is merely objectively binding when it imposes on the state duties that are not owed to any specific rightsholder and therefore do not constitute subjective rights. Alexy further clarifies that the objective dimension of fundamental rights should be understood strictly as comprising only such binding norms that do not grant subjective rights, rejecting terminological conflation that treat principles or value statements as “objective” norms. In this sense, every fundamental right norm may be abstracted into an objective obligation, but only some norms remain exclusively objective because they lack correlating subjective legal positions.<sup>84</sup> This distinction is crucial for FG claims, as many duties invoked in their name lack a correlating subjective rightsholder.

The recognition of fundamental rights as objective constitutional norms has far-reaching implications for constitutional interpretation and institutional structure, a point critically emphasized by Ernst-Wolfgang Böckenförde. Böckenförde argues that conceiving fundamental rights as binding objective constitutional principles necessarily expands their validity across all areas of law and transforms them into judicially enforceable constraints, under Article 1(3) of the German Basic Law. This expansion, however, cannot be achieved without structural consequences for democratic governance, as it strengthens constitutional adjudication at the expense of parliamentary lawmaking. Böckenförde therefore insists that anyone who seeks to preserve the essential function of the democratically elected legislature must adhere to an understanding of fundamental rights as judicially enforceable subjective rights of liberty against the state, rather than simultaneously binding objective principles governing the entire legal order. In contrast to theories that posit multiple “normative layers” of fundamental rights with differentiated binding force, Böckenförde maintains that under the Basic Law even the principled or programmatic effects of fundamental rights constitute a specific form of legal validity that is subject to constitutional review.<sup>85</sup> This tension between subjective rights and objective normativity thus lies at the heart of German fundamental rights doctrine, raising fundamental questions about the allocation of interpretive authority and the permissible scope of constitutional adjudication.

The German distinction between fundamental rights as objective constitutional norms and as subjective legal positions helps diagnose a recurring conceptual slippage in the contemporary climate discourse. The point, rather, is that the objective dimension of fundamental rights, understood as binding constitutional norms that structure and guide state

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84 Alexy, R., 1990.

85 Böckenförde, E. W., 1990, Grundrechte als Grundsatznormen: Zur gegenwärtigen Lage der Grundrechtsdogmatik, *Der Staat*, Vol. 29, No. 1, pp. 1–31.

action without necessarily correlating to a concrete rightsholder, can operate across time without creating presently existing subjective entitlements for non-existent persons. On this reading, it is coherent to speak of taking decisions now that protect the objective constitutional framework, including the material and institutional preconditions for the future enjoyment of rights, while remaining conceptually strict that subjective rights presuppose existing subjects capable of holding and exercising them.

This distinction becomes particularly salient in climate litigation, where the normative concern is often best articulated not as the present vindication of rights held by future persons, but as the prevention of present decisions that irreversibly predetermine the future legal and factual conditions under which rights will (or will not) be exercisable. The German Federal Constitutional Court's climate decision in *Neubauer* illustrates this logic in a doctrinally sophisticated way: rather than recognizing unborn persons as present holders of subjective rights, the Court framed the constitutional problem as one of intertemporal protection of freedom, holding that the legislature may not design climate policy in a way that disproportionately offloads emissions-reduction burdens into the future, thereby producing severe future restrictions on freedom. In this sense, what the case operationalizes is precisely a demand that present lawmaking must take the objective, temporally extended function of fundamental rights seriously, so that those who will exist later can in fact enjoy rights as rightsholders within a preserved constitutional order. *Neubauer* thus exemplifies how intertemporal justice can be operationalized without recognizing FG as present rightsholders.<sup>86</sup>

Against this background, arguments increasingly framed in terms of "discrimination against FG" – including claims that international human rights instruments are for "all", without temporal limitation, and therefore must include future persons – risk reinforcing a misunderstanding German theory can help to avoid: conflating the temporal endurance of the rights-order with the present existence of rightsholders. Analytically it is more appropriate to say that fundamental and human rights are indeed codified to last, and thus to be enjoyed by those who come after us; but this endurance is secured through the objective dimension of the legal order, by the rights-norms as such, not through the attribution of contemporaneous subjective rights to non-existent subjects. The relevant legal vocabulary, therefore, is not that FG already hold present rights, but that present institutions are bound to preserve the objective legal and material conditions under which future individuals can become rightsholders.

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86 Federal Constitutional Court of Germany (Bundesverfassungsgericht – BVerfG), *Neubauer et al. v. Germany*, 1 BvR 2656/18, Judgment of 24 March 2021.

## 2.4. RIGHTS CONFLICTS, ADJUDICATION, AND THE LIMITS OF RIGHTS OF FUTURE GENERATIONS

Building on the understanding outlined above, the adjudication of intertemporal conflicts in constitutional law does not require recognizing FG as present rightsholders but instead demands a careful calibration of objective constitutional mandates and present subjective rights among various constitutionally protected values and goods. While future individuals cannot hold rights in the present, constitutional law nonetheless imposes (anticipatory and preventive) objective duties on the state, requiring present decision-makers to safeguard the normative and material conditions under which rights can be meaningfully exercised over time. These duties – which are functionally analogous to precautionary obligations in international law – operate through the objective dimension of fundamental rights and are addressed to public authorities rather than correlated to identifiable future rightsholders, while remaining grounded in domestic constitutional doctrine. The central task of constitutional adjudication in this context is therefore not to vindicate rights presently attributed to non-existing persons, but to assess whether present legislative and executive choices respect the objective constitutional framework while appropriately balancing the subjective rights and legitimate interests of existing individuals.

These subjective rights can conflict, in certain cases, with other rights, constitutional values, and the public interests enshrined in positive law. Such conflicts must be decided by the administration, or ultimately by the courts, within the legal framework designed by the legislator. What is described here as a “conflict” may, in specific cases, amount to a risk or a violation of rights, which must then be assessed in light of the specific circumstances and may lead to remedies, reparations, injunctions, prohibitions. Moreover, rightsholders may invoke their rights not only in cases of harm caused by action, but also when risks or violations result from state inaction.

It is necessary to add this operational perspective because rights can also be analyzed in constitutional adjudication as abstract legal norms, independently of their concrete invocation by individual rightsholders.<sup>87</sup> Under this understanding, rights as norms may conflict with other protected legal goods, public interests or with other rights – also understood as norms. In such cases, rights may prevail, or they may be subject to jus-

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87 For different understandings of the objective dimension, well developed in the German literature, which also relates to the irradiating efficacy of fundamental rights and to state duties, see Alexy, R., 1990. See also Böckenförde, E. W., 1990.

tified and proportionate restrictions. These abstract conflicts may have different forms and intensities, for example in the setting of legislative priorities, budgetary allocations, or the design of public policies. Legislative limitations on rights adopted in this context are, in many constitutional democracies, subject to abstract constitutional review.<sup>88</sup> In such review, courts do not assess the situation of a specific individual rightsholder, but examine the right as an abstract or objective norm, an element of the constitutional order, and the level of protection it ought to guarantee within that order. This distinction matters for FG because it suggests that, while rights can operate abstractly as objective constitutional norms projecting protection into the future, the status of subjective rightsholder still presupposes the existence of an identifiable subject. This reinforces the point that future-oriented constitutional reasoning need not, and should not, rely on attributing present rights to non-existing persons.

