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THE ENVIRONMENTAL ISSUE AND THE REPRESENTATION OF FUTURE GENERATIONS: WHAT MODELS FOR ITALY? COMPARATIVE LAW SUGGESTIONS*

Abstract

This essay explores the ongoing discourse on environmental reforms in Italy, particularly focusing on the inclusion of future generations' rights in the Constitutional Charter. It examines the political and scientific debates surrounding recent constitutional amendments, highlighting the integration of environmental protection and intergenerational equity into Italy's legal framework.

The essay offers a comparative exam of the approach to the intergenerational issue in constitutional charters all over the world. The analysis wants to highlight different methods of embedding intergenerational responsibility within constitutional texts, ranging from preambles to specific articles on environmental and economic policies.

Furthermore, the essay discusses the institutional models adopted by various countries to give future generations' interests effective tools of representation and protection. It highlights the roles of ombudsmen, independent authorities, advisory bodies, and parliamentary committees in ensuring that future generations' rights are considered in policymaking.

The essay concludes by reflecting on the potential models Italy could adopt to effectively implement its constitutional mandate, emphasizing the need for robust representation and protection mechanisms for future generations.

Keywords: comparative law, constitutional law, future generations, environment

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1. The reform of the environment in Italy and the mystery of future generations

The Italian political and scientific debate of recent years shows an increasing attraction regarding the topic of the reforms which our Constitution needs; at least this is the mainstream idea that comes up in a karstic way from the various interventions. Moving from the reform, currently under discussion, on the form of government, to the organic reform projects of the second part of the Charter that have been presented over the last 25 years, or even the more limited reforms (some of them, it must be observed, with possibly systemic effects) such as the reduction of the number of parliamentarians, the new constitutionalizing of the island[1] issue or, further, the codification of the environmental protection as one of the fundamental principles and a potential limit to the freedom of the economic initiative[2], the Constitutional Charter now appears to be one of the different subjects of confrontation, more often clash, between the different political actors. Notwithstanding the complex and articulated work and the delicate compromise

[1] The island theme, in fact, was originally linked by the Constituents to the South within a protection in favor of the economically less developed areas of the country. The 'regionalist' reform of Title V of 2001 expunged such a reference from the Charter. The political pressure exerted by the island regions has recently led the constitutional legislator to reinsert the issue in the Constitution with an even broader formulation than the original one. On the subject, among many, see T.E. FROSINI, Presentazione. Insularità e comparazione giuridica, in DPCEonline, 2023, n. 3, 2753-2757; G. DEMURO, Le isole tornano in Costituzione, in Quaderni costituzionali, 2022, n. 4, 901-904; F. SANNICHI, La condizione di insularità nella Costituzione, in Osservatorio sulle fonti, 2023, n. 2, 147-169.

[2] Among the constitutional reforms approved in the last period, it must be mentioned the inclusion of the express reference to sporting activity in art. 33 of the Constitution on education and instruction. Although claimed by many political actors as the constitutionalization of sport, the wording adopted leads us to believe that the concrete effects of the reform will be substantially limited. On the subject, it can be briefly recalled L. MELICA, Attività sportiva e persona umana: una riforma ambiziosa e lungimirante, in DPCE, 2023, n. 4, V-X; G. MARAZZITA, Il riconoscimento del valore costituzionale dell'attività sportiva, in Federalismi.it, 2024, n. 1, 110-132; M. DI MASI, Dall'etica alla costituzionalizzazione dello sport. Brevi note sulla riforma dell'articolo 33 della Costituzione, ivi, 2023, n. 22, 124-134; L. SANTORO, L'inserimento dello sport in Costituzione: prime osservazioni, in Diritto dello sport, 2023, n. 2, 9-23.

found by the Constituents, the amendment, even in a disruptive way, of the constitutional text is no longer a taboo.

A summary analysis of the political debate on these interventions about the need to 'update' our Charter, moreover, reveals that the effects of the solutions identified and the textual formulations adopted are not always properly assessed. With the consequent risk of a heterogenesis of goals or a substantial non-application of the constitutional provisions.

In this context, aside any systemic assessment of the effects produced by the reforms approved in recent years, this paper intends to offer some remarks on the innovations introduced by the Constitutional Law. 1/2022 on protecting the environment and, more specifically, on the inclusion in the Constitutional Charter of the express reference to the future generations.

Within an evolutionary trend that, overcoming the original anthropocentric roots of the environmental law, in recent years has increasingly focused on animal rights and on the rights of nature, the more and more frequent emergencies linked to the climate factor have brought attention back to the issue of future generations.

However, the analysis of the political debate that accompanied the reform highlights how the inclusion of the intergenerational issue in the Constitutional Charter occured without an adequate and timely discussion within the parliamentary assemblies. As repeatedly highlighted in the doctrine, the constitutional law revising art. 9 Constitution is the result of merging multiple original proposals aiming at different goals[3]. Some bills, more essential in content, intended only to add the environmental issue to the protection of the landscape, which finds an express reference in constitutional charter since the original

[3] On the subject, it can be recalled the numerous advisory opinions delivered by most prominent Italian scholars heard by the Chamber of Deputies and the Senate of the Republic and published on the webpage of the parliamentary assemblies. Without any exhaustivity, it may be further mentioned A. MORRONE, fondata sull'ambiente, in Istituzioni del federalismo, 2022, n. 4, 783-796; M. CECCHETTI, La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione, ivi, 797-820; M. FERRARA, La forma dell'ambiente. Un percorso tra scelte di politica costituzionale e vincoli discendenti dalla Cedu, ivi, 851-874; D. AMIRANTE, La reformette dell'ambiente in Italia e le ambizioni del costituzionalismo ambientale, in DPCE, 2022, n. 2, V-XIV; R. BIFULCO, La legge costituzionale 1/2022: problemi e prospettive, in Analisi giuridica dell'economia, 2022, n. 1, 7-26; M. BENVENUTI, La revisione dell'articolo 41, commi 2 e 3, della Costituzione, i suoi destinatari e i suoi interpreti, in Rivista AIC, 2023, n. 2; 59-83; D. PORENA, Sull'opportunità di un'espressa costituzionalizzazione dell'Ambiente e dei principi che ne guidano la protezione. Osservazioni intorno alle proposte di modifica dell'articolo 9 della Carta presentate nel corso della XVIII legislatura, in Federalismi.it, 2020, n. 14, 312-332; R. MONTALDO, Il valore costituzionale dell'ambiente, tra doveri di solidarietà e prospettive di riforma, in Forum di Quaderni costituzionali, 2021, n. 2, 441-459.

approval of the text[4], or put the reference to animal welfare in the competence clauses provided for by art. 117 of the Constitution[5]. Other projects proposed the inclusion of a more articulated definition of the concept of the environment, the duties of the State and the rights of citizens[6].

Even though with different degrees, only 5 bills included an express reference to future generations. In the Perilli's bill (A.S. 1203, April 2nd, 2019), with wording that echoes the solution later adopted in the final version of the amendment to art. 9 of the Constitution, it was expressly stated the duty to promote a sustainable development "also in the interest of future generations". Despite the express reference in the text, however, the explanatory report of the bill has no mention of future generations, limiting itself to insisting on the need to introduce the principle of sustainability, defined as "an indispensable element for the affirmation and development of new production techniques, while always respecting the available natural resources". Similarly, in the proposal presented to the Chamber of Deputies by MPs Cunial and others (A.C. 3181 of June 29th, 2021) the protection of future generations was included in art. 2 Constitution within the framework of new mandatory duties of "environmental" solidarity[7]. Even in this case, however, the text of the explanatory report focuses heavily on the climate emergency and the need to overcome the traditionally anthropocentric approach to environmental issues.

Even the proposal signed by Bonino (A.S. 1632 of December 2nd, 2019) focused on the wording of the art. 2 Constitution. Far from inserting new types of obligations, the bill insisted on the fulfilment of economic and social duties "also towards future generations". However, like the other projects, the explanatory report shows that the proposal mainly stressed the need to give constitutional protection to the principle of solidarity and sustainability of economic choices.

[4] These are the Constitutional Law Proposals A.C. 2150 of October 7th, 2019 signed by Meloni and others, A.C. 2124 of September 21st, 2019 signed by Prestigiacomo and others; A.S. 1532 of October 8th, 2019 signed by Gallone; 2160 of March 30th, 2021 signed by Calderoli and others.

[5] V. A.C. no. 2838, of December 21st, 2020 signed by Sarli and others.

[6] In this regard, see the proposals A.S. 83 of March 23rd, 2018 signed by De Petris and A.C. 2174 of October 15th, 2019 signed by Muroni, which proposed, among other things, the constitutionalization of the principles of environmental protection codified at European level, the proposals A.C. 15 of march 23rd, 2018 signed by Brambilla, A.C. 143 of march 23rd, 2018 signed by Russo, A.C. 2914 signed by Pezzopane and others of February 25th, 2021 and A.S. 1627 of November 26th, 2019 signed by L'Abbate.

[7] The text of the proposal provided, in fact, to add to the last part of the provision the reference "and environmental, in order to protect present and future generations".

A clearer awareness of the challenges related to the recognition of the position of future generations comes out from the reports that were submitted with the proposals A.C. 240 of March 23th, 2018, signed by Del Barba and others, and A.C 2315 of December 20th, 2019, presented by the Veneto Regional Council. Even though moving from opposite political approach, accentuated the importance of setting a reference to future generations in art. 2 Constitution, by explicitly recalling the idea of the need to innovate the constitutional charter and codify a real 'contract between generations' without which there is the risk that neither future nor present generations will have the possibility of a prosperous and dignified life[8].

Such an avant-garde position towards the need of constitutionalizing an intergenerational dimension of the principle of responsibility solemnly affirmed in the second article of the Charter, has however been swallowed up by the issue of the environmental protection, generally characterized by a greater political support. The final formulation of the reform bill, therefore, put future generations in direct relationship with the protection of the environment, biodiversity, and ecosystems.

The secondary role played by the future generations issue also emerges from the examination of the doctrinal contributions that focused the constitutional reform in the immediate aftermath of its approval. The different analyses, both the 'critical' and the 'benevolent' ones towards the reform, insist on the introduction of the environmental issue in the constitutional charter, reserving only a brief analysis of the intergenerational issue[9]. In the end, the different opinions highlight the

[8] The text of the first initiative expressly stated that "environmental protection, sustainable development and a perspective of intergenerational responsibility become ... a solid reference to continue along a path of improvement of society and to create new opportunities for all people, today and tomorrow, to fully express their potential. In this sense, the proposal to integrate Article 2 of the Constitution is framed in the direction of making explicit the extension of fundamental rights and duties to future generations as well", while the document approved by the Veneto Regional Council underlined how it wanted to "bring to everyone's attention the issue of the next generations and of the Italy that we want to leave to our children, setting in the Constitutional Charter the prerequisites for a real generational pact, based on environmental protection and sustainable development ... It is necessary for the fundamental law to bind the legislator so that the production of legislation considers the effects that the different choices may have for future generations".

