Taking carbon culture to court : civil lawsuits as political manifestoes in US climate change litigation

Taking Carbon Culture to Court: Civil Lawsuits as Political Manifestoes in US Climate Change Litigation

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Faced with a government chiefly preoccupied by environmental deregulation, citizens and local governments across the US are increasingly resorting to the judiciary in an effort to respond to the challenges brought by environmental disruptions. While climate change litigation has become a worldwide phenomenon in the past half-decade, the number of cases has particularly soared in the US. This paper examines two types of climate change cases, proposing to read them as political manifestoes. The first is a series of claims filed by cities and counties, while the second is a lawsuit brought by twenty-one youths. In order to convince judges, but also citizen voters at large, of the merits of their claim, both types of lawsuit mobilize what are deemed constitutive traits of US national identity and its political and economic ethos. As a result, and while undergirded by environmentalist principles, the rhetoric of these cases fosters a national culture of unsustainability, or a system fueled by a growing ecological debt. This study contends that a change in the dominant reading of US national identity is required for the country to transition toward a sustainable mode of existence.

Keywords: Political manifesto, US climate change litigation, *Juliana v. United States*, unsustainability, ecological debt

The Genres of Genre: Form, Formats, and Cultural Formations. SPELL: Swiss Papers in English Language and Literature 38. Ed. Cécile Heim, Boris Vejdovsky and Benjamin Pickford. Tübingen: Narr, 2019. 43-63.

The recurring trail of floods, storms, and wildfires across the US and the rising costs borne by citizens whose lives are impacted, sometimes dramatically, by these weather disasters, has fueled a sense of urgency among some sectors of civil society regarding the need to address climate change.[1] The political and legislative climate brought forth by the incumbent administration's dismantling of environmental regulation at the national and international levels has incited citizens to turn to the judiciary to meet their concerns, and climate change litigation has grown steadily, as evidenced by the rising number of cases brought to courts by citizens and local governments (see Sabin Center for Climate Change Law). Among these are two types of lawsuit I will examine more closely in this essay. The first is a series of claims filed by cities and counties across the country against major oil corporations, from which these local governments seek damages for the costs they have incurred in the wake of climate destabilization. The second, *Juliana v. United States*, a lawsuit filed in Oregon against the US government by twenty-one youths, argues that the federal government's actions have exacerbated climate change and hence violated some of their basic rights.

Beyond the judicial aspects, I propose to read these cases as political manifestoes by focusing on the generic expectations on which they draw and the ideological framework within which their legal argument inscribes itself. My analysis of these cases-as-manifestoes builds on theories of genre as social action. The "functional, rhetorical, and social view of genre," as Amy J. Devitt explains (698), developed in composition and rhetoric studies in the 1980s, following Carolyn R. Miller's definition of genre as "typified rhetorical actions based in recurrent situations" (159). While this approach has been amplified and complicated since then, as Devitt underlines, the core idea of rhetorical genre theory is that "genres are defined less by their formal conventions than by their purposes, participants, and subjects: by their rhetorical actions. Genre [. . .] is defined by its situation and function in a social context" (698). Moving away from the classification of texts into types on the basis of their formal qualities, rhetorical genre theorists argue that genres are "ways of being. They are frames for social action" (Bazerman 19). If "the term manifesto, strictly speaking, applies to (often short) texts published in a brochure, in a journal or a review, in the name of a po-

[1] I would like to thank my colleague Benjamin Pickford and the two reviewers for their valuable comments on earlier drafts of this paper.

litical, philosophical, literary or artistic movement" (Abastado 3), the social action that guides these cases – an effort to reformat the public's understanding of, and approach to, the issue of climate change – resonates with the conception of manifestoes as "programmatic texts [written] in times of crisis or change" (Yanoshevsky 263).

