

1992

In Fairness To Future Generations and Sustainable Development

Edith Brown Weiss

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Weiss, Edith Brown. "In Fairness To Future Generations and Sustainable Development." American University International Law Review 8, no. 1 (1992): 19-26.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

CONFERENCE ON HUMAN RIGHTS, PUBLIC FINANCE, AND THE DEVELOPMENT PROCESS

IN FAIRNESS TO FUTURE GENERATIONS AND SUSTAINABLE DEVELOPMENT

Edith Brown Weiss*

Sustainable development is inherently an *intergenerational* question as well as an *intragenerational* question.¹ Sustainable development relies on a commitment to equity with future generations. This ethical and philosophical commitment acts as a constraint on a natural inclination to take advantage of our temporary control over the earth's resources, and to use them only for our own benefit without careful regard for what we leave to our children and their descendants. This may seem a self-centered philosophy, but it is actually part of the logic that governs daily economic decisions about the use of our resources.

The recent and valid concern over environmental externalities focuses mainly on the costs that we and our contemporaries must bear when we pollute the air, water and soil by industrial expansion, deforestation and other aspects of economic development. Concern over these externalities is intended to ensure that the benefits from a contemplated action exceed its costs and that those who bear its costs are adequately compensated. But in practice the costs and benefits are assessed from the perspective of the present generation. The discount rate, ensures that short-term benefits nearly always outweigh long-term costs.

For this reason it is useful to address the issue of sustainability from a normative perspective. Sustainability requires that we look at the

* Professor of Laws, Georgetown University Law Center. The presentation of Prof. Edith Brown Weiss, here published, is based largely on her book, EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS*, (1989).

1. This introduction is adapted from Edith Brown Weiss, *Intergenerational Equity: Toward an International Legal Framework*, in *GLOBAL ACCORD* (Nazli Choucri ed. 1993).

earth and its resources not only as an investment opportunity, but as a trust passed to us by our ancestors for our benefit, but also to be passed on to our descendants for their use.

This notion conveys both rights and responsibilities. Most importantly, it implies that future generations have rights too. These rights have meaning only if we, the living, respect them, and in this regard, transcend the differences among countries, religions, and cultures.

Fortunately, the notion that each generation holds the earth as a trustee or steward for its descendants strikes a deep chord with all cultures, religions and nationalities. Nearly all human traditions recognize that we, the living are, sojourners on earth and temporary stewards of our resources. The theory of intergenerational equity states that we, the human species, hold the natural environment of our planet in common with other species, other people, and with past, present and future generations. As members of the present generation, we are both trustees, responsible for the robustness and integrity of our planet, and beneficiaries, with the right to use and benefit from it for ourselves.

Two relationships must shape any theory of intergenerational equity in the environmental context. The first is our relationship with our natural system of which we are a part. The second is our relationship with other generations.

The natural system is not always beneficent. Deserts, glaciers, volcanoes and tsunamis are hostile to humans, but we alone among all other living creatures, have the capacity to significantly shape our relationship with this system. We can use its resources on a sustainable basis or we can degrade the system, and destroy its integrity. Because of our capacity for reason we have a special responsibility to care for it.

The second fundamental relationship is that among different generations of people. All generations are linked by the ongoing relationship with the earth. The theory of intergenerational equity states that all generations have an equal place in relation to the natural system, and that there is no basis for preferring past, present or future generations in relation to the system. This notion has deep roots in international law. The preamble to the universal declaration of human rights begins:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, . . .²

2. *Universal Declaration of Human Rights*, pmbl., G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948).

The reference to all members of the human family has a temporal dimension which brings all generations within its scope. The reference to equal and inalienable rights affirms the basic equality of such generations in the human family.

Every generation should use the natural system to improve the human condition. But when one generation severely degrades the environment, it violates its intergenerational obligations to care for the natural system. In such cases, other generations may in fact have an obligation to restore the robustness of the system, though not to bear all the costs. Those costs should be distributed across generations. This is difficult to do, but we possess some instruments, such as long-term bonds, that are useful for this.

The corollary to the premise of equality is the concept of a partnership among generations. Edmund Burke observed that:

As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership, not only between those who are living but between those who are living, those who are dead, and those who are to be born.³

The purpose of the partnership is to realize and protect the welfare and well-being of every generation in relation to the planet. The integrity of the planet requires proper care of the life support systems of the planet, the ecological processes and the environmental conditions necessary for a healthy human environment.

We must then ask how a generation determines the nature of its responsibilities and obligations with respect to the natural system. In answering this question it is useful to borrow from John Rawls,⁴ who describes a condition of veiled ignorance in which every generation exists somewhere in the spectrum of time, but does not know in advance where it will be located. Future generations would want to inherit the Earth in as good a condition as did their ancestors and with at least comparable access to its resources. This requires that each generation leave the planet in no worse condition than it received it, and to provide succeeding generations equitable access to its resources and benefits.

