# 1AR---Run for the Roses---Race 6

## ADV---Precarity

### Precarity---1AR

## ADV---Entrepreneurship

### Entrepreneurship---1AR

## K---LPE

### LPE K---FW---Kick---1AR

### LPE K---Perm---1AR

### LPE K---Perm---AT: Severance---1AR

### LPE K---Link---1AR

### LPE K---Link---AT: Industrial Peace---1AR

### LPE K---Link---AT: Private Ordering---1AR

### LPE K---Link---AT: State Dependency---1AR

### LPE K---Alt---Crackdown---1AR

#### Organized labor unions are a ‘necessary component’ of any struggle for non-domination. Alternatives fail.

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I argue that labor unions are not only good but necessary components of a republican model of non-domination. Neo-republicans usually sidestep unions in favor of state-level institutions. Radical republicans are more sympathetic to institutions that empower workers, but unions have often remained implicit in their accounts. I demonstrate the importance of labor unions for a republican polity at two levels. At the micro level, labor unions exhibit three functions that serve to create collective worker power. These functions are epistemic, deliberative, and pedagogical. Through the epistemic function, workers understand themselves as dominated agents, understand the nature of their domination, and believe that collective action can change their circumstances. With the deliberative function, they collectively establish – through discussion, debate, mutual influence and persuasion – political and strategic agendas for curbing domination. Through the pedagogical function, they become equipped with the skills, virtues, and knowledge to fight for their interests and push back against domination. At the macro level, labor unions leverage their distinctive institutional capacity, including resources, institutional knowledge, leadership, and decision-making rules to curb workplace and structural domination. In institutionalizing worker power, labor unions mitigate the constraints on collective action inherent in capitalism.

This paper makes several interventions. It contributes to normative republicanism by bridging the gap between republican diagnoses of domination and institutional prescriptions for non-domination. While radical republicans recognize the importance of class-specific institutions, they don’t provide a roadmap for getting to a more just state of affairs. The problem is that the structural diagnosis of domination stacks all the cards against workers. Radical republicans demonstrate just how systemic the barriers to non-domination are, but their prescriptions presume that those barriers have somehow been overcome. To bridge this gap, they need an account of how institutional labor power is created, and how workers’ organized power can push back against domination.

Beyond republican theory, I begin to take the first steps towards theorizing the role of labor unions for a democratic polity. There is an understanding in many corners of political theory that unions are good for a democratic and egalitarian society, but there has been no systematic theory of how unions serve these ends (Reiff, Citation2020; Umbers, Citation2023). The epistemic, deliberative, and pedagogical functions that I lay out provide an account of how unions uphold democratic accountability and political equality under the conditions of class society. The insights I develop in this paper – about the formation of collective power, the role of institutions in advancing freedom, and the trade-offs between strategic and democratic demands in organizing – have implications that extend beyond republicanism into democratic theory and egalitarianism. Furthermore, while using a republican framing allows me to tap into the conceptual vocabulary of power and domination, I intend the arguments presented in this paper to advance future research on labor unions with different theoretical orientations.

In positing labor unions as agents of change, I am sidestepping other worker organizations like worker cooperatives and workers’ parties. Bridging the gap between diagnosis and prescription requires theorizing at the level of political strategy, paying specific attention to the democratic possibilities available to political agents. If so, then worker cooperatives are not strong contenders. They constitute only a small part of capitalist economies; thus, their emancipatory potential is limited. Moreover, by design, worker cooperatives solve the problem of domination only in workplaces with cooperative structures. They lack ambitions towards organizing the working class as a whole, which limits the extent of the epistemic transformation they might achieve. The scope of their deliberation, too, stops at the management of the enterprise. While workers’ parties do have ambitions towards organizing the working class, they suffer from limited institutional capacity. In multi-party systems, they tend to make up a small percentage of the electorate, often failing to elect representatives. Unlike labor unions, they are also less capable of offering diagnoses and devising strategies tailored to the conditions of workers in particular workplaces and industries. Mainstream political parties hold more promise, as they have greater organizing capacity and political influence. But the extent to which mainstream political parties curb workers’ domination depends on the existence of an independently organized working class. Political parties respond to organized constituents, competing for their votes by proposing policies and legislation that align with those constituents’ demands (Freeman, Citation1985, Chapter 13). In the absence of organized labor, parties have much weaker incentives to uphold the rights and interests of workers (Rosenfeld, Citation2014, Chapter 7). Therefore, it is important to prioritize theorizing how labor unions, as opposed to these other organizations, curb workers’ domination.

### LPE K---Alt---1AR

#### Markets are sustainable and comparatively preferable to alternatives.

Schrager **‘**20 [Allison; Winter 2020; Ph.D. in Economics from Columbia University, Senior Fellow at the Manhattan Institute; "Why Socialism Won't Work," https://foreignpolicy.com/2020/01/15/socialism-wont-work-capitalism-still-best/]

WITH INCREASINGLY UBIQUITOUS IPHONES, internet, central air conditioning, flat-screen TVs, and indoor plumbing, few in the developed world would want to go back to life 100, 30, or even 10 years ago. Indeed, around the world, the last two centuries have brought vast improvements in material living standards; billions of people have been lifted from poverty, and life expectancy across income levels has broadly risen. Most of that progress came from capitalist economies.

Yet those economies are not without their problems. In the United States and the United Kingdom, the gap between the rich and poor has become intolerably large as business owners and highly educated workers in urban areas have become richer while workers' wages in rural areas have stagnated. In most rich countries, more trade has brought a bigger, better variety of goods, but it has also displaced many jobs.

With social instability in the form of mass protests, Brexit, the rise of populism, and deep polarization knocking at the capitalist economies' doors, much of the progress of the last several decades is in peril. For some pundits and policymakers, the solution is clear: socialism, which tends to be cited as a method for addressing everything from inequality and injustice to climate change.

Yet the very ills that socialists identify are best addressed through innovation, productivity gains, and better rationing of risk. And capitalism is still far and away the best, if not only, way to generate those outcomes.

TODAY'S SOCIALISM IS DIFFICULT TO DEFINE. Traditionally, the term meant total state ownership of capital, as in the Soviet Union, North Korea, or Maoist China. Nowadays, most people don't take such an extreme view. In Europe, social democracy means the nationalization of many industries and very generous welfare states. And today's rising socialists are rebranding the idea to mean an economic system that delivers all the best parts of capitalism (growth and rising living standards) without the bad (inequality, economic cycles).

But no perfect economic system exists; there are always trade-offs--in the most extreme form between total state ownership of capital and unfettered markets without any regulation or welfare state. Today, few would opt for either pole; what modern socialists and capitalists really disagree on is the right level of government intervention.

Modern socialists want more, but not complete, state ownership. They'd like to nationalize certain industries. In the United States, that's health care--a plan supported by Democratic presidential candidates Elizabeth Warren (who does not call herself a socialist) and Bernie Sanders (who wears the label proudly). In the United Kingdom, Labour Party leader Jeremy Corbyn, who was trounced at the polls in mid-December, has set his sights on a longer list of industries, including the water, energy, and internet providers.

Other items on the socialist wish list may include allowing the government to be the primary investor in the economy through massive infrastructure projects that aim to replace fossil fuels with renewables, as Green New Deal socialists have proposed. They've also floated plans that would make the government the employer of a majority of Americans by offering guaranteed well-paid jobs that people can't be fired from. And then there are more limited proposals, including installing more workers on the boards of private companies and instituting national rent controls and high minimum wages.

For their part, modern capitalists want some, but less, state intervention. They are skeptical of nationalization and price controls; they argue that today's economic problems are best addressed by harnessing private enterprise. In the United States, they've argued for more regulation and progressive taxation to help ease inequality, incentives to encourage private firms to use less carbon, and a more robust welfare state through tax credits. Over the past 15 years, meanwhile, capitalist Europeans have instituted reforms to improve labor market flexibility by making it easier to hire and fire people, and there have been attempts to reduce the size of pensions.

No economic system is perfect, and the exact right balance between markets and the state may never be found. But there are good reasons to believe that keeping capital in the hands of the private sector, and empowering its owners to make decisions in the pursuit of profit, is the best we've got.

ONE REASON TO TRUST MARKETS is that they are better at setting prices than people. If you set prices too high, many a socialist government has found, citizens will be needlessly deprived of goods. Set them too low, and there will be excessive demand and ensuing shortages. This is true for all goods, including health care and labor. And there is little reason to believe that the next batch of socialists in Washington or London would be any better at setting prices than their predecessors. In fact, government-run health care systems in Canada and European countries are plagued by long wait times. A 2018 Fraser Institute study cites a median wait time of 19.8 weeks to see a specialist physician in Canada. Socialists may argue that is a small price to pay for universal access, but a market-based approach can deliver both coverage and responsive service. A full government takeover isn't the only option, nor is it the best one.

