

Creating justice for future generations

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Most people care about the welfare of future generations. Parents want their children and grandchildren to live good lives. A British poll found that 64% of citizens think that the needs of future generations should take priority in the division of resources. But political and economic decisions do not reflect this concern. The reluctance of governments to adopt effective policies for mitigating climate change is the most obvious example of a failure to prevent harm to future people.

There are a number of reasons for this failure. People care about future generations, but their more immediate concerns are likely to dominate the political agenda: security of employment, the cost of living, taxes, and the profitability of their investments. Politicians favour policies that are most likely to win them office at the next election. Executives of corporations aim to show a healthy profit at the end of each business quarter. These objectives are not conducive to long-term planning or to any change that would impose costs on present people for the sake of future citizens. The problem is compounded by the fact that economists in their calculation of costs and benefits typically discount the future, which means that the interests of future people count for less than present interests. Added to these factors is uncertainty about what the future holds.

What a political society should be doing for future generations is an ethical question that depends on views about inter-generational justice. Some people think that we have a duty to ensure, so far as we can, that our descendants enjoy a standard of living that is higher than ours. This view seems to have motivated the responses to the British poll. Others think that justice is done if present living standards and environmental goods are sustained into the future. The American political philosopher, John Rawls, believed that we do our duty to future generations if we ensure that they have sufficient resources to live good lives and can maintain liberal democratic institutions. His view does not require that future generations be as wealthy as we are. But if future citizens are going to be able to live well and maintain a secure, law-abiding democratic society they must be able to enjoy a sufficiency of resources and a wide range of choice about how they can live their lives. Many people think that these opportunities should include the ability to appreciate our environmental and cultural heritage.

So long as the wellbeing of future generations could be secured by economic growth and technological innovation, justice was done to future citizens as a matter of course. Since the industrial revolution, each generation in developed countries has been better off economically than its predecessors. But there is now reason to believe the younger generations in Western societies will not be as well off as their parents. Rising house prices, the cost of education and uncertainties about availability of jobs in the future contribute to this pessimistic projection. Failure to mitigate climate change and effects of species loss could have an even more drastic effect on the lives of future people — perhaps making it impossible for them to live good lives in peaceful and secure democratic societies. The present failure of political societies to address

problems that will affect the lives of people in the future threaten to violate even minimum standards of intergenerational justice.

This prospect, and the reluctance of politicians to address problems that will affect Australians of the future, reveals a deficit in our democracy. In a democratic society citizens protect their interests by the pressure they can put on decision-makers — by voting, protests, petitions and legal action. But young children and future citizens have no means of exercising influence. They cannot vote against present politicians or protest against their policies. Protection of their interests depends on others acting with their interests in mind. But this arrangement is not working.

The failure of democratic political societies to deal with problems that could seriously affect their future citizens is no reason for abandoning democracy. Non-democratic regimes are even worse for future, as well as present, generations. But the failure of our system requires us to turn our attention to possibilities for reform. How can we fix our system of government and law so that it is more likely to protect the interests of young people and future generations?

Why not lower the voting age and increase the representation of young people in parliament? Seven countries, including Austria, Norway, Argentina and Brazil, have lowered the voting age to 16. There is no reason why people of that age (and even younger) cannot make good political decisions. But lack of young people in the world's parliaments is a more serious democratic deficiency. The United Nations reports that only 1.9% of the world's 45,000 parliamentarians are aged below 30. The average age of Australian federal politicians is 51 and only one is under the age of 30. The reasons for having more young people in parliaments is the same as for having more women

parliamentarians. It would make governments more representative of the people. The presence of more young people would also make it more difficult for governments to pass legislation that disadvantages young people. Perhaps it would also encourage greater engagement in politics among the young. Some advocates of youth representation favour a quota of seats reserved for people under 30. But those who think that quotas are undesirable should consider what political parties could do to encourage youthful candidates.

Changing the demographics of parliament would take time. A more immediate avenue for change is to force politicians' hands by using the law. In 2015, Urgenda, a Dutch environmental group, went to court to argue that the Dutch government had failed in its duty of care to present and future generations by refusing to adopt a higher greenhouse gas reduction target. Urgenda's victory in the District Court in the Hague has encouraged activists in other countries to consider a similar action. In America a group of young people have mounted a legal case against federal officials for failing to ensure that they will be able to live in a habitable climate. Some legal experts think that a similar case could have a chance of being successful in Australia.