This logic finds a clear and doctrinally disciplined expression in the German Federal Constitutional Court's climate decision in *Neubauer*, as mentioned above. The Court explicitly clarified that FG "do not yet carry any fundamental rights in the present" and that duties directed at their protection therefore operate solely in an objective dimension. At the same time, the Court held that fundamental rights function as "intertemporal guarantees of freedom" for present rightsholders: current legislative decisions may already affect fundamental rights today when they irreversibly predetermine future restrictions on freedom. By allowing large portions of the remaining CO<sub>2</sub> budget to be consumed in the present, the legislature produces what the Court described as an "advance interference-like effect" (*eingriffsähnliche Vorwirkung*) on the future exercise of freedoms protected by fundamental rights. The constitutional problem thus lies not in the violation of rights presently held by future persons, but in the proportional legal structuring of freedom over time.

Crucially, the Court complemented this subjective rights analysis with a focus on the objective dimension of constitutional law, in particular

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88 For a first approach, with meaningful insights and with extensive literature, see Ginsburg, T., Versteeg, M., *Models of Constitutional Review*, in: Epstein, L., Grendstad, G., Šadl, U., Weinshall, K., (eds.), 2023, *The Oxford Handbook of Comparative Judicial Behaviour*, Oxford, Oxford University Press. See also Ginsburg, T., *The Global Spread of Constitutional Review*, in: Whittington, K., Keleman, D., (eds.), 2008, *Oxford Handbook of Law and Politics*, Oxford, Oxford University Press; Sadurski, W., 2014, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, 2<sup>nd</sup> ed., Cham, Springer, pp. 145–166; Moonen, T., Lavrysen, L., 2021, *Abstract but Concrete, or Concrete but Abstract? A Guide to the Nature of Advisory Opinions under Protocol No 16 to the ECHR*, *Human Rights Law Review*, Vol. 21, No. 3, pp. 752–785.

the protection mandate enshrined in Article 20a of the Basic Law. Article 20a obliges the state to protect the natural foundations of life “[m]indful also of its responsibility toward future generations” and thus frames climate protection as a constitutionally binding objective extending across time. Read together with fundamental rights, this objective mandate requires the legislature to distribute emissions-reduction burdens in a forward-looking and proportionate manner, preventing a one-sided offloading of drastic freedom restrictions onto the future. The Court emphasized that preserving the material preconditions for the future exercise of freedom demands early and transparent legislative planning, including binding specifications for emissions reductions beyond 2030. What the decision operationalizes, therefore, is not a system of present rights held by FG, but a constitutional duty incumbent upon present institutions to protect the objective normative and material framework within which future individuals can, once they come into existence, enjoy fundamental rights as subjective legal positions.

Acknowledging that the Maastricht Principles are not a constitutional text, it is nevertheless meaningful to refer to them in the present context, as they illustrate the practical implications of blurring the distinction between rights as subjective advantage positions and rights as objective norms, particularly well implemented in the decision above. In the Principles, the discourse on granting rights to FG appears to encompass the full spectrum of rights, thereby treating non-existing individuals as present holders of subjective rights, including social, political, and procedural rights. This move collapses the distinction between rights as objective norms and rights as subjective legal positions. Following this approach, all rights of all individuals – those currently living, those being born, and those yet to be born at any point in the future – would coexist contemporaneously with present rights. Although the purported rightsholders would not share temporal existence, their rights would be treated as contemporaneously operative.<sup>89</sup>

Such language may be intelligible at a rhetorical or political level, but if rights and FG are taken seriously in legal terms, this construction becomes untenable. First, it is impossible to have knowledge of (i) all these (subjective) rights, whose holders do not yet exist and are unknown, and which cannot presently be exercised, and (ii) all possible conflicts, risks, and violations involving such rights. Second, the contemporaneous existence of rights held by present and future generations would render the legal functioning of the state, and indeed of society, unworkable. This

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89 Gosseries, A., 2008b.

would undermine the capacity of law to guide decision-making through predictable, reviewable standards; virtually every legislative or administrative measure would necessarily constitute either a risk or a violation of the rights of some generation, whether by action or by omission. This difficulty would be exacerbated further if one were to consider potential claims for reparations, a topic that has gained increasing attention in climate litigation and international law.

Constitutional theory and practice cannot accommodate rights of present generations and of different FG as coexisting subjective rights in the present time. Legal rights understood as subjective advantage positions, distinct from rights as objective norms, presuppose an existing holder. While certain aspects of legal protection may exceptionally be extended through legal fictions, such as the *nasciturus*, this fiction cannot plausibly be extended to a vague and indeterminate category such as FG.<sup>90</sup> Unlike the *nasciturus*, FG lack temporal proximity, determinacy, and individualization.

Law and legal theory can, of course, evolve.<sup>91</sup> Legal instruments have been developed to protect unborn children (the *nasciturus*),<sup>92</sup> and theories of rights have adapted over time, *e.g.*, to accommodate social rights. It is conceivable that future legal developments may introduce new categories, such as “prospective” rights.<sup>93</sup> At present, however, it appears conceptually incoherent and legally unviable to grant FG the same “status” of present subjective rightsholders as existing individuals.<sup>94</sup> Even if these conceptual and constitutional difficulties could somehow be overcome, a further and

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90 It does not seem legally plausible to compare the rights of an existing person in the (uncertain) future to the present rights to future generations. Sustaining this approximation, see Unruh, C., 2016, Present Rights for Future Generations, *Kriterion – Journal of Philosophy*, Vol. 30, No. 3, pp. 77–92.

91 Tackling the evolving protection of FG through time in constitutional making, see Araújo, R., Koessler, L., 2021. From another perspective, see Anthis, J. R., Paez, E., 2021.

92 Drawing attention to this development, concerning social rights, see Coomans, F., 2023, Towards 2122 and Beyond: Developing the Human Rights of Future Generations, *Netherlands Quarterly of Human Rights*, Vol. 41, No. 1. On the development of rights, see Hiskes, R., 2008.

93 On the defense of the right to a green future, conceiving environmental rights for FG as group rights, see Hiskes, R., 2008; Brown Weiss, E., 2021. For a critical analysis on these group rights, see Barresi, P. A., 1997, Beyond Fairness to Future Generations: An Intragenerational Alternative to Intergenerational Equity in the International Environmental Arena, *Tulane Environmental Law Journal*, Vol. 11, pp. 59–88.

94 For a similar insight, see Krämer, L., 2021. Coomans, F., 2023, points out the need for more development but asserts that there is already a legal framework to protect the human rights of the members of future generations.

decisive question would remain: would recognizing rights of FG in fact contribute to addressing the climate crisis. Section 3 turns to this question and argues that it would not.

### 3. THE EMPTY ALLURE OF FUTURE GENERATIONS' RIGHTS

This article shows that the category of FG is legally unstable and difficult to define, and that recognizing FG as present rightsholders raises serious constitutional issues. Moreover, the category FG might be undesirable because the illusion of homogeneity that it creates does not accommodate the essential inequalities that are to be expected in every generation within the present legal (capitalist) system. Then, the article exposed the legal problems around recognizing FG as present rightsholders. In this section, there are two other aspects I want to highlight: first, giving in to the allure of FG does not help tackling the structural causes of climate change; second, it might even reinforce the conception that this is a future problem as a matter of legal and political framing. This latter concern relates not to legal technique, but to the temporal framing and political perception of climate risk.

In addition to the lack of homogeneity among members of given generations, there is another lack of homogeneity that must be addressed. The discourse in favor of FG and their rights rests upon various normative bases: legal, philosophical, political, religious, moral. These bases are rarely sufficiently explicit<sup>95</sup> and can serve divergent ideologies and political goals. This heterogeneity matters because it weakens the claim that recognizing rights of FG constitutes a coherent or effective legal response to climate change.

