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Future generations as subjects of rights?

A content analysis of rights of future generations in Swedish climate
law

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Abstract

The objective of this thesis is to examine Swedish climate law to discuss and examine the concept of “rights of future generations”. Global warming is inevitable causing the world to change rapidly, thus future generations will be faced with monumental environmental challenges. Recently, states around the world are being sued by the younger generations claiming their rights have been violated. As a consequence, the rights of future generations have become a topic of debate. Scholars approach non-existent subjects differently using a variety of theoretical arguments to legitimize their position. Therefore, this thesis includes three different perspectives to examine domestic legislation to investigate how the concept is used. Utilizing Philip’s human rights-based approach to future generations, Weiss’s theory of intergenerational equity, and Parfit’s critique based on the non-identity problem, extracts from a selection of climate-related laws are analyzed. The analysis is primarily based on a qualitative content analysis with elements of quantification to thoroughly examine the usage of the concept. Considering the alarming effects of climate change, legal protection could serve as a vessel to call to action and take responsibility for the fate of the future population. However, without a clear definition of the rights of future generations or what correlating responsibility entails, the purpose of legal protection is defeated. The research indicates an ambiguous Swedish domestic legislation with influences from different theoretical approaches to the rights of future generations.

Keywords: Rights, Future generations, Intergenerational equity, Swedish climate law, Climate change.

Abstract(Swedish)

Framtida generations som rättighetssubjekt?

En innehållsanalys av rättigheter för framtida generationer i svensk klimatlagstiftning

I följande uppsats undersöks svensk klimatlagstiftning i syfte att diskutera och utreda begreppet "framtida generationers rättigheter". Den global uppvärmning är ofrånkomlig och bidrar till att vår värld snabbt förändras, vilket resulterar i att framtida generationer kommer möta stora klimatrelaterade utmaningar. Nyligen har stater runt om i världen blivit stämde av den yngre generationer som yrkar att deras rättigheter har blivit kränkat. Som ett resultat har framtida generationers rättigheter kommit att bli omdiskuterat. Olika forskare bemöter de än icke existerande rättighetssubjekt på olika sätt och legitimerar deras position genom teoretiska argument. Med bakgrund av detta inkluderar följande uppsats tre olika perspektiv för att granska inhemsk lagstiftning för att kunna utreda hur begreppet används. Utdrag från klimatrelaterad lagstiftning kommer analyseras med hjälp av Philips human rights-based approach, Weiss teori om intergenerational equity, och Parfits kritik grundat på the non-identity problem. Anslysen utgår primärt från en kvalitativ innehållsanalys med inslag av kvantifiering i syfte att granska hur begreppet används. Havande i åtanke de allvarliga konsekvenserna av klimatförändringarna, kan juridiskt skydd uppmana förändring och att ta ansvar för ödet för framtida generationer. Dock utan en tydlig definition av framtida generationers rättigheter, samt vad ansvar innebär, kan syftet av juridiskt skydd motverkas. Följande undersökning indikerar att svensk inhemsk lagstiftning är tvetydlig och innehåller influenser från olika teoretisk perspektiv gällande framtida generationers rättigheter.

Nyckelord: Rättigheter, Framtida generationer, Intergenerational equity, Svensk klimatlagstiftning, Klimatförändringar.

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1. Introduction

Children are the future of our world. However, today we can not foresee a future ensuring all children the right to live a dignified life. Youths today and generations to come are facing monumental environmental challenges. These challenges have been observed by the United Nations, through a *Call to Action for Human rights* in 2020,¹ a report by United Nations Children's Fund(UNICEF), *Climate crisis is a child rights crisis*,² and an analytic study presented by the United Nations High Commissioner for Human Rights regarding the relationship between *climate change and the full enjoyment of the child's rights*.³ All of the reports refer to future generations and the rights of the child concerning climate- issues, but what does the concept of the rights of future generations really entail? The reports also address the responsibility to take the necessary measures to protect future generations due to climate change. However, a lack of a definition of the rights of future generations enables misinterpretation, conflict, and potential inaction regarding the scope of obligations present generations have.

The legal rights of future generations have recently received media attention due to different court cases suing states because they do not fulfill the environmental responsibility in line with their human rights obligations. The first high-profile court case was Urgenda. The Dutch Supreme Court ruled in favor of climate responsibility,

¹ United Nations. *The Highest Aspiration: A Call to Action for Human Rights*. United Nations, 2020. Available at: https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf (Accessed: 1/ 3 -2023)

² United Nations Children's Fund(UNICEF). *The Climate Crisis is a Child Rights Crisis*. United Nations Children's Fund, 2021. Available at: <https://www.unicef.org/reports/climate-crisis-child-rights-crisis> (Accessed: 1/ 3 -2023)

³ United Nations High Commissioner for Human Rights: *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*. United Nations High Commissioner for Human Rights, 2017. Available at: <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-child> (Accessed: 1/ 3 -2023)

claiming the Dutch government had an obligation to reduce emissions.⁴ In May 2022, a Swedish youth group, Aurora, sent an appeal to the Swedish prime minister requiring the government to take adequate measures for climate change. After correspondence during the spring and summer of 2022, the Aurora group filed a lawsuit in November 2022, and in March 2023 Nacka district court issued the lawsuit.⁵

The Aurora case gave me the inspiration to further investigate the rights of future generations within a Swedish context. Swedish climate law entails several references to obligations toward future generations. However, as previously noted regarding the documents from the UN, there is a lack of definition of what constitutes future generations. Neither domestic law nor international treaties clearly address future generations as subjects of rights or what kind of corresponding duties it requires. The right of future generations is a new topic of research in the humanitarian field but is nonetheless a pressing issue. The idea of future subjects has been met with skepticism. However, as Eric Brandstedt acknowledges, at a given time in history, subjects of rights that today seem self-evident, were excluded as rightsholders. This is true for both women and other marginalized groups.⁶ Thus, the conversations of rights of future generations could pave the way for the inclusion of future subjects as rightsholders, that in the future potentially will be seen as self-evident rightsholders.

1.1. Purpose and research question

The purpose of the thesis is to analyze what references to the rights of future generations are visible in Swedish climate law. Swedish legislation does not use rights language per definition, however, includes references to future generations with indications of obligations and attributes of rights. Thus, similarities and differences

⁴ Urgenda. Climate case. *Urgenda*. Available at: <https://www.urgenda.nl/en/themas/climate-case/> (Accessed: 5/3 -2023)

⁵ Aurora. Auroramålet/Juridik. Aurora. 2023. Available at: <https://xn--auroramlet-75a.se/juridik/> (Accessed: 25/2-2023)

⁶ Brandstedt, Eric. The Circumstances of Intergenerational Justice." *Moral Philosophy and Politics*, Vol 2 No.1: 33-56, 2015. Page. 8. Available at: <https://doi.org/10.1515/mopp-2014-0018>

between the laws will be analyzed to distinguish between approaches and come closer to a conceptualization of what constitutes the rights of future generations. The aim is not to conduct a legal analysis but rather to investigate the philosophical perspectives of the concept and its practical implications. Therefore, the theoretical approaches to the rights of future generations can provide insight into the usage of the concept. Lack of uniformity could cause misinterpretation and contribute to less resilience against opponents of the rights of future generations. It is further interesting to analyze domestic legislation since Sweden adopted the Convention on the Rights of the Child as law in 2020. The rights of future generations are a topic of many controversies and scholars within the field view subjects of rights differently. This research could therefore contribute to a better understanding of the usage and references to the concept. Thus, the primary focus of this research is:

- How are the rights of future generations conceptualized in Swedish climate law?

Based on the result of the research, the utility of the concept in climate-related laws will be further analyzed:

- To what extent can the concept of the rights of future generations be useful for climate law?

1.2. Material and limitations

The primary material consists of Swedish climate-related laws and policies, chosen based on a set of criteria. Only relevant extracts were studied to serve the purpose of this thesis. A list of the primary sources is visible below followed by a discussion of limitations and motivation of selection.

Primary sources

- The Swedish climate law (Klimatlagen).⁷
- Convention on the Rights of the Child, as Swedish law (Barnkonventionen).⁸

⁷ SFS 2017:720, *Klimatlagen*.

⁸ SFS 2018:1197, *Förenta nationernas konvention om barnets rättigheter*.

- Swedish plan and construct law (Plan och bygglagen).⁹
- Swedish “college law” (Högskolelagen).¹⁰
- Swedish culture environment law (Kulturmiljölagen).¹¹
- The new constitution of Sweden (Sveriges nya regeringsform).¹²
- The Swedish environmental code (Miljöbalken).¹³
- The Generational Goal, a part of the national climate goal initiative (Generationsmålet, en del av de svenska miljömålen).¹⁴

Selection of material

The selection of material was inspired by the Aurora lawsuit which referred to the Swedish climate law. The first section of the Swedish climate law included a reference to “present and future generations” without any explanations as to how the subject should be interpreted.¹⁵ Based on the lack of specification, three criteria were set to select material with a similar reference to further investigate the concept.

→ **Criteria 1:** The material must be either a Swedish law or policy.

→ **Criteria 2:** The document needs to be climate-related.

→ **Criteria 3:** The material needs to have a reference to future generations. Either by direct quotation or references to future generations such as “rights of children in the future”.

The selected sources all meet the criteria. The process of selection began with the search for references to “future generations” in Swedish legislation and policy document. To find the references, a digital tool containing Swedish laws and policy was used, accessed through the webpage called lagen.nu.¹⁶ The first search was; “framtida generationer” (translated: future generations). To increase the scope of the research the proceeding search word was “kommande generationer” (translated: generations that follow). To

⁹ SFS 2010:900, *Plan - och bygglag*.

¹⁰ SFS 1992:1434, *Högskolelagen*.

¹¹ SFS 1988:950, *Kulturmiljölagen*.

