



Foundation for the Rights of Future Generations

Seven Building Blocks for an Intergenerationally Just Democracy  
FRFG position paper





## Executive Summary

**Democracy is biased towards the present.** Election cycles force politicians to achieve as much of their political success as possible within a single term. The long-term consequences of political decisions taken today are usually hard to determine. The proportion of older voters in the electorate is increasing. And **future generations have no voice. Little public or political attention is given to long-term, slowly-emerging problems that affect people in the future.** We need policies that take account of our future, policies that respect the rights of future generations, that stay within planetary boundaries, and that do not shift costs into the future without also shifting the corresponding benefits. We need policies that invest for the future, tackle long-term problems effectively and strengthen democracy sustainably.

Reducing our presentist bias and developing intergenerationally just policies requires anchoring intergenerational justice in the whole political process. Institutions in Germany, which are supposed to ensure this justice, are insufficient. None of them are up to the task, whether it be the German Council for Sustainable Development, the Parliamentary Advisory Council on Sustainable Development, Sustainability Impact Assessments or the German Advisory Council on Global Change.

Other nations like Israel, Wales and Hungary, as well as the academic discourse, offer us examples of how to do it better. Some examples proved short-lived; all have their strengths and weaknesses. We examine them here in order to develop our own proposals for Germany: the seven building-blocks for an intergenerationally just democracy by the Foundation for the Rights of Future Generations.

- **Block 1:** The creation of a **Council for the Future**. This Council for the Future would consist of fifteen expert members with specialisms in a wide range of policy areas. They would be called to serve terms of seven years (single term only). Half of its members would be appointed by the Parliamentary Advisory Council on Sustainable Development with the other half appointed by scientific and academic bodies. The Council for the Future would have rights of access to internal governmental documents and would prepare expert analyses as well as develop policy recommendations to ensure intergenerational justice. To this end, all draft bills would be brought to its attention at an early stage. The addressees of the recommendations (usually the Federal Government) would then have a three-month period in which to explain how they are acting upon the recommendations given to them. A recommendation could only be rejected with a written justification, with both recommendations and their responses published.
- **Block 2:** The **Parliamentary Advisory Council on Sustainable Development** should be upgraded into a **standing committee**. It should appoint half of the Council for the Future and carry out in-depth reviews of the results of Sustainability Impact Assessments carried out by federal ministries.
- **Block 3:** The **Sustainability Impact Assessment for legal proposals (draft bills etc.)** should be strengthened and carried out according to a detailed and legally binding procedure. Results should be published and subject to an in-depth review by the Parliamentary Advisory Council on Sustainable Development.

**Block 4: Indicators that measure intergenerational justice as part of the National Sustainability Strategy.** Building on previous versions of the Sustainability Strategy (2002 to 2016), the SDGs included in the Sustainability Strategy in 2017 should be supplemented by indicators that focus on intergenerational justice.

**Block 5: The Federal Government's Manifesto for the Future.** The Federal Government should have to present its long-term political plans in each legislative period. This long-term perspective would consider the next thirty years, the duration of one generation.

**Block 6: The Future Day.** Parliament, citizens and the media would discuss the federal government's Manifesto for the Future once a year, informing themselves on topics that concern intergenerational justice.

**Block 7: The Citizens' Councils for the Future.** Citizens' Councils should be set up at a local and regional level to advise city and district councils as well as state governments on local and regional issues that concern intergenerational justice.

These seven building blocks would enable **a more intergenerationally just democracy** in Germany. Together, the building-blocks cover all stages of the policy process and address our democracy's bias towards the present. As examples from other countries show, the proposed building-blocks are by no means unrealistic. Their implementation requires a cross-party initiative.

**Let's make our democracy fit for the future. Our children and grandchildren will thank us for it.**

# CONTENTS

- 1. Democracy Today is Biased towards the Present ..... 4
- 2. We Need an Intergenerationally Just Political System .....5
- 3. Germany Lacks Adequate Institutions for Ensuring Intergenerational Justice.....7
- 4. Examples from Other Countries and the Academic Discourse Demonstrate How Intergenerational Justice Can Be Anchored in the Political Process.....10
  - 4.1. Problem Definition and Agenda-setting ..... 11
  - 4.2. Policy Formulation and Decision-making ..... 13
  - 4.3. Implementation and Evaluation..... 15
  - 4.4. The View of the FRFG on the Examples Outlined Above ..... 18
- 5. Seven Building-blocks for an Intergenerationally Just Democracy in Germany .....19
- Bibliography..... 24
- About the Foundation for the Rights of Future Generations (FRFG) ..... 28

## 1. Democracy Today is Biased towards the Present

Our impact on the future has dramatically increased in step with our growing technological capabilities. The consumption of finite resources and the pollution released into the atmosphere and oceans shape the lives of future generations well into the next centuries. We are living in the era of the Anthropocene, a geological epoch marked by man's impact on the earth (Crutzen 2002). A government's time in office is comparatively short next to these long-term developments and impacts. The political scope for action is often limited by the end of the current legislative period (i.e. parliamentary term, electoral term) and is therefore not suited for dealing with the long-term consequences of decisions made today. The institutions with which democracies are endowed were made for the Holocene, now coming to an end. They need to be reformed if they are to function in the Anthropocene (Tremmel 2018b; German Advisory Council on the Environment (SRU) 2019).

Since most politicians have an interest in being re-elected, they prefer policies whose benefits are tangible in time for the next election (Thompson 2010: 19). **Regular elections** thereby contribute to our apparent bias towards the present (Schmidt 2010: 461; Tremmel 2018a: 107-110). That is not bad per se; politicians should respond to their voters. That is the essence of democracy. But the downside is that promoting policies whose benefits are mostly long-term can lead to a form of "electoral suicide" (Stein 1998: 426). That is especially true when long-term benefits incur costs in the present (even if the costs today are puny compared to the benefits later). Successive governments might also undo the far-sighted policies of their predecessors or cover themselves in other people's glory, i.e. claim credit for any emergent successes which are down to previous governments (MacKenzie 2013: 29-32). Politicians acting today therefore have not just a small incentive, but even a negative one when it comes to advancing and implementing long-term policies. Even politicians who are conscious of the future have to act within a democratic framework that promotes a bias towards the present. And, conversely, policies that will provide immediate benefits to voters are a safe bet. Moreover, **the effects of political decisions taken today** are often uncertain. The longer a time period, the more uncertain the policy outcomes. Further factors reinforce democracy's bias towards the present apart from frequent elections and the uncertainty problem:

- **Voters discounting the future.** Voters today tend to value their own short-term good more highly than that of future generations' (Gesang 2018; Lagerspetz 1999; Thompson 2010). They also dislike uncertain policy outcomes. One study shows that voters with little trust in politics are especially averse to this uncertainty (Jacobs/Matthews 2012). They have little faith in the ability of governments and parliaments to properly implement policies whose benefits are primarily in the future. Voters with very high trust in politics do not share this fear.
- **Demographic change in many western democracies.** The interests of younger generations are threatened by the increasing electoral importance of the over-60s (Van Parijs 1998). Only 3.6% of all eligible voters for the 2017 Bundestag elections were under 21

and only 15.4% were under 30. The over-60s on the other hand made up 36.1% and this number is only growing.<sup>1</sup> There are a range of issues in which the interests of younger people and older people do not align. Older people for example are significantly less likely to support increasing benefits for families and substantially more likely to support increasing expenditure on pensions. This effect is stronger if no children live in the household.<sup>2</sup> Young people are hardly able to assert their interests against the older majority. There is no seat for the younger generation at the cabinet table.

