

# Introduction

## Climate Insurgency vs. Doom

UNTIL THE ELECTION OF DONALD TRUMP AS PRESIDENT OF the United States, world leaders projected confidence that their countries were on the road to fixing the earth's climate. With the world's historically greatest greenhouse gas (GHG) polluter now ruled by climate change deniers, coal and oil executives, and fossil fuel promoters, we cannot count on governments to protect our climate. Now climate protection is up to the people. The only way to combat devastating climate change may be climate insurgency.

The illusion that world leaders were fixing climate change was exemplified by the 2015 Paris Agreement in which 195 countries acknowledged their individual and collective duty to protect the earth's climate—and willfully refused to perform that duty. They unanimously agreed to the goal of keeping global warming “well below 2 degrees Celsius” and of pursuing efforts “to limit the increase in temperatures to 1.5 degrees Celsius.” But they did not agree to a single legally binding requirement about how, or how much, they would cut emissions.<sup>1</sup> Consequently it is now up to the people of the world to halt climate destruction. *Against Doom: A Climate Insurgency Manual* tells how.

In response to climate destruction we are witnessing the birth of a global nonviolent constitutional insurgency. Global because the world order of climate destruction it seeks to change is global. Nonviolent because it relies on the power of the world's people to withdraw our acquiescence

and cooperation from those who are destroying our planet. Constitutional because it is based on fundamental constitutional principles: people have a right to a climate system capable of sustaining human life, the earth's shared resources belong to the people, and therefore governments have no authority to destroy them.

In a global survey by the Pew Research Center, a majority of those surveyed say climate change is a very serious problem and nearly four in five say their countries should limit greenhouse gas emissions as part of an international agreement.<sup>2</sup> A majority believe people are already being harmed by climate change; an additional 28% think people will be harmed in the next few years; a majority are concerned that it will cause harm to them personally during their lifetime; and 40% are very worried this will happen.<sup>3</sup>

Many of them are ready to act. One in six Americans say they would personally engage in nonviolent civil disobedience against corporate or government activities that make global warming worse. That's about forty million adults.<sup>4</sup> The fate of the earth may depend on them—and others around the world—doing so.

Although the people of the world want to protect the climate, the governments and fossil fuel corporations of the world go on destroying it. The climate insurgency is a vehicle for the world's people to realize our common interest and our goal of restoring balance to the earth's climate system. Through mass demonstrations, meetings, and marches, through civil disobedience, and perhaps even through popular tribunals and other forms of countergovernment, the climate insurgency can use the power of the world's people to begin forcing climate protection on the powers and principalities of the earth. Will it be able to do so? As Gandhi once said of India's struggle to free itself from British rule, "The matter resolves itself into one of matching forces."

Part I, "The Global Climate Insurgency," explains how and why the climate insurgency has emerged. Chapter 1, "This Is What Insurgency Looks Like," tells the story of Break Free from Fossil Fuels, the May 2016 global weeks of action that constituted the largest global civil disobedience against fossil fuels up to that time. Chapter 2, "Paris: The Promise of Betrayal" dissects the Paris climate agreement, the charade which purports to counter global warming but actually authorizes unlimited climate destruction. Chapter 3, "The Power of the People vs. the Forces of Doom" explains the strategy underlying the emerging global climate insurgency.

Part II, "Climate Insurgency in America," lays out a strategy for climate insurgents in the United States. Chapter 4, "A Strategic Vision," assesses the strengths and weaknesses of climate destroyers and climate protectors and analyzes the underlying dynamics of their struggle. Chapter 5, "Imposing a Fossil Freeze" and Chapter 6, "Imposing Climate Action Plans," describe two essential actionable objectives through which the climate insurgency can force a change in energy production and use. Chapter 7, "Self-Organization for Climate Defense," describes the climate insurgency's emerging organizational form.