Without engaging in a full discussion on rights to nature,<sup>96</sup> as this discourse is often presented as converging with or analogous to claims about FG rights, it is important to note that, by contrast, the arguments presented for rights of nature – which seem to hold more cohesion – are clearly not valid for FG rights. Indeed, the recognition of rights of nature calls for a reinterpretation of rights (of humans) precisely by restricting them by means of recognizing rights to nature. The rights of nature

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95 This lack of homogeneity is also pointed out and explored for rights of nature in Petel, M., 2024, *The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature*, *Transnational Environmental Law*, Vol. 13, No. 1, pp. 12–34.

96 For a deep and well-grounded critical approach to rights of nature, with extensive literature, see Petel, M., 2024.

would in many ways collide with “human rights”, public policies and business practices and represent legitimate restrictions that would lead to a (non-anthropocentric) re-equilibrium in the relationship between humans and nature.<sup>97</sup>

One of the strongest arguments in favor of rights of nature is that the environmental crisis we are facing, with climate change and loss of biodiversity, is due to the anthropocentric foundations of our economic and legal system. Based on the idea of rights, property and exploration, our relationship with nature leads to and enables exploitative practices that destroy the planet. There are certainly other factors, such as population growth, that influence the scale of damage to the planet. It is therefore necessary to change this exploitative logic. Granting rights to future individuals might not be an appropriate means in pursuing sustainability. From this perspective, if the causes of climate change lie in anthropocentric legal and exploitative economic structures, only approaches that directly challenge those structures can plausibly contribute to addressing them. Many scholars, activists and practitioners assert the urgency of recognizing nature as a rightsholder, inverting this anthropocentric logic and practices.

At this point, the first claim of this section becomes clearer: granting rights to nature and granting rights to FG may seem to be a converging strategy, but it might not be. Recognizing FG rights does not per se challenge the anthropocentric logic that is in principle challenged by rights of nature. The present economic and legal models, in which rights of individuals are recognized, have not led to sustainable practices.<sup>98</sup> Why would granting the same rights to FG lead to different results?<sup>99</sup> Absent a transformation of the underlying economic and legal structures, this assumption remains unsubstantiated. This question shifts the burden of justification to proponents of FG rights within legal and constitutional reasoning.

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97 Borras, S., 2016, New Transitions from Human Rights to the Environment to the Rights of Nature, *Transnational Environmental Law*, Vol. 5, No. 1, pp. 113–143.

98 “Wouldn’t it be better to replace this entire moral concept by a less anthropocentric framework? And are not human rights a very individualistic idea, while answers to the ecological crisis require concepts that aim at the protection of collective goods instead of individual liberties? Is not the fact that we exercise our individual liberties so unrestrained the main reason for the ecological crisis? Should we not see ourselves as a global community if we are to protect the planet’s future when it is at risk, instead of embracing an individualistic framework that continues to focus on the protection of individual freedom, even when the planet and its future inhabitants are at risk?” (Düwell, M., Bos, G., 2018, p. 11).

99 Bosselmann, K., *Earth Democracy: Institutionalizing Sustainability and Ecological Integrity*, in: Engel, J. R., Westra, L., Bosselmann, K., (eds.), 2010, *Democracy, Ecological Integrity and International Law*, Cambridge, Cambridge Scholars Publishing, pp. 91–115.

Beyond these structural considerations, focusing on intergenerational equality also risks obscuring deep inequalities within the present and future generations themselves. Against this background, the appeal of this argument is understandable, but this question is not frequently addressed in the literature advocating FG rights. Instead, the idea of granting the same rights to FG held by present generations has been presented as a requirement of equal treatment.<sup>100</sup> This equal treatment would lead to restricting present generations' rights in order to guarantee FG rights. In any case, it is still about the rights to humans. The mere recognition of present (or even future) rights of FG does not in itself lead to a better relationship with nature, nor does it attack the causes of climate change. Moreover, as said, it also reinforces the idea that the most relevant inequality rests between generations and not within generations, obscuring the fact that the present generations do not equally share the “benefits” of the enjoyment of the present rights that cause climate change, which FG will not.

The following response addresses the instrumental effectiveness of this claim. One could counterargue that the goal of granting rights to FG is precisely the restriction of the rights of present generations, with subsequent advantages for nature and the planet. Still, the underlying idea is that FG should have the same rights as present generations; this functions as the ultimate justificatory premise for granting rights to FG. At this point, the moral validity of this claim is not at issue; I merely attempt to expose the inconsistency of the argument that granting FG present rights and, by doing so, restricting present generations' present rights, would address climate change.

First, it is unclear that these restrictions would suffice to address the causes of climate change. Indeed, the idea of FG rights does not always come with a clear assertion that the present economic system and economic relations are unsustainable. These would have to be radically altered if we are to have a chance of “saving the planet”. Not addressing the basis of the problems and giving in to the allure of FG rights perpetuates the illusion that we can afford to maintain this system, that if we impose the necessary restrictions on present generations in favor of FG they can have the same rights that present generations have. Even assuming such restrictions could be clearly defined, this raises not only a conceptual difficulty, but a structural and practical feasibility problem for legal decision-making. This difficulty arises from the temporal structure of rights claims themselves.

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100 Sulyok, K., 2024b, Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations, *Transnational Environmental Law*, Vol. 13, No. 3, pp. 475–501.

Second, even if such a determination were possible, any FG (in relation to the present generation) would inevitably, at a future moment, be the present generation in relation to subsequent FG. How would the “restriction” chain for tackling climate change be calculated? My question can be better understood in the light of assertions like this one: “[w]hile the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent.”<sup>101</sup> For each present generation there would be a FG entitled to the realization of their human rights<sup>102</sup> to a maximum extent, which does not seem feasible.

We can certainly say that this maximum extent must be regarded taking into consideration the environment and subsequent FG. Nonetheless, the idea of granting FG rights becomes more attractive precisely because it sustains the illusion that it is possible to proceed with this model of “rights to the maximum extent” in a linear infinite progress over time. FG rights might also delude us into thinking that what has not yet been achieved in terms of enjoyment of rights will inevitably be achieved in the future; we believe in the progressive realization of rights. There are privileged social fringes that enjoy their rights to the maximum extent now and will probably keep doing so within their own FG for a while. Unfortunately, the great majority of the world’s population is not enjoying their rights to the maximum extent. I want to assert that perhaps this kind of reasoning of “maximum extent rights” must be reassessed (also considering inequality) because nature is showing that we have to make urgent radical changes to the present economic system.

Bringing in a critical perspective, Matthias Petel analyzes the recognition of rights of nature, highlighting the illusion of harmony that this recognition entails; a critique that is analytically instructive for assessing claims about FG rights. His analysis helps expose how rights-based framings can mask unresolved distributive and institutional conflicts. He convincingly argues that rights of nature could be implemented through essentially different institutional arrangements, leading to equally different

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101 UN Committee on the Rights of the Child, *General Comment No. 26 (2023) on Children’s Rights and the Environment with a Special Focus on Climate Change*, UN doc. CRC/C/GC/26 (22 August 2023).