- **The absence of future generations.** Future generations have no electoral importance whatsoever. Tremmel (2006: 189) argues that majority-building, and hence energy and fiscal policy, would look very different if those who were to be born in the next 200 years were also eligible to vote. Present generations need not consider the fallout for future generations when it comes to satisfying their own interests, however outsized, since these future generations are not yet in existence (Doeleman/Sandler 1998).
- **A blind spot for “creeping” and future problems.** People are less likely to realise the importance of “creeping” problems – such as climate change or mass extinction – in comparison to contemporary, pressing problems (Glantz 1999; Jacobs 2011), especially since problems in the future are not as palpable as problems today (Weber 2006). An American study concluded on the basis of electoral returns that voters reward incumbents who deliver state aid for reconstruction and compensation after a natural disaster has taken place, but not incumbents who invest in preventative measures (e.g. dyke construction), even though \$1 invested in prevention is worth about \$15 in mitigated future damage (Healy/Malhotra 2009).

## 2. We Need an Intergenerationally Just Political System

Although political systems in general (not just democracies) are biased towards the present and tend to neglect the future, their impact on the future is immense. Indeed, every political decision affects the future – and so also future generations. There is no escaping the fact that we at present determine the living conditions of future generations. This requires a reflective paternalism instead of an ignorant paternalism (Rose 2016: 59f.),<sup>3</sup> i.e. a mode of politics which does not ignore its obligations to future generations but at the very least reflects upon them and considers them as an important factor in political decision-making.

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<sup>1</sup> The Federal Returning Officer (Der Bundeswahlleiter): Bundestagswahl 2017: 61.5 Millionen Wahlberechtigte, press release 03.02.2017.

<sup>2</sup> According to the Max-Planck-Institute for demographic research, older people are significantly less likely to support increasing child benefit, cutting taxes for parents or financing childcare through public funds. Those aged 65 are around 85% less likely to support increasing child benefit than those aged 20 and approximately 50% less likely to support introducing flexible working hours for parents. Empirical case studies include referenda in Switzerland, which confirm the notion that young and old vote differently. Compare Wilkoszewski (2008, 2012), Bonoli & Häusermann (2010).

<sup>3</sup> Paternalism here refers to people alive today politically determining the possibilities of future generations without these latter having a say (heteronomy).

After all, it is impossible to not impact upon the lives of future generations. Politics in the here and now needs to respect intergenerational justice.<sup>4</sup>

- **Politics is just towards future generations when it ...** protects the **rights of future generations**. That includes the inalienable right to satisfy basic physical and psychological needs. Fundamental and universally applicable human rights also apply to people in the future.
- **takes account of planetary boundaries** and thereby provides for the economic, social and above all ecological basis of a good life on this earth in the future.
- **avoids measures which shift costs onto future generations without simultaneously providing them with commensurate benefits**. This applies to, e.g., high levels of public debt, the storage of high-level radioactive waste and the German pensions system. Direct and indirect subsidies that have a negative impact on future generations, like those for brown coal, should also be removed.
- **tackles long-term problems in a timely and effective manner as soon as they are detected**. Climate change is one such problem whose consequences are felt more in the future and less in the here and now. However, its causes have to be tackled today.
- **strengthens democracy and enables the social conditions necessary for it to properly function so that future generations can also take meaningful political decisions**. That requires political decisions taken today impacting upon their freedom in the political decision-making process as little as possible.
- **invests into the future**, such as through education, instituting environmental protection measures and building resilient societies.

Our democratic institutions have to adapt to meet the goal of creating a political system that is just towards future generations. **Democracy's bias towards the present must be reduced and the likelihood of instituting intergenerationally just policies increased**. The process by which policies are conceived, considered and implemented must be changed in such a way that its results are as intergenerationally just as possible. However, democracy's bias towards the present makes such adaptation harder (Kates 2015). Jonathan Boston (2017: 331) concludes:

"Any commission (...) for future generations runs the risk of having few friends and defenders. At the same time, it is bound to generate enemies. Among these will be all those with a vested interest (...) Ironically, therefore, such institutions are destined to encounter the same political challenges and temporal asymmetries that

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<sup>4</sup> See also the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations (UNESCO 1997). Policy demands for intergenerational justice in particular fields can be found in other FRFG position papers.

In the German version of this paper, we refer to "justice towards the future" ("Zukunftsgerechtigkeit") instead of "intergenerational justice" throughout. In the context of this paper, we understand both terms as being essentially equivalent.

they are designed to alleviate. If they fail to meet these challenges, they will become yet further victims of the presentist bias.”

This challenge should be taken up. Here it can be expected that political decision-makers will take a less self-interested position towards institutional reforms of political decision-making structures than towards very specific, concrete policies concerning the future, in which they are directly aware of the possible negative consequences for their personal re-election (Levinson 2009; Rose 2018).

### 3. Germany Lacks Adequate Institutions for Ensuring Intergenerational Justice

**The measure of political institutions which aim to promote intergenerational justice is how much they can reduce democracy’s harmful short-termism and increase the chances of intergenerationally just policies coming to pass.** There are some institutions for sustainability in Germany that might be understood as institutions for intergenerational justice.<sup>5</sup> They usually only have a consultative role in the decision-making process.

