



PII: S0016–3287(98)00040-8

REVISITING THE ‘COURT OF GENERATIONS’ AMENDMENT

A conversation

Vincent Kelly Pollard and Bruce E Tonn

In 1991, futurist Bruce E. Tonn proposed a ‘Court of Generations’ Amendment to the US Constitution. His proposed ‘Court of Generations’ lacked punitive powers but, hopefully, would have sufficient legitimacy to counteract extreme present-minded thinking evident in US political processes and institutions. Although Tonn’s ‘Court of Generations’ Amendment has been well received in the futures community, who else has heard of it? Otherwise, has it made any difference? How can the cumbersome and nonfuturistic amendment procedure in the US Constitution generate a futures-oriented ‘Court of Generations’? And for those who sincerely look forward to a ‘Court of Generations,’ precisely what kind of tactically savvy visionary leadership will give the ‘Court of Generations’ any chance of being approved? During 1997, Vincent Kelly Pollard engaged Dr. Tonn in an Internet conversation aimed at clarifying these issues. © 1998 Elsevier Science Ltd. All rights reserved

About seven years ago, *Futures* published a provocative proposal by Dr. Bruce E. Tonn,¹ an increasingly prominent futurist at Oak Ridge National Laboratory. Tonn addressed the lack of futures-oriented leadership in the United States by proposing a ‘Court of Generations’ Amendment to the US Constitution.

Vincent Kelly Pollard recently followed up on that proposal by contacting Dr. Tonn and initiating an cybernetic conversation in April 1997 to clarify what kinds of leadership tasks must likely be undertaken if one seriously wishes to introduce futures-oriented

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change into the US Constitution. A second purpose of the conversation was to elicit information on how the original 'Court of Generations' proposal had been received. This led to the following Internet 'conversation' between Tonn and Pollard in August and September 1997.

VKP: In your June 1991 *Futures* article, Dr. Tonn, you proposed an amendment to the United States Constitution. Your amendment calls for a 'Court of Generations.' As I understand it, you were addressing a shortcoming in American government and civil society. In other words, despite the good will of tens of millions of Americans concerned about environmental degradation, technology, genetics and other developments threatening the freedom and quality of life in the United States, part of your argument is that there is a lack of 'leadership' (p. 484). Consequently, it takes too long to do anything that will make a difference for future generations, 'if at all' (p. 484). That was in June 1991. Is this still the case today?

BET: Yes. Politicians, especially at the national level, are still reluctant to push new ideas out of fear that they will not receive support from their constituents. They are reluctant to criticize those who fund their campaigns and those who vote for them. They are reluctant to criticize the political processes that they have mastered but which may not be well serving Americans and future generations. Over the past half decade, we have witnessed a split government (i.e., Democratic White House and Republican Congress) shutdown the federal government because of an ugly budget impasse and fail to make progress on any substantive legislation. Politicians are turning off the electorate. The voting rate in the 1996 national election was the lowest in history. There is no visionary energy policy, and environmental policy is now held hostage by the split government. The political situation at the federal level is not hospitable for ideas and programs related to future generations. On a positive note, leadership is growing at the local level and within numerous non-governmental organizations (NGOs). Many communities across the country are engaging in long-term visioning processes with the goal of building sustainable communities. Indeed, the concept of sustainability is sweeping the world. Implicit in the concept of sustainability is a concern for future generations. I hope the concern for future generations becomes an explicit indicator within the sustainability movement and that people view sustainability within a framework of hundreds and thousands of years, if not substantially longer.

VKP: In your discussion of the 1988 US presidential elections, you felt that '[t]he Republican and Democratic campaigns were not designed to lead the nation on the appraisal of environmental and social issues' (p. 485). Moving ahead to the 1992 and 1996 US presidential elections, did you observe any improvement? In 1996 Bill Clinton and Al Gore, for example, certainly *talked* a lot about 'the future.'

