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## *II. Alternative approaches to intergenerational equity*

There are several approaches to defining intergenerational equity in the context of the relationship among generations to the planet Earth.

The first is the preservationist model, in which the present generation does not destroy or deplete resources or significantly alter anything; rather it saves resources for future generations and preserves the same level of quality in all aspects of the environment. This preservationist model has deep roots in the original natural-flow theory of English water law, in which riparians could use stream water so long as their use did not impair in any way the quantity or quality of water for those downstream. Ultimately this benefits the last riparians before the stream enters the ocean or disappears, because they have no one to whom they owe an obligation.

The preservationist model, if carried to its extreme in saving unspoiled ecosystems, would promote the status quo.<sup>34</sup> It is only consistent with a subsistence economy, not with an industrialized world. In a more flexible form, the model supports the socialist model of economic development applied by Stalin, in which citizens were urged to sacrifice today for a better tomorrow.<sup>35</sup> This attitude was common to the Calvinists as well.<sup>36</sup> In both, future generations benefit at the expense of earlier generations.

The other extreme can be termed the 'opulence model' in which the present generation consumes all that it wants today and generates as much wealth as it can, either because there is no certainty that future generations will exist or because maximizing consumption today is the best way to maximize wealth for future generations.<sup>37</sup> This model overlooks the long-term degradations of the planet that may be generated, such as irreversible losses of species diversity and of renewable resources such as soils and fish, and costly environmental contamination as by insufficiently controlled nuclear or hazardous wastes that make areas unfit for habitation and use. Further under this model, the present generation may trigger irreversible changes in the global climate system that will affect habitability in parts of the world.

Even if we knew that we were the last generation of the human community to live on earth, it is still not clear that we would have the right to desecrate it, or to destroy it, since the human community is, in the end, only part of a much larger natural system, which we can use for our own benefit but must also pass on for others.

A variant of the opulence model is the technology model, in which we do not need to be concerned about the environment for future generations, because technological innovation will enable us to introduce infinite resource substitution.<sup>38</sup> While technology will undoubtedly enable us to develop some substitutes for certain resources and to use resources more efficiently, it is by no means assured that it will suffice or will make the robustness of the planet irrelevant.

Finally, we have the environmental economics model, which argues that if we were to do proper natural resource accounting, we would fulfil our obligations to future generations. The economic tools that we have developed today -environmental externalities and discounting- are sufficient, were we to apply "green" economics. While proper accounting is essential to implementing intergenerational equity, it arguably is not sufficient as presently conceived.

### **The proposed theory of intergenerational equity**

Sustainability is possible only if we look at the Earth and its resources not only as an investment opportunity but as a trust, passed to us by our ancestors, to be enjoyed and passed on to our descendants for their use. Such a "planetary trust" conveys to us both rights and responsibilities. Most importantly, it implies that future generations too have rights - although to be sure, these rights have meaning only if we the living respect them and if this respect transcends the differences among countries, religions, and cultures.

The theory of intergenerational equity proposed argues that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, the present generation, and future generations.<sup>39</sup> As members of the present generation, we hold the Earth in trust for future generations. At the same time, we are beneficiaries entitled to use and benefit from it.<sup>40</sup>

There are two relationships that must shape any theory of intergenerational equity in the context of our natural environment: our relationship to other generations of our own species and our relationship to the natural system of which we are a part. The human species is integrally linked with other parts of the natural system; we affect and are affected by what happens in the system. We alone among all living creatures have the capacity to shape significantly our relationship to the environment. We can use it on a sustainable basis or we can degrade environmental quality and deplete the natural-resource base. As the most sentient of living creatures, we have a special responsibility to care for the planet.

The second fundamental relationship is that between different generations of the human species. All generations are inherently linked to other generations, past and future, in using the common patrimony of earth. The theory of intergenerational equity stipulates that all generations have an equal place in relation to the natural system. There is no basis for preferring the present generation over future generations in their use of the planet.

This premise finds 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..."; 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.

