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Impacts of Youth-Led Climate Litigation In and Out of the Courtroom

Reflection Essay

Recent years have witnessed the unprecedented mobilization of children and youth to combat climate change. The most visible and mediatized forms of activism have been movements such as the #FridaysForFuture initiative, climate strikes and marches that took place around the world before the onset of the global pandemic. My essay focused on how the recent youth-led social movement has turned to the courts to enforce climate-related rights in a novel fashion. Children and youth have in the last few years filed ground-breaking lawsuits against their respective governments arguing that past and current climate action or inaction violate their constitutional and human rights, as well as those of future generations. Although similar arguments are being made in other climate litigation cases, youth plaintiffs are suffering particular injuries because they are disproportionately affected by the consequences of climate change and will be for the longest.

I studied three landmark lawsuits filed by youth plaintiffs in different countries: *Juliana v. the United States*, *Future Generations v. Ministry of the Environment and others* (Colombia), and *Greenpeace Nordic Association and Nature and Youth v. Ministry of Petroleum and Energy* (Norway). Although these case studies and associated findings are further detailed in the essay, I argued that, win or lose, these lawsuits had transformative impacts in and out of the courtroom. Unfortunately, only in *Future Generations* did the Colombian Supreme Court grant the requested remedy after, among other things, historically declaring the Amazon to be an entity subject of rights. Nevertheless, in all three cases the courts interpreted existing constitutional rights as encompassing climate-related rights. For instance, Judge Aiken in *Juliana* held that “the right to a climate system of sustaining human life” was a constitutional right.¹ These three rulings also recognized the urgency of the climate crisis and the state’s responsibility in causing the plaintiffs’ climate-related injuries. They set global precedents that are already being relied upon by courts around the world and inspiring new legal actions on similar grounds. Beyond the legal realm, these decisions have significant political and social repercussions for the plaintiffs, the broader social movement and society more generally. They act as a focal point for mobilization, complementary to other forms of dissent. They are also a way for children and youth to bring their unique perspective to the table and a means of true inclusion, contrary to tokenistic participation. Finally, these judicial decisions contribute to the construction of shared narratives of responsibility, impacting existing normative frameworks. It is important to note that further empirical research is required to assess the practical and long-term effects of this youth-led climate litigation movement.

While conducting research for this essay, I became especially involved with this subject as it went far beyond a purely academic interest. I related to and identified with the plaintiffs in these lawsuits since a lot of them have the same age as me. I was struck by some of the younger plaintiffs’

¹ *Juliana v United States*, Case No 6:15-cv-01517-TC at 2 (District Court of Oregon, 10 November 2016) at para 32, online (PDF): *Our Children’s Trust* <ourchildrenstrust.org/s/Order-MTDAiken.pdf>.

maturity and lucidity when I heard them speak on documentaries or read what they said about the lawsuits in various articles. Even though they are accompanied by experienced lawyers, their activism is inspiring and challenges mental and societal constructs that children are not capable of making a meaningful contribution to the climate debate or do not have an important role to play in politics. These are ideas that I may have unconsciously shared, not just about children and youth generally, but also about myself when I was in high school and already had an opinion about climate politics. That personal impression alone was reason enough for me to think that youth-led climate litigation had wider repercussions than legal consequences. Sociological studies on youth activism in general were helpful in assessing what impacts these lawsuits may have on youth's political engagement and personal development.

As I was writing this essay, I was struck by the interconnectedness of these youth-led judicial initiatives within the broader climate justice movement. Plaintiffs often directly cited other youth-led climate cases in their complaints and lawyers leading these cases in different countries had been communicating on what strategies might work best. This was explicit in *Future Generations* and *Juliana*, where both legal teams successfully used storytelling technics and emphasized the personalized injuries young plaintiffs were currently experiencing due to climate change. For instance, they often spoke about the outdoor and sporting activities they were no longer able to do. They both aimed to put a face on the climate debate, often seen as remote from daily lives. The objective was twofold: establish standing to sue by identifying individualized injuries and fulfill the pedagogical function of showing that the effects of climate change are real and already happening.

