



# Guardians of the Future

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*A Constitutional Case for representing  
and protecting Future People*

Rupert Read

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Lorton Barn, Lorton Lane, Weymouth, Dorset DT3 5QH, United Kingdom.  
+44 (0)1305 816514  
[info@greenhousethinktank.org](mailto:info@greenhousethinktank.org)  
<http://www.greenhousethinktank.org>

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## The author

Rupert Read is Reader in Philosophy at the University of East Anglia. Rupert ([www.rupertread.net](http://www.rupertread.net)) works closely with environmental scientists, in eco-philosophy, at UEA, including on a new multi-disciplinary Masters course. His publications include his popular book, 'Philosophy for Life: applying philosophy in politics and culture'. He was a Norwich Green Party Councillor from 2004-2011. He blogs on environmental reframing at [www.greenwordsworkshop.org](http://www.greenwordsworkshop.org). He is Chair of Green House.

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## Summary

‘Democracy’ means ‘government by the people’; but who are ‘the people’? Society exists over time and decisions taken today can have significant consequences for people yet to be born. This report argues that the interests of future generations should be formally represented within our existing parliamentary democracy.

Building on the precedent of Hungary’s innovative office of Ombudsman for Future Generations, the report proposes the creation of a new legislative structure – Guardians of Future Generations. The members of this body would be selected by sortition, as is current practice for jury service, in order to ensure independence from present-day party political interests.

The Guardians would have a power of veto over legislation that were likely to have substantial negative effects for society in the future, the right to review major administrative decisions which substantially affected future people and the power to initiate legislation to preserve the basic needs and interests of future people.

## **Guardians of the Future:**

### **A Constitutional Case for representing and protecting Future People**

*A Green House report by Rupert Read, prepared as a discussion paper for the Alliance for Future Generations, which brings together civil society groups and individuals who have agreed to work "to ensure that long-termism and the needs of future generations are brought into the heart of UK democracy and policy processes, in order to safeguard the earth and secure intergenerational justice". The proposal made in this report is intended to do precisely that, through a modification to the architecture of Parliament.*

“[Society is] a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.”

- Edmund Burke

“With climate change imposing a heavy price on a distant tomorrow, there's... a case for enfranchising the unborn. That, however, would be impractical – and truly unthinkable.”

- The Guardian, April 2011 23<sup>rd</sup>, editorial



## 1. Demo-crazy: What does it mean?

Democracy means rule (*-cracy*) by the people (the *demos*), and so our opening question has to be: do the people rule at present, in Britain?

There is a strong case for answering that question in the negative. And thinktanks often spend time thinking about how to make our country more democratic.

But there is a problem that would still remain, even in the much-improved reformed democracy that would eventuate from a whole series of ‘standard’ democratic reforms, such as radically reforming the House of Lords, introducing proportional representation, reining in the unbridled power of media oligarchs, etc. The problem is this.

The people who would rule, even in such an improved democratically reformed future, are only the people (in fact, the adult, registered to vote, not extremely infirm etc. people) *who are alive* in the present. But surely ‘the people’ ought to be thought of in a far more temporally extended manner. Does a people only exist as a momentary ‘time-slice’? Surely not. A people, a nation-state, a community, a society, is something extended over time. It extends into (or rather from) the past, and extends indefinitely into the future.

This report aims to propose a solution to the problem identified here, a way in which we can enable the people considered as distributed *over time* (crucially, into the future) as well as over space, to rule.

Burke, in a famous passage (see the epigraph, above) clearly forgotten by some conservatives in UK and (especially) the USA for the last couple of generations, says that society is a contract between the dead, the living and those unborn (with no limit specified on the generations ahead). This report proposes an updating and extension of Burke's intergenerational compact. It proposes taking seriously Burke's thought that society is “a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born”. Taking seriously this thought would mean that we would find a way of bringing the voices of those beings presently without a voice<sup>1</sup> – most strikingly, future generations – into the political and juridical structures of our society, of our state, of our world.

Let us start though with some words about the voices of those whom Burke also of course had in mind: voices from the past.

Unlike the people who will be alive in the future, there is a very obvious and pretty overwhelming sense in which we cannot hurt or damage those in the past, those who have gone before us. This doesn't, however, directly imply that we have no responsibility toward them. I believe that we do have responsibilities toward them. As Burke held, it makes a nonsense of our thinking of ourselves as a *people* to assume, as neoclassical economists do, that the past is completely dead. Think for instance of demutualisation (of the building societies, etc.). Did those who created the building societies have no thought for what would happen after they were gone? Did they not care whether the just institutions that they created would



survive? On the contrary, they surely precisely *did* so care – that indeed that was one of their main *motivations* for creating such institutions.<sup>2</sup> We should have had some regard to that, and not just treat(ed) what they created as our complete inheritance, free to be milked or destroyed in whatever way we wished. We ought to honour their memory, their intentions, the way they deferred gratification.

Or think similarly of building cathedrals, over timescales longer than individual human lives; or of planting orchards, likewise; or of the kind of long-term thinking tied up into institutions such as New College, Oxford, as related in famous stories such as that of the oak-beams in the Hall there, which, upon their decay, it was found were ready to be replaced by a stand of oak trees specially planted for the purpose – hundreds of years before...<sup>3</sup> But what is vital – a key clue – in all these cases, is that what we owe to the past is also in the main *what we owe to the future*. The key lesson that we learn from thinking through the way in which we ought to listen to the voices of the dead, is the way that their voices speak to us primarily by speaking of the future beyond us. Our responsibility to the past, the humility and gratitude that we feel in the presence of the voice of the dead, a certain sense of connection with them as we recognise and appreciate them, translates into a responsibility to the future.

We already hear the ‘voiceless voice’ of the people of the past, and ought to hear it more. It is time we heard the ‘voiceless voice’ of the future people too. We ought to manifest our connection with them, to be responsible. This is especially obviously so, in a finite world, a ‘full’

world, such as that that we now inhabit, in which our collective footprint threatens to trample all over the inheritance that we want to leave to our children and their children.

If it is true that we need to hear the voice of future people and that that voice ought to be one that is not merely heard but acted upon, then it seems clear that we need a significant change to our democratic system, to make it potentially worthy of the name.

There needs to be a mechanism for voicing – *and protecting* – the needs and even the wishes of future people. They are part of the *demos*, and our institutions need to change to reflect this. We need to give them a true *and powerful* voice in our democracy.

As this report is published, in the late autumn of 2011, there are already processes of constitutional change underway, most notably the modernisation of the House of Lords, the long overdue business of implementing the promise from 100 years ago of the Parliament Act.<sup>4</sup> And one or two features of the proposed reform of the House of Lords are encouraging, in relation to the topic of the present report: for instance, it is most interesting that the Government is proposing 15-year term limits – it seems clear that longer term thinking (than that commonly found in the Commons) is the intention, and is always a potential benefit of an upper chamber.<sup>5</sup> But in parallel, the government has rid itself of some key institutions that the previous government had in place to seek to maintain our ecosystems for the future (such as the Sustainable Development Commission). This makes the current proposal especially timely: for the proposal made here is a radical constitutional reform that could safeguard the future more genuinely



than any institution yet devised or even contemplated, and do so via a radicalisation of democracy, in concert with reform of the upper house. Such that we as a society might start to look not just 15 years ahead, but 100, 150 years, and even more, ahead.

Before moving on, let me concede that there may be some who are, for whatever reason (perhaps because they will not be convinced that it is possible to include future people in any way into our democracy; possibly simply because they are not democrats!), frankly unconvinced by the democracy-based argument that I use to motivate the proposal offered in this report. Let me therefore mention an alternative basis on which the proposal can be motivated, which I think also works, but that is independent of arguments about *representing* future people. It is quite simply the obviousness of the need for their protection; the need to offer a deep care toward them;<sup>6</sup> the need to actualise a kind of ‘stewardship’ toward them. Our society’s chronic short-termism is obvious to many who might not endorse the ‘democratic’ argument I am offering for why we need to modify our system to ‘include’ somehow future people. So: if you are troubled by my ‘democratic’ case, feel free to substitute a ‘care-based’ case for the protection of future generations.

One way or another, it is high time we started to think what we have been told is ‘the unthinkable’ (see my second epigraph, above), and make it practical. Are there any extant efforts in the world today to realize a constitutional vision such as this, which would somehow represent and entrench protection for future people?