BET: The 1992 and 1996 campaigns were not much different from the 1988 campaign. My lasting impressions of the major issues of the 1996 campaign were Dole's age and tax cut proposal and Clinton's character. The election did not feature substantive or serious national dialogues on any issue related to the environment or the health of society. The Democrats did talk about a bridge to the future but nothing struck me as unique or important about those words. I found the campaign a source of anxiety. I often turned off National Public Radio, which I regularly listen to during my drive home from work, when it was airing campaign reports.

VKP: So, is there still a need for a 'Court of Generations' Amendment to the US Constitution?

BET: Absolutely. The US political system is very good at reacting to present day problems and providing rules for the current generation to fight out who gets what. A former US congressman I recently interviewed said that the Congress simply reacts to constituent needs and is really not designed for dynamic, future-oriented decision making. A colleague of mine, Jean Peretz, and I interviewed people involved in environmental decision making across the country. These people represented all levels of government, the judiciary, the media, non-governmental organizations, and industry. We asked everyone how far into the future they look and plan. The resounding answer was that they didn't have time (and in many cases the responsibility) to conduct foresight, to look to the future. Needless to say, in the environmental arena, it doesn't seem as though many people are thinking about future generations, which is quite ironic to say the least. So, yes, the country needs a formal, periodic, high profile process that addresses obligations to future generations and an institution with the power to judge threats to the security of the blessings of liberty to our posterity.

VKP: You have expressed dismay at the lack of future-oriented thinking on the part of the leaders of the two largest political parties in the US, for example, during the past three US presidential elections. What institutions do you expect to exhibit, reflect or allow a greater degree of future-oriented thinking such that they will facilitate passage of the Court of Generations Amendment in coming years? You already mentioned communities. Were you referring specifically to local governments?

BET: Yes, many local governments are leading the way with respect to futures thinking. It is in the cities and suburbs where all the problems impact at once—jobs, education, the environment, infrastructure, crime, transportation, to name a few. Local leaders are beginning to understand that current patterns of development are not sustainable, i.e., developing greenfields and building new roads and infrastructure are now resulting in more traffic and pollution and higher infrastructure costs. They see the need to redevelop urban brownfields. Remediating brownfields may be quite costly and time consuming. So, localities are finding it important to bring the community together to jointly envision the community's future. Chattanooga, Tennessee, is one of the leaders in the sustainability movement in the US. Other leading cities include Seattle, Washington, and Portland, Oregon.

VKP: What about churches, labor unions and other voluntary organizations? Based on my personal experience in all these types of associations, it strikes me that sometimes they present unusual opportunities for raising and discussing difficult political issues. If my experiences are not idiosyncratic, what are the limitations of these types of organizations as possible allies in a campaign for a 'Court of Generations' Amendment?

BET: I think that NGOs, also referred to as public interest groups, can have an important role in supporting the amendment. Environmental NGOs in particular would have an interest in the amendment in so far as the 'Court of Generations' assesses long-term environmental issues. Environmental NGOs have experience in influencing political decision making. They are used to thinking long-term and strategically. They also advocate issues in which they do not have personal financial gains, which removes an important source of potential bias in their message. Other organizations may not be as effective because their motives can be seen as biased and too self-interested. Labor unions, political rights organizations, and religiously affiliated political action groups might or might not be effective supporters of the amendment given that they have worked the political system to gain things for themselves and not for the greater good. I could

easily envision some religious groups supporting the 'Court of Generations' Amendment only to further their desires for other constitutional amendments they have not been successful in getting approved. They would probably like to convene a constitutional convention to place numerous favored amendments on the table. Many of these organizations carry conservative and liberal labels, whereas I personally do not view the amendment as falling into either camp. I can envision some pretty interesting political dynamics if these kinds of groups begin to get involved. [The next three groups of questions concern legitimacy.]

