**Denial and Debilitation:**

**Environmental Rights and the Harm of Climate Change Denial**

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*“The earth belongs in usufruct to the living.”*

Thomas Jefferson to James Madison, 1789

**Introduction**

As a farmer, Jefferson knew enough about soil 230 years ago to know that if it were not tilled and refreshed (with more enriching elements than the “blood of patriots and tyrants”) the result would be a less arable land for future generations of Virginia planters. So land use was a right imposing a corresponding duty not to damage or destroy earth’s richness. There was no denying this caretaker responsibility in his mind, for the simple reason that future persons were to be guaranteed the same rights as the living.

Jefferson’s commitment to the rights of future generations was more fully articulated in the arguments of his friend, Tom Paine, but Jefferson’s conceptual contribution specifically concerned rights to the land. Today, the right to rich (or clean) soil is part of a bundle of rights generally referred to as environmental human rights. The rights to clean air, water, and soil have been incorporated into several national constitutions and even those of five US states, and together they are in jeopardy due to climate change; that jeopardy is undeniable to anyone paying attention to the science underlying climate change.

Ensuring those environmental rights for future citizens and for all humans is the duty of the living, a duty that official climate change denial continues to allow many to shirk. I will argue in this piece that, in a manner similar to official genocide denial, climate change denial that reaches the level of official policy causes harm to future persons in two ways: first, by delaying or debilitating the action necessary to ameliorate those environmental effects, and therefore violating environmental human rights. Second, climate change also puts at least three other human rights listed in the Universal Declaration of Human Rights (UDHR) at risk for future generations.

An important distinction must be noted when considering environmental impacts and environmental rights. We live today with environmental risks; it is in the future where those risks will be realized in the form of vast environmental damage. Such harm would violate environmental as well as other human rights, and we the living need to embrace the corresponding duty to prevent it.[[1]](#endnote-1)

The progress of climate change is not inexorable. There is still time, according to most climate change scientists, for vigorous, coordinated efforts to slow its deleterious effects on our--and the future’s--natural environment. But two recent reports make clear that the need for comprehensive action is already upon us. The Fourth National Climate Assessment, produced for the US Congress in late 2018, announces that “[T]he impacts of climate change are already being felt in communities across the country. . . . Further climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality.”[[2]](#endnote-2)

A second special report from the Intergovernmental Panel on Climate Change (IPCC), warns that even limiting overall global warming to 1.5 degrees centigrade over pre-industrial levels poses widespread and devastating consequences. Furthermore, *limiting* warming to 1.5 degrees

“would require rapid and far-reaching transitions in energy, land, urban

infrastructure (including transport and buildings), and industrial

systems. These systems transitions are unprecedented in terms of scale, but not necessarily in terms of speed, and imply deep emissions reductions in all sectors, a wide portfolio of mitigation options and a significant upscaling of investments in those options.”[[3]](#endnote-3)

There *is* still time, but officially sanctioned and coordinated measures such as the Paris Accords need to move forward without delay and without backward steps. In that context, official climate change denial, as is the current White House position in the US, has the effect of chilling or even stopping policies meant to combat the harms portended by environmental changes.[[4]](#endnote-4) Denial has the “debilitating” effect of stopping or slowing policy implementation aimed at reducing carbon emissions. I will argue that such debilitation is indeed harm, to a degree that rises to violation of environmental and other human rights.

**Human Rights Denied**

In her work on Holocaust denial, Deborah Lipstadt observes that, “[I]f Holocaust denial has demonstrated anything, it is the fragility of memory, truth, reason, and history.”[[5]](#endnote-5) In a similar vein, Naomi Oreskes and Erik M. Conway explain how climate change denial relies on a fallaciously “balanced” approach to both scientific knowledge and journalism that undermines the objectivity and accuracy of both.

“Hearing ‘both sides’ of an issue makes sense when debating politics

in a two-party system, but there’s a problem when that framework is

applied to science. When a scientific question is unanswered, there may

three, four, or a dozen competing hypotheses, which are then investigated

through research. . . Research produces evidence which in time may

settle the question. After that point, there are no ‘sides.’ There is simply

accepted scientific knowledge.”[[6]](#endnote-6)

Holocaust denial does violence to memory and historical truth; climate change denial similarly violates accepted scientific facts. Both denials are wrapped in the justificatory language of liberal tolerance for disagreement and embrace of “free speech.” As such, both sets of deniers might be sneered at by more sophisticated observers of history or of science, but do the denials constitute harm, more specifically harm significant enough to contravene actual human rights?

The answer is likely “no” if the argument remains at the abstract level of access to “truth” or scientific knowledge. However, I contend that *tangible* harm that violates human rights is done to people who are victimized by either genocide or climate change denials. Following Gilbert Harman’s widely accepted formulation that human rights protect us from harms that threaten our political well-being, equality, or sense of dignity, genocide denial’s victims are the survivors and their successors; in the case of climate change denial they are all future persons.[[7]](#endnote-7) Both groups experience significant violation of their human rights sufficient to warrant official action in response to those harms. In any event, the similarity between the two forms of denial is worth exploring if our goal is to accurately assess the human rights harm of climate change denial.