Chapter 8, "Turning the Public against Fossil Fuels," and Chapter 9, "Turning Climate Worriers Into Climate Warriors," explain how public opposition, confusion, and apathy can be turned into action. Chapter 10, "Undermining the Pillars of Support for Climate Destruction," tells how the power of the fossil fuel forces can be weakened to the point where it crumbles. Chapter 11, "Just Transitions," outlines a program through which the climate insurgency can ensure wide benefits from the transition to a climate-safe economy while protecting those the transition might threaten.

Chapter 12, "The Right of the People to Protect the Climate," lays out how the public trust doctrine and other

constitutional principles empower the climate insurgents to proclaim that they—not those who are destroying the climate—embody the law. Chapter 13, “Dual Power,” explains the ultimate weapon of the climate insurgency: the nonviolent withdrawal of cooperation and consent to the illegitimate authorities who protect and perpetuate climate destruction. The Conclusion, “Two Scenarios,” summarizes what will happen if the climate insurgency loses and how it might succeed.

My 2015 book *Climate Insurgency: A Strategy for Survival* (available for free download at [www.jeremybrecher.org](http://www.jeremybrecher.org)) recounted the failure of climate protection over the past quarter century and laid out a broad strategy for overcoming it through a global nonviolent constitutional insurgency. *Against Doom: A Climate Insurgency Manual* tells how to put that strategy into action—and how it can succeed. It is a handbook for halting global warming and restoring our climate—a how-to for climate insurgents.

I write as an advocate for and a participant in the climate insurgency. I have been writing about the climate protection movement since 1988; I helped found the Labor Network for Sustainability; I was arrested at the White House in the early protests against the Keystone XL pipeline; I helped block the train tracks in Albany during Break Free from Fossil Fuels. I repeat here what I wrote at the end of the Introduction to *Climate Insurgency*:

I hope readers will examine the strategy proposed here critically. But I also hope they will either correct its flaws or develop a better alternative. Climate protection can't wait for a perfect strategy; all of us have a duty to find the best strategy—and then act on it.

# PART I THE GLOBAL CLIMATE INSURGENCY

# Chapter 1

## This Is What Insurgency Looks Like

IN A SMALL CHURCH IN ALBANY, NEW YORK'S LOW-INCOME, predominantly African American South End, forty people were gathered for a community meeting. They were organizing a protest against trains carrying potentially explosive oil—dubbed by the residents “bomb trains”—that were running through their neighborhood. City Counselor Vivian Kornegay told the group that many municipalities had opposed the bomb trains and other dangerous fossil fuel infrastructure but had little power to protect their residents; it was up to a “people’s movement” to do so. “What we want is for all of us to be free, healthy, and safe—and for our planet to be a better place to live.”

Maeye McBride, an organizer for 350.org, explained that the protest was part of a global campaign of direct action and civil disobedience aiming to keep 80% of all fossil fuels in the ground. Pastor Mark Johnson of the St. John’s Church of God in Christ said, “I heard at a meeting last night that we have a constitutional right to clean water and clean air.” Maeye McBride explained that the action was part of a “new wave” that was drawing on a “new paradigm”—“using civil disobedience to protect the public trust,” which includes water, air, and the climate itself.

Organizers had met with officials from the police and sheriff’s offices and reported, “They abhor the trains—and

are very supportive of us.” Then the group received direct action training. They read out loud the “action agreement” pledging nonviolent behavior and mutual support. Then they lined up to march and while police officers (played by the trainers) ordered them to move away, they scrambled onto an imaginary railroad track. Later that evening the steering committee for Albany Break Free planned outreach to supporting organizations, phone banks, canvassing, leafleting, and details of the action.

The Albany organizers had learned about the “new paradigm” when 350.org, North American co-organizers of Break Free from Fossil Fuels, had decided to use the “public trust” principle to frame U.S. Break Free actions and formed a Break Free Public Trust Work Group to spread the idea. Some on the Break Free Albany steering committee had participated in the working group’s webinar on using the public trust doctrine, and they decided to integrate the Public Trust Proclamation into their “topline message” and to hand out the Break Free Public Trust Proclamation to all participants. [See Frontispiece for Break Free Public Trust Proclamation.]