Beyond that, markets are also good at rationing risk. Fundamentally, socialists would like to reduce risk--protect workers from any personal or economywide shock. That is a noble goal, and some reduction through better functioning safety nets is desirable. But getting rid of all uncertainty--as state ownership of most industries would imply--is a bad idea. Risk is what fuels growth. People who take more chances tend to reap bigger rewards; that's why the top nine names on the Forbes 400 list of the richest Americans are not heirs to family dynasties but are self-made entrepreneurs who took a leap to build new products and created many jobs in the process.

Some leftist economists like Mariana Mazzucato argue that governments might be able to step in and become laboratories for innovation. But that would be a historical anomaly; socialist-leaning governments have typically been less innovative than others. After all, bureaucrats and worker-corporate boards have little incentive to upset the status quo or compete to build a better widget. And even when government programs have spurred innovation--as in the case of the internet--it took the private sector to recognize the value and create a market.

And that brings us to a third reason to believe in markets; productivity. Some economists, such as Robert Gordon, have looked to today's economic problems and suggested that productivity growth--the engine that fueled so much of the progress of the last several decades--is over. In this telling, the resources, products, and systems that underpin the world's economy are all optimized, and little further progress is possible.

But that is hard to square with reality. Innovation helps economies do more with fewer resources--increasingly critical to addressing climate change, for example--which is a form of productivity growth. And likewise, many of the products and technologies people rely on every day did not exist a few years ago. These goods make inaccessible services more available and are changing the nature of work, often for the better. Such gains are made possible by capitalist systems that encourage invention and growing the pie, not by socialist systems that are more concerned with how the existing pie is cut. It is far too soon, in other words, to write off productivity.

## K---Long-termism

### Long-termism K---Turn---1AR

#### Rejecting long-termism in policy is existential and allows short-termism to coopt the alternative.

Sulyok ’24 [Katalin; May 24; Assistant Professor in Environmental Law at the ELTE Law School, LL.M. from Harvard Law School, Ph.D. in International Law; Transnational Environmental Law, “Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations,” vol. 13]

Lawsuits that are challenging states’ environmental or climate policies in the name of, or with reference to, future generations and their long-term interests are becoming a transnational trend. This pattern of litigation, referred to here as ‘future generations lawsuits’, includes climate litigation,1 as well as environmental and biodiversity litigation,2 and transcends continents, legal systems, and legal cultures. At the same time, these proceedings are highly diverse: they are launched under various substantive legal bases, by different kinds of plaintiff, against different respondents, and they seek different types of legal remedy before various national and, increasingly, international fora. Notwithstanding these differences, the lawsuits appear to share some structural similarities, which will be the focus of this article.

The analysis zeroes in on domestic and international lawsuits, in which the interests of future generations are invoked in order to claim and establish new or enhanced obligations for states in relation to posterity in the context of setting their environmental or climate policies. The aim of this cross-jurisdictional comparative analysis is to map the common legal architecture of future generations litigation by sketching the doctrinal ‘frontlines’ of such lawsuits. In other words, the article will focus on the legal doctrines based on which plaintiffs claim, and courts increasingly appear to afford, protection for long-term interests and needs across domestic and certain international jurisdictions. These demands, as I will argue, correspond to a handful of structurally similar legal safeguards that are derived from the imperative of the rule of law.

I use the term ‘rule of law’ in a broad and normative sense, as a guarantee against the state's arbitrary exercise of power over the individual.3 This article will show that the shared legal anatomy of future generations litigation lies in five more concretely defined requirements of the rule of law: (i) respect for human rights, (ii) certain quality of law requirements, (iii) prohibition of arbitrary exercise of governmental power, (iv) non-discrimination, and (v) access to justice.4 The cross-jurisdictional analysis will examine the ways in which these safeguards play out in the context of future generations litigation, where courts appear to be increasingly willing to reinterpret rule of law obligations in order to protect future generations against arbitrary treatment by present-day decision makers. In such an extremely rapidly proliferating field as future generations litigation it is not feasible to include every relevant decision in this article. The cases under review, therefore, have been selected to provide examples of the argumentative solutions of a wide range of jurisdictions, thereby shedding light on some cross-jurisdictional trends in the adjudicative practice.

The central claim of the article is that states are increasingly held accountable by courts – thus far primarily by domestic fora – when decisions by governments or the legislature undermine the vital environmental interests of posterity in an arbitrary manner. I understand arbitrariness here as the capacity of present-day decision makers to benefit from the inherent intergenerational asymmetry between those whose conduct generate long-term risks for the stability of the climate and the ecosystems and those who bear the devastating consequences of such actions. State policies that inflict harm on future generations in full awareness of the potentially catastrophic long-term impacts revealed by robust scientific insights can be viewed as unreasonable5 and irrational6 – and, even more fundamentally, as ‘arbitrary’.

As a caveat, the scope of this analysis is confined to examining legal claims that seek to protect the ‘environmental’ interests of future generations – namely, a safe and liveable planet and climate for our descendants. Needless to say, posterity has a host of other interests, and their liveable future is not only jeopardized by the climate and ecological crises but also by a range of other threats, including nuclear wars, pandemics, and artificial intelligence. The doctrine of intergenerational equity has also been invoked in contexts outside the ‘environmental’ or ‘climate’ protection discourse – concerning, for instance, the accumulation of sovereign debts7 or the sustainability of pension schemes.8 This article, however, will only examine the ways in which states can be held liable for undermining intergenerational needs when designing their environmental and climate measures.

The rule of law framework adopted in this article serves both analytical and explanatory functions. On the one hand, it provides an anchor for the comparative analysis; this analysis seeks to make sense of the trends in a booming field that may, at first glance, appear to feature divergent legal arguments and even ad hoc judicial developments tied to the specificities of respective jurisdictions. On the other hand, the framework also helps to explain some of the drivers of these lawsuits and explores some wider, more systemic implications that such lawsuits may bring to the current paradigm of environmental and climate governance. The analysis will ultimately appraise whether an intergenerationally sensitive ‘revolutionary’ reinterpretation of normative rule of law guarantees can help to change the short-termist paradigm of the domestic decision-making process that has led to and is dominating the Anthropocene.

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The analysis is structured in five main parts. Section 2 identifies three layers of connections between the rule of law and the current planetary crises. The interrelations identified here not only demonstrate how the rule of law could be thrown into disarray if critical thresholds that mark ‘the safe operating space of humanity’9 were to be exceeded, but also how the concept has played a critical role in producing such planetary risks and how it could be transformed into a means of abating them. Section 3 identifies the main normative obligations flowing from the rule of law, and explains why these safeguards offer an influential point of intervention for courts in various jurisdictions to impose long-term obligations on states. Section 4 turns to specific rule of law guarantees, and maps cross-jurisdictional patterns of mobilising these intergenerational rights and obligations before different national and international fora. Section 5 concludes by appraising the potentially transformative impact that future generations litigation may have for the short-termist paradigm of environmental and climate governance by developing an intergenerationally conscious reading of states’ obligations under national and international law. 2. The Rule of Law and the Ecological and Climate Crises: Three Layers of Interconnections The epoch of the Anthropocene10 is marked by humanity's role as the dominant force of change on Earth.11 Our activities and technologies are now capable of fundamentally altering ecosystems and the geochemical cycles of the planet. The last decades have seen an unprecedented environmental and climate crisis that will fundamentally impair the living conditions of future generations – if it remains unabated within a rapidly closing time window.12 It is now widely accepted that the climate crisis is, essentially, a human rights crisis.13 This article will take a step further and argue that the planetary crises challenge the very concept of the rule of law. The multifaceted connections between the rule of law and the planetary risks of the Anthropocene can be depicted through three distinct layers. The first is the most overt linkage, concerning the interdependence of sustaining the rule of law and a stable climate and thriving ecosystems. The second layer, perhaps less obviously, relates to the pivotal role that the rule of law has played in charting humanity's course into the Anthropocene. The third layer, however, highlights that rule of law guarantees, via an intergenerationally sensitive reinterpretation, can also be key in steering humanity towards a sustainable future. Turning to the first layer, several phenomena attest to a mutual interdependence between securing the rule of law and maintaining a liveable planet. Multiple experts have voiced concerns that democracies and the rule of law will not survive this century if our generation fails to take sufficiently stringent and immediate measures to protect the ecosystems and the climate.14 Philip Alston, United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights, warns that poverty fundamentally threatens the rule of law, as massive inequalities between nations may result in ‘climate apartheid’,15 and that further deprivation stimulates nationalist, xenophobic, and racist responses within societies.16 Fundamental freedoms will be at risk, even in established democracies.17 Delayed and ineffective climate action in the present will inevitably force future generations to enact immediate and drastic mitigation measures to halt the catastrophic consequences of climate change. Doing so would equate putting a ‘full brake’ on their lifestyle, which inevitably leads to restrictions on individual freedoms.18 These include restrictions on personal modes of travel and on consumption of food, water, and energy.19 Governments may also be forced to declare states of emergency. The German Federal Constitutional Court has also warned that courts may not be able to protect individuals against restrictions of their freedom rights as they would be deemed necessary and proportionate to tackle the climate crises, and therefore lawful under domestic laws.20 This all suggests that, despite their deeply ingrained short-termist horizon, democracies must nevertheless become able to safeguard long-term environmental interests to sustain the rule of law and democracy itself in the long run. Their interdependence is, emphatically, mutual. Not only do environmental problems frustrate the principles of the rule of law, but a backlash against democracy and the rule of law also virtually always leads to a decline in the normative safeguards that protect ecosystems and the climate. Populist social movements often undermine taking ambitious climate mitigation action and environmental protective measures.21 Populist leaders threaten the international rule of law by challenging multilateralism,22 while, at the national level, they often pursue anti- or deregulatory agendas,23 undermine environmental democracy, including rights related to environmental information and public participation,24 and altogether hinder expertise-based environmental lawmaking.25 Empirical surveys also suggest that greater degrees of commitment to the rule of law raises the stringency of environmental measures,26 provided that this is not met with high degrees of corruptibility, which could offset such effects.27 The second layer of connections between the rule of law and the planetary crisis concerns the genesis of the Anthropocene. As argued in depth by Viñuales, as a social technology the law had a fundamental role in engendering the Anthropocene by regulating and legitimizing the growth-centred economic and industrial system that made it possible for our species to dominate the Earth system.28 The global north has played a pioneering role in mastering both the necessary technological innovations and growth-based capitalism and consumerism that are jointly responsible for the Anthropocene. The right to property, for instance, in its liberal conception as conferring unlimited and exclusionary power on the owner, was a key driver behind developing a growth-based economy, originating from western Europe in the 17th century.29 Property rights have enjoyed strong protection in democratic legal orders committed to the rule of law.