The nine members of the **German Advisory Council on Global Change (WBGU)** are appointed for periods of four years by the Federal Ministry of Education and Research and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. Each member is supported by one part-time research assistant. A General-Secretary heads the office and can call upon a further nine academic members of staff. The WBGU serves the Federal Government as an independent advisory committee on environmental and development policy and has made its mark in environmental policy through, for example, its proposed CO<sub>2</sub> Budget and its determined advocacy of the 2-degree goal. The increasingly well-known “Great Transformation”, a new all-encompassing social contract for sustainability, is down in large part to both the research and political impact of the WBGU.<sup>6</sup>

The **German Council for Sustainable Development (RNE)** was instituted by the Chancellor Gerhard Schröder in February 2001. It is tasked with contributing to the National Sustainable Development Strategy, suggesting concrete measures for its implementation, and promoting civil dialogue around sustainability. The Council currently has fifteen members who are appointed by the chancellor for a three-year term. They are united by a commitment to sustainability. Members usually come from environmental advocacy groups, churches, trade unions, businesses or research institutes. It is not intended that they should serve as delegates for their respective organisations although they do represent various groups in civil society. The youngest member is currently forty-nine years old. The RNE is an advisory

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<sup>5</sup> What follows is mostly based on Rose (2018) and Tremmel (2018) and the homepages of the respective institutions.

<sup>6</sup> The Federal Government and individual ministries have additional advisory, subject-based research committees apart from the WBGU, whose remit is in practice considerably large. See the German Council of Economic Experts and the Economic Advisory Committee of the Ministry for Finance, and above all the German Advisory Council on the Environment (SRU). It consists of seven academics who work in environmental protection and has an office of eighteen researchers at its disposal.



committee dependent on the government with a circumscribed mandate and cannot directly interfere in the legislative process. The Council is managed by a General-Secretary, supported by a single assistant, two press officers and six researchers.

The **Parliamentary Advisory Council on Sustainable Development (PBNE)** was established by the Bundestag in 2004, so as to bring concerns regarding sustainability closer to the political decision-making process. It is not part of the Bundestag's permanent structure and as such must be reconstituted in every legislative period. The PBNE has seventeen regular and seventeen deputising members. Membership is decided by the strength of the various parliamentary groups in the Bundestag, as is usual for parliamentary committees. It is supported by three secretaries. As it is only an advisory council, it does not have the rights of a full committee and cannot initiate legislation. The PBNE scrutinises the Federal Government's Sustainability Strategy, helping to evaluate and implement it. Ministries have been obliged since 2009 to check if their legislative proposals meet key sustainability requirements; the PBNE examines if these formal criteria are met (see also the Sustainability Impact Assessment, below).

The **State Secretaries' Committee for Sustainable Development (StANE)** consists of the State Secretaries of all government departments and meets on a quarterly basis. The Committee is led by the Head of the Chancellery and first met in 2001. Members draw upon the Interministerial Administrative Working Group for support with their work. StANE is mostly responsible for developing and reviewing the National Sustainability Strategy, carries out auditing for the sustainability indicators and liaises with the PBNE, the federal states and representatives of local government. It also advises the Federal Government on topical issues in sustainability. Members are also expected to promote sustainability both inside and outside their own ministry. The Committee also receives departmental reports on sustainability (though departments are under no obligation to submit them).

**Sustainability Impact Assessments** for draft regulations proposed by the Federal Government were introduced in 2009. The Joint Rules of Procedure of the Federal Ministries (GGO) now demand that government ministries ascertain "whether the impacts of the proposal correspond to a long-term development, and in particular which long-term impacts the proposal has shall be indicated" (§ 44 Par. 1 GGO; BMI 2011). An advisory manual of the Federal Ministry of the Interior recommends carrying out the regulatory impact assessment according to the benchmarks set out in the National Sustainability Strategy (BMI 2009a, 2009b).

**The FRFG considers these institutions insufficient** for easing democracy's bias towards the present and strengthening intergenerational justice in politics. The large number of consultative bodies working in policy-making for the long-term belies their inability to implement their proposals. These institutions lack the competences to make the political process respect our duties towards future generations. The RNE and the PBNE have no significant influence beyond their advisory responsibilities. The addresses of their recommendations are free to ignore them. A study by Heinrich and Laws (2012) found that StANE was,

relatively speaking, the most influential committee at the federal level, often considered by civil servants and politicians to play a key role in setting the agenda. But StANE is highly dependent on the government as an internal government committee. In general, it is striking that institutions with explicit responsibility for the future have so far mainly been advisory committees of the executive branch.

The Sustainability Impact Assessment only applies to legislative proposals initiated by the government. Most laws passed in Germany do, of course, originate with the government. Internal (Deutscher Bundestag 2013a/c) and external (Heinrichs/Laws 2012) studies both find the Sustainability Impact Assessment in the seventeenth legislative period to have been lacking in both quantity and quality. The PBNE is indeed tasked with scrutinising the Sustainability Impact Assessments, but it is only empowered to check if the Assessment was carried out according to the regulations or not. It may not comment on the results of the Assessment itself. The PBNE's work and impact also suffer from a lack of personnel. Heinrichs, Laws und Riedel (2013: 52) write:

“Even politicians active in the PBNE admitted their limited political influence and low visibility. Participants mostly attributed this to the PBNE's lack of full committee rights and its limited ability to initiate legislation. Even its potential to examine draft legislation and draft resolutions remains underdeveloped.” (Our translation.)

Rose (2018: 390ff) finds that references to sustainability in the Federal Government's eighteenth legislative period are the rule rather than the exception. But he adds that these references are mostly very short and either neutral (no sustainability impact expected) or entirely positive and moreover often without justification. The potential of Sustainability Impact Assessments to allow for planning and constructive criticism in the form of an ex ante evaluation is either missed or not communicated with the outside world.

Reinhard Loske (2015: 235, our translation), referring to all sustainability institutions in Germany, concludes that these “have no or only very little influence on the actual operation of ministerial departments”. Likewise, the final report of the Investigatory Commission “Growth, Prosperity, Quality of Life – Paths to Sustainable Economic and Social Progress in the Social Market Economy” criticises the large number of committees and expert advisory bodies which have made only a very modest impact (Deutscher Bundestag 2013b: 285). The Advisory Council on the Environment, set up by the Federal Government, agrees with these pessimistic assessments and has its own proposed reforms for making politics more environmentally conscious and intergenerationally just (SRU 2019). We draw upon some of these suggestions below.