Some nations such as Rwanda, France, Belgium and Austria have laws in place that make it a punishable criminal offense to deny genocide. Such “denial” or “memory” laws carry penalties for acts of public denial, construing them as illegal speech acts of “incitement.”[[8]](#endnote-8) And for the European Court of Human Rights the denial or trivialization of the Holocaust specifically, is itself a form of incitement.[[9]](#endnote-9) Speech crimes characterized as incitement are generally considered “inchoate” crimes, since the criminality is in the utterance itself and not dependent on whether the targeted group of victims is targeted again. But their inchoate nature should not be construed as victimless--or harmless--if in fact they lead to preventable violence against a targeted group. As Richard A. Wilson argues, the bringing of charges against deniers can have an important preventative effect. “The central utility of criminalizing particularly dangerous utterances lies in prevention. . . .”[[10]](#endnote-10)

Whether the harm of genocide denial is serious enough to warrant restriction of another human right--that of freedom of speech, is usually how the philosophical or legal question of denial’s criminality is posed. But I think there is a more efficacious approach to uncovering the harm of both genocide denial and climate change denial than exploring their suppressive impact on public speech. As a response to claims of genocide or climate change, denial is one of two possible public and/or official reactions. In the former case, the invidiousness of genocide denial is revealed in comparison with the effects of its opposite reaction to the historical event--an official apology.

Official apologies are also speech acts, and as policy are as similarly “inchoate” as denials. The comparison of the two reveals other “harms” caused by denial in the failure to realize the benefits generated by an official apology. In the same way that formal apologies can compensate for the harms and protect the human rights of survivors of genocide, apologies to future generations in the form of expenditures (as “reparations”) and policies to ameliorate climate damage can protect their environmental human rights in the face our environmental depredations that they inherit. In both cases, we will see, the benefits properly attending official apologies are the exact inverse of the harms accompanying official denials.

**Denial, Apology, Identity and Empowerment**

The initial condition for the possibility of apology, whether personal or official, is explicitly rejected by the position of denial. This is true for several aspects of apologies, as we will see, but the first is that any real apology presumes a pre-existing relationship between the apologizer and the recipient. By their nature, authentic apologies are extended and received by persons (or in official cases, nations or peoples) who have been in a relationship considered by both to be fair or just, and that has been violated or tainted by one of the actor’s behavior. Strangers who jostle us on the street may mumble a “sorry” as they move on, but neither they nor us consider such statements to be real apologies, since we do not know them and will likely never see them again. What makes such expressions of regret not “real” is the absence of several features incorporated into any authentic apology, including any notion of harm rising to the level of violating either a feeling or a right. When the harm is sufficient to require a real apology, it is because one of the parties to the relationship has been hurt and the relationship itself has been damaged. Apologies are the method of restoring them; if not extended, the relationship is permanently affected. Such restoration might seem too much for any apology to accomplish, yet, as Martha Minow notes, this is the paradox of apology--it should not be able by itself to erase or fully expiate past wrongs, but “in a mysterious way and according to its own logic, this is precisely what it manages to do.”[[11]](#endnote-11)

In the case of genocide denial, it is often true that what is being denied is the pre-existing relationship between the perpetrators and the victims. This is usually manifested as a denial of any targeted group (e.g., Jews, Tutsi’s) other than vague “criminals” or “enemies of the state.” If there is no discrete group who has been harmed, but rather only subjects of law enforcement, no apology is forthcoming, or likely expected. In climate change denial the relationship between perpetrator and victim is explicitly ignored, since the victims are future persons and the perpetrators are all of us, specifically our official representatives charged with making environmental policy. Our actions accelerating climate change make clear that the living do not accept a relationship involving duty to future generations. Comedian Groucho Marx then famously speaks for us all: “The future? What has the future ever done for me?”

Besides refusal to acknowledge a pre-existing relationship involving mutual duties, both genocide denial and climate change denial also specifically reject other elements present in all apologies. The first several of these are included in what Michael Marrus declares a “complete apology.”

1. An acknowledgment of a wrong committed, including the harm that

it caused.

2. An acceptance of responsibility for having committed the harm.

3. An expression of regret or remorse both for the harm and for having

committed the wrong.

4. A commitment, explicit or implicit, to reparation, and when appropriate,

to nonrepetition of the wrong.[[12]](#endnote-12)

Though Marrus is speaking here of official apologies, the requirements he lists intuitively recommend themselves to personal apologies as well. As we will see, his list is incomplete since it only focuses on the apologizer, not the recipient. Nevertheless it is instructive as a window into how much is lost in the relationship of denial.

It is evident that genocide denial rejects every element of Marrus’s complete apology. By denying the occurrence even of the event, it denies causing harm, the need for responsibility, regret, remorse, or any need for what Janna Thompson calls “reparative justice,” including either a commitment to reparations or nonrepetition.[[13]](#endnote-13) Denial vacates the need for restoration in the relationship.

