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## 10 Establishing intergenerational justice in national constitutions

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### **Introduction**

Today's generation has the capacity to affect the future more than ever before in the history of mankind. This chapter justifies the need to institutionalize intergenerational justice, focusing on changes in national constitutions. In this context, a 'matrix of the institutionalization of intergenerational justice' is developed. In dealing with the wording, Beckerman's argument that we cannot attribute 'rights' to future generations is rejected. Afterwards, some concrete proposals to institutionalize ecological and financial generation protection clauses are drafted. Finally, current initiatives by young members of parliament are portrayed although their proposals are not bold enough.

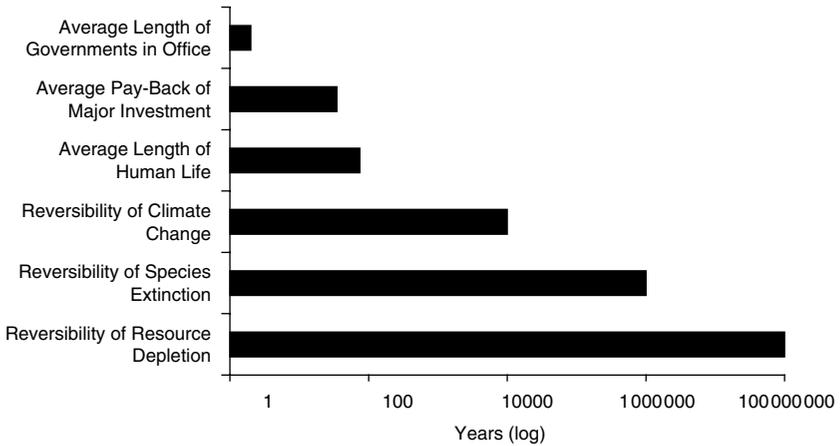
### **The structural problem of democracy: future individuals have no votes**

The principle of democracy, in its traditional and narrow form, can conflict with the maxim of intergenerational justice. The need to appease the electorate every four or five years means that politicians direct their actions towards satisfying the needs and desires of present citizens – their electorate. The interests, therefore, of future generations are all too often neglected.

Due to his limited time in office, a politician will not have to take responsibility for the consequences of his actions and also cannot be made liable for them. Today's technological advancements mean that the consequences of our present undertakings, such as the instalment of nuclear energy plants, will have far reaching effects and a potentially deeply negative influence on the quality of life for numerous future generations.

Nuclear power stations in a country like Germany have produced 118 tonnes of plutonium waste products (PU-239) up until 31st December 2005. Plutonium has a half-life period of 24 110 years, meaning that there will still be one gram of today's plutonium remaining in 310 608 years. Yet, even one single gram threatens human health.

If one considers that the history of mankind only began to be recorded 10 000 years ago, it becomes clear how long the impact of our current actions will be felt by future generations. Relevant time scales for human



Source: Own source.

Figure 10.1 *Relevant time scales for human and environmental development*

and environmental development differ widely (see Figure 10.1). Today's generation thus has the power to shape the future like never before. Yet, unfortunately, increases in technological possibilities have not gone hand in hand with an increase in the morality and far-sightedness of today's decision makers.<sup>1</sup>

In the words of the former German president, Richard von Weizsäcker,

Every democracy is, generally speaking, founded on a structural problem, namely the glorification of the present and a neglect of the future. It is an indisputable fact that we cannot and do not want to be ruled differently than by representatives elected for a fixed amount of time – with no more leeway at their disposal than precisely their legislative terms of office for what they offer as solutions to our problems. I am not saying that the all politicians are unconcerned with the future. They are only faced with the problem of having to acquire a majority. (Friedrich *et al.* 1998, p. 53)

In today's elections those individuals who will be born in the future cannot participate. They are not taken into account for the calculations of a politician, whilst he is organizing his re-election. If they could make their interests in the political decision-making process heard, majority conditions for important political decisions would be different. Policy on energy may serve as an example here: at present, the form of power production, based on fossil fuels, as utilized by today's generation, facilitates a uniquely high standard of living, but today's generation is thereby creating serious

disadvantages for itself and future generations in the medium-term between the next 50 to 100 years. We already know today – and having this knowledge is the crucial point – that such an energy policy leads to increased levels of carbon dioxide in the atmosphere. As a consequence, the natural greenhouse effect is strengthened and temperatures rise worldwide. More and stronger hurricanes, inundations, streams of refugees and new conflicts will be the future results of this short-sighted policy. If only these future individuals, who are born in the next 200 years, could vote on energy policies, this would create a huge majority which would facilitate a quick shift to renewable sources of energy. If only these future individuals could vote on financial policy, public debt would be significantly lower than today.

This fundamental dilemma of democracy leads to a preference for the present and to oblivion with regard to the future. Hence, succeeding generations are confronted with a structural disadvantage if democracy is not improved (Tremmel 1996). Generational justice affects the distribution of resources and life opportunities between generations. In view of the voicelessness of future generations it is not surprising that there will be insufficient resources remaining for them due to the competition for resources between present individuals and groups. Even if nature and mankind are not endangered as a whole, but ‘only’ parts of mankind and determined elements of nature (Renn and Knaus 1998, p. 18), the right of future generations to spend their life on an ecologically intact, biologically diverse planet, is nevertheless threatened like never before in the history of mankind. The ‘futurization’ of ecological problems means an existential danger for future generations.

In the face of present and future problems we cannot afford to ignore these problems any longer: we first need new future ethics. This significant change of consciousness must then be codified in written law. The first step has been done, but the new future ethics is, as yet, not sufficiently reflected in positive law. It is precisely this that is necessary. The term ‘institutionalization’ of intergenerational justice describes measures to safeguard the interests of future generations through institutions or written law. It is naive to hope that politicians will act in the interests of future generations in the same way that they do for those citizens who are alive today. The reason is not pure self-interest of today’s politicians, it rather lies in the political framework of every democracy. Every party tries to obtain votes, and therefore must concentrate on the short term perspective, that is, the preferences of the present electorate and the present interests of influential groups, insofar as politicians of all parties, who want to look further ahead than at the next election (or even the next 30 years), are disadvantaged in the competition with their short-term thinking political rivals. Hence, ambitious politicians who strive for many terms cannot act in favour of

future generations if there is a trade-off between the interests of the present and future generations.

Therefore the framework of political action and responsibility needs to be changed. Of course this must happen in such a way that the core principles of democracy remain intact. It is absurd to believe that doing away with liberal democracy is the solution to resolve the structural problem of democracy, as described above. Democracy is one of the most important social institutions that we can pass on to future generations; for this and many other reasons its abolishment is inconceivable. Such an abolishment would cause irreparable damage in relation to the maxim of generational justice for generations to come. If the influence of the electorate in politics, which is the very essence of liberal democracy, is to be maintained, terms of political office must be short, with frequent elections.

### **Three types of clauses for intergenerational justice in national constitutions**

In order to solve the structural problem of democracy, different countries have chosen different approaches. Discussions revolved first around whether the protection of posterity should be ensured in substantive law by enshrining it in the constitution itself, or by establishing a new institution; and second which policy fields the protection of posterity should concern.

