

Intergenerational Justice

Elderly Client Adviser magazine has traditionally assisted legal advisers in their support of the property rights of older people. In more recent years this has expanded to assist legal and other caring professionals in both the private and public sectors in their support of the broader interests of older people. That remains the magazine's mainspring. But even as this shift in emphasis has developed it has also become apparent that in an increasingly multi-generational world legal advisers, experts and policy-makers will have to grapple with the concept of 'intergenerational justice'. This is an especially topical subject as younger politicians in continental European countries increasingly appear to perceive that they and their peers are being taken advantage of by older people. Older people who they argue were educated for free, were always in employment, worked relatively short hours, retired young, and mortgaged their nation's future to pay for their own state subsidised pensions and extensive welfare provision. In short some nations are entering an era of intergenerational disputes which are reminiscent of historical class and industrial conflicts. Jörg Tremmel is the Geschäftsführender Vorstand (Managing Director) of the 'Stiftung für die Rechte Zukünftiger Generationen' (Foundation for the Rights of Future Generations.) He explains what intergenerational justice means and how it will become of crucial socio-legal importance during the next few decades.

'It is known by everyone that to put words into action is much harder than to put action into words' (Maxim Gorky)

The concept of generational justice first appeared in the late 1980's in texts concerning the future of the welfare state, in particular that of the German pension scheme. From the middle of the 1990's it was used to help describe 'the generation gap' in the context of the relationship between the old and young. The concept of the generation gap has existed in Germany and elsewhere for many centuries and its meaning has been the subject of much discussion, but it is only now 'that the furious question of generational justice has penetrated into German politics' As discussions on sustainability began, the subject of 'generational justice' or the rights of future generations attained a central role within them. In the meantime the concept of has conquered political agendas. The German Green party's manifesto (March 17th 2002) contains a dedicated subsection.. It is also playing a key role in discussions concerning the new manifesto of the Social Democratic Party and in the manifesto of the Free Liberal Party this subject is already more often referred to as 'social justice.' According to trend researchers has predicted that over the next few years 'Generational Justice' will become the keyword of our society. The media is using the term also more and more often (see Newsweek, June 30, 2003/July 7, 2003, p.28 or Sunday Times June 29, 2003, p.25)

Generational justice is the most important theory supporting the arguments explaining why nature and the environment should be protected. By comparison theories, focusing on specifically human interests or ecological issues such as the rights of fauna and flora are as conclusive and persuasive. This article is particularly interested in addressing the relationship between generational justice and sustainability. Looking for material in libraries or on the internet about 'intergenerational justice' will demonstrate that there is significantly more material available on 'sustainability'.

Since the earliest days of the environmental movement, the rights and interests of future generations have been invoked in argumentative discourse. For instance:

- Barely a budget debate passes in the German parliament without the Minister of Finance justifying his planned cuts on the grounds of their generational justice or ‘sustainability’
- On discussion programmes, members of the younger generation use moral issues to put their opponents from the older generations under intense pressure: Is it fair when the younger generations stand to inherit the legacies of the greenhouse effect, the holes in the ozone layer and nuclear waste from previous generations? Is it fair when the unemployment rate is higher amongst young people than amongst the German population as a whole? Is it fair when the younger generations are likely to receive smaller old-age pensions than the older generation? And this when the younger generations are not allowed to elect their members of parliament? And when the younger generations stand to inherit a heavily-indebted state? Where more than twice as many young Germans than pensioners are receiving income support? Is it fair when barely any under-forty-year-olds are to be seen in parliament, in corporate boardrooms and on the editorial committees of the press?
- Advocates of the older generation might retort: Is it fair that older people had few opportunities to take holidays or gain a university education when they were young? Is it fair that young dot.com business start-ups can become multi-millionaires at 25? That the post-war generation spent working weeks of up to 80 hours clearing up the rubble, and had to start afresh from nothing?

The standpoints of both sides are indisputable and the definition of ‘Generational Justice’ is not easy. It is unhelpful that ‘generational justice’ has already become a byword in the narrow agendas of political parties. But the demand remains hollow. There is neither a precise definition of this concept nor is there any practical conception of how such justice is to be achieved.

