



## THE LEGAL FRAMEWORK OF INTERGENERATIONAL EQUITY: A CRITICAL ANALYSIS

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### **Abstract**

*Numerous questions of definition arise when seeking to concretize our duties towards future generations and turn them into legally binding principles such as when we talk about the future generations, exactly who are we referring to—individuals or the entire collective? What must we protect specifically if their interests are to be appropriately taken into account? Which principles should guide the actions we take today? These are the questions which the legal framework of the intergenerational equity seeks to address. The basis of the legal framework of the concept of intergenerational equity has been developed by Edith Brown Weiss in her book titled “In Fairness to Future Generations” (Weiss, 1988). This research paper will be based on her writings, but it will also include the ideas and thoughts of other research scholars as well. In order to respond to the aforementioned queries, it is necessary to first establish the identities of future generations as well as their position as legal subject and the rights that are intended for them. Following that, the principles raised, in work of Edith Brown Weiss concerning conservation of quality, options, and access will be discussed. And at the end, some common criticisms of the framework will be raised.*

**Keywords:** Intergenerational Equity, Future Generations, Legal Framework.

### **1. Introduction**

There are numerous international legal sources that refer to the idea of intergenerational equity. The International Convention for the Regulation of Whaling, which was established in 1946, acknowledged that it was in everyone's best interest to protect "for future generations the vast natural treasures represented by the whale stocks" (ICRW, 1946). The World Commission on Environment and Development (hereinafter called WCED) elaborated on the subject more than 40



years later, emphasizing that the ultimate purpose of sustainable development is to enable future generations to achieve their own aspirations (WCED, 1987). The Rio Declaration on Environment and Development, which was later adopted, as well as the Millennium Declaration of the United Nations General Assembly, directly reference the WCED's findings (UNMD, 2000).

Numerous international accords have been made reference to the need to protect future generations' interests in the wake of the WCED report and the Rio Declaration. According to Article 3.1 of the United Nations Framework Convention on Climate Change, "Parties shall protect the climate system on the basis of justice and in conformity with their common but differentiated duties for the benefit of current and future generations of people". The idea has also been integrated into other documents, such as the Aarhus Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters and the preamble of the Convention on Biological Diversity.

The UNESCO Declaration on the Duties of the Present Generation toward Future Generations, among others, contains the idea of intergenerational responsibilities (UNESCO, 1997). It is evident that the idea of a responsibility to future generations has been received pretty well in the international community given the extensive support exhibited for the concept of intergenerational equity in numerous international declarations and accords. But the objective of this research paper is not to provide a comprehensive overview of the worldwide community's support for the hypothesis. Instead, the legal framework for intergenerational equity will be introduced in this research study. The exposition will draw inspiration from Edith Brown Weiss' publications to some extent, but it will also discuss the theories of other academics. By defining the topic, it will make it clear who is meant while talking about future generations. Before reviewing the framework created by Edith Brown Weiss to safeguard intergenerational equity, the legal standing of future generations will also be explored.

## **2. Future Generations**

The term Future generation has not yet been given a clear definition that is acknowledged as the conventional meaning. Some assert that future generations refers only to living children of the current generation, while other prefers significantly wider interpretation that also includes the current generation's direct descendants. A continuum can also be used to represent upcoming generations, encompassing all future generations without making any distinctions based on where they are on the time frame (Malhotra, 1998).

Weiss advocates the latter interpretation, viewing future generations as a larger group that includes all future descendants of mankind until the end of our time (Weiss, 1988). It does seem desirable when discussing intergenerational justice to adopt a more comprehensive meaning of the terminology, one that is not restricted to short time period immediately after present generation. A short-term definition of the word future generation is not appropriate for purpose if the goal is to



achieve the long-term objective of the sustainable development.

Furthermore, supporters of the ecological justice contest the notion that the phrase should only be used to refer to future generations of humans. They contend that this anthropocentric perspective ignores the need to preserve the environment in order to protect other species, and as a result fails to acknowledge the intrinsic value of nature (Taylor, 1998). But because this concept has so far only had a little impact on the discussion, it will not be discussed further in this research paper.