On that last point, something else I found striking was the crucial role communication played in youth-led climate litigation. Since the goal is not just victory in court but also to raise awareness, mobilize or convey certain narratives, great efforts were spent on communicating about ongoing legal initiatives. In that regard, social media platforms and their immense mobilizing power were essential in targeting children and youth. An important part of my research was to follow the various environmental organizations and young activists behind the lawsuits I studied on Twitter, Instagram or Facebook. Social media activity about lawsuits happening around the world really makes it easier for young people to follow and be included in the legal process, something usually so remote and technical that younger citizens might otherwise not have felt a part of.

Although long-term effects remain to be researched, this essay showed that the involvement of children and youth in climate litigation can be a powerful and transformative force for the climate movement. Youth plaintiffs make a unique contribution and have leveraged innovative legal arguments, such as those made on behalf of future generations, to advance a cause political branches have yet to effectively deal with. Beyond judicial effects, these legal initiatives, even when unsuccessful, serve different social and political purposes. As I was personally impacted by this research project, I have no doubt these lawsuits will play an important role in fostering the civic engagement of other children and youth around the world.

Annotated Bibliography

I. Jurisprudence

The three cases studied in the term essay are especially representative of the youth-led judicial movement. Below are the most relevant judicial decisions for these cases.

Juliana v. the United States

Juliana v United States, Case No 6:15-cv-01517-TC (**District Court of Oregon**, 10 November 2016), online (PDF): *Our Children's Trust* <ourchildrenstrust.org/s/Order-MTDAiken.pdf>.

This historic ruling by Judge Aiken established that the “right to a climate capable of sustaining human life” is an unenumerated constitutional right (at para 32). The public trust doctrine was also held to be applicable in that case. It was a major victory for the young plaintiffs and a decision that benefited from great media attention. It inspired many lawsuits around the world and set an important precedent in the global climate justice movement.

Juliana v United States, DC No 6:15-cv-01517-AA (**Court of Appeals for the Ninth Circuit**, 17 January 2020), online (PDF): *Our Children's Trust* <ourchildrenstrust.org/s/20200117-JULIANA-OPINION.pdf>.

This decision from the Ninth Circuit Court of Appeals overturned Judge Aiken's ruling and concluded that the plaintiffs' claim needed to be addressed to the political branches rather than the judiciary. Two of the three judges on the panel found that the alleged climate-related injuries were not redressable by the court. This decision is currently under appeal. Although it is a setback for the plaintiffs, the decision stressed the urgency of the climate crisis and the government's responsibility in causing it. It also did not question the right to a climate capable of sustaining life articulated by Judge Aiken.

Future Generations v. Ministry of the Environment and Others

Corte Suprema de Justicia [Supreme Court], 5 April 2018, STC4360-2018 (Colombia), online (PDF): *De Justicia* <dejusticia.org/wp-content/uploads/2018/01/Fallo-Corte-Suprema-de-Justicia-Litigio-Cambio-Clim%C3%A1tico.pdf?x54537>.

This decision from the Colombian Supreme Court is one of the most progressive of its kind and a truly historic ruling within the global climate justice movement. Among other things, the Court notably held that notions of “public ethics,” duties of solidarity and nature's intrinsic value warranted granting future generations certain environmental rights. As part of the remedies prescribed by the Court, the government was ordered to draft and implement an intergenerational pact in cooperation with the plaintiffs to address deforestation in the Amazon.

Greenpeace Nordic Association and Nature and Youth v. Ministry of Petroleum and Energy

Oslo District Court, 4 January 2018, *Greenpeace Nordic Association and Nature and Youth v The Government of Norway* (Norway), online (PDF): *Klimasøksmål Arktis* <xn--klimasksm-95a8t.no/wp-content/uploads/2019/10/Judgement-4.-jan-2017-Oslo-District-Court-stamped-version.pdf>.