## 2. Protecting Future People: the Hungarian Precedent

The most striking – and inspiring – existing *precedent*<sup>7</sup> of an innovative constitutional change that aims to protect future people can be found in Hungary. Hungary instituted a ‘Parliamentary Commissioner for Future Generations’ in 2007/8.<sup>8</sup> Since 2008, the Parliamentary Commissioner for Future Generations has been one of four ombudsmen elected by the unicameral Hungarian Parliament.

He is charged with protecting the constitutionally-guaranteed fundamental right to a healthy environment, and receives petitions from those concerned that that right has been, or is in danger of being, violated. He must investigate properly executed petitions and then make recommendations to the relevant public body, and he can investigate violations on his own initiative. He has duties aimed primarily at improving law enforcement and implementation of international treaties, and can ask the Constitutional Court to intervene where relevant. He has powers aimed at influencing the activities of individuals and companies that actually and potentially harm the environment; at moving the competent regulatory authorities to use their own powers to restrain environmentally damaging activities; and at suspending the decisions of administrative bodies which permit activities that harm the environment. In performing his functions, he has significant powers to obtain information, to enter property and to publicise his proceedings (for instance, the Commissioner has commented extensively on relevant draft laws). The Commissioner also carries out strategic development and



research covering the duty of representing the interests of future generations.

Through these means, this ombudsman post has surely given some *voice* to the basic needs and basic interests of future people, and the above list of powers to help try to protect the world that they will inherit is creditable (and enviable). The issue is whether the voice that results from this carries very much weight, relative to the entire political and legislative system of which it is a part. What has the ombudsman actually managed to achieve?

While there have been some heart-warming success stories coming out of the actions of the Hungarian Commissioner for Future Generations,<sup>9</sup> the reports of the first few years of the ombudsman's existence<sup>10</sup> suggest that less has concretely been achieved in terms of stopping Parliament and the Government from acting in ways likely to be harmful to future generations than might have been hoped for from an institution designed to protect future generations.

The instituting of the Parliamentary Commissioner for Future Generations, then, was a visionary move, which has opened up welcome space worldwide for debating constitutional changes to protect future people. And it has certainly given voice to those in Hungary wishing to act for the benefit of future people, and has made it more difficult for political forces to proceed unhindered in undertaking thoughtless short-termist actions.<sup>11</sup>

But the real point is this: the Commissioner was simply not given enough powers to actually accomplish such protection as the present report

aims for and envisages. His powers, as will have been noted, relate mainly to intervening in actual present environmental harms, to intervening in certain kinds of administrative and court decisions, and to assisting those wishing to stand up for the environment and for future people. His powers do not extend to most of the political and legislative process. Thus, crucially, new or existing laws that are likely to undermine the basic interests of future people are basically not vulnerable to the Hungarian ombudsman.<sup>12</sup>

So, we should praise the statesmen who boldly introduced the ombudsman concept and made it a reality, and we should remark that *relative to the powers granted him*, the Hungarian ombudsman has accomplished a great deal. *It is simply that those powers are, in the final analysis, not adequate to the task in hand.*

Here is how Janos Zlinszky, right-hand man to the current Hungarian ombudsman, describes the situation: *“The office of ombudsmen / parliamentary commissioners in XXIst century Europe is that of a watchdog as opposed to a guard-dog... If, and only if you have a society strongly inclined to protect the rights of future generations, but living a way of life too rushing or busy to stop and think properly before deciding, can the warnings from such a watchdog be effective. The only real powers of our model of guardian are in the very hope that, once alerted, informed and warned, society and those elected to represent and govern them will act as they agreed and promised to act in those most fundamental of covenants that are the Constitution (as explained by the Constitutional Court) and the laws derived from it. The model of*



*Ombudsman is for a world where elected representatives do indeed represent the true (long-term) interests of their constituency, and where the powers that be truly feel an obedience to the values, norms and goals agreed by the community (as laid down in fundamental documents). This is why this (the Hungarian) model has the backing of a broad cross-party consensus (the two-thirds majority required for election), the unlimited investigative powers (so that people can be reasonably confident that what he says is based on the full available information, thus credible), and the right to speak up (so that warnings can be given in a timely manner). And then it is presumed that those who have the powers to act will act, and act in the right way, driven in this right direction by public opinion. Admittedly, a naively idealistic view of ourselves.”<sup>13</sup>*

The question that arises then is: where within the system of governance are interests of future generations best placed? The idea of an institution like the Hungarian Ombudsman, enforcing rights and intervening to improve governance is an absolutely necessary one, but *it is not placed at the appropriate place in the governance structure for it to have the level of impact that is needed*. So we need to look at the question of institutional protection for future generations at a higher level of law-making, and *under* that we need watchdogs and champions like the (Hungarian) ombudsman to enforce the rights granted by law and to help get redress.

The Hungarian initiative is the most promising extant example in the world; so, if the best case is simply not good enough, then that strongly suggests that something novel and stronger is required.

As I’ve acknowledged, the Hungarian precedent is inspiring, and has without doubt lent some voice to the cause of future generations. It *might* possibly even be as much as can realistically be expected to be possible in a ‘liberal democracy’ shot through with short-termism and with corporate power.

But attempting only what is ‘realistic’ is not good enough, when the most that is ‘possible’ is not enough. More than voice and pursuance of existing rights is needed; more substantial powers are needed, including the granting of new rights and protections and the prevention of the unpicking of existing rights and protections. Without such ‘more’, the historical record and the built-in ‘presentist’ bias of our electoral and business institutions strongly suggest that future generations simply will not be adequately represented or protected.

We badly need:

- i) a forceful proposal, yielding *stronger* powers than any yet enacted (as intimated in this Section, above);
- ii) that can be brought in without appearing to beg the question about what exactly care for the future would be (i.e. a proposal is useless if it just looks like – or, indeed, *is* – an attempt to bypass democracy and impose a ‘green’ solution); *and*
- iii) that works with the grain of a broader transformation toward a society than can be sustained, empowering people and enhancing democracy, rather than amounting to technocratic tinkering. (This point is



crucial because campaigning resources are so precious and time short; and because we need to think in joined-up ways about how what we propose will change our society in unintended as well as intended ways.)

The proposal offered in this report for how to start to take proper account of future people – for how to *represent* them, democratically - achieves these three requirements.

### 3. Guardians: Protectors of the future

What future people actually need is not just a proxy *voice*: they need, very roughly speaking, to have a *vote*. They need somehow to be (as if) enfranchised in a fair and genuinely democratic system of governance. But people who do not yet exist very obviously cannot literally have a vote.

I propose therefore that there should be *guardians* for future generations, with very strong institutional/political powers (I set out what exactly those powers should be very shortly), stronger than any yet instituted, and even than any yet to my knowledge envisaged or proposed.<sup>14</sup> Only that will be enough, for *democracy* in its true sense: rule by all the people, including those who are as yet not with us. Rather than what we have at present - rule by an arbitrary subsection of the people: *an elective dictatorship of present people over future people*. Only such an enhanced and expanded understanding of democracy – such that it comes to include future people and not just present people – will be enough for the protection of the future people against possible deprivations from us.

The proposal being made here is that we give future people *en masse* the nearest possible ‘equivalent’ to the vote. Given that they can’t be given a *vote*,<sup>15</sup> I propose that we give them a proxy *veto*. That we create a council of Guardians of Future Generations, as (if you will) a ‘3<sup>rd</sup> legislative house’, who would be given the power to scrutinise and if necessary to veto legislative proposals that they judge after due consideration and deliberation would



impact negatively on future people's basic rights and fundamental interests.

With that remark, I have started to address the most crucial issue of all: just what would be their powers? At this point, I should state clearly that there is of course room for different details here, for different degrees of radicalism in the proposal. *From this point onward in the report I will therefore repeatedly pose options for how exactly to proceed. Part of the point of the report indeed is to stimulate debate about these different ways of implementing the Guardians proposal.*

Roughly, the Guardians' powers would be, on this proposal, at least twofold:

a) **To veto in whole or in part new legislation<sup>16</sup> that threatened the basic needs and fundamental interests of future people.** Any new legislation that had significant implications for future people would have to pass through the Guardians, as well as through the upper house (as it does of course already). As a filter, to determine whether there *were* significant implications (for future people) that the Guardians should look at, perhaps a signal might have to be given by the upper house: for instance, in terms of a requirement that any new legislation 'flagged up' by some small percentage of the legislators in the upper house, who would already have scrutinized it, would go to the Guardians. (This is one of those questions that could be debated, and should be debated, once the broad principle of introducing the Guardians has won enough of us over. As perhaps is the question of whether the Guardians would have filters of their own: they might for instance have a 'light touch' procedure for some items

that come before them and a 'heavy / full touch' procedure for others.)

