

Intergenerational Equity: A Move Towards Environmental Justice

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This article by **Ryan Caruana** was previously submitted as part of ERL 1002 and is being published with the author's permission. Intergenerational equity (IGE) serves as a cornerstone of environmental justice, highlighting the obligation of the present generation to preserve the environment for the benefit of those to come. Grounded in principles of conserving options, quality, and equity, the concept emphasizes shared rights and responsibilities across generations. While international frameworks such as the Stockholm Declaration and national laws like Malta's Sustainable Development Act recognize the importance of IGE, significant gaps in implementation persist. Advocating for the appointment of guardians to represent future generations, the discussion underscores the need for their voices in policymaking to ensure sustainable development and a fair environmental legacy.

TAGS: Environmental Law, Intergenerational Equity, Rights and Obligations.

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Traditionally, justice means giving everyone their due. In environmental justice, this is achieved by today's generation enabling future generations to enjoy the same, or better, environmental rights. This concept has caused a paradigm shift in environmental policy and legislation. Many of the proposed national and international environmental policies and laws have since adopted the doctrine of intergenerational equity, which holds that all generations should have equitable access to the environment, and that the current generation has a duty to protect the rights of future generations.

1. Do Future Generations Have Legal Environmental Rights?

Environmental human rights are collective and safeguard present and future generations from environmental degradation, including air pollution and natural resource depletion, caused by previous and current generations' malpractice.¹ The lack of foresight by past and present generations has negatively impacted environmental quality for future generations.²

Whether future generations have such rights has been a contentious debate. It may be difficult to propose that a state has an obligation to protect future generations' rights, as to propose so would mean protecting the inexistent and stateless.³ Debates on whether future generations have environmental rights emerged during the 1970s, caused by an increasing global awareness about natural resource depletion and the effects of modern development and environmental degradation. This led to the acknowledgment of a dissonance between present and future generations, as the latter may be considered disadvantaged since their wellbeing and rights are a direct result of the present generation's actions, governed by their acts and policies.⁴

The environment is a common heritage that must be safeguarded for the common good of humankind, including both present and future generations. No generation should assert absolute rights over the environment. Edith Brown Weiss, in *In Fairness to Future Generations*, states that:

each generation is both a custodian or trustee of the planet for future generations, and a beneficiary of its fruits. This imposes

¹ Richard P Hiskes, 'The honor of human rights: Environmental rights and the duty of intergenerational promise' (2016) *Human Rights Review* 463.

² Emmanuel Agius, 'Intergenerational Justice' in Joerg Chet Tremmel (ed), *Handbook of Intergenerational Justice* (Edward Elgar Publishing Ltd. 2006).

³ Lisa Forman, 'Environmental Justice and the Rights of Unborn and Future Generations: Law, Environmental Harm, and the Right to Health' (2008) *Global Public Health* 455.

⁴ Emmanuel Agius, 'Do future generations have rights?' in David E. Zammit (ed), *Maltese perspectives on human rights* (University of Malta 2008).

*obligations upon us to care for the planet and at the same time gives us certain rights to use it.*⁵

Consequently, there is a reciprocal relationship between present and future generations since present actions impact future quality of life. According to the correspondence thesis, each right has a corresponding duty. Thus, the present generation has the right to enjoy their environmental rights whilst obeying their duty to protect this right for future ones. This duty belongs to national and international governments too in their enforcement of policies and laws.⁶ Protection of future generations is gradually adopting a legally binding status due to a number of laws as well as trials such as *Juliana v. United States*.⁷

2. Intergenerational Equity

Intergenerational equity (IGE) is a doctrine which posits that each generation has the responsibility to pass on natural resources to future generations in a condition that is no worse than the one they received from previous generations.⁸ Thus, each generation is simultaneously a beneficiary and trustee of the planet.⁹ This doctrine is based upon three principles known as Planetary Obligations.

First, the Conservation of Options Principle states that each generation must conserve natural resources for future generations to ensure that they too have the same variety of resources. Second, the Conservation of Quality Principle holds that each generation must maintain the environment's quality such that future generations inherit it in no worse condition than present ones did. Third, the Conservation of Equity Principle posits that each generation should have equitable access to the past's legacy.¹⁰

These principles highlight how each generation has equal environmental rights. Furthermore, they underline a partnership between present generations and future ones, which aims to safeguard each's environmental rights through duties that the present generation must respect. Among these duties are the duty to conserve natural resources and the duty to warrant equitable access to the environment and its resources.¹¹

Environmental concerns, such as atmospheric degradation and increasing sea levels, know no political and geographic boundaries. No country has

⁵ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transitional Publications Inc 1989) 17.

⁶ Hiskes (n 1).

⁷ *Juliana v. United States* [2020] 9th Cir. 1159.

⁸ Weiss (n 5).

⁹ *ibid.*

¹⁰ Edith Brown Weiss, 'Climate change, Intergenerational Equity, and International Law' (2008) 9 Vermont Journal of Environmental Law 615.

