

# Intergenerational Justice and Democracy

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**ABSTRACT:** Intergenerational Equity has become the basis for legal codification in different domains in the most recent decades. This article discusses intergenerational representations in the judiciary system and democracy. Age-balanced decision-making of juries that could transpire into the judiciary system, democratic rotation principles with age-sensitive quotas but also futuristic Artificial Intelligence-led governance that pays attention to the mean age of voting circles are prospective intergenerational justice and democracy advancements proposed.

**KEYWORDS:** AI, Artificial Intelligence, Behavioral Economics, Behavioral Macroeconomics, Behavioral Law & Economics, Democracy, Digitalization, Discounting, Disparate Impact, Economics, Equality, Intergenerational Democracy, Intergenerational Equity, Intergenerational Fairness, Intergenerational Justice, Justice, Law, Law & Economics, Social Justice

## Introduction

In the most recent decades, intergenerational equity concerns have risen given aging Western world populations, overindebtedness of major industrialized economies, age-sensitive health risk propensities during a global pandemic and climate change (PuaSchunder 2017a, b, 2018, 2019b, c, d, 2020b).

An aging Western world population will require pension and social welfare reforms (PuaSchunder 2015). The overindebtedness in many Western societies, which was exacerbated by the 2008 recession and the governmental rescue and recovery aid during the COVID crisis in combination with rising student debt within the U.S. population have created an intergenerationally-tilted inequality for the young generation (PuaSchunder 2015, 2022). Social welfare sustainability is a particular concern of rising demographic age pyramids, in which a shrinking body of young are facing to subsidize a pension and healthcare welfare system of a growing body of elder (PuaSchunder 2017a, b). COVID-19 has also brought a challenging intergenerational inequity along with the elder being the most vulnerable for fatal outcomes while the younger population appears to be most prevalent to face longer-term COVID long haul complications that are not well understood by the medical profession (PuaSchunder & Gelter 2022). Climate change – with its capacity to create irreversible lock-ins, uncontrollable negative externalities and disastrous tipping points that escalate the climate instability problem – appears to put a disproportionate burden on upcoming generations in demands for changing lifestyles and raising funds for climate stability in order to enact climate justice for future unknown world inhabitants to come (PuaSchunder 2017a, 2019b, c, d, 2020b).

Intergenerational fairness, which is considered as a natural behavioral law, has recently leveraged into a judicial foundation of multiple legal actions (PuaSchunder 2017a, b, 2018, 2019b, c, d, 2020b). For instance, children around the world are starting to take governments to court over climate mitigation action based on intergenerational equity concerns (CNN, May 9, 2021). On the international scale, the Intergovernmental Panel on Climate Change (IPCC) and the United Nations Conferences of the Parties on Climate Change (COP) agreements have set the stage for wide-scale legal and policy changes to avoid climate change for the benefit of future generations.

This article addresses creative ideas to consider intertemporally-balanced choices that breed intergenerational harmony in the judiciary system and within the democratic society. Age-balanced decision-making of juries that could transpire into the judiciary system,

democratic rotation principles with age-sensitive quotas but also futuristic Artificial Intelligence-led governance that pays attention to the mean age of voting circles are prospective intergenerational justice and democracy advancements proposed.

### **Age-balanced jury system**

Behavioral economics studies have found that considering two snapshots of now and later concurrently leads to more intergenerationally harmonious decision outcomes (Puaschunder & Schwarz 2012). Intergenerationally-balanced panels have been preferred in lower courts as to find more equitable jury decision making. Age-sensitive choices can be alleviated by providing a broad range of viewpoints that come from all stages of life. Diversity in terms of age ranges represented thus appears to be called for in judiciary settings and democratic decision making (Puaschunder 2022).

Given today's changing intergenerational predicaments that impose threats to future upcoming generations long-term and the seriousness of spheres in danger that are currently under scrutiny for legal and regulatory changes, including ecologic and economic survival, the United States Supreme Court appears to hold the key for future prosperity (Puaschunder 2017a, b, 2018, 2019b, c, d, 2020b).

The Supreme Court of the United States is the highest court in the federal judiciary of the United States existent since 1789. Having the ultimate appellate jurisdiction over all U.S. federal court cases and state court cases that involve a point of federal law, the Supreme Court holds the paramount power of judicial review, including the ability to invalidate a statute for violating a provision of the Constitution.

