5

Climate Litigation through an Equality Lens

JAMES A. GOLDSTON

If the coronavirus pandemic has taught us anything, it is that, when it comes to the natural world, political borders are irrelevant. And like the pandemic, climate change threatens everyone. We all share a common interest in preserving the well-being of our planet. But the changing climate does not affect us in the same ways, at the same pace, or to the same degree. This is because of where we live but also due to our respective levels of wealth and income, our physical and mental disabilities, even the color of our skin. Owners of gated private homes on the Florida Keys are threatened by rising seas – but the nature of their concern, and what can and will be done to address it, contrast powerfully with the situation of the residents of downtown Miami, let alone the Pacific island of Vanuatu.

How do we account for the changing climate's profoundly differential impacts, while at the same time marshaling a world-wide coalition capable of addressing them? How do we appeal to what unites us, while at the same time persuading those with more responsibility, and more resources, to bear a greater burden of the costs of mitigation and adaptation than others? We can't address climate change without contending with issues of difference and inequality. Given that, and assuming that litigation is one of many essential paths to change, what kinds of legal action are most likely to get us where we need to go? And what does climate litigation viewed through the lens of equality look like?

5.1 CLIMATE CHANGE IMPOSES DISPROPORTIONATE IMPACTS

Climate change imposes differential impacts on the marginalized and disadvantaged. As the Inter-Governmental Panel on Climate Change (IPCC) has made clear, "the impacts of warming up to and beyond 1.5°C, and some potential impacts of mitigation actions required to limit warming to 1.5°C, fall

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

disproportionately on the poor and vulnerable."[1] More specifically, "populations at disproportionately higher risk of adverse consequences with global warming of 1.5°C and beyond include disadvantaged and vulnerable populations, some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods."[2]

Compared with wealthier communities, poor and marginalized people are more exposed to adverse climate events, more likely to suffer harm from such events, and less able to recover from those harms.[3]

The poor are more exposed to climate risks because of their location and their work. Worldwide, exposure to drought is more prevalent in rural areas, where a larger proportion of the population lives in poverty, compared with urban areas. One study found that 43 percent of people in rural areas were regularly exposed to drought compared with 32 percent in urban settings.[4] In cities, people living in less vegetated areas face a 5 percent higher risk of heat death.[5] People who work predominantly outside – in low-paid agricultural or construction jobs – are more exposed to the effects of rising temperatures than more highly skilled and highly paid workers. In the United States (primarily Latinx) immigrant non-citizen workers are three times more likely to die from heat exposure than American citizens, and when accounting for age, the risk is more than twenty times higher.[6]

It's not only that the poor are more exposed to climate risks; even where all communities face an identical climate event, they are more susceptible to harm. For example, low-income households in Honduras reported considerably higher asset loss (31 percent) resulting from Hurricane Mitch than did the non-poor households (11 percent), even in areas where the former had comparatively less exposure to the hurricane.[7] While climate-induced fires torch the homes of rich and poor alike, poorer families are more likely to live in densely packed communities, characterized by little or no observance of

[1] "Global Warming of 1.5°C" (2019) *IPCC* 31.
[2] Ibid. at 9.
[3] See S. Nazrul Islam and John Winkel, "Climate Change and Social Inequality" (2017) UN DESA Working Paper 152 at 4.
[4] See ibid. at 16.
[5] See Leah H. Schinasi et al., "Modification of the Association between High Ambient Temperature and Health by Urban Microclimate Indicators: A Systematic Review and Meta-analysis" (2018) 161 *Environmental Research* 168.
[6] See Carolyn Crist, "Immigrant workers in US have tripled risk for heat-related death," Reuters, November 14, 2017, <https://www.reuters.com/article/us-temperature-immigrants-casualties/immigrant-workers-in-u-s-have-tripled-risk-for-heat-related-death-idUSKBN1DE2G3>.
[7] See Nazrul Islam and Winkel, "Climate Change and Social Inequality," above note 3, at 15.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

building codes and limited physical separation between residential and industrial activity.