[9] On this point, see A. D'ALOIA, Bioetica ambientale, sostenibilità, teoria intergenerazionale della Costituzione, in BioLaw Journal, 2019, n. 2, 645-678; D. PORENA, «Anche nell'interesse delle generazioni future». Il problema dei rapporti intergenerazionali all'indomani della revisione dell'art. 9 della Costituzione, in Federalismi.it, 2022, n. 15, 121-143; C. D'ORAZI, Le generazioni future e il loro interesse: oggetti sconosciuti di rilievo costituzionale. Osservazioni a prima lettura della l. cost. n. 1/2022, in BioLaw Journal, 2022, n. 2, 93-114; F.G. MENGA, Dare voce alle generazioni future. Riflessioni filosofico-giuridiche su rappresentanza e riconoscimento a margine della recente modifica dell'articolo 9 della Costituzione italiana, ivi, 73-92; I. RIVERA, Le tonalità dell'ambiente e le generazioni future nel cammino di riforma della Costituzione, ivi, 225-243; A. MOLFETTA, L'interesse delle future generazioni oltre la riforma degli articoli 9

consideration of the indefinite nature of the reference expressed by the constitutional legislator to the intergenerational issue. As a result, it being recognized the complexity of the issue, the formulation adopted runs the risk not having concrete effects at the institutional and legal level.

Within this framework, it emerges the opportunity for an analysis of the models of intervention adopted in other political experiences, both at the level of constitutional formulation and, above all, at the level of institutional solutions aimed at representing the interests of future generations; even with the final goal of evaluating possible solutions to be implemented by the national legislator.

2. The future generations in the Constitutional charters: a comparative analysis

The most recent evolution of environmental constitutionalism shows, as mentioned above, a gradual but constant increase in explicit references to future generations within constitutional charters. The most current analyses include about 50 countries in which the constitutional legislator, as well as the constituent itself sometimes, addressed the intergenerational issue[10]. Because of several factors, included the actual indefiniteness of the concept, from a summary examination of the comparative landscape, it emerges that the solutions adopted are different each other. To comprehensively analyse the Italian experience, classifying the existing rules and regulations is crucial.

A first useful criterion focuses on the 'locus' chosen by the legislators to set the reference to future generations in the constitutional charter. Thus, from a first point of view, it is possible to identify a minor part of experiences, where the issue has been codified among the founding principles of the constitutional system. Among

e 41 della Costituzione, in rivista AIC, 2023, n. 2, 222-243; L. BARTOLUCCI, Le generazioni future (con la tutela dell'ambiente) entrano "espressamente" in Costituzione, in Forum di Quaderni Costituzionali, 2022, n. 2, 20-39; L. VIOLINI, G. FORMICI, Doveri intergenerazionali e tutela dell'ambiente: riforme costituzionali e interventi della giurisprudenza, in P. PANTALEO (ed), Doveri intergenerazionali e tutela dell'ambiente. Sviluppi, sfide e prospettive per Stati, imprese e individui, Mucchi, 2021, 32-54 and studies and contributions mentioned above at nt. 3.

[10] In this regard, see D. AMIRANTE, Costituzionalismo ambientale. Atlante giuridico per l'Antropocene, Il Mulino, 2022, 125, according to whom 20 experiences are placed in the African context, 11 in Europe, 8 in the Americas, 7 in Asia and 3 in Oceania. Partially different numbers can be found in T. GROPPI, Sostenibilità e costituzioni: lo Stato costituzionale allaprova del futuro, in DPCE, 2016, n. 1, 43-78; B. LEWIS, Protecting Environmental Human Rights for Future Generations, in W.F. BABER, J.R. MAY (eds.) Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges. Cambridge University Press, 2023, 31-51; D. BERTRAM, 'For You Will (Still) Be Here Tomorrow': The Many Lives of Intergenerational Equity, in Transnational Environmental Law, 2023, n. 12(1), 121-149.

these, a distinction can be further made between the constitutional charters that regulate future generations in the preamble and those which, because of the lack of this part or other specific choices, set the issue among the fundamental principles and values of the system.

Regarding the experiences in which the issue is expressly related to the environment, it can be first mentioned the 1993 Constitution of Andorra. It being the first document in which the problem was included in the preamble, the Charter proclaims the support of the Andorran community for all common causes of humanity, including the preservation of the integrity of the Earth and the guarantee of an 'adequate' environment for future generations.

Even the solutions adopted by the constitutional legislator in France and Hungary are peculiar. In the first case, a preliminary consideration must be spent regarding the decision to set the reference to future generations in the preamble of a document which, in turn, is expressly recalled by the preamble to the 1958 Charter[11]. From a different point of view, the document strikingly does not link the intergenerational issue to the protection of the environment. Indeed, the French legislator specifically insists on the need that the decisions to be adopted meet current needs without compromising the ability of future generations to meet their own needs.

The Hungarian model, on the other hand, mentions future generations both in the part reserved to the fundamental principles of the system and in the national avowal. If in art. P) of the Constitution the interests of future generations are evoked as the ground base of the duty of the State to preserve natural resources, in the preamble the theme of an intergenerational pact is repeatedly mentioned. On the one hand, in fact, it is solemnly declared the responsibility of every member of the community towards future generations, with the consequent obligation to preserve the living conditions through a prudent use of present resources. On the other hand, the constitution is presented as the result of an 'alliance' between Hungarians of the present, past, and future and it is stressed the importance that the future of the country is "jointly shaped" through the involvement of the younger generations[12]. In this context, future generations are incorporated into the

[11] On the constitutional value of the environment charter, among others, see M. PRIEUR, Droit de l'environnement, Dalloz, 9 ed, 2023, 61; D. BOURG, The French Constitutional Charter for the environment: an effective instrument?, in J. TREMMEL (ed.), The Handbook of Intergenerational Justice, Cheltenham, Edward Elgar Publishing, 2006, 230-244.

[12] The Charter states that "our children and grandchildren will make Hungary great again with their talent,

inter-temporal dimension of the vocation of the constitutional pact, putting the short, medium and long term 'under the same roof'[13].

However, the reference to future generations is more often tackled in different parts of the constitutional texts. Generally, the models adopted are basically two. In a first category of constitutions, the intergenerational issue is codified in the parts dedicated to fundamental rights. In this sense, at the European level, it can be recalled the 1976 Constitution of Portugal, one of the first documents that constitutionalized the environmental issue. Although without an express reference to the concept of future generations, within the part on fundamental rights, more specifically in the title on economic, social, and cultural rights, art. 66 solemnly affirms the right of every individual to a healthy and ecologically balanced environment and then places among the tasks of the State the promotion of the use of natural resources in a way that is consistent with the principle of intergenerational solidarity.

Even in the Latin America charters, the constitutional legislator has repeatedly chosen to link the intergenerational issue to the environmental issue by placing it within the sections dedicated to rights. In this framework, it is possible to look at art. 225 of the 1988 Brazilian Constitution, one of the oldest on the continent, as well as art. 33 of the Bolivian Charter or art. 67 of that of the Dominican Republic. Last but not least, even the art. 75 of the most recent Constitution of Cuba codifies the right to the environment, bringing with it the defence of future generations[14].

Besides the provisions in the preambles and declarations on fundamental rights, from the comparative landscape it comes up that on various occasions constitutional legislators have opted to regulate the intergenerational issue also, or only, within the provisions on the general policies of the State or the management of natural resources[15]. In this regard, the 2014 Egyptian Constitution is of particular

persistence and moral strength".

[13] Incidentally, it can be observed that the reference to the 'younger generations' is not the exclusive prerogative of the Hungarian Charter. Even in the preamble of the Algerian Constitution, in fact, within a transgenerational perspective the jeunesse is placed at the center of the obligations incumbent on the State.

[14] A similar place within fundamental rights can also be found in the experiences of Argentina (art. 41), Uruguay (art. 47) and Guyana (art. 149J). Over time, the constituents active in recent decades on the Asian and African continents have also moved along the same lines. Since the South African Constitution of 1996, the codification of a right to a healthy environment has often been drafted an intergenerational dimension.

[15] Within this category, it seems interesting to mention how in some Constitutional Charters the intergenerational issue has been expressly codified not only in relation to environmental issues, but also with reference to budgetary policies. In this regard, the experiences of Kenya (art. 210) or Bhutan appear to be exemplary. In the latter Constitution it is expressly affirmed that "The Government shall exercise proper management of the monetary system and public finance. It shall ensure that the servicing of public debt will

significance. Indeed, the document contains express references to future generations not only in the preamble, in the chapter on rights and in the article on the right to a healthy environment, but also in the provision on the use of natural resources[16].

A similar solution had been previously adopted in one of the most advanced charters in terms of environmental protection. In the 2008 Constitution of Ecuador, in fact, the intergenerational issue is not part of the discourse on fundamental rights, rather it is tackled in the sections on the economic sovereignty of the country and on nature and the environment[17].

Apart from the locus, the analysis of the comparative landscape shows further elements of differentiation between the various solutions adopted in the constitutional experiences throughout the world.

First, an element of distinction insists on the definition, from a conceptual point of view, of the subjects to whom the guarantees awarded by the constitutional legislator are addressed. In this sense, if it is true that most of the documents refer to the concept of future generations with no further specification,[18] some experiences present particular features. This is, for instance, the case of Belgium. Even if the reform that introduced the issue was passed when the subject had already appeared in many constitutional charters, the Belgian legislator opted for the solution of codifying a responsibility "entre les générations", recalling literally the choice made, decades earlier, by the Portuguese constituent[19].

Although apparently irrelevant, the use of the 'intergenerational' dimension may trigger concrete effects in the implementation of the constitutional mandate. Unlike the concept of future generations, in fact, solidarity between generations also calls into question the role of subjects, such as young people, who, although not traditionally granted significant powers in the daily life of the political

not place an undue burden on future generations" (art. 14).

[16] According to the provisions of art. 32, placed in the part relating to the economic components of the country, natural resources belong to the people and it is up to the state to preserve them in order to ensure their sustainable exploitation, prevent their depletion and take into account the rights of future generations.