Similarly, official climate change denial carries the same exculpatory effect for those responsible for leadership in climate restoration, that is, government officials. By denying that climate harm is occurring--or that human behavior is responsible--the need for action, much less for regret, remorse, reparation, or any change of behavior, is obviated. The question for spokespersons of either denial is this: have rights been violated and victims identified in and by the denial itself? As a speech act, does the denial constitute an “inchoate” crime with recognizable victims who experience subsequent undeniable harm?

The answer to this question is yes, I contend, though the affirmative answer does not depend entirely on empirical evidence of either the occurrence of the event or its harmful impact. If the harm of genocide or climate change did happen (or is happening), then clearly human rights have been violated (viz., genocide) or will be (climate change). But more has been denied in both cases than what Marrus recognizes as warranting apology. These additions render climate change denial especially egregious as a harm-laden denial of the human rights of future generations.

Marrus overlooks four aspects of apologies, in my view,[[14]](#endnote-14) all of which evoke insights about the impact of their absence in denial, and all of which focus on the recipient of the apology (or denial). First, official apologies recognize, often for the first time, the existence of a group of victims *as a discrete and recognizable group.* Since during genocide the perpetrating party typically denies targeting any particular group, the apology officially establishes--and for the first time--the identity of the group. This granting of group identity can be a powerful moment for individuals within the group, and help establish group solidarity and group rights claims. More than just recognition, “the power and importance of the apology lie in its potential to offer to victims *a moral recognition or acknowledgement of their human worth and dignity*.”[[15]](#endnote-15)

In genocide cases, denial represents a continued anonymity for the group of victims, indeed a denial of its group right of recognition, and, as per the African Charter of Human and People’s rights, even its right to existence. In other words, the denial continues the crime of genocide in symbolic terms; it eradicates the victimized group again.

In the case of climate change denial, the group whose moral recognition is being denied is, of course, that of future generations. Denying the relevance of the environmental welfare of future persons is a denial of their environmental rights, and of our corresponding duty to protect them, as we will see in the next section. These would need to be seen as group rights also, since future persons constitute an abstract group. As I have argued elsewhere, those rights should be construed as including reparations for harm committed by the living, and should take the form of policies and expenditures to ameliorate the ongoing effects of climate change.[[16]](#endnote-16)

A second, often overlooked consequence of an apology is the empowerment--a transfer of power really--granted the recipient at the moment the apology is extended. For both official and personal apologies, if the apology is sincere and forgiveness deeply sought, the recipient at this moment wields considerable power in deciding whether or not to accept it. How much power depends on the urgency accompanying the apology’s extension, but in any case what is represented here is a grant of power meant to re-establish the balance previously maintained in the relationship. This should not be seen as a venal exercise on the part of the recipient, since it was the harm done to the relationship in the first place that upset the balance, and the rebalancing is necessary to restore it. This is why apologies work (when they do), because the recipient--the former victim--is newly empowered to decide whether to continue in the relationship.

When apologies are not forthcoming in the occurrence of denial, the continued loss of power can be devastating. Victimized once already by the original harm, the inability to “balance the score” by being asked for forgiveness might easily destroy the relationship forever. In any relationship, trust is founded upon equality; the exercise of the power to harm, without apology, by one party cannot but destroy that trust. In the case of climate change denial, this is simply to proclaim that future persons are not of equal importance compared to us.

Denial’s proclamation that the future matters less than the present violates the principle of intergenerational justice. As both Jefferson and Paine knew, treating the future as at our mercy was not only foolish, but fundamentally immoral. The lack of this moral component in apology is the third aspect missing from Marrus’s treatment. Though not necessarily revealed as a part of personal relationships, justice is specifically the aim of official apologies. This is why they must be accompanied by remorse, a “never again” promise, and usually, reparations.

Reparations solidify the meaningfulness--the sincerity--of official apologies, and their frequent absence is what makes many such apologies ring hollow and be revealed mostly as hypocrisy. What makes them shallow is their attempt to exculpate the past without any guarantee for the future. That is, they make no promise to the future generations of the injured party. Why not? Because to do so would be to bind their own future generations to an obligation owed to the future generations of the injured group. To be so bound would be a duty of intergenerational justice--to continue to fulfill an inherited obligation by a generation itself guiltless for the original harm. What would convince living Americans that they owe reparations to living African Americans for the historic harm of slavery? If nothing can, then even an acceptance of the historical fact of slavery would still lead to another kind of denial--justice denied.

The political difficulty of intergenerational justice (requiring reparations) makes climate change denial an easy option. Why should we pay more in taxes or higher prices now just to ensure a safer future? (“What has the future ever done for us?”) I have suggested two reasons in my previous work, both of which are central to the idea of justice. First, taking steps in the name of future environmental improvement also benefits us--our air, water and soil will improve along the way as well. This is a kind of reciprocity that all justice theorists from Aristotle to Rawls recognize as part of the definition of justice. I have called it “reflexive reciprocity” since it is not future persons returning tit for tat, but our actions in their name that deliver (“bounce”) the benefit back to us.[[17]](#endnote-17)

Beyond this self-interested motivation of benefitting ourselves as well, we *must* do whatever we can to meet our environmental obligations to the future, we are *morally* compelled to do so; we may not *deny* them. Why? Because future generations possess environmental human rights requiring that we carry out our corresponding duty. They have the rights because they are experiencing the harm from our inaction. But the good news is that the rights are reciprocal too--by refusing to deny climate change our own environmental human rights emerge as well. Furthermore, as we will explore next, official climate change denial becomes then, a human rights violation.