The founding fathers of the U.S. Constitution initially debated a model of stable Amendments but flexible case law interpretations ultimately determined by the Supreme Court in order to grant stability but also fit changing circumstances of evolving times. The political independence mandate led to life-long Supreme Court terms from the appointment of the judges on, who were capped at a total of 9 judges since 1869.

At the time of the founding of the Supreme Court in the United States, the average life expectancy was around 38 years for the upper class, who formed the initial Supreme Court for most of its 233 years of existence.

It is thus striking that the current Supreme Court's average age composition is at 62 years mean age, which is an over 60% increase of the average U.S. life expectancy of the population during the Supreme Courts' foundation in 1789. The high mean age of the current U.S. Supreme Court appears as rather narrow age-representation in terms of diversity. Considering that 85% of the current U.S. population is below the age of 62 years, the life cycle stage of the judges is non-correspondent and unrepresentative of the majority of the population and their time horizon prospect.

A younger Supreme Court judge appointment appears not only to hold a diversified decision-making perspective portfolio. Younger judges also have the political advantage to hold a longer-term discounted value and more opportunities to learn and sophisticate in training on-the-job. It would also allow to reap building up of seniority along the way.

Given the gravity of what is at stake in regards to the mentioned intergenerational predicaments of our times in debt, social welfare system sustainability, long-term health impairments and ecologic disasters; the decision making of 9 elders for a 300 million U.S. citizens' body of younger facing an extraordinarily heavy burden to maintain social welfare in a potentially long-term unfavorable health or ecological condition appears risky. Especially when discounting the longevity of lifetimes ahead of the upcoming generation, much appears at stake.

### Age-sensitive rotation

Democracy enables individual and political freedom, political equality and participation of all citizens in collective decisions. In its foundation, democracy was set out to enable to structure the rule of law and the citizens in relation to the political and state power. Democracy was meant to establish the necessary means of groups to be ruled by the majority. Rule of the citizens as *demos* (the people) was represented in all spheres of life, ranging from trade to production and knowledge generation to conservation as well as public discourse to law and order. The concerted action of citizens was means to become politics for all. Collective decision over common goods was chosen to breed social harmony during an ancient time with diverse populations (Puaschunder 2022).

Democracy started in the 5<sup>th</sup> century before Christ in the political realm of states of Attica, today's Athens in Greece. The ancient Athenian city state transformed from a monarchy (rule of one), to an oligarchy (rule of some) to a democracy (rule by the people for the people with the people) as Aristotle and other philosophers and statesmen praised civic participation and direct engagement (Stüwe & Weber 2004). Democracies were sought to preserve freedom for the people under the laws they have established concertedly. In a democracy, commonly-agreed upon laws are guarding the people and the constitution of the state. Rule of law preserves freedom of citizens (Eder 1995; Osterwald 2011).

In its beginnings, democracy was meant to bridge the gap in the divide of the population in the rule of *nobilis* versus *tyrannis* splitting of the leadership, reigning and opposition of civilian society (Stüwe & Weber 2004). Democracy was chosen to enact *Isonomy* (equal rights in front of the law to all), *Isegory* (equal rights of speech) and *Isocracy* (equal rights to rule).

Around 509 before Christ, Cleisthenes established democracy and changed power of *tyrannis* in establishing a political will of the citizens (Frevel 2006). Cleisthenes' reform gave more power to *demos* and the general assembly by forming a Senate of the 500 for daily administrations and decision making for the people. Cleisthenes established democratic tribunals (*Heliaia*) and democratic Senates (*Boule*) as a counterpart to the aristocratic Senate (*Areopag*). 483 before Christ Themistocles opened democracy for citizenry groups. Pericles followed this trend by giving more rights to foreigners with parents that were not from Athens. Peisistratus lowered the power of land possessing *nobilitas* to then give more rights to farmers, which led to the economic and cultural uprise of Athens and a general mobilization of citizens' forces.

Around 462-458 before Christ, Epilates and Pericles reformed how political decision were made by the Senate, courts and Assembly. Every citizen was meant to gain an understanding of democracy. Athenian democratic politics under Pericles were founded on a constitution that was called a democracy granting power in the hands not of a minority but of all people (Eder 1995). Freedom and equality of those who reign and those who are reigned were established through participation and self-determined crafting of laws that were voted on by rotating members of the community (Eder 1995). Private disputes were settled with everyone being equal before the law. Lottery was meant to evade bribery and clique (Eder 1995).