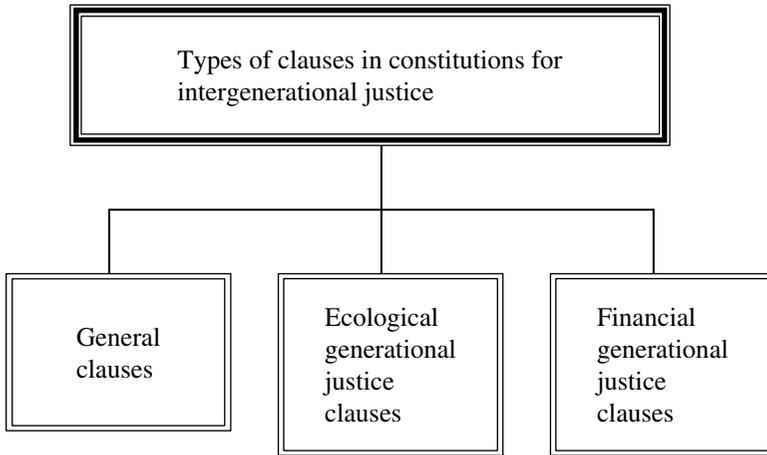
#### *Clauses in national constitutions*

Let us first collect examples for clauses in constitutions. The increasing acceptance of future ethics has resulted in the fact that constitutions and constitutional drafts, worldwide, especially the ones which were adopted in the last few decades, refer to generations to come. These clauses can be grouped into three categories: general clauses for intergenerational justice, ecological generational justice clauses and financial generational justice clauses (Figure 10.2). Obviously, the fields of ecology and finances were deemed by many states so prone to intergenerational misconduct that they wanted to mention them explicitly.<sup>2</sup>

Table 10.1 shows a few examples for constitutions that include general clauses for the protection of future generations, usually in the preambles. Other constitutions explicitly mention the environment or sustainable development, either solely or cumulatively by a general clause (Table 10.2).

Clauses for financial intergenerational justice are found in a smaller number of constitutions and often they are more 'hidden'. Mostly, the word 'generation' is not even mentioned but only 'financial policy' 'balanced budget' and so on. Normally, these clauses come cumulatively with a general clause or a clause for ecological intergenerational justice (Table 10.3).

Of these examples, we will explore article 115 of the German constitution in more detail later. Another interesting example is the ongoing fight



*Figure 10.2 Typology of clauses in constitutions*

for a ‘Balanced Budget Amendment’ in the USA. The Constitution of the United States does not require the Congress to pass a budget which equals the projected income to the government and the proposed expenditure. As a reaction to increasing deficits, more than a dozen attempts have been started to include a provision that stops deficit spending. Public support has ebbed and flowed, however, it seems to have been constantly over 50 per cent. Nevertheless, it never became strong enough to change the US constitution. To win passage, the amendment would have to clear both the House and Senate by two-thirds margins and then be ratified by three-quarters of the state legislatures. The latest attempt (but for sure not the last one) took place in February 2003 when a group of Republican house members introduced a balanced budget amendment to the US Constitution, arguing that recent deficits demonstrate that Congress does not have the discipline to balance the budget on its own. Like most proposals before, it included exceptions for the case of war.

### *Institutions*

Other countries like Israel, Hungary, or Finland have set up or currently discuss new institutions for the protection of future generations instead of enshrining clauses for the protection of future generations into their Constitutions (see the articles of Shoham and Lamay, van Opstaal and Timmerhuis, Jávora, Agius in this volume). The new institutions are designated ‘Ombudsman for Future Generations’, ‘Committee for Future Generations’, ‘Ecological Council’, ‘Future Council,’ or ‘Third Chamber’.

*Table 10.1 General clauses in constitutions for intergenerational justice*

Country	Lieu	Wording	Year of adoption
Estonia	Preamble	'Unwavering in their faith and with an unswerving will to safeguard and develop a state; [. . .] which shall serve to protect internal and external peace and provide security for the social progress and general benefit of present and future generations; [. . .] the Estonian people adopted [. . .] the following Constitution.'	June 1992
Czech Republic	Preamble	'resolved to jointly protect and develop the inherited natural and cultural, material and spiritual wealth, resolved to abide by all time-tried principles of a law-observing state.'	16 December 1992
Czech Republic	Charter of Fundamental Rights and Freedoms Preamble	'The Federal Assembly, [. . .] recalling its share of responsibility towards future generations for the fate of life on this Earth, [. . .] has enacted this Charter of Fundamental Rights and Freedoms.'	16 December 1992
Poland	Preamble	'recalling the best traditions of the First and the Second Republic, obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage.'	April 1997
Switzerland (federal constitution)	Preamble	'In the name of God Almighty! Whereas, we are mindful of our responsibility towards creation; [. . .] are conscious of our common achievements and our responsibility towards future generations; [. . .].'	18 April 1999 amended 15 October 2002
Ukraine	Preamble	'Aware of our responsibility before God, our own conscience, past, present and future generations.'	June 1996

*Table 10.2 Clauses in constitutions for ecological generational justice*

Country	Lieu	Wording	Year of adoption
Argentina	Article 41, clause 1	'All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.'	1994
Brazil	Article 225, clause 1	'All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations.'	1988
Czech Republic	Article 7	'The State shall attend to a prudent utilization of natural resources and to protection of national wealth.'	16 December 1992
Finland	Article 20	'Nature and its biodiversity, the environment and the national heritage are everybody's responsibility. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.'	11 June 1999
Germany	Article 20a	'Mindful also of its responsibility toward future generations, the State shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.'	27 October 1994
France	Charter for the environment 2004  Article 6 of the charter for the environment	'Considering that, [. . .] In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardise the ability of future generations and other peoples to meet their own needs.'  'Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress.'	2004
Greece	Article 24, Clause 1	'The protection of the natural and cultural environment constitutes a duty of the State.'	9 June 1975

Table 10.2 (continued)

Country	Lieu	Wording	Year of adoption
		The State is bound to adopt special preventive or repressive measures for the preservation of the environment.'	
Hungary	Article 15	'The Republic of Hungary recognizes and shall implement the individual's right to a healthy environment.'	1989
Italy	Article 9	'The republic promotes cultural development and scientific and technical research. It safeguards natural beauty and the historical and artistic heritage of the nation.'	27 December 1947
Netherlands	Article 21	'It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.'	1987
Latvia	Article 115	'The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.'	15 October 1998
Lithuania	Article 54, Clause 1	'The State shall look after the protection of the natural environment, its fauna and flora, individual objects of natural resources be used moderately and that they be restored and augmented.'	25 October 1992
Poland	Article 74, Clause 1	'Public authorities shall pursue policies ensuring the ecological security of current and future generations.'	April 1997
Portugal	Article 66, Clause 1 and 2	'Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it. It is the duty of the State, acting through appropriate bodies and having recourse to or taking support on popular initiatives, to: [ . . . ] d) Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability. [ . . . ] h) Ensuring that fiscal policy renders development compatible to the protection of the environment and the quality of life.'	2 April 1976
Slovakia	Article 44, Clauses 2 and 4	'Every person shall have a duty to protect and improve the environment and foster cultural heritage.'	1 September 1992

