

**FORECARING: A CONSTELLATION OF IDEAS TO FULFILL OUR
RESPONSIBILITIES TO OUR NEIGHBORS AND FUTURE
GENERATIONS**

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Many years ago when we began working on the precautionary principle, a core concept of the Women's Congress for Future Generations, we traced the idea back to its origin. The words "precautionary principle" were translated out of a lovely German word Vorsorgeprinzip by Konrad Von Moltke at a meeting of Greenpeace in Europe. The literal translation of Vorsorgeprinzip, according to Nancy Myers, the multi-lingual then communications director of SEHN, is "forecaring". Forecaring is a complex idea that means caring about and preparing for what might be a difficult future.

Von Moltke knew hard times. His father, Helmut James Graf Von Moltke had been part of the German resistance during WWII and was executed by the Nazis for treason. He and his wife Freya belonged to an anti-Nazi resistance group, called the Kreisau Circle. The Kreisau Circle, had been anticipating the fall of Hitler and had been working on "moral and democratic principles" that could form the basis of a post-Nazi Germany.

The concept of the precautionary principle is rooted in the kind of resistance and future-oriented thinking that was exemplified by those trying to stop Hitler's atrocities: what lies on the other side of the hard times? How do we get through this and prepare for the future?

As I write this, the difficult future is here. Everywhere we turn we are faced with fire and floods, racial violence and increasing patterns of diseases in our most vulnerable communities. The old ideas of economic growth for its own sake, government by and for corporations, acceptable risk rather than preventing harm have led to a level of suffering and catastrophe that a decade ago were unimaginable.

The Women's Congress stands for the proposition that we have a responsibility to prevent suffering and harm if we can. Prevention is a future-oriented idea. The Congress affords us an opportunity to examine the ideas that we use as navigational tools as we head towards that future. We believe that the crises of our days and the threat to a livable future require that we use a moral compass to find our way forward. Our grandchildren deserve this. Our neighbors' grandchildren deserve this. We owe it to them.

The Congress serves as a model for what government could be like. We gather to adopt policies that fulfill our obligation to the Earth and generations to come. The policies adopted by the Congress are designed to both restore justice and health as well as to prevent future injustice and ill-health.

What follows here are five policy ideas that fit together like a constellation. They are answers to questions such as “What are we trying to protect? What is government for? How do we give or withhold consent? How can we make wise decisions? Are there new ways to go forward?”

These five ideas of the Commons, Free, Prior and Informed Consent, the Public Trust Theory of Government, the Precautionary Principle and Guardianship of Future Generations are structured for use by a study group that could gather to find new ways to protect some treasure in your community—a river, a forest, an ocean-front, a rare species. Of course you can use this for your individual use as well. Hopefully it will spark new ideas. Is this a useful basis for a candidate questionnaire? Model language for a comprehensive plan? A municipal budget? New legislation or a constitutional provision?

THE COMMONS: A NEW WAY OF EXPRESSING A VERY OLD IDEA

The Commons is a new way to express a very old idea—that some forms of wealth belong to all of us, and that these community resources must be actively protected and managed for the good of all. (All that follows comes from On The Commons website unless otherwise indicated. Visit: www.onthecommons.org/about-Commons). The Commons are the things that we inherit and create jointly, and that will (hopefully) last for generations to come. The Commons consists of gifts of nature such as air, oceans and wildlife, as well as shared social creations such as libraries, public spaces, scientific research and creative works.

Most environmental work—the kind you do in your community—is to protect a Commons such as air, water and public health. Our task is to make clear that we will not sacrifice our commonwealth to private interests in the name of the economy. The basis of any economy is the Commons. Without clean air, clean water, wildlife, and public roads the economy would collapse.

Enclosure: When land that has been held in common is privatized, it is called enclosure. In 15th Century England, “commons” were lands that all could use for their animals’ grazing. When they were fenced and privatized, many peasants suffered. Enclosure entails not just the privatization of a resource, but also the introduction of money and market exchange as the prevailing principles for managing that resource. Enclosure shifts ownership and control from the community at large to private companies. This in turn changes the management and character of the resource

because the market has very different standards of accountability and transparency than a Commons

(Contrast a public library with a bookstore, or Main Street with a private shopping mall.) Markets tend to be driven by the compulsion to extract maximum short-term gains and let the costs fall where they may, often on the public or the Commons.

