Reciprocal Legal Narrative: Climate Change, Judicial Authority, and the National Apocalyptic in *Juliana v. United States*

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Table of Contents

Abstract

How can lawyers convince courts to "do the right thing" in the face of unfavorable law? That is, how can they persuade courts to take some judicial action that a judge explicitly acknowledges is ethically required yet prohibited by governing doctrine? In Juliana v. United States, a landmarkclimate change case, a 2-1 Ninth Circuit decision held that a number of youth plaintiffs had failed to establish Article III standing. The appellate panel found that the harms asserted—governmental policies amounting to violations of the plaintiffs' constitutional right to a functional climate system—were not redressable, even assuming the as-yet unrecognized right existed. Yet the majority opinion is marked by a sense of unease and regret. The court repeatedly lamented that while there is a clear ethical obligation to help the plaintiffs, the judiciary has neither the authority nor the ability to meet that obligation.

This Article proposes a model of legal argument called reciprocal legal narrative. It argues that the model can be useful for situations like that in Juliana, where courts recognize a moral obligation to intervene, but insist that the law bars them from doing so. Reciprocal legal narrative can provide a platform for judges to engage in dialogue-based, collaborative, norm-driven narrative reasoning. It is structured around a creative partnership between the lawyer and the court. The judge, in her written opinion, "co-authors" a legal narrative that revises and expands on the lawyer's "first draft" of the story-based argument that appears across briefs and oral arguments. Reciprocal legal narrative is a subspecies of narrative persuasion, and this Article provides a theoretical framework for the concept that builds on Applied Legal Storytelling scholarship and narrative theory in general.

A close reading of the majority and dissenting opinions in Juliana demonstrates reciprocal legal narrative in action. To support her finding that the plaintiffs established redressability, Judge Josephine Staton crafts a dissent that builds on the plaintiffs' nascent legal narrative (what I call the "American Environmental Apocalypse") and fashions it into her own more persuasive, legally sound narrative (the "National Apocalypse"). The dissent's reciprocal legal narrative exposes the shortcomings of the majority's formalist approach; it exhibits an egalitarian, cooperative view of judge-made law; and most importantly, it converts a moral obligation to act on climate change into a judicial duty to do so. Although Judge Staton was in the minority in this decision, her example of reciprocal legal narrative provides a blueprint for future litigants facing similar circumstances. By employing reciprocal legal narrative, advocates can persuade courts to use creative, narrative reasoning as a means of reconciling existing law with core social values—without overstepping the bounds of judicial authority.

Introduction

"Everyone knows, but no one acts," laments a character in a popular climate novel.[1] Plenty of recent art and criticism echoes the sentiment.[2] Why do we feel disempowered to act on climate change? In his study of art and crisis, Min Song writes, "[w]henever I think about climate change . . . . I struggle to make sense of its enormity . . . . I feel powerless . . . . It's not that I don't care. I do very much."[3] Song captures the odd combination of commitment and helplessness that we might feel in the face of a problem of such magnitude. For Song, and for writers like Kim Stanley Robinson, Richard Powers, and Octavia Butler,[4] inaction may be a moral failing, but it reflects a deeper, practical problem: a dilemma of scale.[5]

Writing for a two-member majority in *Juliana v. United States*, Ninth Circuit Judge Andrew Hurwitz registered a similar frustration.[6] In *Juliana*, twenty-one youth plaintiffs alleged that the federal government had knowingly exacerbated climate harms by implementing policies that increased carbon emissions.[7] The result, the plaintiffs argued, was a violation of their as-yet unrecognized constitutional right live in a functional climate system.[8] The claim failed. Even assuming a climate right exists, the court held, the plaintiffs had failed to establish standing, because the injuries asserted were not redressable.[9] While recognizing the urgency of the plaintiffs' harms, the court disclaimed its authority and ability to meaningfully intervene.[10] Like Song,[11] or the characters in

1 Kim Stanley Robinson, The Ministry for the Future 19 (2020).

2 *See, e.g.*, Richard Powers, The Overstory (2018); First Reformed (Killer Films 2017); Min Hyoung Song, Climate Lyricism 1 (2022).

3 Song, *supra* note 2, at 1.

4 *See generally* Robinson, *supra* note 1; Powers, *supra* note 2; Octavia Butler, Parable of the Sower (1993).

5 *See generally* Robinson, *supra note* 1; Powers, *supra* note 2; Butler, *supra* note 4; *see also* David Lazarus, The Making of Environmental Law, at xv (2004) (climate harms are "varied, complex, and [defined by] uncertain temporal and spatial dimensions"); Song, *supra* note 2, at 3 (climate change "eludes familiar scales of comprehension").

6 *See* Juliana v. United States, 947 F.3d 1159, 1175 (9th Cir. 2020). Part III.A, *infra*, provides a brief overview of the case.

7 *Juliana*, 947 F.3d at 1165–66.

8 *Id.* at 1165.

9 *Id.* at 1164–65, 1174.

10 *Id.* at 1174–75; *see* Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992) (establishing modern redressability requirement).

11 *See* Song, *supra* note 2, at 1.

Robinson's novel,[12] the Ninth Circuit simply could not find a way to act.

This Article suggests one path toward judicial climate action: a persuasive model of advocacy called reciprocal legal narrative.[13] "Reciprocal legal narrative" names a process in which the judge arrives at her decision by engaging the advocate in a constructive, collaborative account of the legal issues. Reciprocal legal narrative is a subspecies of persuasive argument that could accurately be described as a creative partnership between the lawyer and the court. It displaces the traditional adversarial model of a lawyer "arguing before the court." Reciprocal legal narrative is especially useful in cases like *Juliana*, where courts recognize an ethical responsibility to ameliorate social harms but refuse to do so because of perceived doctrinal limitations. This particular species of narrative legal argument resolves this discord. It diffuses the tension between judges' "fidelity to duty and their own sense of what is right"—a struggle to which judges are "constantly subject[ed]."[14]

Situated within the naturally "narrative culture" of litigation,[15] reciprocal legal narrative establishes a process in which lawyer and judge "co-write" a legal argument through an authorial partnership. As its name suggests, this is a circular, or ouroboric, model of persuasion. Beginning with the lawyer's initial narrative of the dispute, a creative dialogue between the lawyer and judge unfolds across briefs and oral arguments, culminating in a written opinion that incorporates and refines the litigant's initial narrative. Because judges have a creative and personal stake in this process, they will be more receptive to seeing novel legal claims as judicially cognizable, not as abstract moral dilemmas that the court has no authority to address.

The collaboration also leads to an egalitarian dialogue within our hierarchical legal institutions. Although a truly "equal" partnership is unfeasible—the court, after all, retains the power to make the law—the judge and lawyer nevertheless work as co-authors. They proceed primarily from core societal values, viewing the case through the lens

12 *See* Robinson, *supra* note 1, at 19.

13 Throughout this Article, I use the phrases "reciprocal legal narrative" and "reciprocal narrative" interchangeably.

14 James Boyd White, The Legal Imagination: Studies in the Nature of Legal Thought and Expression 5 (1973).

15 Philip N. Meyer, *Vignettes from a Narrative Primer*, 12 Legal Writing: J. Legal Writing Inst. 229, 229 (2006); *see also* Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Sections*, 32 Rutgers L.J. 459, 464 (2001) (identifying lawyers as "professional storytellers").

of collective ideals and shared responsibilities.[16] The dialogic structure puts judges closer to the ground, and helps them see the dispute from the perspective of a concerned citizen who wants to act. This partial escape from their professional role frees judges from the restraints of precedent, and it makes them receptive to the role of lived experience in legal argument.

As courts face problems as new as climate change, this kind of dialogue-driven, narrative reasoning works more effectively than formalist reasoning, or "the application of an existing rule of law by its terms to a set of facts."[17] In contrast to formalism's reliance on rules, narrative reasoning "describes the norm-based . . . arguments that motivate a judge to want to rule in a party's favor."[18] Climate change is too new, too big, and too uncertain to apprehend through the inflexible application of precedential rules.[19] A conversational model is thus more effective. As Melanie Joy explains in the context of animal rights, a dialogue-based approach to complicated issues "requires curiosity . . . and its objective is . . . collective empowerment rather than creating 'winners' and 'losers.'"[20] For Joy, the "reductive . . . rhetoric of debate [is unlikely to] produce [the] nuance" required to tackle "complex . . . ever-changing form[s]" of social problems.[21] In the climate context, efforts at intervention that fail to harness nuanced, cooperative approaches are similarly doomed from the start.[22]

This Article examines the role of reciprocal legal narrative first by exploring existing scholarship on law, narrative, and storytelling, and then by performing a close reading of the briefs and opinions in *Juliana v. United States*. Part II develops a theory of reciprocal legal narrative and summarizes its usefulness, particularly in the context of Article III standing and the *Juliana* case. Next, Part III describes the functions of the

16 *See* Camille Lamar Campbell & Olympia R. Duhart, Persuasive Legal Writing: A Storytelling Approach 5 (2017) (Core societal values are "things, ideas, or concepts that a society believes to be so important that they justify legal protection." The "best legal stories reflect core societal values.").

17 Wilson Huhn, *The Stages of Legal Reasoning: Formalism, Analogy, and Realism*, 48 Vill. L. Rev. 305, 309 (2003).

18 Kenneth D. Chestek, *Competing Stories: A Case Study of the Role of Narrative Reasoning in Judicial Decisions*, 9 Legal Commc'n & Rhetoric 99, 102 (2012).

19 *See* Lazarus, *supra* note 5, at xv (environmental harms "resist simple redress").

20 Melanie Joy, *Our Voices Our Movement: How Vegans Can Move Beyond the "Welfare-Abolition Debate,"* One Green Planet, https://www.onegreenplanet.org/animalsandnature/our-voices-our-movement-how-vegans-can-move-beyond-the-welfare-abolition-debate/ (last visited Apr. 29, 2024).

21 *Id.*

22 *See* Song, *supra* note 2, at 2–3.

"writer" (lawyer) and the "reader" (judge) in the reciprocal narrative process. It explains the judge's role as that of the "enthymematic reader": one who uses the rhetorical figure of the enthymeme to revise, expand, and complete the lawyer's original narrative.[23] Part III also uses contemporary legal storytelling scholarship to establish the theoretical foundation for reciprocal narrative. Part IV demonstrates the process in action. It argues that Judge Josephine Staton's *Juliana* dissent exemplifies enthymematic reading and that her interaction with the plaintiffs exemplifies the reciprocal narrative process.[24] Judge Staton's revision of the plaintiffs' legal narrative supports her argument that the claims are redressable, and it transforms an ethical imperative into a judicial duty. Finally, the Conclusion describes reciprocal legal narrative's broader application to impact litigation.

I. An Introduction to Reciprocal Legal Narrative

Applying narrative theory to legal analysis, Professor Anne Ralph distinguishes between narrative and story.[25] Stories, Professor Ralph explains, are sequences of events; narratives are representations of those events.[26] She offers the dueling opinions in *Walker v. City of Birmingham*[27] as an example. Justice Stewart's majority decision, for instance, frames the Birmingham civil rights marches as a threat to societal order.[28] By contrast, Justice Brennan's dissent depicts the same events as peaceful demonstrations for a righteous cause.[29]

In the same way, the majority and minority opinions in *Juliana* offer divergent representations of identical story-events. The majority opinion, authored by Judge Andrew Hurwitz, views the plaintiffs' climate-caused injuries as harms that the judiciary is powerless to ameliorate.[30]

23 Richard Sherwin has discussed the enthymeme's function in litigation, explaining that one "narrative strateg[y]" lawyers can employ is to cast their reader as an "active cocreator" of the legal narrative, rather than a "passive affirmer of . . . posited . . . norms and historical facts." Richard K. Sherwin, *The Narrative Construction of Legal Reality*, 6 J. Ass'n Legal Writing Dirs. 88, 119 (2009).

24 Juliana v. United States, 947 F.3d 1159, 1175–91 (9th Cir. 2020) (Staton, J., dissenting).

25 Anne E. Ralph, *Narrative-Erasing Procedure*, 18 Nev. L.J. 573, 577 (2018).

26 *See id.* at 576–77.

27 Walker v. City of Birmingham, 388 U.S. 307 (1967).

28 Ralph, *supra* note 25, at 577; *see also* Julie M. Spanbauer, *Teaching First-Semester Students That Objective Analysis Persuades*, 5 J. Legal Writing Inst. 167, 178–85 (1999).

29 Ralph, *supra* note 25, at 577.

30 *See* Juliana v. United States, 947 F.3d 1159, 1164–65 (9th Cir. 2020).