VKP: Your article claims that giving 'standing to future generations in the courts' simply is no substitute for 'judgments that have national visibility and credibility' (p. 489). I wonder if the two notions are incompatible. (In a single recent environment focused case, the Supreme Court of the Philippines gave standing to future generations.) If you care to elaborate on this point, please also indicate why the prospective Court of Generations would have more legitimacy.

BET: My answer to your question is to focus on the word effectiveness rather than legitimacy. Court cases cannot take the place of the Court of Generations simply because they would be less effective in pressing the case for future generations. Court cases are random, irregular in timing, and limited in scope. Their aggregate impacts will be piecemeal at best. Generally, only those who are part of the case can participate in the case. People must have money to initiate court cases, too. The Court of Generations is designed to periodically and comprehensively review all aspects of society *vis-à-vis* a concern for future generations. In addition, the Court of Generations can be highly participative, as each state could implement a highly participative process to select their representative to the Court's Grand Jury. The Court of Generations, then, would be unique among all courts in the United States.

VKP: Part of the argument for the Court of Generations Amendment is that 'no one in the political process has the legitimacy to make judgments about the seriousness of the problems' (p. 489). I am tempted to agree with you. However, as we know, legitimacy is one of the more arguable concepts in politics. In this case, how do you focus the argument about legitimacy to elected governmental officials who point to the majorities (or pluralities) of voters who put them in office as a claim to legitimacy?

BET: It is my observation that the voice of the politician carries much less weight these days. The validity of their arguments is tainted by the aura of obligations to special interests. Their ability to speak for their constituents is tainted by several factors: low voter turnout (sometimes in the 20% range of all eligible voters in local elections); the impersonalness of the political process (how many of us actually know our political representatives?); and the extreme diversity of issues that demand attention (no politician can faithfully represent anyone's opinions on all issues all the time much less the majority of the constituents much of the time). Politicians and the political processes in the US are held in low esteem these days. I will also say again that the US political process is reactive, not proactive. Politicians react to their constituents and get re-elected based on their records in providing constituent services. Caring for future generations will not get many politicians elected much less re-elected.

VKP: Following up on the previous question: If implemented, the 'Court of Generations' Amendment itself will have emerged from 'the political process' which your June 1991 *Futures* article envisions in some detail. Therefore, won't the legitimacy of the Court

of Generations derive to some considerable extent from the clarity, concern and passion expressed in the prospective debates over whether or not to ratify the amendment?

BET: There is certainly a Catch-22 situation at work here. How can a political process that is notoriously myopic suddenly step back and pass an amendment to the constitution that is visionary in character? It could happen if citizens (i.e., constituents) supported the amendment. It could happen if politicians came to see that the Court of Generations could help them achieve their more idealistic goals. Numerous politicians have quit the game recently, sick of fund raising and special interest politics and complaining that they felt powerless to change the world for the better. The Court of Generations could provide the requisite leadership and direction for the political process. Politicians could then work as they do to move the process along on a day-to-day basis. The ultimate legitimacy of the Court of Generations will flow from the quality of its work. If the Court truly takes its job seriously, thoroughly assesses threats to the security of the blessings of liberty to our posterity, and provides the moral leadership to get the country thinking positively about future generations, then the Court will have legitimacy. Over time, discussions leading up to approval of the amendment will pale in comparison to the Court's performance with regard to the question of legitimacy.

VKP: Your proposed Court of Generations would be a very unusual court. On the one hand, it may not impose any penalties on wrongdoers for insensitivity to future generations. Indeed, as you stated, 'The Court of Generations must not hold any characteristic in common with a monarch or absolute ruler' (p. 493). On the other hand, it seems like you intend it to be a *conscience* for civil society? Is that a fair analogy?

BET: I like your analogy that the Court of Generations is intended to be the conscience for civil society. I also agree that maybe more is needed than a conscience. In a more recent article in *Futures*, I proposed the establishment of a Futures Congress.² This institution would act on the findings of the Court of Generations. Its structure would be radically different from our current system of representative government in ways designed to eliminate special interest influence and political partisanship, and increase the number of people of wisdom in the decision making process.

