INTERGENERATIONAL JUSTICE AND THE ENVIRONMENT

“Nevermind”
INTERGENERATIONAL JUSTICE AND THE ENVIRONMENT

SOCIAL EQUALITY

INTERGENERATIONAL JUSTICE  ENVIRONMENT

SUSTAINABLE DEVELOPMENT
INTERGENERATIONAL JUSTICE AND THE ENVIRONMENT

SUSTAINABLE DEVELOPMENT GOALS

1. NO POVERTY
2. ZERO HUNGER
3. GOOD HEALTH AND WELL-BEING
4. QUALITY EDUCATION
5. GENDER EQUALITY
6. CLEAN WATER AND SANITATION
7. AFFORDABLE AND CLEAN ENERGY
8. DECENT WORK AND ECONOMIC GROWTH
9. INDUSTRY, INNOVATION AND INFRASTRUCTURE
10. REDUCED INEQUALITIES
11. SUSTAINABLE CITIES AND COMMUNITIES
12. RESPONSIBLE CONSUMPTION AND PRODUCTION
13. CLIMATE ACTION
14. LIFE BELOW WATER
15. LIFE ON LAND
16. PEACE, JUSTICE AND STRONG INSTITUTIONS
17. PARTNERSHIPS FOR THE GOALS
Rachel Carson
*Silent Spring* (1962)

Drew attention to the relationship between economic growth and development and environmental degradation.

- use of pesticides
- chemical industry
- disinformation
Alexandre Kiss located the “awakening of the ecological era” for the international community in the latter 1960s, after the period of reconstruction of post-war, which led to an economic development without precedence.

_Direito Internacional do Ambiente_ (1994)
Stockholm Conference
United Nations Conference on the Human Environment
5 to 16 June 1972

- Stockholm Declaration: 26 principles
- Chemical pollution
- Atomic bomb testing
- Whaling
- United Nations Environment Programme
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Stockholm Declaration

1. Human rights must be asserted, apartheid and colonialism condemned
2. Natural resources must be safeguarded
3. The Earth's capacity to produce renewable resources must be maintained
4. Wildlife must be safeguarded
5. Non-renewable resources must be shared and not exhausted
6. Pollution must not exceed the environment's capacity to clean itself
7. Damaging oceanic pollution must be prevented
8. Development is needed to improve the environment
9. Developing countries therefore need assistance
10. Developing countries need reasonable prices for exports to carry out environmental management
11. Environment policy must not hamper development
12. Developing countries need money to develop environmental safeguards
13. Integrated development planning is needed
14. Rational planning should resolve conflicts between environment and development
15. Human settlements must be planned to eliminate environmental problems
16. Governments should plan their own appropriate population policies
17. National institutions must plan development of states' natural resources
18. Science and technology must be used to improve the environment
19. Environmental education is essential
20. Environmental research must be promoted, particularly in developing countries
21. States may exploit their resources as they wish but must not endanger others
22. Compensation is due to states thus endangered
23. Each nation must establish its own standards
24. There must be cooperation on international issues
25. International organizations should help to improve the environment
26. Weapons of mass destruction must be eliminated
“(…) development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

SUSTAINABLE DEVELOPMENT

“(…) development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Contains within it two key concepts:

✓ The concept of 'needs', in particular, the essential needs of the world's poor, to which overriding priority should be given; and

✓ The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.”

World Commission on Environment and Development, Our Common Future (1987)
Earth Summit

United Nations Conference on Environment and Development (UNCED)
Rio de Janeiro, 3 to 14 June 1992

- Rio Declaration on Environment and Development
- Agenda 21
- Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests

Open for signature:
- Convention on Biological Diversity
- Framework Convention on Climate Change (UNFCCC)
- United Nations Convention to Combat Desertification
Rio Declaration

Principle 1
Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2
States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3
The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4
In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5
All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

(...
Rio Declaration

Principle 21
The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.
Equality between present and future generations
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Sustainability

Economy

Society

Environment
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Sustainable Development

PEOPLE
End poverty and hunger in all forms and ensure dignity and equality

PLANET
Protect our planet’s natural resources and climate for future generations

PARTNERSHIP
Implement the agenda through a solid global partnership

PEACE
Foster peaceful, just and inclusive societies

PROSPERITY
Ensure prosperous and fulfilling lives in harmony with nature

http://yaounde.sites.unicnetwork.org
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http://yaounde.sites.unicnetwork.org
It’s all about equality!
Shenzhen, China, nowadays
INTERGENERATIONAL JUSTICE AND THE ENVIRONMENT
It’s all about equality!
INTERGENERATIONAL JUSTICE AND THE ENVIRONMENT