Much such new legislation might then be more or less nodded through, but some, clearly, they would investigate or question in some detail - and might well rule against. (Some possible examples are briefly considered in the Conclusions, below.)

b) **To force a review, on petitioning, if appropriate and merited,<sup>17</sup> of any existing legislation that threatens the basic needs and fundamental interests of future people** (*somewhat* similarly to existing arrangements *vis a vis* Equalities Impact Assessments<sup>18</sup>). We might even consider the following (and more radical) option: this power could be strengthened into the equivalent of a) above: a power to strike down in whole or in part existing legislation that threatens the basic needs and interests of future people. In this case, to avoid a chaos of sudden collapsing law-books, there should be a tight requirement of unanimity among the Guardians. (If the Guardians cannot agree *vis a vis* a decision as weighty as this would be for present-day people, about the needs and interests of the future people then probably they should have to 'pass'... One might require merely a majority decision to force a review, or to strike down a new law, but unanimity [or at least say an overwhelming majority, or alternatively a genuine willingness by a minority not to block a clear majority decision<sup>19</sup>] to strike down existing law.)

As another option to discuss, more radically still (and with implications for the separation of powers doctrine, thus in effect requiring a new constitutional settlement, which the basic proposal here does not), one



might give the Guardians the right to **review major administrative decisions<sup>20</sup> which substantially affected future people.** And/or to review the *implementation* of laws with such implications.

Such radical powers might prompt the question: what are the *grounds* which the Guardians could have or should require, in order to be able to veto etc. provisions that had moved through Parliament? The first thing to be said in response to this question is of course that *Parliament* itself doesn't have to offer any grounds for what it does. The situation with the Guardians would already improve on this: responsive to the oath that they would take (see Appendix A, below), they would, on those matters relevant to their mandate, deliberate and *include their grounds in any decision that they made.*

Moreover, they would only deliberate/intervene when it *was* relevant. I have mentioned already the possibility of requiring a 'filter' or 'threshold' or 'trigger' (probably initiated by some members of the Upper House) before such intervention was even possible. And if they plainly intervened in inappropriate instances, exceeding their powers, then the Supreme Court could constrain them.

In other words: points (a) and (b) would only apply to matters that were within the purview of the Guardians – i.e. that were reasonably judged to affect the basic needs/interests of future people (see again the remarks about 'filters', above). Other matters should of course be dealt with by the Supreme Court, and the Supreme Court would additionally be able to rule on any narrowly procedural violations by the Guardians *and on any exceeding by them of their authority or*

*of their remit* (in terms of the basic needs and interests of future people). However, there would be no general power of 'appeal' against a decision by the Guardians, no recourse beyond them, except in cases of procedural error (which could include failure to deliberate adequately) or violation of remit. This is crucial: *they* have the power to judge the matter they have been asked to judge on. *They* voice, represent and empower the powerless voiceless future ones.

Should there be a right of appeal to the European Court of Human Rights against the Guardians' decisions? Yes. But: we need to *ensure* meanwhile that the ECHR takes on board a far more meaningful responsibility to future people than it does at present (i.e. in other words, the 'human rights' in question need to start to include in a serious fashion *the rights of future people*).<sup>21</sup> There needs to be a serious rebalancing in all our institutions, including our very highest courts, away from individual rights for present people and toward individual or collective rights for the voiceless, most notably future people.

This implies of course that both the Human Rights Convention and the Human Rights Act ought to be amended to help ensure that future generations are protected.<sup>22</sup> There is already a movement underway to achieve the former objective (and the Guardians themselves of course could seek to amend the HRA, if they have a third power (of legislative initiative) to be suggested shortly).<sup>23</sup> The Guardians are not going to be put in place overnight; hopefully, by the time they are, the ECHR will already be in good shape to sit compatibly with them.

What, apart perhaps from appealing to the ECHR, could one do



if one didn't agree with the Guardians' decision on a given matter? Let's turn that question around for a moment: what can future people do if they don't agree with a decision that *we* have made? ...The answer, obviously, is: nothing. So perhaps it isn't so outrageous to give the Guardians in a certain sense the highest Parliamentary authority... But what would in practice happen would be (for instance) that the government would try to reintroduce similar legislation etc. to that which had been struck down or had had a review forced of it, removing only the part which had drawn the Guardians' worst ire. They might well try to alter what they had done / what legislation they had enacted *as little as possible*, and a to-and-fro might ensue. Rules could be devised for that kind of eventuality (perhaps slightly modeled on the ways in which the separation of powers gets worked out and legislation still gets made in the U.S., including even within the Legislature between the House and Senate; note that the U.S. system, like the model being proposed in the present report, is a 3-tier system of legislation); and these are the kind of thing deserving much discussion and debate, in the refinement and development of the Guardians proposal.

The two powers, (a) and (b), outlined above, are the core of the proposal made in the present report. There is reason to consider the option of the Guardians having a further power, which (members of) the existing lower and upper houses already have:

**c) The Guardians could be given the positive power to initiate legislation.**

The power to create green papers that the government / the civil service would be obliged to seek to turn into white papers, to seek actively the good

for – the preservation of the basic needs and interests of – future people.

This power could be reserved to the Guardians as a whole, or could be allowed to sub-groups of them. This power would enable the Guardians to take positive action to seek to fulfill their vow to represent and defend the future ones. Something to be said in favour of giving the Guardians this power would be that otherwise they might be liable to gain a reputation as merely 'nay-sayers', which would be unfortunate.

Clearly, these 3 powers together (of which the first two are clearly by far the most important and novel; and quite probably those would be enough) would effect a revolution in our system of government. Some might say immediately that these powers are too great, and would feel that our existing democracy for present people pales in comparison. The correct response to such a feeling is not to reduce the powers of the Guardians; it is to increase the reality of democracy (for present people). As implied earlier: we need a democratic revolution already for ourselves, beginning with proportional representation, democratic reform of the upper house, and the restoration of significant powers to local government, and deepening through the reining in of the power of the money markets and of big corporations over democratic structures, and the bringing-in of more economic democracy and more participative democracy. These measures would amount to turning our 'democracy' into a genuine deliberative democracy (of which the Guardians are themselves an example: see below for more on this).

The institution of the Guardians ought not to scare us; it ought to make us



demand as much and as real democracy now as the powers that are proxied to future people by virtue of the Guardians. They need to be represented (and protected) adequately, as do we.

Note that the powers that I have outlined above would indeed in practice require the executive and the legislature to take into account (at the stage at which they were *formulating* any significant action) the needs of future generations. For instance, the opinion of the Guardians (or of some subset of them) would perhaps be sought advisorily at the green paper stage of much new legislation, to avoid wasting everyone's time passing law that was only going to be vetoed. The creation of the Guardians would thus in practice guarantee that the needs of future people entered into the deliberations of politicians, parties, civil servants, voters, the media, etc. to a much greater extent than is at present the case. To avoid gridlock / deadlock, the kinds of values that would be acted upon by the Guardians would need to be internalised increasingly by all players in the political process. This would have a very powerful effect; it would progressively yield the very consciousness shift that has been so elusive for so long, among voters, agents of governance, everyone except the future- and sustainability-minded.<sup>24</sup>

But my proposal may still sound worryingly utopian.<sup>25</sup> A swift way of ensuring that we don't in effect eat our unborn descendants before they are born, but requiring a drastic – revolutionary – institutional change in order to achieve this objective. Let me now then suggest a modification to it that makes it seem comparatively reasonable, genuinely modest. This

modification is I now believe the subtlest way to make my strong Guardians proposal acceptable.

We needn't just imagine national Guardians. There is no reason why there shouldn't be Guardians presiding over *local* council decisions too (and also internationally, for example at the EU<sup>26</sup>, and perhaps the UN).<sup>27</sup>

The introduction of local Guardianship would create a convenient mechanism to make the entire proposal more 'reasonable', less 'extreme'. For an attractive possibility would be that one would have to have a term as a local Guardian *before* one was eligible to be a national Guardian. Local Guardians would perhaps meet once a quarter, or at most once a month; or simply whenever the need arose.<sup>28</sup> The local Guardians might be merely an advisory body; though it would be better and more meaningful, I suggest, if they had very broadly the same kind of powers, relative to the local Councils which they oversaw as a kind of 'upper house', as we are already envisaging for the national Guardians (as outlined above). Powers of veto, etc. It could also make sense to introduce the national Guardians scheme with something like a 7 year initial lead-in during which there wouldn't *be* actual (as opposed to 'shadow') national Guardians yet, only local ones. Again, this could help everyone prepare for the idea (nationally), and let it 'bed in'.