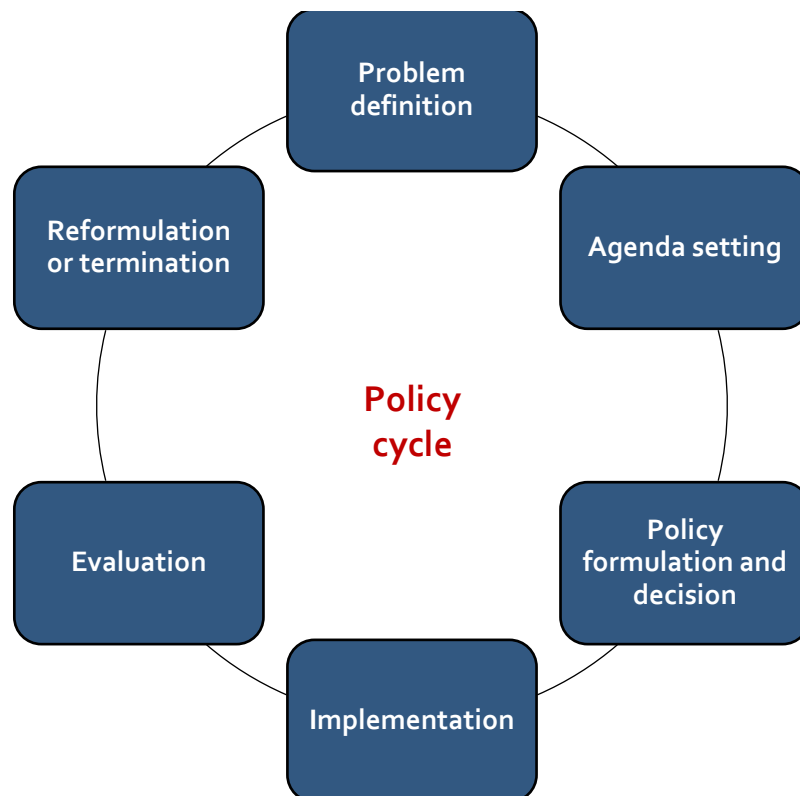
In sum, intergenerational justice is not in a good state in Germany despite the broad array of institutions which could potentially strengthen it. Reform of existing institutions or new institutions going far beyond consultative bodies for the executive are needed.

## 4. Examples from Other Countries and the Academic Discourse Demonstrate How Intergenerational Justice Can Be Anchored in the Political Process

How can we improve? The following very briefly explores selected examples from foreign countries as well as the academic literature, which demonstrate how intergenerational justice can be institutionally anchored in democracies today.<sup>7</sup> These examples serve as the basis for the building-blocks for an intergenerationally just democracy which are then developed in the next chapter.

Political science often breaks down the political process into the stages of the so-called **policy cycle**. All stages, and especially the first ones, should wherever possible be taken into account to build an intergenerationally just political system. It should be noted that in reality these stages often overlap and occasionally take place at the same time. The diagram (fig. 1) is thus a rough representation which should be taken as an ideal. The examples from various democracies and suggestions in the academic literature are here arranged according to these approximate stages. They often concern not just one but several stages of the policy cycle, strictly speaking.

Figure 1: The Policy Cycle



*Original Diagram*

<sup>7</sup> A comprehensive analysis of 29 institutions supposed to politically represent future generations can be found in Rose (2018). Everything laid out here relies on this book unless otherwise stated. Corresponding chapter titles clearly indicate the source text. An overview of examples provided in the academic literature can be found in Boston (2017), Gonzales-Ricoy/Gosseries (2016) and Rose (2016) amongst others.

#### 4.1. Problem Definition and Agenda-setting

According to the ideal, the policy cycle begins with social or political actors identifying problems in the current state of affairs, which in their view call for a collective solution (problem definition). (Problems are also sometimes “contrived” to match pre-existing solutions.) These problems are then “framed” in a particular way to place them onto the political agenda in the hope of influencing the policy-making and decision-making processes (agenda-setting). Actors such as individual politicians, parties, lobby groups, NGOs, expert committees and the media all propagate competing issues and views and play an important role, occasionally along with certain events (e.g. the Fukushima Nuclear Disaster as regards decommissioning nuclear power in Germany).

The Belgian **Federal Council for Sustainable Development** influences problem definition and agenda-setting amongst other phases of the policy cycle. It has been in existence since 1997. It has twenty-four voting members, among them representatives of various NGOs and workers' or employers' associations, and fifty non-voting members, including the King, researchers, representatives of government ministries, the regions, all language groups and other state-backed and non-state backed organisations which work in sustainability. There are five working groups and an office consisting of five researchers in addition to the executive committee, which meets every week. These working groups develop recommendations and joint positions in response to proposals that are supposed to promote sustainability at either a national, European, or international level. Recommendations can be developed either on their own initiative or upon request. The government and public sector organisations are obliged to justify their course of action to the Council if they act contrary to its recommendations. The Council is also supposed to be a forum for discussion, in constant dialogue with politicians as well as the public. In this role it also publishes studies.

Finland also provides relevant examples for institutions meant to promote intergenerational justice. The Finnish government has been obliged since the beginning of the 1990s to set out its programme for the long-term in a comprehensive **Report on the Future**. The **Parliamentary Committee for the Future** was instituted in 1993 as a committee meeting at regular intervals in order to create a space where the government's report could be discussed. A response by the Committee containing original research has been collated ever since. The Committee addresses recommendations to the government in its response. If parliament passes the Committee's report after having debated it, the government is obliged to inform parliament once a year on how the recommended measures are being implemented. In addition, the Committee writes reports on problems concerning the future and keeps the public informed. The Committee has also been tasked with investigating the impacts of new technologies since 1996 and as such plays a bigger role in the policy formulation, decision-making and evaluation stages of the political process. The Parliamentary Committee for the Future has been a standing committee since 2000, though not on a par with other committees when it comes to initiating legislation. It has seventeen parliamentary members and an office consisting of five research assistants.



The **Finnish National Commission on Sustainable Development** is another relevant institution besides the government's Report on the Future and the Parliamentary Committee for the Future. It is led by the prime minister and consists of representatives from politics, the civil service, business, academia and civil society. The Commission coordinates and advises, focussing on the **Finnish Sustainability Strategy**.

Simon Caney (2016), partly drawing upon the Finnish example, proposes a package made up of five institutions:

- 1) The **Governmental Manifesto for the Future**. Here the government would identify the long-term trends, challenges and possibilities which it intends to take up. It would be obliged to include trends that have been identified by the independent Council for the Future (see 4. below).
- 2) The **Parliamentary Committee for the Future**. This would be tasked not only with reviewing the Governmental Manifesto for the Future, but also the government's entire policy programme.
- 3) The institution of a **"Visions for the Future" Day** to promote discussion both inside and outside parliament. This should facilitate public discussion of the Governmental Manifesto for the Future.
- 4) The **Independent Council for the Future**. This external committee comprised of academics would be expected to report on the long-term trends that are likely to intersect with current policy and potential alternatives. It should also investigate past transition processes. The aim is for the government, the opposition, civil-society organisations and the general public to have access to reliable analyses of the long-term effects of either governmental action or governmental inaction. Committee members would be appointed by the relevant academic bodies.
- 5) **Performance Indicators**. Ministries and the Council for the Future should develop and use performance indicators, which permit reliable measures of long-term performance and the attainment of long-term goals.