Table 10.2 (continued)

Country	Lieu	Wording	Year of adoption
Slovenia	Article 72, sentence 1–3	‘The State shall be responsible for the economical use of natural resources, ecological balance and an effective environmental policy.’ ‘Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law.’	23 December 1991
South Africa	Article 24	‘Everyone has the right a) to an environment that is not harmful to their health or well-being; and b) to have the environment protected, for the benefit of present and future generations, through reasonable legislature and other measures that prevent pollution and ecological degradation promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’	1994
Spain	Article 45, clause 2	‘The public authorities shall concern themselves with the rational use of all natural resources of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.’	29 December 1978
Sweden	Chapter I Article 2, sentence 4	‘The public institutions shall promote sustainable development leading to a good environment for present and future generations.’	1 January 1975, amended 1976
Switzerland	Article 73	‘The Confederation and the Cantons shall strive to establish a durable equilibrium between nature, in particular its capacity to renew itself, and its use by man.’	April 1999
Uruguay	Article 47	‘Environmental protection is in the interest of all. Water is a natural resource essential for living. 1) Water and drainage/cleaning up national policies shall be based upon: a) [. . .]	amended 31 October 2004

Table 10.2 (continued)

Country	Lieu	Wording	Year of adoption
		b) sustainable management of water resources and protection of the hydrological cycle; those are issues of general interest and will be run in support of future generations. Civil society and single consumers will participate in every step of the organization, management and monitoring of water resources, after declaring every water basin a basic unit.'	

But what can maintain the protection of future generations more effectively, changes to the constitution or the creation of new institutions? In the solution provided by written law, the Constitutional Court becomes the institution which watches over a balance of the interests of present and future generations. In case of a new institution, the institution itself becomes the watch-dog.

These kinds of new institutions make sense if they really have the competencies to protect future generations. This means, for instance, that these institutions can veto or at least freeze laws or that they can propose laws themselves. Without this responsibility the advisory system is merely extended. In Germany, for instance, there are already four institutions: the German Advisory Council on the Environment (Sachverständigenrat für Umweltfragen, [www.umweltrat.de](http://www.umweltrat.de)), the German Advisory Council on Global Change (Wissenschaftlicher Beirat der Umweltregierung für Globale Umweltveränderungen, [www.wbgu.de](http://www.wbgu.de)), the German Council for Sustainable Development (Rat für Nachhaltige Entwicklung, [www.nachhaltigkeitsrat.de](http://www.nachhaltigkeitsrat.de)) and the Parliamentary Advisory Council on Sustainable Development (Parlamentarischer Beirat für nachhaltige Entwicklung, [www.bundestag.de/parlament/parl\\_beirat/](http://www.bundestag.de/parlament/parl_beirat/)) which was appointed in 2004. They all do not have the necessary power to stop laws which threaten the well-being of future generations.

The question of how an institution with real power would be staffed also requires special attention. One could imagine that the members are nominated by parliament, are provided by associations and NGOs or that they are elected by the people. These proposals – apart from the latter one – are democratically problematic. Just consider the House of Lords in Great Britain, which is under heavy criticism for having too much power for an

*Table 10.3 Clauses in constitutions for financial generational justice*

Country	Lieu	Wording	Year of adoption
Estonia	Article 116	‘Proposed amendments to the national budget or to its draft, which require a decrease in income, an increase of expenditures, or a redistribution of expenditures, as prescribed in the draft national budget, must be accompanied by the necessary financial calculations, prepared by the initiators, which indicate the sources of income to cover the proposed expenditures.’	28 June 1992
Finland	Article 84	‘[. . .] The revenue forecasts in the budget shall cover the appropriations included in it. [. . .]’	11 June 1999
Germany	Article 109, clause 2	‘In managing their respective budgets, the Federation and the Länder shall take due account of the requirements of the overall economic equilibrium.’	23 May 1949
	Article 115	‘Revenue obtained by borrowing shall not exceed the total of investment expenditures provided for in the budget; exceptions shall be permissible only to avert a disturbance of the overall economic equilibrium. Details shall be regulated by a federal law.’	adopted 12 May 1969
Poland	Article 216, clause 5	‘It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.’	2 April 1997

unelected body. For similar reasons, the Senate in Bavaria was abolished (Tremmel and Viehöver 2001, p. 21). It could start legislative initiatives as a so-called ‘Second Chamber’ and was a place of refuge for association lobbyists. On the other hand, very mighty institutions like the European Central Bank are also not staffed by democratic elections and still enjoy a high level of public support.

### **The matrix of the institutionalization of intergenerational justice**

If the first question is ‘written law versus new institution’, a second fundamental decision is ‘range of coverage’. Both clauses in constitutions and new institutions can be conceived to deal with either ecological questions and financial questions or posterity in general. In the latter case the Constitutional Court or the new institution would have to decide case by case which needs of future generations should be prioritized.

The possible combinations are shown in the matrix below with examples in the fields (see Table 10.4).

*Table 10.4 The matrix of the institutionalization of intergenerational justice*

	Only ecological generational justice	Only financial generational justice	General protection of posterity
Written Law Solution	Art. 24 of the Constitution of South Africa	Art. 115 German Constitution	Preamble of the Swiss Constitution
Institution	Ombudsman for Future Generations in Hungary	Audit courts	Commission for Future Generations in Israel

*Source:* own source.

### **The wording: do future humans have ‘rights’?**

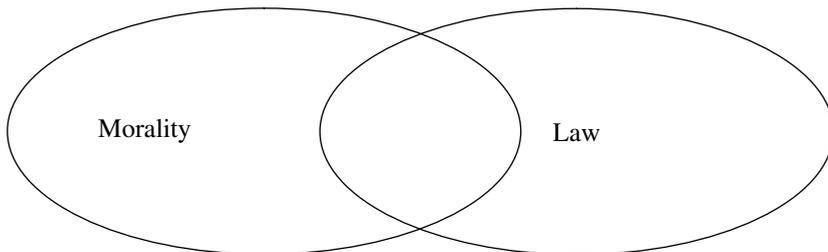
When it comes to changes of the constitution, wording is crucial. Hence, it is necessary to assess whether one can rightfully write: ‘Future generations have rights’.<sup>3</sup> At the beginning of the debate about future generations it was frequently argued that future generations had no rights, but instead that present generations were merely morally obliged to them (Brown-Weiss 1989, p. 96; Beckerman 2004). Because of Edith Brown-Weiss’s intervention, the UNESCO resolution which was originally entitled ‘Declaration for the Rights of Future Generations’ was renamed into ‘Declaration on the Responsibilities of Present Generations towards Future Generations’.

### **Moral and codified rights**

What is the relationship between moral and codified ('written') rights? An obligation according to written law and a moral obligation are factually connected but not identical. In general, the relationship of morality and law can be characterized as follows. First, there are moral commandments, or respectively obligations, that are not codified; second, there is an intersection between both fields; and third, legal norms may exist that are not moral (Figure 10.3).