A week before the action the Break Free Albany steering committee defined their basic message. Potentially explosive crude oil bomb trains roll through Albany and surrounding communities, polluting the air and contributing to the climate crisis. Primarily low-income communities of color are put at risk. The urgent need to address climate change means that fossil fuels have to be left in the ground and a transition made to a “twenty-first century renewable energy economy.” They called for an end to all new fossil fuel infrastructure, including pipelines, power plants, compressor stations, and storage tanks. And they called for a just transition away from fossil fuel energy with training and jobs for affected workers, so “no worker is left behind.”

## On Six Continents

Meanwhile, reports of Break Free actions on six continents began flowing in. In Wales, protesters shut down the UK’s largest open-pit coal mine for over twelve hours with no arrests. In the Philippines, ten thousand people marched and rallied demanding the cancellation of a six-hundred-megawatt coal power plant project. In New Zealand, protesters blockaded and shut down Christchurch, Dunedin, and Wellington branches of the ANZ bank, which had \$13.5 billion invested in fossil fuels. In Indonesia, banner drops brought a coal terminal to a standstill, and three thousand people held a “climate carnival” at the presidential palace demanding a move from coal to renewable energy. In Germany, four thousand people shut down a large lignite coal mine for more than two days.

In Australia, two thousand people shut down the world’s largest coal port with a kayak flotilla and a railroad blockade. In Brazil, thousands participated in a protest against fracking during a concert at an annual rural fair. In Nigeria, demonstrations called attention to the environmental and social devastation that followed in the wake of exhausted oil wells. In South Africa, drought-affected farmers and communities from around the country came together for a “speak out and bread march.” In Ecuador, activists planted trees on the future site of an oil refinery to protest drilling in a national park. In Vancouver, Canada, more than eight hundred people held a sit-in and a kayak swarm at the tanker terminal for the Kinder Morgan gas pipeline. In Turkey, community leaders led a mass action at a coal waste site calling for a halt to four fossil fuel plant projects planned for the area.

Outside Seattle, thousands converged on two oil refineries with kayak flotillas, a march was led by Indigenous leaders, and an overnight sit-in on the train tracks led to more than

fifty arrests. In Washington, DC, 1,300 demanded no new offshore drilling in the Arctic and off the Gulf Coast. Outside Chicago, dozens were arrested as a thousand people protested a planned expansion of a BP refinery. In Los Angeles, two thousand opposed the oil drilling that is conducted right within the city. In Lakewood, Colorado, hundreds of people delayed an auction of thousands of acres of public land for oil and gas drilling with disruptions and a sit-in. Organizers called Break Free “the largest ever global civil disobedience against fossil fuels.”<sup>1</sup>

## Creative Tension

In some cases, Break Free evoked what Martin Luther King Jr. characterized in his “Letter from a Birmingham Jail” as “creative tension.” Some early Break Free statements in the state of Washington, for example, suggested that protesters might use direct action to shut down oil refineries. This was understandably alarming to workers in the highly dangerous refineries. Break Free organizers and a retired union official initiated discussions with the local union that made clear that Break Free would not try to obstruct the plants or their workers and that took into consideration other safety concerns of the local union.

Break Free had always advocated a “just transition,” but discussions with the local union helped them better understand what that means from the workers’ point of view. Break Free organizers say they came away committed to educating their constituency about the importance of fighting to protect and create family-wage jobs in the transition to a clean energy economy; protecting job security amidst declines in fossil fuel consumption; and minimizing job losses as the necessary action is taken to curtail dangerous climate change.

Notwithstanding this dialogue between local Break Free organizers and the union local, the national United Steelworkers union issued a statement critical of 350.org and Break Free. Noting that three USW-represented oil refineries were targeted locations, the USW said, “shutting down a handful of refineries in the U.S. would likely lead to massive job loss in refinery communities; increased imports of refined oil products, and ultimately no impact on reducing global carbon emissions.” It added that “short-sighted and narrow-focused activities like 350.org’s ‘Break Free’ actions this May make it much more challenging to work together to envision and create a clean energy economy.” But they added, “The work of addressing climate change and building a more sustainable economy is too important to be derailed by a handful of groups organizing protests at our plant gates.”<sup>2</sup>

As Dr. King wrote, “Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue.” While Break Free and the Steelworkers by no means see eye to eye, they have begun to negotiate, and are even discussing cooperation around upcoming local energy issues.