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Sustaining the traditional normative content and contours of requirements flowing from the rule of law perpetuates socio-economic processes that undermine the opportunities for future generations. In particular, the rule of law provides for legal certainty, favouring stable and predictable laws. This requirement can also be utilized to hinder regulatory answers to emerging risks and uncertainties surrounding ecological and climate threats.30 In the same vein, the rigidity of the law often works in favour of the holders of economic power by protecting their ‘right to pollute’ and enabling them to impose externalities on communities within the bounds of often relaxed environmental protection standards.31

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Moreover, democratic governance is inherently, and systemically, biased against future generations.32 Elected leaders favour immediate economic gains to satisfy their constituencies, whereas minors, and future generations, are disenfranchised. Presentism is thus deeply ingrained in democracy and in our conceptions of the rule of law, which, as argued in this article, has played a vital role in driving humanity into the Anthropocene. Rule of law guarantees, if interpreted as being applicable only between contemporaries, create a system of laws that is inherently inclined to overlook long-term interests and non-human environmental assets. The rule of law is not only anthropocentric,33 but its traditional understanding is also presentist and, thus, tolerates (if not enables) the necessities of life to be looted from our descendants. Despite all these shortcomings, the third layer of relevant connections, which is the focus of the remainder of this article, suggests that a potential remedy for the ‘regulatory deficits’ of the Anthropocene34 may also lie in the rule of law. Several fora have become responsive to the grave intergenerational asymmetry between the conditions and possibilities of decision makers living in the present and those who will have to bear the resulting impacts in the future. The last decade has seen a boom in successful future generations lawsuits, where courts were willing to limit governmental freedom of action in adopting policies with harmful future effects through developing intergenerational dimensions for certain rule of law guarantees. This will be explored in the coming section. 3. An Intergenerational Reinterpretation of the Rule of Law Pleading with the interests of future generations appears to be a useful litigation strategy, which creates a material impact on judicial inquiries in climate and environmental lawsuits.35 The plaintiffs in such cases claim normative guarantees under various domestic and international legal doctrines to protect future generations against arbitrary treatment. In other words, they demand the extending of core rule of law guarantees to posterity, too. The political ideal of the rule of law36 knows several expressions across jurisdictions, such as Rechtsstaat or État de droit, and has been translated into various more precise political and legal requirements in different legal systems.37 The term is sometimes used to stipulate a set of principles for positive laws,38 to designate the separation of powers,39 or it is invoked in a broad sense to denote the legally regulated nature of certain aspects of state conduct,40 the binding nature of relevant international rules,41 or as a sweeping reference to the system of rules governing a given field.42 In this article, by contrast, I rely on the definition used by rule of law scholars proper, which locates the essence of the term in an overarching guarantee against the arbitrary exercise of sovereign powers.43 I will therefore look for judicially enforceable guarantees of the rule of law – that is, safeguards against arbitrariness – in the case law. Future generations lawsuits deeply resonate with the core idea of (non-)arbitrariness. In an increasing number of judgments, courts attempt to curtail the almost unrestricted ability of governments to favour immediate economic gains by disregarding, arbitrarily, the basic needs and interests of future generations. Arbitrariness is defined here as the ‘uncontrolled, unpredictable and unrespectful’ exercise of governmental power,44 which denotes a ‘distinctive form of unreasonable[ness]’.45 Domestic laws in which present-day lawmakers use their discretionary leeway to pursue short-term gains while freely ignoring the harmful future ramifications, of which they are clearly aware based on ample scientific warning, are fundamentally unjust, unreasonable, and, in this sense, ‘arbitrary’46 in respect of future generations. Intergenerationally arbitrary decisions may come in many forms, by way of both an action or an omission of the state. The former is illustrated in cases where courts strike down short-termist climate and environmental policies that sacrifice long-term interests for immediate gains.47 With regard to the latter, when faced with state inaction to protect environmental assets for the sake of posterity, courts often compel governments to enact protective measures.48 In these cases the exact formulation of judicial guarantees of non-arbitrariness is closely tied to national laws and domestic legal cultures and, hence, are varied in nature. The analytic framework adopted here relies on the rule of law pillars identified by the Council of Europe (CoE) European Commission for Democracy through Law (also known as the Venice Commission), an international independent advisory body dedicated specifically to promoting the rule of law and democracy.49 The Venice Commission has developed extensive doctrinal work regarding the normative content and components of the rule of law. Its relevance is not confined to Europe, as the Commission's definition squares with that endorsed by the UN at the global level,50 and also resonates with scholarly views coming from a non-Eurocentric perspective.51 The Commission lists five overarching ‘thick’52 (meaning substantive) requirements under the rule of law, which are: (i) respect for human rights, (ii) quality of law criteria, (iii) guarantees of non-arbitrariness, (iv) non-discrimination, and (v) access to justice.53 Notwithstanding certain future-looking policies,54 these pillars have largely been enforced under a tacit assumption of contemporaneity, in as much as they pertain to how reigning governments should treat and regulate people living under their rule and power at the given moment. Plaintiffs’ litigation strategies in future generations cases, however, seem to challenge such a presentist conception of the rule of law head-on, and increasingly successfully so. A growing number of courts have been willing to expand the temporal scope of rule of law guarantees into the future, either by enforcing them with regard to the grievances of future rights holders or applying such guarantees to protect current subjects against future risk or harm. The following section will show how such an intergenerational reinterpretation of rule of law pillars emerges in judicial practice and serves to limit the ability of states to disregard the interests and needs of future generations in an arbitrary manner. In these judicial decisions, rule of law obligations are interpreted in a future-oriented way and thereby impose the following binding obligations on states: • respect for the human rights of future individuals (currently living or yet to be born), • the quality of law requirement, demanding that national laws capable of interfering with human rights safeguards must meet certain requirements, such as clarity, foreseeability, and specificity; • the prohibition of arbitrary use of governmental powers in respect of the long-term interests of posterity; • non-discrimination vis-à-vis future generations, prohibiting direct and indirect discrimination against children based on age or birth cohorts; and • access to justice: justiciability of legal challenges against environmental and climate policies of governments and granting standing to plaintiffs acting on behalf of long-term interests. The above pillars denote, in my view, the common legal architecture of many future generations lawsuits. It may be no coincidence that litigation strategies in diverse jurisdictions and under different legal contexts can all be traced back to specific aspects of the rule of law. Indeed, climate governance studies have observed that ‘overarching rules’ can act as vehicles for change and alter the prevailing system of governing climate change.55 The rule of law concept appears to be one of those ‘overarching rules’. Developing forward-looking, intergenerational dimensions for actionable rule of law obligations is a significant legal innovation, which can assist in reimagining the legal order to become more responsive to future threats and to the risk of committing posterity to harmful path-dependencies in the present. A recent study warns, however, that successful legal innovations need to be incremental rather than radical, because of law's preference and need to adhere to past commitments.56 This means, in our context, that the creative, ‘imaginative’,57 one might even say ‘revolutionary’ interpretation of the scope and content of intergenerational state obligations should also be grounded in well-established norms in order to succeed. The concept of the rule of law could satisfy such a need for groundedness and continuity. The fundamental role that the ideal of the rule of law plays in every democratic legal system renders its normative components effective and legitimate anchors for courts to develop incremental changes in the understanding of states’ obligations. The combined effects of this reinterpretation may nevertheless be transformative for the enforceability of claims of intergenerational justice. Further, invoking claims based on the rule of law before courts has practical value in protecting the interests of future generations. Many successful landmark judgments attest to the potential of targeting these basic pillars of the rule of law.

