**BEYOND BENTHAM: GLOBAL PUBLIC LAW AND PROTECTING A LIVING PLANET**:

**A NEW PARADIGM FOR THE INTERNATIONAL LEGAL ORDER IN THE ANTHROPOCENE AGE**

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***Aperçu*: This study provides a preliminary and general**

**definition of Global Public Law or simply Global Law as a rival paradigm to replace Jeremy Bentham’s outdated and antiquated paradigm of international law; as such, it is an exercise in legal philosophy and jurisprudence intended for Civil Law or Mixed Jurisdictions, with many ultimately based on Roman law, and not simply intended for the Anglo-American common law tradition.**

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**\*Signatory: Jurists call for Action For adoption of a Global Pact for the Environment. Paris, October 9, 2018, At:** [Jurists - Global Pact for the Environment (globalpactenvironment.org)](https://globalpactenvironment.org/en/jurists/)

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**SUMMARY:** **“The Law must be stable, but it must not be still.” American Jurist, Roscoe Pound**

**Global Public Law (GPL) is the progressive application and enforcement of the rule of law to the entire earth and its biodiversity based, in the first instance, upon the fundamental necessity for a legal order that insures the self-preservation of nations and nature in the Anthropocene Age.**

**INTRODUCTION:**

**A new paradigm of the international legal order is developed in the following essay that replaces the archaic conception of international law developed by Jeremy Bentham in the late 1700s. Global Public Law (GPL) is also a more accurate description of legal norms, duties and other developments that have occurred and accelerated since World War II, including decolonization, human rights, economic globalization and the growing concern about protecting the Earth’s environment. The outlines of GPL are presented below and includes the reality of a pluralistic legal order that seeks to extend the rule of law to the entire globe, including effective protections for the Earth’s ecologies and global commons, and thus builds upon and goes beyond the current public law of states. Specifically, GPL recognizes the “nation” as a source of law and ensuing legal obligations on the part of states, especially towards their own or other peoples. Global Law defines the state as a trust,[[1]](#footnote-1) the government as a trustee and the nation or peoples as the beneficiaries of specific fiduciary duties.[[2]](#footnote-2) As such, the government and especially the courts have fiduciary obligations to recognize, analyze and enforce *intergenerational equity* *as a paramount duty to ensure the preservation of the nation and nature.* GPL also recognizes the classical idea of *Jus Gentium*, or the “Law of Nations--and Nature-- common to humanity” as a source of law, especially in the judicial recognition and enforcement of the *general principles* of domestic and international Law [Emphasis added],[[3]](#footnote-3) including international ecological general principles such as “Do No Harm,” “Precautionary and Prevention principles,” or the “Common Heritage of Humanity.**”[[4]](#footnote-4)**As such, these general principles are self-executing within national courts as essential to judicial best practice. Finally**, **GPL requires states to ensure the preservation of the nation and nature through the rule of law as a *legal precondition* for legitimate sovereignty. If the state fails in this supreme duty, then it merely becomes a lawless *Leviathan* intent on devouring all the planet’s resources and biodiversity, destroying the Earth’s ecologies upon which all life depends upon to survive in the Anthropocene Age.**

**In view of this, Global Public Law (GPL) is the progressive application and enforcement, especially by the courts, of the best practices common to the rule of law to the entire earth and its biodiversity based, in the first instance, upon the shared, common responsibility of a state or states to their peoples or nations *to ensure the preservation of the nation and nature* (defined below) as well as the complex ecological systems upon which all life on this planet depends. These ecosystems include those identified as critical planetary boundaries[[5]](#footnote-5)-- which must be preserved and protected under the rule of law *as a living system[[6]](#footnote-6)* if human life and biodiversity and all of life are legally protected, preserved, and thus perpetuated into the future as a basic trust inheritance of future generations.[[7]](#footnote-7) We are failing to do this now.**

**GPL AND SELF PRESERVATION—THE FIRST LAW OF LIFE**

**GPL is the basic public law (Jus Publicum) that defines legitimate and legal state sovereignty in the Anthropocene Age to include the state’s fundamental duty to preserve and simultaneously fully protect the *nation or nations* *and nature.* As we shall see, the English philosopher Thomas Hobbes describes self-preservation of life and nature, and the means to secure it, as the first “law of life,” which he calls *Lex Naturalis*.[[8]](#footnote-8) In view of this, under global public law, the *self-preservation* of the nations and nature, which requires the earth’s ecologies that support and sustain life and all biodiversity, is the supreme duty of *integrated sovereign state under global law.***

**“Nature” here is broadly defined to include biodiversity meaning all of life and living beings, as well as including all the earth’s ecologies; “nature” also includes the geophysical global commons which are essential to all of all of life,[[9]](#footnote-9) including your own, as your next breath of air attests. Since many of these commons are degenerating or rapidly changing due to human influences, such as the polar ice caps or the global atmosphere, the state must join in global cooperation with other states to help preserve and perpetuate the Earth’s ecologies for present and future generations. State must also now take steps to ensure the stability of the atmosphere, the oceans and the polar caps or ice sheets so that they will continue to contribute to the stability of the climate under the rule of global law. In this regard, it should be noted that ecology comes from the Greek word “ikos” meaning home.  Thus, global law extends the rule of law to the entire earth, it living inhabitants and biodiversity, and to the earth’s ecology that sustains all of life on Mother Earth, our one and only true home.**

**Yet, the continuing survival of a nation (or nations) and nature now threatened by catastrophic and accelerating climate change. In view of this, as its first duty, the state must seek to ensure *the self-preservation of living beings, as well as natural world upon which all of life fundamentally relies through the rule of law; this is an essential responsibility of the national judiciaries, legislators and executives in the Anthropocene Age.[[10]](#footnote-10)* If states fail in this fundamental duty and task, then they have no legal justification or legitimacy. They may well go the way of the dinosaurs –and take us with them--as a result.**

**PUBLIC GLOBAL LAW: PRESERVING THE NATION AND NATURE**.

**So, Global Public Law (GPL) is based on the absolute biological and legal necessity to secure the *self-preservation of individuals, nations, biodiversity, and especially the Earth’s interdependent ecologies upon which all of life depends* as the first responsibility of states and nations.** **In essence, GPL is the extension of the rule of law to the entire Earth.**

**To do this, Global Law first makes a fundamental distinction between the nation and the state (i.e the nation state), terms that are usually conflated in international law to mean simply the “state.” The legal definition of the nation, unlike that of the state, has always been problematic and underdeveloped in international law.[[11]](#footnote-11) For our purposes, the nation here is legally defined as a *jural community* consisting of a distinctive people, some or most of whom occupy a specific territory, who shares a sense of moral and legal obligation towards one another; as Michael Barkun explains in his book *Law Without Sanction*, the concept of “jural community” means the “’widest grouping within which there are a moral [or legal] obligation and a means of ultimately to settle disputes peacefully.”[[12]](#footnote-12) In this sense, the nation as a jural community exists as a legal pact and an ongoing normative narrative even between the dead, the living and the unborn since it can keep legal obligations,[[13]](#footnote-13) such as public or private trusts, between preceding, present and pending generations. According to Prof. Barkun, such jural communities can be found in so called “primitive” societies as well as in international law.[[14]](#footnote-14) For our purposes we will focus on the intimate yet often ignored reality of the nation—often consisting of a variety of peoples—in a subsequent legal relationship with the state.**

**Though often overlooked in international law, which has privileged and valorized the “state,“ a nation embodies actual living peoples often living in a specific place or territory. In short, the “nation” embodies and contains *real life*; *the nation is the living reality of the law while the subsequent “state” is simply a social and legal construct.* (The word Nation comes from the Latin word, “natio, meaning Birth.) As we shall see, because of legal developments during World War II, such nations had rights recognized prior to statehood, such as self-determination, and even against their own governments, as embodied in the Nuremberg Charter.**