Over the course of the court's narrative, the plaintiffs' lived experiences are slowly translated into the language of standing doctrine.[31] In effect, the court presents traumatic personal experiences with climate change as a narrative about Article III's limitations. In so doing, the court seems to be resisting narrative altogether, because personal catastrophes get boxed into the analytic universe of standing jurisprudence.[32] The story-events are represented as mere examples of what type of harm does not qualify as a redressable injury. In short, the majority remains loyal to formalism. The story-events are divorced from their real-world origins and seen through the relativistic lens of analogical reasoning. No longer the plaintiffs' own experiences, the injuries are reduced to fact patterns to be examined alongside other fact patterns. The majority's narrative casts the story-events as legal abstractions: types of harm do not qualify as redressable injuries.

Judge Staton takes the opposite tack. Her opinion embraces the imaginative capacity of narrative and picks up where the plaintiffs left off. In their answering brief, the plaintiffs sketch a variation of the well-known environmental apocalyptic.[33] As I explain in Part IV, the plaintiffs represent their own story as a uniquely American version of the Environmental Apocalypse. I therefore label their narrative the *American Environmental Apocalypse*. Judge Staton's dissenting opinion revises and expands on the American Environmental Apocalypse, resulting in what I term the *National Apocalypse*. The National Apocalypse, which I examine in Part IV, completes the plaintiffs' narrative by structuring it around a legal theory of climate standing. Judge Staton goes where the majority was unwilling to. She uses narrative, not formalism, to reconcile the plaintiffs' own experiences with the demands of standing doctrine.

In its extension of the plaintiffs' American Environmental Apocalypse, Judge Staton's dissent exemplifies reciprocal legal narrative by exhibiting the genre's three defining properties. First, as noted above, reciprocal narrative is constructed through an exploratory dialogue, not an adversarial exchange. Judge Staton's dissent engages in such an exchange with the plaintiffs. Second, the initial narrative—in *Juliana*,

31 *See id.* at 1165 (beginning opinion by noting the psychological, recreational, medical, and property harms asserted by plaintiffs).

32 The majority is not alone in resisting narrative reasoning. *See* Ralph, *supra* note 25, at 576 n.11 ("Law has an uneasy relationship with narrative. . . . [The legal discipline] 'wants to believe that it is rooted in irrefutable principles and that it proceeds by its own special methodology.'") (quoting Peter Brooks, *Narrative Transactions–Does the Law Need a Narratology?* 18 Yale J.L. & Humans. 1, 20 (2006)).

33 *See* Michael Burger, *Environmental Law/Environmental Literature*, 40 Ecology L.Q. 1, 19–21 (2013); *see infra* Section IV.B.

this is the plaintiffs' American Environmental Apocalypse—mirrors the structure of the rhetorical enthymeme, a "syllogism with either one of the premises or conclusion omitted."[34] A reciprocal narrative is missing its conclusion, because the judge (the "reader") supplies it in her opinion. Third, in the reciprocal model, the judge converts a moral obligation (here, to meaningfully address climate change) into a judicial duty (to recognize the claims as administrable and allow the case to proceed). Structurally and substantively, the complete narrative forms the legal basis for judicial intervention. When the reciprocal process concludes, the court is better positioned to "do the right thing."[35]

The advantages arise from narrative reasoning's capacity to exploit "client-centered and very fact-oriented" normative arguments.[36] These arguments push courts toward solutions to thorny, shifting issues.[37] Reciprocal narratives are particularly motivating. As cooperative efforts, reciprocal narratives foreground our common values, highlighting what we have collectively decided deserves legal protection; these normative, collective decisions are more persuasive than outdated legal precedent that contradicts our social values.[38] Reciprocal narrative provides a sturdier basis for action than narrative in general. It allows judges to safeguard the principles that society believes deserve legal protections. Environmental protection is one such principle.[39]

When a judge vocally supports the core value at stake in the case, that seems like a good thing, but it can be a double-edged sword. For instance, the enormous uncertainty of human-caused climate change can make judges, too, "feel powerless,"[40] and therefore hesitant to step in. Climate change may be the greatest problem we face, but it

34 Jukka Mikkonen, *On the Body of Literary Persuasion*, 47 Estetika 51, 52 (2010). A narrative, too, can "persuad[e] readers of its truths by its [enthymematic] structure, by illustrating or implying the suppressed conclusion . . . . " *Id.* at 61–62; *see infra* Section IV.C.

35 *See* Ross Guberman, Point Made: How to Write Like the Nation's Top Advocates 28 (2d ed. 2014) ("[M]any judges admit off the record to . . . simply [trying] 'to do the right thing' . . . both trial judges and appellate judges are essentially 'pragmatists' who care about the effects their decisions may have[.]") (quoting Richard Posner, How Judges Think 283 (2008); *accord* White, *supra* note 14, at 5 (judges are often torn between a "fidelity to duty and their own sense of what is right").

36 Chestek, *supra* note 18, at 102.

37 *Id.*

38 Campbell & Duhart, *supra* note 16, at 5.

39 *See, e.g.*, Calvert Cliffs' Coordinated Comm. v. Atomic Energy Comm'n, 449 F.2d 1109, 1112, 1114 (D.C. Cir. 1971) (National Environmental Policy Act is not a "paper tiger").

40 Song, *supra* note 2.

is not, as federal courts often imply, simply a *legal* problem. It cannot be apprehended through formalist philosophy. Narratives, however, can fashion hazy moral instincts into solid legal forms: "our notions of justice and right outcome are . . . grounded in and governed by narratives."[41] Reciprocal narratives are effective when judges empathize with the party's claims and even *want* to rule in the party's favor—because they believe doing so is just—but hesitate to act in the face of some ostensible doctrinal limitation. "Every judge," Justice Gorsuch recently observed, "must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right."[42] In its refusal to recognize the redressability of climate harms, the *Juliana* majority arguably perpetuated an indifference to climate change.[43] The language of its opinion, moreover, suggests that the court's inaction was the result of its fear of "the consequences of being right": accusations of judicial activism, or reversal by the Supreme Court.[44] Reciprocal legal narratives helps courts avoid this kind of trap by realigning the law with what judges think—and say—is "right."

II. The Foundations of Reciprocal Legal Narrative: Two Kinds of Readers

In assessing competing arguments, reader-judges respond to narrative reasoning as strongly as they do to formal logic.[45] This Part provides a theoretical foundation for reciprocal narrative by exploring readers' experiences and identifying two types of readers. I begin by describing what I term the empathic reader, a figure derived from applied legal storytelling scholarship, and the concept of narrative transportation. Then, building on the empathic reader, I sketch the figure of the enthymematic reader, which this Article proposes judges embody in the reciprocal narrative process as it unfolds in the context of litigation. Both figures are more than passive receptacle for stories, but they vary in the degree to which they participate in the development of the narrative. The empathic reader becomes deeply invested in the text, even integrating it into her value systems and decision-making

41 Meyer, *supra* note 15, at 229.

42 Ramos v. Louisiana, 140 S. Ct. 1390, 1408 (2020).

43 Juliana v. United States, 947 F.3d 1159, 1165 (9th Cir. 2020).

44 *See Juliana*, 947 F.3d at 1165, 1175.

45 *See* Chestek, *supra* note 18, at 100, 135; *see generally* White, *supra* note 14; Ruth Anne Robbins et al., Your Client's story: Persuasive Legal Writing (2d ed. 2018).

processes; but she stops short of actually *constructing* the text's meaning. In contrast, the enthymematic reader "co-writes" a narrative, through imaginative revision, expansion, and completion. Brian J. Foley and Ruth Anne Robbins explain that the judge "writes the ending" of the lawyer's narrative.[46] Understanding judges' potential enthymematic role in the reciprocal process demonstrates *how* they write the ending—and why it matters.

A. The Empathic Reader

In *The Overstory*, a climate activist, distraught over society's indifference to the Earth's slow death, asks one of her comrades—a graduate student in psychology—for help: "You're a psychologist. . . . How do we convince people that we're right?"[47] "The best arguments in the world won't change a person's mind," he replies.[48] "The only thing that can do that is a good story."[49] Do stories have some kind of immanent persuasive force? Scholars often answer this question in the affirmative: stories and narratives naturally persuade.[50] Discussing the related question of how lawyers can best leverage this power, experts often point to the power of *pathos*.[51] On this view, legal advocates craft each narrative element (*e.g.*, theme, structure, characters) with the goal of engaging the reader-judge emotionally.[52] To write without this intention is to squander the potential of literary forms. One barometer of narrative persuasion, in other words, is the reader's emotional response to narrative elements.[53]

This emotionally engaged figure is the *empathic reader*. The empathic reader understands legal texts primarily through affective

46 Foley & Robbins, *supra* note 15, at 472.
47 Powers, *supra* note 2, at 336.
48 *Id.*
49 *Id.*
50 *See generally* Robbins et al., *supra* note 45.
51 "[L]ike fiction, nonfiction accomplishes its purpose better when it evokes emotion in the reader. . . . [P]eople are moved more by what they feel than by what they understand . . . ." Foley & Robbins, *supra* note 15, at 463 (quoting Sol Stein, Stein on Writing: A Master Editor of Some of the Most Successful Writers of our Century Shares his Craft, Techniques, and Strategies 224 (1995)).
52 *See id.* at 376, 467, 469.
53 Indeed, persuasion writ large has been characterized as a *pathos*-based enterprise, regardless of whether it is conceived in narrative terms. *See* Foley & Robbins, *supra* note 15, at 463 ("[P]ersuading people [is] an art that has always dealt more with emotion than with reason.").

engagement. But what does that look like in practice? What does it mean to reject a *logos*-based approach, bypass the boundaries of formalism,[54] and use emotion and affect as one's guiding interpretive lights? "[U]nderstand[ing] the power of narrative," after all, requires noticing "*how* the audience engages with the narrative."[55] Empathic interpretation involves identifying with the narrative by internalizing characters' sentiments or responding emotionally to narrative conflict. Whether the empathic reader is persuaded depends largely on whether the narrative resonates with their lived experience.[56] The *Juliana* plaintiffs' narrative-heavy submissions to the court, for example, "inject emotional resonance *into* the law in [an attempt] to achieve better outcomes."[57]

Narratives can generate empathy through narrative transportation, the "phenomenological experience of being transported to a narrative world."[58] Narrative transportation makes us lose track of time while reading a good story; it explains why some books are harder to put down than others.[59] To ensure this experience, the author must meticulously assemble the narrative. The structure and content should be fully formed and intertwined. Plot and character should complement one another. To fully transport the reader, the author should ensure that the narrative elements cohere into an account that strikes some intuitive chord with the audience and delivers what they expect to find.

A pivotal scene in *The Matrix* illustrates how narrative elements like plot, genre, theme, and character work in concert to transport the

54 I recognize that it is not always easy or desirable to separate *pathos*-based reasoning from the *logos*-centered epistemology traditionally associated with legal analysis. *See, e.g.*, Kristen Konrad Tiscione, *Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making*, 54 Wake Forest L. Rev. 1159, 1162 (2019) ("[E]motion is a necessary and desirable part of 'thinking like a lawyer.'")

55 Susan M. Chesler & Karen J. Sneddon, *From Clause A to Clause Z: Narrative Transportation and the Transactional Reader*, 71 S.C. L. Rev. 247, 252 (2019) (emphasis added).

56 *See id.* at 261 (exploring empathy "not [as] an. . . . exclusively emotional reaction but rather [a]s a reasoned response based upon evaluation of a situation or a series of events.") (citing Jody Lyneé Madeira, *Lashing Reason to the Mast: Understanding Judicial Constraints on Emotion in Personal Injury Litigation*, 40 U.C. Davis L. Rev. 137, 141 (2006)); *see also* Robbins et al., *supra* note 45, at 168 (readers who identify with characters are more likely to "appreciate [the character's] motivations, and possibly adopt their positions").

57 Chris Hilson, *The Role of Narrative in Environmental Law: The Nature of Tales and the Tales of Nature*, 34 J. Env't L. 1, 5 (2021) (emphasis in original); *see id.* at 8 (discussing *Juliana* plaintiffs' submission in context of emotional narrative resonance).