For instance, many obligations towards animals and plants as well as towards future generations belong to the first category, since they are not yet codified within legal order. Particularly during the past few decades, the growing acceptance of ethics concerning the future led to the circumstance that worldwide constitutions that have been adopted and draft constitutions verbatim refer to future generations. Conceptually, the idea of rights of future generations is preceded by another thought which arose much earlier. Namely, we are talking about the development of the idea of human- and civil rights. Important documents were the 'Magna Charta' (1215), the British 'Bill of Rights' (1689), the 'Declaration of Independence of the United States of America' (1776) and the 'Declaration of Human and Civil Rights' in the course of the French Revolution (1789) and finally the UN 'General Declaration on Human Rights' (1948) where human rights, which at first only applied at the national level, then found their way into public international law. But who would agree with the statement that men and women had no human rights before 1215?

If the obligation of today's generation towards the future was, for example, already anchored in the Dutch constitution, but not yet in the Belgian constitution before the following year, then one could hardly claim that in this year the Belgians would not yet have moral obligations towards posterity. That would repeat the mistake some people



*Source:* own source.

*Figure 10.3* *Morality and written law*

made when they claimed that people in a specific state have no human rights just because their government has never ratified the Charter of Human Rights.

Moral norms that are at the same time legal norms and vice versa belong to the second category. Most legal norms in democratic, liberally organized states are also moral norms (for example 'Thou shall not kill').

Last but not least, there is a third category: those laws of dictatorial states that are deemed unjust everywhere else, for example the Nuremberg Racial Laws of Hitler's Third Reich.

Hence, it can be stated that it is enough to justify that future people have moral rights. Taking a bird's eye view, the written law is always adjusted according to the changes in the moral convictions within a society.

*Semantic investigation of the term 'to have (moral) rights'*

The position of the fathered but still unborn child is acknowledged in *certain* fundamental rights. It has the legal capacity to hold rights, for instance the right not to be killed if the conditions for a legal abortion are not fulfilled. But below we will exclusively deal with non fathered, 'potential' individuals. According to Beckerman, the general proposition that future generations cannot have anything, including rights, follows from the meaning of the present tense of the verb 'to have'. 'Unborn people simply cannot have anything. They cannot have two legs or long hair or a taste for Mozart', Beckerman writes in the *Intergenerational Justice Review* (Beckerman 2004; see also Beckerman 1994; 1999). Beckerman's argument is correct, but of minor importance. It reminds us to use the future tense instead of the present tense, that is, to say: 'Future Generations *will have* rights' instead of 'Future Generations *have* rights'. It is important to understand that Beckerman's argument cannot be used to denounce the term 'rights' and to replace it by 'needs', 'interests', 'wishes' and the like. If future generations cannot have 'rights', they cannot have 'interests' and so on, either. They *will have* interests, just as they *will have* rights. If we want to favour the term 'interests' over 'rights', we must find other arguments. The hint to using the future tense instead of the present tense in the wording of constitutional amendments is just a minor aspect. It is more important which nouns, verbs or adjectives are chosen. Beckerman claims that his argument denounces the term 'rights of future generations' (Beckerman 1999; 2004), but he is incorrect.

Having rejected Beckerman's claim does not mean that we have proven that it is more appropriate to use 'rights' instead of another noun in constitutional amendments.

*The figure of 'conditioned' rights*

Some scholars admit that future generations have rights, but they still differentiate. Callahan argues that our obligations towards future generations are weaker than our obligations towards present generations, because the claims of future individuals are conditioned claims. 'The claim of future generations against us is a conditional claim, in the sense that it depends upon their existing to make the claim [. . .] over against that situation are presently living human beings, whose claims are actualised claims, whose rights are in no sense conditional' (Callahan 1980, p. 82)

Birnbacher holds the opinion that rights always imply obligations: 'A right can only exist when someone else has an obligation towards the legal subject' (Birnbacher 1988, p. 100). The reversed conclusion is as follows: anywhere where a party A has an obligation in relation to another party B, B has a right in relation to A. But according to Birnbacher, for this statement to be true, the following condition must be fulfilled: the obligation will be demanded in the name of A. If a presently living, malnourished person has the right not to die of hunger, he does not have to wait for others to remember that they ought to not let him starve. He himself can demand that others not let him starve. But if the starving person is so weak that he cannot express himself anymore, he has by no means forfeited his right. Thus, if someone cannot assert a right himself, assigning a right to him means demanding from others to fulfil the corresponding obligation (Birnbacher 1995, p. 100).

Sometimes it is argued that a substantial characteristic of the term 'right' is attributed to the possibility to renounce them. According to this argument, one can indeed claim that future generations cannot have rights because they are not able to renounce them. However, this understanding of the term 'right' is problematic because neither animals, nor children, nor mentally handicapped persons would then have rights. 'The situation in which future subjects are prevented from asserting their rights against those alive today due to logical reasons, and where present subjects do not assert their rights because of contingent reasons cannot be a conclusive reason to withhold moral rights from one group and not the other' (Birnbacher 1988, p. 98).

*Who can decide on definitions?*

The resulting question that concludes from the formulation 'future humans will have rights', is about the *definition* of the term 'rights'. Winfred Beckerman *defines* the term 'rights' in a way that from the proposition that all rights imply obligations it is not possible to deduce that all obligations imply rights. Many philosophers (for example Birnbacher or Dierksmeier) *define* rights in a way that all obligations imply some kind of rights. For them, 'rights' and 'obligations' are just two sides of a coin. Other philosophers even

denounce that a right does not necessarily imply an obligation. Gosepath (2004) uses the example of an orphan who has a right to be raised in a family. But that does not imply the obligation for a concrete family (or any family) to adopt him.

By which criteria can the dispute about the definitions of ‘rights’ and ‘obligations’ be decided? Words can and often do change their meanings over time. Despite or just because of the terrific career of the term ‘rights’, an agreement regarding its meaning could not yet be reached. Scarcely any scientist denies that scientific terms must be well-defined and precise. The possibility to criticize theories in a constructive way becomes more difficult, if theories contain terms that stay permanently imprecise and plurivalent. Notwithstanding, the community of scientists should not regard a definition on which they agreed as being definite. Every definition is preliminary, so that the definition process regarding future scientific criteria has to be started again occasionally. Max Weber expresses it the following way:

The history of social sciences is a constant change and remains a constant change between efforts to arrange facts in proper order by composing definitions, [. . .] and the regeneration of definitions on a modified basis. [. . .] The terms are not aims but means to the end of cognition regarding the important coherences from individual standpoints: due to the fact that the content of historical definitions could change necessarily, it is important to formulate them exactly. (Weber 1904, p. 207)

To find out if the meaning ascribed to a word by a specific user at a given moment in time is correct, we have to apply different criteria, among them:

1. the term’s utilization by scientists;
2. meaning at first usage;
3. fertility;
4. necessity (for an extensive study see Tremmel 2003a).

