

**YOUTH AT THE FOREFRONT OF CLIMATE ACTIVISM:
THE DIGNITY OF FUTURE GENERATIONS**

*By Erin Daly**

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INTRODUCTION

Across the world, youth have been at the forefront of climate activism including climate litigation.¹ It is remarkable that these youth leaders are significantly younger than the activists of other social and political movements, including those involved in the revolutionary and anti-war movements of the 1960s,² the Arab Spring protests,³ the women's movement in Iran in 2022,⁴ or the protest movements that that

1 See e.g., *Sacchi v. Argentina*, CRC/C/88/D/104/2019, Decision, Committee on the Rights of the Child [CRC], (Oct. 8, 2021) (international); *What We Want, PEOPLE'S CLIMATE CASE*, <https://peoplesclimatecase.caneurope.org/what-we-want/> (last visited Apr. 22, 2023) (international); *The Case*, Global Legal Action Network, <https://youth4climatejustice.org/the-case/> (last visited Apr. 22, 2023) (Case brought by Portuguese children in the European Court of Human Rights); *La Rose v. His Majesty the King*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/canada> (last visited Apr. 22, 2023) (Canada. Filed 2019, dismissed and on appeal, awaiting court ruling); *Demanda Generaciones Futuras v. Minambiente*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/colombia-global-summary> (last visited Apr. 22, 2023) (Columbia. Favorable judgment in the Supreme Court of Justice on the merits); *Pandey v. Union of India & Ors.*, Original Application No. 187/2017, decided on Jan. 15, 2019 (India. Dismissing case in National Green Tribunal); *Jóvenes v. Gobierno de México*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/mexico> (last visited Apr. 22, 2023) (Mexico. Filed 2019, awaiting hearing date); *Rabab Ali v. Pakistan*, OUR CHILDREN'S TRUST <https://www.ourchildrenstrust.org/pakistan-global-summary> (last visited Apr. 22, 2023) (Pakistan. Filed 2016, awaiting hearing on the merits); *Mbabazi and Others v. The Attorney General and National Environment Management*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/uganda> (last visited Apr. 22, 2023) (Uganda. Filed 2012, awaiting hearing). Our Children's Trust also lists climate actions brought by youth in Australia, Belgium, Canada, Colombia, France, Germany, Ireland, New Zealand, The Netherlands, Norway, Peru, Phillipines, South Korea, and Ukraine. *Other Global Actions*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/other-global-actions> (last visited Feb. 23, 2023). In the United States, Our Children's Trust has been involved in legal actions in all 50 states. *Legal Proceedings in All 50 States*, OUR CHILDREN'S TRUST, <https://www.ourchildrenstrust.org/other-proceedings-in-all-50-states> (last visited Feb. 23, 2023).

2 See generally, Norris R. Johnson & William E. Feinberg, *Youth Protest in the 60s: An Introduction*, 13 SOCIO. FOCUS 173, 174–75 (1980) (discussing the prevalence of protests on college and university campuses in the 1960s).

3 See, e.g., Michael Slackman, *Bullets Stall Youthful Push for Arab Spring*, N.Y. TIMES (Mar. 17, 2011), <https://www.nytimes.com/2011/03/18/world/middleeast/18youth.html> (describing youth leadership in the Arab Spring).

4 See generally, Haleh Esfandiari, *The Tenacity of Young Iranians in the Protest Movement*, FIKRA FORUM (Nov. 29, 2022), <https://www.washingtoninstitute.org/policy-analysis/tenacity-young-iranians-protest-movement> (discussing the movement of young people, largely university-aged, protesting the Iranian Regime's mandatory

have taken hold in France⁵ and Israel⁶ in 2023, much less international or transboundary social movements. By contrast, many of the leaders of the global movement for climate justice are in their teens. The leaders of South Korea's Youth for Climate Action range in age from thirteen to eighteen.⁷ At sixteen, Uganda's Leah Namugerwa was organizing strikes aimed at implementing the Paris Agreement in her country.⁸ Alexandria Villaseñor founded Earth Uprising when she was fourteen.⁹ Haven Coleman and Isra Hirsi founded US Youth Climate Strike when they were thirteen¹⁰ and sixteen,¹¹ respectively. Jerome Foster II founded the Climate Reporter and became the youngest person ever appointed to be a White House Advisor at age nineteen.¹² And the list goes on.¹³ Greta Thunberg may be the movement's poster child,¹⁴ but the army of young activists she represents is diverse and vast.

Perhaps we should not be surprised. The principal mechanism for igniting social movements now is digital technology, and no demographic

hijab policy and treatment of women).