[17] Thus, having defined non-renewable resources as an inalienable heritage of the State, art. 317 requires the latter to manage them by giving 'priority' to intergenerational responsibility. In the environmental regulations, then, art. 395 expressly calls for the adoption of a sustainable development model that preserves biodiversity and ensures that the needs of present and future generations are met.

[18] In some cases, such as in the preamble to the constitution of Ecuador, an even more concise reference to the concept of 'future' can be observed. In the Qatari Charter, on the other hand, the reference focuses on the sustainable development 'for all generations' (art. 33).

[19] The Constitution of Nepal also states in a similar sense (art. 51).

community, have the opportunity to express in different forms their needs and, in general, their visions of the idea of the future. In this sense, the reference to the intergenerational principle represents an opening to forms of representation of interests that, even though refer to a future temporal space, are an expression of subjects that are a constituent part of the 'current' community[20].

A second line of differentiation insists on the category of claims the Constitution protects with regard to future generations. Regardless of the locus in which the issue has been placed by the constitutional legislator, this is the aspect that characterises the most the different countries. In particular, from an analysis of the comparative framework, a fundamental distinction can be established between experiences that qualify the position of future generations as 'rights' and those that insist on the concept of interest.

Thus, on the one hand, Article 112 of the Norwegian Constitution codifies a universal subjective right to a healthy and natural environment, prescribing the management and exploitation of natural resources that safeguard this right for future generations as well[21].

On the other hand, one of the most advanced constitutions on environmental issues, such as the Ecuadorian one, refers to a sustainable development that ensures the satisfaction of the 'needs' of present and future generations[22]. The French constitutional legislator expresses himself in an even more nuanced way when he states that the pursuit of present needs must not compromise the 'ability' of future generations to satisfy their own.

More in general, in various constitutions, the duty to protect the environment or the management of natural resources is also framed 'in the interest' of present and future generations[23].

Many constitutional charters, moreover, do not take a definite solution on the legal qualification of the positions awarded to future generations. Indeed, constitutions

[20] This is the intertemporal logic present in the decision of the German Constitutional Court in the Neubauer case, also known as the Klimaschutz case (Neubauer v Germany, 24 March 2021, 1 BvR 2656/18).
[21] Similarly, in various constitutional charters of the African continent, future generations are considered as entitled to effective rights.
[22] In the same way, albeit with a different approach, the Argentine Constitution refers to a development that does not compromise the needs of future generations (art. 41). In the European context, a similar formulation can be found in the Luxembourg Charter (art. 41).
[23] In this context, the formulation adopted in the most recent Cuban Constitution appears to be peculiar, by linking the theme of future generations to the issue of 'security' (art. 75).

simply provide for their protection or call for action in their favour[24], or even codify a principle of solidarity and responsibility towards them[25].

Closely linked to the status awarded to future generations, the constitutional texts contain different solutions on the nature of the obligations and the subjects in charge to address them.

From a first point of view, it is possible to identify the two macro-categories of norms with a programmatic nature and those codifying concrete legal duties. Most of the constitutional charters, in fact, draw the intergenerational theme by using the stylistic features of the program rules. In this sense, the Bolivian Constitution formally expresses that the preservation of the environment for the well-being of present and future generations is one of the "essential purposes and functions of the State" (art. 9). The Belgian Charter moves along similar lines, by placing the sustainable development among the common objectives of the country's different levels of government (art. 7 bis).

While operating in the same direction, other constitutional charters insist more generically on the concept of responsibility towards posterity. In this regard, the German solution is particularly noteworthy. Art. 20a of the Basic Law put upon the State the duty of protecting the environment in the 'awareness' of its responsibility towards future generations. Even more simply, the Swedish Basic Law confers to public institutions the 'promotion' of a sustainable development that ensures an healthy environment for present and future generations (art. 2).

However, constitutional lawmakers have sometimes opted for more stringent solutions. Even if provisions on the topic are characterised by broad and general formulations, in some legal systems, the rules identify duties upon states in a more effective way. In this sense, the solution adopted in the Iranian Constitution can be reported as an example. After solemnly affirming that the protection of the environment in favour of present and future generations represents "a public duty" of the Islamic Republic, it expressly provides that "economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden" (art. 50).

[24] In this sense, for instance, it can be recalled the charters of Andorra (art. 33), Brazil (art. 225), Dominican Republic (art. 67), that speak of the guarantee of an ecological balance or environmental protection 'in favor of the new generations'.

[25] In this sense, in addition to the most famous cases of the German basic Law (art. 20a) and the Belgian Charter (art. 7bis), the Constitutions of Uruguay (art. 47) and Armenia (art. 12) can be recalled.

Within the classification of the different provisions regarding the nature of the constraint codified by the constitutional legislator, it is possible to further observe a differentiation of the legal systems based on the subjects charged with specific duties to protect future generations. In this regard, in fact, an interesting bipartition emerges. On the one hand, the generality of constitutional charters places these tasks on the shoulders of the State, sometimes interpreted as the totality of public institutions, sometimes referred in its most general sense. This is the case of Luxembourg, where it is stated that "the State guarantees the protection of the environment ... and the satisfaction of the needs of future generations" (art. 41).

Some legal systems, however, have adopted a more complex approach, attributing a role even to the political community. A first solution can be found in the Portuguese Constitution, which refers to the State as the conjunction of the national public bodies but demands the engagement and participation of citizens. An even more stringent involvement of the members of the political community emerges from the Bolivian Constitution, which recognizes as a real duty of citizens the protection and safeguard of natural resources and their sustainable use, within the general purpose of preserving the rights of future generations (art. 108) [26]. A 'negative' construction of such a duty can be found even in the Uruguayan Charter, which codifies the position of citizens as an obligation to abstain from any act that may cause damage or prejudice to the environment (art. 47).

However, in the generality of cases, the intergenerational issue reminds of a broader principle of solidarity that binds the members of a political community, perceived in an inter-temporal dimension[27].

In this regard, the approach outlined in the Bhutanese Constitution is of great significance. With an even more stringent wording, in fact, art. 5 qualifies citizens as "trustees of the Kingdom's natural resources and environment for the benefit of

[26] The charters of Senegal (art. 25.3) and South Sudan (art. 41) also use similar terms, by affirming the obligation of every individual to protect the environment for the benefit of future generations.

[27] In this sense, it can be recalled the position held by both constitutions in the South American area, such as Brazil (art. 225), Argentina (art. 41) and Venezuela (art. 127), and documents of the African area (art. 39 Angola) or South-East Asia (art. 61 East Timor). Although there is no space for an in-depth analysis of such a topic, it is necessary to observe how, even if the solution adopted by these constitutional charters may appear peculiar, the inter-temporal dimension of the body politic represents one of the cornerstones of modern constitutionalism. Already in 1789, the American Constitution emphasized the desire of the founding fathers to adopt rules that 'hold together' the present community and future ones. On this point, it may be recalled R. BIFULCO, Diritto e future generazioni. Problemi giuridici della responsabilità intergenerazionale, Franco Angeli, 2008, 118; T. GROPPI, Sostenibilità e costituzioni, cit., 49; M. HARTWIG, La Costituzione come promessa del futuro, in R. BIFULCO, A D'ALOIA (eds.), Un diritto per il futuro. Teorie e modelli dello sviluppo sostenibile e della responsabilità intergenerazionale, Jovene, 2008.

the present and future generations"[28]. Resorting to the concept of the trust draws a structure of relationships extremely different from the traditional 'landlord' approach outlined in the other constitutional charters. Actually, the present community can no longer claim an absolute, so to say 'supreme', right over the country's natural resources. On the contrary, it is bestowed of a function of service in favour of subjects who are placed in a different space-time dimension.

3. *Protection and representation of future generations: the institutional models provided for in the constitutional charters*

The analysis shows a huge variety of approaches to the intergenerational issue that can be linked to the different constitutional sensibilities and cultures of the different political communities concerned. In this context, the only common feature is represented by the tendency to recur to general formulation provisions. As a result, the concrete implementation of the constitutional mandate is deferred to the ordinary legislation. However, some experiences identify institutional bodies and solutions aimed at guaranteeing adequate representation and protection of the claims of the future generations already within the constitutional text.

In this regard, at the European level, it can be recalled the provision, included in the Hungarian Constitution of 2011, of an Ombudsman for Future Generations. According to the art. 30 of the Constitutional Charter, in fact, within the broader office of the Commissioner for Fundamental Rights, there are two top positions of Deputy Commissioner who are respectively responsible for protecting of the rights of national minorities and the interests of future generations[29]. While referring the specific discipline to an ordinary law, the constitutional text provides guarantees of independence of these bodies, whose election is in charge of the National Assembly with a qualified majority vote of 2/3 of the members, and broad powers of intervention, providing that they can act both ex officio and at the request of a party.

[28] A similar wording can also be found in the preamble to the Constitutional Charter of Papua New Guinea.

[29] M. SZABÓ, Intergenerational Justice under International Treaty Law: The Obligations of the State to Future Generations and the Example of the Hungarian Ombudsman for Future Generation, in M.C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations Rights through National Institutions, Cambridge University Press, 2021, 93 ff.; ID., National institutions for the protection of the interests of future generations, in ePublica, Vol. II, No. 2, Julho 2015.

Although not expressly linked to the intergenerational issue, a further solution can be found in art. 69 of the French Constitutional Charter. The provision regulates the composition and competences of the Conseil économique, social et environnemental. Compared to the Hungarian body, the ESEC's functions are primarily advisory. Even though its competences have been reformed several times by the ordinary legislator, such a public body plays a qualified role of consultancy and assessment of environmental policies and sustainable development.

Solutions that, in a more or less express way, recall the French Charter can be found in various countries of the African continent. In this framework, for instance, it can be mentioned the homonymous Conseil économique, social et environnemental provided for in the art. 94 of the Constitution of Gabon and the one regulated by the art. 152 of the Charter of Morocco, both charged with the function of delivering opinions on the environmental and sustainable development policies of their respective countries[30].

Compared to these bodies, which are characterized by their nature of advisory bodies of the Government, the solution adopted by the Tunisian Constitution of 2014 appears to be peculiar. It provided for the establishment of an Instance du développement durable et des droits des générations futures within the section on independent constitutional authorities [31]. According to art. 129, the functions of this subject, characterized by a strong technical nature and autonomy with regard to politics, include both the mandatory evaluation of bills on economic and environmental matters and the analysis of plans of development. Moreover, the most recent political events that characterised the country prompted the replacement of the Charter born from the Arab Spring uprisings with a new Constitution approved by referendum in 2022[32]. Within a complex redefinition of

[30] In a similar way works the Conseil national économique social et environnemental envisaged in the preamble of the Algerian Charter of 2016. Although with a competence declined more in a social than environmental key, similar is also the position taken by the National Equality Council provided for by art. 156 of the Constitution of Ecuador, which expressly provides for a consultative competence on the subject of generations.