The most important criterion is the term’s utilization by the majority of scientists. A great deal of philosophers and law scholars have become convinced that potential humans receive something for which the expression ‘rights’ is appropriate. This example is illustrative to show how convictions about the appropriate attribution of the word ‘rights’ are reached: during the construction work of a nursery school a terrorist hides a bomb. We assume that the bomb is configured in such a way that it will explode exactly 40 years later. We also assume that at this time only teachers under 30 and children are in the building. If the terrorist’s plan was revealed today, would he have to be punished? Whatever the answer, he can only be punished if he has violated

the rights of others. Whoever feels that this terrorist has committed a crime also must logically also hold the opinion that future individuals will have rights (Birnbacher 1988, p. 59; Unnerstall 1999, p. 98). A further example is as follows: imagine a manufacturer who manufactures porridge for up to two-month-old babies and has a technical defect at his production centre. The result of this is that the products which will be on the market in three months are contaminated with fragments of glass. Almost everybody would consider him worthy of punishment even though the victims are not yet born. But in tort law this is only possible if someone has been harmed, that is, her rights are infringed upon. It is from a moral perspective that in this sense we believe that future generations will have moral rights.<sup>4</sup> For an autonomous rational human being there is no transcendental authority who decides if such attributions are correct or incorrect. If by now a majority of scientists attribute rights to animals – which was considered as inconceivable in earlier epochs – animals have ‘received’ these rights. Materially nothing has changed. Nevertheless, in the collective consciousness of mankind these ‘rights’ now exist. According to Kant, man can and must decide by himself what is morally correct and rightful. Thence the attribution of (moral) rights is only a semantic step and not a step that regards content. Therefore I will continue to speak of ‘rights of future people’.<sup>5</sup> But at the same time I think that there are more important features in the field of intergenerational justice than the question whether future people will have ‘rights’ or mere ‘needs’.<sup>6</sup> Imagine a freshly married couple who are talking about ending the use of contraceptives to conceive a child. The wife says: ‘But remember that you must not work too long hours in your office. Our baby child has a right that you spend time with him.’ Is it worth the effort to argue here whether or not the woman should have used ‘need’ instead of ‘right’ (or ‘will have’ instead of ‘has’) in her phrase? Not likely. It rather makes sense to discuss how much time for work and hobbies the father should give up in favour of the interests of his child. For the establishment of intergenerational justice the situation is just the same. Now, as some questions of wording have been decided we can go on to the more important questions of the scope of generation protection clauses.

### **The establishment of ecological intergenerational justice into national constitutions**

Some states have already taken action and implemented some clauses for the protection of the ecological interests of future generations. However, Poland, Germany, France, Switzerland, South Africa, the Czech Republic and all the other countries named in Tables 10.1 and 10.2 have not become ecologically sustainable states. In fact, all academic disciplines which are concerned with this subject agree that these states, albeit to a differing extent, are still breaching the fiats of ecological sustainability. How come?

The clauses which were mentioned in Tables 10.1 and 10.2 share several weaknesses: first, most of them do not lay down a public right for each individual citizen. Instead they formulate a state objective which is legally something different than a public right.<sup>7</sup> Second, they are too vague.

A state objective, unlike an individual right, obliges above all the legislature but also the executive power, the administration and the jurisdiction to consider it in executing each state activity. Admittedly, the individual citizen has no right to prosecute a claim for certain adjudications of environmental protection if the legislature, executive power and jurisdiction are not acting. That does not mean that lawsuits are impossible, they can occur if a state organ becomes the litigator in a complicated procedure. In Germany, for instance, the Federal Constitutional Court (FCC) can be occupied with Article 20a by way of a judicial review of the constitutionality of laws. That can be for example a litigation between the federal republic and a state (Art. 93 I No. 3 Constitution associated with par. 13 No. 7 and 68 et seq. FCC) and the litigation between public bodies (Art. 93 I No. 1 No. 3 Constitution associated with par. 13 No. 5 and 63 et seq. FCC). However, so far Art. 20a has not been the subject of a lawsuit before the Federal Constitutional Court.

There is a second and more important problem with Article 73 of the Swiss, Article 74 of the Polish, Article 24 of the South African, Article 20a of the German Constitution and the other clauses listed in Table 10.2. It is not included what the concrete responsibility is that present generations have towards future generations in terms of ecological sustainability. Art. 24 of the Greek Constitution or Art. 54 of the Lithuanian one just stipulate the 'protection of the natural environment'. But what level of protection? At the moment, these articles only contain an undetermined demand. Their legal character would be radically different if it demanded that concrete rules of management for ecological sustainability were applied to it.

Law Courts can only amend the legislature and executive authorities when they transgress their obligations. The norms raise hope for an ecological, sustainable policy that the state does not want, or has, to fulfil. In their current version they conceal the fact that the principle of ecological sustainability has not, as yet, been incorporated in the constitutions and therefore that people will carry on living at the expense of future generations.

*Proposal for a general clause on ecological intergenerational justice*

Drawing lessons from this example, what can we say about an effective clause in general, be it in the constitution of South Africa or Germany. The following proposal would establish ecological sustainability and therewith generational justice into constitutions.

Article: Protection of the Ecologic Rights<sup>8</sup> of Succeeding Generations

- (1) The state protects the rights and interests of succeeding generations within the bounds of the constitutional order through the legislative and according to law through the executive and the jurisdiction.
- (2) It guarantees that harmful substances will pollute nature, soil, air, water and the atmosphere only to the extent to which they can decompose due to their natural regenerative capabilities in the respective time period.
- (3) It guarantees that renewable resources are not exploited to a greater extent than they are capable of renewing themselves. Non-renewable raw materials and energy resources must be used as economically as possible by a justifiable expenditure.
- (4) It guarantees that no sources of danger are constructed which could lead to harm that cannot be undone or only undone by unjustifiable expenditure.
- (5) It guarantees that the existing variety of fauna and flora as well as ecological systems is not diminished by human activity.
- (6) Offences against paragraphs 2 and 5 are allowed when they are compensated for by a quantitatively and qualitatively comparable compensation abroad.

*Explanation of this proposed article*

Clauses 2 to 5 are based on criteria which were developed at the beginning of the 1990s to operationalization ecological sustainability (Pearce and Turner 1990; Daly 1991). The criteria received worldwide approval and are used in slightly modified formats in almost all papers up to this day. It is therefore only important to further explain the point on compensation which is expressed in clause 6. This clause considers the fact that environmental pollution is often, but not always, a global phenomenon regardless of national borders. However, the scope of each national Constitution ends at the national borders. Finally, ecological sustainability on a global rather than national level is the ultimate aim. But this does not mean that each country should not carry on striving for it at the national level. Even though it would be highly desirable for concrete sustainability aims to be determined on a continental or worldwide level, few signs can be observed that suggest that such agreements will be accomplished in the near future.

Clause 6 arranges the proposed norm of a constitution in such a flexible manner that, for instance, a worldwide solution for the trade of carbon dioxide emission rights or a prior European solution would remain an option.

