

By their very nature, constitutions are intergenerational documents. With rare exceptions, they are meant to endure for many generations. They establish the basic institutions of government, enshrine the fundamental values of a people, and place certain questions beyond the reach of simple majorities. Constitutions, especially written ones, are often intentionally made difficult to modify.

Inevitably, constitutions raise important questions of intergenerational justice. When one generation enshrines its values in a constitution, and makes it difficult to amend the constitution, does it deprive future generations of the sovereignty each generation should be able to exercise? It might well not make a difference if those future generations share the values of their ancestors, but what if they do not? What if future generations see some important provisions of the constitution as not merely inconvenient, but as morally wrong, or even as a threat to their well-being? Of course, if enough people share this view, the constitution can be changed – but what if the division falls short of the supermajority needed to amend the constitution?

This is the dilemma created by constitutions, particularly written constitutions which require supermajorities to alter their provisions. In our judgment there is no perfect solution to this dilemma. Rather, every solution represents a balancing of interests and risks.

On the one hand, constitutions are valuable precisely because they remove some questions from the hands of electoral majorities. The institutions of government and the basic rights of individuals and communities are among the matters commonly protected by constitutions against the impact of day-to-day politics. Future generations benefit to the extent that constitutions establish just and stable institutions which can adapt and change peacefully to changing needs and circumstances.

On the other hand, constitutions, like people, can age poorly. The values enshrined in a nation's constitution can be ethically wrong when adopted (for

example, the protection of the slave trade written into the U.S. Constitution). Time can also demonstrate that some provisions of a constitution are unwise. Technological change may also alter the effects of some provisions. (Consider the difference between the right to bear a 1790 firearm, and the right to bear an automatic weapon in 2010.) And the values of a people can change, too. To some extent, all of these sources of discontent with a nation's constitution may be inevitable. The framers of a nation's constitution are not all-wise and all-seeing, and even if they were, the constitution that fits a nation in its youth may be quite different from that which fits it two centuries later. The question, then, is how future generations can adapt to their constitution, and how they can adapt their constitution to their needs.

This, in essence, is the problem we posed to the authors who submitted articles for this issue of the *Intergenerational Justice Review*. How do you balance the importance of placing some questions beyond the control of a simple majority in a written constitution, with the need to preserve for future generations the ability to adapt it to their changing needs? The answers our authors give in this issue of the *IGJR* vary. Two of them take as their starting point the disagreement between Thomas Jefferson and James Madison concerning the desirability of revising the U.S. Constitution every generation; and another addresses those concerns in the concluding section.

Iñigo González-Ricoy's opening article focuses on the legitimacy of constitutional provisions aimed at advancing future generations' interests. He argues that the dilemma of future generations being constrained by the choices of their ancestors can be reduced considerably, at least with respect to those constitutional provisions that seek to advance the needs and interests of future generations. Legitimacy concerns may be addressed further through the use of sunset clauses and regular constitutional conventions.

Our second article, by Shai Agmon, argues that Jefferson's proposal that a constitution be re-authorised every 19 years

is unsatisfactory because it fails to fulfil its own normative aspirations. It produces two groups of people who will end up living under laws to which they did not give their consent: (a) citizens who reach the voting age after the re-enactment process; (b) citizens who did not assent to being obliged by the majority vote's results. In Agmon's view, the existence of significant numbers of citizens who have not consented to the laws undermines any consent-based rationale for adopting a Jeffersonian approach.

In our closing article, Michael Rose rejects the Jeffersonian argument that the self-determination of future generations is impeded by lasting constitutions. Rather, he argues that a demand for future generations' full self-determination is both self-contradictory, and impossible to achieve. Instead, we should employ an attitude of "reflective paternalism" towards future generations by introducing their interests into today's decision-making process, and by ensuring that the constitution itself provides for democratic self-determination. No doubt, more research is needed on the best ways to incorporate protections for the rights and interests of future generations into constitutions. Future research should also examine how the lessons we have learned from trying to protect the environment can be applied to the circumstances of future generations. The goal is a very practical one: to discover what constitutional provisions can best protect the rights of future generations.

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