- 5 See generally Anelise Borges & Eleanor Butler, *Why Are So Many Young French People Fighting Against Macron's Pension Reforms?*, EURONEWS (March 30, 2023), <https://www.euronews.com/tag/protests-in-france> (commenting on the participation of people eighteen to twenty-one in the protest movement).
- 6 See generally Bethan McKernan, *What Are the Israeli Protests About and What Happens Next?*, Guardian, (Mar. 27, 2023), <https://www.theguardian.com/world/2023/mar/27/what-are-the-israeli-protests-about-and-what-happens-next>.
- 7 See *Climate Litigation*, YOUTH 4 CLIMATE ACTION, <https://youth4climateaction.org/climate-litigation> (last visited Apr. 28, 2023).
- 8 Blaise Hope, *Get to Know the World's Top Five Youth Climate Activists*, SUSTAINABILITY MAG. (Mar. 1, 2022), <https://sustainabilitymag.com/sustainability/faces-of-change-the-top-five-youth-climate-activists-named-greta-emissions-change-pledge>.
- 9 *Meet Our Team*, EARTH UPRISING, <https://earthuprising.org/about-us/meet-our-team/> (last visited Apr. 28, 2023) (click "Alexandria Villaseñor, 17").
- 10 Meredith Nardino, *Meet the 13-Year-Old Organizer of the US Climate Strike*, DOSOMETHING.ORG, <https://www.dosomething.org/us/articles/haven-coleman-q-a> (last visited Apr. 28, 2023).
- 11 *Global Climate Strike: 5 Youth Activists Who Are Leading the Charge on Climate Action*, Rainforest All., <https://www.rainforest-alliance.org/everyday-actions/5-youth-activists-who-are-leading-the-charge-on-climate-action/> (last updated Sept. 17, 2019).
- 12 Taylor Mills, *Meet the Next Generation of Climate Leaders*, NOW THIS NEWS (Sept. 21, 2021), <https://nowthisnews.com/news/meet-the-next-generation-of-climate-justice-leaders>.
- 13 See, e.g., Anya Kamenetz, *'You Need to Act Now': Meet 4 Girls Working to Save the Warming World*, NPR (Jan. 19, 2020), <https://www.npr.org/2020/01/19/797298179/you-need-to-act-now-meet-4-girls-working-to-save-the-warming-world>.
- 14 See Kamenetz, *supra* note 13.

segment is as expert in its uses as young people. If an international social movement depends on effective communication, today's youth are well positioned to lead it. There are other reasons, too, why youth are playing a leading role in this movement. Beyond the practicalities of communications networks, climate action is fundamentally a youth issue because today's youth will bear the brunt of climate change. It is their world that will see persistent climate disasters like the recent flooding in Pakistan;¹⁵ the devastating forest fires in Australia and the American west;¹⁶ and droughts in Europe, China, and the Horn of Africa,¹⁷ and so on. Climate volatility and danger are shaping this generation's lives.

Today's young people have seen that their predecessors have shown no propensity or capacity to address climate change in any effective way. If you see the calamity rolling toward you and those in front of you have failed to stop it, you are likely to step up, if only because you have no choice. As the Ninth Circuit noted, this is no ordinary calamity but an "environmental apocalypse."¹⁸ As one judge said, climate change is set apart from "all" other harms "not just [because of] its magnitude, but its irreversibility."¹⁹ And as the Committee on the Rights of the Child explained, this calamity affects children particularly: "The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not

15 Raymond Zhong, *In a First Study of Pakistan's Floods, Scientists See Climate Change at Work*, N.Y. TIMES (Sept. 15, 2022), <https://www.nytimes.com/2022/09/15/climate/pakistan-floods-global-warming.html>.

16 Daisy Dunne, *Explainer: How Climate Change Is Affecting Wildfires Around the World*, CARBON BRIEF (July 14, 2020), <https://www.carbonbrief.org/explainer-how-climate-change-is-affecting-wildfires-around-the-world/>.

17 Ayesha Tandon, *Climate Change Made 2022's Northern-Hemisphere Droughts 'At Least 20 Times' More Likely*, CARBON BRIEF (Oct. 5, 2022), [https://www.carbonbrief.org/climate-change-made-2022s-northern-hemisphere-droughts-at-least-20-times-more-likely/#:~:text=The%20summer%20of%202022%20saw,compound%20already%20high%20food%20prices;Drought%20in%20Horn%20of%20Africa%20Worse%20than%202011%20Famine,ALJAZEERA \(Feb. 22, 2023\), https://www.aljazeera.com/news/2023/2/22/drought-in-horn-of-africa-worse-than-in-2011-famine-experts](https://www.carbonbrief.org/climate-change-made-2022s-northern-hemisphere-droughts-at-least-20-times-more-likely/#:~:text=The%20summer%20of%202022%20saw,compound%20already%20high%20food%20prices;Drought%20in%20Horn%20of%20Africa%20Worse%20than%202011%20Famine,ALJAZEERA (Feb. 22, 2023), https://www.aljazeera.com/news/2023/2/22/drought-in-horn-of-africa-worse-than-in-2011-famine-experts).

18 *Juliana v. United States*, 947 F.3d 1159, 1164 (9th Cir. 2020).

19 *Id.* at 1176 (Staton, J., dissenting). The majority "[r]eluctantly" voted to dismiss the youths' complaint on justiciability grounds. *Id.* at 1165 (majority opinion). But Judge Staton, in dissent, noted: "The devastation might look and feel somewhat different if future generations could simply pick up the pieces and restore the Nation. But plaintiffs' experts speak of a certain level of global warming as 'locking in' this catastrophic damage." *Id.* at 1176 (Staton, J., dissenting).

taken.”²⁰ It is therefore no wonder—but rather, welcome—that young people are becoming political activists in the movement for climate responsibility.