What is in a generation?

Definitions are important to lawyers. A useful definition avoids much confusion. According to the Duden dictionary, the term ‘generation’ means ‘an entire group of people who were born around the same time’. This is the narrow definition. It derived from the Latin ‘generatio’ or ‘fertility’ and now describes the range of existing ages, in which children become parents and parents then become grandparents. Women in Germany today give birth to their first child, on average, at the age of 29. The under-thirties belong to the younger generation, those between 30 and 60 years of age belong to the middle-aged generation and the older generation are the over-sixties. ‘Generation’ is also used in English, German and many other languages to describe an entire group of people alive today. This implies only one generation exists at any one time. This is the wide definition.

How do these different definitions affect a statement by a 28 year old: ‘My generation is being put at a disadvantage but the future generations to come will be put at an even greater disadvantage’? In the first limited definition the expression ‘my generation’ relates to Germany and 26, 7 million people aged 0 to 30. If the wider definition is applied, 82,4 million people are caught. The difference between the two interpretations has long been neglected in scientific debates about generational justice. Legal debates have focused on the wider definition where the expression ‘future generations’ has been discussed repeatedly. The question of how to introduce a representative body for the interests of younger generations was also raised. A considerable change to the debate arises when one takes on the more limited definition and starts talking about ‘succeeding generations’ That expression encompasses not only generations unborn but also present children and youth. The need for a representative body for the unborn and young stems from their innate lack of voice meaning they cannot defend their interests in conflicts of distribution. Neither unborn or young have the vote and thus lack influence. Important socio-economic decisions are invariably taken by the middle-aged and older generations although the decisions affect all. The younger a citizen is the closer his fate is to that of the first of future generations who have even less influence. The combination of a present younger generation with future generations is important legally as, in legal terms, as soon as a baby is born it has automatic access to enforceable basic rights. The term generational justice means justice between generations, not justice within one generation. To give an example using a related word, ‘gender justice’, implies justice between the male and female and not within a group of women only. Attempts to use the term ‘generational justice’ as a definition for both of the above interpretations is simply not possible, for use in the criteria for a ‘scientific’ definition, because such a broad definition would hinder any concrete progress.

Towards a definition of intergenerational justice.

One possible working definition of generational justice might be based on the principle of equality, understanding the term to mean that it would be unjust to treat something that is homogenous and of the same worth, in a different manner. Most constitutions state: ‘Before the law all people are equal’. This approach is consistent with other connotations of the word justice. ‘Gender justice’ means the sexes should be treated

equally. ‘Racial justice’ means the races should be treated equally. If we should regard all generations as equal then a preliminary definition for ‘Generational Justice’ might be: ‘No generation should be deliberately favoured or disadvantaged over another’

But not only should one generation not be disadvantaged over another, but arguably an improvement of the lot of future generations is an ethically necessary aim. Generations to date have experienced economic growth and increasing affluence. Justice requires that this remains possible for future generations. For example one of the aims for previous generations of parents was to ensure a better future for their children. Therefore a positive intergenerational ‘educational savings rate’ should be incorporated into the lives of today’s generations with a view to benefiting future generations. More generally improving the quality of life is more desirable than simply maintaining it. But even maintenance is preferable to a worsening quality of life. The breadth of the issues involved suggests that it may never be possible to precisely determine the actual state of the equality of treatment of various generations at any point in history. But using the so-called ‘precaution-principle’ as a guide the generations of today can strive to improve the situation for those of the future whilst avoiding the risk of inadvertently worsening the situation. From the meta-ethical standpoint that ‘justice is what all the participants in a free discussion deem to be just’ the majority may also agree with the attempt to improve the global situation for the benefit of future generations.

Some preliminary conclusions

‘Intertemporal generational justice’ (using the wide definition of ‘generation’ which implies interaction between past, present and future) may be defined as follows:

‘Generational justice is attained when the opportunities for succeeding generations to satisfy their needs are at least as much as those of the generation wielding power today.’