**Environmental Human Rights and their Violation by Denial**

An official apology following genocide acknowledges that human rights have been violated; this recognition is the fourth aspect missing from Marrus’s “complete apology.” By definition genocide violates the group right to existence (Article 20), as named by the African Charter. That Charter of “People’s” rights names several new rights emerging at the level of groups. The right to existence differs from the right to life (as named in the UDHR) precisely because the latter is a right held by individuals, and the existence being referred to is that of a group Also named in the Charter are every people’s “unquestionable and inalienable right to self-determination” (Article 20) and their own “economic, social and cultural development.” (Article 22) As free and newly independent nations and former colonies, these peoples “shall be equal [and] enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.” (Article 19)

Group rights remain controversial in the eyes of some human rights theorists,[[18]](#endnote-18) but once a group phenomenon like genocide moves from being Churchill’s “crime for which there is no name” to acceptance as a “crime against humanity,” the way has become clear for the emergence of group rights. The Holocaust was not only six million discrete acts of murder, after all, but a new and horrifying attack on human rights, including the right to group existence. Genocide can only be recognized as a group phenomenon and concept; therefore the right it violates is the first of many group rights claimed by the African Charter and by many groups ever since. An ancillary outgrowth of Holocaust denial then, is to put these new group rights at risk as well, including one more of interest here.

Also identified in the African Charter and for the first time in a major human rights document is the right of all “peoples” to a “general satisfactory *environment* favorable to their development.” (Article 24, emphasis added). It is significant that environmental rights are first named in the document identifying the rights of “peoples.” A human right to a healthy environment only makes sense as a group right, for a variety of reasons, some having to do with the nature of the harms producing them and the duties corresponding to those harms. Also, the “groupness” of environmental human rights is also partly due to the fact that the initial holders of environmental human rights are future persons, who can only be construed as a group, and a rather abstract one at that. Nevertheless, the denial of (group) environmental human rights will have very a very tangible and harmful impact, not only on those abstract future groups, but on us as well, because of our relationship both with the future and its rights holders.

As I stated in the Introduction, several nations and five US states have included environmental rights in their constitutions, and the case for their acceptance has been made several times now both by other human rights documents and theorists. In the concluding section of this essay we will also see that environmental rights of future persons have been accepted in important national courts both in Europe and the US. Therefore, I do not want to take time here recapitulating the arguments for the reality of environmental human rights, but to make three points concerning them.

First, I will show that as new and emerging rights, environmental human rights highlight an important feature of all human rights--that is their distinctly “relational” foundation. Second, in their invocation of the substantive environmental rights held by future persons, environmental human rights grant new procedural rights to the living to participate in the making of climate policy for protecting the substantive right. Third, I will elaborate how climate change denial impedes the exercise of the procedural right to make effective policy, and therefore substantively violates environmental human rights held by the future. In the process, climate change denial also rejects the relational nature of environmental rights, and therefore puts other traditional human rights at risk as well.

Though some thinkers from Marx to Mary Ann Glendon[[19]](#endnote-19) have argued that the very idea of rights is intrinsically “isolating” or egoistic, it has always been true that rights presume relations or connectedness between individuals in several ways. First, for Maurice Cranston and other modern philosophers, every right legitimately claimed by an individual presumes a corresponding duty for others to either do or refrain from doing something in response to the rights claim.[[20]](#endnote-20) Second, since human rights presume that governments are the addressees of rights, they also posit a political relationship between individuals in the claiming and fulfillment of their rights.

But environmental rights highlight the relational character of rights in a third and special way. Environmental rights have emerged in response specifically to environmental harms and damage that are distinctively collective in nature. Like the harm of genocide, climate change is damage that emerges at the group level; it is a negative effect of our life together, and of the sum of our collective decisions through the history of industrial and post-industrial society about the way we interact with the earth and its resources. Our “development” as a species since modernity began has caused environmental depredations not as a result of one person’s decisions or exercise of rights, but because of all of us interconnected in an inextricable web of choices that have impacted the planet as a similarly interconnected environmental system. A return to pre-industrial society is either impossible or unlikely; so our climate impact will extend into the future as well.

As the early modern rights theorist, Thomas Hobbes, first recognized, rights are specifically “human” possessions because as a species we are uniquely capable of collective action that affects both ourselves and our world. That capability relies on our capacity to make promises (or contracts) with each other to make collective action possible. Therefore, Hobbes concluded, we must have the right to do what it is our uniquely human ability to do—collectively to develop our world through our collective promises with each other.

For Hobbes, all rights are relational at their foundation then, since they rely on our human ability to interact in specific ways, involving promising, in order to make human achievement possible. In fact, rights even resemble promises themselves, since, like promises, they function as guarantees in our deliberation about our expectations for the future.[[21]](#endnote-21) Rights then are founded neither within us due to some attribute like reason, nor are they entirely socially constructed; as relational “promises” they emerge from “between” us, as products of our collective life and individual relationships.

