

Book review: Representation of Non-Voice-Parties in Democracies: Arguments for the Representation of People without Voice as Part of the Citizenry

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tion of interests that will benefit both current and future generations (such as the guarantee of a healthful environment). Boston is generally skeptical that constitutional provisions are useful for accomplishing this goal (with the possible exception of the right to an ecologically healthy environment). He argues that defining the interests of future generations can pose difficulties, as can designing institutional mechanisms to protect those interests. Finally, constitutional engineering imposes costs as well as offering potential benefits, and in the absence of strong evidence that the benefits outweigh the costs, the enterprise strikes Boston as both difficult and inherently risky (235f). In the end, he concludes that “[r]elying on constitutional reforms to mitigate presentist tendencies ... is unlikely to be the most effective of the options available.” (236)

The other side of this argument is that many of the same questions can be raised about any changes to constitutional provisions, or, indeed, about adopting a constitution in the first place. They, too, are difficult to adopt, may impose costs as well as conferring benefits, and can be difficult to design well. Yet there is widespread agreement that the benefits of constitutions generally outweigh the costs, and that they are worth the effort. This is not to say that Boston’s assessment of the desirability of using constitutions to protect the interests of future generations is necessarily wrong. But it is also not clear that this assessment is right.

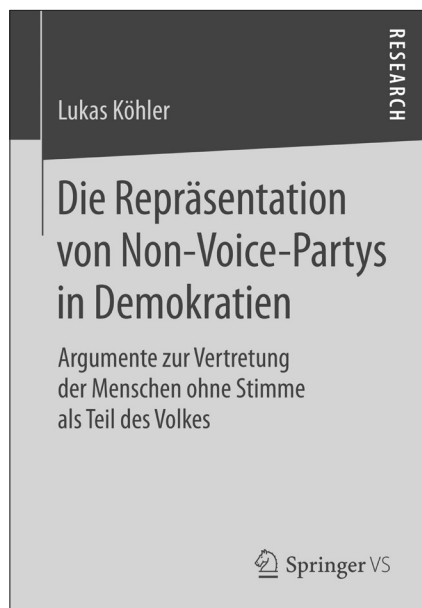
Governing for the Future is not a book one reads casually. Even for readers with some background, it can be a difficult read. This is largely a consequence of the systematic approach the author takes to examining the many aspects of the problem of governing for the future. The most obvious target audience for this work is as a text in an advanced public policy course. The book will also be of great interest to academics and policy-makers looking for a rigorous work on developing long-term public policy. It is a book one would read and then return to re-read chapters of special interest. On the other hand, readers without sufficient background in public policy are likely to find *Governing for the Future* frustrating. In a number of cases, the conclusion of a chapter is that the particular approach examined is not fruitful. It is hard to fault Boston for his conclusions, and even harder to fault him for the difficulty inherent in finding solutions to the problem of presentism he seeks to address – but while *Governing for the Future* is an important work, it is also a complex and, at times, a difficult work.

Boston, Jonathan (2017): Governing for the Future: Designing Democratic Institutions for a Better Tomorrow. Bingley, UK: Emerald Publishing. 576 pages. ISBN: 978-1-78635-056-5. Price: £98.

Representation of Non-Voice-Parties in Democracies: Arguments for the Representation of People without Voice as Part of the Citizenry

Reviewed by Elena Simon

In the Anthropocene, man is put back at the heart of the universe. In this era, where human technology may not only alter the immediate surroundings but the atmosphere of the planet, the questions of intergenerational justice have to be posed with new vigour. In light of radioactive waste, permafrost melting and rising sea levels, it is well known that the decisions that lead to a higher standard of living for many today, may leave future generations with a planet hostile to life. Future generations, though, have of course no possibility to participate in the decision-making process of the present. Yet there has been a debate on whether this might be changed and how. The most recent published volume is Gosseries and González-Ricoy’s



Institutions for Future Generations (2016), wherein Karnein (2016) and Skagen Ekeli (2016) address the challenges of political representation for future generations. Lawrence (2014) explores the possibilities of representing future generations in international law; Bailey, Farrell and Mattei (2013) discuss the possibilities of protecting the rights of future generations through commons; and Thompson (2010) argues that it is possible to anticipate future generations’ interests and therefore they should be represented. Is this justifiable under democratic rule? The monograph *Die Repräsentation von Non-Voice-Partys in Demokratien* by Lukas Köhler goes even further and argues that it is not only justifiable but necessary. He seeks to base the argument for the representation of future generations on a theo-

ry of state rather than on democratic rule. In the process, the book builds a bridge between the arguments of contractual theorists and current academics and provides the logical proof that the representation of future generations' interests is a necessary condition for democratic state legitimacy.