But the active engagement of young people in this movement also reveals some deeper truths about our global political and legal landscape. Children—those under eighteen who constitute much of the leadership of this movement—are the one demographic group that is *totally* and *globally* disenfranchised. Although there are some exceptions, the vast majority of countries allows only those who are eighteen or older to vote.²¹ None allows those under sixteen to vote.²² These young leaders are denied the right to speak politically, so they have no choice but to speak through activism or litigation if they want their voices to be heard.²³

Youth today are using their capacity to influence and participate in public discourse, but that is a weak alternative to the power of the vote. However vocal and insistent young people are, governments across the globe can stay in power without accommodating those who hold absolutely no political power. This is, therefore, precisely the kind of situation that courts are *meant* to resolve. What the U.S. Supreme Court presciently explained in 1938 about race discrimination applies equally to youth, and for the same reasons: “[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.”²⁴ Though the point is important, it is

20 *Sacchi v. Germany*, CRC/C/88/D/107/2019, Decision, Committee on the Rights of the Child [CRC], ¶ 9.13 (Nov. 11, 2021). The Committee then held that “[d]ue to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm.” *Id.*

21 *Voting Age Around the World*, BATCHGEO, <https://blog.batchgeo.com/voting-age-around-the-world/> (last visited Dec. 19, 2022) (noting that 86 percent of 237 countries set the voting age at eighteen).

22 *Id.*; see, e.g., the campaign to extend voting rights to sixteen- and seventeen-year-olds. *We Are Vote16USA*, VOTE16USA, <https://vote16usa.org/> (last visited Apr. 22, 2023).

23 This is true notwithstanding the specious admonition of the 9th Circuit in *Juliana v. United States*, 947 F.3d at 1165, while dismissing plaintiffs’ claims for lack of standing. The Court said: “Reluctantly, we conclude that such relief is beyond our constitutional power. Rather, the plaintiffs’ impressive case for redress must be presented to the political branches of government,” knowing that the plaintiffs had no political power with which to present their impressive case. *Id.*

24 *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938); see generally JOHN

uncomplicated: those who are disenfranchised by law and constitutional fiat are precisely the kinds of “discrete and insular minorities” for whom judicial engagement is especially vital, exactly because they have no alternative means of securing governmental action that protects their interests.

Indeed, no group of human beings is less protected politically than young people—except for those not yet alive. Thus, the claims these young people are making in courts are not only claims to protect themselves but also to protect future generations—that is, “generations yet to come.”²⁵ This Essay examines the complex relationship between the claims of youth today and the claims of future generations. It posits that while there is no necessary relationship between the two, the recognition of human dignity as a universal legal right does link present and future generations and undergirds the claims that today’s youth are making on behalf of themselves and their successors.

I. INTERGENERATIONAL CLIMATE EQUITY

Youth activists and litigants in *Juliana* and throughout the world are advocating not only on their own behalf but also in the name of future generations as well. They are thus activating the theory of intergenerational equity—the notion that the obligation to “act towards one another in a spirit of brotherhood,”²⁶ applies no less to people of different generations than it does to people of the same generation.²⁷ At one level, this is a matter of common sense: the law does not distinguish between someone who is thirty or fifty or seventy or ninety. Once a person reaches the age of majority, duties owed by and to a person are the same regardless of what generation they are in.

But in the context of environmental rights, the application of the principle of intergenerational equity becomes more complex in at least two ways—particularly when climate change is taken into account. The first, and easier, issue is the question of scarcity: claims of young people to environmental equity expand the pool of people to whom a scarce resource is owed. This problem is unique to environmental litigation

HART ELY, *Facilitating the Representation of Minorities*, in *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 135, 148 (Harv. Univ. Press 1980).

25 PA. CONST. art. I, § 27.

26 G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. I (Dec. 10, 1948) [hereinafter UDHR].

27 *Intergenerational Equity*, U.N. ENV’T PROGRAMME, <https://leap.unep.org/knowledge/glossary/intergenerational-equity> (last visited Mar. 30, 2023).

because other duties that governments owe to their constituencies are unbounded: the same full duty to respect speech rights or due process rights is owed to all, no matter who or how many claim it. But environmental goods have become a limited and dwindling resource.²⁸ Thus, a government may have the capacity to fulfill the duty of a healthy environment, or clean water, or protection from climate change for *some* people, but it becomes more challenging as the pool of potential claimants increases.