The ability to move out of harm's way is also largely dependent on economic means. Where wealthy families can load up cars and trailers with treasured belongings, the poor typically have no choice but to escape with what they can carry or remain to protect their possessions at great personal risk. During disasters, early warnings and evacuation instructions may also be inaccessible to marginalized communities because of low literacy rates or language barriers.

Even well-intended but inadequately designed adaptation infrastructure can end up exacerbating the vulnerability of those with fewer economic resources. In Bangladesh, the construction of the Greater Dhaka Western Embankment, intended to protect the capital from catastrophic flooding, worsened the impact of seasonal floods on surrounding rural areas, adding salinity to soil, reducing harvest, and increasing rural to urban migration. Some efforts to lessen vulnerability to climate risks – through the construction of sea walls, landscaped berms, or other adaptation infrastructure – may spark a cycle of "green gentrification," whereby rising real estate values force lower-income communities into denser and more vulnerable tracts of land with greater exposure to climate effects.[8]

Finally, poorer and even some middle-class communities are less able to recover from climate-caused damage compared with wealthy communities. A comparison of the effects of two recent fires in northern California shows this disparity in recovery time. Residents affected by the 2017 fires in North Bay (including Sonoma County, where some of the world's most expensive grapes are cultivated in over 400 vineyards), had completed the removal of debris in little over four months. In contrast, it took nearly a year to finish disposing of debris following the 2015 fire in the Valley, where the poverty rate was twice as high and insurance coverage was less comprehensive. In addition, better-resourced North Bay residents mobilized their political power to pressure insurance companies to make payouts without itemized inventories, whereas 80 percent of Valley residents were required to itemize lost items before receiving insurance funds, leading to only 32 percent of residents receiving payouts.[9] Among wealthy

[8] See Adam Rogers, "Cities Fighting Climate Woes Hasten 'Green Gentrification,'" *Wired*, February 20, 2020, <https://www.wired.com/story/cities-fighting-climate-woes-hasten-green-gentrification/>.

[9] See Sara Viner, "California's Fires Hit Rich and Poor Communities. Guess Which Ones Are Recovering Faster," *Mother Jones*, May 20, 2019, <https://www.motherjones.com/environment/2019/05/californias-fires-hit-rich-and-poor-communities-guess-which-ones-are-recovering-faster/>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

communities in southern California, private firefighting services have emerged as a critical response tool that is available only to those with the ability to pay for it.[10]

Even within the same city, wealthier communities often benefit more from so-called "neutral" policies that in fact generate differential impacts. New York City's post-Hurricane Sandy plan to build a large U-shaped barrier running for ten miles along the coastline of southern Manhattan is an example of a response to climate change that seems to help everyone but in fact may not address the specific needs of the most vulnerable:

> "In many places building a barrier is enough," says Stanley Fritz from the Harlem-based environmental justice organization WE-ACT. "Take south Manhattan and the Financial District. Those communities are affluent and powerful enough to receive protection – and they are getting it. For others in our city, dealing with climate change is not just about infrastructure but social policies. It's not just about preventing the worst but finding long-term solutions to the issues that disproportionately put these communities at risk," including poor infrastructure and a lack of adequate transportation, housing and basic public services.[11]

Women are disproportionately affected by climate change as a result of the underlying social and economic barriers they confront more generally:

> In countries where gender inequality is more severe, death rates for women in climate-related disasters – like hurricanes, floods, tsunamis – are shockingly high. The reason could be as simple as women not being taught to swim. But there's also the fact that women in more unequal societies don't tend to move about in public spaces, which means they won't hear early warnings, and social expectations to stay in the house unless chaperoned means women don't get out fast enough. According to the United Nations Development Program (UNDP), women accounted for 61% of fatalities caused by Cyclone Nargis in Myanmar in 2008, 70–80% in the 2004 Indian Ocean tsunami, and 91% in the 1991 cyclone in Bangladesh. Even if women survive the event itself, the aftermath is just as perilous. When Hurricane Katrina hit New Orleans in 2005, 80% of those left behind in the Lower Ninth Ward after the storm were women. More women than men

[10] See Tanza Loudenback, "People Are Outraged Kim and Kanye Reportedly Hired Private Firefighters to Protect Their $60 Million Mansion from the California Wildfires – but It's Not That Uncommon," *Business Insider*, November 15, 2018, <https://www.businessinsider.com/california-wildfires-private-firefighters-insurance-2018-11>.