This way of proceeding makes *conceptual* sense too. Why? The reason the local level matters and means so very much in the present context is that it is in the local land use planning system, arguably, that the Burkean covenant between past, present and future is most understandable, and most present.<sup>29</sup> In



local land use planning the presence of the past is palpable and visible in the form of built heritage and landscape. The present is there in the form of current demands and pressures. The future is there in the form of hopes, projections and anxieties about the long-term impacts of present choices. True, the planning system has become 'rationalised', economistic, terribly utilitarian in philosophy and sometimes unworkably confrontational. But it could become more deliberative and a proving ground for Guardianship. The local Guardians, overseeing planning decisions for their impact on the future (i.e. reviewing such decisions with a view to the acceptability of those decisions from a point of view that sometimes does not feature within planning law as it currently stands), would add a splendid and helpful new dimension to the planning process, revive it from its present somewhat fallen state, and counter the grave threat (under the present Government) of it falling still further (See <http://www.guardian.co.uk/politics/2011/aug/30/planning-reform-undemocratic-green-groups> ).

I am currently involved with a group of NGOs etc who want to try to develop an (NGO-led) actual pilot scheme for local Guardianship.<sup>30</sup> This is, I believe, an idea whose time truly has come.

The local Guardians that we seek to create could be offered experience with longer-term thinking at the national level, too, to prepare them for possible national Guardianship: e.g., by some kind of Congress for the Future<sup>31</sup> or similar forum, some kind of body that could start operating perhaps as a kind of shadow 'House of the Future' / a shadow set of national Guardians, so

that people would start to get a sense of how it could work at the national level.

With the creation of the Guardians for the future, what James Fishkin, Jürgen Habermas, and others have called for under the heading of 'deliberative democracy' would come a big stage closer. A true 'discursive democracy' (John Dryzek's term), where the discussion starts genuinely to include the future portion of the *demos*.<sup>32</sup>



## 4. Democratic legitimacy of the Guardians

An absolutely crucial issue has been lurking, unanswered, in the discussion so far (despite a tentative suggestion having been made towards the end of Section 3, above, *vis a vis* ‘local Guardians’): *who* would the Guardians be? *How* they would be selected? One might think of the Guardians as a ‘super-jury’, to protect future generations. Would they then be like Plato’s Guardians of the just republican city state: wise dictators, philosopher-kings?

That is not the proposal being imagined here. The proposal being put forward here is for the Guardians to be a vital part of our *democratic* institutions. Democratic-citizen-guardians, not philosopher-kings.

So: how can Guardian for future generations be introduced in such a way that they are democratic (i.e. such that *the people* rule), and clearly *seen to be* democratically legitimate?<sup>33</sup> How can they be picked and operate in a way that includes and underscores such legitimacy, and is not experienced by the current citizenry as undemocratic?

One possibility of course would be election; but this would be insufficiently different from our existing democratic mechanisms, and would thus run the risk of being (1) not sufficiently future-focused; and (2) seen to be either illegitimate in itself or, if legitimate, undermining of our existing democratic institutions’ legitimacy.<sup>34</sup>

A far better option is the ‘Athenian’ option: *sortition*.<sup>35</sup> Representation by

lottery. *The same principle, of course, that supports the jury system.*<sup>36</sup>

Of course, it would be a modified version of the Athenian system, which, for instance, excluded women and slaves. Hardly democratic. Democracy now includes all present adult people, albeit often rather thinly or weakly – but it doesn’t include future people at all, as yet. Just as for democracy to be worthy of the name it was necessary to radically broaden the categories of person to be represented from what they were in Pericles’s time, so now a further radical broadening is required.

A further objection might immediately be made, based on the state of our contemporary culture: is the jury system not flawed? My response would be this: in practice, juries behave (on average) very well.<sup>37</sup> The system still works. Although some in Westminster have lost faith in the jury system in highly technical areas so that it has been dropped for complex cases of serious fraud, it remains a vital and fundamentally democratic part of our common law system. Rejecting such a principle of rule by the people is tantamount to deciding that that democracy is in principle flawed. While we can perhaps imagine circumstances where exceptions may need to be made to the Guardians’ powers, in relation to subject matters too complex for their understanding, we need to restate our confidence in the ability of citizens to decide impartially what is in the best interests of society. But really, would there be any genuine cases of this, in which the Guardians (with all their expert witnesses etc. etc.) should be adjudged incompetent, *in which MPs are competent?* This seems decidedly unlikely.



The creation of the Guardians would be particularly likely to be itself perceived as an effective democratic move if the Guardians were selected by lot, *because they would then patently be representative of 'we the people', the demos, just as juries are.* They would be *us*; they would be our peers, and no one could slough them off as simply *them, those* experts, or (similarly) *those* darned judges.

Their role then would be to represent the voiceless, the future ones, to protect and guard them against the depredations that the present might make – is making – against them. Again, this makes selection by lot peculiarly appropriate:

Because random selection would emphasise that we all share this responsibility for future people, and *that none of us and all of us* are well or ideally placed to do this vital job. You cannot expect future people to represent themselves, for very obvious reasons (they are not here yet) so some way has to be found to pick others to represent them. *The very fact that they are not choosing who should represent them makes chance the only appropriate method for making the choice.* Thus everybody in the population, whatever their attitude to offspring, environmental issues, etc., has an equal chance of being the person who argues the case of future people.

One suggestion would be that an ideal number of Guardians might well be 12... to underline the inheritance of the legitimacy of the jury system, in thus helping legitimise the Guardians. (Once more, however, this question of exactly how many Guardians there should be [I could see a case for there being anywhere between about 7 and

144] is the kind of question on which there is plenty of room for discussion and for different views.<sup>38</sup>)

One objection that will likely be made against the Guardians proposal is that the Guardians, like juries, arguably require a reasonably unified society. That the proposal requires a population to have enough in common with itself to constitute a *people*, such that individuals feel (in the case of juries) that they are being judged by their *peers*. The objection will be that such a society no longer exists. That consumerism, pluralism, cosmopolitanism and increased migration have put an end to it.

Two points about this:

(i) the objection is exaggerated. This complete breakdown of fraternity and sorority has not occurred. For all the strains it is suffering from, and for all its lack of certain kinds of community spirit that flourished more in a less materialist pre-consumerist age, Britain is not broken. (As already argued above, nor is the jury system.) And in fact in a good number of respects people nowadays are signally *better* at empathizing with one another (e.g. across racial divides) than they used to be.

(ii) the Guardians would actually work as a gelling agent helping to put this dangerous process of community-attrition, insofar as it *is* real, into *reverse*. Because they would encourage deliberation, and, as argued by Robert Goodin in the closing pages of his 1996 paper “Enfranchising the Earth, and its alternatives”,<sup>39</sup> the process of participatory and deliberative democracy in itself is likely to increase on balance the sense of community; and because the *kind* of



deliberative considerations the Guardians would encourage would themselves foster empathy. If one can truly care about the 7<sup>th</sup> generation hence,<sup>40</sup> one can surely start to care about one's neighbour...

roughly *representative* of all of us present people, and by powerfully *representing* and thus sufficiently protecting our other equals, our peers to be, the future people.

Montesquieu, the intellectual founder of the separation of powers doctrine, in a way sums this Section up, in the following remark: “[t]he suffrage by lot is natural to democracy. The suffrage by lot is a method of electing that offends no-one, but animates each citizen with the pleasing hope of serving his country”.<sup>41</sup> My proposal attempts to introduce this principle into our system of government in a more serious manner than has been the case to date.

People might be awestruck or intimidated at the thought that they might be selected as one of the 12 or so Guardians of the future – but I would hope that in many cases they might hope that they might be. That they might thus be able to serve their fellow human beings, their fellow future human beings. That they might thus be able to do ‘intergenerational jury service’ (in service of *all* the people – but specifically, and most crucially, of those yet unborn and even undreamt of).