This is, however, a conceptually simple problem: courts should simply treat youth litigants as any other group of potential plaintiffs. This would necessitate expanding the scope of the population to whom environmental duties are owed, but it would not significantly complicate the analysis. Children, like all people, are affected by climate change.²⁹ Upon a showing of harms to them, courts could simply grant them a remedy, just as they would do if one adult sued another. Indeed, the Ninth Circuit found the *Juliana* plaintiffs had shown such harm:

The district court correctly found the injury requirement met. At least some plaintiffs claim concrete and particularized injuries. Jaime B., for example, claims that she was forced to leave her home because of water scarcity, separating her from relatives on the Navajo Reservation. *See Trump v. Hawaii*, [138 S. Ct. 2392, 2416] (2018) (finding separation from relatives to be a concrete injury).³⁰

Including young people in the pool of potential litigants does not fundamentally change the analysis. Instead, it helps protect those most vulnerable to the effects of climate change and those least able to protect themselves politically.

The second problem is more complex. Many of the youth cases have gone farther, treating claims made by children as if they were made not only on behalf of themselves but also on behalf of *future generations*—that is, people not yet alive in generations yet to come.³¹ This approach

28 *We're Gobbling Up the Earth's Resources at an Unsustainable Rate*, U.N. ENV'T PROGRAMME (Apr. 3, 2019), <https://www.unep.org/news-and-stories/story/were-gobbling-earths-resources-unsustainable-rate>.

29 In some areas, they may be the most at risk by the effects of climate change. *See One Billion Children at 'Extremely High Risk' of the Impacts of the Climate Crises*, UNICEF (Aug. 19, 2021), <https://www.unicef.org/press-releases/one-billion-children-extremely-high-risk-impacts-climate-crisis-unicef>.

30 *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020).

31 *See, e.g., id.* at 1165 (noting that “[t]he plaintiffs are twenty-one young citizens, an environmental organization, and a ‘representative of future generations’”); *Oposa v. Factoran*, G.R. No. 101083, 2 (July 30, 1993) (Phil.), <https://leap.unep.org/>

follows the language and logic of the earliest environmental rights provisions anywhere, which protected the rights of present and future generations. Montana's was the first: "The state and each person shall maintain and improve a clean and healthful environment in Montana *for present and future generations*."³² Pennsylvania's constitution (since 1971) asserts: "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*."³³ And Illinois establishes a public policy to protect the rights of future generations: "The public policy of the State and the duty of each person is to provide and maintain a healthful environment *for the benefit of this and future generations*."³⁴

In 1987, Professor Edith Brown Weiss articulated the theoretical underpinnings of the principle of intergenerational equity:

The basic concept is that all generations are partners caring for and using the Earth. Every generation needs to pass the Earth and our natural and cultural resources on in at least as good condition as we received them. This leads to three principles of intergenerational equity: options, quality, and access. The first, comparable options, means conserving the diversity of the natural resource base so that future generations can use it to satisfy their own values. The second principle, comparable quality, means ensuring the quality of the environment on balance is comparable between generations. The third one, comparable access, means non-discriminatory access among generations to the Earth and its resources.³⁵

And a few years after that, the United Nations Conference on Environment and Development—known as the 1992 Earth Summit³⁶—

sites/default/files/court-case/Oposa%2520v%2520Factoran.pdf (noting that, even though all plaintiffs were living minors at the time of filing, "[i]n a broader sense, this petition bears upon the right of Filipinos to a balanced and healthful ecology which the petitioners dramatically associate with the twin concepts of 'inter-generational responsibility' and 'inter-generational justice'").

32 MONT. CONST. art. IX (emphasis added).

33 PA CONST. art I, § 27 (emphasis added).

34 ILL. CONST. art. XI, § 1 (emphasis added).

35 Edith Brown Weiss, *Climate Change, Intergenerational Equity, and International Law*, 9 VT. J. OF ENV'T L. 615, 616 (2008).

36 *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*, U.N., <https://www.un.org/en/conferences/environment/rio1992#:~:text=A%20new%20blueprint%20for%20international,from%203%2D14%20June%201992> (last visited Mar. 31, 2023).

culminated in the Rio Declaration on Environment and Development.³⁷ The Rio Declaration incorporated the principle of intergenerational equity into international law by explicitly asserting that “[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”³⁸ The next year, the Philippine Supreme Court decided the transformative case of *Minors Oposa*³⁹ on behalf of certain children and future generations.⁴⁰ This version of intergenerational equity expands the logic and the jurisprudential basis of environmental rights.

While the concept of intergenerational equity is now well accepted in environmental litigation, its recognition raises some practical and conceptual problems: How many generations into the future does this generation need to protect? Our children and theirs? Seven generations, as some native tribes would imagine?⁴¹ More?⁴² And how can generations yet to come prove that they will have suffered sufficient injury and causation to satisfy standing? (Recall that these are the elements of standing that the Ninth Circuit found the living youth plaintiffs in *Juliana* were able to prove.⁴³) Perhaps even more curiously, why are youth positioned to make these claims on behalf of future generations, and why are they grouped together?⁴⁴ Yes, both youth and

37 U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

38 *Id.* at Principle 3.

39 *Oposa v. Factoran*, G.R. No. 101083 (July 30, 1993) (Phil.), <https://leap.unep.org/sites/default/files/court-case/Oposa%2520v%2520Factoran.pdf>.