¹¹ Lynda Collins. 'Environmental rights for the future? Intergenerational equity in the EU' (2007) 16(3) RECIEL 321.

within its power the ability to safeguard the environment for all future generations. Thus, IGE presents itself as an international doctrine and aims to foster cooperation between all states to safeguard the Earth and its resources for future generations.¹² Most international law documents with relation to future environmental rights protection are aspirational rather than legally binding.¹³ For instance, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the first aspirational legal document concerning environmental politics, argued that the environment should be safeguarded for present and future generations.¹⁴ The first principle of the Declaration, applying the conservation of quality principle, states that future generations have a right to 'an environment of quality that permits a life of dignity and well-being' and thus it should be protected.¹⁵ Similarly, the aspirational UNESCO *Declaration on the Responsibilities of the Present Generations Towards Future Generations* recognises that present generations have a responsibility towards future generations to safeguard natural resources.¹⁶ Following the Lisbon Treaty of 2008,¹⁷ the Charter of Fundamental Rights of the European Union became the first legally binding document to explicitly refer to future generations.¹⁸ Its preamble states that the Charter's rights issue responsibilities and duties for the present generation towards future generations.¹⁹ Article 37, titled 'Environment Protection', adhering to the conservation of quality principle, states that the quality of the environment should be protected and improved, and this should be acknowledged by EU policies which must be in accordance with the principle of sustainable development, which in turn embraces the conservation of options principle.²⁰

Although IGE is an international law doctrine, it should be implemented by the national government through local legislation. For instance, Article 9(2) of the Constitution of Malta states that the State 'shall protect and conserve the environment and its resources for the benefit of the present and future generations'.²¹ Although not enforceable, this article declares the recognised environmental rights of future generations, which the Government has the duty to protect. Another local law is the Sustainable Development Act of 2012, which states that the competent authority, being the Ministry for the Environment, Sustainable Development, and Climate Change, has to 'ensure the development and implementation of Malta's

¹² Weiss (n 10).

¹³ Agius (n 4).

¹⁴ United Nations, 'Report of the United Nations conference on the human environment' 1972 A/CONF.48/14/REV.1.

¹⁵ *ibid* Principle 1.

¹⁶ UNESCO, 'Declaration on the Responsibilities of the Present Generations on Future Generations' 1997.

¹⁷ Consolidated Version of The Treaty on European Union [2008] OJ C115/13.

¹⁸ Charter of the Fundamental Rights of the European Union [2012] OJ C326/391.

¹⁹ *ibid* para 6.

²⁰ *ibid* Article 37.

²¹ Constitution of Malta, Article 9(2).

sustainable development strategy'.²² One such implementation is the Vision 2050, proposed by Hon. Josè Herrera, the former Minister for the Environment, Sustainable Development, and Climate Change, which identifies the importance of taking into consideration future generations' environmental rights as present generations develop Malta.²³

One of the means towards achieving intergenerational equity is by appointing a voice to represent future generations.²⁴ Although it has been widely acknowledged in national and international policies and laws that future generations' rights are vital, there is a lack of implementation of this principle. One method for such implementation is the appointment of a 'Guardian' to speak on behalf of future generations in national and international fora.²⁵ The Guardian would communicate with institutions wielding powers to take environmental decisions that may significantly impact future generations by highlighting the implications of such decisions, and by proposing possible alternatives which better suit their needs. Therefore, they would adopt an advocacy role in pleading and presenting arguments on behalf of future generations. Furthermore, the Guardian would be responsible for trying to raise awareness about the environmental rights of future generations in a civilisation which largely discounts them through its unsustainable use of the environment and its resources.²⁶

However, this principle is still not sufficiently practised. It has been proposed that a European Guardian for Future Generations be appointed to speak on behalf of future generations.²⁷ Nonetheless, there have been countries which have put this principle into practice. For instance, in 2016 Sophie Howe was appointed the first Future Generations Commissioner for Wales. Malta too has put into practice this principle, as provided for by Article 8 of the Sustainable Development Act. Article 8(1) states that there 'shall be a Guardian of Future Generations [...] with the aim of safeguarding intergenerational and intragenerational sustainable development in Malta'.²⁸ The current chairperson of the Guardian of Future Generations as appointed in 2019 is Harry Vassallo. As outlined in Article 8(4) the duties of the Guardian are many, including the promotion of sustainable development advocacy in national policy and legislation, the development of scientific research on sustainability, the proposal of actions to government entities to help achieve sustainable development goals, and the encouragement of non-

²² Sustainable Development Act, Chapter 521 of the Laws of Malta, Article 5.

²³ Ministry for the Environment, Sustainable Development, and Climate Change, 'Vision 2050' (*Sustainable Development* <<https://sustainabledevelopment.gov.mt/vision-2050/#:~:text=Malta's%20Sustainable%20Development%20Vision%20for,an%20international%20and%20EU%20level.>> accessed 11 November 2022).

²⁴ Edith Brown Weiss, 'In fairness to future generations and sustainable development' (1992) 8(1) *American University International Law Review* 19.

²⁵ Agius (n 4).

²⁶ Agius (n 2).

²⁷ Maja Gopel and Malte Arhelger, 'How to protect future generations' rights in European Governance' (2010) *International Justice Review* 4.

²⁸ Chapter 521 (n. 22) Article 8(1).

governmental organisations' participation in matters of sustainable development advocacy.²⁹ Although locally the roles of the Guardian are limited to sustainable development, they still contribute towards intergenerational equity as they support the principle of conservation of options.

3. Conclusion

The environmental rights of future generations are dependent on the present generation's duty and responsibility to respect them. The safeguarding of these rights should be, as is already to an extent, protected and recognised by legal policies and legally binding laws. Nonetheless, this recognition is insufficient towards fulfilling the aspiration of intergenerational justice. To move closer towards achieving this aspiration, a voice should be appointed to speak on behalf of future generations as represented through a Guardian of Future Generations.

²⁹ *ibid* Article 8(4).



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