¹² SFS 1974: 152, *Kungörelse, Regeringsformen*.

¹³ SFS 1998:808, *Miljöbalken*.

¹⁴ Naturvårdsverket: *Generationsmålet*. Bromma: Naturvårdsverket, 2022. Available at: <https://sverigemiljomal.se/miljomalen/generationsmalet/> (Accessed: 4/3 - 2023).

¹⁵ SFS 2017:720, *Klimatlagen*, 2 § 2.

¹⁶ Staffan Malmgren, *Lagen.nu*: 2018. Available at: <https://lagen.nu/> (Accessed: 5/3 - 2023).

avoid missing any important references a final search was made; “barns rättigheter framtid” (translated: children’s rights future). The search for generations that followed had 3280 matches, the search for future generations had 2550 matches, and the search for children’s rights future had 5899 matches. Considering the time aspect of this research, only documents titled “lag/förordning”(translated: law/regulation) were selected while SOU, Statens offentliga utredningar, (translated: public investigations by the state), and propositions (translated: propositioner) were excluded.

Based on the criteria a total of six sources were selected that included references to the future generation, additionally, two documents were added as primary sources. The documents are; The Convention on the Rights of the Child and the Generational Goal. The Convention is included because it was adopted as Swedish law in 2020 and therefore it meets the first criterion. The Convention also meets the second criterion because it refers to climate change-related issues. Moreover, there is no direct reference to future generations, however, The Office of the High Commissioner for Human Rights(OHCHR) opened a discussion about the inclusion of future generations in the draft of the Convention on the Right to Development.¹⁷ Thereby, I argue the value of including the Convention to analyze the possibility of references to future generations.

The Generational Goal policy is included because it meets the second and third criteria and is one of the 16 environmental quality goals Sweden has adopted. The policy is an overall goal focused on guidance to environmental work and politics throughout all levels of society.¹⁸ The policy contains direct references to protecting future generations and is therefore relevant. The policy differs from the primary sources, however, it can give valuable insight into the Swedish understanding of rights for future generations. The generational goal was also referred to in the lawsuit issued by Aurora, arguing Sweden had not fulfilled their goals and ambition.¹⁹

¹⁷ The Office of the High Commissioner for Human Rights(OHCHR): *Draft Convention Right to Development*. The Office of the High Commissioner for Human Rights, 2022. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/2022-08-23/CRC-Draft-Convention-Right-to-Development.pdf> (Accessed: 3/3 - 2023).

¹⁸ Naturvårdsverket: *Miljömålen*. Bromma: Naturvårdsverket, 2022. Available at: <https://sverigsmiljomalen.se/miljomalen/> (Accessed: 4/3 - 2023).

¹⁹ Aurora. Auroramålet/Juridik.

Limitations

The primary sources were carefully selected to distinguish between different references to the rights of future generations. The access to laws through a digital source was deliberate to easily get an overview of the different references included in Swedish laws and policies. Although the webpage could be seen as a limitation, not being the governmental version, each of the laws and documents has been cross-examined to conform with the official version from riksdagen.se (the Swedish governmental official webpage). Considering the time limit, lagen.nu was the best option because it enabled me as a researcher to fast get an overview of the relevant document. If more time could be spent, the analysis could have included other laws or documents using similar terminology to further develop a conceptual understanding. Even though the purpose is to attempt a conceptualization the research does not seek to declare a set definition but rather analyze different references to reach a better understanding of the usage of the concept. Therefore, the choice to not include other documents does not defeat the purpose.

The chosen material was reexamined and later specific extracts from paragraphs were identified referring to “future generations”. Since only parts of the document contained relevant information regarding future generations and environment-related issues, all the material in the laws was not analyzed. Furthermore, considering the time limit, if the research were to analyze the entire document it would have been necessary to decrease the number of primary sources, resulting in less representative research. Instead, the research covers the topic more extensively and thoroughly.

All the documents are in Swedish and have been analyzed in their original form, except the Convention on the Rights of the Child since it is in English originally. Linguistic translation is challenging, to provide an authentic translation and transfer the message correctly, especially if the phrasing has a legal bearing. Synonyms for words can alter the interpretation of a sentence, thus the researcher needs to evaluate the choice of words carefully. Therefore, the concept has been examined from different perspectives to avoid misinterpretation of translations and to extensively cover the different references.

However, at times, the translations of some words are hard to equivalent and thus a limitation.

1.3. Research ethics

Ethical considerations are important to consider before the beginning of any research process. Since the research only includes official documents, the ethical considerations were not extensive. Anna Traianou addresses several critical factors while conducting research in the humanitarian field. Regardless of the relevance and public engagement regarding a topic of research, privacy is highly important. Before drawing a general conclusion the researcher needs to consider representation and critically reflect on the prerogative of interpretation.²⁰ This research does not disclose personal information, however, could be argued to be a sensitive topic. Therefore, it is important to analyze different approaches to honor diversity and inclusivity.

Furthermore, as a researcher, personal bias is always a critical factor. Previous knowledge of a topic is a fundamental precondition, the researcher needs to scour the field and read previous reports and literature by different scholars in order to be prepared. Thus, the researcher will be influenced by different perspectives and “truths”. Therefore, it is important to reflect upon personal bias before conducting the research to avoid individual opinions permeating the analysis. As the researcher for this project, prior to the beginning of analyzing, I declared my bias for myself and consciously made the decision includes different theoretical perspectives to increase transparency and credibility.

²⁰ Traianou, Anna. “The Centrality of Ethics in Qualitative Practice”. I *The Oxford Handbook of Qualitative Research*, 2:a uppl. Leavy, Patricia , (red.), New York: Oxford University Press, 2020. Page. 90.

2. Previous research and theory

Since the study of the rights of future generations is modern, this thesis is theoretically heavy and includes different perspectives to achieve transparency. In the following section, previous research, and theory will be presented jointly. The chosen theorist has shaped the theoretical debate and influenced previous research. Thus, the most natural way to present previous research and theory would be based on themes rather than different scholars. The theories predominantly used are; Rights of future generations as human rights by Jos Philips, Intergenerational Equity by Edith Weiss, and the Non-identity problem by Derek Parfit. Each theory will be presented followed by a discussion and further development by other scholars. The perspectives will be used to analyze the differences and similarities of the reference in Swedish climate law. The theories help distinguish between approaches and further discuss the effect of rights language on future generations.

Rights to future generations as Human Rights

Professor Jos Philips argues future generations are entitled to human rights. In his book, *Actualizing Human Rights Global Inequality, Future People, and Motivation*, Philips claims, if we are committed to the principles of human rights, we believe all human beings to have important interests that should be satisfied through correlating human rights obligations. Thus, the present population could be argued to bear the responsibility for the important interests of future people. Otherwise, the principle of human rights is violated.²¹ Only during extraordinary circumstances should a human rights interest actively be disregarded for the greater good.²² Philips acknowledges the practical complications with responsibility towards future generations and how it could be at the expense of the important interests of the present generations. Thus, Philips further poses questions regarding limitation, location, and risk of conflict with

²¹ Philips, Jos. *Actualizing Human Rights Global Inequality, Future People, and Motivation*, Oxon: Routledge, 2020. Page. 63. E-book: <https://doi.org/10.4324/9781003011569> (Accessed: 20/3 - 23)

²² Philips, *Actualizing Human Rights Global Inequality, Future People, and Motivation*. Page.71.

freedoms and restraints.²³ He argues the current generations are expected to give up trivialities to prevent the escalation of climate change to protect future generations. However, if the action causes an imminent threat it should be avoided. To help solve the question of responsibility, Philip has created a framework, a priority exercise of rights, to balance the interest between present and future interests.²⁴

There are two entrance conditions for valid human rights claims; 1) The protection claims should concern very important interests and, 2) Very important protections against very important threats.²⁵ However, prioritizing between rights does not equivalent to comparing rights, but rather evaluating the interests as a group of rights.²⁶ Human rights dilemmas should not be viewed isolated, because of the risk of losing their contextual setting.²⁷ Therefore the priority exercise proposed by Philips entails considerations of the following factors:

- The importance of the threat
- The number of people affected
- The magnitude and certainty of the threat
- The reliability of the protection as effective
- Present suitable duty bearer
- Other interests should not be actively attacked.²⁸

However, the process of priority setting also needs to address uncertainties regarding assumptions about the future and its population.²⁹ According to Philips, the protection of the interest of future generations are important despite uncertainties about the future.³⁰ Due to global warming, environmental changes are inevitable and future generations will need protection regardless of the specific outcome, however, the

²³ Philips, *Actualizing Human Rights Global Inequality, Future People, and Motivation*. Page.63.

²⁴ Ibid. Page. 64.

²⁵ Ibid. Page. 66.

²⁶ Ibid. Page. 68.

²⁷ Ibid. Page. 73-74.

²⁸ Ibid. Page. 73-74.

²⁹ Ibid. Page. 74-76.

³⁰ Ibid. Page. 77.

scope of protection is yet unknown.³¹ Philips proposes to view outcomes as probabilities and he concludes that it is important to avoid exaggerating or reducing future threats.³² Despite Philips's proclamation of rights to future generations, he prioritizes the interest of present generations if the interest of too many people alive can not be fulfilled.³³ Thus, the evaluation of priority factors needs to be done thoroughly to determine the possible scope of protection of future generations. In the analysis of this thesis, the priority exercise will be used to illustrate references to a human rights-based approach in Swedish climate law. However, the theory will not be used to determine the priority of interest of present and future generations. Rather, used to display the complexity of assigning rights and further analyze subject descriptions and correlating duties. Therefore, it is not relevant to further develop the theoretical priority setting.