[31] For a first analysis, see S. SPADA, Una novità della Costituzione del 2014: le Istanza costituzionale indipendenti, in T. GROPPI, I. SPIGNO (ed.), Tunisia. The Spring of the Constitution, Rome, 2015, 180 ff. In particular, on the debate that prompted the creation of this body, see R. MEDDEB, Un Conseil économique, social et environnmental: pour quoi faire? In Leaders, 2 July 2013, http://www.leaders.com.tn/article/11754-un-conseil-economique-social-et-environnemental-pour-quoi-faire

[32] On the constituent process of the 2014 Charter, among others, see T. ABBATE, The new Tunisian Constitution, the Constitution of the people, in Diritti Comparati, 10.3.2014 on https://www.diritticomparati.it/la-nuova-costituzione-tunisina-la-costituzione-del-popolo/; R.B. ACHOUR, La Constitution tunisienne du 27 janvier 2014, in RFDC, 2014, n. 100, 783-801.
On the new Constitutional Charter, on the other hand, see among others C. SBAILÒ, V. NICOLÌ, I

the constitutional structure, it can be observed even a significant downsizing of the 'position' of future generations. Indeed, the new Charter no longer regulates such an authority, whose fortunes are by consequence left to the free evaluation of the Parliament.

Apart from the cases of technical bodies aimed at controlling and assisting the action of the political decision-maker, in some constitutions it emerges a reference to the role that the political community itself can play for the benefit of future generations. In this sense, the combined provisions adopted in the Constitution of Kenya can be briefly recalled. In the charter of the African country, the intergenerational theme is linked to the environmental aspect through the codification of a right to a healthy and pure environment (art. 42). In a subsequent part, a constitutional duty to implement environmental rights is codified (art. 70). Within this framework, the Constituent Assembly established the creation of judicial bodies with a specific competence in environmental matters. As a result, a systemic interpretation of the constitutional structure could pave the way for a judicial activism of the political community aimed at guaranteeing the protection of the right to a healthy environment also for future generations.

In a different way, the Finnish Constitution also provides for the possibility for members of the political community to represent the needs and rights of those who still have to come. In line with the 1998 Aarhus Convention, based on the recognition of the duty of protection upon the public authorities and the right to a healthy environment for all, art. Article 20 of the Constitutional Charter gives everyone the right to contribute to influencing decisions that affect their living environment.

4. The solutions adopted at the level of ordinary legislation

Within a deeply differentiated constitutional landscape, as mentioned above, the identification of institutional measures capable of giving adequate representation and protection to the positions awarded to future generations is substantially delegated to the discretionary choices of the ordinary legislator. However, the brief presentation of the solutions directly included in the constitutional charters is useful in order to identify some macro-models of reference. From the above

semipresidenzialismi nel Nord Africa, in DPCE Online, 2023, n. (1), 1195-1246; F. BIAGI, Tunisia: the Constitution of Kaïs Saïed, in Diritti Comaprati, 28.7.2022 on https://www.diritticomparati.it/tunisia-la-costituzione-di-kais-saied/.

description, in fact, three different approaches emerge. A first model is represented by the establishment of independent bodies charged with performing functions of control and/or stimulation of the activity of institutional actors. A second approach promotes the establishment of bodies that play an advisory role in favour of the executive. Finally, in other legal systems, the desire to grant forms of political representation of the future generations prompts different solutions.

4.1 The model of the Ombudsman

Among the various solutions of independent bodies charged with specific functions on the intergenerational issue, two macro-models can be identified. In the first category, there are the bodies based on the institutional scheme of the ombudsman. The activity of these subjects relies on a human rights protection approach. In other words, the ombudsmen of future generations act on the basis of petitions or complaints of violation of constitutional norms and principles that caused an infringement of the rights or interests of members of the political community. The independent bodies of the second category carry out a function of impartial evaluation of bills and public policies in line with the traditional scheme of similar authorities.

Among the organisms of the first kind, the archetype is certainly represented by the Commissioner for Children established in Norway[33]. As is well known, the model of the ombudsman itself finds its roots in the Nordic countries. Hence, even regarding future generations, from a historical point of view, the first example is the Norwegian Children's Ombudsman. The authority was introduced into the national legal system by an Act passed in 1981[34], well before the publication of the Brundtland report of 1987 and the constitutional amendment of 1992 that first codified the rights of future generations. Since its origins, the body has been classified as an independent institution aimed at promoting the interests of children in the Norwegian society. Among the various powers attributed to the organism, it can be mentioned the monitoring activity on development plans, as well as the assessment on the compliance with the rules enacted to protect children. At the same time, the Ombudsman has the power to suggest measures

[33] O.K. FAUCHALD, E.G. STANG, Norway: Norwegian Ombudsman for Children, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 352-373.; M. SZABÒ, National institutions for the protection of the interests of future generations, in ePublica, Vol. II, No. 2, 2015, 15 ff.

[34] Act no. 5, March 6th 1981, available on http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19810306-005-eng.pdf (last accessed September 27th, 2024). For the version currently in force, see. https://lovdata.no/dokument/NLE/lov/1981-03-06-5.

that would strengthen the interests of children or prevent conflicts within an appropriate balancing of interests. In performing these functions, the body may act ex officio or at the request of third parties, both public and private.

Thanks to the breadth of the field of action and the absence of further institutional measures adopted by the Norwegian Parliament in implementation of the constitutional mandate, the Commissioner for Children represents the main instrument for representing and protecting the rights of future generations within the Norwegian legal system. The peculiarity of his mandate, explicitly focused on children's rights, has prompted a transgenerational rather than intergenerational approach. Indeed, the protection of future generations has been seen as the result of safeguarding the long-term interests of those generations of individuals who, although already present in society, are deprived of an independent voice. This has sometimes affected the assessment of public measures in terms of the balancing between the conflicting interests involved.

However, from a general analysis of the experience, it emerges that the lack of a full independence of the body hampered the effectiveness of the action conducted over the years. Although, in fact, art. 6 of the 1981 Act defines it as an independent institution, it is appointed by the Government and the operational structure is functionally connected with the Ministry of Children and Equality[35]. The absence of real budgetary autonomy, on the one hand, and the need not to appear as a third body, not linked to the parliamentary minority, on the other, have substantially affected the freedom of action of the Ombudsmen who have succeeded since the origins. From a different point of view, despite the function of monitoring public action, the implementing regulations adopted excluded the possibility of adopting decisions on individual measures of the public administration[36].

In this sense, although innovative, the experience of the Norwegian Commissioner has been characterised by different inconsistencies.

Similar considerations can be expressed with regard to the other experience generally reported by the doctrine: the aforementioned Ombudsman for Future Generations of the Hungarian system. The current body, in fact, results from a change in the original structure prompted by the approval of the new Constitutional Charter in 2011. Appointed for the first time in 2008 based on a

[35] O.K. FAUCHALD, E.G. STANG, Norway: Norwegian Ombudsman for Children cit., 370.
[36] This is expressly provided for in sec. 1 of the Instructions. In this regard, see O.K. FAUCHALD, E.G. STANG, Norway: Norwegian Ombudsman for Children, cit., 360.

decision adopted by the Hungarian Parliament in 2007, before the constitutional reform, the Ombudsman for future generations was given full independence and institutional autonomy[37].

In the current text of the Constitution, the constitutional legislator has provided for a simplification of the structure of the different operating ombudsmen, establishing the apex figure of the Commissioner for Fundamental Rights at the constitutional level. As mentioned before, within the new structure, two figures of Deputy Commissioners, one in charge of national minorities and the other of future generations, have been envisaged. As provided for in the Constitutional Charter, the Authority was then further regulated by Act CXI of 2011 (Ombudsman Act)[38]. Among the key elements of the current discipline, it can be highlighted the institutional guarantee conferred to the ombudsman for future generations. Although placed within the overall structure of the Commissioner for Fundamental Rights, according to the express provision of the Constitutional Charter, both future generations and national minorities issues are expressly associated with a specific body functioning within the organism. Their appointment is therefore not left to the discretion of the Commissioner. In addition, like the Commissioner for Fundamental Rights, the Deputy Commissioner for Future Generations is also elected by Parliament by a qualified majority of two-thirds of the Members. From a functional point of view, then, it has been envisaged an internal articulation of the structure that guarantees the operational autonomy of the Deputies.

In terms of functions and powers of intervention, it should be observed that, compared to the Norwegian experience, the margin of action of the Hungarian body is not only more focused on the intergenerational issue, but also much more extensive and pervasive. Besides the advisory function on legislative proposals, the deputy commissioner has to monitor the protection of the interests of future generations in public actions and policies. At the same time, ex officio or at the request of a party, it may propose inquiries and request the modification or suspension of administrative decisions. In case of risks for the fulfilment of

[37] Through a gradual process that began in 1993, the Hungarian Parliament expanded the number of ombudsmen, creating the post of Ombudsman for Future Generations in 2008. On this topic, see J. PUMP, A Comparative Analysis of Model Institutions: Diversity in Reaching Common Goals, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 546-575; M. SZABÒ, National institutions for the protection of the interests of future generations, cit.; B. JAVOR, Institutional protection of succeeding generations – Ombudsman for Future Generations in Hungary, in J. TREMMEL (ed.), Handbook of Intergenerational Justice, cit., 282-297.

[38] Act CXI 2011, July 26th, 2011, available on https://www.ajbh.hu/web/ajbh-en/act-cxi-of-2011.

intergenerational interests, the Ombudsman may also propose to go before the Constitutional Court to demand the judicial review of legislation[39].

That said, as mentioned, even the assessment of the effectiveness of this experience does not appear fully positive. Within an overall evaluation, in fact, a few non-secondary elements must be underlined. First, it should be noted that, although it is characterized by an institutional guarantee and institutional autonomy, the system does not attribute autonomous powers to the Commissioner for future generations. Its function is to support the activity of the Commissioner for Fundamental Rights. The law gives the latter any power of action, as well as the possibility of disregarding (although it has been envisaged the duty to communicate the reason in its annual report to Parliament) the requests of his Deputy. From a different point of view, it should be noted that the effectiveness of the requirement for a qualified majority and the other provisions on the election of the body, aimed at ensuring their independence, has been revoked in doubt in the most recent years. The peculiar political moment that characterizes the country since the approval of the current Constitutional Charter has prompted a significant circumvention of the clauses aimed at guaranteeing a system of checks and balances.