Environmental human rights both manifest and add to this foundation by including the relationship with future persons as part of the “promise” at the core of their nature as rights. These rights invoke effects that extend into the future—indeed that are not truly revealed as “harms” until the environmental damage we view as a risk now fully arrives in all its potential horror. In fact, as I mentioned in passing earlier, since there is no human right to avoid risk, the actual harm that gives rise to environmental human rights means that the rights--properly so called--only exist or exist primarily as the property of future persons. It is in our relationship with *them* that we are reciprocally accorded our own environmental human rights to demand action protecting the rights of those who come after.

The reciprocal rights relationship with the future marks environmental human rights as somewhat special (or new), but importantly, their uniqueness lies not in their relational character or even their future orientation—all rights manifest these. But because they are group rights held by a non-existent, future group, environmental rights might seem more contingent even than other group rights. However, that is not true, because the procedural rights that attend environmental rights are an essential aspect of the rights themselves, and root them precisely in the present.

As James Nickel first argued, any argument for environmental rights must include the addition of procedural participatory rights in the making of policies—such as those raising taxes—meant to protect the future’s substantive environmental right of escaping climate change devastation.[[22]](#endnote-22) His position is persuasive, but not because environmental human rights are especially aligned with democratic rights of participation. All human rights presume democratic practices to some extent,[[23]](#endnote-23) but Nickel’s requirement is made for a different reason, one having to do with the idea of intergenerational justice.

Environmental rights function primarily, and initially, to protect future generations from climatic harm, but their protection requires the expenditure of considerable resources now, approved by current policies that will inevitably raise costs on the living in terms of higher taxes and perhaps energy prices. Because of this, it might appear that the scales of justice are too heavily weighted to favor future citizens—we pay the costs, future generations enjoy a great benefit in terms of a safer natural environment. The “reflexive reciprocity” that grants the living similar environmental rights balances the scales to some extent, but Nickel insists that the participatory power enabling every citizen to have input into environmental policymaking is also required to alleviate partially the onerous obligation and price of averting future climate disaster.

With the addition of participatory policymaking guarantees, the case for both substantive and procedural environmental human rights is compelling, and reveals just how much in terms of human rights is at stake in official climate change denial. As in genocide denial, the cost in human rights of climate change denial is similarly unacceptable. Official denial means that at the national governmental level, work aimed at alleviating environmental harm grinds to a halt. The effect is that of debilitation: we have it still in our power to halt climate change if not reverse all of its deleterious effects, but we are getting weaker and delay will accelerate and strengthen the impact of climate damage. Official denial prevents us from taking action as a nation. The impact on our successor generations will be catastrophic, both on their world and their environmental human rights.

Within the current administration in the United States, the work of denial has taken the form of deregulation. In general, deregulation refers to the rolling back or complete elimination of federal rules and guidelines meant to protect air and water quality, land preservation, place limits on energy provision, usage and risky transportation, as well as provide for safe food and the protection of animals. In December 2018, the New York Times updated its list of 78 such environmental rules either relaxed or abolished by the Trump administration, mostly by executive order from the President himself.[[24]](#endnote-24) The fanfare accompanying each rollback was meant to trumpet how business and industry would profit from the deregulations. That may in fact be true in terms of increased short-term economic returns, but the long-term impact will only add to the harm already portended by a changing climate—including long-term and extensive economic harm, according to the Fourth National Climate Assessment.

The Trump administration has not merely delayed the necessary policies needed to protect environmental rights; it has turned back the clock on policies meant to begin ameliorative action. Worse than debilitation, this action actually increases future harm and therefore exacerbates the environmental human rights violations being committed against future citizens by this government. As in the case of genocide denial, this action increasing the environmental harm felt by our successor generations is, simply, a crime against humanity.

Significantly, the method of current climate change denial itself increases the harm done to human rights, not only in the future, but for us as well. Executive orders are the least democratic form of decision making available in a democracy. Not only is Congress excluded from the process, but obviously the public has no voice either, and no participatory role in this setting of environmental policy by fiat. It is clear therefore, that the procedural guarantee of public participation, as required as part of environmental human rights, is also violated. The current environmental policy for climate change in the United States is thus fully revealed as a massive violation of the environmental human rights of both living US citizens and our successor generations. Viewed at the official level then, climate change denial is not a matter of free speech; nor is it an intellectual dispute between different points of view. It is a hugely detrimental policy intentionally aimed at the widespread violation of human rights.