40 “The minors further asseverate that they ‘represent their generation as well as generations yet unborn.’” *Id.* at 2. The Court also reprinted portions of the Complaint, including paragraph 13: “The adverse effects, disastrous consequences, serious injury and irreparable damage of this continued trend of deforestation to the plaintiff minor’s generation and to generations not yet alive are evident and incontrovertible. As a matter of fact, the environmental damages enumerated in paragraph 6 hereof are already being felt, experienced and suffered by the generation of plaintiff adults.” *Id.* at 3.

41 The Great Law of the Haudenosaunee (Iroquois) people “installed in government the idea of accountability to future life and responsibility to the seventh generation to come.” Oren R. Lyons, *The American Indian in the Past, in EXILED IN THE LAND OF THE FREE* 13, 33 (Oren R. Lyons & John C. Mohawk eds., 1992).

42 This Essay limits itself to consideration of the environmental rights of human generations yet to come. It does not address other rights of generations yet to come, which may include the right to life. Moreover, it does not address rights of non-humans in generations yet to come, which may include the rights of certain non-human species, or ecosystems, or other rights of nature.

43 *Juliana v. United States*, 947 F.3d 1159, 1168–69 (9th Cir. 2020).

44 See, e.g., Inter-Am. Comm’n H.R. [IACHR] Res. 3/2021, ¶ 21, *Climate Emergency*:

people who will be alive in the future are future generations of adults who will inherit a compromised planet not of their own making; but beyond that, the living young and those yet to be alive may have nothing further in common.

This Essay is not intended to be either a survey of future generation litigation, or as an attack on or defense of such litigation practices. I hope to merely point out that the protection of the environmental (including climate-related) rights of future generations does not flow necessarily from advocacy by today's youth plaintiffs. While "youth" may be an expansive group, the youth of today are a discrete group of plaintiffs to whom specific legal duties may be owed. That group does not necessarily include the rights of future generations.

Rather, this Essay aims to suggest that if the logic of the relationship between today's youth and tomorrow's youth does not itself demand that we protect the environmental rights of future generations, perhaps something else does. Perhaps, despite all the things we do not know about these future generations, we do know that they will be born human, and thus, by definition, will be born "equal in dignity and rights."⁴⁵

The next section of this Essay explores what dignity rights holds for climate litigation brought on behalf of present and future generations.

II. DIGNITY AS THE SOURCE OF INTERGENERATIONAL RIGHTS

Dignity is the inherent and inalienable equal value of every member of the human family.⁴⁶ It denotes that each life has worth and that no life is dispensable or worth less than any other.⁴⁷ It is a

Scope of Inter-American Human Rights Obligations (Dec. 31, 2021) ("Based on the principle of intergenerational equity, all children and adolescents have the right to enjoy a healthy environment and to live on a planet equal to or in better conditions than their ancestors.").

45 UDHR, *supra* note 26, at art. 1.

46 *See, e.g.*, A.B.A. Res. 113B (adopted by House Delegates Aug. 12–13, 2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/113b-annual-2019.pdf> ("[H]uman dignity—the inherent, equal, and inalienable worth of every person—is foundational to a just rule of law; and . . . the American Bar Association urges governments to ensure that 'dignity rights'—the principle that human dignity is fundamental to all areas of law and policy—be reflected in the exercise of their legislative, executive, and judicial functions.").

47 ERIN DALY, DIGNITY RIGHTS: COURTS, CONSTITUTIONS, AND THE WORTH OF THE HUMAN PERSON 103 (updated ed. 2021); ERIN DALY & JAMES R. MAY, DIGNITY LAW: GLOBAL RECOGNITION, CASES, AND PERSPECTIVES 505 (William S. Hein & Co., Inc. 2020).

fundamental precept of international, regional, and domestic human rights law because it represents both the source of human rights and their ultimate purpose: to “promote social progress and better standards of life in larger freedom,” as the United Nations Charter says.⁴⁸ Dignity (including the rights that its recognition gives rise to) is particularly important in the context of environmental rights because it is by nature intergenerational, applying equally to all generations of members of the human family.

The idea that every person is born equal in dignity and rights comes to us from the foundational documents of the human rights era—the period that began in the immediate aftermath of World War II. In 1945, the United Nations Charter signaled the pivotal significance of dignity by including in its preamble one of four purposes: “[T]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”⁴⁹ Three years later, this principle would form the basis of regional and international human rights instruments. The May 1948 American Declaration of the Rights and Duties of Man opens with the affirmation: “All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.”⁵⁰

Later that year, the United Nations General Assembly adopted nearly identical language in the Universal Declaration of Human Rights (“UDHR”).⁵¹ The preamble invokes the language of the UN Charter:

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom⁵²

The UDHR buttresses the preamble with opening language acknowledging that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”⁵³ The UDHR then

48 U.N. Charter preamble.

49 *Id.*

50 American Declaration of the Rights and Duties of Man, Ninth International Conference of American State, preamble, ¶ 1, May 2, 1948, *reprinted in* ORG. OF AM. STATES, INTER-AM. CT. OF HUMAN RTS., BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 19 (updated July 2003).