The Oslo District Court dismissed the lawsuits holding that the government's decision to issue production licenses for oil drilling was not contrary to the Norwegian Constitution (Article 112 more specifically). This decision was important because it was the first time Article 112 was used in court and interpreted as conferring actionable rights to Norwegian citizens.

Borgarting Court of Appeal, Oslo, 23 January 2020, *Greenpeace Nordic Association and Nature and Youth v The Government of Norway* (Norway), online (PDF): *Klimasøksmål Arktis* <xn--klimasksm-95a8t.no/wp-content/uploads/2019/10/judgement_Peoplevs_ArcticOil_Appeal_Jan2020.pdf>.

The Court of Appeal dismissed the appeal but showed sympathy towards the plaintiffs and emphasized the urgency of climate change. It also upheld the District Court's finding that Article 112 is a rights provision. While it ruled against the plaintiffs, it nevertheless stated, contrary to the District Court, that emissions from combustion of Norwegian oil outside of Norway had to be included in any impact assessment of governmental decisions. This decision is currently under appeal at the Supreme Court of Norway.

Canadian youth-led climate lawsuits

This global judicial movement is also present in Canada. Several lawsuits have been filed by youth plaintiffs against the federal or provincial governments. The following decisions are important recent developments in these cases.

ENVironnement JEUnesse v Canada, 2019 QCCS 2885.

This class action lawsuit was filed in Quebec on behalf of all Quebec residents aged 35 and under. Among other things, the environmental organization Jeunesse argued that Canada's lack of decisive action in reducing GHG emissions is violating the class plaintiffs' rights under the *Canadian Charter of Rights and Freedom* ("the Charter"). The Quebec Superior Court accepted that the class plaintiffs raised a justiciable legal question at this stage but still refused to certify the class action because it considered the choice of 35 years old as the maximum age to identify the class to be arbitrary. This decision is currently under appeal.

La Rose v Her Majesty the Queen, 2020 FC 1008.

The plaintiffs in this case are 15 children and youth arguing that the federal government's action and inaction contribute to climate change, which violates their rights under the *Charter*. They also posit, like in *Juliana*, that a public trust doctrine can be relied upon at trial. The Federal Court recently accepted the defendant's motion to strike holding that the claims under the *Charter*

were not justiciable and that the public trust doctrine, although justiciable, does not disclose a reasonable cause of action.

Mathur v Ontario, 2020 ONSC 6918.

Seven youth plaintiffs sued the Ontario government for alleged violations of the *Charter* due to its inadequate action and inaction in curbing climate change. The Ontario Superior Court rejected the defendant's motion to strike and stated that the court could review Ontario's decision to repeal the *Climate Change Act* and its GHG reduction target. This is the first time a Canadian court holds that failure to address climate change may constitute a *Charter* rights violation.

Other significant legal initiatives

Sacchi et al v Argentina et al, Communication to the Committee on the Rights of the Child (23 September 2019), online (PDF): *United Nations* <[courthousenews.com/wp-content/uploads/2019/09/thunberg-petition.pdf](https://www.courthousenews.com/wp-content/uploads/2019/09/thunberg-petition.pdf)>.

Greta Thunberg and 15 other children, from age 8 to 17, filed this complaint to the Committee on the Rights of the Child in September of 2019. It names five countries as respondents and claims that they knowingly contributed to and perpetuated the climate crisis, thereby violating the petitioners' rights to life, health and culture.

Supreme Court of the Netherlands, The Hague, 20 December 2019, *The State of the Netherlands v Stichting Urgenda* (2019), (The Netherlands).

This Dutch judicial decision does not involve youth in particular but is especially important in the global climate justice movement. In that case the court held that the Dutch government was under a duty to limit its GHG emission by 25% below 1990 levels by 2020. It would otherwise be violating Dutch citizens' fundamental rights under various international agreements as well as the Dutch Constitution. This case was explicitly relied upon by the plaintiffs in *Nature and Youth*.

II. Scholarship

Benwell, Matthew C and Peter Hopkins, *Children, Young People and Critical Geopolitics*, first ed (London: Routledge, 2016).