Some observers argue that the denialist policy of the Trump administration (and of denial in general) violates other human rights as well. By intensifying the harm being done to the environment both now and in the future, its effects on human lives can be measured in the loss of or damage to additional rights. First, climate changes occurring now have already produced millions of “climate refugees,” people forced out of their homes due to drought, rising oceans or violent storms intensified by climate change. Hurricane Katrina in New Orleans is an example of how such challenges to “human security” could just as easily be framed as a human rights issue. P. J. Smith writes:

Overall, between 100,000 to 300,000 Louisiana residents alone may have displaced permanently as a result of Hurricane Katrina and, to a lesser

Degree, Hurricane Rita, which struck about a month later. The

displacement of thousands of U.S. Gulf Coast residents in the aftermath

of Hurricane Katrina is emblematic of a human migration challenge that will likely become more severe in the years and decades ahead.[[25]](#endnote-25)

The discussion of the human rights of refugees enters a new phase with the addition of millions of victims worldwide of displacement caused not by political or military oppression, but by the vagaries of weather caused by climate change.

In considering the harm resulting from climate change denial as a violation of intergenerational justice, other theorists argue that additional human rights are violated as well. Henry Shue makes the general case that at a minimum, a “basic” right of protection from bodily harm, including that caused by our detrimental environmental actions today, constitutes a human rights violation to be experienced by future persons for which we are liable. He concludes that   
“If I were a desperate member of that later generation, I think I would be furious at our generation for failing to take action.”[[26]](#endnote-26)

Simon Caney adds several more human rights to the list of rights threatened by climate change, and therefore violated by denial. Climate change:

1. Violates people’s right to *subsistence* by imposing risks of ‘widespread

malnutrition’ that are well-documented by the scientific literature.

2. Threatens people’s capacity to “attain a *decent standing of living*.’

3. Poses unacceptable risks to *human health* due to a range of mechanisms that include heat stress and the increased incidence of

tropical diseases.[[27]](#endnote-27)

Caney considers these rights to be traditional human rights, either listed in the UDHR or implied in the document.

Whether considered a violation of a single human environmental right, or of several human rights, official climate change denial is revealed as a heinous crime against the human rights of both living generations and those yet to arrive. As such it is important to recognize the crime for what it is, and to place responsibility where it belongs—with the national government. National governments are the logical addressees of human rights, as recognized by the UDHR and every subsequent major human rights document; as such it is their responsibility to protect citizens from the harm of human rights violations. In contemporary human rights usage, national governments as a matter of sovereignty are charged with the “responsibility to protect” (R2P) their own citizens’ rights. Obviously, that obligation extends to include environmental human rights. Climate change denial on the part of national governments not only shirks the obligations implicit in R2P, but also adds impunity to a continuing rights violation.

**Conclusion: Why Environmental Human Rights (and their Denial) Matter**

“Naming and shaming” constitutes an essential part of human rights activism, and so far this chapter has explored both the reality of environmental human rights and how official climate change denial violates them. In other words, that denial has been named and shamed. But the significance of recognizing the crime of climate change denial extends beyond the symbolic or rhetorical aspects of domestic and international politics. In federal court cases both in the US and in Europe, and in the efforts of local and state governments within the US, the recognition of climate protection as a human rights requirement has led to real legal and policy cooperation and progress in alleviating the impact of climate change. These are very hopeful signs, and verification that the language and power of human rights can foster meaningful efforts in the protection of environmental human rights. I will close with a brief analysis of these developments.

On October 9, 2018 the Hague Court of Appeals upheld an historic decision by the lower District Court in the “Urgenda Climate Case” of 2015.[[28]](#endnote-28) The Urgenda Foundation is an environmental NGO that had sued the Dutch government on the grounds that it was in violation of human rights, as specifically defined by the European Charter for Human Rights (ECHR), by not taking effective actions to reverse climate change. The District Court sided with Urgenda and ordered that the Netherlands must reduce its greenhouse gas emissions by 25% before 2020 to meet its obligations under international law. Urgenda had argued on the grounds of “the State’s violation of Articles 2 and 8 of the ECHR, respectively protecting a person’s right to life and the right to private life and family life.”[[29]](#endnote-29)

By deciding in favor of Urgenda, the Appeals Court went further than the District Court in recognizing the legal standing of public interest groups representing the human rights negatively affected by climate change. The Appeals decision recognized that even as an interest group, Urgenda could claim violation of the right to life and to private life and family, because it was representing the rights of present and future Dutch citizens. Though the court did not include environmental human rights, the case significantly advanced the recognition of those rights by allowing them to be represented in court by an agent arguing that the rights of future citizens would be violated by government inaction.

The implicit granting of legal standing to future generations and their environmental rights in Urgenda was made explicit in a United States federal case in 2016, a year after the initial Urgenda hearing, and later upheld on appeal. In Kelsey Cascade Rose Juliana et al. v. The United States of America,[[30]](#endnote-30) Judge Thomas Coffin decided in favor the applicants, who included 21 children and Dr. James Hansen on *behalf of future generations.* Judge Coffin agreed that the plaintiffs had been (will be) harmed by the government’s continuing embrace of fossil fuels and the resultant damage to the environment through climate change. In his decision Judge Coffin further agreed that the voices of children and future generations must be heard their rights to due process recognized and respected. He concluded:

Plaintiffs give this debate justiciability by asserting harms that befall

or will befall them personally and to a greater extent than older segments

of society. It may be that eventually the alleged harms, assuming the

correctness of plaintiffs’ analysis of the impacts of global climate change,

will befall us all. . .[T]he court must accept the allegations of concrete

particularized harm or immanent threat of such harm as true.[[31]](#endnote-31)

Together with Urgenda, the Juliana case constitutes official legal recognition of the harm caused by policies that either implicitly or explicitly deny climate change. In doing so, they both advance the environmental human rights of future generations, and provide a legal foundation for determining their denial to be a human rights violation.