**‘Succeeding’ instead of ‘future’ generations**

It does not make any difference for a transgenerational theory of a just distribution of resources and life chances if a child was born yesterday or will be born tomorrow. In both cases, it has still a life to live and should be protected against intergenerational injustice. Close future generations and today’s infants and adolescents are materially on an equal level, thus one should talk about ‘succeeding’ instead of ‘future’ generations. In contrast to

the term ‘future’, the term ‘succeeding’ generations comprises not only unborn generations but also present children and adolescents. By this new wording children and adolescents or their parents would have the right to sue. The clause would then have a level of protection that is concrete and therefore judicially guaranteed. Then the achievement of the Filipino lawyer Antonio Oposa could be repeated who successfully sued the government because of the inactiveness towards the destruction of the rain forest in the Philippines. Forty-three children appeared (as representatives of succeeding generations) as petitioners. The Federal Constitutional Court of the Philippines admitted the claim of the petitioners on the 30 July 1993:

We find no difficulty in ruling that they (petitioners-children) can, for themselves, for others, in their generation and for succeeding generations, file a class suit. Their personality to sue in behalf of succeeding generations can only be based on the concept of inter-generational responsibility [. . .] [to make the natural resources] equitably accessible to the present as well as to future generations. (Oposa 2002, p. 7)

**Which counter-arguments can be brought forward against the proposed clause for ecological intergenerational justice?**

At first glance, numerous objections against the proposed clause can be asserted. In the following the most important ones will be discussed.

*The protection of the natural basis of life is less an affair of constitutional execution but rather a matter of political, arbitrary decision making*

The aim of the proposed clause is the protection of the rights and interests of succeeding generations. The article cannot be left to the discretion of politicians because of the structural problem of democracy. The everyday competition of government and opposition parties averts – as is seen in practice – the effective protection of posterity because of structural reasons.

*The constitution always must remain open to development*

A constitution must remain flexible enough to adjust to changes in reality. But a more open formulation would not ensure ecological sustainability anymore. Moreover, the clause would formulate the aim in relatively concrete terms, yet, concerning the way these aims are implemented, the jurisdiction, the legislature and the executive power would all be left with imaginable freedom.

*The proposed clause is too long and would overload the text of law with moral demands*

On the one hand, it is right that not all which is morally demanded can or may be implemented through the constitution. But on the other hand the

following is also the case: laws are necessary when central moral demands are greatly counteracted without court intervention due to political and economic pressures. It is not 'a matter of overloading' if a constitution tries to achieve what politics evidently does not.

The new clause protects the ecological rights of succeeding generations and therefore can hardly be underestimated. It is an enlargement of the range of human rights in the future. In spite of its importance, in comparison to other similar declarations, it only requires six clauses and a small number of words. If we create a new institution with real competences – as an alternative to the establishment of the protection of posterity – the constitutions would have to be modified in many more passages.

*Such a large modification of the constitution cannot be dogmatically derived from the norms of codified and applicable law*

Positive law must adjust to the prevailing concepts of morality in a society. Human history testifies to a slow and by no means continuous approach of positive law towards moral norms. A step in this direction was the Declaration of Human Rights of the United Nations (1948) which was a pioneering document at the time. Today we are in a comparable situation. The idea of generational responsibility, after all, has already found its way into the law books in recent times. It is necessary to establish the idea of protecting the rights of succeeding generations more effectively in constitutions to make it a political reality.

*The constitutional judges are also trapped in today's line of thinking*

Of course constitutional judges are also members of today's generations. However, they are not under the compulsion to be re-elected in most countries. Therefore, more future-orientated actions can be expected.

### **The establishment of financial intergenerational justice into national constitutions**

Next to the ecological question, protection of future generations from excessive public debt is the most salient problem. The dilemma of financial short-termism within our democracy has already been realized by some peoples (see Table 10.3). The strictest proposal, brought forward by some US congressmen, provides no exception clause from a balanced budget but war.<sup>9</sup> But it has few chances to pass, also because it is not in line with economic wisdom. If the state finances goods that will benefit future generations as well (for example expensive bridges), it then makes perfect sense that they should pay their share of the burden, too. The devil is in the detail, however (for an extensive study see Boettcher and Tremmel 2005). The German constitution, for instance, enunciates the problem by article

115 Basic Law (BL) ('Revenue obtained by borrowing shall not exceed the total of investment expenditures provided for in the budget [. . .]'). However, during the heyday of Keynesianism in 1969, also an exception clause was included in article 115: '[. . .], exceptions shall be permissible only to avert a disturbance of the overall economic equilibrium'. But also here, even if the idea of Intergenerational Justice has some tradition within financial constitutional law, then it has not yet been satisfyingly standardized. 'The current wording in article 115 paragraph 1 of the constitution has proved to be insufficient to stop the growing debt of the state budget', writes the German Federal Court of Auditors. Therefore, it is necessary to re-adjust the problem of generationally acceptable state debt by a change of the constitution in this respect. I will focus on Germany, but I guess most of the reasoning and the argumentation applies to other cases, too. There are several possibilities.

### **Suing the Government at the Federal Constitutional Court**

Using the present article 115, suing the government is not promising when it comes to a generationally unfair budget. The German Conservative Party (CDU) and the Liberals (FDP) together went to the Federal Constitutional Court in November 2004 to take legal action against an infringement of Art. 115 by the then-government of Social Democrats (SPD) and Greens. The case is still pending. The Federal Constitutional Court had already been called once before. It had to decide whether the exceeding of the capital investment in 1981 by the credit income of about one billion Euros (1869 billion DM) was in accordance with article 115 BL. The trial took its time, thus the judgment was not made before 18 April 1989! If the Federal Constitutional Court declares a budget to be unconstitutional, then there are no immediate consequences. The budget year has then long been over. An unconstitutional budget is not subject to sanctions; at best, it is politically embarrassing. A re-adjustment of the financial constitution should thus be formulated in a way that it does not leave any room for interpretation whether the budget is still constitutional or not.

### *Exceptions for recessions?*

A crucial but difficult question is whether or not a balanced budget clause should include an exception for recessions. In a recession, the revenue of a state (through fees, fines, but mostly taxes) declines. Now, cutting back expenditure would completely stall the engine of the economy. On the other hand, a generation protection clause with too many exceptions becomes a real softie.

The exception clause of article 115 BL in Germany is particularly problematic, as it facilitates a rising of credit to *unlimited* height. In paragraph 1

sentence 2 Stability and Growth Law, a macroeconomic equilibrium is defined by four economic objectives: stability of the price level, high rate of employment, import/export balance, as well as constant and adequate economic growth. For the state budgets of 2002 until 2006, the German Parliament asserted a disturbance of the macroeconomic balance and significantly increased the public debt at the expense of future generations. The problem about the German clause is that up to now the budgetary legislator itself asserts a disturbance of the macroeconomic balance after the respective draft by the government – often when 1.5 or 2 per cent of economic growth are reached. This is an absurd situation. The German government claims that the high unemployment rate of the last years justifies a disturbance of the macroeconomic balance. In its decision of 1989, the Federal Constitutional Court pointed out that for a macroeconomic balance the complete accomplishment of all four objectives is not necessary. That means that we cannot automatically speak of a disturbance if only one objective is not met. Thus, the application of the exception clause for the budgets 2002–2006 was illegitimate. For a decision whether the macroeconomic balance is disturbed, an independent institution would be the right addressee. A promising approach would be to transfer the competence to assert such a disturbance to the German Federal Court of Auditors, or to the German Central Bank.

A possibility would thus be the following amendment of balanced budget proposals regarding the inclusion for recession exceptions: ‘The identification of a disturbance of the macroeconomic equilibrium is incumbent upon the Central Bank’.