Partnership between generations is the corollary to equality. It is appropriate to view the human community as a partnership among all generations. In describing a state as a partnership, 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."<sup>41</sup> The purpose of human society must be to realize and protect the welfare and well-being of every generation, in relation to the natural system, of which it is a part. This requires sustaining the robustness of the planet: the life-support systems and the ecological processes and environmental conditions necessary for a healthy and decent human environment.

In this partnership, no generation knows beforehand when it will be the living generation, how many members it will have, or even how many generations there will ultimately be. If we take the perspective of a generation that is placed somewhere along the spectrum of time but does not know in advance where it will be located,<sup>42</sup> such a generation would want to inherit the Earth in at least as good condition as it has been in for any previous generation and to have as good access to it as previous generations. This requires each generation to pass the planet on in no worse condition than it received it in and to provide equitable access to its resources and benefits. Each generation is thus both a trustee for the planet with obligations to care for it and a beneficiary with rights to use it.

If one generation fails to conserve the planet at the level of quality received, succeeding generations have an obligation to repair this damage, even if costly to do so. However, they can distribute the costs across several generations, by means of revenue bonds and other financial measures, so that the benefits and costs of remediation are distributed together. While the generation that allows environmental quality to deteriorate still benefits at the expense of immediate future generations, more distant future generations are protected. Moreover, the generation inflicting the harm may have passed on a sufficiently higher level of income so that immediate successor generations have sufficient wealth to manage the deterioration effectively.

While intergenerational equity may be viewed as in conflict with achieving intragenerational equity, the two can be consistent and in fact must go together. Members of the present generation have an intergenerational right of equitable access to use and benefit from the planet's resources, which derives from the underlying equality that all generations have with each other in relation to their use of the natural system.

Moreover, even the most selfish members of the present generation who care only about their own descendants must as they extend further into time increasingly care about the general environment that they will inherit. Since no one country or group of countries has the power alone to ensure a healthy environment, all must cooperate to ensure a robust planet in the future. Since poverty is a major cause of ecological degradation, this means meeting the basic needs of the poor, so that they will have both the desire and ability to fulfil their intergenerational obligations to conserve the planet.

To be sure, there are instances where the actions needed to protect the health of the planet for future generations may conflict with the need to alleviate poverty as quickly as possible. In these instances, we need to develop appropriate mechanisms and allocate sufficient resources to maximize the ability to advance both goals.

The theory of intergenerational equity has a deep basis in international law.<sup>43</sup> The United Nations Charter, the Preamble to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the American Declaration on the Rights and Duties of Man, the Declaration on the Elimination of Discrimination against Women, the Declaration on the Rights of the Child, and many other human rights documents reveal a fundamental belief in the dignity of all members of human society and in an equality of rights that extends in time as well as space. Indeed, if we were to license the present generation to exploit our natural and cultural resources at the expense of the well-being of future generations, we would contradict the purposes of the United Nations Charter and international human rights documents.

The proposed theory of intergenerational equity also finds deep roots in the religious, cultural, and legal tradition of the world. Islamic law regards man as having inherited "all the resources of life and nature" and having certain religious duties to God in using them.<sup>44</sup> Each generation is entitled to use the resources but must care for them and pass them to future generations.

... The utilization and sustainable use of these resources, is in Islam, the right and privilege of all people. Hence, man should take every precaution to ensure the interests and rights of all others since they are equal partners on earth. Similarly, he should not regard such ownership and such use as restricted to one generation above all other generations. It is rather a joint ownership in which each generation uses and makes the best use of nature. according to its need, without disrupting or upsetting the interests of future generations. Therefore, man should not abuse, misuse or distort the natural resources as each generation is entitled to benefit from them but is not entitled to own them permanently.<sup>45</sup>

Islamic law supports collective restrictions, which are to be observed under a principle of good faith,

and collective rights, which are rights of the community of believers as a whole.<sup>46</sup>

In the Judeo-Christian tradition, God gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation.<sup>47</sup> This has been carried forward in both the common law and the civil law traditions. The English philosopher John Locke, for example, asserts that whether by the dictates of natural reason or by God's gift "to Adam and his posterity," mankind holds the world in common. Man may only appropriate as much as leaves "enough, and as good" for others. He has an obligation not to take more fruits of nature than he can use, so that they do not spoil and become unavailable to someone else for use - i.e., an obligation not to waste the fruit of nature.<sup>48</sup> To be sure, there are many instances where law has been used to authorize the destruction of our environment, but the basic thesis that we are trustees or stewards of our planet is deeply embedded.