102 Interestingly, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, FG rights were not a basis for the judgment, while “intergenerational burden” was an important argument. Even seeking an adequate “intergenerational burden”, I doubt that we can afford the idea of maintaining the present system and promising to FG “the realization of their human rights to the maximum extent”. (ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgment of 9 April 2024 [GC]).

results. He also highlights the broad spectrum of ideological and political goals that can be served by such rights. In a nutshell, Petel's argumentation makes the illusion of harmony undeniable, since rights to nature "as an abstract notion does not offer a ready-made toolkit to dismantle the legal architecture of fossil capitalism; nor does it provide clear guidance on the distribution of costs and benefits of the green transition."<sup>103</sup> Moreover, "re-framing ecological issues in rights language does not alleviate the deeper tensions that exist between sustainability and economic development."<sup>104</sup>

Petel's critical reasoning on rights of nature applies largely to FG rights, but I would argue that FG rights make a special case of his argument: this abstract category is alone incapable of tackling the basis of the problem of FG rights. If not parametrized with other substantive considerations (about nature), FG rights risk relying on the logic of more rights, and may thereby structurally entrench some of the dynamics that have contributed to the problem.<sup>105</sup>

In this article I do not defend the abandonment of a rights-based approach, or the abandonment of rights as privileged legal means for protecting human dignity.<sup>106</sup> The aim is to emphasize the importance of rights while also acknowledging their limits as legal concepts and instruments. The goal is especially to point out the flaws in the legal discourse on FG rights. These limitations become even more apparent when considering how the category of FG frames the temporal dimension of climate risk.

Finally – and this brings me to the second claim of this section – in the defense of FG it is not rare to come across the idea that it is necessary to grant rights to FG because the former legal means, such as intergenerational equity and sustainable development, have not been sufficient to impose policies to combat climate change. The defenders of FG emphasize the urgent need to protect FG rights. Paradoxically, the very use of the category of FG may have the opposite effect, giving the appearance that we are dealing with problems of the FG,<sup>107</sup> problems and risks that

103 Petel, M., 2024.

104 *Ibid.*

105 For criticism and alternatives to a rights-based approach, see Düwell, M., Bos, G., 2018. For another relevant critique on a rights-based approach and its limitations, claiming the advancement of responsibilities toward the Earth system, see Bosselmann, K., 2022, Human Rights and Responsibilities Towards the Earth System, *Environmental Policy and Law*, Vol. 53, No. 3–4, pp. 213–222. For an interesting development of these responsibilities, see Taylor, P., The Imperative of Responsibility in a Legal Context: Reconciling Responsibilities and Rights, in: Engel, J. R., Westra, L., Bosselmann, K., 2010, pp. 198–225.

106 Petel, M., 2024.

107 Interestingly, in its ruling of the *Urgenda* case, the Dutch Supreme Court quoted the Court of Appeal, approaching the problem as a present generation problem, which

might occur in the future.<sup>108</sup> Such temporal displacement risks deferring responsibility rather than mobilizing urgent legal action. Litigation that centralizes present inequalities, including historically accumulated disparities within current generations, demonstrates that climate harm is already unevenly distributed and legally cognizable without recourse to FG rights.<sup>109</sup>

The use of FG, in my view, also obscures the fact that generations overlap and we should consider much more a continuum of generations,<sup>110</sup> in which it becomes much clearer that all generations are bound and might experience the same risks (even in varied extents among generations and within generations). In this sense, climate change is not a problem of FG; it is a current problem of present generations and must be tackled urgently. Besides, the opposition between present generations and FG<sup>111</sup> risks obscuring a more legally salient element: intragenerational inequalities, including those rooted in historic patterns of environmental exposure, unequal protection, and delayed state action, which are likely to be reproduced across time and largely inherited by subsequent generations.<sup>112</sup> This temporal reframing reinforces the argument that climate change engages existing legal responsibilities, not merely speculative future interests.

If climate change must be addressed as a present legal problem rather than deferred through the language of FG, the relevant question becomes not whether law can provide for the future, but how it is already doing so.

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I believe is an appropriate approach: “Based on the aforementioned facts, the Court of Appeal concluded, quite understandably, in para. 45 that there was ‘a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life’. The Court of Appeal also held, in para. 37, that it was ‘clearly plausible that the current generation of Dutch nationals, in particular but not limited to the younger individuals in this group, will have to deal with the adverse effects of climate change in their lifetime if global emissions of greenhouse gases are not adequately reduced.” (Supreme Court of the Netherlands, *The State of the Netherlands v. Urgenda Foundation*, ECLI:NL:HR:2019:2007, Judgment of 20 December 2019).

108 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023: “The shift of focus from the present to the future in these cases does not mean that these legal victories have no effect on the former; it is really quite the opposite. In the absence of competent government action, litigants are able to seek urgent and pressing climate justice through judicial protection by using the powerful device of future generations’ rights.”

109 Netto, L., 2026.

110 On this “continuum”, see Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023.

111 Asserting that the argued opposition between present and future is artificial, not feasible and not positive, see Könczöl, M., 2023.

112 Humphreys, S., 2023.

#### 4. THE NEED FOR LAW TO PROVIDE FOR THE FUTURE: SOMETHING NEW?

The current climate crisis is unprecedented. But the need to govern and make rules for the future, to build legal orders that endure through time, to design and implement lasting legal and institutional systems, and, of course, to regulate rights that will be held by individuals not-yet-born is anything but new.<sup>113</sup> My goal here is to show that the legal system already contains mechanisms for regulating and protecting the future, and that the absence of explicit “FG rights” does not mean that law is structurally incapable of providing for those who will come after us. This section argues that this future-oriented capacity of law operates independently of recognizing FG as present rightsholders.

This temporal orientation is not merely implicit but is sometimes articulated explicitly. A clear illustration of this argument can be found in the preamble to the Constitution of the United States of America, which literally refers to “posterity”:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”<sup>114</sup>

The reference to “posterity” reflects an explicit constitutional commitment to governing with future subjects in mind, without construing them as present rightsholders.

Indeed, we have been using law for centuries to discipline human societies in the long-run and to assure conditions for the maintenance of these very societies and their political and economic systems. This can be seen, more specifically in modern times, in the constitutional discussions

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113 “In conclusion, the vast majority of provisions analyzed in this article speak about themes that have been present in constitutions for centuries. The novelty resides not in the themes themselves but in how they are presented: under the framing of protecting future generations. This shift toward such a framing is relevant to comparative constitutional law as it indicates the rise of a new holder of legal interest to whom constitutions are assigning all sorts of protections. Future generations are increasingly more entitled to a healthy environment, to abundant or sufficient natural resources, to an organized, virtuous social landscape, to responsible public management, and beyond. Such reframing indicates how future generations are rising to reframe a part of the global constitutional language” (Araújo, R., Koessler, L., 2021).

114 On the constitutionalization of FG, see Araújo, R., Koessler, L., 2021. Also, quoting this preamble to highlight the tradition of commitment to posterity, see Wright, R. G., 1990.

about one generation ruling the next generations, within what is often described as a democratic paradox,<sup>115</sup> which in practice comes down to various combinations of constitutional posterity and sunset clauses. This demonstrates that taking future individuals into account does not depend on recognizing them as present rightsholders.

The goal to rule for the future is inherent to law; this goal can be found in different branches of law and legal institutions. This future-oriented function manifests itself across the legal order. These examples illustrate that law routinely designs future conditions using ordinary legal techniques. From an individualist perspective we can find norms on inheritance rights. In public law, there are legal instruments related to planning the future, ranging from the protection of cultural heritage to public budgets, urban plans, impact assessment evaluations and rules concerning pension systems. We could even quote public policies aimed at fostering the existence of FG, such as policies encouraging birth rate growth, or exactly the opposite – restraining procreative freedoms. In international law and environmental law one could come up with numerous examples, such as the precautionary principle.

