

## Editorial

## Special Issue

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## EDITORIAL

### SPECIAL ISSUE

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‘Law and the Future - A Legal Perspective on Intergenerational Justice’ is an innovative venture in the field of Law in Portugal. This issue gathers the ideas of reputed international and national scholars, of young and promising researchers as well as of institutional representatives which were presented at the ‘International Conference on Intergenerational Justice – The Law of the Future And the Future of Law’.

This scientific interdisciplinary event, held on the 19th and 20th of June of 2014 at the University of Lisbon School of Law, was the first initiative within the Lisbon Centre for Research in Public Law’s research project entitled ‘Towards a legal protection of the Future?’

Hugely successful, the Conference was honored by the Secretary-General of the United Nations Ban Ki-moon, who sent the Lisbon Centre for Research in Public Law the following personal statement:

*“Lisbon, Portugal, 19 June 2014 - Secretary-General’s message to Lisbon Conference on Intergenerational Justice: The Future of Law and and the Law of the Future*

*It gives me pleasure to convey my best wishes to all the participants in this important conference on intergenerational justice. I thank the many Portuguese and other partners that have joined together to make this event possible.*

*A dedication to future generations is a universal value, visible across countries and cultures. Increasingly, it finds expression in domestic laws, constitutions and international agreements.*

*Many urgent crises of the present are the symptoms of slow-burning, long-term problems. Yet too often, institutions and decision-makers remain trapped in the “tyranny of the present”, unable to integrate both current and long-term perspectives into policy-making.*

*The United Nations General Assembly is currently embarked on defining a set of sustainable development goals, to build on the gains and lessons of the Millen-*

*nium Development Goals in our work beyond 2015. The post-2015 development agenda, with sustainable development goals at the core, will seek to ensure a healthy planet and support human well-being for the current generation and many generations to come.*

*I am convinced that your deliberations will provide further impetus to this critical pursuit. I wish you every success and thank you for your support of the United Nations.”<sup>1</sup>*

We cannot capture all the energy and progressive debate that occurred at the conference, but hopefully these papers will contribute to recreate a sense of the occasion and inspire a commitment to future research in benefit of justice between generations.

Thereby, this e-Pública issue aims to provide the readers with absolute and thought-provoking research coming from different scientific fields such as Law, Political Science, Philosophy or Sociology. It also includes summaries of the presentations of institutional representatives made during this event due to their scientific interest.

This publication also follows the Budapest Memorandum<sup>2</sup>, signed by the Centre of Research and Marisa Quaresma dos Reis, individually, stating the intention of creating the debate on national and supranational institutional models for the protection of a sustainable future in social, economic and environmental matters. Intergenerational justice and futures thinking have been hot topics in the juridical field since the raise of major environmental concerns back in the early 70s. This special issue aims to demystify the apparent exclusive relationship between intergenerational justice and environmental law.

In fact, in the late 80s, the Brundtland Report (Our Common Future)<sup>3</sup> recognised the need for a programme on sustainable development based on three main pillars: Economy, Society and the Environment. This was just a first step.

Ten years later, the UNESCO went even further in its Declaration on the Responsibilities of Present Generations Towards Future Generations<sup>4</sup> recognising specific interests of future generations and the need to safeguard their freedom of choice concerning, among others, the preservation of genetic heritage, the right to development, and personal and collective fulfilment, along with the right to live in an ecologically balanced environment.

Indeed, the right to a “sustainable development” would explain more precisely what has been understood at the international level as “primordial interest of future generations” in both moral philosophy and in various legal documents (such as the Rio Declaration of 1992<sup>5</sup>) which aims to foster the protection of the interests of posterity.

The national and European policy debate on the safeguard of future generations’

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1. In <http://www.un.org/sg/statements/index.asp?nid=7799>

2. In [http://www.kas.de/wf/doc/kas\\_12857-1442-1-30.pdf?140507135328](http://www.kas.de/wf/doc/kas_12857-1442-1-30.pdf?140507135328)

3. In <http://www.un-documents.net/our-common-future.pdf>

4. In [http://portal.unesco.org/en/ev.php-URL\\_ID=13178&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html)

5. In <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>

interests has been developed along with the question of sovereign debt and the imminent insolvency of States. It is undeniable that the international financial crisis and its consequences within the states prove the urgency and relevance of its legal debate.