## Personal and Global

In Albany, a “climate camp” made preparations for the action, creating banners and other artwork in an “artbuild,” organizing logistics, and nailing down final plans. As Chairman Norman Bay of the Federal Energy Regulatory Commission addressed the Independent Power Producers of New York, a group of Break Free protesters interrupted and drove him from the stage. “Why are you signing the death warrant for so many people?” one protester asked Bay. IPPNY president Gavin Donahue said the protesters were “aggressive.”

“disruptive,” and “out of line.” “We were keeping an eye out, but we did not see anything before this,” he said. “The protesters disguised themselves in suits and ties to blend in.”<sup>3</sup>

As the sun set over the Hudson River the evening before the action, a kayak flotilla provided a perfect photo-op. That night hundreds from the Northeast gathered in a historic neighborhood black church for a meal, a rally, and civil disobedience training. They shared stories from struggles to block pipelines, fracking, and other fossil fuel projects around the region and celebrated the state’s refusal of permits for the Constitution Pipeline after massive protests.

Saturday morning more than 1,500 people arrived at Lincoln Park. Rev. Mark Johnson, welcoming people to the park where he had played as a child, said, “We all deserve clean water, we all deserve clean air.” Albany Common Councilmember Vivian Kornegay said, “We’re tired of big oil coming to our communities and polluting. We should keep the oil in the ground and make our country a greener and safer place. My community is in danger. The people in the Ezra Prentice housing are facing asthma and cancer. The company says it wants to partner with us, but it is partnership where we assume all the risks and minimum benefits.” Miss Charlene Benton, president of the Ezra Prentice Homes Tenants’ Association said, “We’re not going to be cremated without permission.”<sup>4</sup>

Attorney Mark Mishler observed, “Right near here is a historic mansion possessed by slave owners. Slavery was legal. That didn’t make it right. The bomb trains are not legal because they are not right.” Rev. Johnson added, “We’re going to stay on the right side of the law because the moral side of the law is the right side of the law.”

Then Rev. Johnson read the Break Free Albany “Action Agreements.” Participants agreed “not to harm people or property”; to be “dignified in dress, demeanor, and language”;

to attend action training; and to act “in accordance with our group’s agreed plan for action.”

As the crowd started to march toward the Port of Albany, 500 of the demonstrators peeled off to show their support for the people of the Ezra Prentice Homes, a 179-unit housing development described by the protesters as “ground zero for environmental racism,” where bomb trains run next to the playground and the railroad parks its trains free of charge.

As the marchers reached the train tracks, police were present but stood by as they occupied the tracks. An organizer hollered, “You came to block the tracks and that is exactly what you are doing.”

As people settled in on the tracks, law student Kelsey Skaggs asked those risking arrest to fill out intake forms for the legal team. Then she said:

But I want to talk about a different kind of lawbreaking. Fossil fuel companies, and the governments that authorize their activities, are destroying the land, water, and atmosphere that sustain us. From my home in Alaska to here in Albany, we are being sacrificed for the profit of fossil fuel companies.

But these companies have a problem. Their problem is that we—all of us—have rights to that land, water, and atmosphere.

We have rights under a legal principle called the public trust. The public trust concept is old law—it’s been around since ancient Rome. In American law, it means that the government has a duty to protect shared natural resources, and to hold them in trust for the public and for future generations.

But our governments are violating this obligation by failing to regulate fossil fuel emissions. They violate

this right by subsidizing fossil fuels, by approving new dirty energy projects, and by locking us into further, deadly emissions.

The question—the critical question facing humanity at this moment—is what we are going to do about these violations of our rights.

In the face of government's failures, there is only one answer that leads to a livable future on this planet. And that answer is: what each of you is doing, right here, today. Standing up and taking action to break free and end the era of fossil fuels. Enforcing the public trust. Demanding that the government fulfill its obligations to the people, not how to corporate power.