The question relates to other exception clauses also: should they be eliminated or narrowed down? In my opinion, a debt that exceeds the sum of investment would only be tolerable in the following cases: (a) in case of defence; (b) in case of tensions between states; and (c) in case of serious natural disasters or particularly severe accidents.

#### *Discount on the sum of investment*

Due to bitter experiences, it is well-known that not every public investment leads to the yield that was hoped for. The list of investment ruins is too long to be ignored.

The debt permission tied to investment fixed in article 115 assumes up to now that every investment is profitable. The measures to encourage investment are especially insecure in their effect on private investment behaviour. Within every economically acceptable proceeding, they may not be completely counted to the investment sum. Ultimately, an exact measurement of the macroeconomic investment effects that result from the measures to encourage investment is not possible, so that a flat discount becomes

suitable. In order not to impose on future generations the share of unsuccessful investment projects, a flat discount of, for example, 33 per cent on the investment sum could be calculated. New debts of at most 66 per cent would then only be permissible. Wording in articles for financial intergenerational justice could be amended, so that it reads: 'The amount of public investment may not exceed the value of two thirds of the new debt as fixed in the budget plan'.

There are different alternatives for a concrete constitution change, thus each country may have its own preferences here. All variations that were discussed here would render a budget policy that is harmful for future generations more difficult.

### **To walk the talk: campaigns of young members of parliaments**

Even in a scenario in which everybody maximizes his own self-interest there is an important difference between young and old MPs: the younger generation stands to inherit the debt and the ecological degradation. Therefore one can assume that the chances for a change of the constitution are high, where the percentage of young MPs soars. Table 10.5 shows the average age of members of the parliament, the share of MPs below 30 in per cent, and the share of MPs below 40 in per cent (of November 2005).

Scientists like those from the Foundation for the Rights of Future Generations may have a lot of ideas, but in the end it matters what the politicians are willing to do. Usually, the 'pure' concepts are watered down; maybe this is an unavoidable process to gain majorities. After unsuccessfully pursuing its own campaign, the Foundation for the Rights of Future Generations took a new role as a moderator of MPs. Encouraged by the fact that the number of young MPs was higher in the parliamentary term 2002–2005 than ever before in German parliamentary history (Tremmel 2005), it sent a letter to all MPs under the age of 40 and managed to find some supporters in all of the political parties. This was the kick-off for the 'initiative of young MPs' in summer 2003. The feeling that intergenerational justice and sustainability should be institutionalised was widespread among them. In total, 14 workshops took place until spring 2005. Numerous experts in constitutional law were involved and helped to formulate a concrete bill in order to change the German constitution. Two delegates of all four factions (the socialist party, SPD; the conservatives, CDU / CSU; the Greens; the liberal party, FDP) soon built a core group that interlinked the results to their respective faction. Eight young delegates of each party should be within the record of proceedings before the judgment of the proposal itself, so that the public would perceive it as a project of the young generation (of parliamentarians). Various suggestions were discussed and often rejected. The FRFG had all suggestions revised by renowned experts in con-

*Table 10.5 Share of young member of parliament/average age in the parliaments of OECD countries*

Country	no. MPs	Share u30 in %	Share u40 in %	Average age/ average birth year
Austria	183	1.1	9.8	50 Years/ 1955
Belgium	229	3.9	17.9	48 Years/ 1957
Canada				
(House)	307	1.6	12.1	52/ 1953
(Senate)	105	0	0	62/ 1943
Denmark	123	5.7	24.4	49 Years/ 1956
Finland	200	3	16.5	50 Years/ 1955
France	572	0.1	3.1	57 Years/ 1948
Germany	601	2.5	10.1	52 Years/ 1953
Great Britain	644	0.6	13.2	51 Years/ 1954
Italy	618	0	5.2	54 Years/ 1951
Japan	241	0	6.6	57/ 1948
Luxemburg	60	0	11.7	53 Years/ 1952
Netherlands	224	0.8	18.75	50 Years/ 1955
Portugal	229	5.2	22.3	47 Years/ 1958
Spain	349	2.3	14	44 Years/ 1961
Sweden	349	1.7	16.6	51 Years/ 1954
United States of America				
(House)	437	0	3.4	61 Years/ 1944
(Senate)	100	0	0	61 Years/ 1944

*Source:* Websites and national parliaments.

stitutional law, for instance Prof. Dr Eckard Reh binder (Frankfurt), Prof. Dr Michael Ronellenfitsch (Tübingen) and Prof. Dr Peter Häberle (Bayreuth). The MPs finally agreed on the following. A new paragraph 20b should be added to the German constitution, reading:

The state must observe the principle of sustainability and safeguard the interests of future generations.

Moreover, the existing paragraph 109 of the German Constitution shall be sharpened to constrain public debt making (changes italicized).

When making decisions with regard to the budget, the Federal Republic of Germany and its states must pay attention to the macroeconomic balance, *to the principle of sustainability and the interests of future generations.*

The proposal for a change to the constitution in favour of future generations has found 50 supporters from different parties. It was very important for successful negotiations that the idea of this change to the constitution was first kept withheld from the public. At some point, the public were informed of this amendment and many notable press articles were written about it, following a report of the weekly *Der Spiegel*. Even more journalists had to be rebuffed because of the premature elections. The premature elections in 2005 forced the group to postpone the release of this campaign until 2006.

But such campaigns pop up somewhere else, too. In the European Parliament a new initiative had their first meeting just when this chapter had to be submitted. To be continued.

### Notes

1. This is not contradictory to the fact that Birnbacher describes the growing range of moral demands regarding time in this volume. Rather it signifies that the present actions of policy-makers become more and more immoral concerning generations to come.
2. There are, of course, more types of clauses conceivable, for instance those that pertain to education or to the social security system. But those are rarely found.
3. In the debate which has been going on since the 1970s, academics have spoken almost exclusively about the 'rights of future generations' (compare Callahan 1980, p. 82; Birnbacher 1988, pp. 96–100; Posner 1990; Saladin/Zenger 1988; Beckerman 1944; Höhle 1997, p. 808; Unnerstall 1999, p. 63ff, p. 117ff; Acher-Widmaier 1999, p. 53; Beckerman 1999; Tremmel 2003b, pp. 353–357). But we actually have to think about replacing the term 'future generations' by 'future humans' because only few theoreticians explicitly regard generations as legal entities (Unnerstall 1999, p. 63ff and p. 117ff). Future generations are composed of future humans. Each of them possibly has individual rights. Can this justify the use of the term 'rights of future generations'? Since we cannot go into greater detail here, both terminologies will be used.
4. Most people would, for instance, also talk about the rights of extraterrestrials (although it is unclear if they exist). If one imagines that such a 'potential living being' would come down to earth most people would argue that they have the right not to be arbitrarily slaughtered if they behave peacefully. One can point out that a creature like Steven Spielberg's E.T. made millions of people cry.
5. Like many others. In our company there are for instance the French presidents who appointed a Council for the Rights of Future Generations (Conseil pour les Droits des Générations Futures) and last not least, Germany's former minister of justice, Mrs Prof. Dr Däubler-Gmelin (2000, p. 27).
6. Beckerman's second premise ('any coherent theory of justice implies conferring rights on people') is obviously subject to the same definition quarrels. But to apply the above mentioned criteria to the term 'justice' is beyond the scope of this chapter.
7. General opinion, compare *BVerwG*, *NVwZ* 1998, p. 1080; Schink *DÖV* 1997, pp. 221–222; Badura 1996, *Rdnr.* D 44.
8. It does not change the scope of the following six paragraphs if 'rights' is replaced by 'interests' or 'needs' here.
9. For instance the latest proposal for a balanced budget amendment in the US Congress:

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

Section 2. The limit on the debt of the United States held by the public shall not be

increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a roll call vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a roll call vote.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The appropriate committees of the House of Representatives and the Senate shall report to their respective Houses implementing legislation to achieve a balanced budget without increasing the receipts or reducing the disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund to achieve that goal.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Section 8. This article shall take effect beginning with the later of the second fiscal year beginning after its ratification or the first fiscal year beginning after 31 December, 2009.