**In stark contrast, current international law as defined by Bentham merely describes the nation as an apparently passive “population” ruled over in his day by a supreme sovereign.[[15]](#footnote-15) This is a terrible simplification, even a falsehood, of the robust reality of the living nation or peoples who inhabit a specific territory; the *nation is the source of human life, law and culture; as such, it* is the living legal reality of past, present and future generations;[[16]](#footnote-16) the subsequent state is merely a social construct, a human invention, imposed over the natural word and its peoples as a result of the nation or nations within a specific territory with often arbitrary or artificial boundaries of the state as its peoples or nation seek to preserve their lives and security by banding together into an enduring political association, or so they hope. Yet, in Bentham’s scheme, as it came to be understood, this human invention of the state is practically the only “subject” of current international law, and the main source of its legal norms. This is an obvious simplification and misconstruction of a complex reality whose living presence seems to escape current definitions of current “international law.”**

**Rejecting these omissions, Global Public Law regards the nations, and the nature that sustains and supports all of life on the planet as the basic duel and intimately connected living realities of international life as a scientific fact. In turn, this basic scientific reality of human life and its utter dependence on Mother Earth for literally everything, including tomorrow’s food, must be recognized and protected, if possible, by the global rule of law. In view of this, under Global Law, the nation-state is the trust with the nation as the trustor and the government is the trustee; the peoples of the nation—past-present and future—are the beneficiaries. [[17]](#footnote-17) So, the *legal recognition and effective enforcement of the legal principle of intergenerational equity in national jurisdictions is essential as a fundamental precondition of lawful state sovereignty. This obviously will require a lot of work, especially by the courts, and very quickly, in order to be effectively applied in a court of law. So, we will come back to this issue shortly.***

**Thus, trust law including fiduciary relations, duties and obligations are considered a basic source of global law. Most importantly, these fiduciary legal obligations in GPL include the *enforcement of intergenerational equity as a primary and essential fiduciary duty of the state*.[[18]](#footnote-18) This is not a new idea; in fact, it’s simply requires the fulfilling the constitutional, statutory and customary legal obligations that many states already possess; for instance, Intergenerational rights to a healthy environment are protected by the constitutions of 74% of the world’s nations.[[19]](#footnote-19) So, now we turn to how this paramount legal principle and obligation can be fully enforced through the existing legal systems of the world.**

**INTERGENERATIONAL EQUITY AND THE COURTS: LET A THOUSAND CASES BLOOM!**

**Intergenerational equity (IE) is a principle of current international law and is found as well in a variety of domestic legal jurisdictions. While contested by some as vague, Prof. Edith Weiss Brown, a pioneer in this field, outlines three key legal duties as inherent legal principles of intergenerational equity in the following terms:**

**“The basic concept is that all generations are partners caring for and using the Earth. Every generation needs to pass the Earth and our natural and cultural resources on in at least as good condition as we received them. This leads to three principles of intergenerational equity: options, quality, and access. The first, comparable options, means conserving the diversity of the natural resource base so that future generations can use it to satisfy their own values. The second principle, comparable quality, means ensuring the quality of the environment on balance is comparable between generations. The third one, comparable access, means non-discriminatory access among generations to the Earth and its resources.”[[20]](#footnote-20)**

**While all three principles are critical, the second one is particularly noteworthy—*those living in the present cannot simply consume all the resources on Earth, killing most local or global ecologies with climate change, and leave the pending generations or generations with nothing to live on except deserts, extreme wind or weather events and drought-stricken land.* Yet, that is what we are doing now; the future now beckoning is a threat, not an opportunity to future generations due to largely human induced climate change—if we do nothing to curb and quickly curtail our rapacious appetites to consume carbon-based fuels, nonrenewable resources and leave little or nothing for future generations. If current trends continue, we will leave them an earth as a cinder…**

**WE have no right, absolutely no right, to do; yet, we plunder the planet like drunken pirates devouring and destroying all but our tiny and hidden home port, fee for now from the raving winds, waves and rising waters that will soon even destroy our last sanctuary. Nothing yet, certainly not Bentham’s international law, seems to stop this lawful piracy consisting of gluttonous consumption and ecological destruction, mostly by this fortunate few and the resulting wanton devastation of the earth.[[21]](#footnote-21) Such destruction of the earth’s environment and biodiversity fundamentally violates Edmund Burk’s idea of human society as based on the “primeval contract**,” **by which “no single generation claims tyranny over past generations or future ones.**”[[22]](#footnote-22) **Such wanton destruction fundamentally violates the bedrock legal duty of intergenerational equity; this is not the rue of law but the tyranny of the living over the unborn and future generations.**

**This brings us to the still continuing destructive impact of human life, especially by the developed or industrialized nations upon the Earth. The Anthropocene Age can be generally defined in terms of the influence of human behavior on the global commons and ecologies; for example, heat trapping greenhouse gases are building up in the Earth Atmosphere at an alarming rate and are largely human induced, causing the Earth temperature to rise ominously higher with no end in sight. The human impact on the global environment, slowly building up over the centuries, is now accelerating every decade and is now becoming so significant—and damaging-- as to constitute a new geological epoch.[[23]](#footnote-23) In fact, Scientists are already describing our current age as *the Sixth Extinction Event*, largely brought on by human activities such as deforestation, extravagant consumption and the resulting pollution, as well as the ongoing use of carbon-based fuels.[[24]](#footnote-24)**

**Yet, all of these extremely destructive activities of the natural world, and increasingly to human life, continue to be largely “legal,” and thus beyond the realm of the socially-constructed and Mercator projection of state sovereignty and international law, resulting in the current climate crisis that now threatens much, if not most of life on the globe. It now seems that *mere self-preservation* of life on this planet, including an increasingly number of human beings, as well as the Earth ecologies are increasingly beyond any challenge or change to the current rule of international law…**

***To prevent such an uninhabitable future, even now nearing and threatening even our present moment of life on Earth,[[25]](#footnote-25) the national, domestic and indigenous courts of a state must entertain, accept and analyses for immediate adjudication all legitimate cases and claims concerning violations of the fundamental legal principle of intergenerational equity*; in doing so, *each nation must ultimately define its own sui generis legal definition of intergenerational equity based upon its unique geography, history and culture;* for instance, the principle of IE will certainly mean something unique or different for the peoples of islands nations such as Fiji, Japan, the Philippines or Ireland—all of whom rely heavily on fisheries for food—than for a landlocked nation such as Gabon or Jordan even though the basic legal principles of IE, as outlined by Prof Brown Weiss, remain the same.**

**In this regard, one is reminded of Montesquieu’s precautionary caveat in his classic *Spirit of the Law*s that: “Every nation will here find the reasons on which its maxims are founded. [So,] No absolute solutions are proposed, only the necessary relationships between the form of government and the laws are exposed.”[[26]](#footnote-26)**

**In short, there is not, and probably will never be, a single overarching definition and judicial decision of IE that suits and fits all jurisdictions concerning IE even though the basic underlying *legal principals—such as though identified by Prof. Weiss—remain essential* to the application of intergenerational Equity within every national jurisdiction throughout the globe.**

**So, law suits brought to the appropriate court by litigants with standing, especially those in younger generations, should begin to surge in the appropriate jurisdictions as one of the last remaining hopes to insure the rule of law’s critical role in preserving the earth ecologies, biodiversity and the global commons that are absolutely essential to insure even the minimal prospects of self-preservation and life-chances for future generations. There have already been a number of successful law suits in Europe that were argued and won, in part, by reference to the need to recognized and enforce intergenerational equity as a legal responsibility of the state.[[27]](#footnote-27) In fact, encouraged by these successes, “On 18 February, (2020) the International Bar Association released a**[**model for how to litigate climate change**](https://www.ibanet.org/Climate-Change-Model-Statute.aspx)**, laying out legal arguments and precedents that might help future plaintiffs.”[[28]](#footnote-28)**