Pericles also introduced payment for jury service as the first of the state's civilian stipends to make public service feasible to poorer citizens and enable a democratic institution to work in a democratic way. The third wealth class was enabled to join the citizenry and diets. Diets were daily allowances so that those serving the state following a lottery draw could be absent from their work. Lottery of the citizens determined attendance to the *Tribuneral*. The daily funds given to the citizens enabled the economic possibility to join the Senate and participate in juries without their families incurring financial or economic drawbacks of missing heads of families, who served the state, for instance in the general assembly of the ecclesia.

Democracy changed the social class system by giving power to local communities with self-ruling administration. All citizens were enabled to participate in the general assemblies to vote for laws and the judge in trials. Politics of democracy enabled citizens to rule the state. Via the lottery system, equality of all existed in elections of magistrate via lottery and responsibility of magistrates. Rule of the people was ensured by the participation in all public offices, like the Senate and the General Assembly.

A lottery system opened representatives of the districts that helped in the organization of the city. Every citizen could be part of the Assembly as the lottery system enabled intensified political participation of all in-power with no singular leadership. Overall, almost 6,000-8,000 citizens took part in the general Assembly per year over 40 days a year (Sintomer 2016). Democracy of politics of civil action were driven by the self-determination and the active participation of its people, who as civilians felt that they could shape the nature, state and form of their government.

Senate of the 500 Boule featured up to 1,200 citizens over its existence, or around 5% of the population. The Senate of the 500 gave every citizen the right to participate in democracy. The 600-700 Boule members were drawn by lottery, who helped the national Assembly in drafting laws, appointing judges and making military decisions and foreign policy acts as well as controlling the administration and state finance (Sintomer 2016). About 70% of the citizens above 30 were once in their lives part of the Boule serving in the judiciary branch.

The Senate proposed common decisions, which were approved in the *ecclesia*. All judges were drawn by lottery and every year about 6000 citizens were drawn as jury judges. Citizens were thereby directly related to law, general assembly decisions making and serving as advisors to the community (Sintomer 2016).

Public positions were drawn by lottery and every citizen could sue and be held accountable (Philipp 2000). Public officials had to justify their spending at the end of their terms. If leaving a farm to hold a public office, diets were paid. Lottery was meant to bring equality to life and to avoid pre-negotiations and nepotism as well as corruption in city and state placements. Participatory decision making was able to enact common solution finding, acceptance of choices and breed social harmony in a highly diverse society.

The *ecclesia* was at the heart of democracy to meet in frequent intervals and discuss a broad range of issues among the people. Every citizen was enabled to file for legislation changes and could thereby impose democratic will without any repression or economic drawbacks. During the Pericles reign, thereby out of the 3-50,000 citizens about ¼ of the over 30 years old could hold a public office. Of the 10,000 male citizens, around 6-8000 thereby became a vital part of the active democracy. Polis was organized such that free and equal citizens could rule over free and equal citizens (Eder 1995).

Freedom of speech became a means to protest against the *nobilitas* and concerted decision making in the Assembly (Frevel 2006). Democracy in its core founded the ideals of a democratic state being ruled by equal rights, freedom of speech, common assembly and written down laws that are right, just and fair for every citizen (Pericles in Frevel 2006).

Since the beginnings of democracy, the lottery system has become a hallmark of shared collective decision making and accountability control. The lottery system was starkest form of organized direct democracy and had its heights during the golden ages of the Athenian democracy from the 5<sup>th</sup> to the 4<sup>th</sup> century (Sintomer 2016). The lottery could draw from all eligible people with but also without their knowledge. In lottery and a rotation of positions about 1/4<sup>th</sup> to 1/3<sup>rd</sup> of the male citizens above 30 years became part of the government in the ancient Athenian city state. Citizen thereby truly acted as a part of the community, being in a roaster for aiding in the state. Civilians were put into power for a part of the year for the Senate and for a month to become members of the executive branch (Sintomer 2016). Every citizen could be part of the lottery, which also attributed the responsibilities within the Senate that was composed by representatives of the population. The Senate was voted by lottery – its

representatives were only allowed to be active once for a month and the head was only active for a day (Sintomer 2016). The Senate then was the institution within the Athenian democracy that divided legislative, executive and judicial powers. Rotation of positions ensured that individuals were not repeated and that everyone had an equal chance in terms of political participation. In all these features, the lottery system granted hope of all citizens in true participation. Problems are the full inclusion in ancient lottery forms – for instance, in the antique Athenian city state, non-citizens, children, women were excluded to be drafted – and risks of not being qualified or responsible citizens being drawn, however, did occur (Philipp 2000).