While these lawsuits seek to reform US climate change litigation and amend the country's climate policy, from an environmentalist stance these texts fail on a discursive level. Far from publicizing innovative ways for the nation to reassess its relationship with the environment, these texts enshrine in the collective consciousness beliefs that played a role in leading the US into the current ecological impasse. In their effort to garner support from civil society and elected officials, these cases exploit what are deemed constitutive traits of US national identity and its political and economic ethos, enclosing their claims in an ideology that, for *Juliana* at least, undermines the lawsuit's avowed purpose. Their tactical use of the manifesto's generic formulas is meant to help these cases convince citizens, if not win at trial. But in their attempt to rally support, these lawsuits harm the environmental cause by advancing ideas incompatible with a sustainable agenda, and by capitalizing on the dominant ideology of neoliberal capitalism in spite of that system's role in climate disruption. As anti-revolutionary manifestoes, these lawsuits therefore contribute to reinforcing, rather than unmaking, a national culture of unsustainability entrenched in notions of boundless expansion and infinite growth sustained by a seemingly inexhaustible natural abundance.

Civil Lawsuits Brought by Local Governments

In a concerted effort to circumvent the government's climate-change-denying agenda, a number of states have vowed to reduce their carbon emissions and commit to the Paris Agreement, in spite of Donald Trump's resolve to pull the US out of the international treaty. But while some local governments have decided to embrace a political program designed to reduce their carbon footprint, they also find themselves on the frontline of the destructive effects of climate change. While the costliest repercussions may only be felt at the close of the century, un/natural disasters are to be reckoned with in the present, and municipalities and cities across the coun-

try are compelled to handle the aftermath of extreme weather events, for which no federal budget or comprehensive set of legal instruments have been provisioned. In the recent past, the economic burden of local governments has increased as a result of rising sea levels, wildfires, cataclysmic rainfalls, hurricanes and ensuing floods, as well as heat waves and droughts: "2017 was the most expensive year for natural disasters in U.S. history, costing a total of USD 306 billion" (Mark, "The Case for Climate Reparations"). Faced with growing responsibilities, New York City, Baltimore, eight cities and counties in California, municipalities in Colorado and Washington, as well as the state of Rhode Island have turned to courts to invoke tort claims and to seek financial reparation from the conglomerates they hold responsible for the high concentration of carbon dioxide in the atmosphere.

While the monetary compensation could potentially include hefty sums for oil and gas corporations, especially if the number of litigations increases, these lawsuits remain modest in their political intent. Citing the oil industry as the main culprit, the suing governments do not call for a solution to climate change that would include a fundamental shift in environmental policy, but only seek to retrieve money so as to cover the costs of repairing damaged infrastructure and making necessary adjustments in view of the new climatic reality. For instance, the city of Baltimore "seeks to ensure that the parties who have profited from externalizing the responsibility [. . .] of those physical and environmental changes, bear the costs of those impacts on the city" (Green). Because they are based on the "polluter pays" principle – i.e., a person or organization is financially liable for the pollution his/its industry or activity has caused (Boyle) – financial redresses are thus merely a compensation for mitigation measures enabling cities and counties to confront the effects of rising temperatures resulting from higher concentrations of greenhouse gases in the atmosphere. Just as they have a modest political scope, these cases rest on a restrained legal basis, casting carbon dioxide and methane as a public nuisance, or an activity causing inconvenience or damage to the general public (Legal Information Institute).

Although the connection between the nuisance caused by the accumulation of greenhouse gases in the atmosphere and the source of that nuisance may appear rather straightforward, the question of liability forms a central point of contention in climate change litigation, rendering the recourse to genre all the more expedient. Environmental damages are especially difficult to adjudicate, as blame cannot be easily ascribed to one specific offender.

This inherent weakness has offered oil-corporations' attorneys the breach required for the cases to be dismissed. While the New York City lawsuit and other plaintiffs have hammered on the idea that "a corporation that makes a product causing severe harm when used exactly as intended should shoulder the costs of abating that harm" (*City of New York v. BP PLC*, "Complaint" 3), defendants have attempted to dilute responsibility. When R. Hewitt Pate, the vice president of and general counsel for Chevron, declared that "reliable, affordable energy is not a public nuisance but a public necessity" (Schwarz) after the lawsuits brought by the cities of San Francisco and Oakland were dismissed, he exemplified the argument typically employed by oil empires; namely, that they merely provided a resource in high demand, that Western society developed and prospered thanks to an oil-fueled economy, and that they consequently decline responsibility for consumers' choice to burn fossil fuels. This argument is spurious. Research in the recently established field of attribution studies has shown that a relatively small number of Big Oil stakeholders – ninety corporations exactly – have played a significant role in global carbon emissions, accounting for two-thirds of the greenhouse gases released into the atmosphere since 1751 (Heede 234).