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Rule of law safeguards thus serve as influential points of intervention. Through novel interpretations, courts can inject a long-term perspective into states’ traditionally short-termist decision making. Applying actionable rule of law guarantees to protect the interests of later generations offers a workable backdoor mechanism to challenge states’ myopic policies, which are otherwise often insulated from judicial review.58 If domestic and international courts were to continue to acknowledge the intertemporal dimensions of basic rule of law guarantees, legislatures would be discouraged from passing myopic environmental and climate measures. As a result, invoking the interests of future generations can also help to close the liability gap for inflicting future harm, which is thought to be a potentially significant legal response to the Anthropocene challenge.59

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Finally, to appraise the practical significance of demanding safeguards against arbitrariness towards future people, we should examine the temporal limits of such litigation strategies. While the basic theory of intergenerational equity is not limited in its temporal scope,60 it is important to acknowledge the practical barriers to effective advocacy with regard to interests to be protected in the 22nd or 23rd centuries. The temporal reach of such claims appears to be capped by constraints inherent in the methods with which posterity's relevant interests can be defined by courts in a robust (and non-arbitrary) way. As I argue in Section 5, these standards lie in scientific knowledge and soft law instruments. The horizon of our scientific and political attention currently revolves around harm that is likely to arise from human-induced warming by 2050 (that is, within the lifetime of the next generation),61 or at the end of the 21st century (affecting the generation that comes after).62 Viewed from this perspective, it may be no coincidence that plaintiffs appear to be most successful in claiming rule of law-based protection for future generations when they frame their complaints around the near future. Having stated that, with the advent of technologies capable of exerting large-scale systemic influence over the climate system, such as geoengineering, it is not inconceivable to imagine a scenario where actions taken today produce harmful effects over centuries from now. Theoretically speaking, nothing precludes claiming guarantees of non-arbitrariness towards posterity even on such a timescale. 4. Limiting Arbitrariness: Litigation Strategies in Future Generations Lawsuits The overwhelming majority of claims thus far put forward by plaintiffs in future generations litigation seem to fall into one or more of the above-listed five main categories corresponding to the main rule of law guarantees. 4.1. Respect for Human Rights in the Future The traditional conception of human rights is somewhat presentist, in that safeguards are thought to be applicable only between contemporaries.63 Major international human rights covenants are silent about future individuals and declare jurisdiction over complaints if the rights holder falls within the jurisdiction of the duty bearer,64 which arguably requires proximity in both space and time. However, expert proposals have long advocated adopting a more future-oriented stance.65 Most recently, the Maastricht Principles on the Human Rights of Future Generations, released in February 2023, set the tone for a new reading of international human rights law, which emphasizes the absence of any ‘temporal limitations’ of the guarantees set forth in major covenants.66 This implies that human rights safeguards should be guaranteed for future individuals in the same manner as for those currently living. The proliferating field of rights-based climate litigation also attests that courts do offer protection for human rights against future harm and/or for those of future individuals in the context of the climate and ecological crises. There are various conceptualizations of relevant violations of human rights across different temporal scales and with regard to different specific rights, leading to divergent lines of judicial inquiry in such cases. Initially, courts deduced the obligations that states owe to future generations from select human rights, such as the constitutional right to a balanced and healthful ecology,67 or to a healthy environment.68 The latter has been invoked to advocate the protection of long-term needs and environmental assets in a range of jurisdictions, which include Pakistan,69 Brazil,70 Hungary,71 and a state court in the United States (US).72 The Supreme Court of Hawaii has even declared a ‘right to a life-sustaining climate system’.73 Other courts are focusing on more general human rights safeguards. Dutch74 and Belgian75 courts, for instance, have found that the over-lenient climate commitments of their governments violated Articles 2 (right to life) and 8 (right to private life) of the CoE European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).76 Other jurisdictions define potential claimants more narrowly, and protect only the rights of certain most vulnerable special rights holders, such as children77 and Indigenous communities.78 Building on its own earlier findings in Sacchi v. Argentina and Others,79 the UN Committee on the Rights of the Child, in 2023, defined several specific obligations for states in the context of climate change in its General Comment No. 26.80 It remains to be seen whether this document will alter the litigation strategy of child plaintiffs, as an empirical study found that the majority of them did not plead violations of their rights as children but focused on their grievances to be endured later, in their adult lives.81 Moreover, as a doctrinally distinct category from children's rights,82 explicit recognition for the rights of future generations is also gaining ground in human rights discourse. Besides the Maastricht Principles cited above, a central role was afforded to the environmental rights of ‘unborn generations’ in the inquiry of apex courts in Colombia83 and Pakistan.84 Even in jurisdictions that remain wary of speaking explicitly about the rights of future generations, future interests do shape the obligations that courts impose on states.85 Courts may also conceptualize harmful climate impacts as a violation of the full range of the possible spectrum of rights held by every individual. As famously found by the German Federal Constitutional Court, unambitious greenhouse gas (GHG) reduction measures were unconstitutional because they were leading to a future where ‘practically all forms of freedom’ would be put in jeopardy.86 The above conceptualizations of protected rights are closely interlinked in judicial analysis with different configurations of the temporal dimension of relevant human rights violations. One may distinguish four judicial approaches in this respect. Firstly, courts can address violations of human rights that are already taking place. This approach was chosen in the Torres Strait Islanders’ case, in which the lack of climate adaptation measures was deemed an ongoing breach of human rights.87 The second, somewhat similar approach adopts a back-casting method focused on competing rights in the present to tackle the conflicting interests of different generations. The analysis of the Hungarian Constitutional Court in its Forest decision is a stark example.88 The Court reviewed the constitutionality of an amendment to the Forest Act that would expand the property rights of private forest owners against the general public's right to a healthy environment. Noting the constitutional importance of intergenerational equity, the Court annulled the amendment and afforded protection for the interests of future generations against the resource extraction of the current generation by balancing the right to environment against the right to property. A similar back-casting logic features in Neubauer, where the partial annulment of Germany's federal climate law was rooted in the anticipated restrictions on constitutional rights (so-called ‘advance interference-like effect’) that the act would have imposed after 2030.89 This approach is responsive towards violations that will take place in the more distant future. The Dutch Supreme Court, for instance, declared a violation of rights even though the government's lax mitigation commitments were leading to risks that ‘will only be able to materialize a few decades from now’.90 A final option lies in protecting the individual's rights against violations that are inevitable in the short term. The European Court of Human Rights (ECtHR), for instance, protects the right to life and private life against imminent future environmental risks.91 4.2. The Quality of Law Requirement vis-à-vis Domestic Climate Laws Domestic laws that may interfere with human rights must meet a certain quality to be compatible with the rule of law. Such a requirement was developed in the most nuanced way by the ECtHR92 in requiring that national laws that may interfere with basic rights be ‘sufficiently clear and detailed’93 and ‘foreseeable’94 as to their effects on the persons concerned. In the context of climate litigation, these requirements could be invoked analogously to demand that national climate laws include detailed and clear mitigation targets that are sufficiently ambitious to avert drastic climate impacts.95 Although such quality of law requirements have not been argued by applicants – though by one intervener96 – in the pending climate cases before the ECtHR, national courts have set similar conditions for the quality of climate mitigation laws under domestic law. In Neubauer, the German Constitutional Court found that the statutory emissions pathway was unconstitutional because it did not specify long-term reduction targets, and therefore offloaded the mitigation burden onto future generations.97 The same justification was adopted later by the South Korean National Human Rights Institution in its Opinion on the climate crisis.98 Similar specificity requirements were invoked by the Supreme Court of Ireland, which ruled that the government had to ‘give real and sufficient details’ in its National Mitigation Plan,99 and also by the United Kingdom (UK) High Court in litigation surrounding the UK Net Zero Strategy. The Court in the latter case required the Secretary of State to give ‘explanations’ for the bases of the Net Zero Strategy under the statutory obligation to ‘set out’ policies for meeting the carbon budget.100 4.3. Preventing Arbitrary Exercise of Governmental Powers to the Detriment of Future Generations A distinct pillar of the rule of law embodies safeguards that curtail the state's ability to exercise its governmental powers arbitrarily over the individual. Such guarantees against arbitrariness in the strict sense find legal expression in various formulations of due diligence obligations. These ensure that the interests of future generations are not neglected or overridden even outside the scope of human rights safeguards and requirements for the quality of climate legislation. Duties of care towards the future are rooted in a range of doctrines that are closely tied to the substantive laws of respective jurisdictions and, hence, span a wide variety. Yet, they all aim at curtailing the freedom of the sovereign decision maker to disregard future needs and interests in exercising its executive powers. Firstly, under the ECHR system, states have a well-established positive duty to take ‘all reasonable and necessary’ measures to prevent interference with protected rights. This duty of care is frequently invoked in climate change