**In view of these successes, such lawsuits must be tried on a truly massive and continuous scale around the globe as a citizens’ attempt to address the egregious wrongs of destroying the remaining local or global ecologies, all in decline if not dying, that are a literal death sentence for any generation in the future. So, due to the great and growing danger of global climate change, the motto among the rest of us should be: “Let a thousand IE lawsuits bloom!”**

**Under global as well as traditional international law, these principles of IE are actionable as fiduciary duties and responsibilities of the state. Specifically, accelerating global climate change must be seen as gross unjust enrichment by the developed and industrial states—the MIOPs or Most Industrialized or polluting States; as such, every court is entitled, if not obligated, to consider the creation a constructive trust as an equitable remedy that seeks to end or reverse the ensuing ecological damage to the Earth ecologies and global commons; in particular, as a possible remedy, *there is now a desperate need for the immediate development and deployment of Negative Emission Technologies NETS and carbon sequestration that can begin to remove C02 out of the global atmosphere*. So, any court ordered remedy need not be purely punitive or based on financial penalties; most MIOPS send billions on military defenses against other peoples,[[29]](#footnote-29) so they certainly have the funds to fund such development of NETS, which will immeasurably contribute to a green economy as well.**

**Furthermore, the essential fiduciary duties and obligations of states now include the legal enforcement of the principle of intergenerational equity by governments, groups (NGOs) and individuals as an essential part of GPI to protect the global environment and biodiversity as part of the *law common to humanity*; it helps, as noted above, that the legal principle of intergenerational equity is recognized by the constitutions of almost 75 percent of the world’s nations.[[30]](#footnote-30) It also is of significance that the principle of intergenerational equity has been recognized in court cases in many other legal jurisdictions around the world; as such, it is one of the most prevalent and important responsibilities of any state that claims to be governed by the rule of law.**

**Furthermore, given the complex configuration of the executive, legislative and judicial branches of government found in most modern states, the authority of the courts to hear cases of intergenerational equity or on the environment is critical and even emphasized in the modern Jus Publicum of states especially when challenged by extraconstitutional actions; in fact, all courts have jurisdiction of such issues under *fiduciary jurisdiction, to be used—when possible with concurrent jurisdiction,*  since all states are defined as essentially public trusts with solemn fiduciary duties and obligations. In fact, as argued below, GPL requires the good faith enforcement of intergenerational equity as a key precondition of sovereignty in the Anthropocene age; this is a key responsibility of the national courts to uphold, observe and enforce.**

**Yet, states are still legally sanctioning and allowing incredibly destructive activities --such as massive mining and the burning of coal by the ship load or the drilling and ongoing consumption of oil and other carbon-based fuels that are known drivers of catastrophic climate change. If states or regional intergovernmental organizations offset such alarming yet still legally sanctioned activities by the immediate and large-scale development and deployment of Negative Emission Technologies (NETs) and carbon sequestration, there would be far less room for concern or complaint, but no such large-scale sequestrations efforts are underway or even planned; yet, only states or really regional intergovernmental organizations(RIOs) of states, can undertake the massive mobilization and monies needed to design, develop and deploy the now needed NETs and carbon sequestration projects now necessary to prevent the Earth from becoming a cinder.[[31]](#footnote-31)**

**To prevent such a future, even now nearing and threatening even our present moment of life on Earth, the national, domestic and indigenous courts of a state must analyze and, if warranted, accept for immediate adjudication all legitimate cases and claims concerning violations of the *fundamental legal principle of intergenerational equity as a primary fiduciary duty of the state;* in doing so, *each nation must ultimately define its own sui generis legal definition of intergenerational equity based upon its unique geography, history and culture;* for instance, the application of IE will certainly mean something unique or different for the peoples of islands nations such as Fiji, Japan, the Philippines or Ireland—all of whom rely heavily on fisheries for food—than for a landlocked nation such as Gabon or Jordan; yet the basic legal principles of IE, as outlined by Prof Brown Weiss below, remain the same throughout the world. In short, there is not, and probably will never be, a single definition of IE that suits and fits all jurisdictions even though the legal principles and current imperatives of applying intergenerational Equity remain the same throughout the globe. [[32]](#footnote-32)**

**If IE is to have any legal meaning and force, the wanton piracy and destruction of the earth ecologies, the remaining planetary boundaries[[33]](#footnote-33) and few remaining nonrenewable resources should be patently illegal. In fact, if helpful to the courts, we can describe any violation of intergenerational equity that that adversely effects the self-preservation and perpetuation of the nation and nature as an *Earth Crime*, or *Ecocide*, which can be defined in terms of the** **“unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."[[34]](#footnote-34)**

**In particular, global climate change is here viewed as, among other things, as *unjust enrichment* by a minority of states, especially by the Most Industrialized or Polluting States (MIOPS), who have or are often created highly developed economies by offsetting social costs, such as emitting CO2 into the global atmosphere, while most of the world states have contributed little or almost nothing in comparison to the growing existential threat of climate change. In fact, the historic and current contribution of each state to the CO2 in the global atmosphere can be measured and tracked; such global measurements indicate that the current and coming ravages of climate change have been caused by a relative handful of highly developed states and a half dozen industrialized states that simply refuse to curb their seemingly endless appetites for more carbon based fuels.[[35]](#footnote-35) If they simultaneously invested in Negative Emissions Technologies (NETS) or carbon sequestration, and captured the GHGs that they put up there, then the legal claim of unjust enrichment would be specious; but they continue to dump CO2 and other greenhouse gases into the global atmosphere without apparent care or remorse, making the world soon uninhabitable for the rest of us. Meanwhile pilot projects of potentially very large-scale carbon sequestration go underfunded, if not financially starved.[[36]](#footnote-36) If this is not unjust enrichment, with such potential and even currently unfolding devastating consequences, then nothing is….**

**So, within Global Public Law, the international, regional, national, domestic and indigenous courts, especially in civil law jurisdictions, play an enhanced and critical role in the preservation of the nation and nature. Specifically, such courts can by law create a *constructive trust* [[37]](#footnote-37)to remedy unjust enrichment on a local, national and now even global scale. Courts must also enforce the legal principle of intergenerational equity, a principle now found in the constitutions of a majority of states as well.**

**Fortunately, as we shall see, the essential principles of Intergenerational Equity are *common* to most legal jurisdictions in the world as well; so, the courts are not “legislating” or creating new law. In view of the accelerating climate change, --due in large part to the ongoing consumption of carbon-based fuels and the unprecedented destruction of the Earth ecologies—the basic legal principle of intergenerational equity must now be rigorously enforced in all relevant courts of the law to insure “best practice” by the courts in applying the rule of law throughout the globe.**

**Finally, courts can establish the appropriate jurisdiction as a direct result of GPL incorporating the classical definition and practice of *Jus Gentium* defined as the Law of Nations common to humanity; this classical definition and practice of determining the law in international affairs has never ben explicitly repudiated by states, especially those governed by a civil or mixed legal jurisdiction*.***

**In fact, in view of this ongoing failure by states, especially the developed or industrialized one, individual citizens or group (NGOs) can and should bring claims against the state for failure to protect or preserve the nation, nature as well as intergenerational equity so that legal remedies can be adjudicated and enforced in a court of law.[[38]](#footnote-38) Fortunately, in doing so such citizens and NGOs, even entire peoples can refer to a powerful source of classical law that is common to most, if not all, the legal systems of the world. So, we will now turn to the role that the ancient Roman idea of Jus Gentium, defined as a “Law of Nations common to humanity” has in Global Public Law.[[39]](#footnote-39)**

**As we shall see, under Global Law, national courts *already have the power and authority to make declaratory judgements of* *existing general principles of international law in “common” with other national jurisdictions. (This is especially true in civil law or mixed legal systems—many of which are ultimately based on Roman law, and also make up a majority of the world’s legal systems.)[[40]](#footnote-40) This could be especially important as an added judicial safeguard in upholding the independence of the judiciary if and when encroached upon the legislative or executive branches of government seeking to limit the state’s responsibility to insure the basic self-preservation of the nation or nature.***