If the field of attribution studies has emerged recently, the science behind climate change dates back to the nineteenth century. French mathematician Jean-Baptiste Joseph Fourier first established a correlation between carbon-dioxide buildup and warmer climate in 1824. Thirty-five years later, Irish scientist John Tyndall discovered that changes in the concentration of gases blocking solar radiation could alter the climate system. In 1898, Swedish scientist Svente Arrhenius introduced the term "greenhouse effect" and offered the first calculation of anthropogenic global warming (Cumo and Herrera). Even oil-company scientists, by the late 1970s and early 1980s, had arrived at the conclusion that their products were responsible for the greenhouse effect and global warming. Numerous internal memos warned that the "use of fossil fuels [. . .] should not be encouraged" and that computer models predicted "effects which [would] indeed be catastrophic" (Mark, "The Case for Climate Reparations"). That knowledge did not encourage oil companies to shift their core business; on the contrary, as Jason Mark notes, they chose to launch a massive disinformation campaign designed to cast doubt on climate change science in 1988, the same year that NASA scientist James Hansen testified before the Senate about the dangers

of global warming. In the 1990s, after two decades of rising public awareness in the US, the media started giving equal coverage to climate change skeptics and "the public was thereby given the impression that a considerable scientific controversy still existed" (Ross and Allmon 831). This changed again in the mid-2000s, around the time that Al Gore's *An Inconvenient Truth* was released, at which point "U.S. public opinion [swung] from simple awareness of the issue to greater acceptance that global warming was happening" (831).

While US public opinion and recognition of the reality of climate change has greatly fluctuated in the past decades, the question of oil companies' responsibility in fostering climate change has been settled. Yet their argument, centered on their role as a commodity provider, remains seemingly forceful, for it draws on a neoliberal assumption that consumers were and remain wholly responsible for their conscious decision to burn fossil fuels. However, even though the link between climate change and the steady buildup of greenhouse gases in the atmosphere reached circles outside the scientific community three decades ago, the vast majority of citizens since then have not been able to put an end to their oil consumption. Recalling Margaret Thatcher's motto "There Is No Alternative," by which she meant to underscore neoliberalism's ineluctable grip on the political economy of Western societies, pulling out of the oil system did not appear conceivable for many American citizens who were bound to burn fossil fuels to live, feed themselves, and go to work. The choice to quit oil simply did not exist for a vast majority of individuals, since there was no plausible alternative in a society where everything, from earning a living to having a social life, revolved around the sacrosanct ownership of an automobile. As Mark Fiege remarks, "from the B-52 bombers that patrolled the skies to the grass on which children played, twentieth-century America became a fully petroleum-powered, automobilized society" (374) and US culture had virtually merged with oil.

The role of the oil industry in fashioning a socioeconomic petroleum complex did not arise against the will of civil society but with its tacit consent. Consequently, the government, and by extension citizens who elect and re-elect representatives who have bowed down to the hegemonic reign of Big Oil, also deserve their share of responsibility. Successive administrations have allowed the rise and consolidation of a culture and economy "addicted" to oil, and they have emerge as the enablers, if not the architects, of

the petro-Leviathan. Oil corporations undeniably fed this Leviathan billions to ensure its growth, but in so doing, they merely took advantage of a gigantic political loophole. Pointing to the government's own role in allowing the carbon economy and culture to grow does not invalidate the cities and counties' claims, but it shows how difficult it will be for local authorities to obtain compensation. Unsurprisingly, two of these lawsuits, those brought by local authorities in San Francisco and Oakland, were struck down in June 2018. The judge recognized the legitimacy of climate change, but refuted the legal admissibility of these claims, declaring that climate change was an issue best left to the other branches of government because "the problem deserve[d] a solution on a more vast scale than [could] be supplied by a district judge or jury in a public nuisance case" (*City of Oakland v. BP PLC*, "Order" 15). A month later, a federal judge dismissed New York City's lawsuit. Predictably, the question of ascribing the bulk of responsibility to the oil industry proved problematic in all these rulings. In the California cases, the judge wrote that "all of us have benefited. Having reaped the benefit of that historic progress, would it really be fair to now ignore our own responsibility in the use of fossil fuels and place the blame for global warming on those who supplied what we demanded?" (*City of Oakland v. BP PLC*, "Order" 8). While the reality of a supposedly shared responsibility in the continued burning of fossil fuels is more complex than the judge's rhetorical question may suggest, this line of defense will undoubtedly prove successful in future cases as well.