Similar to Philips, Professor Sanz-Caballero supports the claim that future generations have rights. In her article *Children's Rights in a changing climate*, she argues future rights are visible in the Convention of the Rights of the Child.³⁴ The Convention is the first universal treaty to include refers to the environment and Sanz-Caballero argues specific articles within the Convention serve as protection from the consequences of environmental change for children today and even unborns.³⁵ Another scholar addressing the rights of unborn children is Axel Gossiers. He argues the importance of constitutionalizing rights to future generations and further claims that legal rights signal the importance and purpose of correlating duty.³⁶ Gossiers exemplifies this by

³¹ Philips, *Actualizing Human Rights Global Inequality, Future People, and Motivation*. Page. 79-80.

³² Ibid. Page. 81.

³³ Ibid. Page. 66-67.

³⁴ Sanz-Caballero, Susana. Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child, *ETHICS IN SCIENCE AND ENVIRONMENTAL POLITICS*, Vol. 13: 1–14, 2013. Available at: <https://www.semanticscholar.org/paper/Children%27s-rights-in-a-changing-climate%3A-a-from-the-Sanz-Caballero/e93a09e5472b9f76c6ba37c0cb23fcfe12055ca1> (Accessed: 21/3-23).

³⁵ Sanz-Caballero, Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child. Page 3-4.

³⁶ Gosserie, Axel, On Future Generations' Future Rights, *The Journal of Political Philosophy*, Vol. 16, No 4: 446–474, 2008. Page 453. Available at: <https://doi.org/10.1111/j.1467-9760.2008.00323.x> (Accessed: 30/3-23)

presenting a scenario where indeed future subjects have rights in legislation today. If a baby were to become ill after consuming a can of baby food, and the food was produced and concealed before the birth or even conception of the baby, the manufacturer could be sued for ex-post damage, even though the rightsholder was a member of the future generation.³⁷

Similarly, Sanz-Caballero argues that rights do not always need a direct correlation to the rightsholder. She exemplifies that rights assigned to families could by extension cover the protection of children.³⁸ Sanz-Caballero states The United Nations Human Rights Committee orders states to generously interpret Article 6, the right to life. Thereby requiring states to take positive measures to increase life expectancy. The Article shall ensure protection “to the maximum extent possible, the survival and development of the child.”³⁹

Furthermore, in a draft of the convention on the right to development, The Office of the High Commissioner for Human Rights, OHCHR, further notes references to future generations in a number of Articles within the convention. However, the OHCHR states there is a lack of definition and focus on children as a specific group which adds to the complexity of the definition of future generations as subjects of rights.⁴⁰

A fundamental principle within rights academia is the correlation between rights and obligations. Sanz-Caballero discusses responsibility and argues the present generation is to be blamed if future generations are left unsupported.⁴¹ Assigning responsibility raises questions of corresponding obligations. According to international law, states

³⁷ Gosserie, On Future Generations' Future Rights. Page 457.

³⁸ Sanz-Caballero, Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child. Page 2.

³⁹ Ibid. Page 4.

⁴⁰ The Office of the High Commissioner for Human Rights(OHCHR): *Draft Convention Right to Development*. Page 1.

⁴¹ Sanz-Caballero, Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child. Page 13-14.

bear the obligation to protect subjects of rights, however, environmental violations are specifically hard to allocate considering the joint contributions to global warming.⁴² In addition, states are also responsible for the control of private companies and by extension their emission rates. Thus, the obligations to prevent environmental violations of human rights are not one-sided. Sanz-Caballero acknowledges the lack of a clear definition of the scope of protection and what the correlating duty entails. She argues there is a need to improve international law to fulfill the obligation to protect.⁴³ Her perspective on the Convention of the Rights of the Child could help deepen the analytical discussion. It could further facilitate a new angle to the analysis in order to reach a transparent conceptualization. Incorporating Philips and Sanz-Caballero's rights-based approach, the analysis could be amplified by focusing on a terminological analysis of rights language. Although the normative element of human rights theory risks losing the practical complexity of fulfillment of rights, Philip's theoretical framework does in fact account for the complex corresponding responsibility and not only encompass the ideal outcome.

Intergenerational equity

Similar to Philips, Edith Weiss agrees that future generations are entitled to rights. Weiss first published an article about The Intergenerational Theory, otherwise known as the principle of intergenerational equity, in the 1990s.⁴⁴ Weiss states intergenerational equity could help evaluate sustainable environmental strategies to protect the earth in favor of future generations.⁴⁵ Present people have obligations

⁴² Sanz-Caballero, Children's rights in a changing climate: a perspective from the United Nations Convention on the Rights of the Child. Page 12.

⁴³ Ibid. Page 13.

⁴⁴ Weiss, Edith Brown. In Fairness To Future Generations and Sustainable Development, *American University International Law Review*, Vol 8, No 1: 19-26, 1992. Page 23. Available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1498&context=auilr> (Accessed: 15/3 - 23)

⁴⁵ Weiss, Edith Brown. Climate Change, Intergenerational Equity, and International Law, *Vermont Journal of Environmental Law*, Vol. 9, No. 3: 615-627. 2008. Page 623. Available at: <https://scholarship.law.georgetown.edu/facpub/1625/> (Accessed: 15/3 -23)

toward future generations to preserve the earth and its resources in the same condition it was left to them.⁴⁶

According to Weiss, the rights of future generations will only be valuable if they are respected.⁴⁷ She further refers to the preamble of the Universal Declaration of Human Rights (UDHR), which recognizes the inherent dignity of all members of the human family. The reference could be interpreted to have a “(...)temporal dimension which brings all generations within its scope.”⁴⁸ Weiss has established three normative principles that the current generations must obey to secure the earth; opportunity, quality, and access. Opportunity is needed to preserve the diversity of natural and cultural resources. Equality represents the obligation to preserve the condition of the planet, and finally, future generations are entitled to access and benefit from the legacy of Earth.⁴⁹ Based on these principles, she set out four criteria to fulfill intergenerational equity. Firstly, equality should neither authorize exploitation by the current generation nor prohibit the enjoyment of the rights of people today. Secondly, rather than predicting future needs, future generations should have the possibility to secure their version of rights. Thirdly, principles set forth should be aligned with possible outcomes for the future. And lastly, the legacy of the earth must honor the possible different versions of society, including, economic, cultural, and political factors.⁵⁰

The element of uncertainty poses questions about intergenerational equity. However, Weiss states the lack of a foreseeable future does not prevent the obligation to provide future generations with options and resources to enable them to satisfy their needs.⁵¹ However, challenges of injustices restrict the possibility to meet future needs because the interests of current generations are not satisfied.⁵² Weiss further argues rights of

⁴⁶ Weiss, *Climate Change, Intergenerational Equity, and International Law*. Page 622-623.

⁴⁷ Weiss, *In Fairness To Future Generations and Sustainable Development*. Page 19-20.

⁴⁸ *Ibid.* Page 21.

⁴⁹ Weiss, *Climate Change, Intergenerational Equity, and International Law*. Page 623.

⁵⁰ Weiss, *In Fairness To Future Generations and Sustainable Development*. Page 23.

⁵¹ Weiss, *Climate Change, Intergenerational Equity, and International Law*. Page 617.

⁵² *Ibid.* Page 618.

future generations should not be seen as individual rights but rather as group rights. Rights exist in relation to other generations and transcend identities or the unpredicted size of the future population. Since intergenerational equity operates in alignment with a goal beyond the individual, rights could be claimed to be serving human society and by extension people alive today. Weiss proceeds to argue that the future generations' inability to claim their right does not equate to the nonexistence of their right, let alone the obligation to respect and protect their interests.⁵³

Johanna Adashek also advocates intergenerational equity as an appropriate approach to determining obligations,⁵⁴ In her article *Do it for the kids...*, she describes how protection of future generations will not be satisfactory without institutional provision. A lack of a clear definition of future generations could prevent their rights from being ensured.⁵⁵ In addition, Eric Brandstedt develops the argument of intergenerational equity and the element of ethical difficulty in his paper, *The Circumstances of Intergenerational Justice*.⁵⁶ Brandstedt focuses on the criticism of intergenerational justice deriving from justice theorists. His approach to rights is the relational aspect between the recipient and the giver, both parties' ability to affect one another. Thereby, the primary condition for intergenerational justice is opposed since future generations are yet non-existing.⁵⁷

Brandstedt further discusses justice through a moral constructionist approach by focusing on the circumstances of justice and addressing potential ethical progress.⁵⁸

Ethical progress is a key element in the constructivist approach, by referring to

⁵³ Weiss, In Fairness To Future Generations and Sustainable Development. Page 25.

⁵⁴ Adashek, Johanna. Do it for the Kids: Protecting Future Generations from Climate Change Impacts and Future Pandemics in Maryland Using an Environmental Rights Amendment, *Public Land & Resources Law Review*: Vol. 45, Article 7: 114-149. 2022. Page 137.

Available at: <https://scholarworks.umt.edu/plrlr/vol45/iss1/7> (Accessed: 21/3-23)

⁵⁵ Adashek, Do it for the Kids. Page 137.

⁵⁶ Brandstedt, Eric. "The Circumstances of Intergenerational Justice." *Moral Philosophy and Politics*, Vol 2 No.1: 33-56, 2015. Page. 1. Available at: <https://doi.org/10.1515/mopp-2014-0018> (Accessed: 29/3-23)

⁵⁷ Brandstedt, The Circumstances of Intergenerational Justice. Page. 2-4.