**ANCIENT WISDOM: THE LAW OF NATIONS (JUS GENTIUM) WITHIN GPL**

**Global Law incorporates the classical idea of *Jus gentium*, here defined and elaborated upon as the “Law of Nations and Nature common to humanity” *as a critical source of “international law.”[[41]](#footnote-41)* This classical definition of “Jus Gentium” was the controlling law in “international relations” for over two thousand years in the practice and principles of the Roman and Byzantine Empires;[[42]](#footnote-42) as such, it has never been explicitly revoked or repealed by the majority of current states today that have *Civil Law legal or mixed jurisdictions* which are ultimately based on Roman law. Thus, general principles of law are “common” to most legal jurisdictions in the world and are regarded as essential to insuring that the courts are using “best practice” in maintaining and extending the rule of law.**

***In particular, the general principles of law,[[43]](#footnote-43) either domestic or international, can be found in most legal systems and thus “common” to humanity. Courts around the world have already adjudicated and used such recognized general principles, including the international ecological ones, that are essential legal source common to any legal system or jurisdiction that employs best practices within its own judiciary, and thus operates within the global rule of law.[[44]](#footnote-44)***

***In short, recognizing general principles of law, ether domestic or international, are essential to the proper functioning of the courts. So, the seemingly simple word “common” can have a rich* variety and applications.[[45]](#footnote-45) For instance, the word “common” implies its own legal scope and comparative legal methodology for recognizing the relevant law in specific cases by focusing on identifying existing national or domestic laws in civil or common legal jurisdictions. When such legal research discovers critical principles of law “intrinsic to law and basic of all legal systems,” these indicate a common judicial consensus concerning best practice in the rule of law; as such, these principles thus become self-executing within any domestic jurisdiction as being necessary to the proper functioning of the courts.**

**In view of this, the courts can recognize and rigorously enforce, as self-executing, common general principles of domestic and international law, including general principles of ecological law such as the No harm, Prevention and the Precautionary principles of international law. The enforcement of such common general principles of domestic and international law are necessary now to insure the best practice of the courts and judiciary; these also fulfill the basic legal obligation of states, via the courts, to PROTECT WHAT IS ABSOULTELY NECESSARY FOR SELF PRESERVATION AND PERPETUATION OF LIFE ON THIS PLANET;[[46]](#footnote-46) this is the only basis for legitimate state sovereignty in the Anthropocene Age.**

**A critical way to do this is to recognize that a healthy environment that can support and sustained human life as a human right actionable under law. Fortunately, such a human right seems to be powerfully emerging in international law, and is already “common,” at least in incipient form, in over 155 states. [[47]](#footnote-47)In this regard, the recent statements and actions of the UN Human Rights Council are crucial; specifically, the Council first noted that “more than 155 States have recognized some form of a right to a healthy environment in, inter alia, international agreements or their national constitutions, legislation or policies.”[[48]](#footnote-48)**

**Most importantly, the Council then went on to declare that it now “Recognizes the right to a clean, healthy and sustainable environment as a human right,” noting that “the right to a clean, healthy and sustainable environment is related to other rights and existing international law.” [[49]](#footnote-49)**

**Yet, more can and should to be done to make this human right “common to humanity” and thus actionable in national around the world—and not simply in those state mentioned as having recognized it in “some form” by the Council (above). In this regard, the French have pioneered a historic effort to make the human right to a clean environment recognized in the Global Pact for the Environment (GPE).[[50]](#footnote-50) The Pact’s objective is to *fill the gaps* in international environmental law and thus contribute to the emergence of a global legal framework, one that is much more protective of natural resources.[[51]](#footnote-51) Current efforts are now centered in the UN General Assembly to pass a resolution to adopt the GPE as a “fast track” treaty.**

**So, observing and, if need be, enforcing existing legal principles and protections towards the environment, as well as the emergent peoples’ rights to a healthy and safe local and global environment are the absolute prerequisites to self-preservation and hence for legitimate and legal sovereignty of a state.**

**Yet, global climate change is accelerating so fast that the mere existence of future generations on Earth is now in doubt; due to the unrelenting damage that has been done and is now being done to the Earth’s ecology as a whole now raises the specter that the planet will be largely uninhabitable for future generations—a totally unacceptable fate;[[52]](#footnote-52) so further damage is an Earth Crime and ought to be peremptorily rejected in any court in any national jurisdiction that follow the rule of law, and seeks to preserve the nation and nature, let alone intergenerational equity. If we don’t act immediately to enforce a global rule of law, then the courts will be merely handing out convictions for parking tickets or loitering on the very last day. In short, integral sovereignty now requires that the state extend comprehensive legal protection, via its domestic courts, over all remaining biodiversity, forests and those natural systems that support and sustain life on this planet.**

**Such an initial definition and view of Global Public Law is in sharp contrast to the archaic and outdated definition of international law developed by Jeremy Bentham over two hundred years ago and proved powerless against ensuing European colonialism of much of the globe, preventing the crimes of Nazism, which Churchill described as crime without a name, and the ensuing post War II ongoing destruction of the global environment. Currently, there is little or nothing in international law from preventing the state in engaging or legally enabling massively destructive activities that now threaten the self-preservation of the nation and nature, such as the continuing mining and use of coal or the seemingly endless legal consumption of more oil, carbon-based fuels and non-renewable resources. The modern state has become, all too often, a lawless Leviathan at war with all of nature, and too often with other peoples while international law seems powerless to stop or it even enables this ongoing and seemingly endless destruction of the Earth.**

**In view of this lamentable legal legacy, with accelerating climate change threatening the mere existence-- let alone the ongoing self-preservation-- of nations and nature, it’s seems increasingly obvious except to rigid statists and the most obdurate that its time for a change in legal thought concerning international law…**

**We describe a state that observes its ecological obligations in global law as one characterized by integrated sovereignty, a precondition for its legal legitimacy and subsequent rule in this Anthropocene Age.**

**THE RECONSTRUCTION OF THE STATE: INTEGRAL SOVEREIGNTY:**

**Fortunately, any evolution in the legal definition of state sovereignty does not require a complete refutation of its past and now archaic, if not dangerous, definition; rather, we must build and enlarge its meaning to encompass an explicit acknowledgement and obligation to protect the nations’ means of self-preservation found, first and foremost, in the natural world.**

**The word “integral,” in its original Latin meaning, provides a clear blueprint on how to achieve this. Specifically, as its meaning evolved, the word “Integral” means, among other things: “of or pertaining to a whole, intrinsic, *belonging as a part to a whole*.” Thus, to conceive of a state enjoying “integrated sovereignty” clearly implies that it is part of a greater whole, which is natural world from which all life, including that of the nation, derives and depends.**

**In the past hundred years, state sovereignty has evolved to mean territorial sovereignty and to a lesser extent, national or ethnic sovereignty, or some combination of the two; as Barkin and Cronin point out, “the bulk of the international relations literature generally does not account for any variation in the legitimation of sovereignty through the course of modern history. It is often not appreciated fully that sovereignty is a social construct, and like all social institutions its location is subject to changing interpretations.” [[53]](#footnote-53)**

**In short, it should be obvious—though it is not to statists of simplified realism—that state sovereignty is not an absolute and fixed fact of nature, like the Grand Canyon or the craters on the moon.** **This is because the legitimation and legal definition of sovereignty has changed over times to adapt to new circumstances and deep crises, like revolutions or word wars.[[54]](#footnote-54) In short, the definition of state sovereignty is a human invention, not a fact of nature.**