lawsuits.101 National courts have already reviewed the legality of domestic climate measures under the doctrine,102 and concluded that respective governments overstepped the bounds of their discretion under Articles 2 and 8 ECHR in that they failed to demonstrate the required level of care in designing their GHG reduction pathways.103 The District Court of the Hague (The Netherlands), in its Urgenda decision, allowed conducting a cost-benefit analysis in discharging such a duty of care. It stressed, however, that costs should be allocated reasonably between present and future generations and that the state has a ‘serious obligation to combat climate change if taking action in the present is predicted to be cheaper’.104 The Court of Appeal found that the economic and social costs of delayed action strongly warranted taking action in the present.105 The possible intergenerational aspects of states’ due diligence obligations under international human rights law at the global level and under customary international law so far have been less articulated in either positive law or in international judicial practice.106 An early exception lies in General Comment No. 26, emphasizing that states do have a ‘heightened duty of care’ towards children and thus have an obligation ‘to set and enforce environmental standards that protect children from such disproportionate and long-term effects’.107 A major international legal avenue for protecting intergenerational interests lies in the due diligence obligation under customary international law.108 This is also well reflected in the questions put before the International Court of Justice (ICJ) in the pending advisory opinion proceedings, which ask the Court to clarify the legal relevance of future generations for the content of due diligence obligations under customary and treaty obligations, and with respect to the legal consequences of any violation thereof.109 Putting future generations more squarely into the due diligence calculus would be an important step with potentially far-reaching implications. Doing so would, for instance, provide further support for states in refusing to grant new fossil fuel projects on account of their expected future emissions.110 Due diligence obligations may also stem from domestic law. In Neubauer, the Court deducted that the German Basic Law imposes on the legislature a special duty of care towards future generations.111 Such a duty may also be rooted in civil codes112 or in common law doctrines requiring consideration of the interests of minors.113 In some jurisdictions there are currently proposals to enshrine a duty of care towards future generations in statutory law.114 States may also be required to exercise care to protect essential ecosystems and natural resources (such as forests or rivers) for the future, under various stewardship115 or guardianship116 obligations. In some jurisdictions (Ecuador, for example), courts use the Rights of Nature paradigm to safeguard the interests of posterity. Even though the future generations discourse and the Rights of Nature movement may appear, at first, to be distinct and divergent, they share the goal of carving out certain long-term assets from the unfettered discretion and resource exhaustion of states.117 Ecuadorian courts, for instance, prohibited all mining operations in the Los Cedros forest on such a legal basis,118 and opined that any harm that impairs nature is harm inflicted upon several generations.119 Another prominent legal avenue for restricting states’ ability to favour immediate economic gains lies in the public trust doctrine, which appears in the laws of various jurisdictions.120 The doctrine imposes fiduciary duties on states under common law, statutory law or constitutional law, and it deems governments to be sovereign trustees, which ought to preserve the trust's assets – natural resources – for its beneficiaries, present and future. The scope of relevant assets varies across jurisdictions,121 as do the exact requirements for the trustee. The public trust doctrine has already been applied successfully in environmental litigation to exclude policy choices that arbitrarily impair the needs and rights of future generations.122 Scholars have also long advocated pursuing the doctrine in climate litigation through arguing for an atmospheric public trust,123 but it is only recently that courts have picked up such a line of reasoning. In March 2023, Judge Wilson argued in his concurrent opinion, in the Hawai'i Electric Light Co. case, for a public trust obligation to reduce the level of atmospheric carbon dioxide (CO2) below 350 parts per million.124 A few months later, a state court in Montana decided in favour of youth plaintiffs based partly on the doctrine in Held v. Montana.125 A number of further climate public trust cases are still pending, including the Juliana case before a US district court,126 and those before courts in India, Pakistan, and Hungary.127 4.4. Age-Based Discrimination of Minors and Future Generations In political decision making, future generations are a permanently disenfranchised interest group128 whose diverse interests are harmed by myopic laws and policies. There is ample scientific evidence that children born today will experience much harsher climate conditions in their adulthood than experienced by members of previous generations.129 The staggering results of a scientific study show that children aged below 10 in 2020 will experience a fourfold increase in certain weather extremes.130 In the light of these scientific insights, it becomes obvious that children are already ‘particularly affected’ by climate change.131 What is more, such studies make it possible to frame disparate climate impacts as discriminatory treatment. One may conceptualize the problem as either indirect discrimination against children on account of their age, or as birth-cohort discrimination, whereby certain children alive today (together with later generations) are more adversely affected than previous cohorts.132 Climate impacts are framed as a violation of non-discrimination towards children and future generations in several cases pending before the ECtHR.133 The problem of birth-cohort discrimination features most acutely in the Duarte Agostinho case, initiated by Portuguese children before the ECtHR against 32 states, on the basis of violating the right to life and to private life in conjunction with the prohibition of discrimination.134 They argue that, as a result of the respondents’ failure to adopt stringent mitigation measures, the complainants will experience extreme weather events, which affect their living conditions and health. An essentially similar pleading was put before the Court of Justice of the European Union (CJEU) in the Armando Carvalho case to challenge the European Union (EU) GHG reduction commitments as far too lenient, but failed on procedural grounds because of the claimants’ lack of standing.135 Anti-age discrimination claims are also on file with domestic courts in various states, from Italy and Austria to South Korea and Canada.136 Hearing a complaint based partly on the non-discrimination clause of the Canadian Charter of Rights and Freedoms, the Superior Court of Justice of Ontario has deemed the ‘adverse effects of climate change on younger generations’ as ‘self-evident’.137 4.5. Access to Justice in Future Generations Litigation Another central issue in future generations litigation concerns the rights of minors to access justice – that is, whether disputes involving scientifically (and politically) loaded environmental and climate policy choices are deemed justiciable by the courts, and whether certain plaintiffs can claim intergenerational standing. Even though climate change disrupts longstanding judicial doctrines in respect of both questions,138 there are signs that courts are increasingly open to tackling intergenerational cases on the merits. According to the Venice Commission, ‘the judicial branch appears to be best placed to protect future generations against the decisions of present-day politicians’.139 Indeed, courts often deem such safeguards justiciable, despite pledges mostly being couched in symbolic language. This trend is backed by an emerging scholarly consensus140 and practitioners’ support141 for judicial intervention aimed at protecting long-term interests when fundamental rights are at stake. The justiciability of conflicting rights and obligations in an intergenerational setting was expressly linked to the rule of law in Urgenda, in which the Dutch Supreme Court stressed that the courts’ mandate to ‘offer legal protection, even against the government, is an essential component of a democratic state under the rule of law’.142 In European jurisdictions, the separation of powers doctrine does not usually constitute an insurmountable obstacle to adjudicate cases challenging domestic climate targets.143 The approach of courts is far from uniform, though. The first instance court in Klimaatzaak, for instance, found that it was not entitled to set a specific reduction target for the legislature under the separation of powers principle.144 The appellate court disagreed and compelled the respondents to ensure that Belgium meets its target of reducing GHG emissions by 55% by 2030 compared with emissions levels in 1990.145 The reach of the political question argument is strongest in some common law countries, having blocked climate lawsuits on the merits in the US and Canada.146 EU courts have also been hesitant in relaxing strict standing requirements to allow climate claims to proceed.147 <<TEXT CONDESNED, NONE OMITTED>> Plaintiffs seeking to establish standing on behalf of generations unborn face challenges rooted in the conceptual difficulty of claiming representation for future individuals.148 Transgenerational entities149 such as communities – which include states, tribes and cities, as well as specialized spokesperson institutions150 – have already succeeded in bringing intergenerational claims to courts.151 Children and youth plaintiffs are the other types of actor who typically have standing; they comprise around a quarter of the claimants in rights-based climate change lawsuits.152 Some courts have acknowledged the right of youth plaintiffs to claim intergenerational standing,153 but many jurisdictions have not.154 At the international level, children have been deemed to be victims of adverse climate impacts in the future, and thus were granted standing before the UN Committee of the Rights of the Child in a complaint regarding states’ inaction on climate change.155 The same issue is currently being litigated before the ECtHR with regard to Portuguese children, coupled with the question of whether the children have standing to bring a claim that demands climate action extraterritorially, from 32 foreign states.156 Domestic courts have mostly addressed the exterritoriality question at the standing stage. Some acknowledge a close link between intergenerational and intragenerational equity, as suggested by various scholars.157 In Neubauer, the German Constitutional Court recognized the standing rights of complainants coming from Bangladesh and Nepal, although it stressed that the extent of Germany's obligations to prevent future adverse climate impacts abroad are fundamentally different from those owed to its own citizens. It thus found the narrower extraterritorial obligations to have been met.158 To this extent, this decision may even be placed among the more restrictive jurisdictions. Intergenerational claims are also raised in class action lawsuits, which are filed by children in their own name and on behalf of future generations. A Canadian court notably deemed the composition of a class to be arbitrary because it involved only residents under the age of 35 in a particular province and excluded inhabitants of other regions.159 The majority of decisions seems to follow a more restrictive path and bundle the interests of present-day children and future generations only at the local scale – if they all live in the same region or in the same state.160 Such an attitude expands the temporal horizon of state obligations at the price of confining their geographical scope. This approach fails to consider intragenerational (extraterritorial) grievances – past, present, and future – in concretizing intergenerational obligations. Such decisions could be criticized for being ‘parochial’161 and even ‘hypocritical’.162 Indeed, courts of the global north appear to be weary of holding historically high-emitting states accountable for their historical emissions, and they do not compel governments to adopt stricter emissions reduction obligations on account of the widespread damage that such emissions have been (and will be) causing for the historically low-emitting countries from the global south. In a warming world, future generations of different parts of the world will face very diverse climate and environmental futures. We are yet to see whether domestic and international courts will be willing to reflect on these differences and integrate intragenerational equity into their reasoning in future generations lawsuits. 