Köhler bases his discussion on the fact that there are a number of people affected by state actions who nonetheless do not have the right to vote, nor any opportunity to promote their interests in policy formulation. He frames this question as a matter of legitimacy. Legitimacy of state actions has been described as a "precarious resource" which is achieved and sustained under democratic rule through constant debate and public discourse. This confronts democratic rule with a series of awkward questions. If all power emanates from the people, how is it that some are not part of the people? And should or must democracy take into account and engage the interest of all those possibly affected by state actions to claim legitimacy?

The book seeks to answer those questions with arguments from political philosophy and law and by means of reconstruction. Köhler defines future generations as part of non-voice-parties, which are "groups of people that cannot vote, yet are (nonetheless) affected by state actions and that may be clearly defined by one specific characteristic" (28, own translation). He maps out the three main concepts that are put under pressure within this debate: the fundamental legitimation of a state, the definition and constitution of the "people", and the appropriate form of representation.

While first explaining his methodology of reconstruction and defining the term "non-voice-parties" (chapter 2), Köhler turns to the discussions on the purposes of states (chapter 3), state formation (chapter 4), the legitimacy of representation (chapter 5) and proposals for the actual implementation of the representation of non-voice-parties (chapter 6). Finally he engages with possible criticism (chapter 7), summarises his argument (chapter 8) and gives an outlook on the prospect for the representation of the interests of future generations (chapter 9).

Köhler's main concern is to find a modification of the All-Affected-Principle (AAP) that avoids its two major criticisms. The AAP is the solution to the democratic boundary problem and the problem of defining the legitimate sovereign. In its simplest form it states that anybody actually affected by state actions has to be represented in the decision-making process (32). The boundary problem arises because state actions could affect people living outside of a given polity and therefore the democratic decision-making-process might be compromised (32). The definition of the legitimate sovereign is a challenge to democratic theory, because if democratic legitimacy must be based on democratic legitimacy the argument could go on indefinitely, hence resulting in an infinite regress (33). Köhler engages with the two most prominent solutions to these problems given in the literature. The first, exemplified by the position held by Goodin, holds that the question of being actually affected is not a political or ethical one, but rather an epistemological one. According to this, state actions are interdependent and complex and thus there is no reasonable argument for excluding anybody in the decision-making-process. In consequence, this argument leads to the plea for a world state with a world citizenry (35). A second position, held by Sofia Nässtrom, states that only the ones subjected to a polity must be included. This reduces the relevant people to those who live under an

already existing legal framework. Yet, as she points out, this establishes "citizen" as a hierarchising category among humans and "state" is its enacting institution, therefore it is not possible to normatively justify either of them (39).

Köhler sees these problems arising because the theorists either view democracy as the principle on which they must base their arguments (as he says is the case with Arrhenius, Goodin and Dahl), or they do not find sufficient arguments to justify states (Nässtrom) (37). He leans towards a slightly modified version of the All-Subjected-Principle, yet to avoid Nässtrom's conclusions he needs to find arguments that justify the existence of a state (37). In order to achieve his goals he grounds his argument in the basic legitimation of state.

He proceeds in reconstructing the discourses of functional (chapter 3) and basic legitimacy (chapter 4) to prove that non-voice-parties need to be represented in democracies. Because he focuses on Western democracies, Köhler focuses on the classical debates on state formation from Hobbes, Rousseau, Locke, Kant and Mill, and the debates of criteria for legitimacy and its production from Max Weber and Jürgen Habermas. He demonstrates that basic legitimacy derives from natural laws, contractual theory and the idea of human in these theories.