**For instance, Bodin defined “the indivisibility of the sovereign power of the King, nevertheless had advocated that the *parlements* should have the power of remonstrance and of enregistering royal enactments, so that they might judge these in the light of justice and equity.”[[55]](#footnote-55) Montesquieu came along and defined *sovereignty in terms of it being shared among the three co-equal branches of government.* In global law, the courts, not merely Bodin’s parlements, *become the ultimate guardians of the necessary legal preconditions for the existence and subsequent exercise of legitimate state authority.* The state, ultimately through its own courts, must legally and politically recognize that it exists only as part of a greater natural world that makes all of life, including human societies possible; as the preconditions of lawful and legitimate state sovereignty, the legal protection as well as preservation of the nation and nature becomes the courts’ first responsibility—shared by a state’s entire government-- in the Anthropocene world in which much, if not all, is threatened…….**

**As such, the states through their courts must take immediate and effective steps to insure the preservation as well of perpetuation of the nation and nature or be delegated as a *de facto*, not *de jure*, states which—if no improvement are made in a long train of abuses and usurpations—then this neglect gives the people significant potential rights to take decisive actions, if necessary, to restore the rule of law.[[56]](#footnote-56) Fortunately, such jurisdiction is assured within the vast majority of states who have established, for example, intergenerational equity as a principle of constitutional law.**

**In other words, the definition of state sovereignty, which has already changed and evolved in the past several hundred years, must continue to do so in order to insure the self-preservation of the nation and nature in order to be lawful and legitimate.[[57]](#footnote-57) In particular, the emergent and accelerating global emergency of climate change creates unique circumstances that profoundly endanger both the territory and the nation, or “population” of the state; if the state can’t adapt and rise to this challenge, it will have less and less *raison d’etre* for its continued existence, especially if greater and greater parts of its territory and people are ravaged by the coming wildfires, windstorms, flooding, droughts and displacements caused by the accelerating climate crisis.**

**In short, due to this emerging and accelerating climate emergency, which represents an existential threat, the basic legitimation of a state’s *integral* sovereignty must become the self-preservation and perpetuation of the nation or people as well as the essential biological systems that make life possible on Earth.[[58]](#footnote-58)**

**Furthermore, such integrated sovereignty makes more explicit the legal obligation of states to preserve the whole of the natural world, especially its “core commons,” as a lawful condominium[[59]](#footnote-59) in order to ensure the preservation and perpetuation of life and the Earth’s rich biodiversity into the future.**

**International Law and the ICJ has already recognized the legal obligation of states to prevent irreversible harm or the “do no harm,” “prevention” and “precaution” principles concerning the environment.[[60]](#footnote-60) The ICJ has also recognized the prevention principle as a customary principle of international law.[[61]](#footnote-61)**

**Integrated sovereignty allows, and even requires, that international norms, especially ecological general principles of law dealing with the environment be enforced in the domestic courts of each state; such empowerment of the courts is fully consistent with the best practices of the judiciary so that all courts in societies governed by the rule of law enforce those essential principles necessary for the effective operation of any legal system or jurisdiction.[[62]](#footnote-62) The key characteristics of such Integrated Sovereignty are that domestic courts, political and economic elites, and societies at large, recognize their essential legal obligations within the modern state to take the necessary steps to ensure the self-preservation of the nation and nature. So, the courts must become the lawful guardians of the essential preconditions of legitimate and lawful state sovereignty to be recognized and enforced by the judiciary as the ultimate safeguard of the nation; these essential preconditions of lawful state sovereignty include:**

1. **The legal recognition and adjudication in national courts of the fiduciary obligations and duties of the state to ensure intergenerational equity and the preservation of the nation, as well as nature, including biodiversity and the Earth ecologies necessary to support and sustain a livable planet now and in the future. Expanding upon what already exists, the Courts can and should use *fiduciary* jurisdiction[[63]](#footnote-63)—if possible with other concurrent forms of jurisdiction, in a case by case basis, in order to effectively safeguard the preservation and perpetuation of the nation and nature in this now threatening Anthropocene Age.**
2. ***Recognize that the right to a clean, healthy and sustainable environment is a human right.* In this regard, *t*he UN Human Right Commission recently took decisive action by noting that: more than 155 States have recognized some form of a right to a healthy environment in, inter alia, international agreements or their national constitutions, legislation or policies. Then the Commission adopted a resolution that “Recognizes the right to a clean, healthy and sustainable environment as a human right,” noting that “the right to a clean, healthy and sustainable environment is related to other rights and existing international law.” Yet, more needs to be urgently done; so the recognition and acceptance by all states governed by the rule of law and not the power of the purse must adopt the pending French proposed Global Pact for the Environment in order to ensure the preservation of the nation and nature;[[64]](#footnote-64) as such, adoption of the human right to a clean and healthy global environment is now necessary to legal and legitimate state sovereignty**
3. ***Join in sustained regional and international efforts with other states based, in part, on legal treaty obligations[[65]](#footnote-65)* to insure the preservation of the nations and nature. *These efforts must also include progress to halt the acceleration of climate change through carbon cuts, and the use of yet to be proven Negative Emission Technologies (NETs) to* protect and restore as much natural habitats on a state territory that help absorb CO2 from the Earth’s atmosphere, or prevent Greenhouse gases from escaping, the so-called Methane bomb…We will only survive as states, and as a species, if nations and states *collectively cooperate* to address effectively this growing and rapidly accelerating existential crisis of climate change.**
4. **Make access to family planning a universal right of women. Enact state policies to help curtail the *exponential growth* of the global human population on Earth[[66]](#footnote-66) through family planning, the empowerment and education of women as well as tax incentives. Encourage a “2X2” population policy.[[67]](#footnote-67) Simply stated, the *exponential growth* in global human population can’t and won’t, by definition, continue within a limited ecosystem, even if it is the entire earth.[[68]](#footnote-68) Birth control and other related goods and services should be made available, and provided by governments or NGOs in those legal systems that allow such procurements and procedures; with 8 billion people and counting, there are simply to many of us for our Mother Earth to properly care for, house, educate and provide other basic human or health services.[[69]](#footnote-69) Every ecosystem has a biological carrying capacity for every species, especially one with advanced technologies that require us to tear up the earth for even more non-renewable resources, precious ores, minerals oil to transport all this “stuff” and other disappearing resources. The legions of techno-narcists who vehemently criticized the *Limits to Growth* when it came out in 1972 chanted like a cult that ‘Technology will save us!” Fifty years later, we still hear the same chant, this time joined in by neoliberal economists who claim the market will fix it all. Yet, the deadly effect from the “invisible hand” of accelerating global climate change even now sweeping across the globe, and is the strongest “signal” that we human beings will receive—before there are mega droughts, wildfires, extreme weather events, mass migrations and deaths-- that we are currently far exceeding the fragile carrying capacity of Mother Earth.[[70]](#footnote-70)**
5. **Reconfigure the “inner architecture” of state sovereignty characterized by the separate executive legislative and judicial branches by strengthening the independence of the Judiciary which can, and in many civil law jurisdictions—always has recognized the national court jurisdictions to include the modern Law of Nations,[[71]](#footnote-71) consisting of those laws *common to humanity*, especially General principles of law that are necessary to ensure the proper functioning or best practice of the judiciary. According to classical Republican theory concerning the separation of powers, the executive branch executes or enacts the laws, the legislative makes the law, and the courts guard and enforce the law and legality of state action. In Global Law, in states governed by the rule of law, the Executive and the legislature are responsible for the enforcement of Intergenerational Equity.**

**If these branches fail to do so however, the national courts are the guardians of the last resort of IE and are entrusted with legally defining and enforcing, within one’s own national jurisdiction, the scope and limits of intergenerational equity (IE); IE will not have the same meaning or scope for every nation; *sui generis* circumstances may well shape its specific definition and application though not the underlying principles, including that we must pass on, AT THE VERY LEAST, AN INHABITABLE PLANET THAT CAN SUSTAIN THE NATION AND NATURE WHICH ARE INSEPARABLE SINCE WE ARE TOTALLY DEPENDENT ON MOTHER EARTH FOR OUR NEXT BREATH, AND EXISTENCE. WE CAN NO LONGER PROTECT ACTIVITIES THAT DESTROY THE EARTH ECOLOGIES AND BIODIVERSITY UNDER THE RULE OF LAW.**

**So, citizens and the courts must now act since governments are proving too slow or even negligent in their primary responsibility to ensure the preservation of the nation and nature**.