This book reviews research on children and youth in relation to geopolitics. It challenges the idea that children and youth are passive rather than active participants in politics and society. The various chapters put forth different ways in which young people can be empowered and gain agency in geopolitical processes, including through activism.

Blumm, Michael C and Mary C Wood, “No Ordinary Lawsuit’: Climate Change, Due Process, and the Public Trust Doctrine” (2017) 67 Am U L Rev 1.

This article discusses Judge Aiken's decision to deny the defendants' motion to dismiss in the *Juliana* case. It goes over the context of this historic lawsuit and its role within the wider

atmospheric trust litigation movement. This study helps grasp the significance of *Juliana* and the role courts may play in combatting climate change. It must be borne in mind that this article was written before Judge Aiken's decision was overturned by the Ninth Circuit Court of Appeals.

Brown Weiss, Edith, “Intergenerational Equity: A Legal Framework for Global Environmental Change,” in Edith Brown, ed, *Environmental Change and International Law: New Challenges and Dimensions* (Tokyo, Japan: United Nations University Press, 1992).

This chapter articulates a theory of intergenerational equity as a fundamental principle for global environmental change. It also explores the increased prevalence of intergenerational equity as a major theme in international legal instruments. This theoretical framework is helpful in understanding this idea which is being relied upon in the youth-led lawsuits studied in the term essay. Although the chapter was written in 1992, its theoretical assessment is still relevant today.

Fisher, Dana, “The Broader Importance of #FridaysForFuture” (2019) 9 *Nature Climate Change* 430.

This short article discusses the significance of the #FridaysForFuture campaign uniting young activists around the world. This campaign is part of the wider youth-led social movement combatting climate change which gave impetus to the lawsuits studied in the term essay. Dana Fisher argues that the #FridaysForFuture initiative has important implications not just for climate policy but also for individual activists who are more likely to become active participants in democracy. Dana Fisher is one of the leading researchers on youth activism from a sociological perspective.

Gallay, Erin et al, “Youth Environmental Stewardship and Activism for the Environmental Commons” in Jerusha Conner and Sonia M Rosen, eds, *Contemporary Youth Activism: Advancing Social Justice in the United States* (Denver: Praeger, 2016).

This chapter delves into youth climate activism and assesses the role of “environmental commons” as a space for youth activism. Gallay et al argue that this movement acknowledges the interdependence between environmental degradation, climate change and issues of justice, discrimination and oppression. This study is very interesting in understanding how the concept of climate justice plays into youth-led climate litigation and the broader social movement around it.

Han, Heejin and Sang Wuk Ahn, “Youth Mobilization to Stop Global Climate Change: Narratives and Impact” (2020) 12 *Sustainability* 1.

This article discusses the mobilization of children and youth on issues related to climate change, particularly since the climate strikes launched by Greta Thunberg in 2018. The study looks at the movement's shared narratives and how it is used as a tool to unite young activists around the world. The authors argue that the youth movement was successful in raising awareness about climate change, prompting incremental change in some states, shifting global attitudes on climate change and highlighting the need to include youth in climate governance. However, this article also puts forth the movement's limitations and its inability to bring about immediate change.

Jodoin, Sébastien, Shannon Snow and Arielle Corobow, “Realizing the Right to be Cold? Framing Processes and Outcomes Associated with the Inuit Petition on Human Rights and Global Warming” (2020) 54:1 L & Society R 168.

This article analyzes the long-term impacts of the 2005 petition filed by Inuit communities at the Inter-American Commission for Human Rights on the communities concerned by the petition, actors in the climate justice movement and political actors in general. It is an informative study on the framing of climate change as a human rights issue and the innovative legal arguments that are being made in that field. This study also discusses the limitations of rights-based climate litigation and, among other things, shows that the petition did not encounter great success in mobilizing Inuit communities on climate justice.

Marris, Emma, “Why young climate activists have captured the world’s attention” (2019) 573 Nature 471.

This short article discusses recent developments in the youth-led climate movement and highlights some of its key characteristics. For example, it points to the activists’ perceived moral integrity and authenticity and the movement’s increased media attention.