VKP: A proposed amendment to the US Constitution can make a difference even before it has been ratified. A number of years have gone by since you first proposed the Court of Generations Amendment. How has it been received? What kinds of people, what kinds of groups have responded to it most favorably? What kinds of discussions has it generated? What do you hope concerned citizens do with the Court of Generations Amendment in the next 10 years?

BET: The Court of Generations concept has been received quite favorably by the futures community. The idea has not received much attention outside of the futures community. I have sent reprints to several high ranking US politicians but have received no comments back. I submitted an editorial about it to a major newspaper, but it wasn't published. I am not discouraged, though. I believe the idea is taking root. I predict it will receive increasing attention as the new millennium approaches. I hope discussions will critically examine the concept and help improve it.

VKP: So, in your view, the seed is germinating—and the Court of Generations Amendment will begin to be taken more seriously as we move into the 21st century? If that is a fair characterization, let me follow up with some grassroots/riceroots questions.

BET: Yes, that is a fair characterization of my view.

VKP: On an organizational level, it is typically difficult to amend constitutions of

the individual 50 states of the USA. And amending the US Constitution is even more arduous. There is more than one constitutional pathway leading to the ratification of the Court of Generations Amendment. One avenue is through a Constitutional Convention. How likely is that approach to present itself, say, in the next 15 years? (If a Constitutional Convention is the most likely approach to succeed, what kinds of national or international events might facilitate or trigger this outcome?)

BET: At the present time, I do not see the forces in place to realize a Constitutional Convention. The major driver for such an event, a balanced budget amendment, seems to be losing influence as the US Congress, with great help from the US economy, seems to be moving to a balanced budget. Conservative and liberal groups in the US have constitutional amendments they would like approved but would be wary of a Constitutional Convention if they thought the other side might get something approved. However, there are many drivers on the horizon that could lead to a Constitutional Convention. Global climate change is one. A nuclear terrorist episode is another. The failure of Social Security combined with an economic depression spurred by an uncontrollable international currency market is another scenario. I can envision people finally seeing a host of problems catching up to the country, problems that could have been prevented if the country hadn't been so myopic and the politicians so constituent-oriented that a Constitutional Convention could be convened as a cathartic event, if nothing else. In such a scenario, the Court of Generations Amendment would receive much attention, more so than the social agenda amendments. This scenario could take place in a 15-year time period, but would be more likely within a 50-year time period.

VKP: If the Constitutional Convention pathway is not likely to open up, what do you see as some of the necessary steps leading up to (a) passage of the Court of Generations Amendment, first, by the US Congress and, subsequently, (b) ratification of that amendment by the legislatures of the required two thirds of the 50 states of the US, say, by the year 2020? Earlier, for example, you referred to community level long-term visioning processes and to what you discern as the implicit link between sustainability and a concern for future generations. What kinds of leadership, organization and network building will likely be able to make that link explicit? In other words, even if 15 or 20 years (or longer) are required to get the Court of Generations Amendment passed, won't the credibility and attractiveness of your proposal increasingly also depend on visible organizational efforts reflecting the seriousness, intent and commitment of the amendment's supporters?

BET: Leadership is necessary. In organizational theory, the concept of a champion is seen as important. A champion pushes for organizational change. A champion in forward-thinking organizations is at least assured of survival in the organization if the initiative fails. In other words, the champion's job is not a risk, although other less risky opportunities may be foregone. What I am saying is the Court of Generations could use a champion, someone willing to devote one's life and energy to the goal of getting the amendment passed. Emanating from the champion's efforts arise the organizational networks needed to build the required grassroots support. In today's world, the champion must know how to deal with the press, speak in sound bites, and deliver rousing public speeches. People also need to make money to support their families and themselves. Somehow, maybe with the backing of foundations or NGOs, the champion could find the financial support to give it a go.