**Specifically, the judiciary of each state can do this by recognizing and enhancing the role of the domestic courts in enforcing environmental law, both national and international, on the grounds that adjudication environmental legal obligations are *now a legal precondition to its legitimate claims to sovereignty*. In particular, the courts must now accept as self-executing within their national, regional or local jurisdictions the international principles of environmental law, such as the precautionary principle or do no harm found within the Law of Nations, especially treaty or customary international law as the [[72]](#footnote-72)emergent, common and shared Lex Naturalis; as such, this law must now reach deep into the domestic jurisdiction of every state to insure legal protections for the nation and nature against its own and other governments.**

**So, observing and, if need be, enforcing these legal protections towards the environment, as well as peoples’ rights to a healthy and safe local and global environment are the absolute prerequisites to self-preservation and hence for legitimate and legal sovereignty of a state.**

**In short, integral sovereignty now requires that the state extend comprehensive legal protection, via its domestic courts, over all remaining biodiversity, forests and those natural systems that support and sustain life on this planet. Perhaps the most powerful and immediate way is to strictly enforce intergenerational equity in the government, and courts as a main pillar of integrated sovereignty. Otherwise, perhaps sooner rather than later, we will go the way of the dinosaur because the legal brain proved to be the size of a pea, and incapable of conceiving, let alone acting upon, necessary evolutionary change. So, the current great challenge of the international legal order is to change, grow, evolve, or die; as the** **great American jurist Roscoe Pound said, and it bears repeating: “The Law must be stable, but it must not be still.”**

**CONCLUSION: GLOBAL LAW**

**Our planet is now in great peril due to climate change, which is certain to intensify, as well as a number of other threats created by human beings; this article has focused upon the need for law to change, grow and adapt to the accelerating threat of climate change; later articles may incorporate legal approaches to other significant threats facing humanity.**

**Under global public law, the *self-preservation* of the nations and nature-- defined as the earth’s ecologies that support sustain life and all biodiversity—is the supreme duty of *integrated state sovereignty* that is the only basis of legitimate and legal statehood in the Anthropocene age.**

**Due to the continuing failure of international law to protect the natural world upon which our entire existence as human beings rely upon, a new paradigm of the international legal order is presented here, one that can better protect human life and the natural world upon which all of life on this planet depends. For reasons that we have explored and elaborated upon in this introductory essay, this new paradigm of the international legal order can be defined as the Global Legal Order or simply as Global Law.**

**As argued above, Global Law is the basic public law (Jus Publicum) that defines legitimate and legal state sovereignty in the Anthropocene Age to include the state’s fundamental duty to preserve and simultaneously fully protect the *nation or nations* *and nature;* so “nature” here is defined very broadly here to include the Earth’s ecologies and biodiversity-upon which all life depends for basic survival in a time when global climate change is accelerating and ravaging increasing areas of the planet. The purpose and role of GPL is to extend the rule of law to the entire Earth, including the global commons and the Earth’s fragile ecology in cooperation with existing states and courts exercising their fiduciary duties and obligations to insure the self-preservation of the nation (peoples) and nature so that human beings as well as all of life can continue to exist and flourish far into the distant future.**

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1. Global Public Law, GPL or simply Global Law are used interchangeably in the following essay.. [↑](#footnote-ref-1)
2. This is not a new idea; see John Locke’s *Second Treatise* in which he specifically identifies the government as the trustee of the rights that people surrender in order to form a political pact. Also see: Simmons, A. J. (2014). *On the edge of Anarchy*. Princeton University Press. [↑](#footnote-ref-2)
3. For an eloquent explanation of general principles of international law, including their role in domestic jurisdictions, see: Bassiouni, M. C. (1989). A functional approach to general principles of international law. *Mich. J. Int'l L.*, *11*, 768. [↑](#footnote-ref-3)
4. See: Magalhães, P. (2020). Climate as a Concern or a Heritage? Addressing the legal structural roots of climate emergency. *Revista Electrónica de Direito. RED*, *21*(1), 99-134. [↑](#footnote-ref-4)
5. See: Rockström, J., Steffen, W., Noone, K., Persson, Å., Chapin III, F. S., Lambin, E., ... & Foley, J. (2009). Planetary boundaries: exploring the safe operating space for humanity. *Ecology and society*, *14*(2). [↑](#footnote-ref-5)
6. Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016). *The safe operating space treaty: A new approach to managing our use of the earth system*. Cambridge Scholars Publishing. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. . Hobbes, T. (1982). 1660. Leviathan. Also see: Hobbes, T. (1966). The State of Nature. *Leviathan. Can be found in Ebenstein's Great Political Thinkers, 4thEdition*, 374. Finally see: Hobbes, T. (1996). Of the natural condition of mankind as concerning their felicity and misery. *Classics of International Relations*. Hobbes knew Latin and Greek and so was well aware that the usual translation of Lex Naturalis was “natural law.” But here he specifically identifies Lex Naturalis as his first “*Law of Nature*” to emphasize, I think, the primacy and importance of SELF-PRESERVATION as the first law of life. [↑](#footnote-ref-8)
9. See supra, note 3.Also see: Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016). *The safe operating space treaty: A new approach to managing our use of the earth system*. Cambridge Scholars Publishing. [↑](#footnote-ref-9)
10. **Hobbes, supra, note 8. For Hobbes, self-preservation is the first law of life, or Lex Naturalis.** [↑](#footnote-ref-10)
11. For instance, Rawls addressed this problem in his book; *see* John Rawls. The Laws of Peoples. (Harvard Univ Press 3d ed. 2000) (providing a non-historically based call for a law of the people). *See* *also* International Law and the Rise of Nations: The State System and the Challenge of Ethnic Groups (Robert J. Beck & Thomas Ambrosio eds., 2002); J. Sammuel Barkin & Bruce Cronin, *The State of the Nation: Changing Norms and Rules of Sovereignty in International Relations*, 48 Int’l Org. 107 (1994). There are, of course, volumes written about what constitutes a nation; I am offering a legal definition here that will be inevitably contested; yet, I point out that this definition, inspired by the work of Prof. Barkun, can be empirically measured and tested. [↑](#footnote-ref-11)
12. MICHAEL BARKUN, LAW WITHOUT SANCTION: ORDER IN PRIMITIVE SOCIETIES AND THE WORLD COMMUNITY. Yale Univ. Press. (1968). Prof. Barkun has been an invaluable teacher, and colleague. [↑](#footnote-ref-12)
13. Burke [↑](#footnote-ref-13)
14. Law without Sanction, supra, note 11. Prof. Michael Barkun is a consummate scholar, gentleman and mentor; I was blessed to work with him first as his graduate assistant and later as a colleague over the years, and benefitted greatly from his keen intelligence a, wisdom, rigor and insights. [↑](#footnote-ref-14)
15. Despite his apologists, Bentham DID NOT say “sovereign states” in his original formulations; he meant agreements between his sovereign, the king and other Emperors, Queens or kings (as sovereigns), or by parliament; specifically as he put it in A Fragment on Government: “By a sovereign I mean *any person or assemblage of persons* to whose will a whole political community are (no matter on what account) supposed to be in a disposition to pay obedience.”  See his: A Comment on the Commentaries and A Fragment on Government. (1977) [↑](#footnote-ref-15)
16. Friends tell me that Edmund Burke said this better than I ever will; see: [Edmund Burke & the Duties of Generations ~ The Imaginative Conservative](https://theimaginativeconservative.org/2016/09/edmund-burke-and-duties-generations-bradley-birzer.html). Also see: [Edmund Burke’s Eternal Society: A Philosophical Reflection ~ The Imaginative Conservative](https://theimaginativeconservative.org/2016/12/edmund-burke-eternal-society-stephen-wolfe.html#:~:text=Edmund%20Burke%E2%80%99s%20%E2%80%9Ceternal%20society%E2%80%9D%E2%80%94the%20%E2%80%9Cprimeval%20contract%E2%80%9D%20among%20the,numerous%20works%20attempting%20philosophically%20to%20ground%20this%20concept.). [↑](#footnote-ref-16)
17. This is an elaboration of John Lock’s typology of the people being both the trustor and beneficiaries of a trust, while the government acts merely as the trustee. See: Locke, J. (2014). *Second treatise of government: An essay concerning the true original, extent and end of civil government*. John Wiley & Sons; so, I make Locke’s fiduciary typology the basis for a new system of international fiduciary Law of Nations in: Boudreau, T. E. (2012). The Modern Law of Nations: Jus Gentium and the Role of Roman Jurisprudence in Shaping the Post World War II International Legal Order. *Dig.: Nat'l Italian Am. B. Ass'n LJ*, *20*, 1.; this argument for a fiduciary international law is elaborated upon in: Boudreau, T. (2012). The Law of Nations and John Locke's Second Treatise: The Emergence of the Fiduciary Legal Order during World War II. *J. Juris*, *15*, 285.Finally, see our book: Advances in International Law: New Role for the Judiciary (2017) by Thomas Boudreau and Dr. Juan Carlos Sainz-Borgo [Dr Juan Carlos Sainz-Borgo](https://www.amazon.com/s/ref=dp_byline_sr_book_2?ie=UTF8&field-author=Dr+Juan+Carlos+Sainz-Borgo&text=Dr+Juan+Carlos+Sainz-Borgo&sort=relevancerank&search-alias=books). Elias Publishers. My first essay, “Promises to Kep,”and latter one, “Paradigms Lost ad Found” spell out his new international fiduciary legal order in greater detail than possible here. [↑](#footnote-ref-17)
18. See: E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University, 1988 / Dobbs Ferry, NY: Transnational Publishers, 1989); excerpts in E. Brown Weiss, “Intergenerational Equity: A Legal Framework for Global Environmental Change”, in id. (ed.), *Environmental Change and International Law: New Challenges and Dimensions* (Tokyo: United Nations University Press, 1992), pp. 385-412. Also see: Treves, A., Artelle, K. A., Darimont, C. T., Lynn, W. S., Paquet, P., Santiago-Ávila, F. J., ... & Wood, M. C. (2018). Intergenerational equity can help to prevent climate change and extinction. *Nature Ecology & Evolution*, *2*(2), 204-207. Also: Slobodian, L. (2019). Defending the future: Intergenerational equity in climate litigation. *Geo. Envtl. L. Rev.*, *32*, 569.

