

Executive Summary
of the
Climate Legacy Initiative's
Recalibrating the Law of Humans with the Laws of Nature:
Climate Change, Human Rights, and Intergenerational Justice

by
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The Climate Legacy Initiative (CLI) is a joint project of Vermont Law School's Environmental Law Center and The University of Iowa's Center for Human Rights (UICHR). Launched in Spring 2007 to research and analyze how current law (national and international, indigenous and foreign) conceptualizes and codifies the ethical rights and duties that exist between present and future generations ecologically, it was triggered by climate change—which the UN's Intergovernmental Panel on Climate Change (IPCC) and other leading environmental scientists have persuasively demonstrated to be, in modern times, the consequence largely of human activity, generating carbon buildups in the atmosphere that now threaten life on Earth as we know it. In this setting, building on work done previously by Georgetown University Professor Edith Brown Weiss [*In Fairness to Future Generations* (1989)], it has sought to answer intriguing and, indeed, generally unexplored legal questions: Is it possible for US law, the law of other countries, indigenous peoples' law, and/or international law to define the rights of future generations to a clean, healthy, and sustainable environment? Likewise, can law impose a duty on current generations to pass on a climate legacy of this sort?

In Spring 2009, the CLI gave birth to a 108-page Policy Paper, complete with 624 pages of Background Papers (Appendix A) and Recommendations (Appendix B), documenting this research and more. Titled *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice*, it makes the scholarly case that ecological protections for future generations and concomitant

present-day obligations relative to them are supported by plausible and persuasive theories of social justice (particularly when the theories are grounded on the value of respect, the core value of human rights). It finds, too, a broad consensus that this obligation must take the form of **(a)** preserving diversity of natural and cultural resource options comparable to those enjoyed by previous generations; **(b)** maintaining the quality of the planet so that it is passed on in no worse condition than when received, and repairing it where necessary to meet this duty; and **(c)** providing members of current generations equitable access to the legacy of past generations and conserving this access for future generations. Additionally, it identifies and evaluates existing laws that support and codify the obligation to leave an ecologically livable world to future generations.

On final analysis, however, the Policy Paper finds these expressions of intergenerational concern to be, overall, much too limited in scope and practice to meet the challenge of presently ominous and potentially catastrophic climate change. At the same time, it notes that, in the US, the Preamble of the US Constitution expresses concern for posterity and provides, therefore, a strong impetus to develop legal structures and practices to protect future generations.

In this spirit, the Policy Paper calls for a paradigm shift in legal thought and action relative to the environment (globally, regionally, locally). It argues for new legal norms, institutions, and procedures that give to the ecological rights and interests of present and future generations at least equal standing with the essentially market-driven norms and practices that rule worldwide today but which were crafted during and for a bygone 19th century Industrial Revolution and its priorities and interests. "Present and impending climate change," it observes, "brings us face to face with stark, discomfiting images of a non-future. . . . Business-as-usual now appears as an irreversible experiment with the only atmosphere humans have."

The CLI Policy Paper therefore concludes that, to meet the climate change challenge, our country and world needs a heavy dose of intellectual and moral daring committed to ensuring "an ecological legacy . . . that will benefit our children, grandchildren, great-grandchildren, and other future generations" To this end, it calls for the litigation of select cases and the reinterpretation of existing laws sensitive to the preciousness of all

life on Earth. Also, in a manner intended to stimulate—not foreclose—dialogue and innovation, the Policy Paper urges progress on sixteen legal initiatives “that leave a legacy of ecological justice for future generations” defined by the ideal of a clean, healthy, and sustainable global environment for all. Among them are the following:

- the adoption of state and national constitutional amendments and statutes establishing the rights of present and future generations to clean, healthy, and sustainable environments;
- the enactment of state environmental protection acts (SEPAs) to complement and strengthen, and a national environmental legacy act (NELA) to supplement, already existing but weak national environmental protection laws, the US National Environmental Protection Act (NEPA) in particular;
- the adoption of cap-and-trade regulations for allocations to energy efficiency;
- the creation of sky trusts and other environmental stakeholder trusts to sustain and safeguard common ecological assets;
- the expansion of the public trust doctrine beyond its current limited application to safeguard the entire environment for present and future generations;
- the establishment of legal guardians for future generations, with provision for their training and certification;
- the adoption of UN resolutions aimed at protecting the ecological rights and interests of present and future generations, including a call for the establishment of the atmosphere as a global commons protected by precautionary principles and strong enforcement powers; and
- the fine tuning of international trade rules to the ecological needs and interests of future generations.

It is impossible to think, the CLI Policy Paper asserts, that creative responses to the climate change challenge can be successful without innovative as well as effective legal and policy action.

For the complete CLI Policy Paper and other details, visit www.vermontlaw.edu/cli. Professor Weston can be reached at <burns-weston@uiowa.edu>. Professor Bach can be reached at <tbach@vermontlaw.edu>.