The future is the responsibility of us all. The institution of the Guardians would symbolise this, by some of us being picked by lot to exercise the ultimate level of this responsibility. Juries judge their peers. The Guardians would help to reclaim the word “peer” from the way it has arguably been somewhat corrupted by being applied to the Lords (an elite institution). They would in effect reclaim the idea of us all being each others’ peers by being (by virtue of being randomly selected)



## 5. Conclusions

This then is the new constitutional architecture, the proposed new legislative structure envisaged by this report: i) the House of Commons, ii) Senate / upper house, iii) Guardians of Future Generations.<sup>42</sup>

Some might ask why, instead of creating this extra institution, (iii), we shouldn't *simply make caring for future people a responsibility of the upper house as a whole* (i.e. make the revising chamber into a chamber with particular responsibility to look out for the interests of future people).

Such a responsibility would I believe get lost among the various responsibilities and ideals of the upper house. It would mostly become a 'tick-box exercise'. An oath that members of the upper house took to swear to uphold the basic interests and needs of future people would, I predict, become swamped by their other tasks and leanings.<sup>43</sup>

With the upper house becoming, as it may do and should do, some kind of democratically-elected 'Senate', there is a strong case for some (broadly democratic though) *not* elected component to be (re-)inserted into governance structures. The Guardians, selected not on any aristocratic or patronage principle, but on the principle that animates and builds on the historic equality of the jury system as the best way to preserve Britain as a democratic polity into the future, would manifest this case beautifully.

What (it might be asked) about the *accountability* of the Guardians? From where would this spring, and what nature would it take? Well, as already implied above, this would come

primarily simply from *their having to give account* for the decisions they make, during and at the end of the decision-making process. Much as Supreme Court justices (in this country, and especially in the States) do. *They* basically can't be sacked either - and, unlike in the case of the Guardians, are there for life. (Of course, there would have to be some kinds of procedures for having Guardians step aside in the case of conflicts of interest, and for them being removable in case of incapacity, dereliction of duty, etc.. There would most likely be a Code of Conduct for Guardians, a set of 'professional' rules that they were obliged to abide by, perhaps 'progress reports' on their work relative to their oath, and so on. Again, these are details in relation to which I would welcome discussion, important details that could and should be worked out at a later stage than at the stage of the present report.)

The 'real', 'ultimate' accountability of the Guardians would be: to the future. Posterity would assess whether the Guardians - and indeed the rest of us - had done their job properly. It is our descendants who would hold them - as all of us - to account, in the court of (future) public opinion...

When radical human rights advocates were dreaming up and then framing the Genocide Convention, they were not persuaded by those who told them that it was an 'unrealistic' aim, that they should settle for something more modest. They would not have settled for an ombudsman for victims of genocide, nor even for an ombudsman 'responsible' for the prevention of genocide. They framed and then campaigned for their maximum goal - and they got it. By analogy, however desperately bold and improbable our



ideas on saving future people from the terrible fate which is likely to await them on a ‘business-as-usual’ short-term scenario might seem, we should not settle for (campaigning for) an ombudsman for them. We need to frame and to campaign for our maximum goal. Something that could actually work, that could actually be enough.

Other futures (than ones that are not good enough for our children and their children) are possible. The kind of care that in our families we take toward our children needs to be extended en masse to cover our children and their children (and so on), on a society-wide level.

How would the Guardians do enough to protect future generations? What might the Guardians actually *do/decide*? Might the Guardians effectively veto all road-building, for example? What about new supermarkets? What basis would they use for making these decisions (decisions about, for instance, a Chancellor’s budget or a new planning law affecting out of town sites)? How would they weigh up ecological arguments (e.g. more cars = more CO<sub>2</sub> = more dangerous warming) vs. mainstream economic arguments (e.g. more road space = cheaper transportation = a stronger economy = more wealth to invest for future generations)?

One certainly cannot automatically assume that they would take a ‘green’ line on these matters.

I would assume that they would be more likely to act on the basis of the Precautionary Principle than our current Government does. This would incline them to consider ecological arguments often as stronger than

broadly neo-classical economic arguments, as opposed to the other way around as happens at present. But I can’t *know* this. This is actually the beauty of the Guardians proposal, the way it could engender more consensual backing than other ways of seeking to ensure real protection for future people: That the final decision on these and other matters would be *up to the Guardians*. Not up to a green elite nor anyone else. Thus they, representative of us the people, and representing to us the needs of future people, would keep our existing democratic institutions in check.<sup>44</sup>

We can’t know in advance what decisions they would make. We would have to trust them enough to make good decisions; just as at present we (would like to!) put trust in our democratic institutions, our government, etc.. We might indeed even find that we, and especially our children, would come to trust the Guardians a lot more than we trust those existing institutions...

Let us briefly recap on what the strong Guardians proposal amounts to, and why:

- a third Parliamentary House, *with specific reference to care for future generations*, which would comprise
  - a number of individuals chosen by lot;
  - trained and supported by relevant experts (see Appendix B, below);
  - serving for a specified non-renewable term;
- with duties to take the long view and to safeguard the basic needs of future generations as an integral part of the law-making process;



- and therefore with powers
  - to veto proposed legislation;
  - to require reviews of existing legislation, and possibly also of major administrative decisions, where relevant;
  - perhaps also to propose and initiate new legislation;
- which would be bound by the European Convention on Human Rights; therefore the ECHR needs to be amended to include proper consideration of the rights of future humans.
  - so not susceptible to the pressures that brings;
  - free from the pressure of party;
  - genuinely (within the constraints of a system) “us” - we *all* share responsibility for the future, and should not slough that responsibility onto others who might well then be characterized as “*those* experts”, “*those* clerics”, “*those* politicians’ friends” – or, indeed, “*those* politicians” or even “*those* toffs”.

To sum up why the Guardians should be picked by lot rather than be elected:

it makes relatively little sense to *elect* people to be specifically responsible for looking after the interests of the future ones, people who aren’t here yet. It makes good sense rather for us *all* to be so responsible - so we should be picked from at random, to *realise* their interests (in every sense of the word ‘realise’). Electing the Guardians would run the risk of just repeating, unhelpfully, the elections we already have. Election is naturally appropriate for representing *us*. But the Guardians would, while representative of us, *represent*, rather, unborn future generations.

In the context of the need for Lords reform, and thus perhaps of a new upper house that will be overwhelmingly elected, I have suggested that we have additional reason to have amongst our legislators some who are:

- *not* subject to the short-term electoral cycle and

The Guardians, selected by sortition, would fit these bullet-pointed desiderata admirably. Thus they fit the third criterion laid down at the close of Section 2, above, of being and being perceived to be democratic. Furthermore, and crucially, we have now seen that they clearly fulfill the first two criteria discussed there, too: having strong enough powers to actually protect (and not merely to provide a voice for) future people; and embodying a procedural change rather than a substantive (e.g. ‘green’) politics that begs political questions. The Guardians proposal is what we have been looking for.

In conclusion and in overall summing up: Plato famously said that, if we are to have a just society, we should be ruled by Guardians. Democrats would naturally abhor the autocratic overtones of such a proposal... But what if the Guardians were selected to be representative of the *demos*, by sortition? And what if their deliberations became in turn a high-



profile model of what deliberation in a democratic society could be?

Representative democracy as we have it in the UK today does enable us to have some influence over important decisions, but what about cases where the people who ought to be heard in or even to be making the decisions have no voice, even over matters which are life or death matters for them?

Future people are the most obvious case of such people. I have presented here therefore a case for powerful Guardians for future people. This (they) would be likely to produce outcomes a lot closer to perfect, or at least a lot further from impending apocalypse, than those provided by our current institutions. For the creation of the Guardians would give future people not just a proxy voice, but the closest approximation we can give them to a vote, indeed a casting vote, a special vote that where necessary comprehensively outvotes us, the people alive today. And after all, this is surely appropriate; for, so long as - as we must try so much harder to do - we bequeath to future people a decent and survivable inheritance, then *there will over time be a lot more of them than there are of us...*

Our institutions of governance are facing a crisis of confidence, of legitimacy, and are complicit in a crisis of short-termism. This report has highlighted a suffrage issue which if anything redoubles these crises. Thus this report actually does think the allegedly ‘unthinkable’ – and takes the first steps toward making it practical. What is the closest that we could do to enfranchising the unborn future generations? How could we resolve the just-mentioned crises?

Arguably, the single most important element of any answer is: to create a democratic (sortitional) body of Guardians, as outlined here.