    Also see: Weiss, E. B. (1983). The Planetary Trust: Conservation and Intergenerational Equity. *Ecology LQ*, *11*, 495.

    This is where it all began, at least for this author who read this article as a grad. student. [↑](#footnote-ref-18)
19. Treves, A., Artelle, K. A., Darimont, C. T., Lynn, W. S., Paquet, P., Santiago-Ávila, F. J., ... & Wood, M. C. (2018). Intergenerational equity can help to prevent climate change and extinction. *Nature Ecology & Evolution*, *2*(2), 204-207. [↑](#footnote-ref-19)
20. **EDITH BROWN WEISS**, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND **INTERGENERATIONAL EQUITY**. 345-51 (1989) [↑](#footnote-ref-20)
21. ## See: **IPCC Report: “Code Red for Human Driven Global Heating, Warns UN Chief,” at:** [IPCC report: ‘Code red’ for human driven global heating, warns UN chief | | UN News](https://news.un.org/en/story/2021/08/1097362), 9 August 2021.**,**

    [↑](#footnote-ref-21)
22. See supra, Wolfe. [↑](#footnote-ref-22)
23. **See, for example: Crutzen, P. J. (2002, November). The “Anthropocene”. In *Journal de Physique IV (Proceedings)* (Vol. 12, No. 10, pp. 1-5). EDP sciences. Also: Crutzen, P. J., & Stoermer, E. F. (2021). The ‘Anthropocene’(2000). In *Paul J. Crutzen and the Anthropocene: A New Epoch in Earth’s History* (pp. 19-21). Singer, Cham.** [↑](#footnote-ref-23)
24. **See, for instance: Leakey, R. E., & Lewin, R. (1996). *The sixth extinction: patterns of life and the future of humankind*. Anchor. Also: Eldredge, N. (2001). The sixth extinction. *An ActionBioscience. org original article. American Institute of Biological Sciences*.Finally,: Kolbert, E. (2014). *The sixth extinction: An unnatural history*.**  [↑](#footnote-ref-24)
25. **See bestseller by science writer, Wallace-Wells, D. (2019). *The uninhabitable earth*. Columbia University Press.** [↑](#footnote-ref-25)
26. See : Montesquieu, C. S. (1989). The spirit of the laws; Also see: Deudney, D. H. (2010). *Bounding power*. Princeton University Press which won the ISA Best Book of the Decade Award the following year. [↑](#footnote-ref-26)
27. See, for example: [Germany must tighten climate law to protect young people’s future, court rules | Reuters](https://www.reuters.com/business/environment/germany-must-further-tighten-climate-change-law-top-court-rules-2021-04-29/), April 2021. Also: At: [Not slashing emissions? See you in court (nature.com)](https://www.nature.com/articles/d41586-019-03841-5). 20April, 2019. [↑](#footnote-ref-27)
28. See: [Climate lawsuits are breaking new legal ground to protect the planet (nature.com)](https://www.nature.com/articles/d41586-020-00175-5/). Feb. 28, 2020 [↑](#footnote-ref-28)
29. See, for instance, SIPRI index of global and state military expenditures at https://www.sipri.org/databases/milex. [↑](#footnote-ref-29)
30. The idea of intergenerational equity, the right of future generations to a healthy, vibrant, sustainable planet, are protected by the constitutions of 74 percent of the world’s nations. This principle is also recognized as basic in commerce and financial institutions; See article by George Suttles, [Intergenerational Equity and Sustainable Investing (commonfund.org)](https://www.commonfund.org/research-center/articles/intergenerational-equity-sustainable-investing#:~:text=Sustainable%20investing%20gives%20investors%2C%20investment%20committees%2C%20firms%2C%20and,climate%20change%20are%20now%20impacting%20the%20financial%20markets.); [↑](#footnote-ref-30)
31. See website: [Regional International Organizations (RIOs) – Climate Change and the Global Trust Project (atmosphereasaglobaltrust.com)](https://atmosphereasaglobaltrust.com/regional-international-organizations-rios/) [↑](#footnote-ref-31)
32. See David Wallace Wells, The Uninhabitable Earth, supra., note 21. [↑](#footnote-ref-32)
33. See: Steffen, W., Richardson, K., Rockström, J., Cornell, S. E., Fetzer, I., Bennett, E. M., ... & Sörlin, S. (2015). Planetary boundaries: Guiding human development on a changing planet. *Science*, *347*(6223), 1259855. [↑](#footnote-ref-33)
34. There is a dynamic international movement to outlaw such wanton acts of destruction as “ecocide.” See: [What is ecocide? — Stop Ecocide International](https://www.stopecocide.earth/what-is-ecocide). [↑](#footnote-ref-34)
35. There are a variety of sources concerning a state’s contribution of GHGs to the global atmosphere. See, for instance: [Climate Watch | World Resources Institute (wri.org)](https://www.wri.org/initiatives/climate-watch) [↑](#footnote-ref-35)
36. See Climate Foundations See Sequestration as simply one example. [↑](#footnote-ref-36)
37. See: Etherton, T. (2008). Constructive trusts: a new model for equity and unjust enrichment. *The Cambridge Law Journal*, *67*(2), 265-287. [↑](#footnote-ref-37)
38. See supra, notes 22 and 23. [↑](#footnote-ref-38)
39. See: Boudreau, T. E. (2012). The Modern Law of Nations: Jus Gentium and the Role of Roman Jurisprudence in Shaping the Post World War II International Legal Order. *Dig.: Nat'l Italian Am. B. Ass'n LJ*, *20*, 1. [↑](#footnote-ref-39)
40. Glenn, H. P. (2014). *Legal traditions of the world: Sustainable diversity in law*. Oxford University Press. [↑](#footnote-ref-40)
41. Ibid., Alos see Boudreau, “Promises to Keep, Advances in International Law, supra. [↑](#footnote-ref-41)
42. Ibid. [↑](#footnote-ref-42)
43. Ibid., Andrei, See supra, note 2. [↑](#footnote-ref-43)
44. For a definition of the international rule of law, see the excellent article : Ibáñez, J. G. (2012). International Rule of Law and Human Rights: The Aspiration of a Work in Progress. *J. Juris*, *16*, 515.; Also in Advances in International Law, [↑](#footnote-ref-44)
45. See my article “Promises to Keep,” Advances in International Law, supra., pp 60-62. [↑](#footnote-ref-45)
46. See supra, note 5, See: Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016).  [↑](#footnote-ref-46)
47. See: A/HRC/RES/48/13, 8 October 2021 [↑](#footnote-ref-47)
48. .Ibid. [↑](#footnote-ref-48)
49. Ibid. [↑](#footnote-ref-49)