These civil lawsuits, centered around the notion of financial compensation, may fail to yield the plaintiffs' desired outcome because of the intrinsic limits of public-nuisance claims. However, these cases are bound to have a significant impact far outside the courtrooms through the cultural work of the genre on which they rely. As Devitt notes, rhetorical genres "strive for transcendence of their local situation [. . .] speak[ing] to human issues, striv[ing] to inspire actions beyond their local circumstances, and speak[ing] to future generations" (710-11). While the liability of private oil companies may not be recognized by judges, it may still be acknowledged by citizens calling for the implementation of a carbon tax. By articulating and publicizing a set of grievances, such as those arising from the extensive damage to Baltimore's infrastructure after the city "experienced two separate 1,000-year storms that brought torrential rain and flooding [in which] businesses and homeowners suffer[ed] tens of millions of dollars' worth of damages"

(Mark, "Baltimore Becomes Latest Local Government"), these cases constitute citizens into a homogenous group, giving them visibility while underlining the despoilment of natural resources held in common by a powerful minority of polluting corporations. Indeed, one of the great strengths of these lawsuits-as-manifestoes lies in their being "set up like a battlefield" (Caws xx), delineating a united "we" against a perceived oppressor: the oil industry. The rising number of climate change cases of the same caliber is not a coincidence. On the contrary, it speaks to the protagonists' awareness of the momentum and their ability to rewrite an aspect of the cultural world, for "genres enable their users to carry out situated symbolic actions rhetorically and linguistically, and in so doing, to [. . .] frame social realities" (Bawarshi and Reiff 59). Indeed, these lawsuits demonstrate a certain form of resistance and a rejection of the norm by enabling people to realize the true costs of their overreliance on oil. In throwing light on the US's oil-dependent lifestyle and energy system, these cases may potentially reshape the national conversation as citizens come to understand that, far from being mere customers and users, they are harmed by a system in which they are trapped, and for which they are to bear the human costs against which oil billionaires are safeguarded. "Begin[ning] with the de-familiarization of the daily – the making strange of the habitual and the accustomed" (Ebert 560), these lawsuits reveal the faulty nature of a logic advocating private profits and public costs, allowing for a significant change of perspective to emerge.

Yet for all their potential benefit in recalibrating people's perceptions, and unlike traditional manifestoes which emerge as "the privileged discourses of all social and cultural contestations" (553), these cases ground their claim in the dominant ideology of neoliberal capitalism. This move is calculated to convince the judge presiding at the trial, but also to appeal to a much greater audience with legislative power of their own, namely members of civil society. However, the ideology mobilized by these lawsuits goes against an environmentalist agenda. Written in times of crisis, these "conservative" manifestoes do not seek, as manifestoes typically do, to revolutionize the current form of the socioeconomic system, but rather to amend it slightly. In doing so, these cases validate the system in spite of its acute role in fostering climate change, while cementing its apparently ineluctable character. Aimed primarily at making their claim legible and admissible to most (be they legal authorities or mere citizens), these lawsuits-as-

manifestoes draw on the tenets of neoliberal capitalism and more specifically on its vigorous defense of property. In framing the issue as a conventional matter of property damage, these cases pit the use of one type of property against another (oil vs. public infrastructure), depicting them as equivalent entities that can be substituted through an economic transaction. To a public won over to neoliberal ideals of the free market and private ownership, the strength of such rhetoric lies in the minimal change required for business to carry on unobstructed, as opposed to a heavy structural reform involving "big government." Instead, from a capitalist perspective, environmental damage is considered nothing more than a degradation of natural capital which can be precisely assessed and redressed. Yet climate destabilization does not merely translate to damaged infrastructure, but triggers a series of changes in ecosystems, including irreparable losses that do not come with a price tag. Instead of calling the government to action, the plaintiffs simply react to a problem without seeking to address its underlying features, as if resilience, or adaptation to the new climate reality, were a good enough – and indeed the only possible – response. Miller and her coauthors note that "as an apparently immaterial phenomenon [. . .] genre has been theorized as symbolic action; but generic action is materialized in practices and has empirical consequences (273-74). The dissemination of the liberal capitalist creed advocating for the status quo comes at a great ecological cost.