## Appendix A – the oath

A very rough draft of the oath that the Guardians would take on assuming office:

“I promise to do my utmost to represent and uphold the basic needs of future people in the present. I will work to ensure that the future people of the United Kingdom are cared for by us all, and that nothing that we in the U.K. do hurts them or prevents them from being. I vow therefore to execute faithfully and to the very best of my abilities the office of Guardian for Future Generations.”

## Appendix B – selection and training

The selection and training of the Guardians

One of the most crucial of the issues arising from this report that would usefully be debated and considered further is this: from who exactly should the Guardians be sortitionally selected?

- 1) From people who chose to put themselves forward? But this would already drastically reduce the pool – too drastically. Some of the people putting themselves forward would without doubt be the kind of people on balance *least* suitable for actually being selected... A better option would be a ‘Nudge’-style solution.<sup>45</sup> The form that comes around for the electoral register (and which also creates eligibility for jury service) should have on it as the default option that one is eligible for selection as a Guardian. This would mean, civically, that the default would be that every citizen was thought a candidate for Guardianship, as a symbol of our common bond of citizenship and (in a non-technical sense of the word) of our common guardianship and stewardship of the future. Many would opt out, but many would not.
- 2) One could try to ensure accuracy of representativeness from within ‘groups’ such as class, gender, age – this is recommended both by Barnett and Carty, in their proposed



sortitional House of Lords (see *The Athenian Solution*), and by Sutherland in his proposed sortitional House of Commons (see *A People's Parliament*). This would be a recipe for endless disagreement (about what the relevant groups were);<sup>46</sup> and, crucially, the case under discussion here is different. For such demographically-based pre-sortitional selection would detract from the sense, already indicated above, in which this grandest of juries must represent the voiceless, a task for us *all* which is in important respects equally hard, one might venture, for any of us. One certainly wouldn't want to give the impression, which could be given by ensuring sociological representativeness, that individuals were Guardians to represent the interests of their gender, or their class, etc.. *On the contrary*, the whole point is that they are there to represent people they are not, the voiceless future ones.

There is a strong case then for selecting the Guardians simply randomly from the entirety of the (non-opted-out) population, as with jury service. But there is clearly room for different opinions on this point.

Each Guardian, each member of the 'intergenerational super-jury' proposed in this report, might be selected, then, for a term of something around 5-8 years (exactly how long they should serve for would be one of the choices that should be considered in due course), non-renewable. (Ex-Guardians might form a - purely advisory - body of 'Elders' [cf. e.g.

<http://www.theelders.org/> ] They would be selected about a year in advance, to give those picked two things: (I) a decent interval to decide whether or not they were really willing to do this (presumably, there would be a lot of people for whom 7 years or so, as opposed to the 2 weeks basic stint of average jury service, was rather too long!<sup>47</sup> – those selected should be given once again during this stage a free pass to opt out, if they don't feel up to the job, on reflection, or simply cannot accommodate it with their life circumstances - though extensive help should be offered them to help them do so, should they wish it, such as free or heavily-subsidized childcare or elder-care); and (II) almost a year in which to 'train up' for the role, including an intensive programme of civic learning, basic law, educational options, some time spent encountering 'out in the field' the so-called 'ecosystem services' that need preserving if the future well-being of humanity is to be protected and whose fate is at present in the balance, etc.. They would also during this time get to know each other – for their effective mutual deliberation would be an important part of their functionality as a body of Guardians. They would be given training for example in consensus decision making, in a group with a common purpose. They would be helped to develop the kind of intelligence, including emotional intelligence, that all of us except sociopaths are capable of, and that needs developing as widely as possible if we are to listen enough to the voices of the voiceless future generations. They would be more likely to develop a more realistic and manifested sense of *care* for the future ones than the vast majority of us do. They would then formally be sworn in with great public ceremony, taking an oath (see Appendix A, above) that



swore them to represent and defend to the very best of their abilities the basic needs and interests of future people.

The training year would be a prolonged opportunity clearly for the guardians to get to know and to trust each other. Given additionally their common bond and project, I think this would be good grounds for hope that they would be well-placed to work together in a surprisingly consensual way, as for instance Quakers in their business practices<sup>48</sup> and (anecdotally) many juries do.

The Guardians would be supported both in their training *and in their day to day roles as Guardians* by a high-level and diverse support staff of administrators, facilitators and experts, including of course legal experts. It would be very important to stop this support staff serving the Guardians from becoming too powerful (as perhaps the civil service is too powerful in relation to government ministers, in Britain). Primarily, those serving the Guardians closely should consist literally of assistants, secretaries and administrative managers and facilitators, plus a cohort of top academic etc. advisors employed on retainers. The Guardians would have strong rights - including if necessary subpoena style rights,<sup>49</sup> to call any and all further actors and experts that they wished to hear from, to help them in their deliberations.

A matter for discussion and further debate would be whether the Guardians should perhaps have a budget for commissioning their own research, or a right to initiate long-term research projects. But clearly the Guardians would have access to the cream of the country's and indeed much of the world's expertise, in every

sense of the word 'expertise'. (One would expect them to consult NGOs, activists, the very old, the very young, etc., as much as scientists, lawyers etc. They might also be given the power to initiate further deliberative fora, for particular purposes of information, of facilitating deliberation, and in some cases of *decision*, fora such as citizen-juries.) They would often – normally – deliberate largely in public, such as many courts including notably the U.S. Supreme Court do. They would thus provide an arresting focus of attention for the deliberations of civil society. (They would need to be immunised from being *pressurised*, as from 'jury-tampering', but there would be various forms of interaction between them and civil society in terms of intelligent *deliberation*. They would not be *lobbied* as such; they wouldn't have private meetings with businessmen, for instance. But, experts of all kinds would seek to *persuade* them, to offer them evidence, and also in many cases to work for them. It would, clearly, require careful work to delineate the borderline between persuasion and deliberation on the one hand and 'pressurisation' and 'tampering' on the other: again, this is a matter for discussion, that could be worked out in detail at a later stage. I believe that the Guardians, unlike nearly all juries, would be under such intense actual and potential scrutiny that it would be hard for them to be corrupt even if they wanted to be.)

The Guardians would thus become and be recognised as a vital part of our democratic structures, and would provide a stage for quality deliberation that Parliament at present relatively rarely offers.



## Endnotes

<sup>1</sup> In my *A new covenant with all beings* (forthcoming), I argue the case also for guardianship of the basic needs of non-human animals. But that is beyond the scope of the present report.

<sup>2</sup> Factual support for this claim can be found in Birchall, J. (2011), *People-centred businesses: co-operatives, mutuals and the idea of membership*. And in Klimecki, R. and Willmott, H. (2009), 'From demutualisation to meltdown: a tale of two wannabe banks' *Critical Perspectives on International Business*, 5/1-2: 120-40.

<sup>3</sup> <http://blog.longnow.org/2008/09/11/the-oak-beams/> . Cf. also <http://atlasobscura.com/place/oak-beams-new-college-oxford> .

<sup>4</sup> "The introductory text to the Parliament Act 1911 stated that it was intended "to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis." In other words, 100 years ago, it was already seen as an established principle, set out in an Act agreed to by the House of Lords, that the Lords should be a 'popular' chamber." <http://blogs.lse.ac.uk/politicsandpolicy/2011/07/08/house-of-lords-reform-will-lead-to-further-democratic-reform/>

<sup>5</sup> Furthermore, this builds on the Deputy PM's 'New Horizons' speech last year: <http://www.fdsd.org/2010/09/cleggs-horizon-shif/> . That encouraging development may have been the first practical political effect of the 'Alliance for Future Generations', the civil society alliance dedicated to securing a proper place for future generations in our political institutions under whose umbrella the present report is written.

<sup>6</sup> On which point, see my "Care, Love and Our Responsibility to the Future", forthcoming in *Arena*.

<sup>7</sup> Apart perhaps from that of Ecuador (and there have been some similar developments in Costa Rica, Bolivia and the Maldives), in bringing in rights for nature itself / for the Earth. But this is less close than is the Hungarian precedent to giving (or aiming to give) protection *to future people*, the topic of this report. (There are of course a number of interesting precedents for the kind of *idea* of taking care of future people put forward in this report. One very striking little-remarked one is to be found in the Preamble to the U.S. Constitution: "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" (emphasis added). We ought, I would suggest, to think of the 'more perfect union' famously enshrined in this sentence as *including* posterity: as including future people. A smaller but not inconsequential current example in Britain where future people are represented in public policy can be found in the permitted justifications for intervention by Regional Development Agencies (RDAs) and (since the RDAs stopped being allowed to invest) by local government. The main justifications under which a case can be made are: the market failure rationale, the equity failure rationale and the institutional/government failure rationale. In 2009, the guidance provided was updated and clarified, and under the equity failure was included: 'people in the future disadvantaged by the activities of the present generation' (OffPAT Advice Note 1/2009, p. 13). A number of environmental interventions were approved under this rationale, including for example, the 'green spaces' programme. Perhaps, then, there are already those in Whitehall who might be persuaded of the merits of institutionalising care for future people?)