50. See**:** [**Accueil - Pacte mondial pour l’environnement (globalpactenvironment.org)**](https://globalpactenvironment.org/) Also see: Aguila, Y., & Viñuales, J. E. (2019). A global pact for the environment: Conceptual foundations. *Review of European, Comparative & International Environmental Law*, *28*(1), 3-12.; Finally, see: Esty, D. C., Fabius, L., & Kysar, D. A. (2020). Courts, Climate Change, and the Global Pact for the Environment. *Yale Law School, Public Law Research Paper Forthcoming*. [↑](#footnote-ref-50)
51. Ibid., Yet, earlier attempts to adopt the Pact met with frustration as the “usual suspects”—the MIOPS—the Most Industrialized or Polluting states—blocked consensus and any agreement to move forward at a series of conferences at UNEP Headquarters in Nairobi, Kenya. So, efforts are now centered in the UN General Assembly to pass a resolution to adopt the GPE as a “fast track” treaty [↑](#footnote-ref-51)
52. See David Wallace Wells, The Unihabitable Earth, supra, note 21. For a more dated study, see: Thomas, C. D., Cameron, A., Green, R. E., Bakkenes, M., Beaumont, L. J., Collingham, Y. C., ... & Williams, S. E. (2004). Extinction risk from climate change. *Nature*, *427*(6970), 145-148. [↑](#footnote-ref-52)
53. Barkin, J. S., & Cronin, B. (1994). The state and the nation: changing norms and the rules of sovereignty in international relations. *International organization*, 107-130. [↑](#footnote-ref-53)
54. **Ibid.** [↑](#footnote-ref-54)
55. **See W. F. Church, Constitutional Thought in Sixteenth-Century France, Harvard, 1941, esp. Ch. I. Also see:** [Montesquieu and the Separation of Powers | Online Library of Liberty (libertyfund.org)](https://oll.libertyfund.org/page/montesquieu-and-the-separation-of-powers) [↑](#footnote-ref-55)
56. This is not a new idea—both Locke and Jefferson as well as the American Founding Fathers said the same thing, namely: “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.” Our lives, liberties and future happiness are certainly threatened and at risk now due to ongoing inaction, or active enabling by law of adverse consequences committed by states concerning climate change. See: Jefferson, T. (1997). *Declaration of independence*. Applewood Books. [↑](#footnote-ref-56)
57. See, for example: Ferreira-Snyman, M. P. (2006). The evolution of state sovereignty: A historical overview. *Fundamina: A Journal of Legal History*, *12*(2), 1-28. Also: Schrijver, N. (1999). The changing nature of state sovereignty. *British Year Book of International Law*, *70*(1), 65-98. [↑](#footnote-ref-57)
58. **See: Magalhães, P., Steffen, W., & Bosselmann, K. (Eds.). (2016). *The safe operating space treaty: A new approach to managing our use of the earth system*. Cambridge Scholars Publishing.** [↑](#footnote-ref-58)
59. Ibid…... [↑](#footnote-ref-59)
60. Dupuy, P. M., & Viñuales, J. E. (2018). *International environmental law*. Cambridge University Press. [↑](#footnote-ref-60)
61. Ibid., p.59 [↑](#footnote-ref-61)
62. See Schachter, General Principles of International Law, supra. [↑](#footnote-ref-62)
63. See, for example an interesting article on the convoluted evolution of the fiduciary power: Rotman, L. I. (2011). Fiduciary Law's Holy Grail: Reconciling Theory and Practice in Fiduciary Jurisprudence. *BUL Rev.*, *91*, 921.

    Fiduciary jurisdiction use to be employed in the medieval English Courts of Equity. Now, it can be found in the great state of Delaware and used by corporations, but not really by the rest of us. So, It’s time to change this, and restore fiduciary jurisdiction to a basis for subsequent judicial adjudication in the full richness and scope of its history, tradition and meaning. [↑](#footnote-ref-63)
64. See surpa, note 50.. Also see infra, note 65. [↑](#footnote-ref-64)
65. the proposed Global Pact for the Environment. See: Aguila, Y., & Viñuales, J. E. (2019). A Global Pact for the Environment: Conceptual foundations. *Review of European, Comparative & International Environmental Law*, *28*(1), 3-12. [↑](#footnote-ref-65)
66. See, for example: Chapin III, F. S., Torn, M. S., & Tateno, M. (1996). Principles of ecosystem sustainability. *The American Naturalist*, *148*(6), 1016-1037. Also: Daily, G. C., Ehrlich, A. H., & Ehrlich, P. R. (1993). Optimum human population size. *Race, Poverty & the Environment*, 9-12. [↑](#footnote-ref-66)
67. This is the social policy that encourages two parents to have two children: ”Why be outnumbered?!’ Even if adopted for the duration of the climate crisis, this policy will continue the increase of human population for a while but at a slower rate than exponential growth…The idea that continued exponential human population growth has little or no relationship to our current environmental degradation and climate crisis is simply ludicrous. [↑](#footnote-ref-67)
68. See infra, note 33. Limits to Growth [↑](#footnote-ref-68)
69. You can watch live as we become 8 billion and counting, perhaps by the end of Feb., 2022. See: [Worldometer - real time world statistics (worldometers.info)](https://www.worldometers.info/). Critics who claim that I oppose a Woman’s Right to Choose, birth control including the morning after pill and family planning are patently false. Its simply so sad, but there are simply too many of us already…. Plus, we were warned about this over fifty years ago, at: Ehrlich, P. R. (1968). The population bomb. *New York*, 72-80. [↑](#footnote-ref-69)
70. They also tried to war us! See: the original *Limits to Growth (1972)* by the Club of Rome, or the more recent: Meadows, D., Randers, J., & Meadows, D. (2004). Limits to growth the 30-year update. *White River Junction, VT: Chelsea Green Publishing*; Also see: Nordhaus, W. D. (1973). World dynamics: measurement without data. *The Economic Journal*, *83*(332), 1156-1183. Finally, Lethal model 2: The limits to growth revisited. *Brookings papers on economic activity*, *1992*(2), 1-59. [↑](#footnote-ref-70)
71. Boudreau, T. (2016). Paradigms Lost and Found: The Emergent International Legal Order. *J. Juris*, *30*, 65. [↑](#footnote-ref-71)
72. Ib., Andrei. [↑](#footnote-ref-72)