**Political participation and political deliberation** also have a role to play in problem definition and agenda-setting and sometimes in the stages of policy formulation and decision-making. An overview of empirical cases can be found in the [www.participedia.net](http://www.participedia.net) database. The extent to which participatory and deliberative processes promote intergenerational justice by themselves is controversial (MacKenzie 2013; Skirbekk 2008; Unnerstall 1999). Patrizia Nanz (of the Participedia board) and Claus Leggewie take an optimistic view and call for the institutionalisation of so-called Councils for the Future at every (the European, national, regional, and local) political level (Nanz/Leggewie 2016). These Councils for the Future would be integrated into the existing political system as advisory bodies. Current legislative committees would be obliged to consider suggestions from the Councils for the Future but they would not have to implement them. To ensure a high level of diversity amongst the fifteen to twenty members of these permanent councils, they would be select-

ed through a combination of random selection and quotas among all citizens eligible to vote. Membership of a Council would last two years and attract a modest amount of compensation. Mediation teams would help enable constructive cooperation and members of the Councils would decide their own agenda. Nanz und Leggewie argue that “Councils for the Future could become motors of intergenerational justice with the right generational mix” (2016: 78, our translation). The interests of younger and future generations ought to be assured through considering long-term problems and the fact that the younger generation would itself enjoy representation on the council.

Jörg Tremmel (2018) similarly suggests setting up a single **Council for the Future** in Germany, thought it would be different to the ones proposed by Nanz and Leggewie in certain key respects. This would entail merging the Council for Sustainable Development (RNE), the German Advisory Council on the Environment (SRU) and the German Advisory Council on Global Change (WBGU) into a single Council for the Environment. The German Council of Economic Experts (SVR) and the advisory committees for the Federal Ministry for Economic Affairs and Energy, and for the Ministry of Finance, would also be combined into a single Council for Financial Affairs. This and the Council for the Environment would together form the Council for the Future. Appointment to this Council would take place in much the same manner as it currently does. A Citizens’ Forum selected at random would also provide direction to this expert committee, thereby spurring and enriching its advice. The Council for the Future would be able to initiate legislation for consideration by the Bundestag subject to an amendment to the Basic Law.<sup>8</sup> It would serve as an extra-parliamentary expert committee and lack both the final say and the right to vote. The Bundestag, its parliamentary parties and committees would have complete control over the passage of bills.

## 4.2. Policy Formulation and Decision-making

Once an issue is on the political agenda it will make its way into one or several policies such as laws, regulations etc. Parliament and the ministerial bureaucracy are decisive here although the relevant associations and experts are usually consulted as well. The **Parliamentary Commissioner for Future Generations** in Israel had substantial influence on this stage of the policy cycle. The office was instituted in 2001 through a parliamentary majority in the Knesset (parliament) on the initiative of a single member. This was a consequence of Israeli politics’ perceived bias towards the present. The Commissioner’s remit was broad and almost all draft legislation had to be submitted to him for assessment. If this legislation, in his view, affected future generations, he had the right to develop a response and to force an audience with the relevant parliamentary committee. He in effect possessed a suspensive veto since there was no time limit to the preparation of his response. The written response

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<sup>8</sup> Article 76 Para. 1 of the Basic Law (“Bills may be introduced in the Bundestag by the Federal Government, by the Bundesrat or from the floor of the Bundestag”) would have to be expanded to include the words “from the Council for the Future”. The Rules of Procedure of the German Bundestag would also have to be amended. Proposals have up to now only been considered if they either bear the signatures of a parliamentary group, or 5% of Bundestag members, or if the Rules of Procedure “prescribe or permit otherwise” (see § 75, § 76).

was appended to the draft bill and the Commissioner could usually participate in the debates of parliamentary committees.

The Commissioner for Future Generations, supported by up to four staff members, was also able to recommend new laws and amendments and to advise members of parliament in relation to questions concerning intergenerational justice. The Commissioner's yearly reports were guaranteed discussion time in the Knesset. The Commissioner also had comprehensive information-access rights and could thus force public sector institutions to divulge information, which he could then use to increase media pressure on the parliament and government. The Commissioner was appointed by the Speaker of the Knesset from a shortlist compiled by a public committee. The office was de facto abolished in 2006 and formally abolished in 2010 (see 4.4 for details).

Another institution with the potential to influence policy formulation and the decision-making process is Baden-Württemberg's **Sustainability Check** (originally the "Sustainability Assessment", introduced in 2011). Unlike the Federal Government's Sustainability Impact Assessment, the Sustainability Check in Baden-Württemberg is a compulsory hurdle which all government-proposed regulation has to pass (including draft legislation), set out in both the Rules of Procedure of the State Government as well as in the administrative ordinances for the preparation of regulations (VwV Regelungen, available in MUKE 2015). Responsibility for carrying out the Sustainability Check rests with the ministry with which the proposal originated. It also has to submit its plans for internal cross-examination from other departments. The proposal's impact on "economical, ecological and social conditions, particularly in the long-term" must be ascertained (VwV Regelungen, 4.3.1, our translation). This cross-examination is carried out according to the state's explicitly formulated sustainability goals. The Sustainability Check and its results have to be shared with all ministries involved, the State Commissioner for Bureaucracy Reduction, the Council of Ministers, the State Legislature and the Cabinet. Results must set out the calculations, assumptions and forecasts used. Draft legislation can be given a written exemption from the Sustainability Check "when it is clear that significant long-term effects are not to be expected" (VwV Regelungen, No. 4.3.4, our translation). The results of the Sustainability Check have to be published on the state's online service portal once consultation with the relevant stakeholders has begun (if applicable). The cover page of a draft bill has to make clear the extent to which the Sustainability Check has been heeded. In addition, the consequences of the bill are examined no later than seven years after its passage and the results compared with the prognosis of the Sustainability Check to enable any necessary adjustments. As with the federal Sustainability Impact Assessments, however, not all checks are properly carried out not least because of limited capacity.

The Advisory Council on the Environment (SRU 2019) calls for strengthening the Federal Government's Sustainability Impact Assessments by extending the Assessment to cover the strategies and programs of the government and the ministries. The SRU also calls for assessing bills as soon as the first draft is ready and for more transparency, with full results published online.