58 Chesler & Sneddon, *supra* note 55, at 255.

59 *Id.* at 248.

reader (or viewer). Faced with the decision to take blue pill or the red pill, Neo, the protagonist, chooses the red.[60] In doing so, he propels the film's narrative forward: the red pill drops Neo into the middle of a new reality, where all of humanity is at stake. His decision also creates a new *narrative* reality for audience members, transporting them to a futuristic dystopia consistent with science fiction's generic conventions. Had Neo taken the blue pill, that kind of transportation would have been impossible, because there no longer would have *been* a narrative. Neo would simply be back at the office, right where he started. Indeed, Morpheus—the character who offers Neo the pills—says as much: "You take the blue pill, the story ends."[61]

The red pill moment also provides character development. Neo is a seeker, an office drone desperate to find life's purpose. Consistent with that characterization, he takes the red pill, choosing to "stay in Wonderland"[62] and propel the plot in a satisfying direction. That choice also symbolizes the tension between fate and free will. The blue pill would extend Neo's existential purgatory, the life where things just happen to him. The red pill, by contrast, elevates him to the protagonist in his own story—an "action hero." Character, plot, genre, and theme converge to narratively transport the audience, or, "move" them to another "tim[e] or locatio[n]."[63]

Narrative transportation, a technique that both generates and engages the empathic reader, therefore depends on a text's structural unity. We determine whether an author achieves such unity by asking whether the text demonstrates *narrative coherence*, a quality that reflects "the degree to which the narrative 'makes sense' to the reader."[64] Christopher Rideout divides narrative coherence into internal and external coherence. Internal coherence indexes "the parts of the narrative and a sense that they fit with each other."[65] In other words, readers expect to find an internal logic at work in the fictional universes they enter, as illustrated by *The Matrix*.

Narrative coherence and narrative transportation are therefore essential to persuasion. They place the reader inside the story-world, where the high-stakes narrative feels more personal. An emotional investment in the characters' struggles often means the reader carries

60 The Matrix (Warner Bros. 1999).
61 *Id.*
62 *Id.*
63 Chesler & Sneddon, *supra* note 55, at 254.
64 *Id.* at 262.
65 J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 Legal Commc'n & Rhetoric 67, 71 (2013).

the narrative with them after putting the text down. Yet for all their affective power, these techniques do not change the one-way relationship between reader and writer. That is, the writer still writes (or argues), and the reader still reads, interprets, or evaluates. Even if the line between the reader and narrative begins to blur,[66] the text still steadily mediates the reader-writer relationship. Any action the empathic reader takes occurs after she stops reading. She does not inspire the text; she is inspired by it. As Professors Chesler and Sneddon explain, narrative transportation can "prompt *subsequent* actions by the reader" and "influence what actions the reader takes after completion of the narrative or even at a later date."[67] Even "participatory responses" that result from narrative coherence and transportation keep the reader in an observational or interpretive role.[68] The empathic reader does not participate in actually creating the text, despite intensely engaging with it. That distinguishes them from the enthymematic reader.

In sum, the empathic reader provides a theoretical foundation for the enthymematic reader at the heart of the reciprocal process. Empathic readers are likely to be transported into the imaginative world of a coherent narrative; they are even likely to take some action, or question some of their beliefs, in response to the narrative's persuasive elements. But the enthymematic reader goes even further. Her particular interaction with a legal text generates its narrative.

B. The Enthymematic Reader

In reciprocal legal narrative, the judge's role is that of what I call the enthymematic reader. As the name suggests, the role centers on the rhetorical figure of the enthymeme. Aristotle, generally credited with identifying the concept, described the enthymeme as a "syllogism consist[ing] of a few propositions, fewer . . . than those which make up the normal syllogism."[69] While contemporary rhetoricians offer more abstract definitions, I will follow Aristotle's lead in understanding the

66 *See* Chesler & Sneddon, *supra* note 55, at 257 ("The act of reading casts the reader in the role of a performer.").

67 *Id.* at 255 (emphasis added).

68 In these roles, the reader is cast as a "witness to the events of the narrative," and a "fact gatherer." *Id.* at 257–58. Another participatory response, "replotting," occurs "after the reader has concluded the narrative." *Id.* at 259. "Self-referencing," where the reader understands the story in light of their own experiences, could presumably occur during or after they read. *See id.* But self-referencing, too, is a way to interpret textual meaning rather than create it.

69 Aristotle, Rhetoric 1354 (W. Rhys Roberts trans., Dover Publ'ns 2004).

enthymeme as a syllogism missing either its major premise, minor premise, or conclusion.[70] In omitting a premise or the conclusion, the idea is not to confuse the audience, but to invite them into the reasoning process. For example, a listener could discern a defining facet of my dog's personality from this enthymeme:

> Major premise: All Australian shepherds have outrageously high energy levels.
>
> Minor premise: My dog is an Australian shepherd.
>
> Conclusion:

Even a simple example like this requires the reader to actively create meaning, by completing the syllogism and providing the information that the text is designed to convey (my dog's energy level). On a larger scale, too, narrative arguments structured around the enthymeme force the reader to *act* on the text, which in turn helps them see its merits. Once they create the argument's conclusion, they are less likely to view it as flawed. After all, they are now responsible for it. Enthymemes are therefore "not inferior syllogisms; their very incompleteness helps to convince. An audience that helps to complete the argument will have a stake in it and thus will be more likely to accept it."[71]

More recently, scholars have considered the enthymeme from a narrative perspective. Once it is adapted to a literary device, the enthymeme becomes a tool for "changing . . . readers' beliefs."[72] Just like its syllogistic cousin, the literary enthymeme requires that its reader "draw the conclusion, the thematic statement, or thesis of the work."[73] Literary enthymemes are more elastic than their rhetorical counterparts, since they unfold over the course of a text, rather than over two premises and a conclusion. But they function the same: they inspire action, or some shift in one's belief, by making the reader build an integral piece of the narrative.

Knut Hamsun's surreal, early modernist novel *Hunger* (1890) provides an example of the large-scale literary enthymeme. Recounting his psychological unraveling, *Hunger*'s anonymous first-person narrator describes increasingly desperate attempts to find work,

70 *See* Mikkonen, *supra* note 34, at 61.
71 Katherine J. Mayberry, For Argument's Sake: A Guide to Writing Effective Arguments 56 (3d ed. 1999).
72 Mikkonen, *supra* note 34, at 52.
73 *Id.* at 62.

connect with other people, and find food.[74] Throughout the novel, the narration switches between past and present tense without warning or explanation. It is hard to follow, at least at first. But soon, the reader begins to link the speaker's disordered narration to his disintegrating psyche. The narrator's futile attempts to fit into modern society only make him more desperate and delusional, and this vicious cycle becomes embodied by his scattered, atemporal speech patterns. Recognizing this connection allows the reader to slip into the author's shoes. She uses the ostensibly capricious narration as raw material for the novel's unstated central claim: despair and disconnection are byproducts of modernity. The narrator stands in for an alienated underclass, those who are the collateral damage of progress. If we put it back in a simpler rhetorical form, *Hunger*'s thematic enthymeme might look like this:

> Major Premise: The increasing inability to communicate one's own psychological distress always indicates that one suffers from a deep alienation caused by modernity.
>
> Minor Premise: The narrator of *Hunger* suffers an increasing inability to communicate his own psychological distress.
>
> Conclusion [supplied by reader]: The narrator suffers a deep alienation caused by modernity.

Hamsun's decision to leave this theme implicit, and to structure his narrative around an enthymeme, allows his reader to "write" a key part of the novel. *Hunger* gains its narrative coherence from the reader's creation of its thematic ideas. And because the reader creates the theme from what the author has already provided, the process goes beyond mere inquiry and begins to resemble a dialogue. Any of the text's readers will find this invitation to converse with the author. In the legal context, narrative enthymemes therefore draw a wider readership than the insular formalism of legal analysis, which effectively shuts out those who are not law-trained readers.[75] The conversational format reveals the egalitarian nature of reciprocal narrative.

For impact lawyers, enlisting the judge as an enthymematic reader yields a unique persuasive advantage. The collaborative, unfinished form of the enthymeme bolsters a specific species of advocacy, where legal arguments are "derived from beliefs" that the advocate's

74 Knut Hamsen, Hunger (1890).
75 Mikkonen, *supra* note 34, at 62.

"particular audience . . . already . . . ha[s] accepted as a given."[76] Like most Americans, federal judges—including those in the *Juliana* majority—have expressed their belief in the need to address climate change.[77] And the Supreme Court has clearly acknowledged that the government does have *some* responsibility to act.[78] The enthymematic narrative exploits these existing beliefs. It leverages the sense that something must be done. And it gives courts an opportunity to do it, by asking them to join the advocate in crafting a new narrative account of judicial approaches to climate protection.

Judge Staton's enthusiastic embrace of what this Article claims was her enthymematic task resulted in a novel theory of climate redress. Her dissent transformed the plaintiffs' intriguing but incomplete narrative into a persuasive constitutional argument. The next Part of the Article provides a short overview of *Juliana v. United States*, before comparing the plaintiffs' and Judge Staton's apocalypse narratives. It then contrasts Judge Staton's reciprocal approach with that of the two-judge majority, who attempt to slash their way through the thickets of environmental standing using formalism as their clearing saw. The majority opinion concludes with a declaration of the court's powerlessness. Judge Staton's dissent, on the other hand, reveals how reciprocal legal narrative aligns legal outcomes with the collective values that judges claim to share.

III. The National Apocalyptic: Reciprocal Legal Narrative in *Juliana v. United States*

This Part examines *Juliana*'s various narratives of the right to a functional climate system. In doing so, it aims to explain how Judge Staton's dissent molds the plaintiffs' account of that right into a cognizable basis for Article III standing. Section A provides a brief overview of key procedural developments in the case and a description of the "climate right." Section B explores the narrative that takes shape in the plaintiffs' complaint and then continues across their answering brief. Because their argument takes the form of a narrative enthymeme, this section pays special attention to what is absent from the narrative.

76 John T. Gage, The Shape of Reason 100 (2d ed. 1991).

77 *See, e.g.*, West Virginia v. EPA, 597 U.S. 697, 735 (2022) ("Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible 'solution to the crisis of the day,'" even if, as the Court held, it is not a solution the EPA is authorized to implement (quoting New York v. United States, 505 U.S. 144, 187 (1992))).

78 Massachusetts v. EPA, 549 U.S. 497 (2007).

Next, Section C explains why the majority's standing analysis is wrongheaded. Its particular epistemological approach clashes with the substance (and stakes) of the redressability question. The final Section turns to the dissent. Judge Staton's revision completes the enthymeme and supplies what was missing from the plaintiffs' narrative: a legal basis for a redressable "climate right." Her conclusion to the reciprocal narrative converts the majority's perfunctory recognition of a moral responsibility into a legal obligation for courts to act.

A. A Partial History of ***Juliana v. United States****: Environmental Standing and the "Climate Right"*

In 2015, the *Juliana* plaintiffs—aged eight to nineteen—filed their complaint.[79] The plaintiffs alleged physical, psychological, and emotional harms.[80] Their argument cast climate change and the defendants as co-conspirators: "the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change."[81] The plaintiffs stressed that by knowingly exacerbating environmental catastrophe, the government had violated an as-yet unrecognized fundamental right to a "climate system capable of sustaining human life."[82] But the government's actions, the youths claimed, went beyond rights violations. Subsidizing industrial polluters and "deliberately allowing CO2 emissions to escalate to [unprecedented] levels," constituted an existential threat to the entire world.[83] As the court put it, the plaintiffs painted a picture of a government that was intent on "hasten[ing] an environmental apocalypse."[84] The youths sought a declarative judgment recognizing a fundamental right to a functional climate system—the "climate right," in shorthand— plus an injunction ordering the government to "phase out fossil fuel emissions."[85]

The district court was instructed to certify the Ninth Circuit's orders for interlocutory review.[86] After reviewing the lower court's decisions in favor of the plaintiffs, the Ninth Circuit granted the

79 Complaint, Juliana v. United States, 217 F. Supp. 3d 1224 (D. Or. 2016), *rev'd*, 947 F.3d 1159 (9th Cir. 2020) (No. 6:15-cv-01517-TC).
80 *Id.* ¶¶ 16–97.
81 Juliana v. United States, 947 F.3d 1159, 1164 (9th Cir. 2020).
82 *Id.*
83 Complaint, *supra* note 79, ¶¶ 4–5.
84 *Juliana*, 947 F.3d at 1164.
85 *Id.* at 1164–65.
86 Juliana v. United States, No. 6:15-cv-01517-AA, 2023 WL 3750334, at *3 (D. Or. June 1, 2023).

defendants' petition for interlocutory appeal.[87] In the opinion that this Article focuses on, the Ninth Circuit reversed on the issue of standing, finding that the plaintiffs' claims were not likely to be redressed by a judicial remedy.[88] The Ninth Circuit remanded to the district court, ordering it to dismiss the claims.[89]

Modern Article III standing doctrine originates in *Lujan v. Defenders of Wildlife*.[90] There, Justice Scalia created the three-prong test that controls today. To establish standing, plaintiffs must show:

> (1) injury in fact: a concrete and particularized injury that is either actual or imminent;
>
> (2) causation: evidence that their injury is fairly traceable to the defendant's conduct; and
>
> (3) redressability, which means that a favorable decision will likely redress the claimed injury. The possibility of redress cannot be merely "speculative."[91]

The district and appellate courts both found the first two prongs of standing satisfied.[92] But while Judge Ann Aiken found redressability established for summary judgment purposes,[93] the Ninth Circuit

87 *Id.*

88 *Juliana*, 947 F.3d at 1175.