Besides the important legal developments in Urgenda and Juliana,[[32]](#endnote-32) further recognition of the environmental rights of the future has been forthcoming in political movements below the federal level in the US. In September 2014, the mayors of Los Angeles, Philadelphia, and Houston joined together to establish the *Mayors’ Climate Action Agenda*, an organization dedicated to reducing carbon emissions and working toward enhancing federal and international efforts to price carbon emissions.[[33]](#endnote-33) By May 30 2018, 450 US city and town mayors had joined the effort.

At the level of US states, two additional examples are worth noting of political movement to embrace environmental human rights in the service of abating climate change. First, the western states of California, Oregon and Washington in 2013 joined British Columbia to establish the *Pacific Coast Action Plan on Climate and Energy* to jointly price carbon emissions.[[34]](#endnote-34) In 2016 the cities of Los Angeles, Oakland, Portland, San Francisco, Seattle and Vancouver joined in to form the *Pacific North America Climate Leadership Agreement,* renamed in 2018 as the *Pacific Coast Collaborative* (PCC). The PCC’s official goal is to reduce greenhouse gas emissions by at least 80% by 2050. On the other US coast nine northeastern states, representing 13 percent of US population, have formed the *Regional Greenhouse Gas Initiative*.[[35]](#endnote-35) Established in 2005, the states in the RGGI are committed to a coal of reducing CO2 emissions 30 percent by 2030.

What all these legal and political moves share is a belief that the time has arrived for environmental action supporting resilience to a changing climate. Coinciding in time with the official Presidential stance of climate change denial, these court and political decisions are hopeful signs that debilitation and stasis are not universal. Environmental rights, like all human rights, are claims for action and response; rights require that their addressee *do* something in reaction to the claim. Denial is little more than an excuse for inaction. Its debilitating effect as we have seen is not just to kick the can of policy down the road; denial perpetuates environmental harm and therefore violates human rights. Judicial decisions like Urgenda and Juliana are official rebukes of the stance of denial. Made in the name of the environmental rights of children and of future generations, they recognize that climate change denial portends sufficient harm to those rights that mark it as a crime against humanity.