There are sporadic calls in Germany for an **Environmental Council**. Rudolf Bahro (1987) was the first to demand an Environmental Council. Tine Stein (1998, 2014) and Johannes Rux (2003) provide a more current perspective. Stein (2014: 59f.) envisages an Environmental Council as a third chamber with a suspensive veto. This veto power would “throw an ecological spanner into the works” (2014: 59, own translation), allowing an Environmental Council to change norms and take on a strong role. Draft bills, rejected by the Environmental Council as unsatisfactory, would be sent back to the parliament for reconsideration. Stein considers the Environmental Council a form of self-restraint (or precommitment) by present generations for the benefit of future generations. Members of this Environmental Council would be democratically elected, and it is especially important for Stein that the terms of office should be longer than the legislative period so that elections are rarely in the same year as a Bundestag election. Re-election would not be possible.

The Advisory Council on the Environment (SRU 2019) has also recently called for a **Council for Intergenerational Justice** to be set up in Germany. Draft bills would be submitted to the Council for comment and it would be able to exercise a suspensive veto over bills which fell within its purview. The Council could thereby enforce a three-month long period of reflection in the legislative process in the event of serious concerns about the consequences of a particular bill for future generations or due to violations of the German National Sustainability Strategy. The members of the Council would be expected to be independent and to have a high level of expertise, and to be elected by the Bundestag and Bundesrat for 12 years (with no possibility of a second term).

The academic literature provides numerous other examples that explicitly reference future generations and not just environmental concerns. Gesang (2018) for example calls for **Councils for the Future**, which could initiate referenda as well as legislation, collate and publish data and information, and exercise suspensive or absolute vetos. Universities, environmental groups and journalists’ associations among others would all nominate members whom the public could elect for a term of eight to ten years. The Science and Environmental Health Network (SEHN) and the International Human Rights Clinic at Harvard Law School (IHRC) have developed a prototype for an **Ombudsperson for Future Generations** (SEHN/IHRC 2008). This Ombudsperson would be expected to protect and promote the environmental- interests of future generations, recognised in law, in current and proposed legislation. The role’s prerogatives would include evaluating policy consequences, full information-access rights and a right to speak in the most important decision-making committees. Those explicitly addressed in evaluations and reports would be obliged to respond in writing and the Ombudsperson would be empowered to respond to these responses in turn.

### **4.3. Implementation and Evaluation**

What was once but a political possibility becomes enforceable law once the bill passes. The executive is subsequently charged with implementing the law (though implementation is



rarely perfect) and the judiciary is, where applicable, charged with enforcing the law. Enforcement bodies and the judicial apparatus can find out if any problems arise in enforcing the law. There might be conflicts with other existing laws and regulations or unintended side-effects, for example. The courts can demand compliance when laws are not followed. The law itself can, under certain circumstances, be examined if its conformity to the constitution is in question. If problems are identified, the affected law can be either rescinded or reformulated, i.e. fed back into the political process. The problem might also simply be ignored insofar as compliance might not be forced by the courts. Ex-ante evaluation can also take place as early as in the policy formulation stage.

The **Hungarian Ombudsman for Future Generations** influenced every stage of the policy cycle, above all the implementation and evaluation stages. What follows refers to the time from 2008 to 2011 since the Ombudsman subsequently lost many of his competences and in 2012 was pared back to a Co-Ombudsman for Future Generations as part of constitutional reform. The Ombudsman's office was made up of 35 staff, often with formal legal qualifications, organised into several sections. His term of office lasted six years, two more than a legislative period. The Ombudsman's responsibilities emanated from the constitutional right to a healthy environment, a right also applicable to future generations. According to Ambrusné (2011: 22), the Ombudsman's competences amounted to no less than an:

“Official duty [...] to represent future generations in long-term decision-making wherever this might significantly affect their living standards, and to help enforce legislation concerning the environment.” (Our translation.)

The Ombudsman for Future Generations was nominated by the president (head of state) and had to be elected by the parliament with a two-thirds majority. He investigated environmental irregularities, taken in the broadest sense, mostly upon receipt of petitions from the general public. He was equipped with comprehensive powers of investigation and attaining information for this purpose pertaining to both public and private sector bodies, able to formally request in writing that information be divulged. He was entitled to take action and issue recommendations in order to either prohibit or rescind regulations or policies that were harmful to the environment, with explicitly addressed authorities, institutions or persons obliged to respond within thirty days. Evaluating any governmental activity, commissioning evaluations from third parties and suggesting legislative proposals (without the formal right of initiation) were all part of the role's remit. He was entitled to express his views before parliament and its committees. No draft regulations or laws which concerned the environment could formally proceed without his consultation. He could launch legal challenges against already existing laws and regulations if they, in his view, threatened the right to a healthy environment.

**Wales** has had a **Future Generations Commissioner** since 2016. The Commissioner is appointed by ministers in the devolved administration and can employ her own staff as she sees fit. She is supported by an advisory committee and focuses on the executive organs of the government with a view to keeping sustainability at the forefront of government policy,

thereby acting as a watchwoman for future generations and their right to be able to satisfy their needs. Her job is to encourage public bodies to consider more thoroughly the long-term effects of their actions. To this end, she examines and assesses public bodies according to the well-being objectives they have set themselves.

The Future Generations Commissioner's competences include advising public bodies (among them the Minister for Climate Change and Energy), building relationships between them and supporting them in meeting the long-term well-being objectives of the Welsh government. The Commissioner also conducts research at her discretion into increasing sustainability in a particular sector. She also prepares and addresses recommendations to ministers and public bodies, drawing on her information-access rights and powers of investigation. Addressees must implement the Commissioner's recommendations in full insofar as the recommended measures relate to the legally binding well-being objectives, including sustainability. Addressees can, however, reject the recommendations in full or in part, either by justifying their decision or by choosing another course of action. This requires a written response. In addition, the Commissioner prepares a Future Generations Report for parliament and government. This explains how public bodies can better take account of the long-term impacts of their activities and better ensure future generations' capacities to meet their own needs.

There are plentiful examples in the academic literature of protecting the rights of future generations by means of an **ombudsperson** or a **guardian**. Edith Brown Weiss (1989) demands guardians at every policy-level and in every area. They would oversee the implementation of laws that concern intergenerational justice, act as a complaints body for citizens, conduct investigations and determine the impact of new laws. The SEHN and the IHRC (2008) call for a guardian to serve alongside an ombudsperson with the former serving as a mouthpiece for future generations, acting as a representative on their behalf to the government and the courts. The World Future Council agrees with the substance of these demands (Göpel 2012).

The World Future Council (2009) as well as Jodoin (2011) advocate for the legal institution of **crimes against future generations** as an element of human rights jurisprudence. Pelinka (2009) calls for the creation of a **Supreme Legal Council** tasked with checking that decisions taken by a parliamentary majority conform to the fundamental interests of future generations.