NeJaime, Douglas, “Winning Through Losing” (2011) 96 Iowa L R 941.

Although not on climate litigation in particular, this article discusses the productive role of litigation loss for social movements. It frames litigation as an advocacy tool and argues that litigation loss may serve an important role in building a social movement’s identity and mobilizing constituents. Loss can be used as a strategy to further the movement’s political and social goals. This article was relied upon in the term essay to argue youth-led climate litigation, win or lose, had transformative impacts for individual plaintiffs, the broader climate justice movement and the socio-political order more generally.

Nissen, Sylvia, Jennifer H K Wong and Sally Carlton, “Children and young people’s climate crisis activism – a perspective on long-term effects” (2020) Children Geographies 1.

This article examines research on social movements to assess the potential long-term impacts of recent youth climate activism. It argues, among other things, that climate activism is likely to have long-lasting impacts on the children and youth involved as well as on their families, friends and future career. The authors also emphasize potential political legacies with implications for both formal and informal political arrangements. For instance, they point to possible “institutional activists” who may emerge from this movement and pursue the movement’s goals through conventional bureaucratic channels.

Nosek, Grace, “Climate Change Litigation and Narrative: How to Use Litigation to Tell Compelling Climate Stories” (2018) 42:3 Wm & Mary Envtl L & Pol’y Rev 733.

Grace Nosek looks at how climate litigation may be used not only to prompt substantive legal change but also to shape the political and social discourse through the construction of frames. Strategic and effective use of frames and narratives in climate litigation can be an important means

to overcome cognitive hurdles in tackling climate change and modify people's perception of the threat posed by the climate crisis. The use of specific frames and narratives (centered around responsibility, morality or intergenerational equity) is central to the lawsuits studied in the term essay.

O'Brien, Karen, Elin Selboe and Bronwyn M Hayward, "Exploring youth activism on climate change: dutiful, disruptive, and dangerous dissent" (2018) 23:3 Ecology & Society 42.

This article articulates a typology of dissent present in youth climate activism. It identifies three interrelated forms of dissent: dutiful, disruptive and dangerous dissent. The term essay argued that climate litigation can be categorized as dutiful dissent since young plaintiffs are voicing their concerns through existing institutional spaces. Climate litigation as a form of dissent has advantages and drawbacks. For instance, it rarely addresses the underlying causes of climate change, such as certain development and economic models. Successful social movements use different forms of dissent as complementary mechanisms to prompt substantial change.

Olson, Julia, "Youth and Climate Change: An Advocate's Argument for Holding the US Government's Feet to the Fire" (2016) 72:2 Bulletin of the Atomic Scientists 79.

Julia Olson, lead counsel in the *Juliana* case, contextualizes the lawsuit and explains the plaintiffs' main arguments as well as the case's broader significance.

Paiement, Philip, "Urgenda Agenda: How Climate Litigation Builds Transnational Narratives" (2020) 11 Transnational Legal Theory 121.

This article looks at how climate litigation constructs common transnational narratives by examining specific cases, including *Nature and Youth*, studied in this essay. The author argues that litigants attribute meaning to complex climate change issues through narratives focused on urgency, timelines for actions, responsibility and relying on particular symbols and discourse. This theory is relied upon in the term essay and transposed to the particular context of youth-led climate litigation.

Peel, Jacqueline and Hari M Osofsky, "A Rights Turn in Climate Change Litigation?" (2018) 7:1 Transnational Environmental L 37.

This article provides an overview of the recent "rights turn" in climate litigation, which stems from the increased recognition of the human rights aspects of climate change. Courts have been increasingly receptive to this approach and more and more climate lawsuits invoking right-based arguments are being filed around the world. The three cases studied in the term essay are illustrative examples of this transnational judicial movement.

Preston, Brian J, "The Evolving Role of Environmental Rights in Climate Change Litigation" (2018) 2 Chinese J Environmental L 131.