Lottery and direct democracy through a general Assembly and people jury as well as diverted political, judiciary and military rotation of power helped also other powerful ancient and modern democracies to breed social harmony and civic participation in fostering a collective decision making.

Athens, Rome, Venice, Florence, Spain and even China at some point had lottery systems during the height of ancient Republics. In the Roman Empire and Florence under the Medici during the 13th and 14th centuries but also in early Spain, lottery systems were chosen to evade disputes and breed social cohesion. Florence enacted a highly sophisticated draft to influential public offices based on the credibility, tax contribution and abstinence of crime.

Switzerland had lottery drafts until the 1800s. During the European monarchs, the so-called *Fürstenspiegel* was meant as a civic checks-and-balances of the leadership of the reigning class as a precursor of democracy. Great Britain had a stratified random selection to public offices (Philipp 2000).

James Harrington in the British colony of America argued for direct democracy and lottery draft during the 18th century. The rule of the people was brought to life in Abraham Lincoln's advocacy of enacting a "government of the people, by the people and for the people." William Penn argued for direct democracy in the Constitution for New Jersey and Thomas Paine for the appointments in the US Congress. Massachusetts, New York, Connecticut and New Hampshire had some kind of lottery draft between 1736 and 1758, New Jersey and Maryland between independence and 1800 (Philipp 2000). The values conveyed in the idea of direct democracy, including participation and rule by all inspired revolutions, such as the ones of France and America (Tocqueville 1835).

To this day, democracy is a hallmark of modern society. The representative draft serves as a micro-cosmos of society (Philipp 2000). In 1968, the US Congress passed a law for draft for juries based on a fair cross section of the community. Juries were presented for bills to better regulate as fair, neutral and without party affiliation or personal interests. As guardians of public justice, jury drafts enable political novices in common law countries to judge as an enactment of participatory democracy and egalitarian society (Philipp 2000).

To this day, lottery jury systems are praised as self-regulating democratic act and serve as a foundation of common law and democratic participation (Tocqueville, 1835). Petition drives and *Volksbegehren* are until now common in Europe and the USA, in which citizens can point attention of the legislation to issues of concern or legal reform.

Interestingly, the current democratic representation does not include any lottery draft. The closest to the lottery system in the U.S. judiciary is the draft of individuals to petit and grand juries for U.S. courts. In a trial or petit jury, all citizens can be drafted to decide whether a defendant committed a crime as charged in a criminal case or whether a defendant injured a plaintiff in a civil case (United States Courts).

Trial juries consist of 6-12 people (United States Courts). Trials are generally public, but jury deliberations are private (United States Courts). Defendants have the right to appear, testify, and call witnesses on their behalf (United States Courts). The final outcome is a verdict, in favor of plaintiff or defendant in a civil case, or guilty/not guilty in a criminal case (United States Courts).

A grand jury is presented with evidence from a U.S. attorney, the prosecutor in federal criminal cases (United States Courts). The grand jury determines whether there is a “probable cause” to believe the individual has committed a crime and should be put on trial (United States Courts). If the grand jury determines there is enough evidence, an indictment will be issued against the defendant (United States Court). A grand jury consists of 16-23 people (United States Courts). Grand jury proceedings are not open to the public (United States Courts). Defendants and their attorneys do not have the right to appear before the grand jury (United States Courts).