51 UDHR, *supra* note 26, at preamble, ¶¶ 5, 1.

52 UDHR, *supra* note 26, at preamble, ¶ 5.

53 UDHR, *supra* note 26, at preamble, ¶ 1.

takes the language from the American Declaration preamble and places it in its first operative article: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁵⁴

This language, in identical or similar form, has since been adopted into international treaties and conventions, as well as regional human rights instruments throughout the world.⁵⁵ In one form or another, dignity has also been incorporated into the constitutional texts of more than 170 nations on earth and in the jurisprudence of still more.⁵⁶

The point here is important: if every member of the human family is born free and equal in dignity and rights, then dignity is inherent in the human person: it is not a right defined by a government, to be given or taken away as a matter of law. Indeed, it is not subject to law.⁵⁷ And if it inheres in the human person, it pertains to all members of the human family who have ever lived, as well as those who are living now (of every age), and those who are yet to come. Enheduanna (the Sumerian poet who, writing in the Twenty-Third Century BCE, is the first known named author⁵⁸) has as much dignity as you or I, who have

54 UDHR, *supra* note 26, at art. 1.

55 See, e.g., Bouyid v. Belgium, App No. 23380/09, ¶¶ 46-47 (Sept. 28, 2015), <https://hudoc.echr.coe.int/fre?i=002-10837> (providing examples of the “[m]any subsequent international human rights texts and instruments [that] refer to [the] concept [of dignity]”).

56 For constitutional language, see *The Dignity Rights Case Library*, https://docs.google.com/spreadsheets/d/1GebYSEqcECDla3Vt9Ohw5iviITq9ywFgGwIldHojg_w/edit#gid=51272552 (last visited Apr. 23, 2023). For discussion of dignity jurisprudence, see ERIN DALY, *supra* note 39, at xii–xvi. For analysis of the legal-constitutional aspect of dignity, see AHARON BARAK, *HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT* (Daniel Kayros trans., 2015). For analysis of dignity jurisprudence in Europe, see CATHERINE DUPRÉ, *THE AGE OF DIGNITY: HUMAN RIGHTS AND CONSTITUTIONALISM IN EUROPE* (2015). For analysis of dignity jurisprudence in Asia, see JIMMY CHIA-SHIN HSU, *HUMAN DIGNITY IN ASIA: DIALOGUE BETWEEN LAW AND CULTURE* (2022).

57 Zareef v. State, (2021) SCP 92, ¶ 11 (Pak.), https://www.supremecourt.gov.pk/downloads_judgements/crl.a._251_2020.pdf (“Right to dignity under Article 14 of the Constitution is an absolute right and not subject to law. Dignity means *human worth*: simply put, every person matters.”).

58 See *She Who Wrote: Enheduanna and Women of Mesopotamia, ca. 3400–2000 B.C.*, THE MORGAN LIBR. & MUSEUM, <https://www.themorgan.org/exhibitions/she-who-wrote> (last visited Apr. 23, 2023) (noting that “[o]ne particularly remarkable woman who wielded considerable religious and political power was the high priestess and poet Enheduanna (ca. 2300 B.C.), the earliest-named author in

as much dignity as youth climate plaintiffs, who have as much dignity as the children born to our children's children's children. Dignity knows no generational boundaries nor quantitative limits: every person is born with the same quantum of dignity and has the same entitlement to dignity-based rights.

But what are these dignity-based rights, and do they include environmental rights or rights to be protected from the adverse impacts of climate change? We turn to this question next.

III. DIGNITY AND CLIMATE JUSTICE FOR CHILDREN

Even assuming the intergenerational nature of human dignity, it remains to be shown whether dignity entitles its bearers to environmental and climate justice. This purely legal question is increasingly gaining traction. Courts and tribunals around the world are increasingly recognizing that environmental rights *are* dignity rights.⁵⁹ For instance, In *Pro Public v. Godavari Marble Industries Pvt. Ltd. and others*, the Supreme Court of Nepal determined that certain mining operations in UNESCO-protected areas were inconsistent with the constitutional rights to a healthy environment and to life with dignity.⁶⁰ The court held:

It shall be erroneous and incomplete to have a narrow thinking that the right to life is only a matter of sustaining life. Rather it should be understood that all rights necessary for living a dignified lif[e]as a human being are included in it. Not only that, it cannot be imagined to live with dignity in a polluted environment[.] rather it may create an adverse situation[.] even exposing human life to dangers.⁶¹

The decision relied on the 2007 Interim Constitution of Nepal, which protected both “the right to live with dignity and the right to live in a clean environment as fundamental rights.”⁶² Courts in places as diverse

world literature”).

59 Erin Daly, *A Dignity Based-Approach to Environmental and Climate Justice*, in ASIA PACIFIC JUDICIAL COLLOQUIUM ON CLIMATE CHANGE: USING CONSTITUTIONS TO ADVANCE ENVIRONMENTAL RIGHTS AND ACHIEVE CLIMATE JUSTICE 143–47 (2018), <https://www.ajne.org/sites/default/files/event/7219/session-materials/apac-judicial-colloquium-meeting-final-report.pdf>.