Inalienability: the principle that a given resource shall not be freely bought and sold in the marketplace, but shall remain intact, in its natural context.

Inalienability derives from a social consensus that certain things and behaviors are so precious and basic to human identity that they are degraded if they are put up for sale. “Goods”

that have traditionally been regarded as inalienable include votes, babies, bodily organs, sex, genes, living species and most aspects of nature. However, market forces are increasingly challenging what we have long considered inalienable.

Public goods: resources that, because of their “public” nature, are difficult or costly to exclude anyone from using. Examples include lighthouses, city parks, broadcast programming and the global atmosphere. In the lingo of economists, these are “non-rival” and “non-excludable” resources. Government often steps in to pay for public goods because it is difficult to get individual beneficiaries to pay for them. But in the networked environment of the Internet, it is increasingly feasible for self-organizing groups to create and pay for public goods. Open source software and free little libraries are examples.

Public trust doctrine: a legal doctrine that says that the state holds certain resources in trust for its citizens, which cannot be given away or sold. Public trust doctrine has its origins in Roman law, which recognized that certain resources such as fisheries, air, running water and wild animals belong to all. Under the doctrine of *res communes*, the king could not grant exclusive rights of access to a common resource. The point is that there is a clear distinction between common property, which belongs to the people, and state property, which can be controlled and managed by government. (See the later section on the public trust doctrine.)

Ten principles create a legal framework to protect the ecological Commons for future generations. Each generation is responsible for managing these resources, which mandates accountability of the polluters (from an article by Carolyn Raffensperger and others: <http://ontheCommons.org/work/introduction-Commons>):

1. A life-sustaining, community-nourishing, and dignity-enhancing ecological Commons is a fundamental human right of present and future generations.

2. It is the duty of each generation to pass the Commons on to future generations unimpaired by any degradation or depletion that compromises the ability of future generations to secure their rights and needs.
3. The services and infrastructure of the Earth necessary for humans and other living beings to be fully biological and communal creatures shall reside within the domain of the Commons.
4. All commoners (the public or a defined community) have rights of access to, and use of, the ecological Commons without discrimination unrelated to need. Such rights shall not be alienated or diminished except for the purpose of protecting the Commons for future generations.
5. Publicly owned Commons belong not to the state but to the commoners (the public or a defined community), both present and future, who are entitled to the benefits of their Commons.
6. It is the responsibility of government to serve as trustee of Commons assigned to it by law for present and future generations. In fulfillment of this responsibility, governments may create new institutions and mechanisms as well as authorize responsible parties to manage the Commons or resources therein. All such actions must be transparent and accountable to commoners.
7. The precautionary principle is a useful guide for protecting the Commons for present and future generations.
8. Eminent domain (the "taking" of private property for a public use and subject to payment of just compensation) is the principal legal process for moving private property into the Commons and protecting or enhancing the Commons.
9. The market, commerce and private property owners shall not externalize damage or costs onto the Commons. If the Commons are damaged, the polluter, not the commoners, pays.
10. Future generations shall not inherit a financial debt without a corresponding Commons asset.

FREE, PRIOR AND INFORMED CONSENT: CONSENT AND DISSENT IN COMMUNITY STRUGGLES

The basis of democracy is the consent of the governed. The alternative to governing with the consent of the governed is either anarchy or dictatorship. The false premise promoted by the corporations-as-people fiction is that government's primary responsibility is to promote a growth economy even if

it means destroying the water, the air, and wildlife. The real responsibility of government is to protect the commonwealth and health of its members. The commonwealth is all the things we share—air, water, wildlife, roads, sidewalks, museums, the Internet, public health.

Informed consent is the means for protecting the essential dignity and personhood of the individual. This right emerged after atrocities committed by the Nazis. The notion of informed consent as a right of communities, not just of individuals, is taking hold in international law.