4.2 The model of the independent authority

Besides the solution of independent watchdogs, the comparative landscape gives evidence of other independent institutions that, by adopting a sensitive approach to the intergenerational issue[40], play an advisory role regarding political programmes and bills on environmental issues.

[39] Such a decision was adopted in 2019, when the Deputy Commissioner requested a constitutional review of a law that threatened forests and natural resources. eventually, the Court accepted the Ombudsman's observations and annulled the rule (Decision No 14/2020. (VII. 6.) AB). On this point, see M. SZABÓ, Intergenerational Justice under International Treaty Law, cit., 96.

[40] In addition to the experiences analysed in this work, the comparative framework offers numerous examples of independent bodies charged with a function of monitoring and controlling public action in environmental matters without having the protection of the interests of future generations in their institutional mission. In this regard, it can be mentioned, for instance, the model of the Parliamentary Commissioner for the Environment active in New Zealand since 1986. Such authority is appointed by the Government on the recommendation of a parliamentary committee chaired by the Speaker of the House of Representatives. The body carries out a function of analysis of policies and regulatory measures on environmental matters; it also plays a proactive role and stimulates new interventions. However, the protection of the interests of future generations is not one of the parameters on which its action is focused. On this experience and on other models present in the international context, it can be recalled J. BOSTON, Parliamentary Commissioner for the Environment, New Zealand, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation,

In this sense, it can be first recalled the already mentioned Tunisian experience. Even though the approval of the new Constitutional Charter in 2022 eliminated the express reference to the Instance du développement durable et des droits des générations futures, it must be stressed that this body was expressly regulated in a 2019 organic statute which has not yet been repealed[41].

The model formally enacted is of extreme interest both for the functions and for the composition of the body. According to the provision, in fact, the Instance (defined as an independent constitutional authority (art. 1) on the basis of art. 129 of the 2014 Constitution), must forcibly assess all bills on economic, social, and environmental matters, as well as on development plans. Besides this task, the body may, activated by the National Assembly or on its own initiative, conducts studies and issues opinions on economic and environmental issues. In the general definition of the legislator, such an entity aims to strengthen participatory democracy, acting as an element of connection and dialogue between the various actors of public life[42]. In this sense, the law addresses its impartiality by providing for a complex system of elections/appointment of its members. Therefore, the assembly of the organism comprises 8 experts from different sectors and one from civil society associations, elected by a qualified majority of 2/3 of the Assembly of Representatives for a non-renewable mandate of 6 years (art. 13).

That given, at present, it is not possible to express conclusive remarks on the effectiveness of the model outlined. Although not repealed, in fact, the law has never been implemented[43]. Considering the change in the political and constitutional structure that has characterized the country in the most recent years, there is great uncertainty about the concrete enactment of the passed legislative measures and, more generally, about the approach with which Parliament and the government will deal with the intergenerational issue in the near future.

If the enactment of the solution outlined by the Tunisian legislator runs the risk of a substantial circumvention, a case of an independent authority effectively

cit., 434-460; M. SZABÒ, National institutions for the protection of the interests of future generations, cit..

[41] Organic Law No. 2019-60 of 9 July 2019 on the Commission for Sustainable Development and the Rights of Future Generations, Official Journal of the Republic of Tunisia — July 23, 2019 – n. 59, 2187 ff. available on http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3744-10-TAYcAUzBMf/RechercheTexte/SYNC_1967509755.

[42] To this end, the same law provides for the activation of a "forum" of the Instance, a body of formal dialogue with representatives of multiple professional and social categories (art. 24).

[43] On this point, see M. DERBALI, Rights of future generations: Priority steps according to the Tunisian Parliament, in NAWAAT, 10.2.2021, available on https://nawaat.org/2021/02/10/droits-des-generations-futures-pas-prioritaires-selon-le-parlement-tunisien/.

implemented can be found in the Israeli legal system. In 2001, in fact, an amendment to the Knesset law had provided for the establishment of a Commission for Future Generations. This body was inserted within the parliamentary structure as an independent institution. The Commissioner was to be appointed by a mixed committee composed of the chairpersons of the 3 main parliamentary committees and 3 university experts appointed ad hoc by the Speaker of the Knesset[44].

Among the different functions conferred by the law, the authority was required to intervene with its own opinions in the procedures for the approval of bills with a particular impact on future generations. Besides an annual report to be presented before the parliament on the activities performed during the year, the Commission could issue opinions and reports, as well as prepare legislative projects, on issues that would have particular effects at an intergenerational level[45]. In performing its institutional activities, it had access to all the information in the possession of all public bodies, with the only limit of security and international relations issues.

Unlike what has happened so far in Tunisia, the Israeli law had been implemented immediately. The Joint Committee had identified Judge Shlomo Shoham, former independent counsel to the Constitution, Law and Justice Committee of Parliament, as the first commissioner. During its term of office, the Commission had shown that it wanted to exercise an effective control over regulatory and policy measures affecting the intergenerational problem. Frequently, this triggered negative reactions from the executive and the government majority. As a result, at the end of the first commissioner's term of office, no successor was appointed, thus effectively hampering the activity of the body. This stalemate lasted until 2011, when considerations of political expediency led the parliamentary majority to repeal the law that established the authority.

[44] On this experience, v. T. GROPPI, Sostenibilità e costituzioni, cit.; H.S. CHO, O.W. PEDERERSEN, Environmental Rights and Future Generations, cit., 409-410; S. SHOHAM, N. LAMAY, Commission for Future Generations in the Knesset: Lessons Learnt, in J. TREMMEL (ed.), Handbook of Intergenerational Justice, cit., 254; S. SHOHAM, F. KURRE, Institutions for a Sustainable Future: The Former Israeli Commission for Future Generations, in M-C. CORDONIER SEGGER, M. SZABÓ , A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 332-351; M. SZABÒ, National institutions for the protection of the interests of future generations, cit..

[45] Over the years, the Commission had claimed its right/duty to issue an assessment of measures with a significant intergenerational impact even if parliament had a fixed deadline by law within which to decide. In this sense, the Commission was able to play a substantial role of veto on some more delicate measures. On this point, see S. SHOHAM, F. KURRE, Institutions for a Sustainable Future, cit., 338.

Therefore, although the body created gave evidence of its ability to represent intergenerational interests, stimulating the activity of Parliament[46] and effectively operating control over the action of the government and Parliament, because of the lack of any constitutional guarantee about future generations, even with regard to the Israeli experience critical remarks can be expressed.

Even though formally not in charge of representing and protecting the interests of future generations, also the Canadian model of the Commissioner for Environment and Sustainable Development[47] can be counted within the category of independent bodies here under consideration. Compared to the Tunisian and Israeli experiences, similar to what has been observed in Hungary, the Canadian discipline formally placed the Commissioner in a secondary institutional position. In fact, it was placed within the structure of the Auditor General. It is the latter who appoints the Commissioner and is formally in charge of functions and powers. However, even the Commissioner formally takes part in playing the audit function and is awarded independence from other political bodies.

Unlike the Hungarian model, which is based on the Ombudsman scheme, the Canadian Commissioner has no investigative powers. Therefore, petitions submitted by individual citizens can only represent a stimulus for the monitoring and supervision of public action. There is also a lack of a real propulsive function of the activity of political bodies. In fact, studies, reports, and opinions given to Parliament respond more to the aim of disseminating data and raising awareness on specific issues.

However, because of the lack of incisive powers and the placement on a position of secondary importance, the body has been subject to less political pressure from the other institutional actors. This has allowed it to work with greater autonomy,

[46] Among the concrete results of the Commission's work it can be included the presentation and support for two draft laws on sustainable development and air pollution. In this regard, see S. SHOHAM, F. KURRE, Institutions for a Sustainable Future, cit., 346 ff.

[47] Although the nomen insists on the term sustainable development, it should be noted that the law establishing the body took up the definition of sustainability given in the Brundtland Report of 1987. More specifically, Section 21.1 of the Auditor General Act (RSC, 1985, c. A-17 (Canada)) expressly refers to the concept of sustainable development as "respect for nature and the needs of future generations" (subsection h)). On the Canadian experience, among others, see D. WRIGHT, J. MCKENZIE, Canadian Commissioner of the Environment and Sustainable Development, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.) Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 461-477; J. PUMP, A Comparative Analysis of Model Institutions: Diversity in Reaching Common Goals, ivi; M. SZABÒ, National institutions for the protection of the interests of future generations, cit..

gradually consolidating its audit and advice functions on environmental issues with particular attention to the long-term effects of public action.

Within the comparative landscape, the most recent example of an independent authority can be found in Europe. In fact, with the approval of the Well-being of Future Generations Act 2015, the Welsh Parliament has provided for the creation of a Future Generations Commissioner (sec. 17)[48]. The discipline in question appears to be of great interest as the Commissioner is expressly charged with the promotion of sustainable development by acting as guardian of the ability of future generations to meet their needs[49]. Within this framework, the authority performs an audit and monitoring function of the action of public bodies, as well as the assessment of political programs that affect the intergenerational issue. In order to ensure a more complete analysis of government action, the law provides that the Commissioner is assisted by an advisory panel, made up of other commissioners with expertise in areas affected by the intergenerational problem, such as independent bodies on children and health. In general, when the Commissioner has to deal with topics that are the subject of the work of other bodies, the law provides for forms of institutional cooperation.

The system outlined certainly represents an attempt to bring the issue of future generations within the different spheres of action of public bodies. Even if the short time that has elapsed since its establishment does not allow to express conclusive remarks about the ability of this model to achieve the desired result, it is here important to underline some critical issues. Indeed, unlike other independent bodies, the Welsh Commissioner is appointed by the executive on the grounds of a mere consultation with the competent parliamentary committees. From a different point of view, the body depends financially on the executive and, finally, even the term of office is formally 7 years, there are no particular guarantees towards a possible early dismissal. In this sense, the risk of a reduced independence of the body with respect to the subjects to whom it is subject to its control activity appears concrete.

[48] For some preliminary remarks see P. LAWRENCE, Justifying Representation of Future Generations and Nature: Contradictory or Mutually Supporting Values?, in Transnational Environmental Law. 2022; 11(3), 553-579; A. NETHERWOOD, A. FLYNN, Welsh Commissioner for Sustainable Futures, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 411-433.

[49] Section 18, more specifically, bestows on such organism the task of "guardian of the ability of future generations to meet their needs".

