Part 10
Protecting Future Generations
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One of the most critical challenges facing the international community is to ensure that humanity exercises prudent stewardship of the environment – both locally and globally – and lives within the biophysical limits of the planet. If we fail, the consequences for future generations will be severe. Indeed, there is the risk of inflicting large-scale and irreversible damage to key biophysical systems, thereby seriously undermining the wellbeing of people for many generations to come. But how can we ensure that global public goods, such as the oceans and atmosphere, are properly valued and cared for? And how can we ensure that environmental values are respected and that the interests of future generations are adequately protected? After all, neither the environment nor future generations have voting rights. Within the democratic world, they are entirely dependent on the goodwill of current generations of voters. Is this goodwill sufficient? If not, is there a case for endeavouring to protect the environment and future generations through constitutional means and, if so, how effective are such measures likely to be?

In the closing chapters of this volume, a distinguished jurist (Justice Susan Glazebrook) and three young New Zealanders (Rayhan Langdana, Tama Potaka and Kate Stone) offer reflections on how best to protect the environment and future generations, as well as wider issues of citizenship and constitutional reform, with particular reference to New Zealand. In Chap. 25, Justice Glazebrook reviews international and domestic endeavours to recognise the importance of the environment, and considers the role that constitutional environmental rights can play in ensuring the protection of the environment. More specifically, she assesses how a constitutional environmental right might be most effectively formulated. In so doing she evaluates the arguments for and against including an environmental right within a nation’s constitution, the appropriate formulation of such a provision (including whether it should be framed as a “right” and whether it should be procedural or substantive in nature), and whether any such provision should also include reference to future generations and biological diversity. Her argument, in short, is that constitutional environmental protections of a substantive nature are important and justified, and that if New Zealand were to promulgate a written constitution, such protections should be included within its scope.
In Chap. 26 Rayhan Langdana, the youngest of the contributors to this volume, addresses some of the key constitutional challenges facing New Zealand, in particular whether the country should become a republic, whether separate Māori representation should be retained, whether the current system of proportional representation should be reformed, and whether there is a case for separate youth representation in Parliament. He argues for a mix of change and continuity. On the one hand, he favours retaining the current Māori seats in Parliament on the grounds that this will help to protect New Zealand’s Māori heritage and culture. On the other hand, he favours New Zealand becoming a republic, and recommends changes to the current electoral system, including reserved seats for young persons (that is, 18–22 year olds).

Tama Potaka, in Chap. 27, provides a Māori perspective on New Zealand’s constitutional future. A key focus of attention is the constitutional status of the Treaty of Waitangi, especially the controversial question of whether the Treaty should be enshrined into supreme law and/or entrenched in some way. Potaka highlights the difficulties associated with formally codifying the Treaty and suggests various alternative approaches for giving expression to the intentions and values embodied in the Treaty. In the second part of the chapter, Potaka explores how tikanga (that is, Māori customs and traditions) might be optimised through constitutional reform. He considers, for instance, how tikanga might influence the interpretation of the common law and be embodied more fully within the policy process, especially the legislative process. He acknowledges, in this context, the controversial nature of some of his proposals but urges readers to venture with him in his constitutional “dreaming” and be willing to explore new possibilities and alternative futures.

Finally, Kate Stone, in Chap. 28, addresses the process of creating a “reconstituted” constitution. Lamenting the limited civic participation in contemporary liberal democracies like New Zealand, she provides a vigorous defence of “deliberative” democracy and its associated institutional arrangements. In this regard, she urges greater use of the various new information communication technologies (ITC) that are now available, as mechanisms for civic engagement and participation. Equally, she makes a passionate plea for a stronger focus on intergenerational justice and protecting the interests of future generations. In her view, the process of constitutional reform must engage the marginalised, foster a stronger, more vibrant notion of citizenship, and address the huge environmental issues that face humanity, not least the problem of human-induced climate change. Stone’s ideals and dreams are undoubtedly worthy; realising them, however, will be challenging. Yet in the interests of justice and sustainability – social as well as environmental – we must strive to do so.