



A LEGAL LEGACY

The proper scope of the law includes conserving environmental quality, options, and access for future generations. Intergenerational accountability means acknowledging the nature of carbon buildup in our atmosphere, understanding the corresponding rights and duties that can provide intergenerational equity or justice, and advancing the law's role in translating ethical norms into legal practice. The case for the ecological rights of future generations and our responsibilities to them rests on persuasive legal theory and precedent.

Domestic legal systems have traditionally included mechanisms for protecting future interests of one kind or another. In the United States, for example, long-term ground leases and short-term leasehold contracts require the return of property in good condition for use by future tenants. Private and public trusts impose fiduciary duties on trustees to protect the trust corpus for future beneficiaries. In the 20th century, federal and state legislation took vast tracts of private land and conserved them as park land for the use and enjoyment of future Americans.

Each type of law – the bold conservation legislation of federal and state lawmakers, the interpretation of common law norms of stewardship by courts, and the private law made by contract between parties -- has as its common denominator the desire to act in the present to ensure the well-being of those in the future. This capacity to define a legacy through law provides the starting point for making effective policy on climate change mitigation and adaptation. International law has explicitly linked intergenerational accountability and the environment for over thirty years.

Powerful Precedents: State, National, and International

Many current laws invoke fairness and the notion that our “social contract” is inclusive of environmental concerns. With the climate crisis closing fast upon us, it is time that we move boldly to hold each other accountable for the future of our children and their heirs.

- Montana’s constitution lays out the strongest statement of conservation anywhere in the United States: “The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.”
- Hawaii has environmental protections written into its state constitution, ensuring that everyone has a right to a clean, healthy environment.
- The “Alaska Permanent Fund” legislation mandates that natural resources be managed for future generations, and provides also a trust/money to its citizens—a “birthshare,” the idea that each person owns a “share” of the earth at birth.
- The preamble to the U.S. National Environmental Policy Act (NEPA) declares that we must “create and maintain conditions under which man [sic] and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”
- The United Nations Convention on Biological Diversity affirms the principle that current generations shall not limit the options of future generations. The agreement aims to conserve biodiversity to maintain all current plant and animal species.

These are just some of the dozens of state, national, and international laws already in place that specifically address or support the concept of protecting the environment for present and future generations.

The CLI policy paper provides a thorough exploration of this body of law. And it points the way forward, including the development of a Law of the Ecological Commons that can safeguard and enhance a sacred heritage belonging to us all.