[11] Samuel Gilbert, "Remaking New York City in the Wake of Climate Change," Al Jazeera, March 24, 2016, <https://www.govtech.com/em/disaster/Remaking-New-York-City-in-the-wake-of-climate-change.html>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

> were living below the poverty line, fewer women had cars, and women were more likely to have dependents, such as children and elderly or sick relatives – all of which impaired their ability to leave the affected area .... Women are also impacted by the more 'everyday' effects of rising global temperatures. Rising humidity and more frequent flooding means more mosquito-borne diseases, which women are exposed to as water-collectors. Drought means food shortages, which means increased workload for women as food producers – plus women and girls are more likely than men and boys to go without food when there's not enough to go round.[12]

Race and color are other vectors through which climate change generates differential outcomes. The Global South, which is suffering some of the worst impacts from climate change, has on the whole the fewest resources to address it. Laura Pulido writes that "when we look at who will pay the greatest cost [for climate change], in terms of their lives, livelihoods, and well-being, it is overwhelmingly ... the 'darker nations'.... The rich, industrialized countries, which are disproportionately white, will escape with vastly fewer deaths."[13]

But even within wealthy countries, climate justice is often racial justice. "The spatial distribution of risk, vulnerability and death follows along pre-existing lines of racial inequality. In the United States ... the urban poor, which are overwhelmingly nonwhite, will die at the highest rates because of a lack of air conditioning."[14] The impacts of climate change are magnified by numerous public policy choices that have imposed a range of environmental injustices. The disproportionate location of fossil fuel plants in communities of color increases asthma and other health risks that are worsened by climate change.[15] Throughout the United States, air pollution is "disproportionately caused by consumption of goods and services mainly by the non-Hispanic white majority, but disproportionately inhaled by black and Hispanic minorities."[16] As Robert Bullard, professor of urban planning and environmental policy at Texas Southern University and a pioneer in the field of

[12] Regie Genie, "Why Climate Change Is a Gender Equality Issue", Climate Justice, June 3, 2018, <https://www.climatejustice.ch/why-climate-change-is-a-gender-equality-issue/>.

[13] Laura Pulido, "Racism and the Anthropocene," in Gregg Mitman et al. (eds.), *The Remains of the Anthropocene* (Chicago: University of Chicago Press, 2018), p. 118.

[14] Ibid. at 18.

[15] See Karen Savage, "Newest Climate Liability Suits: Climate Justice Is Racial Justice," The Climate Docket, June 30, 2020, <https://www.climatedocket.com/2020/06/30/climate-liability-lawsuits-racial-justice/>

[16] Christopher W. Tessum et al., "Inequity in Consumption of Goods and Services Adds to Racial–Ethnic Disparities in Air Pollution Exposure" (2019) 116 *Proceedings of the National Academy of Sciences* 6001.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

environmental justice, has observed, "It's violence when you have all this pollution pumped into a neighborhood, and people are choking."[17]

As a result of historically rooted patterns of urban housing segregation, many African Americans living in urban heat islands with little tree canopy are more susceptible to the temperature increases that climate change is already producing. Owing to disparities in access to, and quality of, health care, black women who live in such isolated areas of intense heat are at higher risk of giving birth to premature, underweight, or stillborn babies than white women.[18]

Recovery in the aftermath of a climate disaster is also affected by the differential vulnerabilities of distinct racial communities. Confronted with slow or inadequate recovery efforts in their neighborhoods, African Americans were less likely than white residents to return to New Orleans following Hurricane Katrina. The city's Lower Ninth Ward, where 98 percent of residents were African American, contrasted with nearby Lakeview, whose population was 94 percent white. Both suffered catastrophic flooding in the disaster. But a decade later, the Lower Ninth Ward had lost 68 percent of its population, whereas Lakeview was down only 16 percent.[19]