It's up to us to claim our right to a healthy climate, to stand up for the rights of future generations, and to stop the degradation of our planet and our communities and everything that we love. Thank you for doing that.

More than 400 of the 1,500 people registered for the action said they would be willing to be arrested for physically blocking the trains.<sup>5</sup> The company had canceled trains through Albany for the day because of the protest. But sixteen miles up the track in Guilderland, climate activists Marissa Shea and Maewe McBride suspended themselves from train tracks on a railroad bridge. At the risk of a serious or even fatal accident they blockaded a bomb train carrying fracked crude oil from North Dakota. They and three members of their support team were arrested after successfully delaying the train.

Shea and McBride described their efforts as enforcing the public trust doctrine which requires that vital natural resources, in this case the atmosphere, on which human

well-being depends, must be cared for by our governments for the benefit of present and future generations.

"The global climate system, on which every human depends, is no longer stable because our governments have utterly failed us. So now, for our survival, we will act on climate ourselves," said Shea.

The activists demand that the business as usual economy, which is currently reliant on fossil fuels, must be transformed into a new fossil free economy that is just and equitable, a just transition.

"Most of my family lives within a few miles of where the bomb trains travel. This is personal and global. Their lives are at risk and millions of lives are at risk with rising seas, forest fires, violent storms, and all the havoc that global warming brings," said McBride, who grew up in Troy. "Today I felt called to directly obstruct the fossil fuel industry, joining thousands of others around the world."

McBride had earlier written Break Free organizers around the country:

Many of us participated in the Public Trust webinar a couple of weeks ago, and we are excited for the paradigm-shifting opportunity that this presents. Organizers have asked those risking arrest to consider a court solidarity approach where, as a group, we will plead not-guilty and seek to bring our cases to court. While the DA is likely to drop the majority of charges, we are taking measures to ensure that we will have some viable court cases and will seek to argue them under the Public Trust Doctrine and/or necessity with a Public Trust spin. During the action we will distribute copies of the Break Free Public Trust Proclamation, as it could be important to have this document in hand during arrests [and for some political theater in court].<sup>6</sup>

The call to Break Free from Fossil Fuels envisioned “tens of thousands of people around the world rising up” to take back control of their own destiny; “sitting down” to “block the business of government and industry that threaten our future”; conducting “peaceful defense of our right to clean energy.” That’s just what happened.

Such a “rising up” amounts to a global nonviolent insurgency—a withdrawal of consent from those who claim the right to rule—manifested in a selective refusal to accept and obey their authority.<sup>7</sup> Break Free from Fossil Fuels represented a quantum leap in the emergence of a global nonviolent climate insurgency—its nonviolent “shot heard around the world.” It was globally coordinated, with common principles, strategy, planning, and messaging. It used nonviolent direct action not only as an individual moral witness but also to express and mobilize the power of the people on which all government ultimately depends. It presented climate protection not only as a moral but as a legal right and duty, necessary to protect the Constitution and the earth’s essential resources on which we and our posterity depend. It represented an insurgency because it denied the right of the existing powers and principalities—be they corporate or governmental—to use the authority of law to justify their destruction of the earth’s climate.

## Chapter 2

### Paris: The Promise of Betrayal

**BREAK FREE FROM FOSSIL FUELS WAS IN CONSIDERABLE part a response to the Paris Agreement on climate change. But what is the Paris Agreement?**

The 195 nations meeting in Paris in December 2015 unanimously agreed to the goal of keeping global warming “well below 2 degrees Celsius” and to pursue efforts “to limit the increase in temperatures to 1.5 degrees Celsius.” Despite that goal, The Paris climate agreement doesn’t prevent one molecule of greenhouse gas (GHG) from being put in the atmosphere; indeed, it permits every country in the world to increase the GHG emissions that cause global warming without limit. The U.S. Department of Energy now predicts that global GHG emissions will increase 40% by 2040.<sup>1</sup>

Under the Paris Agreement, governments put forward any targets they want—known as Intended Nationally Determined Contributions (INDCs)—with “no legal requirement dictating how, or how much, countries should cut emissions.”<sup>2</sup> These voluntary commitments don’t come into effect until 2020 and generally end in 2025–2030.