The constitution, being the foundational legal document of the domestic order, does indeed create this order, establishing the basis for its legal development. The order designed in and by the constitution has the goal of installing and preserving the determined system in the long run, leaving some room for change and adaptation. Above all, a constitution is designed to constitute a system of power and legal norms intended to endure, *i.e.*, to regulate the future.

At the constitutional level, this future-oriented structure of law mirrors the topic of this article, in the objective dimension of fundamental rights discussed above. This corresponds to the distinction between subjective and objective dimensions of rights. Rights norms do not function solely as subjective entitlements invoked by existing rightsholders, but also as enduring elements of the constitutional order, which shape legislation, administration and adjudication over time. In this sense, the capacity of law to provide for the future does not depend on attributing present subjective rights to non-existing individuals, but on preserving the normative and institutional framework within which future persons will come to exist as rightsholders. Section 2.3 shows this at the level of rights theory; the present section situates this insight within a broader understanding of law's temporal structure.

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115 This traditional constitutional discussion is well portrayed within the discussion on FG by Gosseries. He draws attention to the paradox: we want to protect FG by vesting guarantees in the constitution, but by doing so we “threaten the generational sovereignty” of FG (Gosseries, A., 2008a).

The very idea of legal (positive) norms entails establishing norms in the present, for the future, with lasting effects. Thus, the temporal projection of law is already embedded in its normative structure, independently of attributing subjective rights to non-existing individuals. This can be observed by looking at the exceptionality of temporary laws and the prohibition of retroactive laws. In addition, legal norms feature generality and abstraction, meaning that the addressees are not known in advance and the norms are to be applied an undetermined number of times in the future, repeatedly, every time that the circumstances prescribed in the norm are confirmed in reality. This idea of legality (with generality and abstraction) serves formally the advancement of individual freedom and equal treatment. In fact, the future-oriented nature of law also underlies individual freedom; think of the Latin expression *nulla poena sine lege*, which is translated into most criminal legislations. This very idea can also be found in tax legislation, for example.

The legal order created by the constitution is built upon institutional aspects, such as the separation of powers, but also upon defining the “status” of the individual toward *vis-à-vis* the state. The order of freedom and individual protection (including social rights), structured by the constitutional rights norms, should not be confined to the individual exercise and claims that rightsholders make relying on their rights. These enduring norms take part in the architecture of the state and its legal order. They define expectations and limits for present and future exercises of public power. The freedoms (and social guarantees) enshrined in a constitutional order are not limited to the living, to the subjects present at this very moment; they are also intended to apply to every subject who comes into existence under such an order, *i.e.*, to posterity.<sup>116</sup>

In other words, as legal norms, rights norms are designed to endure through time; every individual who comes into existence in the present or in the future, living under the referred legal order, will be entitled to these positivized rights. In fact, the very idea of positivizing human or fundamental rights entails a projection into the future; we positivize a system of norms that protects and promotes human dignity over time.<sup>117</sup> From this perspective, the temporal reach of rights is already

116 I read the decision of *Neubauer v. Germany* in the light of these ideas, not as a decision recognizing rights to FG (BVerfG, *Neubauer et al. v. Germany*, 1 BvR 2656/18, Judgment of 24 March 2021).

117 As Düwell and Bos put it: “Our commitment to human rights thus requires us to make sure that human rights institutions are continuously robust, future-proof and resilient in their capacity to recognise and protect human beings as such. Hence, we should oppose environmental developments that undermine this capacity of these institutions within our lifetime and beyond. We need environmental conditions in

built into the constitutional framework. This temporal projection is a structural feature of constitutional rights, not an innovation introduced by assertions about FG, and therefore cannot serve as an argument for transforming future-oriented norms into present subjective rights of non-existing persons.

Climate change is clearly shining a new light onto the relation between law and time. This is evident considering the challenges of assuring the factual conditions required, for example, for the existence of FG,<sup>118</sup> the challenges of the progressive realization of rights and prohibition of retrogression related to social rights and sustainable development.<sup>119</sup> Nonetheless, it is important to assert that this is nothing new and that there are legal instruments available that deal with the special needs of planning for the future. Perhaps new instruments are necessary, but the need to address climate change through legal means neither entails nor requires the recognition of FG as present rightsholders.

## 5. QUESTIONS FOR FURTHER RESEARCH AND CLOSING REMARKS

Several structurally important questions regarding FG rights have not been addressed in this paper. These omissions are not shortcomings of the argument, but reflect choices aimed at preserving analytical focus. The most significant absences concern the representation of FG, the tendency to label FG as vulnerable, and the exploration of alternatives to recognizing FG as rightsholders.<sup>120</sup> Such alternatives may include strengthening intragenerational equity mechanisms, imposing more explicit constitutional duties of ecological protection, and designing institutional guardianship models that operate through duties rather than rights, while considering the interests of future persons. These absences give rise to relevant further research questions and avenues.

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which human rights institutions can exist and function properly” (Düwell, M., Bos, G., 2018, p. 18).

118 Coomans, F., 2023.

119 As Atapattu asserts: “One of the integral components of sustainable development is the intergenerational equity principle. This principle requires us to ensure that when taking developmental decisions today, the rights of future generations will not be jeopardised by our actions” (Atapattu, S., 2019). See also Gosseries, A., 2008a; Coomans, F., 2023.

120 I believe we have to further explore the already known concept/principle of intergenerational equity or justice. But I foster special interest for what sustainable development, seriously addressed, might enable to advance, namely because it combines the concerns about present generations, FG and nature, in a more appropriate way.

In this paper I argue that the growing appeal of FG rights rests on conceptual, legal, and institutional inconsistencies, which undermine their viability within constitutional rights frameworks. Firstly, I highlighted the vagueness of the FG category. Then, from a more theoretical or technical perspective, I argued that the recognition of FG rights leads to unsolvable legal problems. The existence of the rightsholders and their relationship with real circumstances is essential to operating with rights in (constitutional) adjudication, which is a precondition for legally justified constitutional adjudication. This translates into the need to have legal parameters to determine the weights of the rights possibly involved in a balancing process, in order to decide cases involving various rightsholders and rights, and other constitutionally protected values and goods.

Secondly, the recognition of FG rights, often framed through a rhetoric of solidarity, risks maintaining existing economic, political, and social power relations. There are no FG homogeneously equipped with real possibilities to exercise rights, nor with convergent needs or interests. The use of FG in political or legal discourse covers historical and present social and economic cleavages and devalues the need to guarantee, within the present generations, the protection and promotion of fundamental rights in their universality. There is the risk of the alienating use of FG, disregarding the unequal responsibilities, capabilities and consequences of climate change upon states, communities, social classes, individuals, *etc.* In addition, it is difficult to combine FG rights with the urgent need to reshape our relationship with nature, rather than facilitating a structural reconfiguration of that relationship. FG rights risk representing the maintenance of an anthropocentric relation toward nature, leading to the reproduction of the present economic exploitation model – which is precisely what is causing climate change.