At present the United States does not recognize a community's legal right of free, prior and informed consent but it does recognize the individual's right to free, prior and informed consent, particularly in research situations where the individual might be the subject of an experiment. Experiments by their very nature have uncertain outcomes. Projects like oil pipelines, fracking and mining are like experiments in that the long-term future has uncertainties and raises threats of harm to the community.

Accordingly, communities need to have the right to give or withhold informed consent. Community organizing and assertion of this right can help shift the terms of the debate and eventually make consent a legally recognized right. It is like the women's right to vote or civil rights for those who were once enslaved. There was a long struggle and then it became law. Here's how you can both use the concept in your work and eventually make it a legally recognized right:

- Remind political officials about the consent of the governed in making public comments on the issue you are addressing. If you are resisting a mine, fracking, a pipeline or other noxious intrusion on community life, you can express the fact that in order for government to be legitimate it must have the consent of the governed.
- Insist that environmental or public health agencies (or the corporation proposing a project) provide full information so the community can make an informed decision. The premise here is that the decision is not an agency's to make, it is the community's decision.
- Demand that the first decision that must be made is not whether the project will go forward or not but whether it is an ethical project. Does it compromise the rights of future generations or require them to pay for benefits present generations receive? Does it create injustice? Does the community bear the burden of the project but people living far away get the benefit?
- Use all mechanisms for obtaining or denying consent of the community. Referendums, ballot measures, town hall meetings.
- Remember that consent must be given freely, before the project goes forward and on the basis of full information. E.g., A corporation can keep its trade secrets about fracking fluids but it cannot frack if it does not disclose the information.

Today, we do not have consent and as such corporations, through the Halliburton Law, do not have to disclose the fracking fluids they use.

PUBLIC TRUST THEORY OF GOVERNMENT: PROTECTING THE THINGS WE SHARE

All the nattering of the media and politicians has reduced the discussion of what government is for to promoting the economy and jobs. The main view of the political class is that the foundation of the economy is capital and private property, therefore government's primary responsibility is to protect capital and private property. Accordingly, most of our environmental laws are skewed in favor of the free market and growing the economy.

Standing in contrast to this view that government's main responsibility is to protect private property is an ancient theory of government called the Public Trust Doctrine. The Public Trust Doctrine has two parts. The first is that community members have a right to equal access of Commons resources that are necessary for food, shelter, travel, community life, wildlife and water.

The second part is the responsibility of government to hold these common assets in trust and maintain them for the wellbeing of present and future generations. Individuals have the right to use their share of the Commons that are protected and maintained by the government in exchange for giving up the right to take more than their share or harm the Commons by polluting or damaging the shared assets like air and water. In turn, if government makes a decision to allow use of a Commons asset that threatens or alters the future of a community, the community has the right to give or withhold free, prior and informed consent to that proposal. Government's legitimacy hinges on the consent of the governed.

The Public Trust Doctrine stands for the premise that the commonwealth and health is the real foundation of the economy, and that all commoners have an equal right to shared resources. The commonwealth and health must be protected from harm or exploitation. It is the obligation of government to care for the Commons and pass it on unimpaired to future generations. It is the right and obligation of the public to give or withhold informed consent to troublesome activities permitted by government. Government's responsibility is to serve as the steward of the Commonwealth and health.

Public investment in the Commons necessary for health and wellbeing must be the first order of government spending. These Commons include clean water, sewage treatment, reliable, clean energy sources, public transportation. Access to the Commons necessary for life is a right, not a privilege. Clean drinking water and clean air are rights. Planning for and implementing those plans to build in

community resiliency must begin now. The Commons are the main component of community resiliency in the face of coming climate chaos.

Government policies must be adopted that:

- Recognize the equal rights of people to access the Commons necessary for life, health and community.
- Recognize the rights of future generations to inherit a habitable planet.
- Fund the Commons infrastructure that will be required in the coming days of climate chaos. The priorities are water, local food systems, public transportation, wild places and protection from flooding and drought.
- Establish polluter-pays laws and mechanisms for enforcement. No polluter should be allowed to trash the Commons without being held accountable.
- Revamp the regulatory system so that we stop permitting polluters to destroy the climate, water, air and soil.