The success of legal initiatives is uncertain. The Dutch government is appealing the decision of the Hague court and it may succeed in having it overturned. Parliamentarians, however chosen, may not represent the interests of unborn generations. Many reformers prefer measures that encourage or require legislators to take the interests of future generations into account when making laws or policies. The Parliamentary Commissioner for Future Generations established by the Hungarian Parliament in 2008 has not only acted as an ombudsman to review public complaints but also as an advisor

to parliament on intergenerational issues. It was successful in protecting heritage and preventing developments that threatened to harm the environment and cause health problems. A Commission for Future Generations was also established in Israel in 2001 to encourage long-term thinking of politicians and the public. It had the power to delay and review legislation and make recommendations in parliamentary committees.

Under a right-wing government, the Hungarian Commission for the Future lost its independent status. The Israeli commission was abolished when it was judged too much of a hindrance to the work of politicians. Nevertheless, having an independent commissioner or committee with the job of looking after the interests of future generations is an idea favoured in a number of countries and regions. Finland, Sweden, Malta, Canada and Wales have instituted such commissions, though their powers vary. The European Union is considering the establishment of a commission that can act as a guardian for future generations. A proposal for a High Commission for Future Generations has also been aired at the United Nations. Such a body would have the responsibility for international agenda setting and monitoring developments in member countries. So far this proposal has not gained enough support to be put into practice.

Commissioners for the future could be regarded as representatives of future citizens — guardians of the interests of those who are not yet in the position to speak for themselves. As such, they should be able to review government institutions, to request information from them, to make recommendations about legislation, to conduct public information campaigns and to provide an overview of what needs to be done. There is even a good case for giving them the power to veto legislation that they deem to be inimical to the wellbeing of future generations

(though no existing commission has ever been given that much power). Most existing commissions have concerned themselves mostly or wholly with environmental issues. But there is no reason why people who are appointed guardians of future generations could not also focus on jobs, housing, infrastructure, government spending, and other issues likely to affect young and future people.

Commissioners for the future are likely to be lawyers and academics — people who come from the same segment of society. Their ability to represent all future people is questionable. Some reformers think that it would be better for the role of guardianship to be performed by a more representative sample of citizens. Citizens' advisory committees assigned with the task of making proposals for legislation or resolving disputes are not unprecedented. The Tasmanian Forestry Agreement was the result of round-table discussions between forestry representatives and members of environmental groups. In the Canadian province of British Columbia, 60 citizens, chosen more or less randomly, met for nine months to discuss the possibility of a change to the provincial electoral system. When citizens deliberate together they not only become well informed; they also tend to rise above their parochial interests and focus on the public good.

The talents and perspectives of ordinary citizens could also be employed to represent future generations. They would become the official guardians of future generations, tasked with the responsibility of proposing or reviewing legislation affecting future people. Some advocates of this proposal think that composition of these 'mini-publics' ought to reflect the ethnic, religious and other sources of diversity in the population. Some think that they should be made up of members of environmental groups — people who are familiar with the problems and

accustomed to taking a long view. But there are good reasons for membership in these groups to be chosen at random, as juries now are. The selected members would know that their job is to represent future people and not the views of their organisation or a particular section of the population. This method of selection could also encourage discussion of the issues among people who know that they might be chosen for the role of guardian. It would harness the widespread concern that already exists for the wellbeing of future people and would make this concern more politically effective.

Citizens' groups with the task of commenting on legislative proposals or reaching an agreement about what ought to be done have always had an advisory function. Whether their recommendations are followed depends on what politicians decide. The British philosopher Rupert Read thinks that proper representation of future generations requires that they have a legislative role. He recommends that they occupy a third house of parliament and be given the power to review legislation, veto it if necessary and make proposals for legislation of their own. His proposal, whatever its virtues, would require a radical change to political processes — a major disadvantage for those who want immediate practical reforms. A government can make use of advisory groups without overhauling the country's system of government, and if these groups are regarded as representing the considered opinion of the public, then it will be politically difficult to reject their recommendations.

Some reformers think that protection of future people ought to be built into the proceedings of government. Every five years the Australian government is required to issue an intergenerational report on the direction that policies ought to take over the next 40 years. This is a positive step that encourages long-

term thinking. But these reports are prepared by the Treasury and they concentrate almost exclusively on budgetary matters. They tend to reflect the agenda of the party in power, and their recommendations do not seem to have much of an effect on political decisionmaking. The Rudd government's *Intergenerational Report 2010* identified climate change as a serious risk to future Australians, but neither his government nor the following ones acted as if this were really true. In the *Intergenerational Report 2015* of the Abbott government, climate change is not featured.

Changes could be made to the process of preparing the *Intergenerational Report* and to the way it is followed up in parliament. One idea is to create a parliamentary standing committee on intergenerational affairs with the task of holding inquiries about issues that should be covered by the reports — making them more comprehensive and open to contributions by the public. This committee could also be given the task of proposing legislation, and monitoring and reporting the progress of governments in fulfilling the recommendations of intergenerational reports. These changes would not resolve differences of opinion on climate change and other issues, but they would make it more difficult for parliament to ignore intergenerational concerns in its day-to-day decisionmaking.

