

**INTERNATIONAL CONFERENCE "INTERGENERATIONAL JUSTICE – THE LAW OF  
THE FUTURE AND THE FUTURE OF THE LAW"**

**(19 JUNE 2014)**

I would like to start by thanking the Faculty of Law of the University of Lisbon and the Institute of Legal and Political Sciences for organising this conference. It is taking place at a time of severe crisis, in which the hardest hit – beyond the elderly – are young people, who inevitably begin to understand the unconcerned way in which current generations have viewed future ones and, consequently, how the absence of Law has allowed this intergenerational situation to be forgotten.

Today, we better understand the fact that the world's democracies are facing a structural problem: they tend to favour the present over the future, which can lead to a collision with the imperatives of balance and intergenerational justice. We should, therefore, seek to find ways of reconciling democracy and intergenerational justice, institutionalising the interests of future generations in today's decision-making process. We should not forget that this attempt to protect a future that is open, uncertain and insecure and to allow the formation of intergenerational ties depends on accepting uncertainties in decision-making processes, since the situation is so dynamic and changeable for many reasons that forecasts, studies and diagnoses cannot be unchanging or reliable.

**In the field of principles**

Concern with future generations certainly stems from the greatest principle of our legal system – **the dignity of the human person**. It requires a minimum living standard for human beings, with pillars in the quality of life and well-being of individuals and groups, dignity that should be maintained over time and includes concern with and respect for others, even if they do not exist.

The Portuguese Constitution does not refer to the rights of future generations, but it expressly mentions the **principle of intergenerational solidarity** in Title III, Economic, social and cultural rights and duties – in subparagraph d), paragraph 2 of Article 66 (*Environment and quality of life*). The principle of solidarity involves

protecting the interests of future generations, requires that preventive measures are adopted, and justifies applying other principles such as the principle of liability and the use of the best technologies available.

The **principle of sustainability**, which has direct, immediate reflections in matters of intergenerational justice, is also expressly enshrined in the Constitution: it is laid down as a fundamental task of the state in paragraph e) of Article 9.

During the 11th legislature – the last legislature in which the Assembly of the Republic assumed powers of constitutional revision – the draft revision of the Constitution submitted by the Social Democratic Party sought to take a further step towards protecting future generations. It proposed enshrining a general clause overseeing the interests and expectations of future generations, adding the promotion of intergenerational solidarity as a fundamental task of the state (in Article 9), which would mean extending this principle to all areas of state intervention, rather than being limited to environmental issues.

(The constitutional revision process lapsed when the Prime Minister José Sócrates resigned in 2011, leading to the dissolution of the Assembly of the Republic and the end of the 11th legislature).

### **In practice**

It is clear that establishing ties with the generations who succeed us means limiting our current desire for power and usage. But in reality there are still not adequate mechanisms to incorporate the interests of future generations in today's decision-making processes.

Conflicts between the interests of present and future generations are likely in two fields: the environment and financial policy. Traditionally, they were focused exclusively on environmental issues but, today, widening the discussion to financial issues is particularly important.

(1) To start with, the decisions about public spending and creating debt taken by the "generation in power" may represent a choice by the current generation of voters to live at the expense of those who are still too young to vote, which may mean breaking the intergenerational pact. In other words, the people who pay the fundamental costs of excessive indebtedness do not contribute in the precise moment of electing those who make the decision to use credit.

(2) Another example that illustrates the situation is related to the transfer of private pension funds to the state sphere, both from the banking sector and from certain public companies. Such operations provide a financial increase that makes it possible to satisfy the concerns of electors in the short term, by increasing availability for consumption and reducing budget deficits, without apparent drawbacks or costs. However, transferring those funds involves accepting a large obligation that will have repercussions in the future of new generations.

(3) As regards social security, too, the current system, in which current generations provide for the pensions of previous generations, is condemned to a limited lifespan because of demographics. The joint effects of low birth rates and significant increases in average life expectancy mean that there are fewer and fewer people in the active population to pay social security and more and more retired people living on it. This structural cause is today joined by the effects of the crisis and the absence of growth that lead to decreased revenue for social security, due to company bankruptcies and unemployment, and increased social expenditure. In fact, our social security is based on generational solidarity and, essentially, it is being rendered unviable by structural changes introduced by our society's demographics (and also by the effects of the economic and financial crisis).

### **The importance of intergenerational solidarity and long-term governance**

To a certain extent, today's generation exerts power over future generations and has the chance to deplete resources in such a way as to deny future generations' rights, freedom and autonomy. And there is no way for the future to control the

present. Furthermore, the current generation even exercises power over the existence of future generations.

It is here that the idea of community becomes useful, because within a community members of the collective find "a sense of identity that spreads across time". Therefore, justice considerations apply to relationships that go beyond the present ones.

Perceiving ourselves as a collective whole, it is easy to argue that we are obliged to be concerned about the fate of people in future generations. But the question is how and to what extent our present actions and decisions must be oriented to the future.

The key idea is that each generation receives a legacy from those before it and makes its contribution to those that follow, making investments that include education, science and culture (John Rawl's "*Theory of Justice*" and the "just savings" principle). Instead of breaks between generations, it is essential for there to be an agreement on the way to coordinate justice in the present with the promotion of just institutions in the future.

It is therefore up to the bodies that represent citizens – national parliaments and governments – to assume the function of taking precautions for the sustainability of present generations but also to perform its activities focusing on guaranteeing the sustainability of new and future generations. In other words, Law and public policies should go beyond short-term concerns and assume the responsibility of taking precautions for the future by identifying and minimising their impact on the living conditions of future generations. They should also focus on and be geared towards the future, with the aim of ensuring improvements in future generations' living conditions.

The right to intergenerational equity should, for all these reasons, be enshrined in the Constitution to make it compulsory for it to be provided for and sustained, with the natural limitations that the unpredictability of the future always holds. This is the only way, by taking on the duty to be stricter with ourselves, that we can be fairer to those who come after us.