⁵⁸ Ibid. Page.6.

historical justice cases, such as women's rights and abolitionism, Brandstedt recognizes the importance of change to achieve justice. Historical regulations prohibited the inclusion of groups that today are seen as self-evident rightsholders.⁵⁹ Lastly, Brandstedt addresses how the intergenerational problem is self-inflicted since humans are future-oriented and intergenerationally connected through our actions, such as planning for future offspring, investments, etc. Thus, discussions of future interest are inevitable and could further challenge the status quo by addressing our future impact in order to question business as usual.⁶⁰ Johan Brännmark also discusses future investments in regard to intergenerational equity. The foundational principle of equal access to earthy resources is complicated when the benefits of consumption transcend generations, such as investments in infrastructure and social institutions. Brännmark refers to John Broome who discusses if something is seen as an investment, could it be argued to compensate for present consumption?⁶¹

Brännmark and Brandstedt contribute valuable perspectives to the theory of intergenerational equity through critical reflection. Brandstedt's problematization of Weiss's argument can be used to further deepen the discussion and contrast arguments. Likewise, Brännmark's perspectives could facilitate an alternative view of the usage of resources, a recurrent topic visible in Swedish climate law. Intergenerational equity permeates the field of research for future generations. Weiss's theory invites a new approach to the affinity between generations and opens up a new argument for the obligations toward future subjects. However, intergenerational equity is founded upon the principle of moral responsibility, an argument open to critique by scholars opposing ethics as legitimate grounds for duty.

⁵⁹ Brandstedt, *The Circumstances of Intergenerational Justice*. Page. 8.

⁶⁰ *Ibid.* Page. 10.

⁶¹ Brännmark, Johan. Future generations as rightsholders, *Critical Review of International Social and Political Philosophy*, Vol. 19, No. 6, 2016: 680–698. Page 689. Available at: <http://dx.doi.org/10.1080/13698230.2014.966231> (Accessed: 30/3-23)

Parfit and the non-identity problem

In his book, *Reasons and Person*, philosopher Derek Parfit questions the legitimacy of rights to future generations. Parfit bases his moral argument on the non-identity problem and his theory is essential to the purpose of the thesis. By offering a critical perspective he further deepens the conceptual understanding of the rights of future generations. Thus, Parfit's theory can be used to analyze the approach visible in Swedish climate law which invites a new perspective regarding the discussion of responsibility. An important precondition to Parfit's theory is the Time-dependent claim, defining the importance of the moment of conception for the development of an identity. According to Parfit, "(...)if any particular person had not been conceived when he was in fact conceived, it is, *in fact*, true he would never have existed."⁶² The existence of a particular person is dependent upon the conception of the individual within a month's time. If failed to be conceived the individual will not have *that* specific identity, but be destined for another.⁶³

Parfit further poses two questions to consider when discussing future generations;

- 1) If we cause someone to exist, will they have a life worth living, and do we thereby benefit this person?
- 2) Do we benefit this person if some acts of ours are a remote but necessary part of the cause of existence?⁶⁴

Bearing in mind the time-dependent claim, Parfit answer the questions as follows; If a said person were to exist, we have benefitted *that individual* regardless of our actions leading up to their conception because without it *they* would not have existed and therefore been "worse off". Parfit contemplates the lack of sufficient explanation of rights and duties to future subjects, and further expands his argument on the non-identity problem through an example called "the risk policy". The risk policy scenario describes a community that needs to choose between two energy policies.⁶⁵

⁶² Parfit, Derek. *Reasons and persons*, New York: Oxford University Press, 1984. Page 351.

⁶³ Parfit, Derek. *Reasons and persons*. Page 352.

⁶⁴ Ibid. Page 358.

⁶⁵ Ibid. Page 371.

The policies regard the management of nuclear waste and differ as to *how* and *where* to bury the waste. Choosing the risk policy entails the burial of nuclear waste superficially. Based on this choice, inevitably sometime in the future, an earthquake will strike causing contamination of the environment. The leakage of radio-active material will shorten the life expectancy of the future generation.⁶⁶ Initially, one could argue to choose the safe policy to avoid shortening life expectancy. However, Parfit refers to the time-dependent claim, arguing without the risk policy *the* specific future generation will not bear *the* identity as in the first scenario. Thus, their life would not be shortened because they would not have existed, and by extension, the generation would not have been worse off.⁶⁷

If the future generation were claimed to not be worse off by the risk policy, could the past generation be argued to have harmed them, thus accounting for future generations to claim their rights?⁶⁸ According to Parfit, “causing harm” is hard to determine, instead he refers to consent and regret. To wrong someone is to act without their consent, however, future generations can not give consent, thus, Parfit turns to regret. Would the future generation have regretted the choice? The risk policy generation would possibly regret their early death, however, without the policy, they would not have existed.⁶⁹ Parfit concludes, in order to determine if the risk policy was wrong future generations have to declare what rights they claim. Either the right to life, knowing their right to development is limited due to premature death, or the right to development causing another future population to live in safety, however, not for themselves.⁷⁰

Similar to Parfit, Brännmark also addresses the non-identity problem however, instead, he investigates the claim of rights of future generations as collective rights. Brännmark declares collective rights entitled to a specific group of people can not be equated to generational protection. Regardless of the possibility to foresee the potential violations of future generations the non-identity problem is still present. It poses epistemological

⁶⁶ Parfit, Derek. *Reasons and persons*, New York: Oxford University Press, 1984. Page 371.

⁶⁷ Ibid. Page 372

⁶⁸ Ibid. Page 372.

⁶⁹ Ibid. Page 373-374

⁷⁰ Ibid. Page 375.

challenges, because what we think we know about future scenarios can potentially be irrelevant due to radical political and environmental changes. The lack of knowledge of future generations and conditions hampers the ability to assign rights based on future needs.⁷¹ Brännmark lastly addresses the importance of a definition of future generations. He argues vagueness can defeat the purpose of what the definition should accomplish. Since the future entails elements of uncertainty, a definition needs to be sufficiently clear to guide future-oriented moral constraints.⁷² Brännmark's arguments are valuable for the purpose of this thesis because it develops the non-identity problem and problematizes the different aspects. It further addresses the lack of definition of future generations enhancing the purpose of a conceptualization of the rights of future generations.

The non-identity problem gives rise to important questions by opposing the rights of future generations. Parfit contributes with valuable critique that recognizes the uncertainties of the future and by extension the inability to determine a suitable corresponding duty bearer. His argument challenges the notion of rights to future subjects and enables the opposing scholars to sharpen their argument. However, the non-identity problem is only a problem in his scenarios regarding the time of conception. The moral obligations after conception are rarely addressed by Parfit, thus leading to question his line of reasoning.

2.1 Summary of theory

In summary, the main theoretical arguments for the rights of future generations regard different themes; individual or collective rights, the element of uncertainty, vagueness in definition, responsibility and correlative duties, institutional or moral reasoning, and lastly equality in resources. The different scholars assume different focal points in their argumentation. Philips advocates an individual rights focus claiming future generations are rightsholders according to human rights. He problematizes prioritization between present and future generations' interest, however, argues

⁷¹ Brännmark, Future generations as rightholders. Page 686-687.

⁷² Ibid. Page 693.

uncertainties does not prevent the legitimization of the protection of future generations. Similarly, Weiss advocates the rights of future generations as group rights, including the protection of earthly resources because of the principle of intergenerational equity. According to Weiss, the present generation have an obligation to provide the future generation with equal access to resources to have the freedom and ability to achieve their rights in the future. In contrast, Parfit opposes the belief that future generations have rights, questioning the legitimacy of responsibility. Parfit bases his argument on the non-identity problem and disputes the argument of moral responsibility. He further problematizes assigning rights to future generations by elaborating on the difficulty of defining violation of rights and causing someone harm.

3. Method

In the following section method and methodological choices will be presented. The research is based on a content analysis primarily with a qualitative approach, however, with elements of quantification. Furthermore, the method is inspired by methodological tools from concept analysis and grounded theory. The result is presented through bar charts visualizing the findings quantitatively to obtain a comprehensive picture of the result. Content analysis will be introduced followed by a discussion of the influences from concept analysis and grounded theory. Lastly, the benefits and shortcomings of the method will be presented.

3.1. Content analysis

Since qualitative content analysis primarily has guided the methodological choices of this research the focus will be to present its usage followed by an explanation of how the other methods have been used as an inspiration for this thesis. Qualitative content analysis is commonly used in research focused on analyzing documents and investigating underlying themes. However, the research process is not predetermined and often includes inspiration from different approaches. By contrast, quantitative content analysis is used to compare a wide selection of material and utilizes the counting of codes to identify patterns.⁷³ The inspiration for concept analysis was to deepen the understanding of the concept and its relation to other concepts. Concept analysis is used differently within disciplines, however, tends to be more terminologically focused.⁷⁴ Therefore, the inspiration of concept analysis focuses on the linguistic approach in the usage of the concept of “rights of future generations”. Furthermore, the inspiration of grounded theory predominantly guided the research process, however, with modifications adjusted to the purpose of the thesis.

⁷³ Boreús, Kristina och Bergström, Göran, *Textens mening och makt*, uppl. 4. Lund: Studentlitteratur, 2018. Page 50-51.

⁷⁴ Nuopponen, Anita. Methods of concept analysis – a comparative study, *Communication Studies LSP Journal*, Vol.1, No.1 2010: 4-12. Page. 5-6. Available at: <https://www.heds.ir/images/Books/Methods-of-concept-analysis.pdf> (Accessed: 24/4 - 23)

Grounded theory was developed by Strauss and Glaser in the 1960s and is one of the common approaches within qualitative content analysis. According to Alan Bryman, different versions of grounded theory have been developed.⁷⁵ This thesis uses Strauss's version because it focuses more on the establishment of a concept rather than the development of a theory, thus more suitable for the purpose of the research. Grounded theory is an examining method aimed to provide an indication of a concept through coding. Based on the result of the research, a concept can be developed and later transformed into categories and further formulated as a theory.⁷⁶ Grounded theory could either utilize open coding or selective coding. Selective coding refers to systematic coding based on predetermined categories to which the findings are compared. The chosen categories guide the analytic process while open coding is not predetermined, rather focusing on comparison and conceptualization in order to categorize data into concepts and categories.⁷⁷ Within this thesis, the data has been coded based on a *hybrid* coding. Using the benefits of transparency from open coding, however, employ selective coding to guide the research process in order to investigate the conceptualization of a predetermined concept.