89 *Id.* The lawsuit was recently revived after the Supreme Court's decision in *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2023), which the *Juliana* plaintiffs argued abrogated the Ninth Circuit's unfavorable holding. *See Juliana*, 2023 WL 3750334. Specifically, the plaintiffs relied on the *Uzuegbunam* majority's declaration that even a partial remedy can satisfy the redressability prong of the standing inquiry. *Id.* (citing *Uzuegbunam*, 141 S. Ct. at 801). On December 29, 2023, the district court denied the motion to dismiss plaintiffs' second amended complaint. Juliana v. United States, No. 6:15-CV-01517-AA, 2023 WL 9023339 (D. Or. Dec. 29, 2023). As she had in her 2016 denial of the government's motion to dismiss, Judge Aiken explicitly held that "the right to a climate system that can sustain human life is fundamental to a free and ordered society." *Id.* at *17; *accord* Juliana v. United States, 217 F. Supp. 3d 1224, 1250 (D. Or. 2016), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020). On May 1, 2024, however, the Ninth Circuit once again reversed Judge Aiken, explaining that "*Uzuegbunam* did not change" its earlier holding that plaintiffs lacked standing. United States v. D. Or., No. 6:15-cv-1517 (9th Cir. May 1, 2024), *rev'g* Juliana v. United States, No. 6:15-CV-01517-AA, 2023 WL 9023339 (D. Or. Dec. 29, 2023). The Ninth Circuit panel ordered the case be dismissed without leave to amend. *Id.*

90 504 U.S. 555 (1992).

91 *Id.* at 560–61.

92 *Juliana*, 947 F.3d at 1168–69 ("The district court correctly found the injury requirement met. . . . [and] also correctly found the Article III causation requirement satisfied for the purposes of summary judgment.").

93 Juliana v. United States, 339 F. Supp. 3d 1062, 1096 (D. Or. 2018), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020).

"reluctantly" held it was not.[94] The appellate opinion conceded that "action is needed,"[95] but in opting to make that pronouncement in the passive voice, it gave the game away. The *court* would not be taking action. Instead, the opinion stressed, either the political branches, or average Americans ("the electorate at large") must step up.[96] Judge Staton disagreed, of course—strongly. She had no trouble finding the plaintiffs' claims redressable.[97] The judiciary, she wrote, has "more than just a nebulous 'moral responsibility'" to protect its citizens from the worst effects of climate change.[98] Climate responsibility does not arbitrarily fall on the shoulders of the American people and their legislators alone. Like any institution, the courts also have a role to play.

B. The Plaintiffs' Story

1. The Standard Environmental Apocalypse Narrative

A quick scan of the plaintiffs' answering brief unveils a familiar landscape. "Destroy," "flooded," "sea level rise," "irreversibility": each word points toward the environmental apocalypse narrative.[99] The environmental apocalypse is a stock story chronicling "humanity's fall from ecological grace."[100] The environmental apocalypse narrative has been described as a modern jeremiad, in which a "chosen people . . . fail[] to keep covenant with key values" and face possible catastrophe as a result.[101] The conclusion remains unwritten, however. We might yet avoid calamity if we "return to the righteous ways of the covenant."[102] Climate change is the modern centerpiece for the environmental apocalypse, since it threatens our "understandings of wilderness . . . natural phenomena[,] and human values seeded deep in the American consciousness."[103]

In Professor Veldman's account, the environmental apocalypse

94 *Juliana*, 947 F.3d at 1165 (9th Cir. 2020).
95 *Id.* at 1175.
96 *Id.*
97 *Juliana*, 947 F.3d at 1175–76 (Staton, J., dissenting).
98 *Id.* at 1177.
99 Plaintiffs-Appellees' Answering Brief at 19, 28, Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020) (No. 18-36082), 2019 WL 981552 at *2, *11.
100 Robin Globus Veldman, *Narrating the Environmental Apocalypse: How Imagining the End Facilitates Moral Reasoning Among Environmental Activists*, 17 Ethics & Env't 1, 4 (2012).
101 *See* Burger, *supra* note 33, at 20.
102 *Id.*
103 *Id.* at 19.

unfolds across three acts.[104] In Act I, pastoral themes predominate.[105] Humans and nature co-exist harmoniously. In Act II, humans see themselves as superior to the natural world, which leads to the destructive exploitation of natural resources.[106] We seem to be living through Act III. In this final act, we confront the karmic consequences of our destruction: climate change; overpopulation; a startling loss of biodiversity.[107] In short, we face "an ecological crisis of apocalyptic proportions."[108] But since it is being written in real time,[109] this version of the apocalypse lacks an ending. Humans might succumb to climate change or, with decisive action, we might yet avert it.[110]

At a structural level, the environmental apocalypse narrative follows a well-established template, that of the plot schema.[111] The curtain rises on the pastoral, a harmonious story-world, what Anthony Amsterdam and Jerome Bruner would call a "steady state."[112] But the status quo is soon upended by "a *[t]rouble*,"—*i.e.*, climate change—that is "attributable to human agency."[113] In turn, the trouble "evok[es] *efforts* at redress . . . which succeed or fail."[114] Finally, the narrative either reverts back to the initial steady state, or it creates a "new (*transformed*) steady state."[115] As *Juliana* demonstrates, it is not yet clear whether our efforts at redress will succeed, nor how the story will end.

For decades, the apocalypse has been a "standard feature" of not only "environmentalist arguments" in the courtroom[116] but also

104 Veldman, *supra* note 100, at 4; *accord* Burger, *supra* note 33, at 19–21.
105 Veldman, *supra* note 100, at 4.
106 *Id.* at 4–5; *see also* Frederick Buell, From Apocalypse to Way of Life: Environmental Crisis in the Twentieth Century 164 (2003) ("As people became . . . a geological force, they began to do damage. That damage was essentially the damage of depletion.").
107 Veldman, *supra* note 100, at 4.
108 *Id.*
109 Buell, *supra* note 106, at 163 (tracing the development of "crisis thought" from descriptions of "an environmental apocalypse ahead" to the contemporary view of environmental "crisis as a place in which people presently dwell . . . a feature of present normality.")
110 Veldman, *supra* note 100, at 5.
111 *See* Anthony G. Amsterdam & Jerome Bruner, Minding the Law 113–14 (2000).
112 *Id.* at 113.
113 *Id.* at 114 (emphasis in original).
114 *Id.* (emphasis in original).
115 *Id.* (emphasis in original).
116 Burger, *supra* note 33, at 19; *see also* West Virginia v. EPA, 142 S. Ct. 2587, 2626–27 (2022); Juliana v. United States, 947 F.3d 1159, 1166 (9th Cir. 2020) ("[T]he destabilizing climate will bury cities, spawn life-threatening natural disasters, and jeopardize critical food and water supplies.").

literary fiction, popular music, and film.[117] Even *Silent Spring*, the *ur*-text of the modern environmental movement, makes use of the form, opening on the steady state of the pastoral: "There was once a town in the heart of America where all life seemed to live in harmony with its surroundings."[118] In short, apocalyptic visions define the environmental imaginary. And apocalyptic features similarly dominate popular perceptions of climate change.[119] Climate Armageddon does not simply exist "on paper"; it pervades our "hearts and minds."[120] The ubiquity of this particular narrative shows the persuasive power of narratives in general—and the advantages they have over syllogistic argument.[121]

In multiple filings (including the complaint, discussed *infra*), the *Juliana* plaintiffs leverage this persuasive power by presenting a variation on the standard story, a variation I will call the American Environmental Apocalypse. Their version of the tale links climate change to American history, values, and progress. As a result, climate change begins to seem like a vaguely *American* problem. In light of its reciprocal structure, the American Environmental Apocalypse is necessarily tentative and incomplete; Judge Staton will present the finished version in her dissent. But the plaintiffs' first draft lays down a narrative foundation for the asserted right to a "life-sustaining climate system."[122]

2. The American Environmental Apocalypse

The plaintiffs' American Environmental Apocalypse resembles the standard environmental apocalypse in certain aspects, but its focus on American history, government, and values sets it apart in at least three ways. First, it casts the federal government as an accomplice to

117 *See, e.g.*, Butler, *supra* note 4; Bjork, Biophilia (Nonesuch Records 2011); Anohni, Hopelessness (Secretly Canadian 2016); Vampire Weekend, Father of the Bride (Columbia Records 2019); The Day After Tomorrow (Lionsgate Films 2004); The Happening (Dune Entertainment 2008); Annihilation (Skydance 2018).

118 Rachel Carson, Silent Spring 1 (1962).

119 *See* Burger, *supra* note 33, at 20; *see also* Anna Funk, *Can Climate Fiction Writers Reach People in Ways That Scientists Can't?*, Smithsonian Mag. (May 14, 2021), https://www.smithsonianmag.com/innovation/can-climate-fiction-writers-reach-people-ways-scientists-cant-180977714/.

120 Veldman, *supra* note 100, at 5.

121 Funk, *supra* note 119; Ruth Anne Robbins, *Fiction 102: Create a Portal for Story Immersion*, 18 Legal Commc'n & Rhetoric 27, 29 (2021) ("While scientific data presents truth and facts, the audience's response to receiving information that way does not necessarily result in the audience fully absorbing that information if the audience is biased heavily against that truth.").

122 Plaintiff-Appellees' Answering Brief, *supra* note 99, at *42.

climate change. Climate harms are generally understood to be caused by human action on a global scale. But in the plaintiffs' telling, climate-related injuries result from the actions of a much smaller subset of humans: the executive branch of the U.S. government. Second, federal courts are the potential heroes of the American Environmental Apocalypse. More thoughtful and less shortsighted than the executive agencies cutting deals with industrial polluters, the judiciary appears poised to save Americans from government actors profiting from the steady destruction of a functional national climate system. And third, given the context in which the plaintiffs' narrative appears, the American Environmental Apocalypse must have some essential legal dimension to it.

Yet in spite of the substantive story the plaintiffs sketch here, the American Environmental Apocalypse, much like the standard environmental apocalypse described above, remains incomplete on a formal level. Its enthymematic structure[123] omits the legal basis for redress; that basis forms the enthymeme's missing major premise. The underlying structure of the American Environmental Apocalypse therefore takes the following form:

> Major premise (legal rule): [*omitted*]
>
> Minor premise (relevant facts): The government knowingly worsened climate change, an existential threat to the United States. In doing so, it caused the plaintiffs' injuries.
>
> Conclusion (holding): The court has the power to redress the injuries; the plaintiffs have established standing.

The plaintiffs' narrative argument lacks a persuasive legal basis for recovery and therefore omits an explanation of how the court can remedy climate injuries.[124] Just as the major premise is omitted from the syllogism, the American Environmental Apocalypse excludes the major premise's narrative counterpart.

Instead, the narrative presents a particular vision of America, in which the nation's history, character, and Constitution are inseparable from its reverence for the natural world. The thematic and structural hallmarks of the environmental apocalypse are here, but they slowly merge with the story of America itself, from the pre-founding through

123 *See infra* Section III.B.

124 *See generally* Elizabeth Kellar, *Giving the Climate a Voice: Why Allowing Suits Over Climate Change to Be Heard in Court Is Not Only Constitutional, but May Be Our Only Viable Option*, 51 Stetson L. Rev. 375, 378 (2022).

the present. To begin, Act I's pastoral opening is set squarely within America's beginnings—and its prehistory. The authors of the brief evoke a lineage of the United States' cultural precursors, all of them linked by their deep respect for the environment.[125]

Act II, which traditionally represents the damage done by humanity's exploitation of the planet's resources, here appears as the government's threat to the American climate.[126] Again, this threat is embedded in American history: in the plaintiffs' telling, the fall from pastoral grace coincides with America's founding. Indeed, in the plaintiffs' view, American independence itself was an act of resistance to government-sanctioned environmental damage. As support for this claim, they offer the Declaration of Independence, which frames colonial rebellion as a battle against "a form of governance . . . that 'plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.'"[127] The first Americans were fighting for a Constitutional democracy built on the recognition of "the natural environment [a]s a critical underlying principle of liberty."[128] Defeating the environmental despotism of the British was thus a prerequisite to the life, liberty, and happiness that lay on the other side of the Revolution.[129] On this naturalist view of the nation's purpose, a failure to recognize and safeguard the *Juliana* plaintiffs' climate right poses an even more dire threat "to our seas, our coasts, our towns, and the lives of our people than did George III's tyranny."[130]

The plaintiffs' third act is consistent with the standard apocalyptic in that it remains incomplete: a looming climate Armageddon that we still have some (rapidly diminishing) chance of averting.[131] But this Act, too, becomes essentially American. Its unwritten conclusion hinges on a particular interpretation of the U.S. Constitution, and on American courts' willingness to intervene. All told, the American Environmental

125 *See* Plaintiff-Appellees' Answering Brief, *supra* note 99, at *43, *45 (explaining that "air, running water, [and] the sea" have been linked to functional democracies "at least since Roman times." Connections between nature and freedom continued, the plaintiffs suggest, appearing in early English common law jurisprudence, and finally, finding their way into America's "founding documents" and "the common law origins of the Constitution[.]" (citation omitted)).