Intergenerational equity may appear to conflict with the goal of achieving intragenerational equity, meaning equity among those who are living today. Certainly, we must urgently devote resources to helping all people meet their basic human needs for food, potable water, and shelter. In many instances, however, the actions needed to achieve intragenerational equity are consistent with those advancing intergenerational equity.

3. Edmund Burke, *Reflections on the Revolution in France* 139-140 (1790), in 2 WORKS OF EDMUND BURKE 368 (1905).

4. John Rawls, *A THEORY OF JUSTICE* (1971).

ational equity. People living today have an intergenerational right of equitable access to use and benefit from the planet's resources, which is derived from the underlying equality among all generations in relation to use of the natural system. Moreover, even if one society of the present generation selfishly cares only for its own descendants, extending that concern further and further into time increasingly requires care for the whole natural system. No single country or group of countries has the power to ensure a healthy environment for the future. Thus, even when each country cares only about its own people, all nations must cooperate in order to guarantee a robust planet in the future. This includes meeting the basic needs of the poor so that they will have both the desire and the ability to fulfill intergenerational obligations to conserve the planet's resources.

In many instances, the actions need to meet the basic needs of the poor are consistent with those advancing intergenerational equity. There are instances, however, where the actions needed to protect the health of the planet for future generations may conflict with the immediate needs of alleviating poverty, even though poverty itself is a primary cause of ecological degradation. In these instances we need to develop processes for ensuring that the rights of future generations are adequately protected while at the same time addressing poverty as quickly and effectively as possible.

There are three normative principles of intergenerational equity. First, each generation must conserve options. This means conserving the diversity of the natural and cultural resource base, so that each generation does not unduly restrict the options available to future generations in solving their problems and satisfying their own values. It does not necessarily mean maximizing diversity, for this might be inconsistent with maintaining robustness. Future generations are entitled to diversity comparable to that which has been enjoyed by previous generations. This is an intergenerational principle of options, or conservation of options.

Second, each generation should be required to maintain the quality of the planet so that it is passed on in a condition no worse than that in which it was received. Each generation should be entitled to quality comparable to that enjoyed by previous generations. One can think of this as the intergenerational principle of quality or conservation of quality.

In this case, diversity and quality are treated separately. In explaining this, it is useful to refer to the principle of trust law which asserts that one quality investment does not necessarily ensure the robustness of the whole trust. There must also be a certain diversity of invest-

ments. Similarly, diversity of investment in the trust does not ensure a robust investment if the investments are of poor quality. The same notion underlies the difference here.

Third, each generation should provide its members with equitable rights of access to the legacy of past generations and conserve this access for future generations. This is an intergenerational principle of access, or conservation of access. This applies, for example, to access to potable water supplies. There are at least four criteria that should apply to the articulation of principles of intergenerational equity. First, while these principles should encourage equality among generations, they should neither authorize the present generation to exploit resources to the exclusion of future generations, nor impose unreasonable burdens on the present generation to meet indeterminate future needs. Second, no principle should require us to predict the values of future generations. Rather, we should provide them with sufficient flexibility to achieve their own goals according to their own values. Third, the principles must be clear in their application to foreseeable situations. Finally, they must be shared by different cultural traditions, and must be generally acceptable to different economic and political systems.

The principles proposed here recognize the right of each generation to use the Earth's resources for its own benefit. They also constrain the present generation's use of the Earth's resources. These principles provide guidance, but do not dictate how each generation should manage its resources. They do not require that the present generation predict the preferences of future generations, an impossible feat. Rather, these principles are intended to achieve a reasonably secure and flexible natural resource base for future generations, which they can use for their own needs and preferences. Thus, the principles of options, quality and access form the set of intergenerational obligations and rights. One could refer to them as planetary rights and obligations held by each generation. They derive from each generation's position as part of the intertemporal entity of human society. They provide a normative basis for the concept of sustainable development, which arguably otherwise rests on a sense of *noblesse oblige* by the present generation.

In the intergenerational context, people have planetary rights and obligations which derive from their relationship with past and future generations. Intergenerational rights are present in all generations whether they are immediate successive generations or more distant. There is no theoretical basis for limiting such rights to immediately successive generations, and doing so would provide little protection to more distant future generations. Nuclear waste, hazardous waste disposal, the loss of biological diversity, and ozone depletion, for example,

have significant effects on the natural and cultural heritage of more distant generations.

Intergenerational rights, or planetary rights, may be regarded as group rights, rather than individual rights, held in relation to other generations, past, present, and future. They exist regardless of the number and identity of individuals making up each generation. Sometimes, intergenerational rights held by members of the present generation acquire attributes of individual rights, reflecting protection of an individual's identifiable interests. These interests, however, derive from the fact that those living are now members of the present generation and have rights in relationship to other generations to use and benefit from the planet. The remedies for violations of these rights will benefit other members of the generation, not only the individual. Implementation of intergenerational rights is critical. Enforcement could be appropriately done by a guardian or representative of future generations as a group. While the holders of rights may lack the capacity to bring grievances, and hence, depend upon the representatives to do so, such incapacity does not affect the existence of the rights or the obligations associated with them.