Juliana v. United States

In 2015, backed by the environmental non-profit organization Our Children's Trust, twenty-one youths filed a constitutional climate lawsuit against the US government in the Oregon District Court. Their complaint asserts that, through its actions and policies, the government has contributed to exacerbating climate change, thereby violating some of the youngest generation's constitutional rights, and that it has failed to protect critical public-trust resources. Fifty similar claims have been filed in state courts, two of which, the Alaska and the Washington cases, were dismissed in 2018. A federal case, *Juliana v. United States*, gained prominence in November 2016, two days after Trump's election, when the Oregon district court ruled that it could proceed to trial. Many challenges stand in its way, however, and the

current government has worked hard to obtain a dismissal of the case, successfully preventing it from reaching trial twice. Originally scheduled for February 2018 at the Oregon District Court in Eugene, the trial date for *Juliana* was postponed until October 29, before being halted at the last minute as a result of the current administration's latest attempt at delaying proceedings (Our Children's Trust). The young plaintiffs already had to prove that their claim was not based on generalized grievances, which by their very nature cannot be addressed in a court of law. They also had to convince the judge that they had legal standing, namely that the government, through its climate policy, was harming them specifically and in a concrete, demonstrable way. They also succeeded in getting climate change recognized as a legal matter, as opposed to a nonjusticiable political question. As Melissa Powers explains, "the plaintiffs' success in getting the court to accept jurisdiction over the case was itself an important achievement in the case and potentially for climate change law itself" (202). Should *Juliana* reach the trial phase of litigation, the court could deliver a powerful order that, if reiterated by the Supreme Court, would confirm the constitutional right to a safe climate. Prevailing in court would indeed compel the government to craft and implement an ambitious climate policy framework aimed at reducing greenhouse gas emissions from fossil fuels, an important step in climate change mitigation efforts.

As with the cities' and counties' lawsuits, the question of responsibility once more proves a thorny point, underlining the importance for the plaintiffs of resorting to generic conventions to secure public approval. Without being explicitly mentioned in the complaint, this lawsuit draws on an important concept of environmental justice: ecological debt. What is specifically invoked by the plaintiffs is the harm caused to present and future generations by the US government in allowing practices leading to climate disruption. This harm, however, is a direct consequence of the ever-growing ecological debt on which the US and other industrialized nations' socieconomic systems rest. There are two types of ecological debts or, seen the other way around, ecological credits. The horizontal credit symbolizes the fact that the excessive consumption of developed economies is offset by the much lower consumption of developing countries. Vertical credit, on the other hand, refers to the "grab" of current generations on the theoretical right of younger and future generations to access the same natural resources. If sustained over the next decades, current levels of extraction and consumption could

result in depletion or outright extinction, thus depriving future generations of basic needs. This environmental credit system enables advanced economies to consume more than they would be allowed to in a system privileging a fair allocation of resources, both horizontally and vertically. Responsible for a quarter of all CO_2 emissions since the beginning of the second Industrial Revolution, and the second largest annual emitter after China (Union of Concerned Scientists), the US would occupy a prominent seat in an international courtroom ruling on climate change responsibility. At the national level, the plaintiffs' claim implicitly relies on this notion of vertical ecological debt to argue that the US government has wronged the young and unborn generations. But as Andrea Rogers, one of the *Juliana* lawyers, explained, the government cannot be sued for failing to do something such as implementing a sustainable energy system. Rather, the plaintiffs must demonstrate that the government had a long-standing knowledge of climate danger and that it violated the constitution through its affirmative actions. And indeed, the US government has long known of the dangers associated with a warmer planet, for it received numerous scientific reports in the decades following the end of the Second World War (Weart 206-12).