According to Bryman, some scholars argue that grounded theory is honored when the researcher departs from the principles of the method. Thus, the usage of grounded theory could vary between projects. However, grounded theory is based on a predetermined set of techniques to approach the material.⁷⁸ Continuous comparison of findings is a common technique, including further categorization to reach a conceptualization.⁷⁹ Strauss recommends writing memos throughout the interpretative phase of the analysis to ensure an accurate interpretation and reflection of the result.⁸⁰ Utilizing inspiration from grounded theory and concept analysis, this research uses the qualitative content analysis research processes proposed by Bryman, based on six fundamental steps:

⁷⁵ Bryman, Alan, *Sambällsvetenskapliga metoder*, uppl.2, Malmö: Liber, 2008. Page. 513.

⁷⁶ Bryman, *Sambällsvetenskapliga metoder*. Page. 517.

⁷⁷ Ibid. Page. 513-514.

⁷⁸ Ibid. Page. 514-515.

⁷⁹ Ibid. Page. 517.

⁸⁰ Ibid. Page. 521.

- 1) Pose a general question to the material
- 2) Choose relevant places and people(research material)
- 3) Collect data
- 4) Interpret data
- 5) Concept and theoretical work
 - a) Specify the research question
 - b) Collect further data.⁸¹

The first step: *Pose a general question to the material* - Three different questions were posed to the material in order to conceptualize the “rights of future generations”, each of the questions entails a different perspective to obtain a qualified answer.

- What *concepts* are future generations *associated* with in Swedish climate law/policy?
- In what way are future generations presented as *subjects of rights*?
- What kind of *practical implications* does the Swedish climate law/policy entail for the potential corresponding rights for future generations?

The second step: *Choose relevant research material* - The material is composed of a selection of Swedish laws and policies regarding climate, all documents contain a reference to future generations. The selection process, motivation, and limitations were previously discussed in section 1.2 Material and Limitations.

Using documents as sources requires evaluation of the quality of the document based on authenticity, reliability, representation, and purpose.⁸² The authenticity criteria are met because the material is published by the Swedish government and the reliability criteria are met because the documents are cross referenced to the official governmental version without alterations. The criteria of representation are met and further motivated in section 1.2. Lastly, the criteria of purpose are met, because the material is relevant and accessible.

⁸¹ Bryman, *Sambällsvetenskapliga metoder*. Page. 346.

⁸² Ibid. Page. 489.

The third step: *Collect data* - The process of deriving data focused on identifying how the “rights of future generations” and “Children’s rights in the future” were referenced to and described in the primary sources. At the beginning of the process, a document titled “findings” was created to document sentences, quotes, or words associated with one of the three questions stated above. A document titled “memo” was also created to catalog the daily progress of the analysis.

The fourth step: *Interpret data* - The coding process is inspired by quantitative methodological tools. By using a hybrid of selective and open coding all findings were documented in the findings document and later analyzed. The process was inspired by iteration, a way of analyzing material through an interplay between collecting and interpreting data, allowing the researchers to re-examine their findings and collect more data.⁸³ In the interpretive phase, all findings were analyzed and whenever a phrase or a sentence was detected concerning future generations it was categorized. The phrase could be an association or a direct quotation however, all the categorization was based on the three questions mentioned above. With every selected phrase a short note was written to be used later in the analytic process. To demonstrate, an example from the findings document:

Miljöbalken

“...främja en hållbar utveckling som innebär att nuvarande och kommande generationer tillförsäkras en hälsosam och god miljö.”

“... människors hälsa och miljön skyddas mot skador och olägenheter oavsett om dessa orsakas av föroreningar eller annan påverkan...”

(A sample from the “findings document”, with relevant extracts from the material. This specific extract is from Miljöbalken, The Swedish environmental code).

After reading through all phrases and sentences the coding process began. Based on each of the three questions, the extracts were reformulated into keywords to represent

⁸³ Bryman, *Sambällsvetenskapliga metoder*. Page. 511

the finding and later coded into schemes. The schemes were constructed based on each question with three separate columns, one for the code/keyword, one for the phrase, and one containing personal reflection.

What concepts are future generations associated with in Swedish climate law/policy?

Phrase/word:	Theme/keyword:	My notes:
“...hänsyn till den enskilda människans frihet...”	Freedom	Frihet - koppling till rättigheter, fokus på de enskilda människor friheter, inte kollektivistiskt som intergenerational equity.
“...en god och långsiktigt hållbar livsmiljö...”	Long-term sustainability	Description of what the future generations are entitled to.
“...främja en hållbar utveckling som innebär att nuvarande och kommande generationer tillförsäkras en hälsosam och god miljö ekonomisk och social välfärd och rättvisa.”	Sustainable environment Economic and cultural	The rights of future generations are described according to what kind of living conditions is strived towards according to the law.

(A sample from the first question to the material regarding how the rights of future generations are presented in Swedish law and policies)

In the final step of coding, each keyword was counted based on the number of times the categories were used. A quantitative tools can be useful to compare a wide selection of material systematically.⁸⁴ The quantitative element was valuable for the thesis, to demonstrate the inconsistency in references to rights of future generations. The result was transferred into new schemes containing a quantitative reference of the categories. To obtain a better visualization of the result, the coding schemes were remodeled into a bar chart.

Keywords/Themes	Frequency of use
Freedom	4
Sustainable environment	8
Long-term sustainability	2
Equality	6

⁸⁴ Boreús & Bergström, *Textens mening och makt*, Page 52-53.

(A sample from the first question to the material regarding how the rights of future generations are presented in Swedish law and policies)

Step 5: *Concept and theoretical work* - The last step of the research process was to specify the research questions and evaluate if the collection of more data was needed. Firstly, the revision of the questions has been continuous throughout the process and the final version reads as follows:

- How are the rights of future generations conceptualized in Swedish climate law?
- To what extent can the concept of the rights of future generations be useful for climate law?

Secondly, no other data was further collected after the last coding. Considering the time aspect the material was judged as sufficient and proceeded to be analyzed. The result was extensive enough to attempt a conceptualization of the rights of future generations.

3.2. Critical reflection of method and methodology

Critique of content analysis

Critical reflection of research method and methodology usually evaluates validity and reliability, however, within qualitative research some scholars argue it is needed to specify the criteria of evaluation, proposing evaluation based on trustworthiness and authenticity.⁸⁵ Trustworthiness is determined based on credibility, transferability, dependability, and confirmability. Credibility is achieved if the research is conducted according to the principle of the research method.⁸⁶ As previously stated, this thesis is based on a hybrid of different methods, therefore the credibility could be argued to be decreased because the research does not follow strict predetermined guidelines. However, I have extensively researched different research approaches and after careful consideration constructed my research method. In addition, the research process

⁸⁵ Bryman, *Sambällsvetenskapliga metoder*, Page. 354.

⁸⁶ Ibid. Page. 354-355.

utilizes Bryman's six-step qualitative content analysis process, thus, the research follows credible guidelines.

Transferability notes the quality of the research and it is important to present an elaborate description of the result to enable another researcher to evaluate its transferability to another context.⁸⁷ This research is transferable regarding the method since the research process applies to other domestic legislations while the result is solely representative of Sweden. Moreover, dependability requires an exhaustive and accessible description of the research process, the purpose of the research, and the selection of material.⁸⁸ The research process is thoroughly described in section 3.1(Content analysis) including extracts from the coding process, increasing transparency and thus dependability. A qualitative content analysis enables the researcher to deepen the understanding of the research subject through close examination of limited material, thus resulting in a detailed analysis.⁸⁹ However, the qualitative approach limits the ability of generalization, while this research could be argued to have produced a representative result from a Swedish context.

The quantitative element of this research makes it more transferable enables if other empirical research were to be conducted on the same topic, rather than if it would have been solely qualitative research. However, if the purpose of a qualitative research is an in-depth analyze the inherent meaning or hidden themes quantifications are not preferred. Thus, this thesis has used a combination of qualitative and quantitative approaches in order to examine the frequency of use to display the similarities and differences, while also thoroughly analyzing different perspectives of the concept.

A further general disadvantage of content analysis is the lack of focus on the unexpressed and only on what is visible.⁹⁰ Nevertheless, the aim of this research is to discuss and examine what the Swedish climate law demonstrates, thus benefiting the literal analysis of rights language. However, unexpressed messages could potentially go unnoticed. Lastly, quantitative research could be problematic considering the

⁸⁷ Bryman, *Sambällsvetenskapliga metoder*. Page. 355.

⁸⁸ Ibid. Page. 355.

⁸⁹ Ibid. Page. 369-370.

⁹⁰ Boreús, Kristina och Bergström, Göran, *Textens mening och makt*. Page 79.

interpretation, and the representation of the coding.⁹¹ It is important to critically reflect upon the representation of the coding if it indicates a transparent result of the analyzed material. Using a coding scheme as a methodological tool requires the researcher to do extensive research to incorporate all perspectives within the codes since they represent the documents.

Critical reflection of grounded theory

Grounded theory is a useful approach within qualitative content analysis because the material guides the analytic process. However, Bulmer has questioned the ability of the researcher to not let their previous knowledge affect the research. Using grounded theory and hybrid coding challenges the researcher's ability to stay impartial.⁹² Therefore, it is important to continuously write memos and thoroughly explain the research process to increase reliability. Furthermore, a common critique of grounded theory is the inconsistent use of terminologies such as concept and category. The critique is valid since the researcher can interpret the method freely. Thus, it is important to describe how the method is used. In addition, Coffey and Atkinson, question the encouragement of open coding, because they argue it could lead to fragmentation which could compromise the contextual setting of the material.⁹³ Fragmentation is necessary for this thesis because the aim is to examine how the rights of future generations are addressed. Therefore, fragmentation is needed to analyze the categories from the different perspectives of the concept and further analyze visible elements of theoretical approaches.