In the civil law tradition, this recognition of the community interest in natural property appears in Germany in the form of social obligations that are inherent in the ownership of private property.<sup>49</sup> Rights of ownership can be limited for the public good, without the necessity to provide compensation to the owners. Thus legislatures can ban the disposal of toxic wastes in ecologically sensitive areas and invoke the social obligation inherent in property to avoid monetary compensation to the owner of the land. In common law countries such as the United States, local governments can do this through the exercise of the police power<sup>50</sup> - the power to protect the health and welfare of its citizens - or the public trust doctrine.

The socialist legal tradition also has roots that recognize that we are only stewards of the earth. Karl Marx, for example, states that all communities, even if taken together, are only possessors or users of the earth, not owners, with obligations to protect the earth for future generations.<sup>51</sup>

African customary law contains deep roots for the principle that we are only tenants on Earth, with obligations to past and future generations. Under the principles of customary land law in Ghana, land is owned by a community, which goes on from one generation to the next. A distinguished Ghanaian chief said, "I conceive that land belongs to a vast family of whom many are dead, a few are living, and countless host are still unborn."<sup>52</sup> Land thus belongs to the community, not to the individual. The chief of the community or head of the family is like a trustee who holds it for the use of the community. Members of the community can use the property, but cannot alienate it. Customary laws and practices of other African communities, and indeed of peoples in other areas of the world, also view natural resources as held in common with the community promoting responsible stewardship and imposing restrictions on rights of use.<sup>53</sup>

The non-theistic traditions of Asia and South Asia, such as Shinto, also provide deep roots for a respect for nature and for our responsibilities to future generations as stewards of this planet. In most instances they call for living in harmony with nature.<sup>54</sup> Moreover, the orthodoxy of Hinduism, Buddhism, and Jainism indirectly support the conservation of our diverse cultural resources in their acceptance of the legitimacy of other religious groups.<sup>55</sup>

### *III. Principles of intergenerational equity*

Three principles form the basis of intergenerational equity. First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options." Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous

generations. This is the principle of "conservation of quality." Third, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access."

The proposed principles recognize the right of each generation to use the Earth's resources for its own benefit, but constrain the actions of the present generation in doing so. Within these constraints they do not dictate how each generation should manage its resources. They do not require that the present generation predict the preferences of future generations, which would be difficult if not impossible. Rather, they try to ensure a reasonably secure and flexible natural resource base for future generations that they can use to satisfy their own values and preferences. They are generally shared by different cultural traditions and are generally acceptable to different economic and political systems.

While the principle of quality may be viewed as including the principle of diversity, they are separate and complementary. To illustrate this, we can invoke the analogy of a common law trust, whose corpus consists of investments in two different energy companies and a computer company. If the trustee shifts the investments into other energy and computer companies that turn out to be lower in quality as investments, the value of the trust corpus declines, but the diversity of the holdings does not change. By contrast, if the trustee combines all the investments into a single oil company, the value of the holdings may remain the same, but the diversity of the holdings is sharply compromised.<sup>56</sup>

In our planet, environmental quality may decline, but this does not necessarily reduce significantly the diversity of the resource base. Similarly, it may be possible for one generation to sustain the quality of air and water but substantially destroy the diversity of the resource base, as by a significant loss of genetic diversity. Certainly the two principles interact and feed upon each other. It is easier to maintain quality if there are many options available for doing so, and serious water pollution may cause fish to disappear. It is easier to conserve options when there is concern for maintaining quality. Both principles are essential for a robust planet for future generations and must be implemented in tandem.