## **Bibliography**

- Acker-Widmaier, Gerald (1999), *Intertemporale Gerechtigkeit und nachhaltiges Wirtschaften. Zur normativen Begründung eines Leitbildes* (Intertemporal Justice and sustainable budgeting), Marburg: Metropolis Verlag.
- Badura, Peter (1996), *Staatsrecht: systematische Erläuterung des Grundgesetz für die Bundesrepublik Deutschland* (Constitutional Law: a systematic explanation of the Basic Law of Germany), München: Beck.
- Beckerman, Wilfred (1994), ‘“Sustainable Development” – Is it a useful concept?’, *Environmental Values* 3(3), 191–209.
- Beckerman, Wilfred (1999), ‘The myth of inter-generational justice’, [www.project-syndicate.cz/docs/columns/Beckerman1999November.asp](http://www.project-syndicate.cz/docs/columns/Beckerman1999November.asp), 21 March 2001.
- Beckerman, Wilfred (2004), ‘Intergenerational justice’, *Intergenerational Justice Review*, 4(2), 1–5.
- Birnbacher, Dieter (1988), *Verantwortung für zukünftige Generationen* (Responsibility for future generations), Stuttgart: Reclam.
- Birnbacher, Dieter and Norbert Hoerster (eds) (1976), *Texte zur Ethik* (Writings on ethics), München: Deutscher Taschenbuch Verlag (11th edition, 2000).
- Boettcher, Florian and Jörg Tremmel (2005), ‘Generationengerechtigkeit in der Finanzverfassung’ (Generational justice in financial constitutional clauses), *SRzG-Studien*, 1/2005. [http://www.srzg.de/ndeutsch/download/studie\\_finanzielle\\_gg.pdf](http://www.srzg.de/ndeutsch/download/studie_finanzielle_gg.pdf), 29 December.
- Brown-Weiss, Edith (1989), *In Fairness to Future Generations*, Tokyo/New York: United Nations University/Transnational Publishers.
- Callahan, Daniel (1980), ‘What obligations do we have to future generations?’, in Partridge, Ernest (ed.), *Responsibilities to Future Generations*, Buffalo, NY: Prometheus Press, pp. 73–85.
- Daly, Herman (1991), ‘Elements of environmental macroeconomics’, in Constanza, Robert (ed.), *Ecological Economics: the Science and Management of Sustainability*, New York: Columbia University Press, pp. 32–46.

- Däubler-Gmelin, Herta (2000), 'Open letter to the editors', *Zeitschrift für Rechtspolitik*, pp. 27–8.
- Friedrich, Holger, Mändler, Max and Kimakowitz, Ernst von (1998), *Die Herausforderung Zukunft: Deutschland im Dialog. Ein Appell der jungen Generation* (The challenge of the future: Germany in dialogue. A statement from the young generation), Berlin: Ullstein.
- Gosepath, Stefan (2004), *Gleiche Gerechtigkeit. Grundlagen eines liberalen Egalitarismus* (Equal Justice. Foundations of a liberal egalitarianism), Frankfurt am Main: Suhrkamp.
- Hösle, Vittorio (1997), *Moral und Politik. Grundlagen einer politischen Ethik für das 21. Jahrhundert* (Morality and politics. Foundations of a political ethics for the 21st century), München: C.H. Beck Verlag.
- Oposa, Antonio (2002), 'In Defence of Future Generations', *Intergenerational Justice Review*, 2(3), 7.
- Pearce, David and Turner, Kerry R. (1990), *Economics of Natural Resources and the Environment*, London: Harvester Wheatsheaf.
- Posner, Roland (1990), 'Das Drei-Kammer-System: Ein Weg zur demokratischen Organisation von kollektivem Wissen und Gewissen über Jahrtausende' (The three-chamber-system: a way for a democratic organisation of collective wisdom and conscience for millenia), in Posner, Roland (ed.), *Warnungen an eine ferne Zukunft. Atommüll als Kommunikationsproblem* (Warnings to a remote future. Atomic waste as a problem of communication), München: Raben Verlag, pp. 259–305.
- Renn, Ortwin and Anja Knaus (1998), *Den Gipfel von Augen. Unterwegs in eine nachhaltige Zukunft* (The peak in front of you – on the way to a sustainable future), Marburg: Metropolis Verlag.
- Saladin, Peter and Zenger, Christoph A. (1988), *Rechte künftiger Generationen* (Rights of future generations), Basel/Frankfurt am Main: Helbing & Lichtenhahn.
- Schink, Alexander (1997), 'Umweltschutz als Staatsziel' (Environmental protection as a state aim), *DÖV* 1997, 221–23.
- Tremmel, Jörg (1996), *Der Generationsbetrug* (The generation fraud), Frankfurt am Main: Eichborn Verlag.
- Tremmel, Jörg (2003a), *Nachhaltigkeit als politische und analytische Kategorie* (Sustainability as a political and analytical category), München: oekom Verlag.
- Tremmel, Jörg (2003b), 'Positivrechtliche Verantwortung der Rechte nachrückender Generationen', Stiftung für die Rechte zukünftiger Generationen (eds) (2003), *Handbuch Generationengerechtigkeit*, 2nd edition, München: oekom Verlag, pp. 349–82.
- Tremmel, Jörg (2005), 'Was ist jung an den Grünen?' (In which aspect are the 'Greens' still young?), in Grammatikpoulos, Maria and Rudi Hoogvliet (eds), *Grüne. Lob und andere Wahrheiten*, Berlin: Helios Media, pp. 176–81.
- Tremmel, Jörg and Viehöver, Martin (2001), 'Das Dilemma der Kurzfristigkeit der Politik' (The dilemma of short-termism in politics), *Intergenerational Justice Review* (German edition), 1(2), pp. 1 and 20.
- Unnerstall, Herwig (1999), *Rechte zukünftiger Generationen* (Rights of future generations), Würzburg: Verlag Königshausen und Neumann.
- Weber, Marx (1904), 'Die Objektivität sozialwissenschaftlicher und sozialpolitischer Erkenntnis' (The objectivity of knowledge in social science and social policy), Reprinted in J. von Winckelmann (ed.) (1988), *Gesammelte Aufsätze zur Wissenschaftslehre*, Tübingen: Mohr, pp. 146–214.