Government policies in the aftermath of Katrina – which former US Congressman Barney Frank condemned as "ethnic cleansing through inaction"[20] – played a role in the disparate reconstruction efforts. As a result, "New Orleans no longer has a public hospital, though prior to Katrina, it was home to the nation's oldest one .... The largest housing recovery program in U.S. history, 'Road Home,' was created in the months after Katrina. But money was disbursed based on the appraised value of a home rather than the cost of rebuilding, even though a home in a white community was typically appraised at a far higher price than the same house in a black community."[21]

In addition to poverty, gender, and race, another dimension along which the effects of climate change fall is political power. Countries in the Global South, who have contributed least to the problem, are on the whole likely to

[17] James Bruggers, "Louisville's 'Black Lives Matter' Demonstrations Continue a Long Quest for Environmental Justice", Inside Climate News, June 21, 2020, <https://insideclimatenews.org/news/20062020/louisville-kentucky-black-lives-matter-rubbertown-environmental-justice>.

[18] See Savage, "Newest Climate Liability Suits," above note 15.

[19] Based on 2000 US Census data.

[20] Gary Rivlin, "White New Orleans Has Recovered from Hurricane Katrina. Black New Orleans Has Not", Talk Poverty, August 29, 2016, <https://talkpoverty.org/2016/08/29/white-new-orleans-recovered-hurricane-katrina-black-new-orleans-not/>.

[21] Ibid.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

suffer the worst consequences, largely because, at least until now, they have lacked the political capacity to force more equitable burden sharing. But political power is not just a determinant of global climate inequality; it also imposes disparate climate change impacts on individual countries. The observations of a Palestinian environmental rights activist are telling:

> For Palestinians, climate change is not just a natural phenomenon, but a political one. Israel's regime of occupation and apartheid, which denies us the right to manage our land and resources, exacerbates the climate crisis Palestinians face, making us more vulnerable to climate-related events. The most extreme example is the Gaza Strip, where two million Palestinians live in an open-air prison under Israeli occupation and siege. The UN projected that Gaza will be unlivable by 2020. Many say it already is. Gaza's acute shortage of potable water has been worsened, not only by climate change but also by Israel's restrictions on the entry of materials and fuel needed for wastewater treatment. As a result, sewage has infiltrated Gaza's aquifer and is flowing untreated into Gaza's coastal waters, damaging marine life and health. Ninety-seven percent of Gaza's scarce water is now unfit for human consumption and contaminated water causes 26 percent of all illnesses in Gaza, and is a leading cause of child deaths. In one of the countless tragic examples of the impacts, a five-year-old boy, Mohammed al-Sayis, who went to Gaza's beach with his family to escape the heat, died in 2017 after swimming in seawater contaminated by sewage.[22]

The extent of politically determined climate outcomes in Palestine is extreme. But the inverse relationship of heightened climate change impacts to political power is evidenced, in different ways, from the vulnerable low-lying nations of the Pacific to Washington, DC.

5.2 PURSUING CLIMATE JUSTICE THROUGH AN EQUALITY LENS IS A CHOICE

Climate change is an objective fact. But its impacts vary greatly and depend significantly on factors that are a function of political choice. And so, it should not be a surprise that not everyone working to address climate change is also focused on addressing inequality. Some go so far as to argue that climate change is an existential crisis and thus everything else should be put on hold. First, they say, save the planet, then worry about racism, sexism, poverty, and other problems. In an interactive poll conducted in early 2020 on the UN

[22] Abeer Butmeh, "Palestine Is a Climate Justice Issue", Al Jazeera, November 28, 2019, <https://www.aljazeera.com/indepth/opinion/palestine-climate-justice-issue-191127102617054.html>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

Sustainable Development Goals, *The Guardian* newspaper found that 51 percent of readers chose to save the planet ahead of all other priorities, compared with 16 percent who would end inequality above all.[23] An October 2019 survey of EU citizens by Eurobarometer found that fighting climate change was seen as the top priority for Europe, barely ahead of combating social inequalities.[24]