### **Conservation of options**

Future generations are more likely to survive and attain their goals if they have a variety of options for addressing their problems. Conserving the diversity of the natural and cultural resource bases is designed to give our descendants a robust and flexible heritage with which to try to achieve a decent and healthy life.<sup>57</sup>

The principle of conserving options rests on the premise that diversity, like quality, contributes to robustness. This can be seen in the contribution of biological diversity to the robustness of ecosystems. If diverse strains and species are present in an ecosystem and the system is perturbed, some strains and species will survive and multiply. While the distribution of the biological population may change, the ecosystem remains viable.<sup>58</sup> By contrast, farmers producing monocultures have to work hard to preserve them, for they are easily eliminated through the invasion of weeds, insects, and other pests. Some theoretical scientific research suggests, however, that as systems become more complex (more species and a richer structure of interdependence), they may become more dynamically fragile. This suggests that we need to understand the special kinds of complexity that promote stability.<sup>59</sup>

Biological diversity as it relates to robustness encompasses change in the species and strains that make up the ecosystem.<sup>60</sup> This point is essential to intergenerational justice, for it means that change, which is essential for economic development, is an integral part of implementing the principle.

The wisdom of conserving options is reflected more broadly in conventional economic practices, such as maintaining diversity in the corpus of a common law trust, portfolios of investments, and national economies. In these latter examples, diversity is primarily viewed as a means of spreading risks to avoid reliance on only one investment or industry. At the same time it offers an effective strategy for improving economic wealth.

The question arises, however, whether conserving options does not disregard the needs of the present generation. It may be argued that the best way to conserve options is to preserve the status quo, which means that poor people in particular will continue to suffer.<sup>61</sup>

This argument applies the principle incorrectly. Conservation of options can be accomplished by new technological developments that create substitutes for existing resources or processes for exploiting them more efficiently, as well as by conservation of existing resources. Certainly any investment in the development of particular resources forecloses other options for that resource. The decision to convert an area to solar panels will foreclose use of the land for crops, at least for that period of time. But the solar panels may help to conserve more scarce energy supplies, such as helium-rich natural gas reserves, or to avoid fossil-fuel emissions that contribute to climate change. To the extent that a hydroelectric dam or mine will destroy a unique natural resource, however, we must proceed extremely cautiously, if at all, because future generations might be willing to pay us handsomely to conserve it for them.

The principle of conservation of options requires that on *balance* the diversity of the resource base be maintained. It acts as an important brake on those who would destroy biological diversity by clear-cutting tropical areas, developing crop monocultures to the exclusion of conserving wild cultivars, exhausting all known quantities of essentially non-renewable resources such as oil and helium-bearing natural gas, or discarding the cultural resources of all but a few dominant cultures.

### **Conservation of quality**

The principle of conservation of quality requires that we leave the quality of the natural and cultural environments in no worse condition than we received it. Recent generations have used resources of air, water, and soils as free resources for dumping their wastes, thereby passing on the costs of their activities to future generations in the form of degraded quality of air and water, with accompanying harms to plant and animal life and to human health.

The principle of conserving quality is consistent with environmentally sustainable growth. It does not mean that the environment must remain unchanged, which would be inconsistent in any event with conserving the present generation's access to the benefits of the planet. In determining whether one generation is conserving quality, trade-offs are inevitable. For example, we may exhaust more reserves of a natural resource and cause modest levels of pollution, but pass on a higher level of income, capital, and knowledge sufficient to enable future generations to develop substitutes for the depleted resource and methods for abating or removing pollutants. A framework must be developed in which such balancing can take place. Necessary components will be predictive indices of resource diversity and resource quality, baseline measurements, and an improved capacity to predict technological change.

It is natural to assume that present trends in natural and social systems will continue. However, breaking-points may exist in key variables beyond which these systems will reorganize and substantially change their properties. Predicting these breaking-points is thus of critical importance, probably more important than predicting specific technological changes, since such breaking-points would indicate the need for deliberate human intervention.<sup>62</sup>

According to the Gaia hypothesis, the Earth's biosphere is a complex entity that has a homeostatic feedback system capable of maintaining an optimal physical and chemical environment for life on

Earth.<sup>63</sup> Even if this is the case, there is still a question of whether there are limits in critical variables beyond which this homeostatic quality no longer obtains.