A large and distinct part of the literature focuses on constitutional amendments which have either already come to pass or are now proposed. There are corresponding demands to anchor the **rights of future generations** expressis verbis in the **Basic Law**. Animal protection and the preservation of the environment are currently two clearly defined national objectives (Art. 20a GG) which aim to meet the responsibility towards future generations. Article 20a was a new insertion into the German Basic Law, made in 1994 as a consequence of reunification prompting a new, broad-based debate about the constitution and its suitability for modern times. However, an initiative put forward by young members of parliament and

supported by the FRFG for a new Article 20b was not successful (Wanderwitz et al 2008; Tremmel 2012: 109-111).

#### **4.4. The View of the FRFG on the Examples Outlined Above**

There are, as has been shown, many inspiring examples on offer both from other countries and from academia, which demonstrate how intergenerational justice can be anchored in the political process. But not every single one is suitable for Germany. Unlike in some Scandinavian countries, for example, there has traditionally been no great role for the ombudsperson in the German political system. The creation of an ombudsperson, as often demanded, would be alien to the German polity.

Caney's demand for a parliamentary Committee for the Future to assess all government policies would be impractical in a large country such as Germany with its high output of legislative proposals, drafts and regulations. Moreover, 88% of successful proposals originate with the government, and in a parliament which does most of its work in committees, like the German Bundestag, these bills will anyway be examined and discussed in detail by the regular parliamentary committees which are arranged by subject and armed with the relevant expertise.

Some suggestions raise questions on our part. It is unclear if Nanz' and Leggewie's Councils for the Future could really promote intergenerational justice without a corresponding mandate. Such councils are also much more promising at the local and regional level than at the national or European level since policies and discussion points are less abstract and more tangible for the former, and the local knowledge of participating citizens can serve as relevant expertise.

Institutions for intergenerational justice should not limit themselves to just one policy area, but address politics as a whole wherever possible. Sustainability, closely linked to intergenerational justice, seeks to integrate various sectors and policy areas to get a handle on cross-effects and long-term impacts (see also SRU 2019).

Some formerly existing and many proposed institutions provide for either regular or suspensive veto power against draft bills that infringe upon intergenerational justice. In our view, this goes too far both in terms of the practical politics and of democratic legitimacy. Firstly, such institutions' legitimacy is normally "only" indirect precisely because direct election of their members seems inappropriate in the face of democracy's bias towards the present. Institutions for intergenerational justice should be as independent as possible from the sources of this bias. Secondly, intergenerationally just politics calls for strengthening democracy and its ability to work. More opportunities for veto in the political system slow down the political process and can even block it entirely in a worst case scenario. The conflict between elected members of parliament and an expert for the future armed with a de facto suspensive veto in Israel made a large contribution to the eventual abolition of the latter's office. We also look unfavourably upon concentrations of power with single individuals like ombudspersons or commissioners.

It should be noted that anchoring the rights of future generations' in the constitution as a responsibility of the state still leaves the legislature with a great deal of leeway when it comes to implementation. The responsibilities of the state, so defined, also do not amount to a bill of rights for the individual and so individual citizens cannot bring legal challenges on this basis. It would thus be more expedient to make it clear that certain institutions would be legally liable in the case of infringing upon the rights of future generations, and to legally enshrine the right of certain other institutions to sue for the rights of future generations when they judge that these have been violated.<sup>9</sup> The Federal Constitutional Court would thereby become a guardian of intergenerational justice. A clear stipulation of the duties of present generations towards future generations would be critical in endowing the Constitutional Court with the necessary legal mandate. Rights are effective above all when there are organisations responsible for strengthening and enforcing them. They should thus always be combined with organisational institutions whose legitimacy is assured through a solid constitutional foundation (Rose 2016). In our view, however, it seems unlikely that intergenerational justice will get greater constitutional recognition, e.g. by making it a constitutional responsibility of the state, anytime in the near future.

## 5. Seven Building-blocks for an Intergenerationally Just Democracy in Germany

Democracy in Germany is not intergenerationally just. Following our analysis, the Foundation for the Rights of Future Generations (FRFG) demands a comprehensive reform of Germany's democratic institutions. The aim is to change the political process such that our democracy's bias towards the present is reduced and the chances of intergenerationally just policies being implemented are increased.

- **Block 1:** We demand the creation of a **Council for the Future**. This Council would deal with questions concerning the future from a wide range of perspectives. The Council for the Future might develop out of existing institutions that deal with sustainability, or it could be entirely new. It would consist of up to fifteen academics in different subject areas appointed for terms of seven years (with no possibility of a second term). The academic community in Germany and the Parliamentary Advisory Council on Sustainable Development (PBNE) would each appoint half of its members (rotating between choosing seven or eight each time). Those members appointed by the PBNE should be elected with a 2/3 majority of that body. The academic community would have to develop a suitable and transparent procedure for the appointment of half of the members of the Council for the Future, perhaps similar to the election of review boards by the German Research Foundation.

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<sup>9</sup> Environmental organisations currently have the right to initiate legal action under certain circumstances even when their own rights are not directly infringed upon. Because this right only refers to certain environmental issues and does not encompass intergenerational justice as a whole, however, it does not amount to adequate legal protection of the rights of future generations.



The Council for the Future would require a permanent office with around fifty research and administrative assistants for its work. It would have comprehensive rights of information-access and thereby be empowered to request relevant information from the relevant authorities. It should independently decide its own agenda and be exempt from any obligatory instruction. Its tasks would include compiling expert advice and policy-analyses in affairs concerning intergenerational justice as well as making recommendations. The Federal Government, Bundestag or Bundesrat could seek to commission such advice and policy-analyses, but the Council of the Future would be under no obligation to accept such commissions. The Council for the Future's recommendations could identify problems with both missing and existing legislation, i.e. call for new legislative proposals or draw attention to perceived failures in either the letter or the implementation of legal regulations, and would have to clearly reference intergenerational justice.

To execute this task properly, the Council for the Future would have to be involved early on in the drafting of a bill, as soon as ministries begin exchanging draft texts amongst themselves (*Ressortkoordination*). This would entail passing the executive's internal house drafts onto the Council at which point the Council could demand that it be given an advisory role in drawing up the draft bills. The Joint Rules of Procedure of the Federal Ministries (GGO, especially §47) would have to be revised to account for this. The Council's public recommendations would address the Federal Government and its subordinate institutions, or, in exceptional cases, the Bundestag (or the Bundesrat where the latter has introduced a bill as set out in Art. 76 Para. 1 of the Basic Law). Addressees would have a three month period in which to explain how they intend to implement the recommendations. A written justification would also be required if it were not intended that a recommendation should be implemented. Both recommendations and answers would be published. The policy-making and implementation processes would not be substantially slowed; no suspensive veto is envisaged.