5. Judicial Standards for Detecting Arbitrariness: Science and Soft Law In operationalizing the legal doctrines surveyed above, courts need some criteria to anchor their analysis concerning the future interests they deem worthy of protection through judicial intervention. Most importantly, they must ensure that their reasoning is not seen as capricious or biased. The legal doctrines I identified above are vaguely defined, open-textured norms, the application of which to particular facts leaves considerable room for judicial discretion. For instance, the concept of due diligence under international human rights law does not entail specific obligations for states,163 nor do the public trust doctrine or the right to a healthy environment. Courts therefore need to find substantive benchmarks to appraise the compatibility of sovereign conduct with normative requirements. In doing so, they must devise legal (or technical) standards to measure against the ‘arbitrariness’ of laws and policies or, in other words, their capacity to encroach upon the interests of future generations. Two common argumentative solutions emerge. Courts either refer to scientific knowledge or to goals enshrined in soft law documents to review the merits of short-termist legislation. Science is often seen as a supplier of objective knowledge in the courtroom,164 enabling adjudicators to make robust assessments of the magnitude and imminence of future risks. Taking into account robust scientific knowledge is a core requisite for making ‘reasonable’165 decisions. In this vein, to limit the sovereign's regulatory freedom, domestic courts often rely primarily on scientific reports. In Neubauer, the German Federal Constitutional Court pointed to the results of climate science in finding that the lawmaker exceeded the bounds of its discretion. It stressed that ‘if reliable data suggest that the constitutionally relevant temperature limit might be exceeded, such data must be taken into account’.166 References to climate science seem to be an almost obligatory accessory of climate litigation judgments. The recommendations contained in the reports of the Intergovernmental Panel on Climate Change have sometimes directly laid the foundation for the reduction targets mandated by courts.167 The findings of expert organizations are also instrumental in defining the breach of stewardship obligations. In the Amazon decision, the Supreme Court of Colombia referred to scientific reports to support its conclusion that governmental measures were ineffective in combating environmental problems in the region.168 Similarly, the first instance court in Klimaatzaak referred to the opinion of the Federal Council for Sustainable Development to justify finding a lack of good climate governance, which was one of the grounds for establishing a breach of the government's civil law duty of care.169 Another cross-jurisdictional pattern shows that courts often use soft law goals and prior policy commitments of the state as a benchmark for assessing whether governments arbitrarily harm the interests of future generations. Such an inquiry was most explicit in the Hungarian Forest decision, in which the Constitutional Court partially quashed an amendment to the Forest Act for contravening principles set out in the long-term National Forestry Strategy. The Strategy had been adopted by the legislature as a non-binding sectoral policy instrument setting out a long-term vision and principles for national forest management. A few years later, the amendment narrowed the powers of authorities to mandate temporal and spatial restrictions on logging for nature conservation purposes. The Court opined that this ran counter to sustainable forest management, as set out in the Strategy, and therefore repealed the amendment.170 A structurally similar argument was made in Milieudefensie v. Royal Dutch Shell by the first instance court.171 While interpreting the normative content of the unwritten standard of care in civil law, the District Court turned to the UN Guiding Principles on Business and Human Rights (UNGP),172 which is a soft law compilation of principles addressed to states and companies. Although the UNGP do not impose binding obligations on corporations, the court nevertheless argued that ‘the responsibility of business enterprises to respect human rights, as formulated in the UNGP, is a global standard of expected conduct for all business enterprises’.173 On these premises, the District Court ordered Shell to increase its mitigation efforts in line with its obligations under the UNGP. <<PARAGRAPH BREAKS RESUME>> These examples also suggest that the dividing line between hard law and soft law obligations often becomes blurred in future generations litigation. Courts appear to turn non-binding standards into judicially enforceable benchmarks to carve out certain policy choices from decision makers’ lawful room for manoeuvre. The soft law standards reflect a political consensus, negotiated irrespective of the particular lawsuit, on the measures that the courts deem necessary to protect posterity's long-term interests. Similarly, the scientific opinion of competent institutions with recognized prestige and expertise lends persuasive force to judicial findings that limit sovereign choices. 6. Conclusions on Transforming the Rule of Law: Trends and Implications This snapshot of the frontlines of future generations litigation has shown how legal claims keep challenging the traditional content of states’ rule of law obligations across national, and also some international, jurisdictions. Courts are increasingly willing to interpret and apply traditional rule of law guarantees in a ‘revolutionary’ way: by extending their temporal scope to include both the concerns of future individuals as well as the future needs and rights of present-day subjects. Firstly, many jurisdictions now afford human rights safeguards against future environmental and climate hazards; and some even recognize unborn generations as rights holders. Secondly, national courts have also set various quality of law requirements for national climate laws to establish ambitious mitigation commitments. Thirdly, several jurisdictions have put constraints on the arbitrary exercise of governmental powers that threaten the viability of long-term natural assets, either by declaring such laws invalid or by compelling present decision makers to establish protective measures. Fourthly, while most lawsuits involving claims of age-based discrimination against minors are still pending, some courts have already shown sympathy for the discriminatory impact of adverse climate change on future generations. Finally, access to justice is increasingly granted in intergenerational lawsuits through expanding rules on justiciability and standing. Courts concretize the meaning of legal standards through heterogeneous strategies, which are closely tailored to the specificities of national laws. Different modalities of rights-based approaches (including creating new rights holders), duty-centred reasoning, and concepts borrowed from Indigenous legal cultures174 all have their rightful place in the judicial ‘toolbox’, depending on the interpretative canons of the applicable legal culture. Such heterogeneity appears to be inevitable. The success of future generations lawsuits depends, at least in part, on whether plaintiffs manage to find the appropriate doctrine to expand the contours of state obligations that is most in line with domestic legal traditions. In sum, courts appear to delineate the interests of future generations worthy of judicial protection through one of five legal avenues, all of which flow from the rule of law. Accordingly, these rule of law pillars mark the application of the intergenerational equity principle in judicial practice. In many scenarios it would be difficult for courts to select long-term interests that ought to be protected through substantive standards, given that such interests can be vague and subjective, and thus contestable. In similar delicate situations in the past, courts have turned to procedural requirements in their environmental case law.175 For the same reason, using the safeguards stemming from the rule of law are perhaps the most viable judicial tool to operationalize intergenerational equity. On a higher level of abstraction, plaintiffs demand (with increasing success) that states respond to scientifically substantiated environmental risks and adopt ‘good laws’ with the purpose of diffusing ‘happiness and powers universally and equally’176 – in our context, equally across generations. To that extent, successful future generations lawsuits insist on an ambitious justice concept as expressed within various theories of intergenerational justice.177 At the minimum, unfolding judicial practice pushes present decision makers ‘to make wise choices for future generations’.178 In the ‘laboratory’ of future generations litigation, courts translate the morally rooted requirement of passing good laws and making wise policies into binding obligations on states not to treat future individuals in an arbitrary way. Decisions and policy choices made in the present that are ‘capricious’ and unjustifiable in the light of scientific knowledge and soft law goals are repeatedly struck down by courts. States are no longer free to prioritize ‘at will’ certain short-term gains over long-term risks by wielding ‘uncontrolled power’ (to use colloquial synonyms of ‘arbitrary’) over ‘colonized’179 future generations. Even though states do retain discretion in balancing competing interests, their actions are becoming increasingly scrutinized to ‘arriv[e] at a reasonable balance’180 between present-day interests and longer-term impacts. Judicially prohibiting arbitrary disregard for the interests of future generations may not be as revolutionary an idea as it may sound at first. It is in line with the changing contours of sovereignty, where states need to take into account ‘other-regarding considerations’ in designing their policies not only towards ‘foreign stakeholders’,181 but arguably also towards future stakeholders. Positing binding guarantees against arbitrariness towards future generations also resonates well with the idea that state sovereignty has inherent limits under international law and prohibits unreasonable exercise of sovereignty to the detriment of future people.182