Today there are 400 parts per million (ppm) of carbon in the atmosphere, far above the 350 ppm climate scientists regard as the safe upper limit. Even in the unlikely event that all nations fulfill their INDC pledges, carbon in the atmosphere is predicted to increase to 670 ppm by the end of this century.<sup>3</sup> The global temperature will rise an estimated 3.5°C (6.3°F) above preindustrial levels.<sup>4</sup> For comparison, a 1°C

health care, and pensions for up to three years and job training and living expenses up to four years. Employers receive tax incentives to hire transitioning employees. Counties where thirty-five or more workers become eligible for the program can receive targeted development funds. The right of workers to join unions is protected by streamlining NLRB union recognition provisions. The bill covers the estimated \$41 billion cost of the program by closing the tax loophole that allows corporations to send their headquarters overseas to avoid paying taxes.

Good, stable jobs protecting the climate can help challenge the growing inequality and injustice of our society, but only if public policy is designed to do so. Climate policy needs to include strong racial, gender, age, and locational hiring requirements to counter our current employment inequality and provide a jobs pipeline for those individuals and groups who have been denied equal access to good jobs. It needs to help remedy the concentration of pollution in low-income communities; their lack of transportation, education, health, and other facilities; and other manifestations of discrimination, inequality, and racism.

The climate insurgency can be pluralistic about what kind of future society should follow the elimination of fossil fuels. But it can open the way to wide discussion of and experimentation with new social forms. It can help draw together a community of allies who support climate protection, even though it is not their primary focus. It can help them develop a common program through which their needs and objectives can be met as part of the transition to a climate-safe society.<sup>7</sup>

## Chapter 12

### The Right of the People to Protect the Climate

THOUSANDS OF PEOPLE HAVE ENGAGED IN CIVIL DISOBEDIENCE for climate actions like Break Free from Fossil Fuels. Many have been arrested and faced legal consequences.

Many of them have begun to define themselves—to the movement, the public, and the courts—not as criminals but as law-enforcers trying to protect legal rights and halt governments and corporations from committing the greatest crime in human history. As the Break Free Proclamation put it, “We proclaim: The people of the world have a right, indeed a duty, to protect the public trust we own in common—the earth’s climate. When we take nonviolent direct action we are law-enforcers carrying out our duty to protect the earth’s climate from illegal, dangerous crimes.” That assertion defines the climate insurgency.<sup>1</sup>

#### What Is the “Public Trust Doctrine”?

The governments that permit and protect climate destruction may rule the world, but they do not own the world. Under many legal systems the earth’s shared natural resources belong to the world’s people and their posterity, as the common heritage of humanity.

Governments have long served as trustees for rights held in common by the people—specifically, rights to the public

natural resources on which we all depend. In American law this role is defined by the “public trust doctrine,” under which our federal and state governments serve as trustees of natural resources on behalf of present and future generations. As trustee the government has a strict “fiduciary duty” to the owners—the citizen beneficiaries. This legal duty requires government officials to act in the public interest, with “the highest duty of care.” Our officials have no legal right to harm the public trust for the benefit a corporation or other private interest—no matter how politically powerful it may be.

This fundamental principle is embodied in the laws and constitutions of countries around the world. It was codified in the Institutes of Justinian, issued by the Roman emperor in 535 AD, which stated, “By the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea.”

Use of the public trust doctrine for climate protection has been pioneered by young people represented by Our Children’s Trust, who have brought lawsuits and rulemaking petitions in every U.S. state, against the federal government, and in countries around the world, to require governments to act on their public trust duty to protect the climate and to protect fundamental constitutional rights.