### **Conservation of access**

Conservation of access gives the members of the present generation a reasonable, non-discriminatory right of access to the natural and cultural resources of our planet. This means they are entitled to these resources to improve their own economic and social well-being provided that they respect their equitable duties to future generations and do not unreasonably interfere with the access of other members of their generation to these same resources.

This offers a principle of justice between generations and between members of the same generation. The refinement of what conservation of access means as applied to members of the present generation is extremely complex. It implies both that the patrimony itself to which they have access should be comparable in quality and diversity (or robustness) to previous generations and that they should have a minimum level of resources so that they can in fact have access to such a patrimony. Thus, members of the present generation must not degrade the patrimony available, and to the extent that some members are too impoverished to have effective access, must assist them to gain such access.

### *IV. Intergenerational rights and obligations*

The principles of options (diversity), quality, and access form the basis of a set of intergenerational obligations and rights, or planetary rights and obligations, that are held by each generation. These rights and obligations derive from each generation's position as part of the intertemporal entity of human society. Planetary intergenerational rights and obligations are integrally linked; the rights are always associated with obligations. They represent in the first instance a moral protection of interests, which must be transformed into legal rights and obligations.

Planetary rights and obligations coexist in each generation. In the intergenerational dimension, the generations to which the obligations are owed are future generations, while the generations with which the rights are linked are past generations. Thus the rights of future generations are linked to the obligations of the present generation. In the intragenerational context, planetary obligations and rights exist between members of the present generation. They derive from the intergenerational relationship that each generation shares with those who have come before and those yet to come. Thus, intergenerational obligations to conserve the planet flow from the present generation both to future generations as generations and to members of the present generation, who have the right to use and enjoy the planetary legacy.

Intergenerational rights of necessity inhere in all generations, whether these be immediately successive generations or ones more distant. There is no theoretical basis for limiting such rights to immediately successive generations. If we were to do so, we would often provide little or no protection to more distant future generations. Nuclear and hazardous-waste disposal, the loss of biological diversity, and ozone depletion, for example, have significant effects on the natural heritage of more distant generations.

Intergenerational planetary rights may be regarded as group rights, as distinct from individual rights, in the sense that generations hold these rights as groups in relation to other generations - past, present, and future.<sup>64</sup> They exist regardless of the number and identity of individuals making up each generation. When held by members of the present generation, they acquire attributes of individual rights in the sense that there are identifiable interests of individuals that the rights protect. However, those interests derive from the fact that those living now are members of the present generation and have rights in relation to other generations to use and benefit from planet Earth. The remedies for violations of these rights will benefit other members of the generation, not only the individual.

More broadly, intergenerational rights may provide a theoretically attractive framework for linking a number of disparate rights that have inherently a temporal dimension. These include cultural rights and rights to development, which implicitly assume that there are continuing processes that are to be protected.

It has been argued that future generations cannot have rights, because rights exist only when there are identifiable interests, which can only happen if we can identify the individuals who have interests to protect. Since we cannot know who the individuals in the future will be, it is not possible for future generations to have rights.<sup>65</sup>

This paradox assumes the traditional conceptual framework of rights as rights of identifiable individuals. But planetary intergenerational rights are not in the first instance rights possessed by individuals. They are, instead, *generational* rights, which must be conceived of in the temporal context of generations. Generations hold these rights as groups in relation to other generations - past, present, and future. This is consistent with other approaches to rights, including the Islamic approach, which treats human rights not only as individual rights, but as "rights of the community of believers as a whole."<sup>66</sup> They can be evaluated by objective criteria and indices applied to the planet from one generation to the next. To evaluate whether the interests represented in planetary rights are being adequately protected does not depend upon knowing the number of kinds of individuals that may ultimately exist in any given future generation.

One might still ask whether it is not preferable to speak only of planetary obligations toward future generations without corresponding intergenerational rights. Can intergenerational obligations exist without rights?<sup>67</sup> While rights are always connected to obligations, the reverse is not always true. Theoretically, an obligation need not always entail a right. For example, a moral obligation of charity does not give those who benefit a right to charity.