United Nations Resolution
A/RES/70/1 of 25 September 2015

SUSTAINABLE DEVELOPMENT GOALS
1. No Poverty
2 Zero Hunger
5. GENDER EQUALITY
6 CLEAN WATER AND SANITATION
10 REDUCED INEQUALITIES
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Human rights?
Generations of human rights

First generation
Civil and political rights

Second generation
Economic, social and cultural rights

Third generation (after Stockholm 1972)
Beyond civil and social rights: healthy environment, intergenerational rights, sustainable development...

Fourth generation...?
Hungarian Parliamentary Commissioner for Future Generations

According to the Act 111 of 2011 on the Hungarian Commissioner for Fundamental Rights, has ceased to exist. From 1 January 2012 its tasks were overtaken by its legal successor, the Office of the Commissioner for Fundamental Rights.
Is there a human right to a green future?
Reciprocity at the centre of the concept of justice.

*Theory of Justice* (1971)
“Reciprocity is a deontic virtue. (…) we should return good for good, in proportion to what we receive; (…) we should resist evil, but not do evil in return; (…) we should make reparation for harm we do; and (…) we should be disposed to do those things as a matter of moral obligation.”

Lawrence C. Becker, *Reciprocity* (1986)
“Whether or not the circumstances of justice obtain among nations is an empirical matter. They may or they may not. Whether or not they obtain between the generation of those currently alive at one time and their successors is a logical matter. They cannot. The directionality of time guarantees that, while those now alive can make their successors better or worse off, those successors cannot do anything to help or harm the current generation.”

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Equality between present and future generations
What if they take the power?
What if they take the power?
The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.
Climate change justice?
Congress and Trump have begun reversing multiple Obama rules on the environment — and more
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Environmental legal reversals?
Environmental legal reversals

reduction of the environmental protection level

Motivated by:
✓ economic crisis
✓ administrative simplification
Interdiction of environmental legal reversals

- Environmental reason: ecological precaution
  - interdiction for precaution (risk)
  - interdiction for prevention (certainty)

- Social reason: intergenerational justice
  - social reversal (loss of individual/collective rights)
  - environmental reversal (loss of ecological balances)

- Legal and European reason: high level of protection
High level of protection

Treaty EU: article 3, par. 3
“The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.”

Treaty on the Functioning EU: article 114, par. 3
“The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.”
High level of protection

Treaty on the Functioning EU: Article 191, par. 2 “Union policy on the environment shall aim at a **high level of protection** taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”

Charter of Fundamental Rights EU: Article 37 “A **high level of environmental protection** and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”
Interdiction of environmental legal reversals

Environmental protection always assumes a reallocation of economic resources which are scarce. So there is always a balancing on the ecological and non-ecological values.

There are:
✓ Direct investments
✓ Social indirect investments
✓ Direct costs
✓ Indirect costs
Interdiction of environmental legal reversals

Balancing the legal possibility or not of enacting new norms that may imply a lower protection level:

- severity and irreversibility of the environmental effects
- legal and civilizational progress of certain norms

Legal irreversibility must obey to:
- ecological precaution
- intergenerational justice
Ecological sustainability is a **pre-requisite of development** and not only a mere aspect of it: only a healthy environmental development may satisfy the needs of current and future generations.

*The principle of sustainability: Transforming Law and Governance* (2008)
“Democracies through the guarantees of constitutionalism offer citizens the opportunity to check the power of governments and all institutions that either countenance or perpetuate new environmental harms.

As citizens empowered to effect governamental and organizational decision making for the environment and for public health, they must recognize that when some institution enjoys unchecked power, democratic peoples ultimately should also blame themselves, and not merely scapegoat the institution.”

“Protecting environmental rights also require sacrifice on the part of all of society, as is customarily the case with rights, but with a significant difference. Environmental rights posit a relationship (defined by rights and duties) with a usually ignored set of others – future generations.

Furthermore, environmental rights not only insist that future persons will actually have the same rights as us but also, much more significantly, that we have obligations toward them already because of those rights, even though their bearers do not yet exist.”

