

Institutional Innovations for Perpetual Obligations

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Abstract / Introduction

Who should advocate for the perpetual interests of future generations? Researchers have evolved several sets of perpetual obligations that current generations have to future generations. However, few national structures contain formal constitutional or institutional provisions to support current generations in meeting obligations, much less to evaluate which outcomes are addressed, with which consequences, over what period of time. This presentation addresses these institutional deficiencies by identifying innovative approaches to ensuring anticipatory care through amendment to national constitutions.

The presentation begins with a review of obligations to future generations. This is followed by a brief review of institutions that exist or have been proposed to advocate for future generations whose existence are not tied to constitutional provisions. The third part of the presentation sets out the criteria used to assess opportunities to amend national constitutions and five general types of amendments proposed. The fourth part presents some examples of specific recommendations to amend constitutions and also presents some descriptive statistics for how often these opportunities seem to avail themselves in a review of more than forty national constitutions. The presentation concludes with observations about the practical implications for meeting perpetual obligations to future generations with institutional innovations. This contributes to anticipation studies not only by using the future in the governance and policy processes, but by leveraging the anticipatory system itself to seed perpetual obligations into national institutions.

Relationship to Existing Research and Practice

Perpetual Obligations to Future Generations

Eminent futurists, Bell¹ and Slaughter², have each developed extensive statements on perpetual obligations to future generations with proposed obligations relating to, *inter alia*: natural resources of the earth; care for public goods entrusted to us by past generations for future generations as well; care as a cultural force that is

¹ Bell, W. (1993). Why Should We Care about Future Generations? In *The years ahead: Perils, problems, and promises*.

² Slaughter, R. A. (1994). Why We Should Care for Future Generations Now. *Futures*, 26, 1077–1085.

valuable now and for the foreseeable future; and no regrets. Several other authors also argue for perpetual obligations to future generations. MacLean, Bodde, and Cochran³ and Schrader-Frechette⁴ argue for a fairness obligation: current generations ought not to impose involuntary environmentally-based risks of death upon future generations that they would not themselves accept. Weiss⁵, Tonn⁶, Golding⁷ and others argue for a “maintaining options” obligation in which decisions made by current generations should not restrict the various possible futures that could be pursued by future generations. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) developed a Declaration on the Responsibilities of the Present Generations Towards Future Generations that presents eleven obligations, including the maintenance and perpetuation of humankind.⁸ Tonn presents a new set of obligations that builds upon these efforts and is up-dated to recognize new challenges to meeting obligations to future generations.⁹ In short, futurists have characterized a perpetual commitment; what has not yet been characterized are the anticipatory mechanisms by which current and future generations can keep those perpetual commitments.

Institutional Innovations for Perpetual Obligations

While this presentation argues for institutional innovations via any mechanism as long as it is codified in constitutions, some argue for the specific mechanisms of legislative checks and balances. Gödel and Arhelger¹⁰ propose a European Guardian for Future Generations that would attend to the rights of future generations while keeping current generations informed about the progress in support of future generations. The Institute for European Environmental Policy¹¹ identifies several boundary-type organizations that have been founded around the world to provide this type of representation for future generations. These include the Welsh Commissioner for Future Generations.

³ MacLean, D., Bodde, D., & Cochran, T. (1981). Introduction to Conflicting Views on a Neutrality Criterion for Radioactive Waste Management. College Park: University of Maryland, Center for Philosophy and Public Policy.

⁴ Schrader-Frechette, K. (1991). Ethical Dimensions and Radioactive Waste. *Environmental Ethics*, 13, 327–344.

⁵ Weiss, E. B. (1989). *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*. Dobbs Ferry, New York: Transnational Publishers Inc.

⁶ Tonn, B. (1987). Philosophical Aspects of 500-Year Planning. *Environment and Planning A*, 20, 1507–1522.

⁷ Golding, M. P. (1981). Obligations to Future Generations. In E. Partridge (Ed.), *Responsibilities to Future Generations: Environmental Ethics* (p. 319). Buffalo, NY: Prometheus Books.