While this approach may be attractive, it ignores the fundamental temporal relationship that each generation has to all other generations and that gives rise to the rights of each generation to share equitably in the use of the planet and its natural resources. These rights focus discussion on the welfare of generations, what each generation is able to have and to enjoy, in a way that obligations cannot. If obligations of the present generation are not linked with rights, the present generation has a strong incentive to bias the definition of these obligations in favour of itself at the expense of future generations. Intergenerational rights have greater moral force than do obligations. They provide a basis for protecting the interests of all generations in a healthy and robust planet.<sup>68</sup> The content of intergenerational rights is framed by the principles of intergenerational equity. Within this constraint, each generation has the responsibility to set criteria for defining the actions that infringe upon these rights. Appropriate criteria would be whether activities have a significant impact, either spatially or over time, whether the effects are irreversible or reversible only with unacceptable costs, and whether the effects will be viewed as significant by a substantial number of people. Certain categories of actions can be identified as likely infringing upon intergenerational rights. They include the following:

- wastes whose impacts cannot be confidently contained either spatially or over time;
- damage to soils such that they are incapable of supporting plant or animal life;
- tropical-forest destruction sufficient to diminish significantly the overall diversity of species in the region and the sustainability of soils;
- air pollution or land transformations that induce significant climate change on a large scale;

- destruction of knowledge essential to understanding natural and social systems, such as residence decay times of nuclear wastes;
- destruction of cultural monuments that countries have acknowledged to be part of the common heritage of mankind;
- destruction of specific endowments established by the present generation for the benefit of future generations, such as libraries and gene banks.

Some international agreements already obligate countries to guard against such actions. These include the London Ocean Dumping Convention, which controls dumping of hazardous and nuclear wastes in the marine environment; the Antarctic Treaty and the new Environmental Protocol; the World Soils Charter; the Montreal Protocol on Substances That Deplete the Ozone Layer; and the World Heritage Convention.

Intergenerational planetary rights may also be linked to certain procedural norms, which are important to achieving the substantive norms. For example, access to information, public participation, and long-term impact assessments are emerging as potentially important instruments for achieving intergenerational equity.

Enforcement of intergenerational planetary rights is appropriately done by a guardian or representative of future generations as a *group*, not of future individuals, who are of necessity indeterminate. While the holder of the right may lack the capacity to bring grievances forward and hence depends upon the representative's decision to do so, this inability does not affect the existence of the right or the obligation associated with it.

Developments in international law outside the field of the environment make acceptance of intergenerational rights a natural and desirable evolution. Indeed, international human rights law - the genocide convention, and the prohibition against racial discrimination, to cite two examples - are arguably directed as much to the protection of future as to present generations. The extinction of, for example, an entire people is more odious in law than the murder of an equal number of people constituting a minority of each of several groups. Similarly, discrimination denies an "equal place at the starting gate" not only to the generation of the suppressed group, but (by implication) also to future generations. Provisions in other human rights agreements refer to rights of children and of the elderly, and to education and training, which are implicitly temporally oriented.

Intergenerational rights and obligations may have implications for population policies. While the existence of the rights does not depend upon knowing the composition of the future generation, nevertheless, if the earth's population continues to grow rapidly, the amount of diversity and degree of quality that must be passed on will be higher than if the population in the future were at the same level or less than it is today. Whether a generation chooses to meet its obligations by curtailing exploitation, consumption, and waste or by constraining population growth is a decision 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 this choice.

Almost every policy decision of government and business affects the composition of future generations, whether or not they are taken to ensure their rights under the guidelines enunciated above. Decisions regarding war and peace, economic policy, the relative prosperity of different regions and social groups, transportation, health, education - all influence the demographics and the composition of future generations by affecting the lives and fortunes of the present generation. This opens the possibility that all decisions deserve to be scrutinized from the point of view of their impact on future generations. The possibility that intergenerational equity may place limits on our actions is an important new area of research on sustainable development. But such constraints must be applied narrowly, however, so that concern for future generations does not become a blunt

instrument to thwart proposals for change. The purpose must be only to protect against long-term environment damage, such as toxic groundwater pollution, radiative pollution of the oceans, soil degradation, etc., whose effects are difficult or impossible to reverse unless there are extremely compelling reasons to do so beyond profitability.