In order to pay tribute to intergenerational equity, a potential jury recommendation or a rotating governing body could be pursued that represents a broad spectrum of ages. Rotating representations of different age groups in a lottery system that supports governmental decision making and offers different viewpoints and life prospect horizons could be enacted. Within juries, a well-balanced age-range representation should be established by mandate to foster intergenerationally-harmonious choices and exchange of fluid intelligence with crystallized excellence. As for the Judiciary, stability enacted through life-long Supreme Court judges’ terms and independence of accountability checks and balances detaches the U.S. Supreme Court from any rotation influence in their ultimate decision control. When considering the decision-making leverage 9 Supreme Court judges have over the almost 330 million strong U.S. population, an over 35 million people per judge ratio without any rotation or lottery possibility lets the current system in place look as for having reform potential towards closer representation of democratically-rotating will, potentially enacted by some kind of term-limits (Klein, 2022).

### **Artificial Intelligence-enhanced Intergenerational Democracy**

Current most innovative governance developments are drawing from the evolution of Artificial Intelligence (AI). Behaviorally-informed insights about decision making fallibility reaching also into governmental decision but also the currently ongoing reality check of the law-in-books and law-in-action practice and actual conduct of governance have challenged traditional forms of democratic ruling. Most innovatively, there appears to be an opening of governance for AI-led decision making that could draw from the wisdom of the crowds and big data (Puaschunder 2019a). Outsourcing democratic decision making and governmental leadership to AI has been discussed for advantages such as absence of salary remunerations and corruption potential of computer-led choices.

AI governance has been proposed to draw from the wisdom of crowds in having informed citizens vote on policies rather than individuals, who are meant to represent the population. The mean opinion or financial allocation preference for causes would then determine the outcome of elections. The contemporary AI capacities would allow not only to measure a rational mean of the general populace opinion. AI could also benefit from big data of historical political action and determine the optimum policy choices given historical insights about previous reactions, trajectories and outcomes.

If individuals vote on programs and policies rather than representative parties or individuals, ample opportunities exist to peg big data insights to voting preferences. For instance, the policy preference could be pegged to certain age groups. Age could also be used as a discounting factor that weights the preference. For example, the voter preference of younger age groups could be given more weight as for their longer life horizon prospect and decisions being more long-term determinants of their longer future. As an example in which intergenerational fairness has been noted, during the 2016 Brexit vote in the United Kingdom, elder voters had a higher propensity to vote for a European Union exit of Great Britain. In the aftermath of the Brexit fallout, younger voter segments complained that a body of elder may have determined their longer future prospect without the European Union. Warfare is another example that drives the case of intergenerational concern. The decision to go to war is

usually housed in parliamentary ranks and/or governmental leadership positions. While these bodies and representatives tend to be comprised of elder within a society, warfare on the ground is usually borne by younger societal members. So while the decision making of engaging in a risky task is trusted to elder, the negative consequences are suffered by younger generations often long after those who decided to go to war exist or are in power.

AI therefore appears as vital option to determine decision-making patterns and provide insights from big data of age-diversified voting circles. Age could be pegged to a certain mean preference and weighting scheme based on projected lifetime ahead. Over the course of a lifetime, one's relative decision making power in votes would shrink; while the likelihood to hold a public leadership office would rise given the insights of age-distributed allocation to parliamentary posts or judiciary positions. An as such voting system could become the basis for bundling different life-stages' viewpoints in age-representative decision-making (Puaschunder & Schwarz 2012).

Caveat of such an AI-enhanced democratic decision making, however, is the need for a well-informed decision making of the general populace and the administrative and cognitive costs involved. While AI use instead of voted officials can reduce human decision making fallibility risks and the salary remuneration cost as well as corruption and bribery potential of human beings, the role of corporations providing AI services and respective safety and security risks have to be mentioned (Puaschunder 2020a). Those who program and provide AI services but also the official involved in analyzing big data derived from AI-administered voting hold the power to influence – and likely also the risk to manipulate – any democratic act. Clear guidelines how to detect misconduct and fraud as well as transparency and rotation mandates of the individuals involved may aid in a futuristic transition of democratic power to decentralized AI-enhanced governance.

Current government and governance officials could consider integrating all generations in age-balanced decision-making of juries that could transpire into the judiciary system, democratic rotation principles with age-sensitive quotas but also futuristic AI-led governance that pays attention to the mean age of voting circles are prospective intergenerational justice and democracy advancements. Innovations of cost-benefit policy analyses with respect for discounting future values of current decisions could aid in curbing harmful myopic decision-making or intergenerationally-insensitive dominance of those with less living time ahead.

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