Emphasizing the role of successive administrations in heightening the concentration of carbon dioxide in the atmosphere, the claim asks for the implementation of a national climate-recovery plan. This plan, the plaintiffs argue, would ensure that the concentration of carbon dioxide, expressed in parts per million (ppm), be lowered from its current 400 ppm to 350 ppm by the end of this century, a level which would ensure that temperatures at the surface of the earth do not skyrocket (Estrin 19). Researchers have calculated that, based on the Nationally Determined Contributions (NDCs) the US pledged to respect at the 2015 UN Climate Change Conference held in Paris, its carbon emissions budget, if taken as a reference for the world's total budget, would lead to a 4 °C warming – significantly higher than the upper limit set by climate scientists at 2 °C above preindustrial levels (Robiou Du Pont and Meinshausen 5). The plaintiffs reckon that the United States needs to reduce its CO_2 emissions by about ten percent each year beginning in 2018 in order to stay within a safe threshold. The case is thus a call to phase out fossil-fuel emissions, with the aim of stabilizing the climate system by lowering the amount of greenhouse gases in the atmosphere.

Let us now turn to the judicial framework in which this lawsuit inscribes itself, and the two main legal arguments developed by the plaintiffs. The

first of these emanates from common law and appeals to what is known as the public trust doctrine. Originally granting the government "title to submerged land under navigable waters in trust for the benefit of the public" (The People's Law Dictionary), the doctrine holds that the government acts as a trustee of water resources, limiting its own authority to develop the resources it must preserve for the public, including future generations. In recent legal developments, the doctrine has been invoked to include a broader set of environmental resources. *Juliana*, for instance, argues that the notion of public trust applies to the atmosphere, a claim resting on the concept of Atmospheric Trust Litigation developed by Mary Wood, a law professor at the University of Oregon. Wood contends that a representative government has a duty to protect the natural systems required for its people's survival, for citizens would not give power to their government to eradicate resources such as a stable climate system (Mukherjee). The youths' lawyers assert that the national climate policy violates the public trust doctrine, by allowing industrial and business practices that generate carbon emissions destabilizing the climate system and by "support[ing] fossil fuel development through federal permits, leases, subsidies, and approvals for fossil fuel exports" (Powers 201). While this doctrine represents the collective aspect of *Juliana*'s legal argument, the core of the plaintiffs' claim lies in the violation that derives from it, and which pertains to their constitutional rights to "life, liberty and property" (*Juliana v. United States*, "First Amended Complaint" 2). Arguing that these rights cannot be safeguarded as carbon accumulation continues to increase in the atmosphere, the plaintiffs assert that the government's energy policy violates two amendments to the Constitution, one of which is the due-process component of the Fifth Amendment, which holds that the "no person shall be [. . .] deprived of life, liberty, or property, without due process of law" (Comparative Constitutions Project). As Sabrina McCormick and her coauthors explain, *Juliana* "seeks to extend due process beyond limiting government infringement on substantive rights to impose an affirmative obligation on government to take action to prevent climate change" (832-33).

As with the cities and counties lawsuits, the communication campaign around *Juliana* and the promotion of its legal argument allow for a symbolic reading of this case as a political manifesto. The nonprofit representing the youths has worked hard to ensure that, should the lawsuit not make it to trial, its main ideas would still reach a large audience, with the hope that it

might initiate change in the ballot boxes. Indeed, "the manifesto has a particular performativity: it does not 'merely describe a history of rupture, but produces such a history, seeking to create this rupture actively through its own intervention'" (Puchner, "Manifesto = Theatre" 450). More than winning at trial, *Juliana* aims at propelling its environmental ideas onto a wider arena. "A programmatic *discourse of power* [that] aspires to change reality with words" (Yanoshevsky 264), *Juliana*-as-manifesto is aimed at altering people's understanding of climate change and the ways to mitigate its consequences. In order to convince a substantial audience, the case takes advantage of a recognizable repertoire, grounding its legal argument in the most famous US manifesto: the Declaration of Independence. In asserting that "new insights reveal discord between the Constitution's central protections [of the rights to life, liberty, and property] and the conduct of government" (*Juliana v. United States*, "First Amended Complaint" 84), *Juliana* inscribes its claim in constitutional law, but it also echoes, significantly, the Declaration of Independence's preamble, which established as "self-evident truths" that men were "endowed by their Creator with certain unalienable Rights" such as "Life, Liberty and the Pursuit of Happiness." As Martin Puchner rightly points out,

> these rights, no matter how radical, are not presented as being created, enacted, constituted, or made, and consequently their declaration is not something that is in need of a poesis. All that is required is an innocuous mention of rights whose natural authority rests solely in themselves. ("The Formation of a Genre" 19)