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The implications of future generations lawsuits are of constitutional proportions; they call for transforming our conceptions of the meaning of the rule of law183 and, through that, they might recalibrate some of the basic tenets of the current system of environmental and climate governance. More specifically, a transformed understanding of basic rule of law obligations, if spread across jurisdictions and maintained to a sufficient degree to solidify,184 could assist in holding states liable for inflicting harm over longer timescales. By fostering a new, future-focused understanding of the rule of law, courts could level the playing field for later generations and emancipate them from the ‘systematic bias’185 of current short-termist decision making.

#### Short-termism is existential.

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Paradigmatic examples of possible existential catastrophes include natural extinction events such as asteroid impacts, naturally occurring pandemics, supervolcanic eruptions, and stellar explosions; anthropogenic extinction events such as nuclear holocausts and engineered pandemics; and extinction events arising from both natural and anthropogenic factors such as tail risks of runaway greenhouse effects.6 All these catastrophes would eliminate our species and (a fortiori) destroy our ability to develop our moral powers. But existential catastrophes need not involve extinction. On our account (like Ord’s), the emergence of a dystopic system of universal human oppression from which we could never recover would also constitute an existential catastrophe, even if it did not literally wipe us out (Ord, 2020: 145–155).7

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Naturally, we are and should be interested in mitigating risks of all sorts. But x-risks are especially grave. While humanity could potentially recover from a non-existential catastrophe, a true existential catastrophe precludes any possibility of recovery. Hence, x-risk mitigation is a wholly proactive endeavor. In assessing different political systems’ capacities to mitigate x-risk, we should bear in mind three features of most x-risks: Long timescales: Many existential catastrophes are unlikely to occur for many thousands—or even millions—of years. For example, an asteroid impact may not threaten humanity with extinction for several million years, because there is an inverse relation between asteroid size and frequency of impact (with more dangerous impacts occurring much less frequently). Low probabilities: Relatedly, most—though not all—existential catastrophes are individually unlikely. For instance, the probability of an existentially catastrophic stellar explosion within the next century is only 1 in 1,000,000,000 (Ord, 2020: 167). Complexity: Many x-risks cannot be adequately understood without a firm grasp of several complex technical subjects. For example, the risk of value-misaligned artificial intelligence cannot be adequately understood—let alone minimized—without a good grasp of computer science, decision theory, and other cognitively demanding fields of study. In short, most x-risks (though not necessarily all) involve far-off, low-probability, and complex events. Consequently, it is easy to underestimate the threat they pose to humanity. But x-risk is no minor concern. Although the individual probability within the next century of any one existential catastrophe may be quite low, the cumulative probability of all such catastrophes—the total x-risk—may be worryingly and surprisingly high. (Ord (ibid.) estimates it to be roughly 1 in 6.) X-risk is therefore both especially important and especially hard to mitigate. Unfortunately, we cannot directly study which political systems minimize any given individual x-risk. For obvious reasons, it is impossible to wait until after an existential catastrophe has occurred to learn from experience which political systems dealt with it best. Thus, in assessing different systems’ relative x-risk-mitigating capacities, the best we can do is to study the extent to which a given system promotes informed, rational, and long-term decision-making in general. Plausibly, systems which do not effectively promote such decision-making are ill-suited to deal with problems like x-risk. Of course, such an indirect method can hardly be definitive—one reason we do not claim to know which systems would minimize cumulative x-risk. But it can still be quite fruitful. 2.2 Three pathologies of democracy Is democracy always best suited to deal with problems like x-risk involving far-off, low-probability, or complex events? We doubt so, because democratic decision-making is compromised by at least three pathologies: voter ignorance, voter irrationality, and democratic short-termism.8 First, democratic decision-making is compromised by voter ignorance. Since becoming politically well-informed is highly costly and only minimally beneficial to individual voters, most democratic voters are rationally ignorant (Downs, 1957: 207–219). Decades of research confirm that typical voters are ignorant of even basic facts about the structure and function of political institutions, the identity and platforms of political candidates, and much more.9 Unsurprisingly, most voters are also ignorant of important social-scientific subjects relevant to democratic politics—not to mention the many other complex subjects relevant to x-risk mitigation. Voters’ widespread ignorance has two mutually reinforcing consequences. On the one hand, ignorant voters often support candidates endorsing harmful policies. On the other hand, both prospective and current legislators are incentivized to respond to ignorant voters’ preferences.10 The joint effect of these two consequences is the frequent implementation of laws and policies which go against citizens’ interests—including their interest in x-risk mitigation. A salient recent example is contemporary democracies’ ineffective response to the COVID-19 pandemic (Winsberg et al., 2020). If COVID-19 had been much deadlier, the ensuing pandemic could have become a genuine existential catastrophe for which most democracies—and most extant non-democracies—would have been terribly underprepared. Second, and similarly, democratic decision-making is compromised by voter irrationality. Just as becoming politically well-informed is highly costly and only minimally beneficial to individual voters, so too is conforming to normal standards of epistemic rationality in political belief formation. In fact, in many partisan environments, epistemic rationality can even be penalized. Within some ingroups, for instance, rationally moderating one’s beliefs may result in ostracization and other social costs. Hence, most democratic voters behave in paradigmatically epistemically irrational ways in the political domain. Indeed, most voters are rationally irrational: (practically) rational in their (epistemic) irrationality (Caplan, 2007). Naturally, rationally irrational voters incentivized to form irrational political beliefs are not especially well suited to deal with political problems of any kind. X-risk is no exception.

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Third, and maybe most importantly, democratic decision-making is compromised by short-termism. A large body of work in political science suggests that democracies focus unduly on short-term problems at the expense of long-term ones.11 Of course, short-termism is not a problem for democracies alone. Some determinants of short-termism are general and pose a challenge for all political systems. For example, many cognitive biases can lead us to neglect long-term issues. In conditions of informational uncertainty about the future, we often discount the value of actions with long-term benefits relative to actions with more certain short-term benefits (Frederick et al., 2002). In addition, we are often more responsive to salient and visible risks than to risks apparent only from abstract reflection or extrapolation from data (Weber, 2006).12 But salient, visible, and short-term risks are not necessarily the most threatening ones, and in any case, most x-risks are neither salient, visible, nor short-term. Consequently, most members of any political system can be expected to neglect long-term problems like x-risk, because psychological determinants of short-termism predispose them to biased short-term thinking.

#### Flipping incentives solves extinction.

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Global catastrophic and existential risks pose central challenges for intergenerational justice and the structure of our current democracy. The Global Challenges Report 2016 defines global catastrophic risk as risk of an ‘event or process that, were it to occur, would end the lives of approximately 10% or more of the global population, or do comparable damage’ (Global Challenges Foundation & Global Priorities Project, 2016). A subset of catastrophic risks are ‘existential’ risks, which would end human civilisation or lead to the extinction of humanity (Global Challenges Foundation & Global Priorities Project, 2016). Catastrophic and existential risks may be categorised in terms of ongoing risks, which could potentially occur in any given year (e.g. nuclear war; pandemics), versus emerging risks which may be unlikely today but will become significantly more likely in the future (e.g. catastrophic climate change; risks stemming from emerging technologies). Ongoing risks have existed for some time now and are generally well-understood. However, emerging risks, particularly those arising from technological developments, are less understood and demand increasing attention from scientists and policymakers. These technological developments include advances in synthetic biology, geoengineering, distributed manufacturing and artificial intelligence (AI) (Global Priorities Project, Future of Humanity Institute, Oxford Martin School, Centre for the Study of Existential Risk, 2014). Although the impact of these technologies is still very uncertain, expert estimates suggest a non-negligible probability of catastrophic harm.

In this article we rely on two main premises. The first is that future generations are under-represented in current political structures partly due to political ‘short-termism’ or ‘presentism’ (Thompson, 2010). Governments primarily focus on short-term concerns, which mean that they may systematically neglect global catastrophic risks and, accordingly, future generations (Global Priorities Project et al., 2014). The problem of presentism transcends political divisions: people across the political spectrum are concerned about its effects, and should care about mitigating global catastrophic risks. This situation is exacerbated in that the good of mitigating global catastrophic and existential risks is typically global. Individual political actors (even whole countries) bear many costs in providing for such goods, whereas the benefits are dispersed globally. In addition to the benefits of mitigating existential risks being global, many of the beneficiaries are future people who do not exist presently and as such have no voice in the political process. There is a clear lack of incentives to mitigate such risks, and market failure should be expected (Beckstead, 2013).

The second key assumption is that we as a society consider the rights and interests of future generations to be important. It is beyond the scope of this paper to present a complete account of the philosophical arguments on this matter. It is sufficient to note that although significant philosophical problems have been pointed out, chiefly due to the fact that the actions of present people have a causal impact on the values, number and identity of future individuals (Parfit, 1984), there are several theories of intergenerational justice that may support this assumption (Gosseries, 2008).

The need to include explicit pathways in governance structures for accountability to the rights and needs of future generations has been noted (Global Priorities Project et al., 2014). Some thought has been put into how future generations may be represented in relation to environmental risks such as climate change, resource depletion and biodiversity loss; this research is reflected in the sustainable development literature (Brown Weiss, 1990). However, this problem has not been explored in relation to society’s burgeoning awareness of technology-related catastrophic and existential risks. In addition, such pathways have not been fully explored in the United Kingdom (UK) context. This policy paper hopes to fill this gap in the literature.

#### If they win framework, assessing long-termists and policy responses creates emancipatory futures, AND doesn’t trade off with attention to structural injustice.