126 *See* Complaint, *supra* note 79, ¶ 5 (defendants' actions caused "the dangerous destabilization of *our nation's* climate system" (emphasis added)).

127 Plaintiff-Appellees' Answering Brief, *supra* note 99, at *44.

128 *Id.* at *47.

129 *Id.* at *48–49.

130 *Id.* at *44.

131 *See supra* Section III.B.2.

Apocalypse takes the standard environmental apocalyptic, and shapes it into a vision of America as an environmental democracy.

In addition, because the plaintiffs assert the climate right under a substantive due process theory,[132] their narrative must account for why the climate right qualifies as a "fundamental right" subject to strict scrutiny review.[133] The American Environmental Apocalypse, in other words, must explain why a climate right is either "fundamental to [the Nation's scheme of] ordered liberty," or "deeply rooted" in American history.[134] The capacious inquiry would seem to benefit the plaintiffs. There is no rigid formula to which the analysis can be reduced;[135] instead, it calls for a persuasive *narrative* of the climate right—exactly what the American Environmental Apocalypse offers.[136] The fundamental liberty test provides a venue for "competing narratives through and against which Americans debate the meaning of their past and the shape of their future."[137] The American Environmental Apocalypse argument exemplifies this backward-and-forward-looking narrative. It offers an account of American history as environmental history. And it suggests that dual history is the basis for the right to "a livable future."[138]

And yet for all of this careful storytelling, there remains that gap in the enthymematic narrative, which forgoes a legal justification for judicial intervention.[139] While this Article suggests that this gap is exactly the point of reciprocal narrative, the government, in its oral argument, seizes on the omission as a fatal flaw in the plaintiffs' argument.[140] For the government, the omission leaves nothing but a scattered picture of early American environmentalism, a collection of irrelevant historical anecdotes. The plaintiffs' reference to John Locke, for example, is one of many instances of "stray references"[141] to Western history, none of which "provide the basis for a [redressable] constitutional right."[142] In the

132 Juliana v. United States, 217 F. Supp. 3d 1224, 1248–49 (D. Or. 2016).
133 *Id.*
134 Washington v. Glucksberg, 521 U.S. 702, 727 (1997).
135 Obergefell v. Hodges, 567 U.S. 644, 663–64 (2015).
136 *See, e.g.*, Laurence H. Tribe, *America's Constitutional Narrative*, 141 Daedalus 18, 19 (2012) (defining the Constitution, in part, as a locus for "competing stories about constitutional values[.]").
137 *See id.* at 20.
138 Plaintiff-Appellees' Answering Brief, *supra* note 99, at *42.
139 There is a gesture at a standard redressability argument elsewhere in the brief, but it's cordoned off from the organizing legal narrative. *See id.* at *23–29.
140 Oral Argument, Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020) (No. 18-36082), https://www.youtube.com/watch?v=DlQR_sqGt5k.
141 *Id.* at 1:02:30–1:03:00.
142 *Id.*

government's view, it is ironically this kitchen-sink approach that results in an incomplete argument. The plaintiffs' narrative, the government implies, papers over a satisfying account of redressability with an erratic sketch of an environmental republic.[143] The narrative focuses on the climate right—which, for purposes of assessing standing, the Court assumes exists[144]—at the expense of explaining the remedy.

But that "missing" explanation (that is, the legal rule) is the missing major premise; the core of reciprocal narrative. It's the judge's cue to complete the enthymeme with a narrative conclusion, and it offers her the chance to bypass the strictures of precedent in crafting a judicial remedy for an unprecedented problem. In its unfinished state, the plaintiffs' legal narrative begs the question of why courts in particular can and must remedy climate harms. Judge Staton's dissent answers the question. It provides a narrative basis for Article III standing, where the American Environmental Apocalypse did not. Throughout that narrative, it demonstrates why climate action is the federal judiciary's responsibility.

C. The Judge's Story

Judge Staton's National Apocalyptic narrative expands on the American Environmental Apocalypse in two ways. First, it includes a major premise. At the core of the National Apocalypse lies a near-identical syllogism as the one we saw in the plaintiffs' narrative, now slightly revised and updated to include a major premise, *i.e.*, a legal rule for establishing climate standing:

> Major premise (legal rule): The Constitution protects citizens from any government act that threatens the nation's continued existence.
>
> Minor premise (*Juliana* facts): The government knowingly worsened an existential threat to the United States. In doing so, it caused the plaintiffs' injuries.
>
> Conclusion (holding): The court has the power to redress the injuries. The plaintiffs have established standing.

Consistent with the National Apocalypse that I describe in detail below, this syllogism concentrates on *any* governmental threat to the

143 *Id.*

144 *Juliana*, 947 F.3d at 1170 (citing M.S. v. Brown, 902 F.2d 1076, 1083 (9th Cir. 2018)); *see* Lujan v. Defs. of Wildlife, 504 U.S. 555, 563–64 (1992).

nation, not on climate-related threats specifically. The modified minor premise reflects this revision: unlike the plaintiffs' version, it never alludes to climate change.

The second distinguishing feature of the National Apocalyptic is its narrative coherence. Internal narrative coherence produces its tight, driving story of a dangerous executive branch. And its external coherence means it meets readerly expectations of what courts should do to fight climate change.

This Section begins by unpacking the National Apocalypse, emphasizing the thematic shift from environmental crisis to constitutional crisis. While climate change must, of course, feature into the plot, the dissent discards the plaintiffs' "environmental democracy" motif, replacing it with a vision of a precarious Nation held hostage by its government. After close reading the National Apocalyptic and explaining its reciprocal relationship to the plaintiffs' tale, Section III.C.2 turns to the legal proposition that Judge Staton's narrative generates. It explores Judge Staton's theory of the "perpetuity principle," or the idea that "the Constitution d[oes] not countenance its own destruction."[145] Section III.C.2 also demonstrates in more detail how Judge Staton's reciprocal development of the plaintiffs' narrative is superior to the majority's formalist approach to the redressability prong. The cooperative, value-driven structure of reciprocal narrative exposes the inefficacy of precedential reasoning, especially in impact litigation.[146]

1. Revising the Apocalypse

At first, not much looks different. The dissent recites a familiar list of standard environmental calamities.[147] Yet early on, Judge Staton hints at her radical revision of the plaintiffs' narrative. The National Apocalypse is an environmental narrative without any reference to the environment. I refer to it as the "National Apocalypse" because it tells of a *generalized* domestic Armageddon brought about by the federal

145 *Id.* at 1178–79 (Staton, J., dissenting).

146 *See* Veldman, *supra* note 100, at 11 ("[M]oral deliberation entails constructing narratives rooted in our unique history and circumstances, rather than applying universal principles . . . to particular cases."); Kenneth Chestek, *Dimensions of Being and the Limits of Logic: The Myth of Empirical Reasoning*, 19 Legal Commc'n & Rhetoric 23, 47 (2022) (identifying impact litigation as one "kind[] of case[] where storytelling is essential to a court's reasoning[.]").

147 *See Juliana*, 947 F.3d at 1176 (Staton, J., dissenting) (citing plaintiffs' experts' predictions of '"an inhospitable future"' marked by '"rising seas . . . mass migrations, resource wars, food shortages . . . mega-storms[,]'" and loss of biodiversity).

government. Foreshadowing the way its narrative themes—the nation's fragility; the government's recklessness—will ultimately inject the dissent with its legal weight, Judge Staton writes, "Plaintiffs bring suit to enforce the most basic structural principle embedded in our system of ordered liberty: that the Constitution does not condone the Nation's willful destruction. *So viewed*, plaintiffs' claims adhere to a judicially administrable standard."[148] In other words, when we are willing to "view" the dispute through its proper, narrative framework, we see that the plaintiffs' claims pass the fundamental rights test. The claims arise from the "most basic" freedom the Constitution—and, by extension, the federal courts—exist to protect.

To constitute a violation under the National Apocalypse standard, the federal government's actions must point to a threat of *willful* destruction of the United States.[149] Early in the dissent, a vivid hypothetical (also devoid of any reference to climate change) encapsulates this requirement. Judge Staton imagines an "asteroid . . . barreling toward Earth," while the government responds by shutting down the nation's defenses.[150] The analogy includes the three components of the National Apocalyptic narrative:

> (1) an existential threat to the Union;
>
> (2) the federal government's knowledge of the threat; and
>
> (3) some ongoing governmental action that facilitates or exacerbates the threat.

In its third prong, the analogy reflects the willful requirement: the government must act voluntarily, with the specific intent to do something that the law forbids[151] (here, existentially threaten the nation's perpetuity). The illustration again invokes the fundamental rights test, because it demonstrates governmental intrusion on fundamental freedoms—here, the freedom to live in a functional democratic republic. In its reminder of the republic's permanent vulnerability to expansive centralized authority, it expresses the precarity of the "Nation's fundamental scheme of ordered liberty." Yet in spite of this familiarity, the narrative remains pliable enough to fit novel facts like those in *Juliana*. And it improves on the American Environmental Apocalypse in

148 *Id.* at 1175 (emphasis added).
149 *Id.*
150 *Id.*
151 *See generally* United States v. Gregg, 612 F.2d 43, 50–51 (2d Cir. 1979).

multiple ways.

To begin, the National Apocalypse exhibits a substantial degree of narrative coherence.[152] As explained above, internal coherence, generated by a smooth fusion of character, theme, and organization, immerses the audience. Internal coherence sends empathic readers into the experience of narrative transportation. External coherence accords with the reader's expectations of the story's readability and enhances persuasive effects. For example, when readers encounter the National Apocalypse's account of a nation imperiled by its power-hungry government, and an independent judiciary poised to right the ship, they find a stock story that "corresponds structurally with . . . social knowledge" about cherished American principles.[153] Under these circumstances, the audience is more receptive to the author's argument.[154]

In addition, the dissent's narrative coherence corrects two rhetorical missteps made in the plaintiffs' brief. The first problem the plaintiffs face is that of scale. According to their brief, the Constitution alone protects Americans from environmental harms. But a single legal document (even one as weighty as the Constitution) is wildly incommensurate with the natural environment. The Constitution exists firmly within an American imaginary, while climate change exceeds all boundaries: political and cultural, even spatial and temporal.[155] Because climate change transcends the conceptual boundaries of the Constitution, the plaintiffs' story of a uniquely *American* climate change seems implausible. Their presentation of the climate right—the right to live in a functional climate system—faces the same quandary. How can freedom from a *global* catastrophe be confined within constitutional borders? Even the plaintiffs' shorthand subtly reinforces this contradiction in terms: a climate (implicitly global) right (implicitly constitutional, and therefore domestic). This may explain why Judge Staton never uses that phrase: it attempts to link a planetary problem with an American entitlement. The scalar inconsistency stems from a

152 *See* Rideout, *supra* note 65, at 72.

153 *See id.*

154 *Id.*

155 Indeed, shortly after the birth of the modern American environmental movement, the dominant understanding of climate change emphasized this transcendent character. *See* Buell, *supra* note 106, at 169 (in the early 1970s, "perceptions of environmental crisis as a defining challenge for humanity became global . . . . The elaboration of a complexly systemic, dynamically expanding, and fully global environmental crisis became as real as . . . scientific findings").

lack of narrative coherence: we don't usually view climate change itself as a distinctly domestic threat. The result is a dent in the story's plausibility and persuasiveness.[156]

The plaintiffs face a second, related problem, also addressed by the dissent: climate change's disordered uncertainty damages the picture of the American Environmental Apocalypse. Climate change is a moving target. Its volatile ubiquity makes it difficult to conceptualize, let alone control. So why turn to the U.S. Constitution to get a handle on such an unruly cataclysm? This question relates to a common challenge in environmental lawsuits, which seek remedies for speculative, future harms through a legal system designed primarily to remedy past harms.[157] Next to mercurial, even mysterious climate phenomena, legal instruments appear quaint. Addressing climate change through the Constitution alone appears inefficient, if not absurd. Here again, the plaintiffs' picture of a strictly American climate change—one that stays still long enough to submit to Constitutional mandates—demonstrates a dearth of narrative coherence and detracts from the plaintiffs' argument.

