

## **Intergenerational environmental justice: tackling a democratic deficit with Ombudpersons for future generations**

BY

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## **Part 1: Challenges – democratic deficit and short-termism**

The living conditions of citizens in the future are significantly impacted by our decisions today. How we protect our ecosystems and natural resources determines the opportunities of future generations to fulfil their needs and to enjoy the beauty of nature. The increasing knowledge about the systemic and often irreversible damage that climate change, ongoing loss of biodiversity and potential collapse of oceans will and would cause silences even purely economic arguments that today's economic development will outweigh the costs of long-term environmental harm.

Yet, we witness as common practice of current decisions that environmental costs continue to be pushed onto future individuals that cannot challenge them. As the Brundtland Commission's report *Our Common Future* in 1987 pointed out: "We borrow environmental capital from future generations with no intention or prospect of repaying... We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions."<sup>2</sup>

The question therefore becomes: how can we promote and reinforce environmental justice towards those who have no voice to claim their rights are being sacrificed? The argument here is that social institutions should be changed if they do not serve (any longer) the higher purpose they were designed for. One solution to include future generations could therefore be to go beyond the currently dominant individualist and short-term outlook on societies and to challenge justice claims based on this worldview. Yet, ideas are enshrined in our political and economic institutions, meaning we equally need to scrutinise how these structures hinder even far-sighted leaders and actors to enact a new paradigm. Most traditional cultures had Councils that looked out for the seventh generation to be considered as part of the community. This piece concludes that such institutions deserve to be reinstated, as they help us cultivate ethics and outlook on human development that can help overcome roadblocks to sustainability and environmental justice we are facing today. Ombudspersons for Future Generations are a promising existing example and will be briefly reviewed.

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<sup>2</sup> World Commission on Environment and Development, *Our Common Future*, 1987, From one Earth to one World, para. 25, online at [www.un-documents.net/ocf-ov.htm](http://www.un-documents.net/ocf-ov.htm)

## Political recognition of future generations as subjects of justice

The most pronounced political recognition of the need to consciously and comprehensively protect the needs and interests of future generations is the 1997 United Nations Educational, Scientific and Cultural Organisation (UNESCO) Declaration on the Responsibilities of the Present Generations towards Future Generations.<sup>3</sup> The process leading to its adoption was inaugurated in the early 1990s when the Cousteau Society started a campaign and petition for a Bill of Rights for Future Generations. Article 1 in the proposed bill declared that

Future generations have a right to an uncontaminated and undamaged Earth and to its enjoyment as the ground of human history, of culture, and of the social bonds that make each generation and individual a member of one human family. (Cousteau 2010)

Over 9 million people in 106 countries signed the petition, in 1993 UNESCO became a partner, and in 1997 the UNESCO General Conference adopted the declaration. Its *chapeau* paragraph contains strong language on the urgency of the matter:

Conscious that, at this point in history, the very existence of humankind and its environment are threatened,

Stressing that full respect for human rights and ideals of democracy constitute an essential basis for the protection of the needs and interests of future generations,

Asserting the necessity for establishing new, equitable and global links of partnership and intra-generational solidarity, and for promoting intergenerational solidarity for the perpetuation of humankind, ...

Convinced that there is a moral obligation to formulate behavioural guidelines for present generations within a broad, future-oriented perspective ... (UNESCO 1997).

Some of the articles in the declaration have an existential character, including “Maintenance and perpetuation of humankind” (Article 3), “Preservation of life on Earth” (Article 4) and “Peace” (Article 9). Article 8 on “Common Heritage of Humankind” involves

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<sup>3</sup> For an overview of which constitutions entail such references and how different countries intend to implement such commitments, see the joint legal research paper on Official Representation of Future Generations, 2010, by the World Future Council and the Centre for International Sustainable Development Law, available with other documents on intergenerational justice and political instruments for its protection at: [www.worldfuturecouncil.org/library.html](http://www.worldfuturecouncil.org/library.html)

a distributional justice approach based on a notion of keeping the integrity of systems alive: “present generations may use the common heritage of humankind, as defined in international law, *provided that this does not entail compromising it irreversibly*” (UNESCO 1997, emphasis added).