⁹¹ Boreús & Bergström, *Textens mening och makt*. Page 80-82.

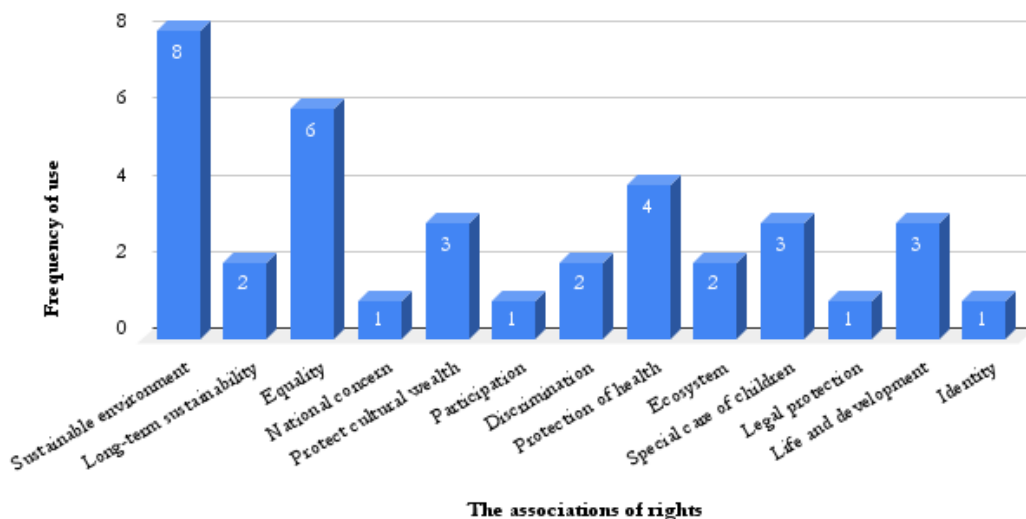
⁹² Bryman, Alan, *Samhällsvetenskapliga metoder*. Page. 521.

⁹³ Ibid. Page. 522.

4. Analysis and result

In the following section, the result of the research will be presented through bar charts visualizing the code schemes. The charts indicate what concepts are associated with future generations, in what way are future generations presented as subjects of rights, and what obligations or practical implications Swedish climate law entails. Each of the charts is followed by a summarizing analysis of the predominant categories, including references to specific extracts from the laws. Utilizing the theoretical approaches; intergenerational equity, human rights-based approach, and the non-identity problem, to further analyze the conceptual meaning. The analysis aims to examine associations and references to the rights of future generations in Swedish climate law to come closer to a conceptualization.

4.1 What concepts are future generations associated with in Swedish climate law/policy?



Visible through the chart are the most recurring associations to the rights of future generations used in Swedish climate law. To clarify, the associations are not stated explicitly as rights, however, the concepts are written in the same sentences or argued to be the object of protection of what future generations are entitled to. Thus, the analysis

of the result aims to establish how the concepts of rights could be interpreted in Swedish climate law. The predominant categories found are; Sustainability(8 times), Equality(6 times), and Freedom(4 times).

The Swedish climate law refers to future generations through different concepts without clear consistency. The references demonstrate the variation in the usage of language concerning future generations with influences of both intergenerational equity and a human rights-based approach. The association of equality in legislation would be supported by both Weiss and Philips, although on a different basis. Equality is interpreted as how rights should be assigned to future generations.

[...]främja en samhällsutveckling med jämlika och goda sociala
levnadsförhållanden[...]⁹⁴

(An extract from the Swedish plan and construct law)

In the extract from the Swedish plan and construct law, equality is referred to as the responsibility to promote an *equal* development of society with beneficial living conditions. One of the criteria of intergenerational equity is the principle of equality, thus all generations, alive and to come, are entitled to an equal share of the earth. Similarly, Philips advocates the equal entitlement of rights to all people with points of departure in UDHR. He further argues if we accept the principle of human rights we must accept that future generations are included as well. Equality is differently interpreted by the theoretical approaches, either as a generational collective right or individually based.

References in the law to future generations and sustainability has been interpreted as a right to a sustainable future.

Det allmänna ska främja en hållbar utveckling som leder till en god miljö för
nuvarande och kommande generationer.⁹⁵

(An extract from The new constitution of Sweden)

⁹⁴ SFS 2010:900, *Plan - och bygglag*, 1 §.

⁹⁵ SFS 1974: 152, *Kungörelse, Regeringsformen*, 2 §.

In the extract from the new constitution of Sweden, sustainability is promoted to be a general concern and society should provide a good environment for the present and future generations. Sustainability and preservation of the earth are in accordance with the fundamental principle of intergenerational equity. Promoting sustainability in domestic climate law could also be interpreted to be influenced by a human rights-based approach. Sustainability itself is not a human right, however, Article 3(right to life),⁹⁶ and Article 25(right to a standard of living)⁹⁷ both refer to elements of sustainability. Furthermore, according to Philips, the present generation is obligated to give up trivialities to protect the important interests of future generations rather than competing about limited resources. The important interest of future generations could be argued to be a sustainable future because it is a precondition for several human rights.

The association of freedom as a right to future generations was difficult to define, however, it is explicitly addressed in a few paragraphs in different laws.

[...]hänsyn till den enskilda människans frihet[...].⁹⁸

(An extract from Swedish plan and construct law)

In the extract from the Swedish plan and construct law, freedom is referred to as taking into consideration freedom and beneficial living conditions of the present and future population while making plans for future construction. Freedom could be interpreted differently from the theoretical perspectives. According to a human rights-based approach, freedom permeates many human rights and is visible as a right both in UDHR and the Convention on The Rights of the Child. However, freedom could be argued to conflict with other important interests, thus Philips's priority exercise would facilitate a tool to evaluate how to interpret the right to freedom. By contrast, intergenerational equity makes use of the term freedom differently. According to one of the fundamental principles of the theory, opportunity, Weiss explains that future generations need to be ensured the freedom to choose their rights. Past generations

⁹⁶ SFS (2018:1197), *Förenta nationernas konvention om barnets rättigheter*, Artikel 3.

⁹⁷ SFS (2018:1197), *Förenta nationernas konvention om barnets rättigheter*, Artikel 25.

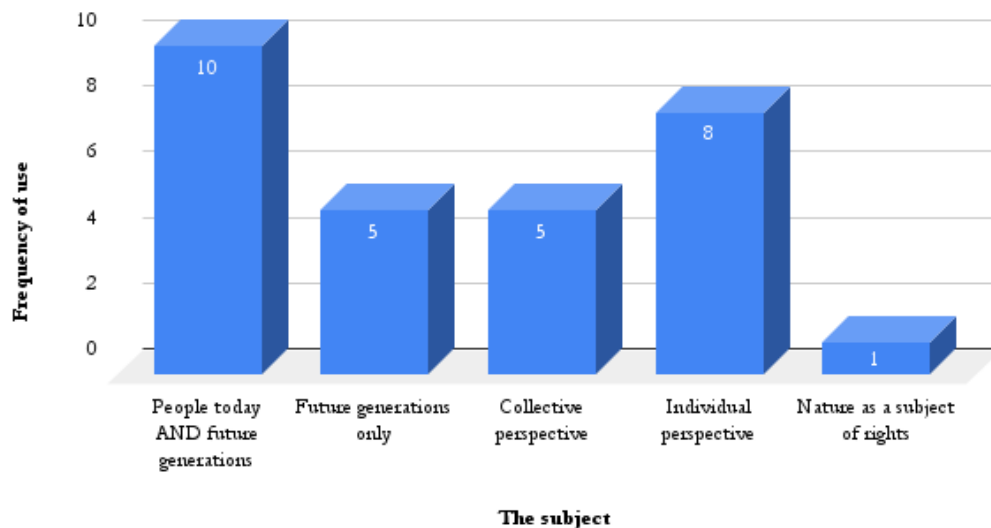
⁹⁸ SFS 2010:900, *Plan - och bygglag*, 1 §.

have an obligation to provide future subjects with the earth in a sufficient state to reassure their ability to fulfill their potential rights.

On the contrary, Parfit argues against the rights of future generations and would question the association with freedom, equality, and sustainability. Thus, the Swedish climate law lacks reference to Parfit's theory. According to the non-identity problem, assigning rights to future subjects is impossible because the determination of their right requires knowledge about their identity. Dependent on our actions today, the identity of future subjects could be altered, resulting in their entitlement as non-existent. Parfit use another approach to the question of rights and more importantly violations of rights. According to Parfit's reasoning, if a subject can be said to not be worse off if their alleged right had not been fulfilled and if they would not have regretted the action by present generations it would not be a violation of rights. If the subject would have a life worth living and did not regret the fact that they were alive, Parfit argues the discussion of the rights of future generations is irrelevant.

I conclude that the associated concept of the right to future generations primarily regards freedom, sustainability, and equality. The associations differ depending on which law the extracts are derived from. Applying a theoretical approach enhances the inconsistency in the results, however, enables a better understanding of how the associations could be interpreted and help legitimize the importance of the rights of future generations.

4.2 In what way are future generations presented as subjects of rights?



Visible through the chart is how future generations are described in Swedish climate law, if the concept is intertwined with other terms, and if the approach is collective or individually attributed. How the concept is used indicates how future generations could be interpreted as subjects of rights. The predominant categories are; Present and future generations(10 times), Individual rights(8 times,), and lastly future generations, only and collective rights are both mentioned 5 times.

The Swedish climate law addresses future generations as subjects of rights ambiguously. The subjects are both referred to as a future entity, while also in combination with the present generation. Further, the rights language includes both a collectivistic and individualistic approach. Thus, the conceptualization of future generations as subjects of rights can not be claimed to represent a singular perspective. The Swedish climate law demonstrates the influences of both intergenerational equity and a human rights-based approach.