### **3. The Status of Future Generations as a Legal Subject**

As a legal subject, an actor or organization must have legal capacity to be recognized with the power to carry out rights and obligations. It's contentious to claim that future generations who don't yet exist have this capacity (Redgwell, 1999). Historically, the only acknowledged legal entity in international law is states. Over time, the focus has widened to include both individuals and to a lesser extent groups of people (Boyle & Freestone, 1999). International human rights law that is concerned with the interaction between the individuals and the states provides one example of this. Human rights law acknowledges individuals as subjects of the law who have specific rights that the state is obligated to uphold (Boyd, 2012). Accepting possibility of identifying group of people as right bearers represents yet another step toward enlarging the scope. For instance, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights both includes the right to self-determination for all people as well as granting minorities and native peoples a certain amount of autonomy (Malhotra, 1998).

In fact, as both areas are concerned with defending the welfare of people, intergenerational rights, and the study of international human rights are related. Intergenerational rights, however, target a bigger collective rather than a single person, which is important for the framework to continue to be operationalized (Segger, Szabo, & Harrington, 2021). It would be required to determine the precise interests of an unborn creature if intergenerational rights were to target future generations rather than the greater community. Since there is no way to know whatever preferences that person will have, doing so would be impossible. However, it is simpler to see that many people share a common desire to take advantage of a healthy atmosphere (González-Ricoy & Gosseries, 2016). Weiss decides to classify the rights of the future generations as planetary rights, a kind of collective rights which exists irrespective of characteristics and numbers which constitute future generations (Weiss, 1988).

Domestic law also provides evidence in favor of the claim that future generations are capable of bearing rights. Unborn descendants of current generations are granted ability to inherit in various domestic legal systems around the world. In so far as both cases concern the rights of a subject who does not yet exist, their status is similar to that of future generations (Beckerman & Pasek, 2001).



Finally, it should be highlighted that while though future generations are not currently given legal status, such change is not wholly unlikely to occur. The field of international law has seen significant growth during the past century, expanding to recognize an increasing number of geographical regions and legal subjects. The acknowledgement of future generations' legal competence may well be a logical step given these circumstances, particularly in light of swift developments in the international human rights law and international environmental law (Segger et al., 2021).

#### **4. Safeguarding the Interest of Future Generations**

The safeguarding of future generations' interests has been covered in great detail by numerous scientific scholars. Weiss has created one of the most significant works, as was previously said. She has created an intelligible legal doctrine of intergenerational equity the details of which will be discussed further in sub-sections.

##### **4.1. Approaches to the Legal Doctrine of Intergenerational Equity**

There are two main approaches to develop strategies administering the use of natural resources and managing the environment: one is called the preservationist approach and the other one is called an opulent approach. Under preservatist approach, it is practically impossible to use any non-renewable resources because the environment must be kept in the same condition as it was when it was first created. While on the other hand, an opulent approach adopts the exact opposite stance and permits unlimited consumption. It makes the assumption that increasing our wealth today, and leaving a strong economy to our heirs is the best approach to ensure the prosperity and well-being of future generations. However, this method ignores the requirement that economic prosperity be embedded in a robust natural environment in order to represent real wealth which does not incur expenses in the future. In the end, a compromise must be made (Weiss, 1988).

The strategy that while not going beyond, protects the environment for present and future generations while also allowing certain resource usage. This would enable a strong economic system with a solid ecological foundation to be handed on to future generations. Returning to the goal of intergenerational equity can provide more clarification on how to proceed with safeguarding future generations' interests. According to Weiss, the goal of preserving intergenerational equity is that "the welfare and well-being of future generations must be maintained" (Weiss, 1990).

To maintain the ecological processes, environmental circumstances, and cultural resources required for the survival of the human species, as well as to maintain a healthy and respectable human habitat are three distinct aspects that must be taken into account in order to achieve this goal (IUCN, 2001). Additionally, rules created to safeguard future generations' interests must be fair to all generations which is reasonably obvious, value-neutral and foreseeable as well as



acceptable in the majority of cultural, economic, and political systems (Weiss, 1988).

## **4.2. The Three Principles of Intergenerational Equity**

The challenges of resource depletion, environmental degradation, and problems with access to the benefits and usage of natural resources are all directly related to the ideas that Weiss goes on to lay out. Principles for preserving options, preserving quality, and preserving access are defined in order to effectively address these issues.