In this reconstruction of discourses Köhler points out that the justification of state functions derive from the justification of state formation. The pragmatist notion of the rule of law does only justify state actions within an existing legal framework but does not apply when this legal framework comes under pressure and its legitimacy claims are contested. Therefore it excludes the central question of what makes "state" a legitimate power towards human (40ff.).

This is why Köhler turns to the natural law debate and argues that the state is the best institution to provide protection against anarchic violence. Köhler identifies the protection of pursuing *self-interests safely* and the protection of *human dignity* as the basic justifications for state formation, i.e. the establishment of a social contract. With Rousseau this contract establishes civic equality, in which all consent to subject themselves under a specific legal framework. Because of this equality, everybody born into the social contract, and thereby affected by it, needs to legitimise it and must be considered as contractual subjects (113). This is why future generations, too, need to be considered as contractual subjects, i.e. part of the people (114).

Yet the justification of state formation on the grounds of rational interests is insufficient because interests are contingent, contradictory and inconsistent (116). Pre-civic human dignity provides the second line of argument. The social contract that founds the state, and legitimises the state to act, derives its legitimacy from the promise to protect the right to human dignity. Thus, it is human nature that is at the heart of the relationship between state and human and ultimately legitimises any polity. This is why and how Köhler concludes that the right to be represented derives from being human and not from being a citizen. Therefore the representation of all affected people is a necessary condition (*sine qua non*) for legitimate democratic rule.

After he has established and proved theoretically that non-voice parties are part of the affected people, who need to be included into the social contract and thus need to be represented in democracies, Köhler turns to the question of how the representation of non-voice-parties might be implemented. After thorough consid-

eration of the arguments given in the literature on authority and accountability, he mainly follows Rehfeld in concluding that the legitimate way to represent the interests of non-voice parties is in the form of an anticipatory representation that aims for the best interest of the represented (153). Because non-voice-parties do not have the opportunity to ensure accountability through voting (136), Köhler argues for a deliberative system of accountability. He states that the criteria for legitimate representation are the comprehensible and transparent establishment of rules and their acceptance by an audience (157). Democracies, therefore, need to represent the interests of every group possibly affected by its actions to keep their basic legitimacy intact. This includes non-voice-parties and, as such, future generations. However, this does not mean that they need to be part of those who vote, because there are other ways how their interests might be represented. This way, Köhler avoids the argument for a world citizenry or the abolition of the state.

In the remaining chapters Köhler very briefly illustrates the Swedish concept of ombudsman for future generations as a realistic possibility for the implementation of future generations' representation in democracies (chapter 6). He distinguishes between non-voice-parties and structural minorities by introducing the case of the South Schleswig Voters' Association, a German party representing the Danish and Frisian minorities of the north German state Schleswig-Holstein who are foreigners, yet allowed to vote (173). The last three chapters defend his argument and highlight that his approach, which deduces basic state legitimacy from human dignity and self-interest, proves that henceforth the representation of non-voice-parties' interests is a question of state legitimacy. Since there is no need for "descriptive representation" but anticipatory representation suffices, there is no need for widening the citizenry beyond those who can vote. Through the establishment of an ombudsman, non-voice-parties' interests can be represented and the criticism aimed at the All-Affected-Principle does not apply to his approach (176-190).

As a dissertation in political philosophy the book follows the structure of a logical proof. Therefore the reconstruction of the classical democratic theory discourses, which leads to the proof that non-voice-parties need to be represented in democracies, takes up the most part of the book. As a result, the amount of chapters focusing on representation and the presentation of realistic implementation possibilities seems comparably small. Thus, while one can appreciate the author's overall aim to provide arguments for the representation of non-voice-parties in democracies, there are some questions in want of deeper discussion from the perspective of political science.

It is particularly the organisation and implementation of the representation of future generations' interests as non-voice-parties that pose challenges to democratic rule, and therefore it is a pity that some of the discussions have been cut short. An interesting point of discussion would have been the danger of moral hazard in justifying unpopular policies in the present with reference to future generations' interests, as Karnein (2016) has stressed. The main critique presented here will focus on matters of "descriptive representation", which play only a minor part in Köhler's argument, yet are at the core of the questions the reading raises for political implementation. Pitkin's contribution for the study of representation has been appreciated as teasing out "core elements of an interactive relation" between representatives and the rep-

resented. It thus seems that rather than singling out one specific form of representation, Pitkin aimed to show different facets of legitimate representation, which is first and foremost a social relation and therefore not free of power. This is where the argument for "descriptive representation" comes to the fore. This facet of representation focuses on representatives' shared social characteristics with their constituents. Yet, Köhler appears to dismiss the importance of "descriptive representation" rather quickly on the grounds of the representatives' capability to empathise, allowing them to anticipate the best interest of those represented (148).