The formal commitments on this process read as follows:

States, the United Nations system, other intergovernmental and non-governmental organisations, individuals, public and private bodies should assume their full responsibilities in promoting, in particular through education, training and information, respect for the ideals laid down in this declaration, and encourage by all appropriate means their full recognition and effective application. (UNESCO 1997)

Today, many declarations and also constitutions make reference to future generations as subjects of political protection. Effective long-term planning and a precautionary approach in decision-making, however, still await successful implementation.

### **The need for a voice for sustainability interests of future generations**

The liberal ideal of democracies is one in which individuals have equal opportunities to voice their concerns in the formulation of agreed principles. However, not all citizens enjoy the same opportunity to express their views or are willing to be convinced by the better arguments. Democratic societies are entrenched with structural power relations and habits that filter which arguments become shrieking loud and which wither away unnoticed.

One group of individuals that is particularly disadvantaged in representative democracies is that of future generations. As the Brundtland report outlined, the short voting cycles and lack of lobbying power behind long-term considerations are structurally hampering pursuit of a sustainability agenda (WCED 1987). Politicians and economic actors are driven to meet short-term interests of current generations and investors. Moreover, remote and diffuse subjects or objects, be they geographically, temporally or culturally distant, are less easy for us to engage within our moral imagination. Feeling and acting responsibly for someone who is not presenting his or her interests visibly, cannot participate actively or does it in a way not known to us can be morally highly demanding. Especially if one experiences

individual precariousness (not feeling safe or in control of one's life), fear is clearly reducing the capacity for "other-regardingness" and "future-regardingness".

Thus, even if agreement on the principles on intergenerational justice is reached, we see that we need continued and active engagement for their implementation. The implementation gap around the principles and declarations on sustainability over the last 20 years is a clear indication of institutional and cultural inertia, weighing heavily even on far-sighted decision-makers. In looking for the cause of this implementation gap, we find that it is also almost impossible for a businessperson or a parliamentarian to promote decisions whose effects will only be noticeable in the medium to long term. If the obligatory quarterly reports show less profit this tends to trigger a slump in the stock market value - or corporate law even obliges CEOs to put shareholder value before all other considerations in business conduct. Politicians facing elections every four or five years find it difficult enough to tailor the compromises that will keep current generations more or less satisfied. We have built institutions that encapsulate extreme competitiveness and individualism, but also a structural short-termism.

Therefore, even if individuals are convinced of the ethics of obligations to future generations, it is very difficult to act on it. In the development of our social institutions, we can acknowledge such structural and individual limitations and intentionally check and balance them if we wish to strengthen a long-term point of view in our current institutions. In part 2 of this contribution, the added value of such a check and balance structure will be presented – an Ombudsperson as catalyst for environmental justice and sustainability, an innovative justice solution which strengthens the voice of future generations.

## **Part 2: Solution – Ombudspersons for Future Generations as catalysts for environmental justice**

Several countries around the world have established institutions that have the role of influencing new legislative projects from the perspective of intergenerational equity. Approaches include parliamentary committees, commissioners and ombudspersons, who scrutinise policy proposals for their long-term effects. Some parliaments, like the German one, have installed parliamentary committees for the analysis of legislative proposals before

they are presented for voting in. But only an institution independent from voting procedures can promote short-term costs for the populace without risking to be called out of office right afterwards. The former Israeli and current Hungarian Parliamentary Commissioners or Ombudspersons for Future Generations are such independent units and pursue an official and active advocacy role for long-term interests. The Hungarian example also has legal means at his or her availability if unsatisfactory impact assessments hint to a sacrificing of future concerns in the name of immediate returns. Such an independent institution can function as an effective mechanism of checks and balances between present and future interests. As long as it is legitimised by the parliament and acts transparently in dealings with different government departments, it can also mediate between typical lines of conflict, such as economic versus environmental concerns.