Nevertheless, the question of how juridical concepts such as “duties”, “rights” or “damage” can be interpreted when applied within the intergenerational context remain unsolved. Nevertheless, it is consensual that future generations have moral meaning.

One of the problems that ‘pro future generations thinkers’ identify is the functioning of modern representative democracies themselves. Political parties (or should we say party politics) are largely oriented to the short term. It is also certain that current legal systems all over the world and at a supra national level are ill-equipped to protect those who are disregarded by today’s electorate. This said, it is urgent to foster the debate on the law and its relation to future people, requiring innovative thinking to imagine alternatives that can complement today’s legal architecture surpassing our restricted way of thinking.

Fortunately, there is an increasing number of institutions and bodies all over the world created to protect the interests of future generations. At the same time, the term ‘future generations’ is burgeoning in national constitutions and international legal texts.

Yet, we believe this debate should seek to build a prudent assessment of the intergenerational justice concept at a legal level. Methodological prudence is required, nevertheless we firmly advocate the need of a consistent legal concept of intergenerational justice as well as the recognition of legitimate interests to future generations.

This would be specially relevant and desirable concerning the following areas:

- Sustainable development and environmental protection;
- Sustainable and informed consumption given the scarcity of natural resources such as fish resources and forests;
- Protection of biodiversity, in particular the protection of endangered plants and animal species;
- Creation of funds coming from the exploitation of non-renewable resources such as oil or minerals;
- The protection of the biological and genetic identity of the human person.

Besides these contexts, thinkers should find a balance between intra and intergenerational justice, avoiding a certain political and ideological contamination in times of crisis and austerity. Of course it is legitimate to discuss whether the priority is to keep the funding of public schools, the NHS and the social security system or, alternatively, the priority should be given to the fight against budget deficit and to the reduction of public debt. The debate is legitimate, but it seems more political and ideological than juridical. On the other hand, a theoretical construction too focused on an intergenerational justice imperative could result as being excessively abstract and could neglect the specificities of each country. For instance, in a country such as Portugal, which is facing a severe economic and social crisis, certainly the most serious in the last decades, present generations cannot remain in the background. Should not the imperative in this case be the one of intragenerational justice? The one of justice between coexistent generations? For example, the imperative of equity and solidarity between older and

younger; between the richest and the poorest? We would like to emphasize that social justice and intragenerational justice should also be fundamental dimensions in this debate. Fostering intragenerational and social justice will assuredly contribute to create better conditions for future generations.

In Portugal, just after the terrible earthquake of 1755 that destroyed the city of Lisbon, Marques de Pombal, State Secretary of the Portuguese Crown at the time, clearly defined the priorities of the Kingdom: “Bury the dead and care for the living.”

In such a situation of structural economic and financial crisis, which multiplies and amplifies the destructive social effects of unemployment and poverty, this requires from all of us – not only from scholars - options and solutions that help the living to continue living with dignity and sense of future.

In the previously quoted message addressed to the Lisbon Conference on Intergenerational Justice by the Secretary-General of the United Nations it is said that “*institutions and decision-makers remain trapped in the tyranny of the present*”. Following the same reasoning, it seems obvious that institutions and decision-makers shall not be trapped in the tyranny of the future also.

Through this diversity of authors, the reader will find fruitful thoughts coming from different scientific backgrounds and different age groups. It seems clear that this debate shall be conducted in the academic space, as we did here, but also within the political and institutional actors. That is the reason why we have included the contributions of institutional representatives (both from Portugal and from abroad) that work on the promotion and protection of the future at a higher level of influence.

Finally, we would like to thank our reviewers for their most helpful criticisms and advice in the preparation of this issue. We truly hope this publication works as the basis for much further discussion and thinking on the lawful implementation of intergenerational justice.

We hope you enjoy reading this special issue of e-Pública!

#### **The Guest Editors**

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