The government forcefully seizes on these shortcomings. Its brief cites the Supreme Court's ominous observation of the "striking" breadth of the plaintiffs' claims.[158] This concern about "breadth" puts the scalar mismatch described above front and center, highlighting the narrative contradiction between a constrained constitutional foundation on the one hand, and the unbounded immensity of climate change on the other.[159] In addition, the government criticizes the plaintiffs' quixotic quest to uncover a right "to particular climate conditions."[160] In the government's telling, the plaintiffs are demanding that three federal judges control climate change—a futile pursuit even if it were constitutionally permissible.[161] Climate change, the government insists, serves as a striking reminder of natural limits on judicial power.

Judge Staton's National Apocalyptic avoids these stumbling blocks because it completely restructures the requested relief. First, it addresses the problem of "particular climate conditions." In Judge Staton's narrative, the court need not end global climate change to

156 *See* Rideout, *supra* note 65, at 66.

157 Even some injunctive remedies are backward-looking. For example, some permanent injunctions are geared toward preventing *past* harms from occurring again, not toward preempting future, yet-to-be-realized injuries.

158 Appellants' Opening Brief, at 16, Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020) (No. 18-36082), 2019 WL 439256 at *4.

159 *See* Lazarus, *supra* note 5, at xv; Song, *supra* note 2, at 3.

160 Appellants' Opening Brief, *supra* note 158, at *36.

161 *See* Lazarus, *supra* note 5, at xv.

ameliorate the injuries. It only has to carry out its most basic duty to check nation-demolishing executive power.[162] Similarly, the dissent bypasses the problem of scalar and conceptual discrepancy between the Constitution and the natural environment. The defendants can no longer criticize a chimerical connection between climate and constitution, because the National Apocalyptic excises climate change from its plot. Judge Staton replaces our current climate emergency—something the Founders could not have foreseen—with the brand of peril that the Founders *did* repeatedly warn us of: a tyrannical, self-interested government, indifferent to the nation's well-being. Contrary to the plaintiffs' American Environmental Apocalypse, then, the National Apocalypse is *appropriately* confined within U.S. borders because it is not a climate apocalypse at all.[163]

With these inconsistencies remedied, Judge Staton gradually begins moving toward the fusion of law and narrative. She starts the journey by tightening the story through its internal narrative coherence. Plot, character, and theme are carefully woven into an integrated whole,[164] forming an infrastructure for narrative transportation. The plot is simply stated: the United States faces an urgent "existential crisis," one "directly facilitated" by its own government.[165] (If this were a horror movie, the call would be coming from inside the house.) Character flows from plot: the executive branch plays the villain; the judiciary, the potential hero. Courts have both the authority and the resources to step in and help, and to spare us the righteous anger of future generations.[166] The National Apocalypse asks whether the Ninth Circuit will accept this responsibility, and through this question we find one of the narrative's key themes. This is the David and Goliath motif, a common one in environmental law.[167] It features a hero who

162 *See Juliana*, 947 F.3d at 1177, 1179, 1184 (Staton, J., dissenting) (court has legal obligation "to preserve the *Nation*"; redressing injuries would not task court "with determining the optimal level of environmental regulation," but with "prohibit[ing] the willful dissolution of the *Republic*"; "judicial review compels federal courts to . . . instruct the other branches as to the constitutional limitations on their power." (emphases added)).

163 *See id.* at 1177.

164 *See* Rideout, *supra* note 65, at 59–60; Chesler & Sneddon, *supra* note 55, at 262 (narrative coherence, "the degree to which the narrative 'makes sense' to the reader . . . will enhance the likelihood of narrative transportation").

165 *See Juliana*, 947 F.3d at 1177 (Staton, J., dissenting).

166 *See id.* at 1191.

167 *See, e.g.*, Dark Waters (Participant 2019); Burger, *supra* note 33, at 21 (discussing prevalence of David and Goliath tales in environmental law stories and "toxic tales").

must take some risk to thwart a powerful, self-interested entity seeking short-term material gains—whatever the human cost. Here, the risks facing the Ninth Circuit are obvious; they depend on how it decides the redressability question. It might exceed its judicial authority, but it might also harm the environment.[168]

External coherence similarly pervades the National Apocalypse. Inseparable from the dispositive question is the separation of powers problem, a danger embedded deep in our collective understanding of the constitutional order. Pitting the executive and judicial branches against one another, and adding a layer of ethical entanglement, brings the conflict in line with readerly expectations, and results in an externally coherent narrative. Much of the dissent's persuasive effect originates from this external coherence, the same quality that the government complained was lacking in the American Environmental Apocalypse. Judge Staton's account of government-induced collapse exists within the narrative universe of America's constitutional democracy, as the dissent demonstrates with *connected* historical examples of attempts to thwart an out-of-control executive.[169] The plaintiffs' take failed to capitalize on this collective constitutional knowledge, instead presenting piecemeal snapshots of naturalism throughout history.

Dispatching with the climate altogether thus proves to be the dissent's most canny revision. The core fiction of the National Apocalypse—that *Juliana* is a climate dispute, but somehow is not about climate change—avoids the contradictions of the plaintiffs' narrative, and leans heavily on the power of the "social and cultural presuppositions . . . with which [the narrative] structurally coheres."[170] The dissent leverages our collective knowledge that the limits of judicial powers are often difficult to discern. They change from case to case. Rather than tell an untested story primarily about a new, unlimited power to protect an unrecognized climate right, the National Apocalypse sets out a familiar narrative of a government run amok.

By converting the climate right narrative to a tale of checks and balances, Judge Staton's argument also meets substantive due process requirements. First, checks and balances are "fundamental to the

168 *See Juliana*, 947 F.3d at 1191 (Staton, J., dissenting) (majority's refusal to take such a risk ignores "the government's own studies," which warn of "seas envelop[ing] our coastal cities, fires and draughts haunt[ing] our interiors . . . storms ravag[ing] everything in between," and snatching "hope from future generations").

169 *See id.* at 1178–79.

170 Rideout, *supra* note 65, at 72.

Nation's scheme of ordered liberty."[171] The judiciary must curb excessive executive power if it wants to avert the National Apocalypse and keep the political order in place. Second, the concept of checks and balances is "deeply rooted" in national history and tradition.[172] Once the narrative's constitutional foundation comes into view, the standing argument becomes easier to make. The next Section turns to that argument, and its enthymematic relationship to the National Apocalypse.

2. Completing the Enthymeme: The Perpetuity Principle and the Role of the Courts

Unlike the American Environmental Apocalypse, the National Apocalypse arrives fully formed: its organizing legal principle is deftly threaded throughout its narrative of governmental threat. This organizing concept of the perpetuity principle possesses an equal amount of legal and narrative force. It is at the root of the standing argument, but it also demonstrates the enthymematic form of Judge Staton's narrative. This Section defines the perpetuity principle in greater detail, examines its role in the reciprocal narrative, and shows how it converts a narrative vision of national collapse into a legal theory of judicial intervention.

a. The Meta-Right

The perpetuity principle creates the constitutional right to be protected from a self-destructive government. The principle "prohibits . . . the willful dissolution of the Republic," and it derives its authority from the notion that "the Constitution [does] not countenance its own destruction."[173] It's a straightforward idea, one that tracks the key features of the National Apocalypse narrative: were the nation destroyed by its government, the Constitution—and the rights it protects—would necessarily perish. Constitutional rights have an obvious, though implicit, prerequisite: an extant sovereignty with the power to protect those rights. Once the American state ceases to persist in perpetuity, fundamental rights disappear, too. By barring the government's "willful dissolution of the Republic," the perpetuity principle functions as a kind of *meta-right*, a guarantor of constitutional freedoms.[174] If constitutional

171 McDonald v. City of Chicago, 561 U.S. 742, 744 (2010).
172 *Id.*
173 *See Juliana*, 947 F.3d at 1178, 1179 (Staton, J., dissenting).
174 *Id.* ("[T]he perpetuity of the Republic occupies a central role our constitutional

rights exist, then so too must the promise of national perpetuity.[175] Courts cannot protect one without protecting the other.

The perpetuity principle displaces the plaintiffs' climate right. Rather than claim an abstract right to a life-sustaining climate system, Judge Staton focuses on a right to "the perpetuity of the Republic,"[176] which is written into the Constitution itself. For example, according to Judge Staton, the Presidential Oath to "preserve and protect" the Constitution demonstrates that "the Constitution's structure reflects th[e] perpetuity principle."[177] Article IV, Section 4's guarantee that the government will protect the Nation "against domestic [v]iolence"[178] provides further support for the claim. Since the principle can be located in the Constitution *itself* (among other places), it meets the first prong of the fundamental rights test, in that it is part and parcel of our national scheme of constitutional liberty.[179]

In addition, the perpetuity principle is inscribed in our collective ideas of America, and our knowledge of national development. In that sense, it is "deeply rooted"[180] in national history for the purposes of the second prong of the test. On this point, Judge Staton quotes Abraham Lincoln, who said that '"the Union of these States is perpetual'" because '"[p]erpetuity is implied, if not expressed, in the fundamental law of all national governments . . . . [N]o government . . . ever had a provision in its organic law for its own termination.'"[181] The idea goes back even further, Judge Staton notes, as she recounts the Constitutional Convention's "'great object' of 'preserv[ing] and perpetuat[ing]' the Union."[182] In sum, in addition rooting the perpetuity principle in the Constitution, Judge Staton uncovers it in bedrock American moments. The climate right, on the other hand, was nascent and free-floating, dislocated from the Constitution and drifting through Western history and naturalist philosophy. Filling that gap—completing the enthymeme—first meant finding a firmer narrative ground for the right.

But the dissent doesn't stop with its reimagined climate right origin story. Judge Staton goes further in explicitly distinguishing her

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structure as a guardian of all other rights.") (citation omitted).

175 *See id.* at 1177 (providing examples of rights that "serve as the necessary predicate for others[.]").

176 *Id.* at 1178.

177 *Id.*

178 *Id.* at 1178–79.

179 McDonald v. City of Chicago, 561 U.S. 742, 744 (2010).

180 *Juliana*, 947 F.3d at 1178 (Staton, J., dissenting).

181 *Id.* at 1179.

182 *Id.* at 1178.

argument from the plaintiffs': "the perpetuity principle," she writes, "*is not an environmental right at all* . . . rather, it prohibits only the willful dissolution of the Republic."[183] Just as they were to the National Apocalypse narrative, climate harms are incidental to the perpetuity principle.

b. Narrative Reasoning and Judicial Responsibility

Fiction, then, forms the heart of the dissent. The climate right is paradoxically "not an environmental right at all."[184] This unapologetic foray into the fictive represents Judge Staton's particular mode of analysis. Her rewrite of the plaintiffs' nascent apocalypse tale means she proceeds by way of *narrative* reasoning[185] throughout her opinion, a methodology that clashes with the majority's formalist approach to the standing question. These dueling analytical approaches, rather than disagreements over substantive legal questions, ultimately result in a 2-1 decision. The majority's formalism conveniently restrains the court. It prevents the judges from honestly engaging with the moral dimensions of the case—even as they acknowledge the reality of those moral dimensions. On the other hand, narrative reasoning in general, and reciprocal narrative in particular, allow Judge Staton to tackle the standing question from a richer position, one that addresses both its doctrinal challenges and its ethical complexities.

Judge Staton's venture into the literary is not a radical move. It fits within an existing canon of judicial dissents, particularly dissents urging action. These dissents often use story-logic to advance "long-standing narratives of a[n] . . . interventionist stripe."[186] A nuanced, narrative approach of this kind sharply differs from the majority's rhetoric, in which staid analogies to precedent dominate, resulting in an "unsatisfactory . . . purely common law account"[187] of climate standing. The reciprocal narrative comprises an evolving dialogue that creatively incorporates caselaw into its discourse, rather than attempt to wring a conclusion from "only . . . the steady accretion of precedent."[188] While all three judges seem to agree that the plaintiffs deserve relief from governmental harms, they diverge on the question who or what must

183 *Id.* (emphasis added).
184 *Id.*
185 *See* Chestek, *supra* note 18, at 102.
186 Tribe, *supra* note 136, at 27.
187 *Id.* at 28.
188 *Id.*

provide that relief. That divergence results from their conflicting modes of analysis.