Reciprocity & Equality
Ye ye ye, that's theory...

Show me facts!
Judicial cases
examples
Jayal and Others v. India and Others (2004)
Jayal and Others v. India and Others (2004)

A challenge to the construction of the Terhi Dam.

Petitioners alleged that further study and tests were necessary to ensure the safety of the dam and that conditions imposed by an environmental clearance issued for the project had not been complied with. They claimed that the project had to be halted until further tests were completed and the conditions complied with.

The Court refused to order the additional tests because the “decision-making agency took a well informed decision (...) there is no need to interfere.”
Jayal and Others v. India and Others (2004)

“This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project (...) When the Government or the concerned authorities after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate fot the Court to interfere.”

The Court also ruled that the conditions imposed by the environmental clearance had been complied with, even if there had been occasional lapses that had to be enforced by the supervising.
Jayal and Others v. India and Others (2004)

“(…) the balance between environmental protection and developmental activities [can] only be maintained by strictly following the principle of “sustainable development.” This is a development strategy that caters the needs of present without negotiating the ability of upcoming generations to satisfy their needs.

(…) All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be on jeopardy.”
Jayal and Others v. India and Others (2004)

“[A]dherence [to the] sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to “sustainable development” cannot be singled out. (…)

The weighty concepts like inter-generational equity (…), public trust doctrine (…), and precautionary principle (…), which we declare as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.”
Discussion:

1. Can environmental protection and economic development be reconciled?

Is that what sustainable development attempts to achieve?

“only growth can eliminate poverty. Only growth can create the capacity to solve environmental problems. But growth cannot be based on overexploitation of resources (...) it must be managed to enhance the resource base on which all countries depend.”

Gro Harlem Brundtland, Global Change and Our Common Future (1990)
Discussion:

2. Does the principle of sustainable development imply limits?

Is it the same as sustainable growth?

Does integrating environment and development somehow subordinate environmental concerns to development?
Discussion:

3. To what extent should the needs of poor nations for economic development override environmental concerns?

“Common but differentiated responsibilities”
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*Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Supreme Court of Philippines (1993)*
Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Supreme Court of Philippines (1993)

This petition bears upon the right of Filipinos to a balanced and healthful ecology which the petitioners dramatically associate with the twin concepts of “inter-generational responsibility” and “inter-generational justice”.

Specifically, the issue was whether the petitioners have a cause of action to “prevent the misappropriation or impairment” of Philippine rainforests and “arrest the unbated hemorrhage of the country’s vital life-support systems and continued rape of Mother Earth.”
Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Supreme Court of Philippines (1993)

The principal plaintiffs were all minors duly represented and joined by their respective parents.

They asseverated that they “represent[ed] their generation as well as generations yet unborn.”

“the right of the people to a balanced and healthful ecology recognized by Constitution], the concept of generational genocide in Criminal Law and the concept of man’s inalienable right to self-preservation and self-perpetuation embodied in natural law”
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Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Supreme Court of Philippines (1993)

Minors as plaintiffs:

“Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.”

Donald Anton & Dinah Shelton (2011)

The Philippines Supreme Court found that present generations have standing to represent future generations.
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Discussion:

1. Can future generations have rights?

2. What about intragenerational equities? Is this what is meant by environmental justice? Or is intragenerational equity in fact the concept of human rights?

3. Is intragenerational justice reflected in the following principles?
   - common but differentiated responsibilities
   - equitable utilization of shared resources
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Water supply enhancement to Bragança (pending)
Water supply enhancement to Bragança (pending)

Water supply to current generations vs. Natural resources and future generations
On Intergenerational Equity

It is a principle of international justice, based on the recognition of three key facts.
On Intergenerational Equity

1. Human life emerged from, and is dependent on, Earth’s natural resource base, including its ecological processes, and is thus inseparable from environmental conditions;
On Intergenerational Equity

2. Human beings have a unique capacity to alter the environment on which life depends; and
On Intergenerational Equity

3. No generation has a superior claim to Earth’s resources, because humans did not create them but inherited them.
3. No generation has a superior claim to Earth’s resources, because humans did not create them but inherited them.

The reason why environmental legal reversals must be considered as interdicted.
“Nevermind” is not the word!
Today would have been your 50th Birthday. You are loved and you are missed. Thank you for giving me The GIFT of Life. Forever your Daughter, Frances Bean Cobain.
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