4.3 The model of the advisory body

The two categories of models just analysed are characterized by the choice of conferring the representation of future generations to bodies, mostly monocratic, whose members are asked to act as a counterpart to the institutions of government. To this end, they are generally placed within an institutional structure and are appointed via a procedure that guarantees their autonomy and independence with regard to other political actors. Beside this solution, other legal systems address the intergenerational issue by creating bodies, commonly collegial, charged with advisory functions in favour of the executive. Unlike what happens in systems characterized by independent authorities, where the relationship moves along conflicting lines typical of the controller/controlled dynamic, in these cases the system aims at establishing a dialectical exchange in which, through a collaborative approach, the executive can benefit from technical skills that it does not master. Even in these cases, the subjects involved are characterized by professional qualifications in areas (such as, more precisely, the environment) that are particularly sensitive to the protection of the interests of future generations. Compared to the other advisory bodies of the executive that can be observed in the generality of the constitutional systems, these bodies are distinguished by the specific scope of action conferred.

In the comparative landscape, a similar model has historically been adopted in France with the establishment of the Conseil des droits des Générations Futures. From a historical point of view, the French system was one of the first to explicitly recognize the existence of an intergenerational issue in Europe. In fact, even before the approval of the Environmental Charter and its reference within the preamble of the Constitution, the art. 1 of Loi no. 91-1381 on research on the management of nuclear waste had already established that the management of the latter should be tackled in compliance with the protection of nature, the environment, and health "en prenant en considération les droits des générations futures". Subsequently, objectives and commitments assumed with the ratification of the 1992 Rio Declaration led the national government to create a technical body that could support the activity of the executive in the identification and implementation of environmental policies. In particular, Decree no. 93-298 of March 8th, 1993 established such a body and provided that it would be associated to the Presidency of the Republic and made up of 9 members identified and appointed by the President on the basis of their skills and interests in environmental matters. In order to ensure greater impartiality, one third of the members had to be chosen from the

proposals made by the general associations for the protection of the environment and nature.

Such a body aimed at integrating the environmental issue within the generality of public policies in a way consistent with the directives outlined in Rio. In this regard, in addition to an annual report on its activities, it could issue opinions on specific dossiers. Besides ex officio activities, it could also be activated by members of the Government[50], the Presidents of parliamentary assemblies and recognized environmental associations.

The executive gave evidence of its actual intention to enhance and take advantage of the contribution of the new body by appointing as the first president Jacques Yves Cousteau, a world-renowned oceanographic explorer and ecologist. Nevertheless, from a factual analysis, it stems that eventually the Council failed to influence the government's policies. Therefore, two years later, the President Chirac's decision to resume nuclear tests in French Polynesia led Cousteau to resign. The Government did not proceed with the replacement of the office and, consequently, the body no longer had the possibility to work. Such a stalemate ended with the formal repeal of the Council in 2003[51].

Like other constitutional experiences[52], the French executive has, over time, created a plurality of bodies charged with advisory functions on environmental matters. So to say, in parallel with the Conseil des droits des Générations Futures, in 1993, a

[50] A particular role was attributed to the Minister of the Environment. Indeed, it not only had the power to convene a meeting of the body, but also the ultimate responsibility for the body's operating budget (art. 5).
[51] Decree no. 2003-758 of 30 July 2003.
[52] In this regard, among the various experiences, the German one should be mentioned. Alongside other parliamentary structures, mentioned later on, over the years the federal government has created various bodies to support its action. Among others, it can be mentioned the Federal Environment Agency and the Federal Agency for Nature Conservation, set up to operate as official advisory bodies of the Ministry of the Environment, namely the German Advisory Council on the Environment, the German Avisory Council on Global Climate Change or, further, the Council for Sustainable Development, which operate at the service of the entire government. These bodies, mainly made up of subjects with technical-scientific skills, carry out a function of advice and guidance with respect to the programmatic guidelines of the executive on environmental matters. Even though on the ground of the express reference in art. 20a of the Constitution the intergenerational issue represents an important element of environmental policies, it does not represent the key feature of the analysis carried out by these subjects. Rather, future generations interests are only one of the many elements to be balanced with short-term social and economic objectives. On these bodies, see F. REIMER, Institutions for a Sustainable Future: The German Parliamentary Advisory Council on Sustainable Development, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 374-394; M. SZABÒ, National institutions for the protection of the interests of future generations, cit. and doctrine therein reported.

Commission du développement durable[53] was established. Although not expressly designed to help to handle the intergenerational issue at the environmental level, the body worked with the Prime Minister as a connection tool with the French delegation within the UN Commission on Sustainable Development and performed the functions of the other advisory body in the aftermath of Cousteau's resignation[54]. However, even this organism was rid of an effective ability to direct government activity, so that in 2003 all the members resigned and, like the Council for future generations, the body was definitively repealed[55].

Over the last twenty years, the French Government has repeatedly showed its intention to create and take advantage of structures supporting the formulation of its policies under the imperative of sustainable development. As it has been seen above, this commitment was also sanctioned at the constitutional level with the formal inclusion of the environmental issue within the field of action of the Conseil économique, social et environnemental. Besides this body, the legislator established several other bodies, such as the Conseil national du développement durable (2003-2010), the Comité national du développement durable et du Grenelle de l'environnement (2010-2012), the Conseil national de la transition écologique (2012). The latter is currently still in operation. Like the other organisms, the rules that provide for its establishment[56] confer to this council powers over a very large area. In fact, it is in charge of issuing opinions on draft laws and regulations dealing with the environment or energy, as well as advice on the national strategy for sustainable development and biodiversity, on the social and environmental responsibility of companies and, last, on the strategy for the carbon reduction. Therefore, members of this body have general expertise on the issues of ecological transition and sustainable development. Further, the functional connection with the executive is ensured by formally attributing the presidency of the body to the Minister of Ecology[57].

[53] Decree no. 93-744 of 29 March 1993.
[54] This is what the Minister of the Environment had explicitly expressed replying to a parliamentary question in 2000 (https://www.senat.fr/questions/base/2000/qSEQ000222298.html).
[55] Decree no. 2003-1045 of 28 October 2003.
[56] Art. 13, Act no. 2012-1460 of 27 December 2012, reforming the Environmental Code (Articles 133-1 à 4) and Decree No. 2013-753 of 16 August 2013 (Art. D 134-1 à 7 Code environnement)
[57] To ensure plurality and dynamism, it is envisaged that the body will be composed of 50 members, of which at least 8 are representatives of associations, and special commissions can be created within it with particular regard to the development of national indicators of the ecological transition and the green economy. For an analysis of this body, see M. PRIEUR, Droit de l'environnement, cit., 385.

However, even in this case, the ability of the body to play an adequate representation and advocacy of the claims of future generations is all but ensured. The functional link with the executive, on the one hand, and the lack of any specific institutional guarantees, on the other, stand as insurmountable obstacles to an effective management of the intergenerational issue. Notwithstanding solemn and programmatic statements, in fact, the government's action seems to rely on short-term political opportunity considerations. Hence, in case the consultative bodies prompt difficulties for the political activity, they are silenced or, in any case, 'overcome' by the action of the executive[58].

4.4 Future generations and political representation: the model of parliamentary bodies

The analysis so far exposed reveals a key critical aspect of the models described. Both the experiences characterized by the presence of independent authorities called to act as watchdogs and those that charge technical bodies with an advisory function in favour of the government activity show a substantial weakness. Although in environmental matters and, even more, in issues involving the interests of future generations, the contribution of science appears essential[59], governments and parliaments tend to avoid or circumvent any form of limitation of their political discretion.

Moreover, the conferral of the power to safeguard future generations' interests to technicians has also raised several doubts. Some authors stress that the representation of their interests is, and has to be, the result of a political evaluation. In this sense, some legal systems have opted for models that foster tools aiming at enhancing the political evaluations of what and how the interests of future communities should be protected.

[58] This is what happened to the Conseil national de la transition écologique, which was in fact replaced by the creation, in 2019, of a Conseil de défénse écologique. Established by Decree no. 2019-449 of 15 May 2019, not integrated into the Environmental Code, this body actually represents an interministerial committee chaired by the Head of State and made up of 9 other ministers and the Prime Minister. In this way, technical advice has been replaced by a purely political evaluation. Moreover, this body has also not been convened since 2020 and it has been flanked, at least unofficially, by a Conseil de planification écologique, directly established by President Macron in 2023.

[59] With regard to climate change, among others, see, M. CECCHETTI, La produzione pubblica del diritto dell'ambiente: tra expertise tecnico-scientifico, democrazia e responsabilità politica, in DPCEonline, 2020, n. 3, 3399-3416; A. PISANÒ, Il diritto al clima. Il ruolo dei diritti nei contenziosi climatici europei, 2022, ESI, 45; R. BIFULCO, Cambiamento climatico e generazioni future (e sovranità) nella prospettiva del Tribunale costituzionale federale tedesco, in Rassegna di Diritto pubblico europeo, 2021, n. 2, 427; G. DONATO, Le prospettive di dialogo fra scienza e diritto. Spunti di riflessione dalla pandemia e dalle "climate litigations", in DPCE, 2022, n. 4, 973-990.

A first model inspired by this approach is represented by the creation of parliamentary bodies. Unlike ombudsmen or parliamentary commissioners, in this case, the legal systems assign political representatives the task of giving voice to claims referable to those who do not yet exist. In this context, they can be observed collegial bodies which, framed within the parliamentary structure and without an autonomous subjectivity, are exclusively made up of members of the legislative assemblies. Within this macro-category, the comparative outlook offers two main examples.

The first experience worthy of note is that constituted by the German Parliamentary Advisory Council for Sustainable Development (PACSD)[60]. Years after the introduction of the reference to future generations in art. 20a of the Constitutional Charter, the majority centre-left coalition decided to establish a body in the Bundestag to monitor and direct the government's action on sustainable development.

Unlike other experiences, the parliamentary assembly decided not to delegate this function to third parties placed in a position of autonomy, but to create a parliamentary commission composed of deputies representing the various groups present in Parliament. However, more than a real parliamentary commission, the body represents an advisory council. In fact, it does not have autonomous legislative power, rather, it only exercises the function of monitoring the implementation of the government strategy on sustainable development, both at the national, European, and international level. In this context, the council has the possibility of addressing opinions and recommendations both to parliamentary committees and to the assembly and members of the government[61]. Progressively, the body has further gained the function of reviewing the sustainability impact assessments drafted by the Government with regard to legislative proposals[62].