- **Block 2:** The **Parliamentary Advisory Council on Sustainable Development** (PBNE) must be strengthened, as the Advisory Council on the Environment (SRU 2019) also demands. It should become a permanent standing committee and be equipped with a large supporting office. It would be responsible for nominating half of the members of the Council for the Future (Block 1), scrutinise the detail of the Federal Government's Sustainability Impact Assessments (Block 3) and organise the national Future Day with the Council for the Future (Blocks 1, 6). In this capacity, it would thoroughly examine the Federal Government's Manifesto for the Future (Block 5).
- **Block 3:** We demand improvements to the federal **Sustainability Impact Assessment** (as does the SRU (2019)). Baden-Württemberg is the exemplar here. Their version of the Sustainability Impact Assessment, the Sustainability Check, is not only set out in Rules of Procedure of the State Government, but also legally binding. The Check's results and the assumptions used are published along with the draft bill in question. The

regulation behind the Sustainability Check in Baden-Württemberg effectively provides a set of legally binding rules for carrying out a Sustainability Impact Assessment. The German Environmental Agency (UBA 2017) has also drafted new criteria for a reformed Assessment. Ministerial departments should be given the necessary resources and training for carrying out the Assessments. The Sustainability Impact Assessment should be sent to the PBNE before the first reading in parliament so that it can examine the Assessment in detail. The PBNE would then send the results of the Assessment to the relevant parliamentary committees and ministries as well as the Council for the Future. These would not, however, be obliged to wait for the results before moving forward.

The PBNE should be expected to carry out the Assessments swiftly in order to avoid any delay in the legislative process. The Federal Government could, in exceptional circumstances, forgo the Sustainability Impact Assessment with a written justification when it is necessary to act with great speed in emergencies. In this case, the Sustainability Impact Assessment would have to be carried out retrospectively but quickly to enable changing course, if necessary. The Sustainability Impact Assessment could equally be deemed unnecessary, again in writing, if it is obvious that there will be no long-term impact resulting from the proposed bill.

- **Block 4:** We demand supplementing the German **National Sustainability Strategy** with **indicators for intergenerational justice**. The German National Sustainability Strategy designated, until 2016, four areas of action: intergenerational justice, quality of life, social cohesion and international responsibility (Federal Government of Germany/Die Bundesregierung 2002). Revisions (in 2004, 2008 und 2012) meticulously developed indicators which remained comparable across the time period (Federal Government of Germany 2012). Goals and indicators were eventually changed at the beginning of 2017 because of the welcome event of the United Nation's adopting the seventeen Sustainable Development Goals (SDGs). This change was a consequence of the UN's call to implement the SDGs at national level.

However, Germany did lose useful tools through re-working its National Sustainability Strategy (Federal Government of Germany 2017). The intergenerational justice area of action until 2016 comprised indicators dealing with resource conservation, protecting the climate, renewable energy, land-use management, biodiversity, the national debt, sustainable growth, innovation, and education. Some of these indicators are indeed now to be found under the SDGs but the German National Sustainability Strategy overall emphasised intergenerational justice less from 2017 onwards than it did before. It needs to be expanded with indicators for intergenerational justice that are comparable with the previous ones. This can be done without reversing the sensible organisation of the National Sustainability Strategy around the Sustainable Development Goals. Keeping the indicators comparable will help strengthen the Federal Republic's long-term thinking. This building-block can barely be separated from Blocks 2 and 3 since sustainability indicators and targets are usually at the core of the Sustainability Impact Assessment.

- **Block 5:** Drawing from Finland and from Caney's proposal, we demand that each newly elected federal government should have a **Manifesto for the Future**. The government should use the manifesto as a platform at the beginning of the legislative period to announce its long-term plans for Germany's and Europe's future and explain how it intends to cope with long-term challenges. This period should encompass thirty years, i.e. the duration of one generation. The government would have to respond in detail to the analyses and recommendations of the Council for the Future (Block 1) in the Manifesto for the Future. The manifesto would be discussed in public on Future Day (Block 6).
- **Block 6:** Drawing again from Caney and from Finland, we demand the introduction of an annual **Future Day**. The first Future Day of each legislative period would be dedicated to parliamentary discussion of the Federal Government's Manifesto for the Future on the part of the government and the opposition, as well as by the Citizens' Councils for the Future (Block 7) and the public. The Federal Government's progress, judged against the Manifesto, would be debated on subsequent Future Days. Media organisations should be asked to broadcast the debate live, provide critical analysis and to produce additional output dealing with the future. Future Days would be organised at the federal level by the reinforced Parliamentary Advisory Council for Sustainable Development (PBNE, Block 2) and by the Council for the Future (Block 1) and on the regional and local levels by Citizens' Councils for the Future (Block 7).
- **Block 7:** We demand, drawing inspiration from Nanz and Leggewie, the establishment of **Citizens' Councils for the Future** at regional and local levels. They would advise city and district councils, as well as state governments, focussing on topics concerning intergenerational justice which are specific to the area at hand. Citizens eligible to vote would be chosen for this role through a combination of a random draw and quotas to ensure that the councils are representative (a stratified random sample). Their time in office would last two years, consisting of monthly meetings supported by those with professional experience of mediation. Financial compensation should be paid wherever possible.

These seven building-blocks would enable an intergenerationally just democracy in Germany. Together, they cover every phase of the policy cycle, from identifying and defining problems to implementation and evaluation. They draw attention to both long-term problems and foreseeable ones arising in the future, promote understanding among both politicians and the public, and force politicians to grapple with intergenerational justice. They take account of the long-term consequences of political decisions taken today and offer politicians independent advice and analysis when it comes to intergenerational justice. They make our democracy stronger and livelier through the interplay between political, academic and social actors.

**The building-blocks proposed here are by no means unrealistic as the examples from other countries show. They require the societal and political will to oppose democracy's bias towards the present and to make Germany more intergenerationally just.** They are

fundamentally non-partisan insofar as they aim to reform the political process itself. A cross-party initiative is required to make the seven building-blocks a reality. Together, we can make our democracy strong and fit for the future. Our children and grandchildren will thank us for it.



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Foundation for the Rights of Future Generations

The Foundation for the Rights of Future Generations (FRFG) is an activist think tank working at the boundary between academic research and practical politics and is the “best-known extra-parliamentary think tank working in intergenerational justice” (Wirtschaftswoche). It was called into being in 1997 by a cross-party alliance of five young people aged between 18 and 27, is led by one of the youngest executive committees of all German think tanks and aims to increase knowledge about, and awareness of, matters concerning intergenerational justice and sustainability through useful research and advice. The foundation is financially independent and not associated with any political party.

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