The goal of this paper is not to undermine the protection of nature or FG. On the contrary, the idea is to continue enhancing the legal debate on these matters, but with legal consistency, especially from a constitutional law perspective. As pointed out by Margaretha Wewerinke-Singh, Ayan Garg, and Shubhangi Agarwalla, “a concern with future generations can bring about tangible positive effects.”<sup>121</sup> I do not argue for “rejecting future generations discourse altogether, [and risking] losing its potential to shape international law based on a vision of justice and solidarity across time and space.”<sup>122</sup> I am aware of the weight that rights are generally understood to

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121 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023, p. 653.

122 *Ibid.*

carry<sup>123</sup> in the legal discourse and practice and that this can have symbolic meaning, as well as actually lead to concrete results.<sup>124</sup> Precisely because of this weight, conceptual inflation in rights discourse carries particularly high systemic costs.<sup>125</sup> Nonetheless, precisely because of the centrality of rights<sup>126</sup> in constitutional orders, granting present rights to FG, within existing fundamental rights frameworks, is neither feasible nor normatively appropriate for advancing sustainable development or inter- and intragenerational equity.

In this sense, I argue that we should resist the allure of FG rights – popular in the climate discourse – and take rights seriously in the legal domain. This resistance is grounded not in skepticism toward rights, but in a commitment to their legal integrity. Resisting the allure of FG rights preserves the coherence and justiciability of constitutional rights frameworks, preventing an expansion that would dilute their legal force and undermine their capacity to protect existing rightsholders. Further research should therefore focus on existing duties and on developing alternative legal mechanisms – whether duties, institutional arrangements, or policy instruments – capable of effectively protecting future interests without generating the conceptual and practical problems identified in this paper.

Resisting the allure of FG rights is therefore not a retreat from the responsibility toward the future, but a commitment to preserving the coherence, justiciability, and institutional integrity of constitutional rights frameworks – conditions without which neither present nor future justice can be meaningfully secured.

## BIBLIOGRAPHY

1. Alexy, R., 1990, Grundrecht als subjektive Rechte und als objektive Normen, *Der Staat*, Vol. 29, No. 1, pp. 49–68.
2. Anthis, J. R., Paez, E., 2021, Moral Circle Expansion: A Promising Strategy to Impact the Far Future, *Futures*, Vol. 130, p. 102756.
3. Araújo, R., Koessler, L., 2021, The Rise of the Constitutional Protection of Future Generations, *LPP Working Paper*, No. 7.

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123 As Gosseries writes, “[i]n the end, the road towards recognizing the rights of future people is probably narrower than what advocates of future generations may wish. Yet, we are far from being at a dead end, as some tempted by expedient scepticism may think.” (Gosseries, A., 2008b, p. 471).

124 Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023. On the symbolic force of rights, see Neves, M., 2004, La fuerza simbólica de los derechos humanos, *Doxa*, No. 27, pp. 143–180.

125 Netto, L., 2021.

126 Gosseries, A., 2008b.

4. Atapattu, S., Intergenerational Equity and Children's Rights: The Role of Sustainable Development and Justice, in: Fenton-Glynn, C., (ed.), 2019, *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations*, Cambridge, Cambridge University Press, pp. 167–191.
5. Barresi, P. A., 1997, Beyond Fairness to Future Generations: An Intragenerational Alternative to Intergenerational Equity in the International Environmental Arena, *Tulane Environmental Law Journal*, Vol. 11, pp. 59–88.
6. Basson, G. et al., 2025, Commentary to the Maastricht Principles on the Human Rights of Future Generations, *Human Rights Quarterly*, Vol. 47, No. 4, pp. 754–1006.
7. Beckerman, W., Pasek, J., 2001, *Justice, Posterity, and the Environment*, Oxford, Oxford University Press.
8. Beckman, L., 2015, Political Representation of Future Generations and Collective Responsibility, *Jurisprudence*, Vol. 6, No. 3, pp. 516–534.
9. Böckenförde, E. W., 1990, Grundrechte als Grundsatznormen: Zur gegenwärtigen Lage der Grundrechtsdogmatik, *Der Staat*, Vol. 29, No. 1, pp. 1–31.
10. Borrás, S., 2016, New Transitions from Human Rights to the Environment to the Rights of Nature, *Transnational Environmental Law*, Vol. 5, No. 1, pp. 113–143.
11. Bosselmann, K., 2022, Human Rights and Responsibilities Towards the Earth System, *Environmental Policy and Law*, Vol. 53, No. 3–4, pp. 213–222.
12. Bosselmann, K., Earth Democracy: Institutionalizing Sustainability and Ecological Integrity, in: Engel, J. R., Westra, L., Bosselmann, K., (eds.), 2010, *Democracy, Ecological Integrity and International Law*, Cambridge, Cambridge Scholars Publishing, pp. 91–115.
13. Brown Weiss, E., 1989, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, New York, Transnational Publishers.
14. Brown Weiss, E., The Theoretical Framework for International Legal Principles of Intergenerational Equity and Implementation through National Institutions, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press, pp. 16–44.
15. Campbell, T., Kolk, M., Mosquera, J., 2023, Universal Procreation Rights and Future Generations, *Journal of Applied Philosophy*, Vol. 40, No. 1, pp. 3–22.
16. Campos, A. S., 2019, The Rights of Future Persons under Attack: Correlativity in the Non-Identity Problem, *Philosophia*, Vol. 47, No. 1, pp. 625–648.
17. Cho, H., Pedersen, O., Environmental Rights and Future Generations, in: Tushnet, M., Fleiner, T., Saunders, C., (eds.), 2013, *Routledge Handbook of Constitutional Law*, Oxfordshire, Routledge, pp. 401–412.
18. Coomans, F., 2020, *The Precautionary Principle and Its Relevance for the Protection of the Human Rights of Future Generations*, Maastricht Faculty of Law Working Paper.
19. Coomans, F., 2023, Towards 2122 and Beyond: Developing the Human Rights of Future Generations, *Netherlands Quarterly of Human Rights*, Vol. 41, No. 1, pp. 53–60.