Planetary rights of future generations provide a normative framework for implementing environmentally sustainable development. They mean that we do not have to rely on a sense of patronizing generosity by the present generation, but on a fundamental entitlement of future generations. It is an entitlement that we ourselves, as members of the present generation, held in relation to our ancestors and that we need now to protect for our descendants.

### *V. Implementation of intergenerational equity*

Strategies for implementing intergenerational equity are set forth in detail elsewhere.<sup>69</sup> Several of them merit special attention in this chapter.

### **Representation to future generations**

Future generations are not effectively represented in the decision-making processes today, although the decisions we make today will determine their initial welfare. While future generations may be willing to pay us handsomely to prevent certain actions or to have us undertake others, they have no way of voicing this preference. Representation must take place in several different forms: in the market place, in legislative and administrative decision-making, and in judicial decision-making.

Future generations are not effectively represented in the market place today; they must be. This requires that we understand the fundamental entitlement among generations correctly, so that we recognize that future generations have an equal claim with the present generation to use and benefit from the natural environment. Once we recognize this entitlement of equality among generations, economic instruments can be developed to achieve intergenerational equity efficiently.<sup>70</sup>

In administrative and judicial decisions, we can appoint and publicly finance an office that has responsibility for ensuring that the interests of future generations are considered and for ensuring that laws regarding our environment and natural resources are observed, for investigating complaints, and for providing warnings of pending problems. States could give standing in their national courts and administrative bodies to a representative of future generations, who might function as a guardian *ad litem*. Another approach is to designate an ombudsman for future generations or to appoint commissioners for future generations. These could operate internationally, nationally, or locally. The World Commission on Environment and Development recommended that countries consider a national ombudsman.<sup>71</sup>

### **Development in international legal instruments**

To encourage cooperation between countries and among communities to fulfill obligations to future generations, it is useful to elaborate and codify the relevant norms of intergenerational equity. Codification reduces the ambiguities about expected behaviour and defines cooperative behaviour from uncooperative behaviour.

Some of these legal instruments will be binding. Others may be non-binding legal instruments, or may become binding over time. To the extent that the norms represent customary international law, they will become binding upon all countries, whether or not they are party to the relevant agreement. We need to encourage both general legal instruments articulating intergenerational rights and obligations in relation to our planet, as well as binding agreements directed to conserving specific resources, such as forests and living resources essential to maintaining biological diversity, or to

pollution prevention.

International regimes to manage or to coordinate measures for managing particular natural resources or environmental pollutants are important. They facilitate the development and exchange of information, make it more difficult for a party to defect since there are costs involved, and may contribute to the developing of new norms. It is important that relevant states participate in the regime in order to avoid pollution havens or free riders in the international community. This calls for states to provide incentives and disincentives to encourage participation.

### **Planetary ethos**

To implement intergenerational equity, we need an ethos that is planetary in scope and encompasses all generations. This requires that we raise public consciousness and educate people about environmentally sustainable development. Communities have a right to know about the environmental contaminants in their area and about the sustainability of natural-resource consumption patterns. Nongovernmental organizations, whether corporate or environmentally based, have a particularly important role in ensuring this. The information revolution that is upon us should greatly assist in providing the information necessary to do this and in mobilizing public participation in developing and implementing measures to achieve intergenerational equity.

If we review the progress of the international community in addressing intergenerational environmental concerns in the last two decades, we can conclude, on the one hand, that it is highly insufficient to the task. But if we compare where we are today to 1972, we cannot help but be impressed by the rapid learning curve of countries in addressing these issues.

The issue for 1972 was the reconciliation of environment and development. The issue in 1992 is achieving environmentally sustainable development and committing to a new ethos of intergenerational fairness.

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