VKP: Wouldn't campaigns to pass a Court of Generations Amendment to state consti-

tutions be a useful part of a broader campaign to amend the federal constitution? (This effort wouldn't have to preclude simultaneously working on a national Court of Generations Amendment, but it might have the virtue of being a political training school wherein supporters of the amendment would experience, first-hand, typical difficulties, skills and opportunities. Moreover, wouldn't it be easier to do in some states than in others, allowing pro-amendment forces from around the USA to combine and concentrate their efforts in such states?)

BET: This is a really exciting idea you just put forth. State constitutions are easier to amend. A champion would have a much less daunting task at the state level. In many policy areas, states learn quickly from each other and adopt the newest policies and programs. So, success in one state could definitely lead to successes in other states, and then to success on the national scene.

VKP: Also, if even just one of the 50 states amended its constitution with a 'Court of Generations Amendment', wouldn't that kind of event likely energize otherwise politically fatigued supporters elsewhere in the USA? Couldn't that kind of victory make it easier for other supporters to learn and begin applying the lessons in their own states, as well as to build up a national political network with a serious chance of getting the Court of Generations Amendment to the US Constitution passed during our lifetimes? For example, won't individuals and groups who do not normally collaborate politically have to figure out ways of acting together in support of the Court of Generations Amendment?

BET: Yes, I agree with your ideas here.

VKP: As you envision likely and not-so-likely events transpiring during the first and second decades of the 21st century, what do you expect will be the most important political and economic obstacles that supporters of the Court of Generations Amendment will have to overcome in any campaign to get it adopted?

BET: I just finished a study of environmental citizenship in the USA. My co-author, Carl Petrich, and I wanted to survey the constraints that the modern US society places on people that prevents them from being as involved in environmental issues as they could be. This study was motivated by several observations: low citizen participation in most any political issue; complaints from NGO staff about apathetic publics; and a growing desire on the part of US governments to involve the public. Our conclusion is that there are overwhelming constraints on people. These constraints fall into six categories: work; consumerist consumerism; social capital; personal; educational; and built environment. People are working longer hours and in life-disruptive schedules. They work to pay their debts incurred in supporting consumerist lifestyles. Time and attention focus on work and entertainment. Meanwhile, the social capital of communities diminishes because of high rates of moving (from city centers and from place to place due to job transfers). People are losing the ability to talk to each other in a political fashion, which in turn leads to even more anxiety about participating. People are also reluctant to participate knowing they do not have the scientific or environmental education to positively contribute. Our car-oriented, single family housing, suburban society reduces the ability of people to meet with each other, to get to central places to discuss issues face-to-face. Many of those who do give it a shot become burnt out and cynical about changing the world. Environmental citizenship, then, can only improve if major changes take place in society. So, my biggest worry is that the social reality which so sorely needs assessment by the Court of Generations may be the biggest obstacle to its inception. So many people are caught up in work and lifestyle, suffer from lack of community, and live in built

environments inhospitable to social participation that it will be hard to get that threshold of people motivated to get the amendment passed. Of course, any of the forcing events mentioned earlier could radically change this picture.

VKP: How do you rate the chances of passage of the 'Court of Generations' Amendment to the US Constitution, say, in the next 20 years?

BET: A champion is needed and one or two forcing events. I would say that the chances of these things happening in the next 20 years are low but certainly positive.

VKP: Finally, what do you have to say to young people, to college students who are hearing about the Court of Generations Amendment for the first time?

BET: I would say it is okay to be idealistic. I would say that is okay to be creative. I would say it is okay to ask the hard questions. For example, what will it take for humans to survive the next thousand years, even the next million years? What aspects of our political, economic, religious and social systems are sustainable and which are not? Often times, such exercises lead to ideas such as the Court of Generations, ideas that call into question the status quo. Humanity desperately needs many, many more new ideas if it is to survive into the distant future.

Notes and references

1. Tonn, B. E., The Court of Generations: a proposed amendment to the US Constitution. *Futures*, 1991, **23**(5), 482–498.
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