The British philosopher Simon Caney proposes comprehensive changes to parliamentary procedure to ensure that the interests of future generations are represented. A government when coming to office should be required to issue a manifesto that outlines its policies for the long-term future. This manifesto should address problems and trends identified in the report of an independent Council for the Future that makes use of scientific expertise to identify these trends. He thinks that there should also be a parliamentary committee of review that

monitors the progress of the government in fulfilling its commitments. To ensure that intergenerational issues are kept on the agenda, he proposes that parliament hold a Visions for the Future Day in which the government's manifesto and the opposition's position are publicly scrutinised.

Caney, like Read, presents an ideal vision of how the interests of future generations should be represented in a parliamentary democracy. Politics in the real world may never achieve the reforms he recommends, but his proposals have the advantage of allowing piecemeal reform — the realisation of some of his recommendations even if others are rejected. They also have the advantage of not requiring changes to the constitution or the basic structure of government.

However, a constitutional provision that requires governments to protect the interests of future citizens would encourage parliamentary reform. Legal cases against governments that fail to protect future people from harm would be more likely to succeed. Such protections are written into the constitutions of 57 countries. The Czech Republic Constitution, for example, requires taking responsibility for future generations. Norway includes the right to an environment conducive to health for future, as well as present, generations. Constitutional change in Australia is difficult to achieve, but not impossible. If constitutional recognition of Aboriginal and Torres Strait Islander people gets passed by Australian voters, then why not put protection of the interests of future generations next on the agenda?

Reform of democratic institutions to protect the interests of future generations is theoretically possible. But is it likely to happen? Would it make much difference to the fate of future people even if it did happen? The first question reflects a cynicism about the possibility of political change. The only way of countering it is to point out that popular movements and

lobby groups have sometimes managed to bring about significant reforms. Change becomes more likely if it answers to a perceived need, and the effects of climate change are creating this need.

The second question reminds us that problems faced by future people are global and will not be solved without action on a global scale. They will also not be solved without tackling world inequality and poverty and without bringing the future-unfriendly behaviour of some global corporations under control. Proposals exist to mitigate these problems and to provide funds for development that help people without harming their prospects for the future. But effective global action depends on the cooperation of states and, in particular, on the willingness of wealthy states to share their resources and technology with developing nations. Global reforms are more likely if governments of wealthy democratic states are required to take responsibility for the wellbeing of future, as well as present, generations.

Selective bibliography

Some of the above proposals for political reform, including those of Simon Caney, are presented in Inigo Gonzalez-Ricoy and Axel Gosseries (Eds), *Institutions for Future Generations*. London, New York: Oxford University Press, 2016.

John Rawls's view about intergenerational justice is in his book, *A Theory of Justice*, revised edition. Cambridge, MA: Harvard University Press, 1999.

Information about Urgenda's successful attempt to sue the Dutch government for failure in its duty of care to future generations is found at: <http://www.urgenda.nl/en/climate-case/legal-documents.php>

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For a view about the implications for Australia of the Urgenda case, see Don Anton, 'A Dutch Blueprint for Climate Litigation' at: <http://www.smh.com.au/comment/a-dutch-blueprint-for-climate-litigation-20150702-gi3d5d.html>

The duties and activities of the Hungarian Ombudsman for Future Generations is described here: <http://www.fdsd.org/ideas/the-hungarian-parliaments-ombudsman-for-future-generations/>

Information about a proposed European Union 'Guardian for Future Generations' is found in Nesbit, M. and Illés, A., *Establishing an EU Guardian for Future Generations. Report and Recommendations for the World Future Council*, London, Institute for European Environmental Policy, London, 2015: https://www.worldfuturecouncil.org/file/2016/02/IEEP_WF_C_2016_Establishing_an_EU_Guardian_for_Future_Generation_s.pdf. This document also contains information about the establishment of commissioners for future generations in Europe and elsewhere.

Rupert Reads' view about how future generations ought to be represented in parliaments is in Read, *Guardians of the Future: A Constitutional Case for Representing and Protecting Future People*. Weymouth, Dorset: Green House, 2012: http://www.greenhousethinktank.org/uploads/4/8/3/2/48324387/guardians_inside_final.pdf

The Foundation for the Rights of Future Generations is a think tank based in Stuttgart, Germany that promotes the interests of young people and future generations: <http://www.intergenerationaljustice.org/>. It publishes the Intergenerational Justice Review containing articles about reform proposals: <http://www.igjr.org/ojs/index.php/igjr/index>

FRAGILITY AND HOPE IN A WORLD OF UNCERTAINTY

The British group, Alliance for Future Generations, aims to bring the interest of future generations into the heart of UK politics: <http://www.allianceforfuturegenerations.org/>