Indeed, some of the most prolific climate philanthropists have been sharply criticized for failing to address inequality. Although in the midst of a brief presidential campaign he subsequently apologized, New York City's former mayor Michael Bloomberg was responsible for adopting and sustaining a policy of massive discriminatory stop and frisk practices that, during the 2000s, violated the constitutional rights of hundreds of thousands of young men of color.[25] In pledging ten billion dollars to fight climate change, alongside ambitious carbon targets for his Amazon company, Jeff Bezos declared: "It's going to take collective action from big companies, small companies, nation states, global organizations, and individuals."[26] Yet Amazon's fortune has been built on a same-day delivery model, an airline shipping business, and a vast cloud-computing venture whose clients include major fossil fuel companies. Its annual carbon footprint is equal to that of Norway. The company is facing criticism for a lack of diversity in its senior leadership team and for having allegedly fostered a hostile work environment for low-wage employees, many of them black and brown, in its warehouses.[27]

More generally, private money often flows into climate initiatives that are only accessible to, or deliver benefits primarily for, the wealthy. Electric vehicles, efficient heating systems, home insulation, and improvement in solar technology largely benefit a small section of society whose resources already shield them from the worst effects of a changing climate. By contrast,

[23] See Gary Blight et al., "Climate, Inequality, Hunger: Which Global Problems Would You Fix First?', *The Guardian*, January 15, 2020, <https://www.theguardian.com/global-development/ng-interactive/2020/jan/15/environment-inequality-hunger-which-global-problems-would-you-fix-first>.

[24] See "Parlemeter 2019: Heeding the Call beyond the Vote: A Stronger Parliament to Listen to Citizens Voices" (2019) European Parliament, <https://www.europarl.europa.eu/pdf/eurobarometre/2019/parlemeter-2019-heeding-the-call-beyond-the-vote/report/en-report.pdf>.

[25] See Joseph Goldstein, "Judge Rejects New York's Stop and Frisk Policy," *New York Times*, August 13, 2013, <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

[26] Daniella Silva, "Jeff Bexos Commits $10 Billion to Combat Climate Change," NBC News, February 18, 2020, <https://www.nbcnews.com/news/world/jeff-bezos-commits-10-billion-combat-climate-change-n1137761>.

[27] See Karen Weise, "Amazon Workers Urge Bezos to Match His Words on Race With Actions," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/technology/amazon-racial-inequality.html>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

investments in mass transit systems, power transmission infrastructure to deliver clean energy to rural areas, or protecting and preserving global forests would help meet carbon reduction targets and benefit a more inclusive cross-section of humanity.

In respect of public financing, governments of richer countries in the Global North have long resisted demands from poorer nations for compensation commensurate with their historically disproportionate contributions to climate change.

5.3 THE RATIONALE FOR AN EQUALITY LENS

So, if pursuing climate justice – and, in particular, litigation – through an equality lens requires a deliberate choice, why take that path?

The most compelling reason is moral. It's precisely because those least culpable for climate change will suffer its most severe impacts – within cities and regions and across the globe – that an approach that takes account of that imbalance is essential.

But ethics don't always drive law and politics. Thankfully, applying an equality lens to climate litigation is not just the right thing to do; it's also more effective.

In the realm of politics, even the threat of equality-focused climate litigation can highlight, and help leaders correct for, the risks of imposing new taxes (for gasoline or other items) that disproportionately affect persons of modest incomes or of shutting down coal plants or palm plantations without considering the employment prospects for workers and farmers. In the absence of legal action, French President Macron's failure to consider the costs for workers of new fuel duties imposed in 2018 to fight climate change helped give rise to the nationwide "Yellow Vest" protest movement that eventually forced Macron into a politically humiliating U-turn.[28] Leveraging the possibility of litigation focused on unequal burdens can promote more politically sustainable climate-friendly policies.

An equality frame may also enhance the viability of climate litigation in the courtroom, easing some judges' understandable concerns about deciding what are sometimes termed "political questions."[29] Courts in countries around the

[28] Kim Willsher, "Macron Scraps Fuel Tax Rise in Face of Gilets Jaunes Protests," *The Guardian*, December 5, 2018, <https://www.theguardian.com/world/2018/dec/05/france-wealth-tax-changes-gilets-jaunes-protests-president-macron>.