Norris ’23 [Trevor; 2023; Associate Professor in the Department of Educational Studies at Brock University; Brock Education: A Journal of Educational Research and Practice, “Education and the End of Times,” vol. 32]

Education presumes a future. But education also has an important responsibility to preserve and protect a future. Even when concerned with the past, for example through history education (and history of education), education aims to preserve the past and carry it forward into an unknown future. Often education is tasked with changing the future, currently most apparent in the field of environmental education, where education is asked to inform the next generation about the threats we are facing, encourage new values regarding nature, and initiate political changes towards that environmental stewardship.

Longtermism and Existential Risks

A century ago, people could not have anticipated the threat of nuclear war or climate change. What new risks might emerge in the future? While climate change dominates discourse about the near term, other risks may prove to be even more catastrophic further ahead—what are called “existential risks.” Existential risks include things both natural and anthropogenetic (caused by human activities): nuclear war, pandemics, loss of biodiversity, overconsumption, supervolcanoes, or an asteroid such as the one that heralded the dinosaur era and a later one that ended it. Artificial intelligence, the development of a rival sentient “superintelligence” (Bostrom, 2016) on Earth, may turn out to be more dangerous than any other known risk, showing that while humanity has survived existential risks for a very long time, the biggest existential risks are increasingly anthropogenic: caused by human activities rather than nature.

What are the arguments for thinking long term? A central tenet of longtermism is that there will be far more people living in future generations than have lived and are currently living; present or even near-term lives are far fewer than future lives. While it is true that the impact of our current actions in a hundred years is far more knowable than our impact in a hundred thousand, the immensity of the future and the vast number of potential lives that may exist presents considerable moral reasons to think long term. Evolutionary history shows that Homo sapiens have been around only a fraction of the time most mammalian species last: potentially hundreds of thousands of years, or even hundreds of thousands of generations. While there is a great accumulation of the past behind us, there could be far more future. Humanity is only getting started.

What makes humanity worthwhile? What makes humanity worth preserving? Some question whether the extinction of humans wouldn’t be such a bad thing (O’Connell, 2020). Others suggest that we shouldn’t overlook the future positives that humanity might bring about. Therefore, we should reduce existential risks not only because humanity is important but also because humanity might lead to something greater; perhaps the loss would not only be to humanity but to what humanity might be leading to.

Some longtermists argue that it is morally questionable to privilege the soon-to-be-born over those not born several generations hence (MacAskill, 2022). Our moral obligations to the future are made even more clear when we consider that far more people will live in the future than in the past. If human civilization is around for millions of years (what theorists call the “far future”) when we weigh the possibility of thousands of generations, our actions to address threats to humanity within the next thousand years gain even greater import. The expected value of the future is huge. Philosopher Nick Beckstead (2013) argues that “what matters most (in expectation) is that we do what is best (in expectation) for the general trajectory along which our descendants develop over the coming millions, billions, and trillions of years” (p. 1). How best to value the future? How to weigh low probability but near term versus higher probability but far term? Although there are significant challenges in calculating the potential costs of such events with any precision, especially in the “far future,” they are not negligible (Posner, 2004).

Apocalyptic Opportunities

But thinking about such dire scenarios can have positive effects. Indeed, the word “apocalypse” comes from the ancient Greek apokalypsis, meaning to “uncover”—a “revelation or disclosure” (OED, n.d.). It is only in recent centuries that the word took on a strictly negative connotation. Haines-Eitzen (2020) writes about “apocalyptic hope,” noting that “Apocalypticism cultivated a sense of meaning and encouragement through dire circumstances” (para. 16). In “The Apocalyptic Word,” Jenny Stümer and Felicitas Loest (2022) note that apocalypses are transformative and open up opportunities for new beginnings: “Optimistically speaking, apocalypses are transformative: They are about the creation of novel and emancipatory collective imaginaries that undo pervasive conceptions of the world and trouble established ontological and epistemological promises of the ways we may inhabit this planet” (p. 5).

Whether we leave the Earth or not is decreasingly relevant because we are making it less and less earth-like and more and more “made.” We are turning Earth into a spaceship, in the sense that we increasingly—and must, in order to survive—surround ourselves with things entirely of our own making. Political theorist Hannah Arendt (2018) describes this as “worldly alienation” or (“worldessness”) and describes the launch of Sputnik as initiating an age in which human beings dwell in a world entirely of their own making. Although in outer space humans must have complete mastery over the environment that they themselves create, it is a very inhospitable place to live compared to Earth (Hall, 2019).

Existential Risk and the End of Education: Enhancements and Alterations

Longtermism raises many questions: ethical questions (what kinds of values should we promote for the future?), technological questions (can more technology stop technological harm?), political questions (who decides who has power and responsibility?), and educational questions (how to educate the next generation to prevent catastrophe? What will future education look like?).

Much is asked of education. Anticipation of future catastrophes might make education irrelevant, in the case of extreme cataclysms: why go to school when your future will soon be obliterated? If one knew they had only a short time to live, then education might be less important than other pursuits. On the other hand, existential risks may make education overwhelmingly important and deeply urgent. The global “School Strike for Climate” initiated by Swedish student Greta Thunberg is a movement of students who skip school on Friday and instead participate in protests (“School Strike,” 2023); however, long-term risks might make education even more important. Some founders of the longtermist movement began offering career services to help students determine which career paths can have the most long-term impact based on the notion of “effective altruism” (Koehler, 2020; Whittlestone, 2018).

Educational institutions such as universities can be important sites for this research. Several academic research institutes have emerged in recent years to study the topic. For example, the Centre for the Study of Existential Risk (CESR, 2023) is an interdisciplinary research centre at the University of Cambridge that is “dedicated to the study and mitigation of risks that could lead to human extinction or civilisational collapse” (para. 1); its chair, philosopher Martin Rees (2021), notes that “The earth has existed for 45 million centuries. But this is the first century in which one species, ours, has the planet’s future in its hands” (p. 12). The Future of Humanity Institute (FHI, 2023) at Oxford University “works on big picture questions for human civilisation and explores what can be done now to ensure a flourishing long-term future” (para. 1). To examine this question, the FHI brings together math, philosophy, computer sciences, ethics, and the social sciences, publishes academic work and policy papers, and also is involved in government consulting. The Centre for Apocalyptic and Post-Apocalyptic Studies (CAPAS, 2021) at Heidelberg University examines how societies respond to threats of catastrophes and “employs a transdisciplinary research approach toward the production of a differentiated description of radical changes and breakdowns in the past and present” (para. 1). CAPAS looks at coping strategies, successful and failed responses, and ways to “strengthen societal and political resilience” (para. 2) to existential threats. Brock University’s Posthumanism Research Institute (2023) notes that “our humanist tradition and the way we have conceived of ourselves as exceptional” (para. 1) is at the root of the many issues we face, and advocates “thinking through our manifold entanglements with other human and nonhuman animals” (para. 2). However, significant issues arise if funders are not arm’s-length researchers from particular corporate interests, as is the case regarding AI research (Baker & Hanna, 2022).

Post-Education Futures?

But longtermism also raises many important questions about education: Are there limits to what education can do? Can education really save us from our future—especially our far future? (Peters, 2020). These debates raise important questions about the future of education. Is the most appropriate way to change the human being through technological or biological alterations, rather than through education? Such risks demand that we rethink education; as Wallin (2017) puts it, “To deny that education must be fundamentally rethought in relation to such ecological complexity marks a failure to engage not only the challenges to human and non-human life intimate to the anthropocene, but a reluctance to forge a speculative encounter with the quite real potential of human extinction” (p. 1100).

Enhancement is an artificial way of bypassing what makes us human—our various impediments, imperfections, inconveniences, and inefficiencies—to promote a technological re-creation of human beings that can overcome these impediments. The inferiority of our biological “wetware” is evident as substandard next to the hardware and software that technology offers. Considering all the effort and expenses involved in educating our biological wetware, why not embrace neural implants, genetic alterations and amendments, brain implants, cognitive drugs, and other such biochemical pharmacological solutions that allow us to simply bypass education? This is what Tillson and Aldridge (2018) call “knowledge as insertion”: a futuristic techno utopia in which knowledge could simply be inserted into the human brain through some hybrid mix of circuits and grey matter.

These possibilities indicate that technology is not something that helps education but rather something that replaces it; technology makes education redundant. Such futures are therefore post-educational futures (Peim & Stock, 2022).

Education When Nothing Remains: Education as Teaching Knowledge of the End

What is the best way to ensure that education contributes to the preservation of our world in the face of any number of possible future scenarios? Should schools even raise these issues with children? Some argue that certain topics are too upsetting for children (Boler, 2013; Kelly, 1986), even though apocalyptic and existential issues invariably appear in religious education. However, Jandrić (2020) notes that “Schools teach students about ‘the future of humanity’ and ‘end times’ anyway—so the real question is how to make that teaching better” (p. 828). Discussions about future technologies and their threats should not displace a focus on justice, equity, and what Freire (1972) called “critical consciousness.” Having the right political order in place would position us better to deal with future catastrophes.

### Theory: Floating PIKs---1AR