<sup>8</sup> See <http://jno.hu/en/> . (I will not attempt a complete summary of precedents for the kind of change that being proposed here. A very good survey can be found in Peter Roderick's recent report, "Taking the Longer View: UK Governance Options for a Finite Planet: <http://www.fdsd.org/wordpress/wp-content/uploads/Taking-the-longer-view-December-2010.pdf> . See also <http://www.thesolutionsjournal.com/node/821> )

<sup>9</sup> See e.g. [http://www.youtube.com/watch?feature=player\\_embedded&v=n9N-Vpn7VEQ](http://www.youtube.com/watch?feature=player_embedded&v=n9N-Vpn7VEQ) .

<sup>10</sup> See e.g. [http://jno.hu/report2010/jno\\_report\\_2010.pdf](http://jno.hu/report2010/jno_report_2010.pdf) .

<sup>11</sup> For instance, the Commissioner's precautionary recommendation on the Danube – basically, whatever you do, don't lose any ecological services (<http://jno.hu/en/?&menu=press&doc=pr-101020> ) – exemplifies this. Moreover, a sign that the Commissioner has been a thorn in the side of short-termism is that he has made it difficult enough for the existing powers that be that the Commissioner's position is being circumscribed...: <http://www.politics.hu/20110802/former-president-sees-constitutional-appeal-great-opportunity-criticises-curbs-on-top-court/> .

<sup>12</sup> He can *comment* on them, and his comments must be listened to; but he has no formal *powers* over them. (This is the area on which we shall focus in Section 3, below.)



<sup>13</sup> Personal communication. Dr. Zlinszky goes on: “Now: in reality, alas, this is not what our practice, the practice of European politics West or East, is like. And therefore you are right in implying that, should we in one of our bright and virtuous moments truly wish to establish or guarantee inter-generational equality, we must change the rules of the game by letting a new player enter the arena. And this player must be properly equipped to stand a chance in the fight, his/her powers must be fair to both the task and to the others already on the playing field. And a right of veto of legislation, for instance, would suffice. It is certainly one of the possible and workable options - as the Israeli example of their parliamentary SD/future generations commission showed [Cf. <http://www.fdsd.org/2009/09/examples-of-parliamentary-innovation-for-sustainable-development-hungary-finland-israel-and-the-uk/>]. I understand they were beginning to become very effective, even though their right of veto was not an explicit legislative but an implicit, procedural one.

“Their fate also resembles that of the Hungarian Institution: you may be aware of the fact that from January 2012 our independence will be taken away. One of the four independent ombudsman offices will be transformed into an authority/agency, the remaining three lumped together into one office headed by a general ombudsman. The ombudsman for future generations will be “downgraded” to deputy ombudsman for future generations, and stripped from his powers of independent decision on cases to be pursued, and will only be able to speak through the “main” ombudsman. Thus the voices of the future generations are in danger of being lost in the cacophony of today.”

<sup>14</sup> One helpful additional context within which to think about the timeliness of creating such strong powers is the Rio+20 2012 Conference, which will be looking as one of its two main themes at institutional governance structures suitable for ‘sustainable development’.

<sup>15</sup> Why not give them the closest we can to proxy *votes*? I.e. Why not give some people in the electorate two or more votes, with the extra votes being votes that they cast on behalf of future people? A proposal slightly along these lines is currently under discussion in Hungary: an extra vote for mothers with younger children (<http://www.Guardian.co.uk/world/2011/apr/17/hungary-mothers-get-extra-votes>). In the full-length version of the present report, which will appear in my forthcoming book, *A new covenant with all beings*, I address this kind of question directly, in critiquing the proposal that Andy Dobson has made for extra votes for the sustainability-minded. I think that that kind of proposal falls down exactly where my current proposal succeeds: Dobson’s looks like an attempt to ‘corrupt’ our electoral system in a direction pre-determined by a particular political agenda. Whereas the Guardians are an *addition* to our existing system, a safeguarding and enriching addition, and (crucially) an addition of a *procedural* nature. I.e. We – all of us, no matter what our politics – will be able to put our trust in the Guardians. As I stress in Section 5, below: we do not know ahead of time *what* they will decide.

<sup>16</sup> To clarify: this would include the repeal of existing legislation. In other words, the Guardians would have just as much right to stop the repeal of existing legislation as they would to stop the passage of new legislation.

<sup>17</sup> I.e. there should be a ‘filter’ here too; the nature thereof, I leave to future discussion.

<sup>18</sup> We might then imagine ‘Future Generations Impact Assessments’. There is a serious question as to whether EIAs have been at all effective. If they haven’t been (as I think is true), that is probably because they have lacked enforcement. One might look at the option of making the Guardians in effect the enforcers of FGIAs. Or: FGIAs might be one of the main pieces of evidence leaned on by the Guardians in making their decisions about whatever matters came before them.

<sup>19</sup> This is an important device that enables Quaker unanimitarian democracy to function within itself, and not to continually gridlock, as outsiders invariably expect that it would.

<sup>20</sup> The Guardians could be given the power to review executive policies and decisions - in a political, not legal, sense, rather like parliamentary committees do now. Or they could be given the stronger power that I am implying here: to treat some administrative decisions, if they threatened the basic needs/interests of future people, as if they were existing laws, and to *force* a review of them. I leave this (important) matter to further debate.

<sup>21</sup> This need not bog us down in an argument about abortion rights. For abortion concerns the specific non-existence (or existence) of a potential life tied to a specific individual. Whereas we are concerned with future people in general, our descendants, our children and their children *whenever they may be*. We are concerned, in other words, with the future inhabitants of Britain (and of the world).

In some cases, abortion is called for because the life or physical health or psychological health of the mother is directly threatened by the burgeoning foetus within her. There are vanishingly few cases, probably *none whatsoever*, in which future people in general pose any threat whatsoever to present people. So: while their basic needs and fundamental interests need to be considered by us, they will never need to be weighed directly in the balance against ours (they do not *threaten* us).



This raises the question: who does the Guardians' remit concern? Who, in this sense, *are* future people? To a limited extent, *all* of us who are alive are future people; only after we have died do we have no future. For example: the Guardians will surely wish to make present to us the concerns of those who will be alive in 2100; but those future people clearly include some who are alive today. I think then that the answer to the question is that the Guardians can legitimately be concerned with all who are alive today, especially children, but that their primary concern will be with those with a longer future and a shorter past, and especially with those not represented in the democratic system to date: i.e. children, and (still more so; for children alive today are, one would hope, at least considered to some degree by parents etc. when they exercise their democratic rights) their children and their children...

Does this imply that the Guardians need to have maximum regard to those who are very temporally distant from them? That would seem a very exacting requirement: for it is hard to vision the needs of people living (say) in the year 20011 (though one *can* surmise, for example, that the Guardians might be more likely than our existing political institutions to have grave doubts about the justifiability of nuclear power programmes, because of the very-long-term highly-toxic wastes that such programmes create.). I think rather that the Guardians concern will 'peak' with those imaginable future people who are not adequately catered for in our existing democratic institutions, and will gradually decline away in tandem with great temporal distance into the future, which brings with it ignorance of the needs of those very distant ones. Those living (say) in the year 2000011 will mostly have to look after themselves...

<sup>22</sup> A movement has been underway for some time to amend the Human Rights Convention in roughly this way.

<sup>23</sup> See for instance the Council of Europe Parliamentary Assembly recommendation 1885, September 2009.

<sup>24</sup> This point about the way that the existing powers-that-be would adapt gives another reason for thinking that perhaps just the first two powers envisaged for the Guardians would be sufficient. But the power of initiative would doubtless help speed up this process of adaptation.

<sup>25</sup> As one might put it: a modest proposal seemingly only in the most Swiftian of senses...