[29] See *Juliana* v. *United States*, 947 F.3d 1159 (9th Cir. 2020) (Case Summary).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

world have built up substantial experience in adjudicating equality claims, and there is now a well-settled jurisprudence at national and international levels on which to rely. More fundamentally, as John Hart Ely and others have taught, courts considering claims on behalf of disfavored groups are acting, not to undermine but rather to buttress and reinforce democratic norms – by demanding attention be paid to those whose interests are often overlooked in a majoritarian political process.[30] By framing climate cases at least partly with an equality focus, litigants may help unelected judges overcome the common – and forceful – criticism that courts should step aside and let the elected branches address contentious political issues. There's nothing wrong with ensuring that governments pay necessary, and sometimes special, attention to people with less power and fewer resources – those who are already bearing the brunt of climate change and will continue to do so. That's justice.

And in the sphere of public discourse, an equality lens enables advocates to build a narrative about climate change that is less technical and more human. Equality litigation and related advocacy center the voices of the most marginalized – who, in the climate context, include agriculturalists, forest dwellers, smallholders, Indigenous persons, and people residing on or near coastlines. By underscoring the ways in which climate change is a reflection of unjust power relations, a focus on equality makes it more likely that policy will attend to climate change's causes and help ensure that those most responsible bear the greatest costs of redress.

5.4 DRAWING ON THE LESSONS OF EQUALITY LITIGATION

Whether pursued on behalf of women, racial and ethnic minorities, persons with disabilities, gays and lesbians, transgender individuals, or others, equality litigation has broadened educational access, saved lives through the provision of essential medicines, and struck down arbitrary barriers to employment and economic opportunity. This rich history has generated insights of potential relevance to legal action on behalf of the climate.

Climate litigators might draw on the accumulated experience of equality litigation in marshaling detailed statistical evidence of systematic problems affecting large numbers of people over extended periods of time; defining the affirmative responsibilities of states to take affirmative measures to prevent, as well as to redress, certain kinds of harm; and crafting, monitoring, and enforcing collective remedies. Precisely because climate change affects some

[30] John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1981).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

more negatively than others, climate justice advocates could usefully capitalize on the practiced ability of equality litigators to frame a problem and tell a story in ways designed to engender sympathy, solidarity, and support for persons who are most vulnerable, least heard, and most susceptible to "othering."

Experience has shown that litigating against governments, though essential, is not sufficient to address inequality in many spheres of life. Private actors play a major role in fostering, and accentuating, climate change and its disproportionate impacts. Equality litigation offers doctrinal tools like "positive obligations" and "positive action," as well as experience with direct action against corporate entities, which may be useful in highlighting, and helping articulate the contours of, the responsibility of private actors to address climate change.

Finally, an equality-focused climate legal strategy will have to learn from the mixed history of equality advocates in honestly reckoning with the risks and costs of litigation; marrying litigation with other tools of advocacy; ensuring that litigation is owned by, and rooted in the struggles of, the communities on whose behalf litigation is brought; planning early for the challenge of implementing any resulting judgment; and magnifying the beneficial effects of litigation other than final judicial victory.

As in other areas of law, just because litigation cannot achieve everything does not mean it cannot do much good. Particularly when more than a quarter century of intergovernmental negotiations have yielded such limited progress, it would be folly to discard any tool that offers a reasonable prospect of advancing the ball.

5.5 WHAT WOULD CLIMATE LITIGATION PURSUED THROUGH THE EQUALITY LENS LOOK LIKE?

To be sure, not all climate litigation should explicitly raise issues of equal treatment. The landmark December 2019 *Urgenda* judgment of the Dutch Supreme Court rightly underscored the Dutch government's duty of care to all its citizens in reducing greenhouse gas emissions.[31]

But while some cases should advance the universal rights of everyone to a sustainable climate, others can call out the distinctive threats that climate change poses to vulnerable groups. Litigation has already been brought on behalf of children and youth, whose rights to life and a healthy environment were vindicated by the 2018 ruling of the Colombian Supreme Court of