Similarly, *Juliana* attempts to define the right to a healthy climate as a self-evident truth. Puchner further observes that "these rights, laws, and truths [. . .] do not need to be declared at all; they are self-evident. What is being declared instead [. . .] are the violations of these laws and truths, violations that alone become 'the causes which impel them [the authors] to the separation'" (18-19). While their aim is not to create their own republic – at least not yet – the young plaintiffs seek to highlight the just and legitimate character of their case by aligning their claim with the most renowned episodes in US history depicting a government violating its own citizens' natural rights. By invoking fundamental rights and depicting them as quintessentially American, *Juliana* also draws a parallel between the adoption of a more sustainable lifestyle and the pursuit of these rights, refuting the claim, often

voiced, that environmental regulation and a more sustainable lifestyle would impinge on individuals' freedom by restraining their rights and access to liberty and property, hence proving somewhat un-American. "Originally [. . .] envisioned as a 'credo,' a collection of articles of faith in the form of a catechism" (Puchner, "The Formation of a Genre" 20), the manifesto seeks to convert its audience by appealing to values immune to disagreement. Stated otherwise, in order to convince a greater number of people, *Juliana* tones down the environmentalist quality of its claim, stressing instead that ecological issues and solutions lie at the heart of national identity, a form of civil credo.

To constitute itself as a legitimate group whose rights have been flouted, a manifesto needs to identify an oppressor and to develop a "confrontational delivery and insistence on dividing its audience into 'us' and 'them'" (Weeks 221). In the same way that Karl Marx and Friedrich Engels's emblematic "Manifesto of the Communist Party" leveled charges against the bourgeoisie, the *Juliana* plaintiffs reproach the government for its apathy and its complicity in not taking "necessary steps to address and ameliorate the known, serious risk to which they have exposed Plaintiffs" (*Juliana v. United States* 86), using a string of statements reminiscent of the long list of grievances against King George. While the Second Continental Congress sought to justify to the Crown itself the colonies' right to secede from the British Empire, its members also strived to convince colonists of the legitimacy of their state as a sovereign one. Beyond proving the validity of their claims, or the government's role as the custodian of these natural rights, including the right to a healthy climate, the plaintiffs also seek to convince people of the desirability of the alternative society they envision, namely a post-carbon one. Indeed, as "exercises in thinking collective life and imagining futurity, manifestos can be understood as a species of utopianism" (Weeks 217). As such, these texts "enabl[e] us to detach cognitively and affectively from the present so as to produce some critical leverage vis-à-vis the status quo" and to "encourag[e] the production of political desire for a better possible future" (218). The rhetoric developed by *Juliana* seeks to convey the idea that living sustainably would in fact align with fundamental American rights and values. In framing their claim in this manner, the plaintiffs hope to initiate a change of perception and behaviors and set off a series of reforms in Americans' representations and daily practices of sustainability that would undermine unsustainable patterns of behavior and thoughts.

Resorting to the manifesto's generic conventions is a strategic move to impress the court in a favorable manner and rally more people to the plaintiffs' cause, in order to prompt the government to offer a true response to the challenge posed by climate change. But as Mary Ann Caws notes, "the manifesto was from the beginning, and has remained, a deliberate manipulation of the public view [. . .] a document of an ideology, crafted to convince and convert" (xix). For all its positive impacts on environmental policy and its attempt to persuade people to adopt ecologically informed practices, at a more fundamental level, the ideology advanced by this lawsuit-as-manifesto proves problematic, for reasons informed not by some eco-phobic position but rather by an ecological ethos. Instead of fostering actual change, the youths' lawsuit reinforces ideas undergirding the unsustainable socioeconomic system of the US by reinstating a problematic cultural reading of national identity. In referring to the Constitution, *Juliana* directly connects governmental harm to the violation of rights that are natural and basic, but also private, attached to the individual. In the words of one of the plaintiffs' lawyers, *Juliana* "is fundamentally a conservative case [aimed at] protecting individual liberties from government abuses of power" (Gustin). By departing from the level of collective rights and benefits resulting from a healthy climate, placing the accent on individual rights instead, the plaintiffs strengthen the appeal of their claim by tying it to the American individualistic ethos. By insisting on the private pursuit of these rights, as opposed to the public enjoyment of a healthy environment, this lawsuit sanctifies a certain conception of national identity and its coterminous myths, such as the notion of infinite prosperity underlying the American dream, or the insistence on the necessity of unrestrained freedom for personal self-accomplishment, that have fueled the nation's unsustainable practices. "Identif[ying] with extant myths, beliefs, folk tales, and the like" enables the manifesto to "successfully strik[e] a responsive chord" (Stewart, Smith and Denton 95), making it palatable to a majority, but the national myths that *Juliana* invokes enclose its claim in an environmentally unsustainable ideological framework. Stressing the American ideal of ever-expanding personal growth also entrenches and validates the imperial and expansionist character of the nation, while the emphasis on the right to private property, as opposed to a common, public heritage of natural resources, fosters a culture of division whereby individuals seek to maximize their supply of resources regardless of others' access to these same resources.