Using the Public Trust Doctrine in organizing to protect our communities begins with reminding public officials of their responsibility to serve as trustees of the Commons. Some state constitutions or city charters have language that describes this

responsibility. For instance, the Constitution of the Commonwealth of Pennsylvania has Article 1 Sect. 27. Natural Resources and the Public Estate Section 27.

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

Minnesota has a statute that reads:

Minnesota Statute 116B.01 PURPOSE.

“The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.”

<https://revisor.mn.gov/statutes/?id=116B.01>]

You can make the case in jurisdictions that have provisions like this, that it is a constitutional mandate for government to conserve and maintain the natural

resources. Allowing a corporation to trash the common property is a violation of that constitutional responsibility.

One place to match this responsibility to the Commons with government activity is in budgets. Does the budget reflect the trustee responsibility to the Commons? If an industry is going to be allowed to do business in a jurisdiction is it likely to pollute the air or water? If so, then government should require an assurance bond or other financial mechanism that guarantees the public won't have to pay for the damage. By requiring a bond of potential polluters, government satisfies some of its responsibility to protect the common property.

PRECAUTIONARY PRINCIPLE: HOW GOVERNMENT CAN MAKE WISE DECISIONS

The precautionary principle is defined in the Wingspread Statement this way: "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically."
<http://www.sehn.org/state.html#w>

That is, in the face of harm and scientific uncertainty, take action to prevent harm. The precautionary principle tells us to act ethically and protect future generations, not wait until all the evidence is complete. The question is, "do we know enough to act?"

There are five steps that can be taken to implement the precautionary principle.

- 1) Heed Early Warnings. Are there trends in data that show increasing levels of disease or pollution or climate change? Those trends can sound an alarm of increasing levels of harm even if we don't fully understand all the causes. These early warnings can initiate more research. But they can also lead to various preventive measures when we have enough evidence to act.
- 2) Set Goals. When the trend lines show decreases in honeybees or increases in asthma and breast cancer or dying rivers, we can set goals that shape action to reverse those trends.
- 3) Hold Polluters Accountable. Lawyers have a fancy term for holding polluters accountable and that is "reversing the burden of proof." Currently most law favors economic activity and dismisses predictions of environmental or public health harm. What this means is that polluters or mining and fracking companies are able to gamble with our health, clean water and air. When they lose their bet, the public has to pay for the pollution and the disease. Polluters must be held accountable by making them put up bonds before proceeding with a potentially

damaging activity and they must pay if they damage the commonwealth and common health.

4) Identify the best alternatives to harmful activities and choose them. Most environmental decisions consider the risk of single activities, mines or chemicals. They decide if those risks are acceptable. Instead of simply accepting risk, the precautionary principle directs us to determine if an activity poses a threat of harm and if it does, to look for a safer alternative. Is solar or wind power safer than nuclear power? Are there alternatives to toxic pesticides for managing lawns?

5) Engage in democratic participation leading to free, prior and informed consent. Because the precautionary principle is a way to make ethical decisions, it doesn't leave all decisions to scientists. Communities and people affected by a decision should be at the table to document the early warnings, set goals and look for the best alternatives. Communities have the right to give or withhold their free, prior and informed consent to activities that affect their future.

Applying this in your community:

In most cases proposals for confined animal feeding lots, pipelines, mines, fracking and other noxious activities are evaluated on the old environmental model of allowing acceptable harm. The public has to pay for the gambles of corporations when they pollute the Commons.

Arguments for noxious activities are usually based on the necessity of growing the economy and jobs. Most governmental bodies see their primary role as protecting the economy. You can assert that their true responsibility is to protect the commonwealth and health. This means that if water, air, public health or other important common assets are threatened, government has a primary duty to protect them.

Local governments can set up Early Warning Committees that evaluate clusters of unusual diseases, trends in problems such as polluted drinking water, and changes in wildlife that provide clues about trouble in the environment. An Early Warning Committee could be empowered to propose legislation or recommend research with the intention of taking precautionary action based on the research findings.