The prospects of every succeeding and future generation should be at least as great as those preceding them. For example, the middle-aged generation of today should not be placed in a better position than today’s younger generation at the expense of the generations to follow who will consequently be worse off than both of them.

Additional observations.

Do the definitions of future and succeeding generations refer to them as entities or as members of the future and also succeeding generations? The answer has far-reaching implications. Imagine generation ‘A’ wants to fairly share out a non-renewable resource ‘X’ with future generation ‘B’. There are 6 existing units. Because of population growth generation B will be twice as large as generation A. Generation A would not only have to save half but more like two thirds of resource X. If an individual from a future generation, is, through no fault of their own, worse off than a member of today’s generation this cannot be classified as justice between generations. People alive today must consider that the ways of behaving in a generationally just manner is by either making a conscious effort to save or by reducing the population growth rate.

The principle of ‘generational justice’ will only be able to gain acceptance as a model for society, if it does not conflict with dominant western political ideologies: conservatism, liberalism, socialism and conservatism. The protection of nature and other natural resources connects with conservative ideas. For more left-wing trends the idea of solidarity with future generations and their equality (at least not a worsening of the situation) is a link. András Lányi, a left-wing Hungarian and one of the initiators proposing a draft bill for an Ombudsman for future generations said: ‘The arguments of the left are quite simple. The essence of the left is the extension and inclusion of human rights within more and more social groups: those who are not of noble birth, newcomers, the have-nots, women and all other possible minorities. How could we then deny these rights to the largest minority of all, the future generations? (Lányi 2001) Liberalism emphasises freedom and thus a link is established which implies that freedom of action and self-determination should also be available for future generations. The conflict of interests between today’s and future generations can be interpreted as conflicts of freedom. Just as today, where the freedom of one person ends that of another begins, is the freedom of today’s generations limited by that of future generations. How can it be justified that the birth of an individual at any particular point in time leads to him or her being treated favourably or disadvantaged?

Taking intergenerational justice into account means the following:

1. The natural capital of the world must not be reduced. Renewable energy resources should only be used at a rate in which they can be renewed. Non-renewable resources need to be used as least as possible so that succeeding generations have the opportunity to create substitutes for

them. The biological diversity of species and eco-systems must not be reduced. Air, water and earth should only be contaminated with polluting substances at a rate in which they can in turn rid themselves of this pollution.

2. The yield of the younger and future generations coming from the state pension scheme should not be lower than the yield of today's older and earlier generations.
3. The share of the state's revenue which is given out for debt servicing should not rise in the long term. If today's ruling generation carries out a fiscal policy which uses an increased share of the state's revenue that a future generation then needs to repay with interest it is taking away an element of this future generation's freedom.
4. Every generation particularly when at a young age should be able to attain a certain position through education and training, to be able to come to advance with their lives as best as possible.
5. The unemployment rate of young people should not be higher than the overall unemployment rate. It should also not be higher than in the past.
6. Just as adults under eighteen year-olds should be able to participate in all political decisions that will affect them. They must somehow have a 'right to vote'.
7. The health of succeeding generations should be better than that of previous generations. The prospects and risks of biotechnology should be assessed. If the prospects outweigh the risks progress should be made through research in the interest of future generations. If not, it should not be carried out.
8. The survival of the institution of war is a serious threat for future generations. This threat is now rather less apparent in the debate about generational justice. With the end of the cold war, the environmental crisis came to the forefront and took first place as the main threat to future generations. Whether this was justified is questionable.

How can we know what succeeding generations want? The poet Gibran Khalil Gibran has described this problem poetically: 'Their souls lie in the house of the future, which we cannot visit, not even in our dreams.'

1. Future generations will have similar basic economic and social needs to ours
2. Children and youth are the earthly representatives of future generations.
3. There is also another procedure we can use to establish what the interests of future generations are. We need to make ourselves aware that the rapidly deteriorating changes to the environment such as climate change or the decimation of species, was not only created by people in the present. From the perspective of the past, today, we are the future generations – and one which can provide extensive information about our needs.

Summary

There will never be a 'war of generations', just because every young person knows that she will turn old and every old person remembers youth. But to have real good intergenerational relations, we must change current politics.