<sup>26</sup> At this juncture it is worth noting that future people ideally should be in a serious way brought into the founding European Union Treaties; but, to help make that happen, and until that happens, and ongoingly still after it happens, Guardians of the kind I have described, at the EU level, would be important for helping to ensure that the EU did not for instance undo the good work done by Guardians at the British level. (See also <http://www.euractiv.com/en/climate-environment/giving-our-future-face-we-need-Guardians-long-term-well-being-analysis-496188> )

<sup>27</sup> In general terms: in a political system marked by genuine subsidiarity, with each decision taking place at the lowest suitable and feasible level, why not have Guardians in place at each such level of governance? Thus for instance there would be Guardians in place in relation to the Scottish Parliament and the Welsh Assembly too, etc. (and indeed, one might hope that Wales may be an early leader in the movement to bring in Guardians: for it would build on their preservation of the SDC, in the figure of the <http://www.sustainwales.com/commissioner>; this is part of the new and promising Welsh 'One Wales One Planet' strategy: <http://wales.gov.uk/topics/sustainabledevelopment/publications/onewalesoneplanet/?lang=en>). At each level, the Guardians at that level would oversee relevant decisions made at that level for their potential effect on future people.

<sup>28</sup> Being appointed a local Guardian through sortition – as I will propose in Section (4), below - thus would be a lot more directly akin to becoming a juror: instead of 2 weeks'-plus concentrated service, one might expect to serve for about 24 days in total over a six year period (and in fact most meetings might well take a lot less than a day).

<sup>29</sup> It is also striking that Tom Crompton's 'Common Cause' report ([http://www.wwf.org.uk/wwf\\_articles.cfm?unewsid=4224](http://www.wwf.org.uk/wwf_articles.cfm?unewsid=4224) ) takes the British planning system as one of its key examples of a policy-mechanism that has positive holistic feedbacks, empowering people, encouraging people to consider themselves as part of a community, etc. . As I remark below, the British planning system is very far from ideal – it needs strengthening, democratizing, immunizing more against the power of large supermarkets, etc. – but compared to many of our other institutions and compared to some other countries, it actually is remarkably positive in these ways and others. (Which makes it all the more tragic that the present government seems set on in effect dismantling it, and substituting a new 'business-friendly' planning regimen.)

<sup>30</sup> This is a sub-group of the Alliance For Future Generations in Britain.

<sup>31</sup> As proposed by the Sustainable Development Commission: see p.16 of their 'Breakthroughs for the 21<sup>st</sup> century' report, accessible here: <http://www.sd-commission.org.uk/pages/breakthroughs-for-the-21st-century>



[century.html](#) . The membership of the SDC's proposed Congress for the Future would be selected, not incidentally, by... sortition.

<sup>32</sup> *Who* would the Guardians represent? The future people of Britain only; or all future people, across the world? It could only be the former. Other countries (and the EU, etc.) should be encouraged to put in place similar institutions. But two key points here: (1) given that some ecological challenges (e.g. very obviously, man-made climate change) are inevitably global in nature, the Guardians will of necessity have a view to matters which will end with them being likely to opt for a path which will be of benefit to future people worldwide, and not merely in this country; (2) given that over time people and families migrate to and from this country, the further we think into the future the more Britons become commingled with other peoples, thus again inclining the Guardians to think unnarrowly, beyond our frontiers. Thus you simply can't defend future people in this country by ignoring what is happening elsewhere in the world. (Furthermore, it is a well-established principle of international law that State A must not cause damage to State B's environment and property as a result of activities carried out in State A.) For further discussion, see the section entitled "The case of non-nationals" in Andy Dobson's "Representative democracy and the environment", in W.M. Lafferty and J. Meadowcroft (eds.) *Democracy and the environment* (Cheltenham: Edward Elgar, 124-139, 1996).

<sup>33</sup> In the sense brought out at the end of Section 2, above.

<sup>34</sup> The same argument is made, not unreasonably, by the Commons, against the Upper House being elected, or at least against its being elected by the same system of election and for the same length of term as the Lower House is.

<sup>35</sup> Intriguingly, a version of the Athenian system of sortitional selection has returned to Athens, in and from the assemblies convened there recently as part of the massive anti-austerity protests.:

<http://www.thenewsinsignificance.com/2011/06/16/costas-douzinias-in-greece-we-see-democracy-in-action/>

<sup>36</sup> In some ways, the guardians resemble magistrates, who most often work consensually. But the crucial difference is that the magistracy remains an elite institution, not (as juries are) a democratic one.

<sup>37</sup> See for instance: <http://business.timesonline.co.uk/tol/business/law/article6604448.ece> .

<sup>38</sup> For further discussion of details concerning how the Guardians would work, and what their training needs would be, see Appendix B, below.

<sup>39</sup> *Political Studies* XLIV 835-849.

<sup>40</sup> Thinking here of the famous Iroquois idea (<http://www.indigenouspeople.net/iroqcon.htm> ) that "in our every deliberation, we must consider the impact of our decisions on the next seven generations". This idea is the founding historical inspiration for the present proposal.

<sup>41</sup> See his *The Spirit of Laws*, Book 2: [http://www.constitution.org/cm/sol\\_02.htm](http://www.constitution.org/cm/sol_02.htm)

<sup>42</sup> The Guardians *could* sit as a specific group within a reformed upper house (as I originally envisaged, in my evidence to the Environmental Audit Committee on this matter in 2010:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenvaud/writev/esd/esd12.htm> ) – this idea would work just as well if the powers of the group would be the same as if the group constituted a third house. Then the upper house's assent would only be possible if the Guardians AND the rest of the upper house voted in favour - so the upper house stages of Bills would require the Bills to go through both the Guardians and the rest of the upper house.

It now seems to me, though, that it would simply be clearer and more elegant to set the Guardians aside as a separate institution, a third House. But this is a question of detail that could be debated and decided later.

Above all: it would be misleading to suppose that the Guardians could only be brought in as part of a Lords reform package. If Lords reform fails, I think that the case for Guardians is if anything *strengthened*: to act as a counter-weight to the overweening 'elective dictatorship' of the present as manifested in the Commons and in turn in the 'presidentialism' now dominant in the (dominance of the) executive / the PM over the Commons.

<sup>43</sup> Whereas something like the oath offered in Appendix A (below) as the *sole responsibility* that the Guardians had would, I believe, be profoundly motivating.

<sup>44</sup> Would the Guardians be able to intervene in respect of issues which have no obvious connection with the well-being of future generations, but which it could be argued have a powerful indirect effect thereon? For example: tackling social injustice in the present might be something that (on broadly Wilkinson-and-Pickett grounds) could be argued to be very important for the well-being of future generations. Maybe, it might even be argued, striving for equality now *is* the best single way of helping people who are yet to be.

I don't have a firm view on the question asked in this note: I would leave it as one of those matters that is up for debate, and that different views could reasonably be taken on. On the one hand, it is important to



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note that the Guardians are NOT meant to be a ‘theory of everything’, a silver bullet for all social ills. They must not be over-stretched, conceptually or practically. On the other hand, it might well be legitimate to argue as is imagined in the previous paragraph, provided that the Guardians only looked to the well-being of future people, and did not try directly to fix the problems of the present for their own sake.

<sup>45</sup> Cf. [Nudge](#), Richard Thaler and Cass Sunstein (New Haven: Yale University Press, 2009); and <http://www.cabinetoffice.gov.uk/content/applying-behavioural-insights> .

<sup>46</sup> As pointed out by Prof. D. King at pp.98-9 of Barnett’s [The Athenian Option](#), an additional danger of selecting via some demographic categories is that you almost inevitably *increase* the risk that categories that you do *not* select by are less well represented (i.e. less randomly and more distortedly represented) than if you made a purely random selection.

<sup>47</sup> Given the vastly longer duration of the role, it would be necessary to provide the Guardians with some kind of salary. Probably this should simply be the salary they were getting in their regular job, plus generous (but not corruptly so!) expenses. Alternatively, all the Guardians could get the average national wage (as, arguably, MPs should, too). The latter would be attractive in terms of emphasising the sense in which the Guardians are representative of us at large. This – the question of how much they should be paid – is once more the kind of detail that should be *discussed*, and that could be *decided* later, as part of the process of actually implementing the Guardians proposal.

<sup>48</sup> See e.g. [http://www.quakerbooks.org/beyond\\_majority\\_rule.php](http://www.quakerbooks.org/beyond_majority_rule.php)

<sup>49</sup> Roughly akin to or even stronger than those that the Hungarian Ombudsman for Future Generations already has.