### **4.2.1. The Principle of Conservation of Options**

The first principle, conservation of options, is to guarantee the preservation of a healthy natural world. The objective is that the future generations should pass on a flexible environment and have the same ability to choose how to achieve their goals and have healthy lives as the current generation. If a stable environment is to be maintained, variety in the resource base—both in terms of the number of resources and the diversity within a population of species—is seen to be crucial. However, preserving options does not necessitate maintaining the status quo. As long as the general diversity of the resource base is preserved, needs of the current generation, like fighting poverty, may be met. It is also an acknowledged fact that since ecosystems is dynamic, long-term predictions cannot be made about them. A diversified and adaptable resource base as a whole, rather than each particular item in its current state, needs to be safeguarded (Weiss, 1988).

### **4.2.2. The Principle of Conservation of Quality**

The second principle i.e., conservation of quality calls for safeguarding that future generation continue to enjoy same level of the natural environment that we do. Future generations' health and welfare shouldn't be jeopardized by air, water, or soil pollution. The resources' quality shouldn't be compromised to the point where future generations won't be able to use them for the things they value most. Furthermore, the principle mandates that high sanitation costs not be passed on to the future generation. Instead, it is significant to uphold the polluter pays principle, which requires that any costs associated with a current activity be borne by the person who is now engaging in it. Similar to the first principle, maintaining quality does not require complete avoidance of environmental changes. Once more, it is important to safeguard the environment's overall quality. Certain precise circumstances may change, and most likely they will (Weiss, 1990). At this point critique has been raised that the requirement to protect the environment's overall quality is so ambiguous that it would have no practical application (Collins, 2007).

### **4.2.3. The Principle of Conservation of Options**

In contrast to the first two principles, the third one—conservation of access—focuses particularly on the interactions between people of the same generation. This principle's underlying



premise stems from the fair foundation upon which philosophy of intergenerational equity is based. If one agrees with the claim that principles of equality must govern relationships between current and future generations, then the same should be true for relationships within individual generations. Therefore, wealthier members of the current generation must help less fortunate members realize their entitlement to enjoy and benefit from the planet's legacy as well as their conservation responsibility (Weiss, 1988). The issue of conflicts between interests of future generations and those of the less fortunate members of the current generation is brought up by Lynda Collins, an assistant professor of law at the University of Ottawa. She uses the use of DDT to fight malaria in Africa as an illustration of the issue. Such a strategy has ability to save the lives and alleviate much suffering in the present, but in the long run it will destroy biodiversity and jeopardize the health of future generations. Collins, however, also points out that even in presence of such conflicts the framework created by Weiss can be helpful for analyzing the pertinent interests and for coming up with a solution (Collins, 2007).

#### **4.3. The Planetary Obligations Based on the Three Principles of Intergenerational Equity**

Weiss identifies three types of planetary obligations which must be upheld in safeguarding the interest of future generations, directly following from the three principles. It is necessary for the current generation to preserve quality, diversity, and access. The duties are global in a sense that these are drawn from our status as human beings and are meant to be applied universally. The nation-state is ultimately responsible for making sure the responsibilities are met (Weiss, 1988).

Weiss elaborates on the obligations and identifies five particular duties that must be met: the duty to preserve the resources, the duty to safeguard equitable use, the duty to evade negative impressions, the duty to prevent disasters, the duty to diminish damage, the duty to offer emergency assistance, and last but not the least the duty to make up for environmental harm. First; the present generation is required by the obligation to conserve resources to protect both renewable and non-renewable natural resources. The goal is to change the starting point for resource management rather than to completely stop all resource extraction. Resources should be conserved and sustainably managed instead of being used without restriction, unless there are compelling reasons to do otherwise, if there are no strong reasons not to. The use of resources is typically permissible as long as it is done in a way that is effective and sustainable, while strict preservation may be required for some endangered species and unique natural resources (Weiss, 1988). Second, a reasonable, non-discriminatory access to the planet's legacy is what is meant by the obligation to ensure equitable usage. It includes obligations to uphold the rights of others and to support less fortunate groups in exercising their right to access and make use of resources (Weiss, 1988). The third duty is to avoid harmful impacts, is similar to the precautionary principle in that it emphasizes the necessity for procedural environmental rules and focuses on preventing and mitigating environmental damage. Before any potentially damaging action is carried out, appropriate environmental impact assessments should be carried out and notice to impacted parties should be given (Weiss, 1988). The fourth duty is to prevent disaster avoidance, damage reduction, and to