To address present and future generations jointly indicates tendencies of intergenerational equity. As Weiss's theory explains, the principle of equality neither implies the right of present generations to exploit resources today nor that they should be prohibited from the enjoyment of fundamental rights to save future generations.

Weiss further advocates a transcending perspective, arguing rights should have generational overlaps despite the uncertainties about future populations. Thus, the Swedish articulation of present and future generations jointly supports this notion.

[...] en god miljö för nuvarande och kommande generationer.⁹⁹

(An extract from the new constitution of Sweden)

The extract from the new constitution of Sweden refers to a good environment for future generations *in combination* with the present population. Thus, echoing the transcending perspective Weiss advocates and uses a collectivist approach to subject description. Philip's rights-based approach could be argued to second the subject position based on the principle of equal inclusivity according to Human rights. However, future generations are only legitimate subjects of rights as long as violations of the rights of the present population are avoided. Addressing present and future generations jointly could benefit the complex intersection between the subject of rights between generations. However, the joint description of entitlement could obstruct Philip's priority exercise between subjects of rights.

Furthermore, according to the Generational Goal policy, future generations are addressed as one entity without referring to the present population.

[...]kommande generationers behov beaktas samt att det globala miljöutrymmet fördelas rättvist.¹⁰⁰

(An extract from The Generational Goal)

The extract refers to the need to consider the interest of future generations and equally share the global environment. The element of equality indicates a collectivistic approach which could be argued to be in alignment with Philip's priority exercise. The evaluation of the best interest of future and present people utilizes a form of utilitarian approach with a collective perspective rather than promoting individual rights. Likewise, Weiss advocates the rights of future generations as group rights,

⁹⁹ SFS 1974: 152, *Kungörelse, Regeringsformen*, 2 §.

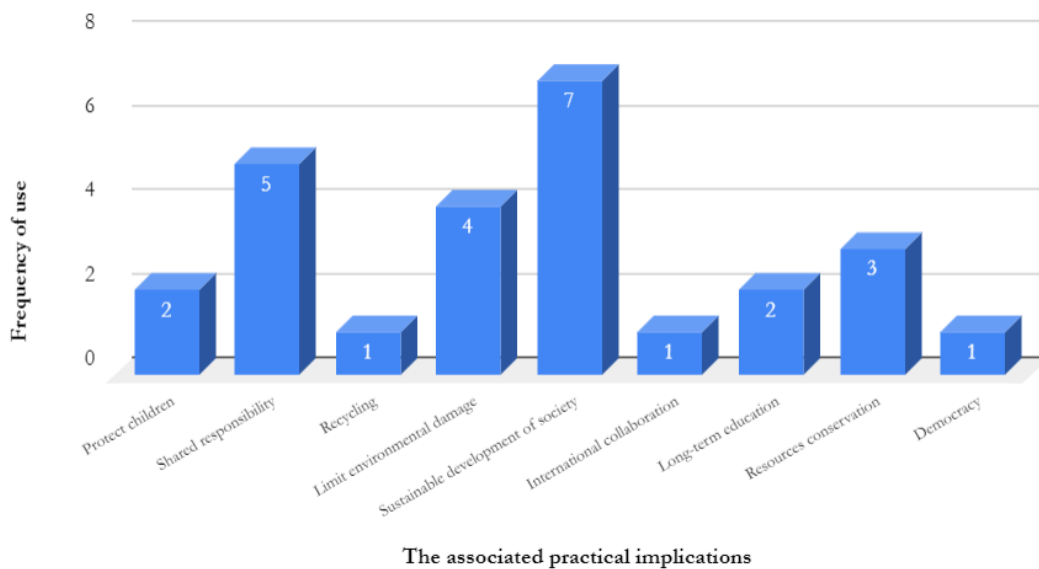
¹⁰⁰ Naturvårdsverket: *Generationsmålet*, Page. 45.

assuming the future population as one entity entitled to the equal division of earthly resources and not primarily addressing the single individual.

The inconsistency in terminology referring to both future generations as one entity and in combination with the present generation could support Parfit's argument questioning the legitimacy of future generations as subjects of rights. Parfit references the uncertainties about the future as a crucial factor as to why future generations are not suitable as subjects of rights. Based on an individualistic approach, the inability to assign rights to a specific identity and individual, due to the non-identity problem, questions Weiss's and Philip's argument and the Swedish climate law. The ambiguous result could be argued by Parfit to exemplify the uncertainties about the future and thus the inability to assign rights to future subjects.

I can conclude that the references to future generations as subjects of rights are misleading because of the inconsistency in references to singularly future generations and other paragraphs in combination with the present population. The most common reference is to "future and present generations", 10 times, while the references to only future generations are 5 times. Thus, Swedish climate-related laws indicate a preference for a collectivistic approach to subjects of rights.

4.3 What kind of practical implications does the Swedish climate law/policy entail for the potential corresponding rights of future generations?



As visible through the chart, the Swedish climate law indicates practical corresponding obligations to protect future generations. The obligations are associations indicating responsibility, however not always explicitly expressed. The laws are interpreted to include different versions of responsibility to incorporate how obligations towards future generations are framed. The responsibility is predominantly expressed as; Sustainable development of society(7 times), Shared responsibility(5 times), Limit damages to the environment(4 times), and Long-term conservation of resources(3 times).

Similarly to the subject position and associated concepts, the practical implications vary within Swedish legislation. The different versions of responsibility presented could be interpreted as an obligation to corresponding rights or as a moral obligation to serve the protection of future generations. The law recurrently indicates a shared responsibility which is in line with both Philips's rights theory and Weiss's moral argument.

Ansvaret för kulturmiljön delas av alla. Såväl enskilda som myndigheter ska visa hänsyn och aktsamhet mot kulturmiljön.¹⁰¹

(An extract from the Swedish culture environment law)

The extract is from the Swedish culture environmental law expressing that the responsibility should be shared by all individuals as well as authority. A Human rights-based approach argues the primary corresponding duty bearer is the state and by extension its inhabitants. Likewise, Weiss claims responsibility should be shared by the present generation. However, she acknowledges the challenges of injustices in our world, and thereby the inability to be equally responsible.

The domestic legislation further specifies the responsibility to ensure the sustainable development of society.

[...]bidrar till att skydda ekosystemen samt nutida och framtida generationer mot skadliga effekter av klimatförändring.¹⁰²

(An extract from the Swedish climate law)

The extract from the Swedish climate law indicates a responsibility to protect the ecosystem, and the present and future generations, from the harmful effects of climate change. The statement could be interpreted as assigning an obligation to enforce a sustainable development of society to prevent damage to the ecosystem and manage the effects of climate change. Sustainable development of society is in alignment with both Weiss and Philips's theory, although on a different basis. According to Philips, a sustainable society constitutes a foundation for the fulfillment of several human rights, for example, article 25, the sufficient standard of living.¹⁰³ Furthermore, Philip's prioritization exercise aims to facilitate the complex problem of responsibility toward future generations. According to the framework, individual cases need evaluation based on set criteria regarding; the threat itself, the estimated effects, the effectiveness of the protection, and if a suitable duty bearer is present. To determine if the responsibility is a relevant obligation an investigation regarding probabilities of threats and effective

¹⁰¹ SFS 1988:950, *Kulturmiljölagen*, 1 §.

¹⁰² SFS 2017:720, *Klimatlagen*, 2 §. 2.

¹⁰³ SFS 2018:1197, *Förenta nationernas konvention om barnets rättigheter*, Artikel 5.

remedies needs to be conducted. However, if a lack of sustainability would pose an imminent threat to future generations it would be arguable to need protection.

Likewise, Weiss would claim sustainability is fundamental to ensure the principle of intergenerational equity. Although, her argument is rather based on a moral obligation to ensure the protection of earthly resources.

Det allmänna ska främja en hållbar utveckling som leder till en god miljö för
nuvarande och kommande generationer.¹⁰⁴

(An extract from the new constitution of Sweden)

The extract is from the new constitution of Sweden expressing a responsibility to promote sustainable development to facilitate a good environment for the present and future generations. Furthermore, sustainability fulfills the criterion of intergenerational equity based on the principle of equal access to resources between generations, because it provides the opportunity to fulfill future rights. Similarly, the obligation to limit damages to the environment and long-term conservation of resources would be supported by both Weiss and Philips.

Viktiga aspekter i god naturresurshushållning bedöms vara att kommande
generationers behov beaktas samt att det globala miljöutrymmet fördelas rättvist.¹⁰⁵

(An extract from The Generational Goal)

The extract is from the Generational Goal indicating that environmental space should be shared equally and preservation of natural resources should consider the interest of future generations. Philips would support the conservation of resources and a fruitful environment because it enables the fulfillment of certain human rights. Weiss would also claim the protection of earthly resources is a responsibility transcending generations. The different aspects of environmental sustainability incorporate extensive protection and obligations toward future subjects.

¹⁰⁴ SFS 1974: 152, *Kungörelse, Regeringsformen*, 2 §.

¹⁰⁵ Naturvårdsverket: *Generationsmålet*. Page, 45.

Uncertainties about the future neither prevent Weiss nor Philips from arguing for the responsibility of future generations. Weiss declares the inability of the future generation to claim their rights does not make them nonexistent.

Över hela världen påverkar klimatförändringarna rättigheter för barn idag och för kommande generationers barn.¹⁰⁶

(An extract from The Generational Goal)

In the extract from The Generational Goal, Weiss's statement is thus supported by the expression that the rights of children today and future generations are affected by climate change. Acknowledging the entitlement of future subjects, their rights are taken seriously without any excuse to avoid responsibility. Similarly, Philips argues global warming is inevitable, thus the consequences for future generations are a matter of when and not if. Parfit however, advocates a different approach, arguing against the notion that the present generation has an obligation towards future generations. He visualizes his complex argument through the example of the risk policy. If rights were to entail a responsibility to protect the future generation, the imagined group we declare as subjects of rights would not be the recipient of the protection. For example, if Sweden were to follow the guidelines in the Generational Goal policy, Parfit argues the subjects of rights that we are aiming to protect would not be the recipient of the protection. Following a policy is to alter the preconditions for the future and by extension change the moment of conception for the future population. Thereby, it would be an alternative population we are attributing as subjects of rights.