However, as is seen in migration and refugee policies there is a real danger of paternalistic co-optation of interests and needs of the represented. Other examples are the women's and civil rights movement where the hope for empathy of white, male decision-makers had proven to be an insufficient basis for the protection of interests, rights, and dignity of affected groups. While shared social characteristics cannot guarantee that the representative will act as intended by the elector, without any representatives that share social characteristics "certain points of view will simply be ignored". The inclusion and discussion of the experiences of these (former) non-voice-parties and the "politics of presence" could have given the debate on representation a bit more substance.

It could have also softened some of the uncomfortable implications that arise from Köhler's inclusion of future generations in the category of non-voice-parties. Clearly, a representative with shared social characteristics is not possible in the case of future generations. However, it is and was important for the groups he identifies as non-voice-parties. In his understanding, the range of non-voice-parties includes children, whose interest may legitimately be represented by their parents (113); foreigners with limited electoral rights; and women who successfully fought for their political representation and as such are considered a former non-voice-party (148). The categorisation of these widely differing groups as non-voice-parties bears the danger of an equalisation of these groups in more than the intended comparative way. First, the problem arises with the "traditional" non-voice-parties. The defining characteristic of children in Köhler's reconstruction is that they are persons in need of parental care (111f), yet nonetheless, they are part of the same category as are women and foreigners. This activates a frame of "in need of care" that is the basis for the aforementioned paternalistic co-optation of interests and historically has been used just to this end.

Second, the main characteristic of Köhler's non-voice-parties is their lack of vote in contrast to citizens whose main characteristic is the opportunity to vote (136). He further states that he takes future generations as "representatives of non-voice-parties" (109). Yet, with this argument he appears to be revitalising the difference between groups without the *opportunity* to vote and groups without the *possibility* to vote. A language-sensitive perspective elucidates that language is not innocent and categorising is a way of producing social reality. To specify: future generations are not yet existent; their definition as being existent in some possible future prevents them from articulating their interests in the present. This is very different from the other-mentioned groups categorised and traditionally understood as non-voice-parties. Summarising them under the single category of non-voice-parties bears the danger of treating them as analytically equal. This is giving way to a possible naturalisation of their non-representation. It suggests that it is as unfeasible for children (and by extension women and foreigners)

to voice their interests as it is for people not yet existing. Most importantly, the equal treatment of future generations and disenfranchised groups bears the danger of applying the same lower criteria that are established for the representation of future generations to other groups classified as non-voice-parties. This may lead to arguments for their exclusion and further hierarchising society. Since it is the declared goal of the book to do the opposite – provide arguments for more representation – a broader and more nuanced discussion of “descriptive representation” would have been beneficial.

In conclusion, Köhler argues to take the revolutionary core of the Universal Declaration of Human Rights seriously and to implement it in democratic rule. In order to do so, he argues, the definition of the people needs to be widened (157). He shows how this argument is actually rooted in classical democracy and contractual theory that operate with a pessimistic idea of human beings. His contribution is thus to prove that the philosophical basis of Western democracy calls for the representation of the interests of all those possibly affected by state actions. He provides a line of argumentation for the representation of future generations and highlights the timeliness of contractual theorists in today’s democracies.

After the almost revolutionary call for a widening of the concept of the people, however, the suggested restrictions that may lead to the representation of non-voice-parties are based on considerations of Realpolitik and seem rather conservative. This leaves the reader a bit disillusioned and gives way to the question whether the analytical non-discrimination between people who *cannot* vote and people who are not *allowed* to vote really is desirable and legitimate.

Notes

- 1 Nullmeier 2010.
- 2 Kühne 2015: 463.
- 3 Weale 2007: 146.
- 4 Phillips 1995: 31.
- 5 Weale 2007: 211f.
- 6 Yanow 2002.

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