The majority's reaction to the perpetuity principle provides an illustration. Unsurprisingly, the majority first complains of a lack of authority, pointing out that the Supreme Court has never "recognized the 'perpetuity principle.'"[189] In addition, the court laments, "the dissent offers no metrics for judicial determination of the level of climate change that would cause the 'willful dissolution of the Republic"[190] and trigger application of the perpetuity principle. Although it remains implicit, the true target of this criticism is Judge Staton's narrative reasoning—an epistemology that eschews formulaic analysis in favor of norm-driven reasoning. Because the perpetuity principle enshrines a right to the continued existence of the nation—*not* a right to "particular climate conditions"—it has no need for numerical measurements.

The majority bulldozes past this point. It continues to demand that Judge Staton hand over the "metrics," noting that when a holding for a plaintiff does "not require the defendant to redress the plaintiff's claimed injury," then the plaintiff "cannot demonstrate redressability."[191] In the majority's mind, nothing outside of a finely tuned, ready-to-be-implemented climate plan would ameliorate the plaintiffs' harms—and Judge Staton, her colleagues complain, offers no such plan. But that's the point. The National Apocalypse narrative includes *any* looming government-caused apocalypse; and the perpetuity principle only prohibits government action that makes such an apocalypse. It protects citizens from climate harms (and other harms) representing a threat of total destruction. Such a threat cannot be neatly measured, as Judge Staton's historical examples demonstrate: President Lincoln had no numerical data to support his claim that the Civil War was illegal because it posed an existential threat to the Union. Because the perpetuity principle does not shield the *Juliana* plaintiffs from *any* government-caused climate harms—only the harms that the threaten the nation's survival—it has no need for precise metrics. Reciprocal narrative appeals to imaginative story-logic that draws disparate voices into the conversation; not on judicial tests and policy minutiae that are the domain of the courts, legislators, and bureaucratic agency officials far removed from average Americans.

Narrative also embraces productive "what-ifs," and these are essential to climate cases. What if shared values drove the court's

189 *Juliana*, 947 F.3d at 1175 (majority opinion).
190 *Id.* at 1174.
191 *Id.* (quoting M.S. v. Brown, 902 F.3d 1076, 1083 (9th Cir. 2019)).

decision? What if judges saw the haziness of standing doctrine as an opportunity for progress, not a self-enforced barrier to judicial action? The answers to these questions matter less than the willingness to ask them—to be receptive to open-ended quandaries with no single answer. And because narrative form is itself open-ended, it effectively conveys these questions by modeling their potential. Where legal precedent generates boundaries, narrative offers possibility. And "metrics" of the kind demanded by the majority are like precedent: they set limits. Formalism suffers the same affliction. "Like cases should be decided alike," contend formalism's proponents.[192] Following precedent "promotes both consistency and predictability."[193] But what use are consistency and predictability when dealing with the effects of climate change, whose phenomena are defined mainly by their unpredictability?

In a case as far-reaching and future-facing as *Juliana*, a "color-matching technique of determining whether one case looks just like another case"[194] is unworkable. It can even look absurd: a dogmatic adherence to earlier caselaw when faced with a problem like climate change, which stretches the definition of "unprecedented." Like any dogma, the majority's fealty to precedent might sound nice in theory, but it tends to contradict itself in practice, as Elizabeth Kellar's analysis of *Juliana* demonstrates.[195] For example, while the *Juliana* panel maintained that its decision did not conflict with *Massachusetts v. EPA*[196]—a case with facts and arguments "almost identical"[197] to those in *Juliana*— it also suggested that the plaintiffs' lack of redressable injuries resulted from the absence of a metric for "measuring a constitutionally acceptable 'perceptible reduction in the advance of climate change.'"[198] That claim squarely conflicts with *Massachusetts v. EPA*, in which the Court explicitly rejected the notion that redressability requires a precise calculation of how much remedial climate action would suffice to provide a remedy.[199] Like the EPA in the earlier case, the *Juliana* court made the "erroneous

192 Bryan A. Garner et al., The Law of Judicial Precedent 21 (2016).
193 *Id.*
194 Sherwin, *supra* note 23, at 116 (citations omitted).
195 *See* Kellar, *supra* note 124, at 387–89.
196 Massachusetts v. EPA, 549 U.S. 497 (2007); *Juliana*, 947 F.3d at 1171.
197 Kellar, *supra* note 124, at 388.
198 *Juliana*, 947 F.3d at 1174; *see* Kellar, *supra* note 124, at 387–88.
199 Massachusetts v. EPA, 549 U.S. at 524; Kellar, *supra* note 124, at 386–87 ("The Court recognized that even if a party merely contributes to climate change, and forcing them to stop would not end climate change, or even make a noticeable dent in the near future, that small contribution suffices to hold the party liable.").

assumption that a small incremental step, because it is incremental, can never be attacked in a . . . judicial forum."[200] That a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to the law.[201]

The formalist approach that led to this contradiction is too restrictive to address reparative climate action, which requires an openness to the possibilities of tentative steps. Narrative is a better fit, in part because narrative reasoning and moral reasoning dovetail with one another. In fact, cognitive science suggests a significant overlap between the two. Moral deliberation is

> an imaginative exploration of the possibilities for constructive action . . . . We have a problem to solve here and now (e.g., 'What am I to do?' . . .), and we must try out various possible continuations of our narrative in search of the one that seems best to resolve the indeterminacy of our present situation.[202]

In a case like *Juliana*, moral reasoning

> entails constructing narratives rooted in our unique history and circumstances, rather than applying universal principles . . . to particular cases. . . . Formal principles may be useful in unambiguous textbook cases, but in real life we can almost never decide . . . how to act without considering the ways in which we can continue our narrative construction of our situation. Empirically speaking, *"our moral reasoning is situated within our narrative understanding."*[203]

For the majority, the redressability question is "textbook." Viewing redress as a simple test of judicial authority, rather than the "narrative construction"[204] that it is, precludes the majority from addressing its "real life"[205] complexities.[206] And it allows them to bypass

200 Massachusetts v. EPA, 549 U.S. at 524.
201 *Id.*
202 Veldman, *supra* note 100, at 11 (citations omitted).
203 *Id.* (emphasis in original) (internal citations omitted).
204 *Id.*
205 *Id.*
206 *See* Juliana v. United States, 947 F.3d 1159, 1172 (9th Cir. 2020) (conceding that "in some circumstances, courts may order broad injunctive relief while leaving the 'details of implementation' to the government's discretion," but concluding that the plaintiffs' request fails to warrant such relief (citation omitted)); *see also* Maggie Kainulainen, *Saying Climate Change*, 21 SYMPLOKE 109, 111 (2013) ("[W]e have to think big, bigger than we know how, and bear witness to the deep interconnection and undecidability that climate change reveals . . . . [B]ecause climate change as a totality can only be encountered through discourse, the issue of representation is key.").

the imaginative labor that the redressability analysis demands under the particular circumstances of the case.[207] This objection to the productive mutability of the narrative form is designed to rescue the majority from a bind of its own making. Throughout its opinion, the court repeatedly recognizes a moral obligation to intervene. Yet it refuses to do so. Attempting to account for the delta between its proposal (we must act) and its conclusion (we will not act) only yields further contradictions, as noted above. Thus, the only way out of this hypocritical position is for the majority to reject the *narrative reasoning* necessary to make a persuasive argument in favor of redressability. Formalism, in other words, provides the court with cover.

But even if one accepts that narrative reasoning can better apprehend climate change in all of its complexity, there remains the question of how narrative reasoning leads to a sound legal conclusion. To answer that question, we turn back to the reciprocal, enthymematic move from the plaintiffs' American Environmental Apocalypse to Judge Staton's National Apocalypse. Although I have argued that narrative reasoning's flexibility is its key strength, a legal narrative must nevertheless carry some identifiable structure. It cannot offer endless, branching possibilities. It needs an anchor. In the dissent, some of the anchoring effect comes from the narrative coherence of the National Apocalypse.[208] The rest of it derives from the enthymematic function of the perpetuity principle.

In the minds of the majority, Judge Staton's conclusion could snowball into a judicial obligation to end climate change altogether.[209] But atop this slippery slope sits the guardrail of the perpetuity principle. The principle sufficiently cabins the parade-of-horribles type of argument: there is no right to a contaminant-free environment.[210] Nor is anyone demanding that government actors restore the health of the planet. Instead, the perpetuity principle establishes and protects an individual freedom "from *irreversible and catastrophic climate change*."[211] If climate change can be "irreversible," then it must have a temporal dimension. Climate harms, after all, unfold over time; they do not suddenly materialize when the apocalypse timer goes off. "Irreversible" does much of the analytical work here; it limits the scope of the perpetuity principle. By prohibiting only "irreversible" damage, Judge

207 *See infra* Section II.A.
208 *See infra* Section II.A.
209 *See Juliana*, 947 F.3d at 1171–72.
210 *Id.* at 1182 (Staton, J., dissenting).
211 *Id.* (emphasis in original).

Staton recognizes that courts cannot stop climate change, even as her colleagues imply that she does not: "[T]he injury at issue is not climate change writ large," she writes. "[I]t is climate change beyond the threshold point of no return."[212]

That threshold has not yet been crossed. There is still a window in which the judiciary might ameliorate the plaintiffs' "prefatory harms,"[213] or "the barbs of an *ongoing* injury flowing from an *ongoing* violation of plaintiffs' rights."[214] Indeed, time itself is a limiting principle. The court need not design long-term climate policy, but it can address what is happening now. Prefatory harms have not yet culminated in the nation's "physical destruction."[215] But if left unchecked, they will. The United States, Judge Staton warns, "is crumbling—at [its] government's own hand—into a wasteland."[216] Again, the language reflects a ticking clock. Wrapped within the present participle of the phrase "is crumbling," the point is clear: for now, the nation continues to crumble. The court can still do something. "And 'something,'" the lone dissenter concludes, "is all that standing requires."[217] Under the circumstances of the case, the perpetuity principle requires judicial action. And the obligation doesn't dissipate when action might only provide minimal relief. Even one remedial drop in the bucket might matter. "*A lot.*"[218]

As for what that single drop might look like, Judge Staton reasons that "[p]roperly framed, a court order—even one that merely *postpones* the day when remedial measures become . . . [in]effective—would likely have a real impact on preventing the impending cataclysm."[219] The legal effect of this statement hinges on the character of the cataclysm and the appropriate judicial response—both of which, again, are sequential, or chronological, in nature. "Postpones," "preventing," impending": each word hammers home the temporal component of Judge Staton's legal argument. The *perpetuity* principle, after all, protects not just a republic from an existential threat, but an *ongoing* republic from an *ongoing* existential threat. Judge Staton's word choice also reinforces her argument's narrative form. The first two words—"properly framed"—

212 *Id.*
213 *Id.*
214 *Id.* (emphases in original).
215 *Id.* at 1179. (Staton, J., dissenting).
216 *Id.* at 1176. "Wasteland" further reflects the dissent's literary character. It metonymizes the environmental apocalypse, calling to mind T.S. Eliot's epic poem of twentieth-century breakdown, "The Wasteland."
217 *Id.* at 1182.
218 *Id.* (emphasis in original); *see also* Massachusetts v. EPA, 549 U.S. 497, 524 (2007).
219 *Juliana*, 947 F.3d at 1182 (Staton, J., dissenting) (emphasis added).

confirm that the National Apocalyptic is a literary enthymeme. The National Apocalypse narrative, via the perpetuity principle, "properly frames" (or reframes) the American Environmental Apocalypse as a domestic emergency, whether climate-related or not. *Any* impending cataclysm is sufficient, so long as it was caused or aggravated by the government. It is not a climate right that the dissent is after. It is the freedom from a government with "the absolute and unreviewable power to destroy the Nation."[220]

In explaining why minimal, impermanent remedies are all that is needed to stave off this destruction, Judge Staton satisfies both prongs of the redressability inquiry at once. First, if all the plaintiffs require is some type of small, temporary alleviation of their harms, then a modest order—even a declaratory order—would be "substantially likely to redress their injuries."[221] Second, that kind of restrained remedy would be "within the district court's power to award."[222] Anything that moves the needle *now* will suffice:

> The bulk of the injury is yet to come. Therefore, practical redressability is not measured by our ability to stop climate change in its tracks and immediately undo the injuries that plaintiffs suffer today—an admittedly tall order; it is instead measured by our ability to curb by some meaningful degree . . . an otherwise inevitable march to the point of no return. . . . As we approach that threshold, the significance of every emissions reduction is magnified.[223]

Any intervention that meaningfully delays an "impending cataclysm"[224] buys us time. Buying time is doing something. And if the court can do something, then it must: '"something' is all that standing requires."[225]

The perpetuity principle connects the dots between the American Environmental Apocalypse and the National Apocalypse. This Article has argued that in the dissent's theory of standing, climate harms are paradoxically incidental and essential. Because the harms—which just so happen to be environmental—pose an existential threat to the Union, and because they are perpetrated by the government, they are now cognizable injuries. The enthymeme is complete; the

220 *Id.* at 1175.
221 *Id.* at 1170 (majority opinion) (quoting M.S. v. Brown, 902 F.3d 1076, 1083 (9th Cir. 2018)).
222 *Id.*
223 *Id.* at 1182 (Staton, J., dissenting).
224 *Id.*
225 *Id.*; *see also* Kellar, *supra* note 124, at 386–87.

perpetuity principle fills the gap in the plaintiffs' unfinished narrative argument. As explained in Section IV.A, *infra*, the plaintiffs' American Environmental Apocalypse failed to persuasively support its picture of a specifically American climate change. Instead, it collected disparate historical evidence of naturalist traditions, an incomplete approach that opened the door to the government's successful critique. The resulting gap formed the narrative's enthymematic structure. The perpetuity principle completes the enthymeme in that it represents a legal principle for the fictional picture of a uniquely American climate change. That principle can only be arrived at by way of the narrative coherence at the heart of the National Apocalypse.

