

## How to Protect the Future By Tim Montague

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The earth is our home -- our only home. So far as anyone knows, there is no other place in the universe hospitable to human life. If we ruin the earth as a place suitable for humans, we are lost.

In 2000 the United Nations organized a massive study to assess the condition of planet earth. Called the Millennium Ecosystem Assessment, the study involved 1300 researchers from 95 countries, who spent four years examining 24 ecosystems worldwide. The main conclusion: of 24 ecosystems studied, 15 (about 2/3rds) are in serious decline as a result of human activities.

When the Millennium Assessment was released, the scientific director of the project, Dr. Walter Reid, said, "At the heart of this assessment is a stark warning. Human activity is putting so much strain on the natural functions of Earth that the ability of the planet's ecosystem to support future generations can no longer be taken for granted."

As more and more people recognize that humans are ruining the planet as a suitable home for humans, a central question comes into focus: how can we protect the future, so that our children can be assured of having a suitable home? What habits of thought, rules for behavior (laws), and institutions can we put in place to make sure the earth continues to support our species?

Now a new report, **Models for Protecting the Environment for Future Generations**, from the Science and Environmental Health Network (SEHN), the International Human Rights Clinic at Harvard Law School, and the Indigenous Environmental Network (IEN) offers an overview of legal and social mechanisms that human societies, ancient and modern, have created to protect the future.

This short report -- just 24 pages, plus appendices -- examines three crucial aspects of protecting the future:

1. How do we formally acknowledge and assert that the present generation has an obligation to future generations, and that future generations have a parallel right to a habitable planet?

2. What legal and social relationships can embody our recognition that we have a duty to preserve our children's only home, the Earth?
3. What institutions can we create to make those relationships real and effective? Luckily we don't have to start from scratch. Ancient human societies have passed down to us some of their own wisdom about these questions. For example, the Gayanshagowa, or "Great Binding Law," of the Iroquois Confederacy, defines the duties, rights, and qualifications of leaders to take future generations' interests into account in their decision-making: to "[l]ook and listen for the welfare of the whole people and have always in view not only the present but also the coming generations." (p. 7) This ancient law finds modern expression in the Bemidji Statement developed by the Indigenous Environmental Network.

In modern times, humans have formally acknowledged the interests of future generations in various legal frameworks. These include declarations (like the Rio Declaration on Environment and Development), conventions (the Stockholm Convention on Persistent Organic Pollutants, for example), constitutions (notably, those of Bolivia, Japan, Norway and the U.S. states of Alabama, Colorado, Hawaii, Illinois, and Montana; see the appendix C of the report pp. 34-46 for details), as well as certain U.S. federal and state laws (like the California Environmental Quality Act).

For example, the Norwegian Constitution says, "Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well." (p. 39)

Another example is the 1987 report, *Our Common Future: Report of the World Commission on Environment and Development* (known as the Brundtland Report), and the 1992 UN Framework Convention on Climate Change, both of which connect actions by the current generation to the well-being of future generations. The Brundtland Report gave us what is still the most popular definition of sustainability: "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs." (p. 4)

So we have examples, ancient and modern, of many ways that present-day humans have acknowledged their obligation to future generations. Arguably, this obligation, once acknowledged, creates a parallel right of future generations to inherit a habitable world. Rights are a particularly powerful concept in the law, often trumping other interests.

But how can a right to a habitable planet be safeguarded? We can have the best intentions, but if we don't have a mechanism for representing the interests of future generations in decision-making, then those interests are likely to be ignored.

### **Courts, Ombudsmen, Guardians**

The report describes three main ways that we can (and sometimes do) protect the environment for future generations: the courts, ombudsmen (or commissioners), and guardians (or trustees).

A functioning court system is essential. The courts interpret (and hopefully uphold) the law. Of course there have to be meaningful laws to uphold and the courts have to be independent from the influence of money or other sources of corruption. The report offers a few examples like the Philippines, which gave 44 minors the right to "sue on behalf of themselves and future generations because of concerns about unsustainable logging in the country." (p. 13) And the Montana Supreme Court "found its state constitutional environmental provisions give private citizens and environmental groups the right to sue for environmental harms to public resources." which theoretically protects the health and environment of future generations.

Assuming that the courts serve their basic function, then the appointment (or election) of ombudsmen and guardians for future generations are logical next steps. An ombudsman is an advisor who engages in a decision-making process on behalf of future generations. A guardian is a legal representative for future generations. The distinction between the two is subtle but important.

### **Ombudsmen and Guardians for Future Generations**

Ombudsmen are independent advisors who review proposed laws or actions. They can serve as liaisons, mediators or investigators. Sometimes they have the right to sue. According to the report, "Many countries have established human rights ombudsmen. These authorities usually serve quasi-judicial roles, either as investigators or mediators." And two countries, Canada and the United Kingdom, have established Ombudsmen for environmental issues. The U.K. Sustainable Development Commission uses "advocacy, advice and appraisal... [to] put sustainable development at the heart of Government Policy." It reports to the prime minister and other ministers and describes itself as "the Government's independent watchdog." (p. 16)

Guardians give future generations a direct voice and a real presence in the decision-making process. According to the report, "Guardians are advocates rather than advisors

and seek, in specific situations such as litigation and negotiations, to maximize the best interests of those who cannot speak for themselves." (p. 19) The natural resource trustees authorized by the U.S. Superfund Amendments and Re-authorization Act of 1986 is a model for how guardians for future generations could work to protect the environment and health of future generations.

### **A precautionary approach is essential**

Because there is inherent uncertainty when considering the impacts of present-day actions on future generations, courts, guardians and ombudsmen for future generations would rely on the precautionary principle to guide their work, the report says. The report uses the definition of precaution embodied in the 1998 Wingspread Statement: "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically." (p. 22)

The Wingspread Statement also specifies that "precautionary action" involves a systematic search for the least-harmful alternative to any intended action, as is spelled out in the U.S. National Environmental Policy Act. The key, according to the report, is that "The precautionary principle and alternatives approach acknowledge the needs and rights of present generations, they also support the protection of an ecologically healthy environment for future generations. Both support the proposition that each generation depends on its predecessors to bequeath it an inhabitable environment." (p. 23)

*Models for Protecting the Environment for Future Generations* is a unique resource for anyone interested in really protecting the rights of future generations. It spells out in considerable detail how courts, ombudsmen and guardians can protect the future. It also reminds us that our right to a clean and healthy environment is still not recognized as a basic human right. According to Carolyn Raffensperger, one of the authors of the new report, this right, and extending it to future generations, are essential additions to the Universal Declaration of Human Rights of 1948.

In this report, you will find practical ideas and suggestions that you could put into practice in your town or city, your county council, your state, or your national government. In sum, here is an essential set of tools for protecting the future, some new, some ancient, but all explained clearly, concisely, and (so far as we know) collected together for the first time ever.