[60] For a more in-depth examination of the experience, see M. SZABÒ, National institutions for the protection of the interests of future generations, cit.; J. TREMMEL (ed.), The Handbook of Intergenerational Justice, cit., 196; B. DALAL-CLAYTON, S. BASS, A Review of Monitoring Mechanisms for National Sustainable Development Strategies, in Environmental Planning Issues, XXVII, 2006, pp. 16-17, available at: http://pubs.iied.org/pdfs/G02190.pdf; OECD, Institutionalising Sustainable Development, OECD Sustainable Development Studies, Paris, OECD Publishing, 2007, 109-110.

[61] On the basis of the general rules of operation of the Bundestag, the Council is entitled to summon members of the executive to a hearing.

[62] Since 2010, this assessment has been considered mandatory for all the regulatory instruments. Therefore, the attribution of a power to review the impact assessments carried out by the executive has significantly affected the visibility of the Council's activity.

An initial assessment of the activity performed by the PACSD, however, reveals a reduced ability to influence the political agenda of the government majority. The doctrine has identified several factors that have limited the potential of the body. A first element is linked to the source of legitimacy of the organism. Indeed, it is constituted by a resolution of the Parliamentary Assembly and has a duration that is limited to the legislature. The absence of a regulatory provision providing for its constitution at the beginning of each parliamentary term results in a feasible shortcoming. In fact, its establishment is deferred after the starting of the legislature, with the risk that a political stalemate could lead to a postponement sine die.

A further weakness is the peculiar nature of the Council. Unlike the standing parliamentary committees, it does not fulfil its own function within the legislative procedure. Its competences are advisory and monitoring and insist on the national and supranational strategy on sustainability. Related to this aspect, the system of deliberation of the council provides for the rule of decision by consensus. This inevitably leads, on the one hand, to not being able to express strong political wills and, on the other, to having a reduced weight in the overall functioning of parliamentary life. The system, in fact, provides that the opinions given to the other parliamentary committees must be considered. On the other hand, their mandatory or binding nature is not envisaged. Consequently, the other parliamentary bodies usually merely take note of the opinions delivered by the Council without expressing an assessment of the merits.

Similarly, the assessment of the impact of government policies on sustainability is performed on the basis of a complex and articulated series of indicators, with the consequence of an essentially formal analysis conducted by the PACSD.

Last, but not least, the participation in the Council is not o particular significance within the parliamentary dynamics. This implies that the members who are designated by the parliamentary groups in each legislature are deputies at their first political experience or, in any case, playing a secondary role within their groups. As a result, it can be observed that it is more difficult for the members of the Council to bring its assessments into the political agenda of the legislative assembly.

Therefore, while such a solution has made it possible to gradually make the intergenerational issue gain greater political visibility, the model outlined still appears to be ineffective in terms of valuable defence of the interests of future generations.

Opposite remarks can be made regarding the different solution adopted in Finland. Since the late 1980s, the Finnish Parliament has regulated a Committee for the Future[63]. Unlike what happened in Germany, with the constitutional revision of 2000, Parliament changed its structure by providing for this Commission among the standing committees[64]. As in the German case, the body comprises representatives of the Parliamentary Assembly in proportion to the size of the groups. The very nature of a parliamentary committee, however, ensures that it has a role and stability that is not found with PACSD.

There are also several powers granted to the Finnish body. Although it does not have reserved competences for the discussion and analysis of legislative projects on specific material areas, its sphere of action is transversal[65]. The Committee, therefore, can take part in the legislative procedures delegated to other parliamentary committees. In particular, besides preparing the annual parliamentary resolution on the report drawn up by the Government on future development issues, the committee delivers opinions on the issues submitted by the other parliamentary committees, evaluates the intergenerational effects of public action and may decide to discuss certain thematic instances.

Compared to the German experience, the importance of the Committee for the Future is significantly greater. Because of the different size of the parliamentary assembly, the members of the Finnish committee, in fact, also participate in other parliamentary bodies. Furthermore, from a different point of view, the fact that this commission has existed and has been working for almost forty years means that many political representatives, including those of the executive, may have had previous experience within it. Beside these elements, it must be underlined the more solid and widespread cultural and social sensitivity towards environmental issues and, above all, the long-term approach. In this context, although it does not have autonomous decision-making powers, the Finnish Commission has shown

[63] On this experience, among the others, see M. SZABÒ, National institutions for the protection of the interests of future generations, cit.; P. TIIHONEN, The Right of Future Generations, in L. ZSOLNAI (ed.), Ethical Prospects: Economy, Society and Environment, Dordrecht, Springer, 2009, 239-240; EAD, Power over Coming Generations: Committee for the Future in the Eduskunta, the Parliament of Finland, in M-C. CORDONIER SEGGER, M. SZABÓ, A.R. HARRINGTON (eds.), Intergenerational Justice in Sustainable Development Treaty Implementation, cit., 395-410.

[64] As a parliamentary committee, it is made up of at least 10% of the members of the assembly. Like the other parliamentary structures, the commission works continuously, meeting twice a week.

[65] This aspect means that, differently from the other commissions, the Committee for Future does not have a corresponding Ministry. Although it can talk with the various members of the executive, therefore, it primarily interacts with the Prime Minister.

that it is able to give adequate representation to future generations at the institutional level.

4.5 Future generations and political representation: the model of citizens' assemblies

The Finnish and German experiences represent, from an institutional point of view, the most stable solutions offered by the comparative constitutional landscape in terms of political representation of interests referable to the next generations. Moreover, the current political and social context, on the one hand, and the peculiar nature of the intergenerational issue, on the other, have led some legal systems to take a partially different path. The environmental and climate crisis that is increasingly affecting the lives of the global population and the parallel inability of national governments to comply with the commitments assumed at international level are at the root of the growing crisis in term of trust of the civil society towards representative institutions. In particular, the young people, which tend to be more sensitive to the environmental issue and the long-term effects of public policies, seem to recognize themselves less and less in their political representatives whom, because of their age, they have not contributed to select. The disconnection between representatives and represented is even clearer when the spotlight focuses on a part of the community, the future generations, which does not yet exist.

In order to resolve these shortcomings of the traditional system of representative democracy, in recent years, new tools of participatory democracy have been elaborated. In particular, some countries have started to test the instrument of citizens' assemblies[66]. Unlike other forms of popular consultation, the so-called mini-publics are characterized by a full institutional dimension. In fact, they are represented by groups of citizens selected by lot within a set of people previously identified on the basis of a plurality of social parameters aimed at ensuring the representativeness of the widest segment of the population. The selected

[66] The first experience of a citizens' assembly is usually traced back to the one organized in Canada, in the Province of British Columbia, in 2004. From a comparative analysis, this tool, still not very widespread at national and international level, represents a solution now consolidated at regional and local level. For further information on the subject, see A. LACELLE-WEBSTER, M. WARREN, Citizens' Assemblies and Democracy, Oxford Research Encyclopedias, Politics, 25 Mar. 2021, available at: https://doi.org/10.1093/acrefore/9780190228637.013.1975; A. LANG, But Is It for Real? The British Columbia Citizens' Assembly as a Model of State-Sponsored Citizen Empowerment, in Politics&Society, 2007, n. 35(1), 35–70; M. GERBER, Deliberative Abilities and Influence in a Transnational Deliberative Poll (EuroPolis), in British Journal of Political Science, 2018, n. 48(4), 1093–118; M. WARREN. H. PEARSE, Designing Deliberative Democracy: The British Columbia Citizens' Assembly (Cambridge University Press, 2008); OECD, Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave (OECD, 2020), available at: https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306daen.htm.

individuals are not simply summoned to the assembly to be consulted by the government and/or the legislature, but form a body characterized by a peculiar functioning structure and a defined term. This institution is responsible for analysing, deliberating and issuing recommendations on specific topics of public interest. The results of the work of the assemblies form the basis of the subsequent activity of the traditional 'political bodies' of the community.

Due to its characteristics, such a solution is considered particularly useful in overcoming the crisis of legitimacy of traditional institutions. The sort by lot and the identification through social rather than political parameters foster the perception of these bodies as places of representation of the social community, free from the dynamics of conflict that characterize legislative assemblies. With particular regard to the intergenerational issue, the widening of the participation even for citizens not yet in possession of the active electorate increases the idea of the mini-public as a forum in which the interests of future generations can have direct and effective representation. Last, the conferral to these assemblies of the power to issue proposals and normative projects designed to be enacted and/or implemented by government bodies reinforces the perception of them as an instrument capable of giving a real voice to the needs of the social community and, from a different point of view, provides new political legitimacy to political institutions.

The elements briefly described have triggered, in recent years, various governments to resort to the solution of citizen assemblies to overcome critiques and protest movements related to the management of the environmental and climate issue. In this regard, for instance, in a relatively short space of time, the instrument has been adopted by the Irish Government and the British and French Governments.

In reality, in the Irish experience, the issue of climate change originally represented only the latest, in order of importance, of a series of issues that in 2016 Parliament had decided to defer to the analysis of an assembly made up of 99 citizens sort by lot and a president appointed by the government[67]. However, it was upon the political pressure linked to the climate emergency that the assembly was given more space to handle the issue. In its final report, the assembly included four

[67] The assembly worked from 2016 to 2018 focusing its work on 5 issues considered of particular political interest: abortion, duration of the legislature, referendum, population aging and climate change. On the Irish experience, see L-A. DUVIC-PAOLI, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, in Transnational Environmental Law, 2022, n. 11(2), 235-261.

general recommendations on the climate problem and several specific measures on sectoral areas, such as transport and energy.

More specifically, focused on the goal of climate neutrality was the assembly of 110 British citizens who had worked for six months during 2020[68]. Unlike the Irish experience, the assembly had identified some general principles that should inspire policy action on climate issues, both by the government and the legislator. Rather than specific measures, the summary report of the assembly's work insisted on the workable options within a plurality of future scenarios.

However, among the different experiences, the one that raised the greatest media and political attention is the Convention Citoyenne pour le Climat established in France[69]. Unlike the other two citizens assemblies mentioned before, the French convention results from a political decision adopted by President Macron in his attempt to overcome the protest movements that had characterized the national political life in 2019. The demonstrations of the yellow vests' movement had initially led the President to convene a form of national public consultation on the issues of the reforms to be implemented. The Grand Débat National had seen the realization of several public meetings scattered throughout the country and from which proposals should emerge and be submitted to the attention of the political decision-maker.

Nevertheless, such a solution proved to not be able to silence social protests. Therefore, President Macron decided to create a new, more structured initiative. In his speech presenting the convention, he declared that the assembly would be engaged in debating, deliberating and proposing concrete measures for the reduction of greenhouse gas emissions and assured that the proposals drawn up by the assembly would be translated 'without filter'' into legislative proposals to be submitted, depending on the competence, to the National Assembly, to the Government or to the popular vote.