Målet visar på den samhällsomställning som krävs för att vi ska kunna lämna över ett samhälle där de stora miljöproblemen är lösta till kommande generationer.¹⁰⁷

(An extract from The Generational Goal)

The extract from the Generational Goal indicates a need to restructure our society to combat imminent environmental threats. By restructuring our society we alter the identity of the future population and the imagined subjects of rights we aim to do right by will be non-existent, because they will have another identity. Thus, according to

¹⁰⁶ Naturvårdsverket: *Generationsmålet*. Page, 35.

¹⁰⁷ Naturvårdsverket: *Generationsmålet*. Page 11.

Parfit, advocating the rights of a specific future generation is misleading. Parfit's argument is morally structured pinpointing the uncertainties about the future and the inability to assign rights to a specific subject. Therefore, to claim the present generation is responsible for future subjects is against Parfit's theoretical beliefs. Parfit rather argues, in the scenario of an environmental policy the future generation can not claim they are wronged by the past generation if the scenario entails a bad environment because if they were to have chosen a different policy, the outcome would have resulted in their non-existent.

I can conclude that associations of responsibility in Swedish climate-related laws are predominantly concerning sustainable development and the conservation of resources. How the obligations are expressed varies, however, it imposes a responsibility on the present generations to take conscious environmental decisions and to consider the interest of future generations.

4.4 Summary of result

The result of the analysis demonstrates ambiguous domestic legislation. Thus, a convincing conceptualization is difficult to achieve. The Swedish climate law indicates references to intergenerational equity and a human rights-based approach interwoven in the same law, expressing different versions of how the concept of the rights of future generations should be understood and interpreted. Swedish climate law indicates influences of a morally based theoretical approach while also referring to elements in alignment with human rights and existing conventions. Not only are different theoretical approaches used in combination, but the terminology is further confusing. The domestic legislation includes a combination of references to future generations, using both individualistic and collectivistic terms, which could hamper the ability to be juridically indicative. If the "rights of future generations" could be defined differently the possibility of misinterpretation is less likely, and could further lead to more resilience against litigation.

The purpose of this research was to investigate how the concept of the rights of future generations is expressed in Swedish climate-related laws. Based on the ambiguous result

it is hard to determine a definition. However, future generations can be concluded to be subjects of rights, however less clear if they are entitled to rights separate from the rights of the present population. The rights they are entitled to are not explicitly stated in domestic legislation however, could be interpreted to be equally divided amongst the present population and generations to come. Sustainability and freedom are predominantly visible as associated objects to future generations. Who is responsible to ensure the objects are not articulated, however, the different laws indicate a shared responsibility to preserve a sustainable environment for future generations. Lastly, the result is difficult to read regarding responsibility. Should it be interpreted as a moral responsibility or a correlating duty to a legal right?

Parfit's theory does not correspond with Swedish climate legislation. However, his moral argument poses important questions regarding how responsibility should be attributed. Uncertainties about the future and the inability to address the identity of future subjects are the main reason why Parfit argues for the entitlement of rights to future generations. Since the future subjects would not be worse off in the scenario of their existence, their rights have not been violated.

5. Discussion

Since the research demonstrates an ambiguous result, the discussion will tackle the different perspectives of the findings. Conceptualizing the rights of future generations is an ambitious commitment and the expectations were not to find a solid answer. Rather the purpose was to investigate the Swedish legal approach to future generations. The aim to set a definition might be unattainable, however, depending on an optimistic or pessimistic attitude, it is possible to come closer to a better understanding. We are in need of a less vague definition of the rights of future generations otherwise the purpose of guidance regarding future-related issues could be defeated.¹⁰⁸ The rights of future generations are still a new topic of research. Evident is the uncertainty regarding how responsibility should be interpreted, as an obligation or a moral duty.

5.1. To what extent can the concept of the rights of future generations be useful for climate law?

As proclaimed by Brännmark, previous research about the rights of future generations are valuable to guide the responsibility of the present population.¹⁰⁹ The lack of a definition of the concept could have severe consequences. Even the OHCHR addresses the importance of considering the rights of future generations in different conventions and giving special protection to future children. Since the Convention on the Rights of the Child became Swedish law in 2020, children of future generations could be claimed to hold special rights within domestic climate law. Sanz-Caballero claims the Convention could be interpreted to include even unborn children. As visible in previous research, unborn subjects are claimed to be legitimate rightsholders. Gossiers example, with canned baby food, explain that unborn children do have rights in ex-post damage legislation today.¹¹⁰ However, the question is how far into the future are their rights justifiable?

¹⁰⁸ Brännmark, Future generations as rightholders. Page 693.

¹⁰⁹ Ibid. Page 693.

¹¹⁰ Gosserie, On Future Generations' Future Rights. Page 457.

Sanz-Caballero argues that states have a responsibility to take positive measures to increase life expectancy in accordance with Article 6, the right to survival. Further, she is not the only scholar advocating the responsibility of the state. However, addressing responsibility invites us to consider, whether is it a question of moral responsibility or a correlating obligation. The result of the research demonstrates how the term “responsibility” is used in Swedish climate law. However, does responsibility entail a moral obligation or a practical one?

The reality of climate change complicates the ability to address responsibility. Global warming is not a one-man’s doing, the responsibility is shared by all states. Sanz-Cabellero remarks on the special obligation of states to monitor and regulate private companies, including environmental precautions to protect future generations. She further claims there is a need to clarify the definition of the rights of future generations and improve international law to ensure their protection. Adashek similarly addresses the need for institutional provisions. Based on the result of this research, it would not be radical to agree to some extent. However, the improvement of law needs to be both international and domestic, and a clarification of what the improvement would entail.

A clarification of a definition and legislative improvement could be crucial in the development of court cases like the Aurora lawsuit. The critique by Aurora is the lack of commitment from the Swedish government to fulfill its goals and its deficiency in following climate law. Thus, indicating a need for improvement by the government. A clarification of the concept could facilitate more coherent Swedish legislation and potentially the ability to enforce court orders, ruling in favor of future subjects. However, juridical change is slow, and is it even possible considering the uncertainties about the future?

Uncertainties are commonly addressed by scholars within the field. Their approach to the unknown varies. The lack of knowledge about future populations and earthly status does not prevent Weiss, Philips, Sanz-Cabellero, and other scholars from advocating the rights of future generations. However, Parfit questions uncertainties

about the future regarding the right holders' identity. Parfit's argument is valid for the discussion while analyzing corresponding duties. However, the mere moral responsibility for the rights of the future population is less susceptible to his criticism.

Brandstedt further discusses how future-oriented the present population is through investments, such as infrastructures and planning for future offspring. Acknowledging our intergenerational connection enables us to challenge the status quo. The intergenerational connection further contributes to the need to improve our understanding of the rights of future generations, to question our impact as well as our investments. Brännmark invites us to consider investments as compensation for our consumption. However, the uncertainties about the future hamper the ability to count on investments as profitable. Thus, the protection of future generations within domestic legislation is highly relevant to take into account potential future interests and not only present expectations of investments.

Trying to conceptualize the rights of future generations is challenging. Is a definition relevant and what could it contribute to? As previous research indicates the role of future generations as subjects of rights could serve an important role in the future. As Brandstedt proclaims, at a given time in history, specific groups in society were not entitled as subjects of rights that today are included and even seen as self-evident.¹¹¹ The process of challenging is a step towards justice, inviting us to openly discuss conceptualization and responsibility. Even though the result of this thesis indicates a lack of a common and legal understanding of rights, continuous questioning could benefit a future definition. Besides conceptualization, the result indicates a lack of an understanding of responsibility.

Are the rights of future generations addressed out of guilt? Because we know the following generations are left with a fate where their rights will be unable to be achieved. The Swedish law demonstrates the complexity of the rights of non-existent

¹¹¹ Brandstedt, *The Circumstances of Intergenerational Justice*. Page. 8.

subjects, however, this does not justify ad hoc legislation, interwoven with different theoretical approaches and terminology. We owe it to the future subjects to do better. For example, when the Swedish legislation addresses the rights of future generations in combination with the present generations, it indicates a lack of understanding of the seriousness of the environmental situation future generations are facing. Or potentially the unwillingness to make the grand effort to secure the future for the generations to come. It is a real problem that the concept of the rights of future generations is not verified. Thereby, similar empirical research like this one needs to be conducted to come closer to a conceptualization. It would be necessary to analyze other domestic legislation to compare if the same usage of ambiguous language is present and from there work towards improvement.

6. Conclusion

Based on a qualitative content analysis inspired by grounded theory and concept analysis, this thesis has examined Swedish climate law to reach a better understanding of the concept of “rights of future generations”. The laws were selectively chosen based on three set criteria to fit the time frame for the research. Utilizing quantitative coding tools, the findings were presented through bar charts based on three questions posed to the material. Each question represented a perspective of the concept, either subject position, responsibility, or association of rights, to answer the overall research question; “How are the rights of future generations conceptualized in Swedish climate law?”. The result indicated ambiguous domestic legislation. By analyzing different theoretical approaches, visible and underlying similarities, and differences were detected. Based on the result the second research question could be answered; “To what extent can the concept of the rights of future generations be useful for climate law?”. There is a definite need to establish what responsibility entails to do future generations justice. The discussion illustrates different perspectives on Swedish climate law and further analyzes the potential for an improvement of domestic and international legislation. The concluding remarks of this thesis display the complexity of legislation regarding non-existent subjects, however, also demonstrates the need to take responsibility for the fate of future generations.

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