In order to anticipate trends in people's needs and worries, an institution representing the interests of future generations should also have wide exchanges with present generations. In the Hungarian example, the Commissioner can be addressed as an ombudsperson, meaning that individuals can directly raise concerns about the long-term impact of certain projects or policy proposals. This also increases the influx of citizens' concerns into government bodies between elections. In addition, the Ombudsperson has the mandate to decide him- or herself when policies would harm the interests of future generations. Their research and investigations lead to the development of new expertise and knowledge, and they are entitled to deliberate their findings in parliament. Such a proactive advocate speaking up for future citizens is not only a watchdog, but also continually diffuses an alternative point of view on policy-impacts among decision-makers.<sup>4</sup>

Given increasing recognition of the interdependences between ecological, social, economic and cultural trends from the long-term perspective, a more relational and systemic world-view may begin to permeate institutions. This approach would then also span the different silos of environment, employment, finances, trade, culture, social services and health in which decision-making currently takes place in isolation from other agendas. Speaking up about the long-term effects in a transparent and widely recognised manner<sup>5</sup> may put single-

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4. For discussion of existing institution models and a recommended European solution, see Göpel and Arhelger 2010.

<sup>5</sup> The Commissioners in Israel and Hungary both worked and work closely with the media - the latter translates Annual Reports and the general outline of his mandate, legal structure, approach of performance into English: <http://jno.hu/en/>; the former has summarised his work in a book on "Future Intelligence," see Shoham 2010.

interest conflicts into a different perspective, leading to a way around current roadblocks. Such a holistic and systemic worldview portrays individuals from a contextual point of view, embedding actors in the wider web of relationships they live in, and focuses on keeping sound relations intact, so that the viability and resilience of a community are maintained. For determinations of justice, considerations start with an analysis of developments of “the whole”, the parameters of a supportive livelihood. Hans Jonas is probably the most prominent advocate of this perspective. He has formulated what can be called a “generational categorical imperative”: “act so that the effects of your action are compatible with the permanence of genuine human life!” (Häberle 2005: 28). One important concept here in our relation to future generations is that of common heritage, which implies that justice is a matter of equal access to common resources rather than the just distribution of private property. In parallel with the benefit of enjoying access goes a duty of trusteeship, meaning protection of the common good as the property of humankind as a whole. Adopting such an ideal of intergenerational equity seeks to ensure a similar operating space for all generations in fulfilling their needs. Given the growing number of people on this planet, it implies an ethics of sufficiency rather than one of maximum self-interest. The corresponding concept of rights is also collective or generational rather than individual; it draws attention to preserving options for development rather than defining quantitative entitlements to resources that often keep us stuck in tit-for-tat and no-net-benefit comparisons (ibid.).

Furthermore, speaking up for unborn individuals frees participants in the democratic process from directly comparative calculations of different lobbies that often lead to stalemate.

In short: A more collective justice ethics that includes the enabling the wellbeing of future citizens can help individual bargainers today to see sufficiency and sharing as a contribution to future freedom rather than as a restriction on their individually deserved consumption levels.

Bringing a worldview of caring for future generations into our governments and decision-making procedures would train us in a different point of view on what just policy-proposals are and who is capable to make which contribution in safeguarding the quality of life of our children and grandchildren. While not being able to turn around our culture and

institutions right away, an official voice for this point of view could be a catalyst for change in many places, therefore improving sustainability and environmental justice from tomorrow onwards, benefiting current generations as well. I am convinced we can update our institutions and paradigms alike. Justice can be defined as “enabling” – seeking to ensure every member of the community now and in the future is able to develop his or her full potential. This view encourages members of the community with greater capacities to take responsibility because it is seen as a valued contribution to maintaining a beautiful planet and its cultures, not as enforced self-sacrifice. Institutions encourage the conservation and nurturing of good relationships with ourselves, with each other and with our planet, to the benefit of current and future generations’ well-being alike.

Such a vision could bring back the spirit of Rio 1992, using the next UN Conference Sustainable Development in 2012 as a game-changing event.<sup>6</sup>

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<sup>6</sup> For information on promoting Ombudspersons for Future Generations for UNCSD 2012 see [www.futurejustice.org](http://www.futurejustice.org)