provide emergency aid comprise. It relates to accidents or natural disasters that affect shared natural resources, disasters that have significant environmental repercussions across international boundaries, and accidents or natural disasters that harm a state's collective history. As part of one's responsibility to prevent disasters, one must implement the necessary safety standards and protocols to lessen the likelihood and possible severity of an accident. If an accident or a disaster still happens the afflicted state must take all reasonable steps to lessen the harm, such as alerting neighboring nations that might be impacted. Additionally, other nations are required to help the affected nation, including by sending rescuers or splitting expenses (Weiss, 1988). Last but not least, the fifth obligation, to make amends for environmental harm, compels nations to do so if their actions—or lack thereof—have contributed to the development of the issue that harms future generations or other members of the current generation (Weiss, 1988).

#### **4.4. The Planetary Rights as an Intergenerational Perspective**

A corresponding right for someone else is always linked with a duty to preserve the interests of a group or individual. The doctrine of intergenerational equity creates global rights to quality, options and access in accordance with planetary obligations. In an intergenerational perspective, the group as a whole is entitled to certain rights irrespective of the number and diversity of its individual members. However, rights should be viewed as individual rights on an intragenerational basis. The state is in charge of ensuring that the planetary rights are upheld (Weiss, 1988).

#### **4.5. The Criticism raised against Intergenerational Aspect of Weiss' Theory**

Uncertainty surrounding the identities and preferences of future generations is a major point of criticism made of Weiss' theory. However, issues with the theory's temporal elements are frequently raised as well. Weiss contends that there are no age restrictions on the planetary rights; they apply to all generations. While on the other hand, the critique contends that our responsibilities to future generation should be temporary. For instance, Farber and Hemmersbaug express concern that the general public now would not support giving too much thought to implications that might occur more than one generation in the future. Therefore, acting to save future generations against popular desire would be contrary to democratic norms (Farber & Hemmersbaugh, 1993).

When discussing how long the obligations should last, Avner de-Shalit goes even further. According to De-Shalit, there exist obligations between the current generation and future generation but only in as much as they are part of same transgenerational community. The transgenerational community is made up of generations which are anticipated to have comparable tastes and interests and who share the same fundamental moral principles. It is predicted that the transgenerational community would survive for 8 to 10 generations. However, negative obligations—obligations to refrain from doing harm that cannot be undone—are imposed on even



later generations (De-Shalit, 1995).

Collins concurred that if a transition to recognizing the idea of responsibility towards future generations were to take place a similar constrained time range may be better. She also makes the point that a time frame of 6 to 12 generations would be consistent with customary legal principles, such as the Iroquois tribe's seven-generation norm (Collins, 2007).

Weiss' theory has also come under criticism for failing to adequately account for issues with equity between global south and global north. Weiss' theory's intergenerational components have drawn criticism, leading some to believe that these parts of the framework are not sufficiently developed. As a result, there is a chance that addressing current issues in the developing world will take precedence over ensuring the requirements of future generations. Additionally, the idea has come under fire for failing to adequately take into account moral obligations that result from rich world colonialism of developing world (Collins, 2007).

The question of future generations' legal standing is one of the theory's most important practical critiques. It does seem illogical given the kinds of subjects that have often been given legal status to refer to future generations as legal subjects. Given the general growth of international environmental law and human rights law, as was mentioned above, such a development is not implausible (Gaillard & Forman, 2020).

## **5. Conclusion**

According to the idea of intergenerational equality, the rights of posterity are a type of collective right that belong to the entire generation, regardless of who belongs to it or how many people there are in it. It is the duty of every generation to preserve access, quality, and access in order to protect the interests of succeeding ones.

Weiss's theory is not without flaws and criticism. Future generations' tastes and circumstances are unpredictable, and the length of our duties is being questioned. It is also being attacked for failing to adequately take into consideration the requirements of emerging nations and historical issues like colonization. However, the idea succeeds in creating a logical theoretical framework for safeguarding future generations. It might not have all the solutions, or be fully developed in every way, but it can act as a starting point for policies that protect future generations' interests. The knowledge of what issues can be regulated by the legislation, or whose interests can be accorded legal worth, is always changing. The next logical step may very well be to convert moral obligations for future generations into legal obligations if consensus can be gained on their existence.





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