⁸ http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁹ Tonn, B. 2017. “Philosophical, Institutional, and Decision Making Framework for Meeting Obligations to Future Generations,” *Futures*, Vol. 95, 44-57.

¹⁰ Göpel, M. and Arhelger, M., 2010. How to Protect Future Generations' Rights in European Governance. *Intergenerational Justice Review*, 5(1).

¹¹ Institute for European Environmental Policy. (2015). “Establishing an EU ‘Guardian for Future Generations’”. Report and Recommendations for the World Future Council.

Criteria and Approaches in Practice for Seeding Institutional Innovations Through Constitutional Amendments

We used the following criteria to guide the development of opportunities to amend national constitutions to assess whether current generations are meeting obligations to future generations:

- Create an acknowledgement that future generations also are citizens.
- Speak for future generations to engender second thoughts in the current generations' discussions.
- Create a highly visible forum for these issues.
- Serve a vital role as one of the main 'checks and balances' within the government.
- Incorporate core principles of independence, transparency, legitimacy, accessibility, open information.
- Be politically neutral.

The process of reviewing constitutions entailed these steps:

1. Search for mention of any institution established by the constitution that takes up the cause of future generations.
2. Search for any words that indicate that the framers of the constitution took up the cause of future generations, specifically, and anticipation, in general.
3. Search for any commissions or councils that could be tasked with advocating for future generations.
4. Search for imminent individuals or unique institutions that could be tasked with advocating for future generations.
5. Peruse the constitution to identify other opportunities that are consistent with flow and dominant language and terminology used.

The constitutions reviewed so far represent every continent and include the constitutions of the fourteen largest countries by population as well as constitutions for mid-size and island countries. We searched for the following words: future, generation, posterity, foresight, and anticipation. Eighteen constitutions completely lacked any of these words; fourteen had only one mention, usually future generations or posterity. No constitutions used the words foresight or anticipation. The most exemplary constitution is Hungary's, which actually formally establishes The Commissioner for Fundamental Rights that has the responsibility for protecting future generations. Egypt's constitution is inspiring with respect to commitments to future generations, although it falls short in establishing a formal institution to take up the cause of future generations.

Categories of Opportunities

Five categories of opportunities to amend constitutions have been identified and applied to the 40 constitutions reviewed so far. Each category is defined and examples are provided below. The percentages within the parentheses represent the fraction of constitutional opportunities identified that fit into each category.

Commission or Council on Human Rights (20%)

One approach is to amend constitutions to explicitly assign to human rights commissions the responsibilities of advocating for future generations and assessing whether obligations to future generations are being met. As mentioned above, the Hungarian constitution uniquely establishes The Commissioner for Fundamental Rights, which has the responsibility for protecting future generations. Countries that have such commissions whose remit could be expanded include: Kenya (The Kenya National Human Rights and Equality Commission¹²) and South Africa (South African Human Rights Commission).

Ombudsman (12.5%)

Ombudsmen are officials appointed to investigate complaints against public authorities and other major organizations. These officials' remit could be expanded to represent the interests of future generations. Countries whose constitutions establish offices of ombudsman include: Argentina (The Ombudsman), and Morocco (The Mediator).

At-Large Representatives for Future Generations (5%)

The notion that specific people ought to advocate for is a common theme in the anticipation and futures studies literatures. Direct advocacy opportunities through elected representatives, however, are difficult to find within constitutional and typical electoral frameworks. However, there are some constitutions that have provisions for legislative representatives that are not tied to constituencies, which include Norway and Singapore.

Assign Responsibilities to Existing Prominent Person or Institution (32.5%)

In the absence of a commission on human rights or an ombudsman, the constitution may offer an opportunity to assign this responsibility to a prominent person or institution. For example, the constitution of Japan could be to simply revise Article 7 to include amongst the responsibilities of the Emperor—which already include Promulgation of amendments of the constitution, laws, cabinet orders and Treaties and Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights—attestation of whether current generations are meeting their perpetual obligations to future generations. Here are ideas for two additional countries: United Kingdom -- give this responsibility to the House of Lords^{13,14}; and India -- give this responsibility to its Supreme Court.