Some argue that rights can only exist when there are identifiable interests to protect, and that future generations, therefore, cannot have rights. This view requires that we identify individuals who have interests to protect. Since we cannot know who the individuals will be until they are born, nor how many will exist, those future generations cannot, according to this argument, have rights. That is the famous Parfit's paradox. However, the rights of future generations are not individual rights. Rather, they are generational rights in which the interests protected do not depend upon knowing the kinds of individuals that may exist or the numbers in any given future generation.

One may argue that generational rights depend on at least knowing the number of individuals in the future. This is because as our population continues to grow, the amount of diversity and degree of quality that must be passed on will be more difficult to achieve if the population rises dramatically from what it is today. But whether a generation chooses to meet its obligations by curtailing exploitation, consumption and waste, or by constraining population growth, or some combination, is a decision that it must make. The fact that future generations have a generational right to receive the planet in a certain condition limits the extent to which a present generation can ignore such choices and trade-offs.

Almost every policy decision of government and business affects the composition of future generations, whether the decisions concern war

and peace, economic policy, the relative prosperity of different groups and regions, health, or education. We need to explore the possibility of scrutinizing decisions from the point of view of their impact on future generations.

The question of how to implement intergenerational rights and obligations can be approached at two levels: broad strategies and specific actions. These have been detailed elsewhere.⁵ Only a few will be mentioned here.

The most important strategy is to give representation to the interests of future generations in decision-making processes, including the market. The decisions we make today will determine the initial welfare of future generations, but they are not effectively represented in our decision-making processes. Future generations might be willing to compensate present generations to prevent certain actions or to have us undertake others if they had a way of voicing their preferences.

This representation has to take place in several forms: in administrative decision-making, judicial decision-making, and most importantly, in the marketplace. For administrative and judicial decisions, one option is to appoint and publicly finance an office responsible for identifying and ensuring that interests of future generations are considered. This office could also be responsible for ensuring that laws regarding our environment and natural resources are observed, for investigating complaints, or for providing warnings of pending problems. The World Commission on Environment and Development recommended appointment of an ombudsman for future generations.

Future generations are not effectively represented in the marketplace today. To do so, we must first understand the fundamental entitlement among generations correctly: that future generations have an equal claim with the present generation to use and benefit from the natural environment. Once this entitlement is acknowledged, relevant economic instruments can be designed to achieve intergenerational equity efficiently.⁶ Some of the more exciting work in the economics field is directed to intergenerational issues and to generational accounting.

A second component of an intergenerational strategy is a focus on maintenance of systems, capital investments, and data banks. We must be concerned, not only with capital investments, but with maintaining them. Similarly in a data bank, we must be concerned not only with gathering data, but also maintaining it.

5. EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS*, 119-289 (1989).

6. See RICHARD B. NORGAARD, *SUSTAINABILITY AS INTERGENERATIONAL EQUITY: THE CHALLENGE TO ECONOMIC THOUGHT AND PRACTICE* (1991).

This requires changing the way we think about maintenance, from that of a step-child to capital investment, to an integral component of the investment. Otherwise, today's generation benefits for a very short time at the expense of future generations. If maintenance is considered part of the intergenerational equity question, the criteria of the ease and the cost of maintenance become a central criteria in considering an investment.

Third, long-term scientific research and development is part of an intergenerational strategy. Such research is necessary to develop substitutes for depleted resources, to extract and use resources more efficiently and to understand and manage long-term threats to environmental quality, such as hazardous pollutants in ground water. Much of the research may take place in the private sector. But in some cases there is a need to provide public support for research that is important to achieving intergenerational equity and would not otherwise be taken.

At the concrete level, attention should be given to the intergenerational aspects to nuclear power, freshwater supply, hazardous pollutant contamination, biological resources, information resources, cultural heritages, etc. For example, information should be gathered on the disposal of low-level nuclear waste in all areas of the world and retained in a form useful to future generations. Or provision could be made at the outset for the eventual decommissioning of nuclear reactors so that poor communities do not have to choose in forty years between keeping an unsafe facility in operation or diverting funds needed to meet basic needs in order to decommission the reactor.

To conclude, implementing our responsibilities to future generations will be difficult.⁷ Our institutions, at the international, national and local levels are designed to handle relatively short-term problems of several years. They are, for the most part, not well-suited to addressing long-range problems — particularly when their effects may not be felt for a generation or more. Powerful political incentives encourage people in power to focus on short-term issues, to show tangible results. Similarly, private businesses are sometimes forced by the workings of the market to take a relatively short-term view. But our responsibilities to future generations demand that we take a long-term perspective. This requires adjustments in institutions, economic incentives, legal instruments, public consciousness and political will. Sustainable development requires that we begin this process.

7. The concluding paragraph is adapted from GLOBAL ACCORD, *supra* note 1, at 351-2.