60 Suray Prasad Sharma Dhungel v. Godavari Marble Industries & others, No. WP 35/1991 (Nepal 1995), *translated in* ENV'T L. ALL. WORLDWIDE, <https://elaw.org/system/files/English%20translation%20of%20Godavari%20Marble%20Case.pdf> (last visited Apr. 23, 2023).

61 *Id.* at 46.

62 *Id.* at 60.

as Colombia,⁶³ Pakistan,⁶⁴ Israel,⁶⁵ and Nigeria⁶⁶ (among other places) have also recognized that the right to live with dignity includes the right to live in a healthy environment.

This constitutional recognition of the right to live in a healthy environment tracks with international human rights law. The Human Rights Committee of the United Nations, which interprets and applies the International Covenant on Civil and Political Rights,⁶⁷ has held that the right to life must be understood as the right to live with dignity, including the right to live in a healthy environment.⁶⁸ Most recently, the Human Rights Committee held that the government of Australia had affirmative duties to protect the residents of the Torres Straits Islands from the adverse impacts of climate change.⁶⁹ The Committee began by explaining that the right to live entails the right to live with dignity:

The preamble of the Covenant initially recognizes that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and further recognizes that those rights derive from the inherent dignity of the human person. . . . [T]he preamble of the present Covenant recognizes

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- 63 See, e.g., Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, Expediente T-5.016.242 (Colomb.), *translated in* DIGNITY RTS. PROJECT, CENTER FOR SOCIAL JUSTICE STUDIES ET AL. V. PRESIDENCY OF THE REPUBLIC ET AL. (2019), <http://files.harmonywithnatureun.org/uploads/upload838.pdf> (recognizing the juridical personality of Colombia's Atrato River).
- 64 See, e.g., Leghari v. Fed'n of Pak., (2015) W.P. No. 25501/2015, 10–11, 24 (2018) (Pak.), <https://sys.lhc.gov.pk/appjudgments/2018LHC132.pdf>.
- 65 CivA 9535/06 Abu Masad v. Water Comm'r, ¶ 23 (2011) (Isr.) (“Accessibility to water sources for basic human use falls within the realm of the right to minimal existence with dignity. Water is a vital need for humans, and without basic accessibility to water of a reasonable quality, humans cannot exist.”).
- 66 Gbemre v. Shell Petrol. Dev. Co. Nigeria Ltd. [2005] FHC/B/CS/53/05, 29–30 (Nigeria), http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2005/20051130_FHCBCS5305_judgment.pdf.
- 67 *Human Rights Committee*, U.N. HUMAN RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/treaty-bodies/ccpr> (last visited Apr. 23, 2023).
- 68 See, e.g., Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, Decision, ¶ 9.4 (Oct. 24, 2019) (“The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).”).
- 69 Erin Daly, *The UNHRC’s Torres Strait Islands Decision: A Major Advance, and a Roadmap for the Future*, THE GLOB. NETWORK FOR HUMAN RTS. & THE ENV’T (Oct. 3, 2022), <https://gnhre.org/community/the-unhrcs-torres-strait-islands-decision-a-major-advance-and-a-roadmap-for-the-future/>.

that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social and cultural rights.⁷⁰

The General Comment on which this decision relied specifically includes environmental rights within the panoply of rights guaranteed by the right to live with dignity, protected in Article 6 of the International Covenant on Civil and Political Rights:⁷¹

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include . . . degradation of the environment.⁷²

In its General Comment, the Committee elaborated on the dignity-based right to a healthy environment in terms that explicitly include future generations; indeed, the only reference to future generations in the General Comment comes in the context of environmental protection.⁷³ The Committee's expansive commitment to the dignity-based right to live in a healthy environment bears quoting at length:

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation

70 *Billy v. Australia*, CCPR/C/135/D/3624/2019, Decision, ¶ 8.4 (July 21, 2022). “[T]he Committee followed and expanded upon its substantive reading of the Convention’s protection of the right to life in Article 6 as a right to *live with dignity*: ‘The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).’” Daly, *supra* note 60.

71 See International Covenant on Civil and Political Rights, art. 6, ¶ 1, Dec. 19, 1966, 999 U.N.T.S. 171, 175 (“The Right to Life”: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

72 U.N. Hum. Rts. Comm., General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to life, ¶ 26, U.N. Doc. CCPR/C/CG/36 (Sept. 3, 2019).

73 *See id.* ¶ 62 (footnotes and citations omitted).

of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.⁷⁴

As noted elsewhere,⁷⁵ using a human dignity focus in environmental contexts produces several advantages. First, if there is no explicit and enforceable environmental rights provision in a constitution, other constitutionally recognized rights, such as the right to life or dignity, can serve as a vehicle for protection of environmental rights. This happened in India,⁷⁶ Nepal,⁷⁷ and Pakistan⁷⁸ and could happen in the United States, where there is no environmental rights provision at the federal level or

74 *Id.* (footnotes and citations omitted).