Create Brand New Institution (32.5%)

In many cases, there may be no obvious hook upon which to hang responsibilities for advocating for future generations. In these instances, the approach is to develop ideas for new institutions to be enshrined within constitutions that are tied to the

¹² <https://www.knchr.org/About-Us/Establishment>

¹³ This idea was first presented in this article: Tonn, B. and Hogan, M. 2006. The House of Lords: Guardians of Future Generations. *Futures* 38, 115-119.

language and spirit of the constitutions. An idea that has previously published is to establish the Court of Generations in the United States¹⁴. Another idea is to create an institutional framework in Germany to allow a ‘representative of future generations’ who could veto decisions or at least challenge them^{15, 16}.

Observations

The research and ideas presented above strongly suggest that there are several straightforward ways to amend national constitutions so that the anticipatory interests of future generations are formally represented and that ideas can be developed that fit a wide variety of constitutional contexts. The various opportunities probably differ in their influence. For example, a few at-large representatives for future generations in a legislature may not have the same influence as pronouncements made by the House of Lords. However, first steps are important and any nation can adopt more influential institutional arrangements at time goes on.

The recommendations are also first steps in other ways, too. With respect to Figure 1, the constitutional amendments sit amongst other important processes needed to render good policy. For example, any process needs to have the participation of a broad representation of society and involve people with a broad range of education and perspectives. How to meet perpetual obligations needs part of day-to-day meetings, problem-solving, and decision-making that is at the heart of public policy making.¹⁷ Lastly, the institutional solutions need to allow for constant evaluation of how well current generations are meeting obligations to future generations.

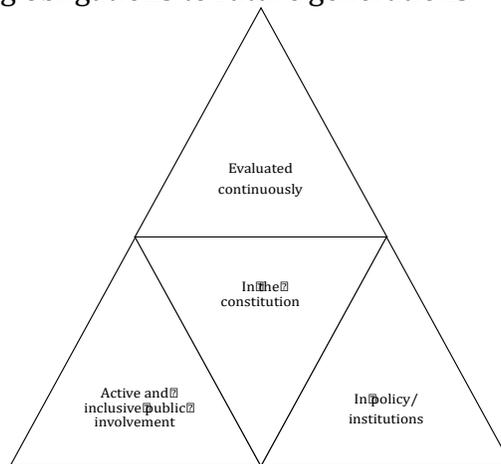


Figure. Building Blocks for Futures-Oriented Governance

¹⁴ B. Tonn, The Court of Generations: A Proposed Amendment to the U.S. Constitution. *Futures*, 23 (5) (1991) 482–498.

¹⁵ The Federal Republic of Germany. (2019). Basic Law. Retrieved from Germany, The Federal Government: <https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510>.

¹⁶ Schröder, M. (2011). The Concept of Intergenerational Justice in German Constitutional Law. *Ritsumeikan Law Review*, 321-330.

¹⁷ Jackson, M. (2013). *Practical Foresight Guide*. Michael Jackson.

Finally, adopting any amendments targeted to future generations cannot by themselves ensure that society will change in the needed manner. For example, giving responsibilities in this area to India's Supreme Court is only as effective as the Court is able to give this issue its attention. Corrupt leaders and rampant corruption within governments and society can most certainly derail the best of intentions.

Conclusion

This presentation addresses a persistent problem in anticipatory care: Any generation, in any nation, can consider perpetual obligations to future generations. Yet, mostly they do not. And, if they do not do it now, then why would they start doing it? The leaders who can comprehend these criteria for responsible governance and policy also can implement the proposed structures that make it inevitable that perpetual obligations to all generations will be addressed in the regular course of governance and policy.

It is shown that it is the rare constitution that directly addresses meeting obligations to future generations through formal institutional arrangements. Few constitutions even mention future generations in passing and none directly address anticipation or foresight. On the other hand, opportunities were found in every constitution for amendments to formally assign responsibilities for advocating for future generations.