[68] Like the Irish experience, the British Assembly also has a parliamentary origin. Its establishment, in fact, was jointly requested by 6 parliamentary committees in the aftermath of the approval of the goal of climate neutrality by 2050. On this experience, see L-A. DUVIC-PAOLI, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, cit..

[69] On such a topic, see M. PRIEUR, Droit de l'environnement, cit., 183; L-A. DUVIC-PAOLI, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, cit.; A VAN LANG, La Convention citoyenne pour le climat vue du droit de l'environnement : un dispositif participatif singulier en voie d'institutionnalisation, in Archives de Philosophie du Droit, 2020, n. 62 (1), 509-525; N. STIRN, Le nouvel élan participatif de la Convention citoyenne pour le climat et ses répercussions sur la procédure de révision de la Constitution, in RFDC, 2021, n. 3, 147-173.

The assembly, made up of 159 members drawn by lot, worked between 2019 and 2020, approving 149 proposals that included both general recommendations and specific measures to be translated into regulatory measures. Among other requests, the assembly had insisted on the amendment of the preamble and art. 1 of the Constitution to include environmental protection among the fundamental principles of the Constitutional Charter.

That given, although differing from each other, these experiences have aroused the attention of the political community and, at first glance, these new tools have proven to be able to strengthen the bond of between representatives and represented. However, at a deeper insight on the work of these bodies, as well as upon the evaluation of the material effects produced by the deliberations of the assemblies or, even, the approach of governments and parliaments, the proposed solutions show critical issues of not secondary significance.

First, it has been observed that the wide scope and complexity of the issues submitted to the attention of the members of the assembly triggered some difficulties in the functioning. Even with the help of experts in the field, in fact, the data to be taken into consideration appeared difficult to be managed by the assembly of citizens. In order to overcome such a problem, all the assemblies provided for the division of the work into subcommittees. However, this led to a restricted competence and knowledge of the dossiers. As a result, the proposals drawn up by the subcommittees frequently lacked coordination. This element was of no secondary importance, since, not having time and skills to conduct an organic examination of the various proposals, the plenum of the assemblies often limited itself to voting on the recommendations suggested by the subcommittees with no discussion on the merits.

Secondly, from the point of view of the material effects produced by these assemblies, it can be observed a different degree of commitment by the political actors. In the case of the United Kingdom, in fact, because of the absence of specific prescriptions and suggestions within the final report of the assembly, the Government and Parliament used to expressly refer to the indications expressed by citizens. Nevertheless, from a factual perspective, they maintained a wide discretion in identifying the solutions to be taken.

The activity of the Irish and French assemblies seems to have been more effective. In fact, the recommendations and measures developed led to the adoption, respectively, of the Climate Action and Low Carbon Development (Amendment)

Act 2021 in Ireland and Law 2021-1104 of August 22th, 2021 (Lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets) in France[70]. However, at a deeper analysis, neither the Gaelic nor the French legislator resulted to be bound by the proposals drawn up by the citizens' forums.

This element takes on particular significance with regard to the French experience. As mentioned, in fact, in order to give strength to the initiative, the President himself had stated that the proposals put forward by the Convention would be translated 'without filter' into parliamentary or governmental initiatives. On two subsequent occasions, Macron clarified the meaning of this statement. Initially, he specified that if the assembly produced simple recommendations, the Parliament and the Government would draw them up, while in the event of the approval of an articulated legislative proposal, the legislative and executive bodies, within the limits of their respective competences, would express themselves without departing from the text[71]. In a subsequent phase, he partially corrected the position by stating that the initiatives would be discussed on the merits and voted by the 'political bodies'[72], thus giving to the word 'filter' the meaning of any activity aimed at substantially circumventing the request of the citizens' assembly.

Although it is connatural to the activity of any legislative body the examination and weighing up of a plurality of proposals and, consequently, the identification of compromises that sometimes significantly differ from the original proposals, with this second declaration President Macron reduced de facto the activity of the citizens assembly to a mere advisory function, giving back to the legislator and the executive the widest discretion on the merits of the various proposals received.

In this context, the effectiveness of the proposals put forward by the assemblies appears to have been significantly shrunk. However structured, in fact, mini-publics turn out to be solutions aimed at reconstituting a relationship of trust and

[70] The proposals to amend the Constitutional Charter, on the other hand, didn't succeed. On the one hand, President Macron appealed to a right of veto regarding the request for the amendment of the preamble to the Constitution. The proposal to amend art. 1, on the other hand, although actually presented in Parliament, was rejected by the Senate in 2023.

[71] Élysée, 'Échanges avec les 150 Membres de la Convention Citoyenne pour le Climat', 10 Jan. 2020, available at: https://www.elysee.fr/emmanuel-macron/2020/01/10/echanges-avec-les-150-membres-de-la-convention-citoyenne-pour-le-climat reported in L-A. DUVIC-PAOLI, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, cit..

[72] Élysée, 'Échanges du Président EmmanuelMacron avec les membres de la Convention Citoyenne pour le Climat', 14 Dec. 2020, at 6'30–7'50, available at: https://www.elysee.fr/emmanuel-macron/2020/12/14/echanges-du-president-emmanuel-macron-avec-les-membres-de-la-convention-citoyenne-pour-le-climat , reported in L-A. DUVIC-PAOLI, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, cit..

identification between representatives and represented rather than instruments of participatory democracy capable of giving voice to subjects that are alien to the functioning of contemporary political systems.

5. Conclusions: Italy and the glass half full

The description that has been presented shows, albeit in very reduced terms, the complexity of the comparative outlook on the issue of the future generations. De lege ferenda, the plurality of solutions sketched out in the different constitutional experiences, represents a useful term of reference for the Italian legislator called upon to implement the recent constitutional reform.

On a closer inspection, except for citizens' assemblies[73], many of the institutional solutions described are already present in our legal system. Sometimes, the parallelism with foreign models is direct. In this sense, the points of contact between the different models of Conseil économique, social et environnemental and the National Council of Economy and Labour are undeniable. Even in Italy, this body performs an auxiliary function of the activity of the executive and enjoys an express provision at the constitutional level. Compared to comparative experiences, the Italian body appears to lack specific competences in the field of evaluation of public policies in terms of intergenerational effects and environmental issues. As in France, however, the regulation of powers and functions attributed to such an entity is attributed to the ordinary legislator. It must therefore be considered that, in principle, there is nothing to prevent the possible extension of the scope of action of the CNEL.

Even the solution of assigning supervision tasks to an independent authority may find specific references in the Italian system. This is the case, for instance, of the Parliamentary Budget Office. Established by Law no. 243 of 24 December 2012 to implement the constitutional reform on budget, the body is in charge of evaluating the Executive's macroeconomic and public finance forecasts and, in general, of assessing its compliance with national and European budgetary rules. In this context, the Office is expressly asked to issue its opinion on the sustainability of

[73] Even in this regard, however, it must be noted that the Italian political community has already had the opportunity to be involved in participatory democracy initiatives. Leaving aside forms of local consultation, the experience of the Conference on the Future of Europe represented an important opportunity for many categories of subjects traditionally on the margins of institutional political life to express their voice. On this point, see D. VITALE, Tutela ambientale e Conferenza sul Futuro dell'Europa: quali prospettive?, in Diritto Pubblico Europeo - Rassegna online, 2023, n. 1, 96–109.

public finances in the long term. Now, even if this organism does not have competence in environmental matters, its creation within the frame of implementing a constitutional reform paves the way for the possibility to replicate the model also in the environmental field as a consequence of the constitutional reform at stake.

However, both in relation to the CNEL and the independent authority, the same critical elements observed in foreign experiences seem to recur. Indeed, despite solemn declarations of recognition of the rights and interests of future generations, national governments seem reluctant to create forms of control that effectively limit their actions.

In this context, the most effective solutions in terms of protecting the expectations of future generations seem to be the current legislative provisions that, by requiring the executive to motivate and justify its choices from the point of view of long-term sustainability, may limit the discretion of the political decision-maker. By virtue of European regulations, tools such as the analysis of the impact of regulation or environmental impact assessments require the executive and the legislator to expressly weigh the effects of their decisions also from an intergenerational point of view.

Within this regard, the tool of the judicial review of legislation may play a significant and decisive role[74]. In the last decade, the Constitutional Court has often had the opportunity to focus on the intergenerational issue from an economic point of view. Indeed, in the case no. 88/2014 on public debt, the Court affirmed that the principle of sustainability implies a responsibility which, upon the implementation of the 'foundational' principles of solidarity and equality, relies not only on the institutions but also on each citizen towards the others, "including those of future generations". More recently, in the decision no. 18/2019, the judges observed that "intergenerational equity involves, [...] the need not to disproportionately burden the growth opportunities of future generations, guaranteeing them sufficient resources for a balanced development ... And, on the other hand, the golden rule contained in art. 119, sixth paragraph, of the Constitution. demonstrates how

[74] On this topic, among others, see R. BIFULCO, Cambiamento climatico e generazioni future (e sovranità) nella prospettiva del Tribunale costituzionale federale tedesco, cit.; S. FANNI, Una teorizzazione di un approccio fondato sui diritti umani alla protezione delle generazioni future nell'ambito del contenzioso ambientale internazionale e nazionale, in BioLaw Journal, 2022, n. 2, 203-223; M. MALVICINI, Costituzione, legge e interesse intergenerazionale: tutela dei diritti e vincoli legislativi, ivi, 183-202; G. PALOMBINO, La tutela delle generazioni future nel dialogo tra legislatore e Corte costituzionale, in Federalismi.it, 2020, n. 24, 242-272.

indebtedness must be finalized and reserved solely for investments in order to determine a tendential balance between the size of its costs and the benefits brought over time to the communities administered".

Although currently there is still no specific ruling on the effects deriving from the inclusion of the reference to the future generations in Article 9 of the Constitution, based on the approach to the sustainability of the public debt, in the decision no. 228/2021, the Court highlighted that "the declared connotation of collective domains as 'intergenerational co-ownership' (Article 1, paragraph 1, letter c, of Law no. 168 of 2017) shows a clear diachronic projection so that the environment and the landscape are also guaranteed for future generations".

If it is true that the protection of future generations operated by the judge of the laws turns out to be exclusively negative, representing only a barrier to unreasonable choices of the legislator and the executive, it must be conclusively observed that it can operate as a guarantee of non-regression while awaiting the political decision-maker to identify, by drawing inspiration from the bouquet of solutions offered by the comparative panorama, the institutional structure that best fits with the mandate solemnly affirmed by the constitutional legislator.