75 *See generally* Daly, *supra* note 59; ERIN DALY & JAMES R. MAY, DIGNITY UNDER LAW: A GLOBAL HANDBOOK FOR CIVIL SOCIETY 60–61 (2021), <https://static.squarespace.com/static/5f384e3445a5af3e6c13d27b/t/61d9af525e8e0701b548d717/1641656148101/Dignity+Handbook+FOR+CSO.pdf>; Erin Daly & James R. May, *Bridging Constitutional Dignity and Environmental Rights Jurisprudence*, 7 J. HUM. RTS & ENV'T 218 (2016); Dina Lupin Townsend, HUMAN DIGNITY AND THE ADJUDICATION OF ENVIRONMENTAL RIGHTS, Edward Elgar (2020).

76 K.M. Chinnappa in T.N. Godavarman Thirumalpad vs Union of India & Ors., (2002) 3 SCR 541, 556 (India) (“Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution.”).

77 *Suray Prasad Sharma Dhungel v. Godavari Marble Industries & others*, No. WP 35/1991 (Nepal 1995), *translated in* ENV'T L. ALL. WORLDWIDE, <https://elaw.org/system/files/English%20translation%20of%20Godavari%20Marble%20Case.pdf> (last visited Apr. 23, 2023).

78 *Leghari v. Fed'n of Pak.*, (2015) W.P. No. 25501/2015 (2018) (Pak.), <https://sys.lhc.gov.pk/appjudgments/2018LHC132.pdf>.

in most states.

Second, “even if environmental and human rights do co-exist in the constitutional enumeration of rights, [a focus on human dignity] unites the human and the environmental interests.”⁷⁹ This is particularly true in Latin American jurisprudence, where dignity rights and environmental rights are imbricated in a single cosmological vision, one that embodies indigenous values of harmony with and within nature.⁸⁰

Third, dignity rights embody the interdependence of human rights and their indivisibility. Nowhere is this more true than with environmental rights, which are intimately linked to the rights to life and health; shelter and education; food and clean water; as well as civil and political rights like rights of association, petition, and voting.⁸¹ If rights are generational,⁸² environmental rights are intergenerational, too.

79 Daly, *supra* note 59, at 146.

80 Corte Suprema de Justicia [C.S.J.] [Supreme Court], abril 5, 2018, Radicación n. 11001-22-03-000-2018-00319-01 (p. 33) (Colom.), <https://www.escri-net.org/sites/default/files/caselaw/fallo-corte-supremade-justicia-litigio-cambio-climatico.pdf> (finding that—in case involving twenty-five youths arguing that climate change was violating their constitutional rights—“in reality, there exists a causal nexus between climate change generated by the progressive reduction of forest cover, caused by the expansion of agriculture, the cultivation of narcotics, mining and other illicit activities, which presumptively negatively affect the health of those who live in the Colombian territory, and . . . the uncontrolled degradation of the rainforest, which directly impairs the human rights to live in dignity, to water, and to food of the petitioners.” (translated by author)).

81 See Erin Daly, *La Dignité Humaine au Cœur de la Démocratie Écologique*, in LA DÉMOCRATIE ÉCOLOGIQUE : UNE PENSÉE INDISCIPLINÉE (Jean-Michel Fourniau et al. eds., 2022); Erin Daly, *Judicial Activity/Democratic Activity: The Democratising Effects of Dignity*, in HUMAN DIGNITY AND DEMOCRACY IN EUROPE 27–28 (Daniel Bedford et al. eds., 2022).

82 See, e.g., *The Evolution of Human Rights*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/compass/the-evolution-of-human-rights> (last visited Dec. 20, 2022) (describing the three generations of rights: first, civil and political rights; second, social, economic, and cultural rights; and third, solidarity rights); Steven L. B. Jensen, *Putting to Rest the Three Generations Theory of Human Rights*, OPEN GLOB. RTS. (Nov. 15, 2017), <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/>.

CONCLUSION

“[D]ignity is at the heart of a human rights perspective”;⁸³ it brings environmental law closer to environmental justice. Dignity brings the focus back to the people themselves—“their lives and their health, [] their ability to control their own destinies, their ability to engage with others in their communities on an equal footing, [and] their sense of self-worth.”⁸⁴ This is what makes a human rights approach so valuable to environmental protection.⁸⁵ “The focus on dignity directs a laser beam at the heart of human rights.”⁸⁶

Most importantly, a dignity-based approach to environmental rights ensures that children can sue to protect the environment on behalf of themselves and all future generations. Although legal rights are not typically thought of as having intergenerational relevance, dignity rights—including those protecting environmental interests—must be intergenerational, because human beings of future generations are entitled to live with dignity in a healthy environment just as much as humans of the present or past. And who can better advocate for the generations yet to come than the youth of today, those most recently arrived?

83 Daly, *supra* note 59, at 146.

84 *Id.*

85 See Hum. Rts. Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, at Framework Principle 16, ¶ 55, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018) (“Most important, a human rights perspective helps to ensure that environmental and development policies improve the lives of the human beings who depend on a safe, clean, healthy and sustainable environment — which is to say, all human beings.”).

86 Daly, *supra* note 59, at 146.