20. Cooper, E., Bird, K., 2012, Inheritance: A Gendered and Intergenerational Dimension of Poverty, *Development Policy Review*, Vol. 30, No. 5, pp. 527–541.
21. Cordonier Segger, M. C., Szabó, M., Harrington, A. R., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press.
22. Daly, A., 2023, Intergenerational Rights Are Children's Rights: Upholding the Right to a Healthy Environment through the UNCRC, *Netherlands Quarterly of Human Rights*, Vol. 41, No. 3, pp. 132–154.
23. Daly, P., Administrative Law: Characteristics, Legitimacy, Unity, in: Elliott, M., Varuhas, J., Stark, S., (eds.), 2018, *The Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives*, Oxford, Hart Publishing, pp. 101–121.
24. Duque, M., McKnight, A., Understanding the Relationship between Inequalities and Poverty: A Review of Dynamic Mechanisms, in: Bucelli, I., McKnight, S., Summers, K., 2020, *Understanding the Relationship between Inequalities and Poverty: Policy Toolkit*, London, Centre for Analysis of Social Exclusion, LIPpaper 7.
25. Düwell, M., Bos, G., Steenbergen, N. van, (eds.), 2018, *Towards the Ethics of a Green Future*, London, Routledge.
26. Düwell, M., Bos, G., Why 'Rights' of Future People?, in: Düwell, M., Bos, G., Steenbergen, N. van, (eds.), 2018, *Towards the Ethics of a Green Future*, London, Routledge, pp. 9–27.
27. Dworkin, R., 1978, *Taking Rights Seriously*, Cambridge, Harvard University Press.
28. Elliot, R., 1989, The Rights of Future People, *Journal of Applied Philosophy*, Vol. 6, No. 2, pp. 159–169.
29. Fairhurst, K., 2022, *Our Obligations to Future Generations: A Human Rights Approach in the Case of Neubauer et al. v Germany*, LLM thesis, Universitat Pompeu Fabra.
30. Gatmaytan, D. B., 2003, The Illusion of Intergenerational Equity: *Oposa v. Factoran* as Pyrrhic Victory, *Georgetown International Environmental Law Review*, Vol. 15, No. 3, pp. 457–486.
31. Ginsburg, T., The Global Spread of Constitutional Review, in: Whittington, K., Keleman, D., (eds.), 2008, *Oxford Handbook of Law and Politics*, Oxford, Oxford University Press.
32. Ginsburg, T., Versteeg, M., Models of Constitutional Review, in: Epstein, L., Grendstad, G., Šadl, U., Weinshall, K., (eds.), 2023, *The Oxford Handbook of Comparative Judicial Behaviour*, Oxford, Oxford University Press.
33. Gonzalez, R., Rey, F., 2019, Enfranchising the Future: Climate Justice and the Representation of Future Generations, *Wiley Interdisciplinary Reviews: Climate Change*, Vol. 10, No. 5, p. e598.
34. Gosseries, A., 2008a, Constitutions and Future Generations, *The Good Society*, Vol. 17, No. 2, pp. 32–37.
35. Gosseries, A., 2008b, On Future Generations' Future Rights, *The Journal of Political Philosophy*, Vol. 16, No. 4, pp. 446–474.
36. Gosseries, A., 2008c, Theories of Intergenerational Justice: A Synopsis, *Surveys and Perspectives Integrating Environment and Society*, Vol. 1, No. 1, pp. 39–49.

37. Griffith, J. A. G., 1979, The Political Constitution, *Modern Law Review*, Vol. 42, No. 1, pp. 1–21.
38. Hannum, H., 2019, *Rescuing Human Rights: A Radically Moderate Approach*, Cambridge, Cambridge University Press.
39. Herstein, O. J., 2009, The Identity and (Legal) Rights of Future Generations, *George Washington Law Review*, No. 77, p. 1173.
40. Hiskes, R., 2008, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice*, Cambridge, Cambridge University Press.
41. Humphreys, S., 2023, Taking Future Generations Seriously: A Rejoinder to Margaretha Wewerinke-Singh, Ayan Garg and Shubhangi Agarwalla, and Peter Lawrence, *European Journal of International Law*, Vol. 34, No. 3, pp. 683–696.
42. Keij, D., Meurs, B. R. van, 2023, Responsibility for Future Climate Justice: The Direct Responsibility to Mitigate Structural Injustice for Future Generations, *Journal of Applied Philosophy*, Vol. 40, No. 2, pp. 642–657.
43. Knudsen, M., Ahlqvist, T., Taylor, A., 2023, Defining “future generations”: Epistemic considerations on conceptualizing a future-oriented domain in policy and law-making, *Journal of Futures Studies*, Vol. 28, No. 2, pp. 3–19.
44. Könczöl, M., 2023, Rights and Future Persons: The Promise of Arguments from Present People’s Identity, *Public Governance, Administration and Finances Law Review*, Vol. 8, No. 2, pp. 29–40.
45. Krämer, L., Time to Think: Sustainable Development, Future Generations and the Individual, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press, pp. 211–224.
46. Lawrence, P., 2023, International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys, *European Journal of International Law*, Vol. 34, No. 3, pp. 669–682.
47. Lewis, B., 2018, The Rights of Future Generations within the Post-Paris Climate Regime, *Transnational Environmental Law*, Vol. 7, No. 1, pp. 69–87.
48. Lewis, B., Human Rights as a Basis for Institutions for Future Generations, in: Linehan, J., Lawrence, P., (eds.), 2021, *Giving Future Generations a Voice*, Cheltenham, Edward Elgar Publishing.
49. Lewis, B., Protecting Environmental Human Rights for Future Generations, in: Baber, W. F., May, J., (eds.), 2023, *Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges*, Cambridge, Cambridge University Press, pp. 31–51.
50. Linehan, L., Lawrence, P., (eds.), 2021, *Giving Future Generations a Voice: Normative Frameworks, Institutions, and Practice*, Cheltenham, Edward Elgar Publishing.
51. Martínez, E., Winter, C., 2022, Cross-Cultural Perceptions of Rights for Future Generations, *LPP Working Paper*, No. 6.
52. Mayer, B., Asselt, H. van, 2023, The Rise of International Climate Litigation, *Review of European Community & International Environmental Law*, Vol. 32, No. 2, pp. 175–184.
53. Möller, K., 2012, *The Global Model of Constitutional Rights*, Oxford, Oxford University Press.

54. Moonen, T., Lavrysen, L., 2021, Abstract but Concrete, or Concrete but Abstract? A Guide to the Nature of Advisory Opinions under Protocol No 16 to the ECHR, *Human Rights Law Review*, Vol. 21, No. 3, pp. 752–785.
55. Netto, L., 2021, Criteria to Scrutinize New Rights: Protecting Rights against Artificial Proliferation, *Journal of Constitutional Research, Revista de Investigações Constitucionais*, Vol. 8, No. 1, pp. 11–75.
56. Netto, L., The struggle is now: why we should be cautious about granting present rights to future generations, in: Izyumenko, E., (ed.), 2025b, *Verfassungsbooks*, Berlin, Max Steinbeis Verfassungsblog gGmbH, pp. 47–60.
57. Neves, M., 2004, La fuerza simbólica de los derechos humanos, *Doxa*, No. 27, pp. 143–180.
58. Neves, M., 2022, *Symbolic Constitutionalization*, Oxford, Oxford University Press.
59. Nolan, A., 2023, Human Rights and the Cost-of-Living Crisis, *Netherlands Quarterly of Human Rights*, Vol. 41, No. 1, pp. 3–12.
60. Nolan, A., 2024, Children and Future Generations Rights before the Courts: The Vexed Question of Definitions, *Transnational Environmental Law*, Vol. 13, No. 3, pp. 522–546.
61. Nolan, A., Skelton, A., 2022, Turning the Rights Lens Inwards: The Case for Child Rights-Consistent Strategic Litigation Practice, *Human Rights Law Review*, Vol. 22, No. 2, p. ngac026.
62. Palombella, G., 2006, From Human Rights to Fundamental Rights: Consequences of a Conceptual Distinction, *Archiv für Rechts- und Sozialphilosophie*, Vol. 34, No. 3, pp. 396–426.
63. Pedersen, O. W., Sulyok, K., 2024, Future generations litigation and transformative changes in environmental governance, *Transnational Environmental Law*, Vol. 13, No. 3, pp. 464–474.
64. Petel, M., 2024, The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature, *Transnational Environmental Law*, Vol. 13, No. 1, pp. 12–34.
65. Quising, J., 2025, Beyond Oposa: Courts reinforcing intergenerational equity as customary international law, *European Law Journal*, Vol. 29, Nos. 3–6, pp. 422–444.
66. Sadurski, W., 2014, *Rights Before Courts: A Study of Constitutional Courts in Post-communist States of Central and Eastern Europe*, 2<sup>nd</sup> ed., Cham, Springer.
67. Shue, H., 1993, Subsistence Emissions and Luxury Emissions, *Law & Policy*, Vol. 15, No. 1, pp. 39–60.
68. Sólyom, L., 2002, The Rights of Future Generations, and Representing Them in the Present, *Hungarian Journal of Legal Studies*, Vol. 43, Nos. 1–2, pp. 135–143.
69. Sulyok, K., 2023, A Rule of Law Revolution in Future Generations' Litigation – Intergenerational Equity and the Rule of Law in the Anthropocene, *re:constitution*, Working Paper, Vol. 14.
70. Sulyok, K., 2024a, *Protecting the Interests of Future Generations by the European Union: An Overview of the Existing Powers and Legal Bases in EU Law*, Brussels, Jesuit European Social Centre.