[31] See HR 20 December 2019, 41 NJ 2020, m.nt. J.S. (Urgenda/Netherlands) (Neth.).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

Justice in a case brought by Dejusticia[32] but were dismissed for lack of standing early in 2020 by a divided panel of the United States Ninth Circuit Court of Appeals in the *Juliana* litigation.[33] In the matter of *Teitiota* v. *New Zealand*, the United Nations Human Rights Committee recognized, for the first time, the interests of climate refugees – specifically, that forcibly returning a person to a place where their life would be at risk due to the adverse effects of climate change may violate the right to life under Article 6 of the International Covenant on Civil and Political Rights.[34]

And legal action specifically targeting the disproportionate impacts of climate change is accelerating. In July 2020, as a series of racial justice protests following the police killing of George Floyd in Minneapolis rippled across the United States and the world, Minnesota's attorney general underscored climate change's disproportionate impacts for "people living in poverty and people of color" when launching a lawsuit against Exxon, three Koch Industries entities, and the American Petroleum Institute for allegedly deceiving the public about their product's climate risks.[35] In a complaint filed the next day against four carbon majors for deception about the climate, Washington, DC's attorney general echoed the emphasis on the "particularly severe impacts" of flooding, extreme weather, and heat waves on "low-income communities and communities of color."[36] That same month, two large US energy companies – Dominion Energy and Duke Energy – pulled the plug on a major natural gas project – the proposed Atlantic Coast Pipeline – which would have delivered fracked gas from West Virginia to population centers in Virginia and North Carolina.[37] The project ultimately succumbed to economic hurdles and legal challenges to the proposed placement of a compressor station in Union Hill, Virginia, a "predominately African-American community that has deep ties to the lives of formerly enslaved people."[38]

[32] See Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: L.A. Tolosa Villabona, Expediente 11001-22-03-000-2018-00319-01 (Colom.).

[33] See *Juliana* v. *United States*, 947 F.3d 1159 (9th Cir. 2020).

[34] See Kate Lyons, "Climate Refugees Can't Be Returned Home, Says Landmark UN Human Rights Ruling," *The Guardian*, January 20, 2020, <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling>.

[35] See Savage, "Newest Climate Liability Suits," above note 15.

[36] Ibid.

[37] See "Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline," PRNewswire, July 5, 2020, <https://www.prnewswire.com/news-releases/dominion-energy-and-duke-energy-cancel-the-atlantic-coast-pipeline-301088177.html>.

[38] Marianne Lavelle, "Climate Activists See 'New Era' After Three Major Oil and Gas Pipeline Defeats," Inside Climate News, July 7, 2020, <https://insideclimatenews.org/news/07072020/pipeline-climate-victories-dakota-access-keystone-xl-atlantic-coast>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008

It's not hard to imagine other legal complaints being pursued on behalf of communities of color victimized by municipal and state policies that overwhelmingly concentrate waste disposal facilities, trucking routes, high asphalt-to-greenery ratios, and other accelerators of climate change impacts in their communities. We will likely see further lawsuits by resource-poor residents of places from Bangladesh to Puerto Rico that are especially prone to flooding or face heightened danger from sea level rise and severe weather. An equality lens might also encourage litigation in defense of the protest rights of those who do not command the attention of political leaders or the mainstream media and instead must make their voices heard on the streets. And litigation with an equality focus might give force to the call for reparations that descendants of slaves in the Caribbean have been making from private and state actors for the role of sugar cane, and its slave-based model of production, in causing "deforestation for ranches and ... plantations, [causing] the erosion and loss of fertility of our soils and the loss of valuable protective forestry."[39]

As it evolves, climate litigation will rightly build on many other fields of jurisprudence. Some of it will succeed in the courtroom, while much of it may contribute to change in other ways. But as the movement for racial justice gathers force, an equality lens offers distinctive political, strategic, and jurisprudential advantages that should not be overlooked.

[39] "Caribbean Needs Climate Justice," *The Jamaica Gleaner*, February 27, 2020, <http://web4.jamaica-gleaner.com/article/news/20200227/earth-today-caribbean-needs-climate-justice>.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 11:29:58, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009106214.008