Brian Preston's article outlines some of the major trends in rights-based climate litigation. It articulates and categorizes the types of environmental rights relied upon in different lawsuits. The article also reviews recent jurisprudence to illustrate how this judicial movement is shaping global climate justice advocacy. The three lawsuits studied in the term essay are discussed in Preston's study.

Slobodian, Lydia, "Defending the Future: Intergenerational Equity in Climate Litigation" (2020) 32:3 *Geo Intl Env'tl L Rev* 569.

Slobodian's study on intergenerational equity looks at how this concept has integrated the judicial discourse, international legal instruments, national constitutions and judicial decisions. A number of lawsuits are being filed on behalf of future generations, making innovative arguments articulating rights and obligations owed to them by the state. That includes cases like *Future Generations* and *Juliana*, discussed in this article as well as the term essay. Slobodian studies how intergenerational equity plays into questions of standing and how it is integrated into legal arguments and used to craft remedies. ù

Trajber et al, "Promoting Climate Change Transformation *with* Young People in Brazil: Participatory Action Research Through a Looping Approach" (2019) 17:1 *Action Research* 87.

This paper, although not on the judicial process, highlights how children and youth bring a unique perspective to climate governance. Trajber et al detail a case study on community efforts to address and adapt to climate change in Brazil. They argue that young people's participation makes for better preparation to climate-related events and is particularly valuable when dealing with issues of social justice.

III. Other Online Sources

Boom, Keely, Julie-Anne Richards and Stephen Leonard, "Climate Justice: The International Momentum Towards Climate Litigation" (2016), online (PDF): *Heinrich Boell Foundation*
<static1.squarespace.com/static/571d109b04426270152febe0/t/5b1ffbb4575d1fc3161be111/1528822716566/report-climate-justice-2016.pdf>.

This report gives an overview of climate justice initiatives around the world. It starts by discussing the Paris Agreement and how concepts of climate justice have gained momentum thereafter. It then goes over climate litigation trends and looks at cases launched against companies and governments. The report reviews a number of youth-led climate litigation cases. It also examines how litigation interacts with other sectors, including climate negotiations and the fossil fuel industry.

Mila, Carolina, "Colombia's youth fighting for the Amazon — in the courts and on the streets" (18 July 2019), online: *DW* <[dw.com/en/colombias-youth-fighting-for-the-amazon-in-the-courts-and-on-the-streets/a-49523373](https://www.dw.com/en/colombias-youth-fighting-for-the-amazon-in-the-courts-and-on-the-streets/a-49523373)>.

This article on the aftermaths of the Colombian Supreme Court decision shows how interlinked the broader youth-led social movement is with climate litigation. The plaintiffs in *Future Generations* are taking actions in their communities and becoming spokesperson for the climate movement in Colombia. It also explains how this court ruling has impacted the public debate, normative frames and brought the issue of deforestation closer to people.

Quiroz-Martinez, Julie, Diana Pei Wu and Kristen Zimmerman, “ReGeneration: Young People Shaping Environmental Justice” (2005), online: *Racial Equity Tools* <movementstrategy.org/?smd_process_download=1&download_id=3506>.

This report examines the youth-led environmental justice movement. It goes back to its history and relationship with other social movements. It emphasizes the intersectionality of the movement and its commitment to inclusiveness and sustainability as organizational principles. Various experiences, strategies, processes and initiatives are reviewed to understand how this movement is evolving and what its core values are. This report is still helpful to apprehend the origins and underpinnings of the youth-led climate movement although much has happened in that field since it was published in 2005.

Setzer, Joana, and Rebecca Byrnes, “Global Trends in Climate Change Litigation: 2020 Snapshot” (July 2020), online (PDF): *LSE* <lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf>.

This report provides an overview of recent development and potential future trends in climate litigation. It relies on up-to-date data to track evolutions in climate litigation and reviews the kinds of legal arguments that are being raised, how cases may relate to each other and the types of parties involved. Potential and observable impacts of litigation are discussed, as well as the risks associated with this strategy. Lastly, it assesses the impacts of COVID-19 on litigation efforts around the world.