71. Sulyok, K., 2024b, Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations, *Transnational Environmental Law*, Vol. 13, No. 3, pp. 475–501.
72. Szabó, M., Intergenerational Justice under International Treaty Law: The Obligations of the State to Future Generations and the Example of the Hungarian Ombudsman for Future Generations, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press, pp. 68–98.
73. Tasioulas, J., 2010, Taking Rights out of Human Rights, *Ethics*, Vol. 120, No. 4, pp. 647–678.
74. Tasioulas, J., 2019, Are Human Rights Taking Over the Space Once Occupied by Politics?, *The New Statesman*, 26 August, (updated 08 Sep 2021), (<https://www.newstatesman.com/politics/2019/08/are-human-rights-taking-over-the-space-once-occupied-by-politics-2>, 15. 1. 2026).
75. Tasioulas, J., Verdirame, G., 2022, Philosophy of International Law, *The Stanford Encyclopedia of Philosophy*, (<https://plato.stanford.edu/entries/international-law>, 18. 4. 2026).
76. Taylor, P., The Imperative of Responsibility in a Legal Context: Reconciling Responsibilities and Rights, in: Engel, J. R., Westra, L., Bosselmann, K., (eds.), 2010, *Democracy, Ecological Integrity and International Law*, Cambridge, Cambridge Scholars Publishing, pp. 198–225.
77. Tremmel, J. C., The Four-Branched Model of Government: Representing Future Generations, in: Cordonier Segger, M. C., Szabó, M., Harrington, A., (eds.), 2021, *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions*, Cambridge, Cambridge University Press, pp. 754–780.
78. Unruh, C., 2016, Present Rights for Future Generations, *Kriterion – Journal of Philosophy*, Vol. 30, No. 3, pp. 77–92.
79. Wewerinke-Singh, M., Garg, A., Agarwalla, S., 2023, In Defence of Future Generations: A Reply to Stephen Humphreys, *European Journal of International Law*, Vol. 34, No. 3, pp. 651–668.
80. Wright, R. G., 1990, The Interests of Posterity in the Constitutional Scheme, *University of Cincinnati Law Review*, Vol. 59, pp. 113–146.

## LEGISLATIVE SOURCES

1. ICJ, *Obligations of States in respect of Climate Change (Request for Advisory Opinion)*, Oral Proceedings of 2 December 2024, Statement of Cynthia Rosah Bareagihaka Houniuihi, ICJ Verbatim Record, Doc. No. 187-20241202-ORA-01-00-BI, p. 115.
2. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, I.C.J. Reports 2025.
3. Office of the United Nations High Commissioner for Human Rights (OHCHR), *The Maastricht Principles on The Human Rights of Future Generations* (3 February 2023).

4. President of the United Nations General Assembly, REV3 of the Declaration on Future Generations (23 September 2024).
5. UN Committee on the Rights of the Child, *General Comment No. 26 (2023) on Children's Rights and the Environment with a Special Focus on Climate Change*, UN doc. CRC/C/GC/26 (22 August 2023).
6. United Nations System High-Level Committee on Programmes (HLCP), Core Group on Duties to the Future, *Discussion paper: Duties to the future through an intergenerational equity lens*, Chief Executives Board for Coordination (CEB) (13 February 2023).

## CASE LAW

1. District Court of The Hague (Rechtbank Den Haag), *Stichting Greenpeace Nederland and Eight Residents of Bonaire v. the State of the Netherlands*, ECLI:NL:RB-DHA:2026:1347, Judgment of 28 January 2026.
2. Federal Constitutional Court of Germany (Bundesverfassungsgericht – BVerfG), *Neubauer et al. v. Germany*, 1 BvR 2656/18, Judgment of 24 March 2021.
3. ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgment of 9 April 2024 [GC].
4. Supreme Court of the Netherlands, *The State of the Netherlands v. Urgenda Foundation*, ECLI:NL:HR:2019:2007, Judgment of 20 December 2019.
5. Supreme Court of the Philippines, *Oposa v. Factoran*, G.R. No. 101083, Judgment of 30 July 1993.

## INTERNET SOURCES

1. Netto, L., 2024, Resisting the allure of future generations' rights: the ECtHR's approach to climate action in KlimaSeniorinnen, *Völkerrechtsblog*, 19 April, (<https://voelkerrechtsblog.org/resisting-the-allure-of-future-generations-rights>, 18. 4. 2026).
2. Netto, L., 2025, Rights beyond the Constitution: Evolution and Symbolism between Text, Function and Content, ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=6176983](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6176983), 18. 4. 2026).
3. Netto, L., 2026, The Struggle is Now: Climate Urgency in the Bonaire Judgment, *I-CONnect*, 19 February, (<https://www.iconnectblog.com/the-struggle-is-now-climate-urgency-in-the-bonaire-judgment>, 18. 4. 2026).
4. Nolan, A., 2021, Is sustainable development bad news for children's rights?: A provocation paper, *Medium*, 16 March, (<https://medium.com/reframing-childhood-past-and-present/is-sustainable-development-bad-news-for-childrens-rights-13b78e3b30ce>, 18. 4. 2026).
5. Nolan, A., 2022, The Children Are the Future – Or Not? Exploring the Complexities of the Relationship between the Rights of Children and Future Generations, *EJIL:Talk!*, 26 May, (<https://www.ejiltalk.org/the-children-are-the-future-or-not-exploring-the-complexities-of-the-relationship-between-the-rights-of-children-and-future-generations>, 18. 4. 2026).

## ZAŠTO TREBA ODOLETI PRIVLAČNOSTI IDEJE O „PRAVIMA“ BUDUĆIH GENERACIJA

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### APSTRAKT

Diskurs „budućih generacija“ postaje istaknut u parnicama o klimatskim promenama. Buduće generacije se sve češće tretiraju kao sadašnji nosioci prava koja mogu predstavljati tužbeni osnov. Rad tvrdi da se, iz ustavne perspektive, buduće generacije ne mogu smatrati sadašnjim nosiocima prava jer je kategorija pravno neodređena, konceptualno nestabilna i epistemološki neodređiva, i kao takva onemogućava identifikaciju nosilaca prava, preciziranje obima prava i njihovu primenu u sudskom postupku. Prava budućih generacija nisu nužno ni delotvorna za rešavanje problema klimatskih promena i rizikuju zanemarivanje postojećih obaveza i odgovornosti. Ustavni okviri već sadrže mehanizme – kroz objektivne norme i dužnosti države – koji mogu zaštititi buduće uslove bez pripisivanja prava nepostojećim kategorijama. Zaključak je da treba odoleti privlačnosti ideje o pravima budućih generacija i usmeriti se na pravno koherentne instrumente koji mogu unaprediti međugeneracijsku i unutar-generacijsku pravdu.

**Ključne reči:** klimatski diskurs, klimatske parnice, buduće generacije, nosioci prava, osnovna prava, objektivna dimenzija osnovnih prava.

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