Finally, it is the reciprocal narrative encapsulated in the dissent that translates a collective moral responsibility into a discrete judicial duty. That translation provides a way out of the agonizing maze the majority has constructed for itself, shirking their responsibility even as they recognize it. The court readily concedes that the plaintiffs have mounted a "compelling case that action is needed."[226] Nor does it doubt the government's "role in causing" climate harms.[227] In fact, the court goes further, admonishing the government and urging it to undo the damage.[228] But in the same breath as its reprimand, the majority disclaims its own role, by defining "the government" narrowly. Only "elected officials have a moral responsibility to seek solutions."[229] It's true, the majority admits, that Congress might well "have abdicated [its] responsibility to remediate the problem."[230] But no matter. It remains legislators, and perhaps their constituents, who should be held accountable by Americans subjected to preventable climate harms.[231] Thus, in the court's view, while there is a collective obligation to help, that obligation runs from the President, through Congress, and down to American voters. It somehow skips the federal courts.

Contrary to this protective formalism, reciprocal narrative democratizes the law and encourages judges to make themselves responsible and vulnerable. The reciprocal narrative model more evenly distributes the rights and responsibilities of the kind that *Juliana* implicates. It recognizes that collective burdens demand collective

226 *Juliana*, 947 F.3d at 1175 (majority opinion).
227 *Id.*
228 *Id.*
229 *Id.*
230 *Id.*; *see also* Kellar, *supra* note 124, at 377 ("[T]he legislative and executive branches . . . have been compromised through the failure to hold elected officials accountable . . .").
231 *See Juliana*, 947 F.3d at 1175.

responses. And through the enthymeme at the heart of it, reciprocal narrative lets litigants "speak with" judges, not simply attempt to influence them. Collective creative acts—which happen to be the only kinds of actions that might make a dent in change—become more likely. In the courtroom, collaboration of this kind might also chip away at the boundaries and hierarchies of legal institutions. Judge Staton's dissent, for example, goes beyond critiquing her colleagues' reasoning and conclusions. Its particular narrative form, and its willingness to engage in an extended dialogue with youth climate activists, implicitly rejects the majority's entire jurisprudence. In its recognition of the law's concrete effect on climate change and those in its path, the National Apocalypse takes its cues from foundational tenets of narrative legal reasoning.

For example, using words that resonate with the reciprocal narrative framework this Article has proposed, James Boyd White describes both the equalizing power of narrative, and its potential to push judges to meet their moral obligations. He writes that judges must, "with [the lawyer's] aid[,] fashion [the judge's] own account" of the case.[232] The court's "own account" then culminates in "a judgment . . . in legal language, with words that work on the world. The endless possibilities for narrative, the retellings of the story in ever more various terms . . . ."[233] Fashioning a judicial opinion from all of these potentialities means setting out "a characterization of experience in the terms of the law, a claim of meaning for which the judge must take responsibility. So it is that one story, one set of experiences, can be connected with others. So it is that the law is made."[234] Here, White elevates dialogue, connection, and attention over formalist assessment. He presents the parties' own experiences as the material of the law itself—material that a judge should use to at least the same degree she uses binding authority.

Judge Staton follows this blueprint. She listens to the plaintiffs' narrative of their experience, spins it into the National Apocalypse, and, via the perpetuity principle, casts that story in legal terms. She further recognizes her responsibility for the particular "claim of meaning"[235] that she has constructed from the youth plaintiffs' lived experiences. In this context, redressability comes to look less like one piece of the plaintiffs' heavy standing burden, and more like a gauge of the court's responsibility to act. By reframing the narrative, the dissent reframes the law. The parties' dispute over standing fades into the background. In its

232 White, *supra* note 14, at 243.
233 *Id.*
234 *Id.*
235 *Id.*

place, a moral dilemma presents the court with the simple choice that's right in front of it: act or don't. Do the right thing, or do nothing. The dissenting opinion's formal properties propel this forceful conclusion. Its reciprocal narrative relies on more than the traditional sources of law; it derives at least some of its legal authority in the people themselves. As White's analysis suggests, litigants' experience of climate change should create the relevant law. A reciprocal approach, structured around the enthymeme, makes it more likely that it will.

But still, average citizens—even citizens suing the government—only have so much power within the system itself. Judges still retain the power and responsibility to "say what the law is."[236] But *how* they choose to say it matters as much as what they say. Indeed, as the contest between the split *Juliana* panel demonstrates, the formal properties of judicial opinions can determine the outcome of a case as easily as the substance of judges' analyses. The reciprocal narrative dialogue that shapes Judge Staton's declaration of what the law is (or what it should be, given that she is in the minority), carves a path from an ambiguous "moral" imperative to a particular judicial responsibility. It lays the legal foundation for judicial climate action that is part and parcel of a broader, societal obligation to act on climate change.

Of course, the plaintiffs lost. Formalism prevailed, at least in this case, so one might reasonably question the utility of the reciprocal approach. But the outcome of an individual dispute does not determine the merits of rhetorical strategies used by the dissenting judge or the losing party (especially when that strategy is relatively new, and in flux). As this Article has suggested, the *Juliana* majority seems to have rejected Judge Staton's formal approach only because it had to. After all, accepting it would necessarily mean accepting her substantive conclusion. That is not the same as a blanket rejection of a narrative-minded rhetoric. Future justice-minded litigants might refine the reciprocal model and have more success with it. In addition, embarking on a creative—and therefore risky—path to solve a novel problem might be viewed as a victory in itself. Judge Staton's narrative strategy harmonizes the law with society's ethical values. The majority's formalist reasoning does not—even when the judges explicitly voice support for those same values.

It makes sense, then, that the public took notice of Judge Staton's approach. One journalist, for example, praised the power of her opening analogy, which compared the facts of the case to a scenario in which the federal government knowingly exacerbates the threat of

236 Marbury v. Madison, 5 U.S. 137, 177 (1803).

an imminent asteroid strike.[237] This sort of public engagement matters and, in this context, counts as more than consolation prize. As this Article has suggested, climate change is a problem too complex for a single judge, civic institution, or even nation to handle on its own. It demands all hands on deck. The more eyes on the dissent's narrative, the better chance of sparking some collective active through the narrative dialogue reflected in Judge Staton's writing.

Unlike her colleagues, Judge Staton works toward the "right" outcome within the confines of a legal system that "must be stable and yet . . . cannot stand still."[238] To do so, she uses reciprocal narrative, a tool no more or less inherently legitimate than precedential analysis, but one that is a better fit for climate change. And even if formalism's near-hegemonic dominance makes it look like an "objective" source of authority, it is also merely a tool. As the famous *Marbury* pronouncement makes clear, formalist judges create law through their speech acts.[239] The same is true of judges who choose reciprocal narrative—except that their speech acts take the form of a dialogue with the litigants; not a monologue, pronouncement, or decree. Judge Staton's opinion experiments with narrative reasoning's law-making capacity. Following the lead of the youth plaintiffs and their lawyers, her *Juliana* dissent models a more equitable distribution of legal authority—and it envisions a judiciary unafraid to act on its moral commitments.

IV. Conclusion

The National Apocalypse narrative that forms the basis of the *Juliana* dissent represents the potential of reciprocal legal narrative. Only creative, collaborative, open-minded collective actions might effectively take on a challenge as singular as climate change, with its limitless reach and uncertainty. Reciprocal narrative provides an opportunity for such an action in the impact litigation context by enlisting the court as a symbolic co-author. It turns on the recognition that reimagining what is possible requires discarding traditional approaches, and that the

237 *Juliana*, 947 F.3d at 1177 n.3 (Staton, J., dissenting); *see, e.g.*, Robinson Meyer, *A Climate-Lawsuit Dissent That Changed My Mind*, The Atlantic (Jan. 22, 2020), https://www.theatlantic.com/science/archive/2020/01/read-fiery-dissent-childrens-climate-case/605296/ (describing the analogy as a "thunderclap . . . [a]s I read the sole dissent . . . I found myself moved. I urge you to read it.").

238 Roscoe Pound, Interpretations of Legal History 1 (1923).

239 *Marbury*, 5 U.S. 137 at 177; *see also* Amy J. Griffin, "*If Rules They Can Be Called*": *An Essay on the Law of Judicial Precedent*, 19 Legal Commc'n & Rhetoric 155, 160 (2022).

"easiest way" to access our own innovative approaches to novel problems is "to discuss them with others—through dialogue."[240] Like all successful stories, the dialogue between advocate and judge also recognizes shared, public sentiment; it gains part of its force by incorporating core social values into its dialogic narrative exchange.[241] In that sense, the process dissolves the line between those who get to say what the law is and those whose lives the law affects. By giving average citizens a voice in the law-making process—even symbolically—reciprocal narrative reminds us of how often those voices are shut out.

The majority opinion in *Juliana*, for example, professes to empathize with the plaintiffs, even as it refuses recognize its own adherence to selectively applied "rules" as a contributing factor to their plight. At the same time, the court pretends that in questions of environmental standing, they are simply incapable of "eschew[ing] doctrinal rigidity in favor of a process of legal reasoning that [would account] for" the "uncertain and speculative nature" of climate harms, and the need for flexible legal antidotes.[242] Yet landmark Supreme Court cases have adopted just this kind of "straightforward and flexible" approach to environmental standing.[243]

So too does Judge Staton. By embarking on what this Article terms a reciprocal dialogue, she prioritizes possibility over precedent. In this particular lawsuit, the rhetorical model fell short, but the plaintiffs carved out a viable path for the climate right. In Montana state court, Our Children's Trust recently prevailed on a similar climate-right claim grounded in the state constitution.[244] Judge Kathy Seeley held that "[p]laintiffs have a fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system."[245] When this Article went to print, the State's appeal to the Montana Supreme Court was pending.[246]

Reciprocal legal storytelling offers a useful blueprint for lawyers who find themselves before sympathetic judges and unforgiving law. Indeed, some advocates facing uphill battles seem to be deploying similar open-ended, dialogue-based, less adversarial techniques. The briefings and opinions in these cases warrant further attention and exploration. For example, in the animal rights context, *habeas corpus* petitions

240 *See* Amsterdam & Bruner, *supra* note 111, at 237.
241 *See* Campbell & Duhart, *supra* note 16, at 4.
242 *See* Lazarus, *supra* note 5, at 82.
243 *Id.*
244 Held v. State, 2023 Mont. Dist. LEXIS 2, at *129 (Aug. 14, 2023).
245 *Id.*
246 Order That Appeal May Proceed, Held v. State, DA 23-0575 (Mont. Oct. 17, 2023).

brought on behalf of nonhuman animals—a claim as unprecedented as a constitutional right to a functional climate—have spawned passionate dissenting opinions that sound much like the protests against the *Juliana* majority.[247] Like Judge Staton, these dissenters admonish the majority for implicitly acknowledging the morally correct action, but refusing to take it; they ask despairingly how future generations will judge our refusal to act; and they use narrative to take advantage of the law's inherent adaptability.[248] Continued experiments with reciprocal legal narrative will not solve climate change. Nor will they immediately grant captive animals the right to bodily autonomy. But they might eventually coalesce into a sturdy rhetorical framework for conveying the aspirational worlds "that end up shaping tomorrow's canonicity."[249] Reciprocal legal narrative can reconcile the stability of the law with the constant motion of transformative social shifts. It can thereby free us "from the constraints of the present."[250]

247 *See, e.g.*, Nonhuman Rts. Project, Inc. v. Breheny, 197 N.E. 3d 921, 933, 934, 935, 968–69 (N.Y. 2022) (Wilson, J., dissenting); *id.* at 966–77 (Rivera, J., dissenting).

248 *See id.*

249 Amsterdam & Bruner, *supra* note 111, at 235.

250 *Id.*