Communities can set goals for what they'd like their community to become. Reducing diseases and pollution, protecting drinking water, increasing green spaces—whatever the community thinks should be improved. Government can be measured against those goals and budgets should be tailored to those goals.

Some projects in some jurisdictions require that an environmental impact assessment be done on a project. One part of the assessment requires that alternatives to a potentially harmful activity be identified. Many local or county jurisdictions don't require alternatives to be identified or chosen. However, it is

worth demanding that businesses and activities be recruited that add to the Commons and not harm them. Some jurisdictions create Green Zones and provide incentives for environmentally friendly businesses that provide economic opportunity but do not add environmental harm.

The Achilles heel for most local governments is having to pay for messes left by corporations or businesses that spill, pollute and damage the Commons. One way to protect the community is to require that a potentially noxious industry post an assurance bond. Construction firms regularly post bonds in case of engineering failure.

GUARDIANSHIP: NEW ROLES TO FULFILL OUR RESPONSIBILITY TO FUTURE GENERATIONS

Climate change and other environmental ills threaten our future in unprecedented ways. These threats challenge us to innovate practical new approaches and policies. Government has a particularly important role in planning for a difficult future since it can leverage collaborative efforts that prevent harms and mitigate difficulties. Government institutions change more slowly than business but they can have an outsized effect on the future.

New Ethic

A new ethic is emerging that will provide a rationale and structure for meeting the challenges ahead: present generations have a responsibility to protect the rights of future generations to inherit a livable planet. Future generations include nature and all of her creatures. This new ethic invites rethinking governmental institutions and creating new ones that can fulfill our responsibility to future generations.

New Institution

A key new institution to take responsibility for future generations is a Guardian of Future Generations. While the exact title doesn't matter, what is important is to charge someone with the duty to care for future generations and provide the tools to carry out that duty. The guardian can be elected, appointed or designated in other ways. The guardian would have three primary responsibilities.

- Prepare an audit of the commonwealth and common health under that government's jurisdiction. This audit would provide an inventory of parks, water and air quality, and infrastructure necessary for community wellbeing—all of the Commons that are essential for the health and wellbeing of present and future generations. The audit could be reported as a qualitative, non-monetized set of assets.

- Draft a legacy plan for the Commons. What is needed to improve, restore, and expand the Commons to leave them in good shape for future generations? Some threats are particularly important to consider in plans. It is difficult to flourish in the face of floods, drought and fire. The legacy plan could become the basis of governmental sustainability goals.
- Review all regulations and land use plans for their impact on future generations. The guardian would be empowered to make recommendations for modifications to regulations and land uses that would protect future generations.

Key Role of Government

The proposal for a Guardian of Future Generations is premised on the idea that government has two key roles and responsibilities.

1. To serve as the trustee or steward of the Commons for present and future generations.
2. To be responsible for protecting our rights to a clean and healthy environment. Few rights are as important as that of a clean and healthy environment.

By making these roles explicit, government bodies have a rationale for structuring budgets. The budget should be tied to the Commons under its jurisdiction. The argument isn't whether government should be big or small but whether it can fulfill its responsibilities to care for the commonwealth and common health.

Starting Place

If you want to establish a Guardian of Future Generations in your local or state government you can look at who you know in government, at the local newspaper or other organizations that might be interested in helping to promote the idea.

Every government is a little different. You might have a city manager or an attorney general or a mayor who is willing to champion this idea with you. A mayor or governor could appoint someone to fill this role. A county board could appoint someone. A sustainability officer in your city could adopt the role and serve as the de facto guardian.

You might begin this effort because something you treasure is being threatened by a proposal that will bring harm. Fracking, mining, a big development—you can ask if this proposed project will leave long lasting damage. Does this project threaten future generations?

The idea of a Guardian for Future Generations signals to the community that you care about more than immediate dollars. You care about the health and wellbeing of all the things necessary for life.

Many people in government assume that their role is to promote the economy and that a strong economy will guarantee prosperity. Making clear that the role of government is far broader than that will help to shift the conversation so that government officials and others can see government must protect the basic infrastructure of life. Become Guardians of Future Generations. Become a moral force.