1. For a full discussion of my theory of environmental human rights as the possession of future generations, see Richard P. Hiskes (2009), The Human Right to a Green Future: Environmental Rights and Intergenerational Justice. New York: Cambridge. [↑](#endnote-ref-1)
2. Fourth National Climate Assessment (2018). Washington, DC: United States Government. [↑](#endnote-ref-2)
3. IPCC, 2018: Summary for Policymakers. In Global Warming of 1.5 C, An IPCC Special Report on the Impacts of Global Warming of 1.5 C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways; p. 17 [↑](#endnote-ref-3)
4. See Clare Foran (Dec. 25, 2016). “Donald Trump and the Triumph of Climate-Change Denial.” The Atlantic. [↑](#endnote-ref-4)
5. Lipstadt, Deborah (1993). Denying the Holocaust: The Growing Assault on Truth and Memory. New York, NY: Free Press; p. 216. [↑](#endnote-ref-5)
6. Naomi Oreskes and Erik M. Conway (2010). Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming. New York: Bloomsbury Press. [↑](#endnote-ref-6)
7. Gilbert Harman (1980). “Moral Relativism as a Foundation for Natural Rights?” Journal of Libertarian Studies 4, 367-371. [↑](#endnote-ref-7)
8. See Yakare-Oule (Nani) Jansen (2014). “Denying Genocide or Denying Free Speech? A Case Study of the Application of Rwanda’s Genocide Denial Laws.” Northwestern Journal of International Human Rights, pp. 191-2015. [↑](#endnote-ref-8)
9. Jeroen Temperman (2014). “Laws Against the Denial of Historical Atrocities: A Human Rights Analysis.” Religion & Human Rights 9 (2-3), p. 162. [↑](#endnote-ref-9)
10. Richard A. Wilson (2017). Incitement on Trial: Prosecuting International Speech Crimes. New York: Cambridge, p. 248. [↑](#endnote-ref-10)
11. Martha Minow (1998). Between Vengeance and Forgiveness. Boston: Beacon Press, p. 114. [↑](#endnote-ref-11)
12. Michael Marrus (2007). “Official Apologies and the Quest for Historical Justice.” Journal of Human Rights 6: 75-105; p. 79. [↑](#endnote-ref-12)
13. Janna Thompson (2002). Taking Responsibility for the Past: Reparation and Historical Injustice. Cambridge: Polity Press. [↑](#endnote-ref-13)
14. For a full treatment of my critique of Marrus and discussion of the role of apology in human rights, see: Richard P. Hiskes (2017). “With Apologies to the Future: Environmental Human Rights and the Politics of Communal Responsibility.” The International Journal of Human Rights, DOI:10.1080/13642987.2017.1336387, pp. 1401-1416. [↑](#endnote-ref-14)
15. Trudy Govier and Wilhelm Verwoerd (2002). “The Practice of Public Apologies: A Qualified Defense.” In Mark Gibney, et. al., ed., The Age of Apology: Facing Up to the Past. Philadelphia: University of Pennsylvania Press, p. 34. [↑](#endnote-ref-15)
16. Hiskes (2017), op. cit. [↑](#endnote-ref-16)
17. See Hiskes (2009), op.cit., chapter 3. [↑](#endnote-ref-17)
18. See Jack Donnelly (1989). Universal Human Rights in Theory and Practice. Ithaca, NY: Cornell University Press; also Will Kymlicka (1996). “The Good, the Bad, and the Intolerable: Minority Group Rights.” Dissent 43: 22-30; and James Crawford (1988). The Rights of Peoples. Oxford, England: Clarendon Press. Donnelly rejects group rights; Crawford embraces them; Kymlicka occupies a middle position. [↑](#endnote-ref-18)
19. See Karl Marx (1843). “On the Jewish Question.” In: The Marx-Engels Reader. Edited by Robert Tucker, New York: Norton & Company, 1978. p. 26 - 46. Also, Mary Ann Glendon (1993). Rights Talk. New York: Free Press. [↑](#endnote-ref-19)
20. Maurice Cranston (1967). “Human Rights, Real and Supposed.” In D. D. Raphael, ed., Political Theory and the Rights of Man. Bloomington, IN: Indiana University Press. [↑](#endnote-ref-20)
21. See my (2014), “A Very Promising Species: From Hobbes to the Human Right to Water.” Refereed book chapter, in Steve J. Stern and Scott Straus, Eds., The Human Rights Paradox: Universality and Its Discontents in the Global Age. Madison, WI: University of Wisconsin Press. [↑](#endnote-ref-21)
22. James W. Nickel (1993). “The Human Right to a Safe Environment: Philosophical Perspectives on its Scope and Justification.” Yale Journal of International Law 18: 281-285. I have expanded and elaborated on Nickel’s defense of participatory environmental human rights in Hiskes (2009), op. cit.; chapter 6. [↑](#endnote-ref-22)
23. See Michael Goodhart (2005). Democracy as Human Rights: Freedom and Equality in the Age of Globalization. New York: Routledge. [↑](#endnote-ref-23)
24. Nadja Popovich, et. al. (December 19, 2018). “78 Environmental Rules on the way Out Under Trump.” New York Times (Original article October 5, 2017). For a preview of Trump administration environmental policies and their impact, see Clare Foran op. cit. “Donald Trump and the Triumph of Climate-Change Denial.” The Atlantic. [↑](#endnote-ref-24)
25. P. J. Smith (2007). “Climate Change, Mass Migration and the Military Response. Orbis: A Journal of of World Affairs 51: 617. [↑](#endnote-ref-25)
26. Henry Shue (2005). “Responsibility to Future Generations and the Technological Transition.” In W. Sinnott-Armstrong and R. B. Howarth, eds., Perspectives on Climate Change: Science, Economics, Politics, Ethics. Amsterdam: Elsevier. [↑](#endnote-ref-26)
27. Simon Caney (2008). “Human Rights, Climate Change, and Discounting. Environmental Politics 17: 536-555; p. 538. Quoted by Richard B. Howarth, “Intergenerational Justice,” Chapter 23 in John Dryzek, et. al. (2011). The Oxford Handbook of Climate Change and Society. Oxford, England: Oxford University Press; p. 344. [↑](#endnote-ref-27)
28. *Urgenda Foundation v. The Kingdom of the Netherlands*. C/09/456689/ HA ZA 13-1396; 2018. [↑](#endnote-ref-28)
29. Maria-Jolie Veder (October, 29, 2018). “The Urgenda Climate Case and Access to Justice for Environmental NG)’s in the Netherlands.” Client Earth, Justice and Environment (clientearth.org). [↑](#endnote-ref-29)
30. *Kelsey Cascade Rose Juliana et al. v. The United States of America* 2016 WL 6661146/D. Or. Nov. 10, 2016). [↑](#endnote-ref-30)
31. Ibid. [↑](#endnote-ref-31)
32. At the appellate level in the US Ninth Circuit, Juliana was affirmed. From Appeals Judge Ann Aiken’s decision: “This action is of a different order than the typical environmental case. It alleges that defendants' actions and inactions - whether or not they violate any specific statutory duty have so profoundly damaged our home planet that they threaten plaintiffs' fundamental constitutional rights to life and liberty. Affirmed.” [↑](#endnote-ref-32)
33. Michael E. Mann and Tom Toles (2018). The Madhouse Effect: How Climate Change Denial is Threatening our Planet, Destroying our Politics, and Driving Us Crazy. New York: Columbia University Press; p. 136. [↑](#endnote-ref-33)
34. Mann and Toles, ibid., p. 137. [↑](#endnote-ref-34)
35. Ibid. [↑](#endnote-ref-35)