Sustainability, of which unity and a communal spirit are fundamental traits, requires on the contrary a culture of consensus and a shared commitment by current generations to act as trustees of the planet for future generations. A sustainable mode of existence necessarily implies notions of self-restraint, as opposed to the unbridled freedom and unaccountable behavior characteristic of the private pursuit of individuals' right to life, liberty and property. If citizens are free, they are also part of a community that transcends their individual existence, both from a geographical and a temporal point of view. Individual rights encounter boundaries in the existence of others, whether they be citizens of other nations or unborn members of the human community. Miller and her coauthors write that "genre holds in balance fundamental tensions along multiple dimensions: between innovation and conformity, stability and change [. . .] intention–exigence (or agency–structure, to put it in sociological terms)" (273). In this delicate exercise, the *Juliana* plaintiffs fail to strike a balance between deriving benefits from their adhering to "socially objectified exigences," such as unconditional personal freedom and access to property, and their "individual intentions" (273), which are to advance the fight against climate change.

Aimed at swaying public opinions ranging from denial to outright indifference, this lawsuit taps into the rhetorical ploys offered by the genre of the manifesto in order to persuade, both in the courtroom and in the legislative arena. While this strategy may prove successful, the ideology undergirding its legal argument ultimately proves detrimental to the environmental cause which, in this case, is the cause defended by the plaintiffs themselves. Instead of using genre for its creative power and profiting from its "multiple capacities for invention and transformation," *Juliana* solely relies on its "stabilizing function" (274), invoking some of the unsustainable values that have brought forth the climate predicament even as it strives to appeal to a refractory or unconcerned audience.

Regardless of their numerous merits, including the validation by courts of scientific conclusions regarding global warming, both types of lawsuit fail to reshape the national debate on climate change. The cities' and counties' lawsuits contribute to a rhetoric suggesting that resilience, or adaptation to a modified climate system, should prevail over attempts at regulating the carbon buildup in the atmosphere, a conception promulgated by international economic institutions (Felli). In this logic, compensation suffices to counteract the harmful aspects of climate change. For all its appeal in maintain-

ing the status quo and averting costly radical changes and possible losses of profits, resilience is a flawed policy tool, for the disappearance of a coral reef or a glacier, or the extinction of a species, can never be compensated for. Natural and cultural heritages are not akin to portions of the infrastructure whose damage can be assessed and which can be repaired; their value is inestimable, and their recovery, exceedingly complex, if possible at all. As for *Juliana*, although it calls for a substantial amendment of the US climate policy, its legal argument revives some of the poisonous conceptions that have led to environmental destabilization. Instead of proposing a radical revision reframing the issue, *Juliana* encloses its ecological call in a set of values that are at odds with sustainability. A genuinely transformative lawsuit-as-manifesto would probably integrate indigenous perspectives. In emphasizing the interrelatedness between the natural world and humankind, as well as the importance of building a strong community and cultivating a close, spiritual relationship with the land, Native American writings and beliefs point to a sustainable mode of existence modeled on, and respectful of, the natural world. While Western societies' ideas of nature unmistakably lead to a bleak future, they continue to enjoy a central position within the national conversation, relegating the native ecological ethos to the margins. Yet the fact that language defines our mental world and our response to societal issues such as climate change makes the question of citizenship all the more central, highlighting how environmental questions are intimately connected to issues of national identity and citizenship, or who gets to write national self-representations and define the nation's relationship to nature.

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