Xiuhtezcatl Martinez, one of the lead youth plaintiffs in the federal case, and youth director of Earth Guardians, another plaintiff in the federal case said:

The Federal government has been making decisions in the best interest of multinational corporations and their profits, but not in the best interest of my generation and those to come. Instead of changing their business model to meet the scientific reality of climate change, these companies are demanding we

adapt to an uninhabitable world that supports their profits. When you compare the two, I think it’s clear that our right to clean air and a healthy atmosphere, is more important than their “need” to make money off destroying our future.

In November 2015, attorneys for American Fuel & Petrochemical Manufacturers, American Petroleum Institute, and the National Association of Manufacturers, filed a motion to “intervene” and join forces with the government as codefendants in the federal constitutional and public trust lawsuit brought by Our Children’s Trust. They argued, “If Plaintiffs succeed in this Court ordering the elimination or massive reduction of U.S. conventional fuel consumption and manufacturing processes that emit GHGs beyond existing federal and other regulations, the members of each of the Proposed Intervenor-Defendants will be harmed.” Two months later Magistrate Judge Thomas Coffin of the U.S. District Court in Oregon accepted the fossil fuel and manufacturing industries’ move to join the federal government in opposing the climate kids’ lawsuit.

“The fossil fuel industry would not want to be in court unless it understood the significance of our case,” said Philip Gregory, attorney for the youth. “This litigation is a momentous threat to fossil fuel companies. They are determined to join the federal government to defeat the constitutional claims asserted by these youth Plaintiffs. The fossil fuel industry and the federal government lining up against 21 young citizens. That shows you what is at stake here.”

The right of the people to demand that government protect the public trust expresses a common-sense constitutionalism. In the United States, we enjoy fundamental constitutional rights to life and liberty. Government failure to protect the public trust, and governments’ complicity in

the destruction of the atmospheric resource and the natural conditions on which human life depends, compromises those constitutional rights in the near term and extinguishes those rights in the longer term.

## The Right to a Stable Climate

Two days after the election of Donald Trump, twenty-one kids won a court ruling that may be just as important as that election in determining our future. The decision by Judge Ann Aiken in the federal district court in Oregon sets the stage for a momentous trial of the right to a stable climate—and the constitutional obligation of the United States government to protect that right. It also lays out the arguments that justify climate insurgency.

As Judge Aiken emphasized, “This is no ordinary lawsuit.” The youth’s suit, supported by the grassroots, youth-focused climate recovery nonprofit Our Children’s Trust,<sup>2</sup> challenges decisions “across a vast set of topics”—decisions like “whether and to what extent to regulate CO<sub>2</sub> emissions from power plants and vehicles, whether to permit fossil fuel extraction and development to take place on federal lands, how much to charge for use of those lands, whether to give tax breaks to the fossil fuel industry, whether to subsidize or directly fund that industry, whether to fund the construction of fossil fuel infrastructure such as natural gas pipelines at home and abroad, whether to authorize new marine coal terminal projects.”

Judge Aiken noted the personal harms the kids said they face because of climate change. One said the algae blooms harm the water she drinks, and low water levels caused by drought kill the wild salmon she eats. Another said increased wildfires and extreme flooding jeopardize his personal safety. Jayden F., a thirteen-year-old resident of Rayne, Louisiana,

said that at five o’clock on the morning of August 13, 2016, she stepped out of bed into ankle-deep water.

Floodwaters were pouring into our home through every possible opening. We tried to stop it with towels, blankets, and boards. The water was flowing down the hallway, into my Mom’s room and my sisters’ room. The water drenched my living room and began to cover our kitchen floor. Our toilets, sinks, and bathtubs began to overflow with awful smelling sewage because our town’s sewer system also flooded. Soon the sewage was everywhere. We had a stream of sewage and water running through our house.

Jayden said the storm that destroyed her home “ordinarily would happen once every thousand years, but is happening now as a result of climate change.”

The Fifth Amendment to the U.S. Constitution bars the federal government from depriving a person of “life, liberty, or property” without “due process of law.” The climate kids say that the effects of climate change they describe do just that—and that the policies of the federal government are responsible for those violations of their rights.

The lawsuit alleges that the government has violated their rights by “directly causing atmospheric CO<sub>2</sub> to rise to levels that dangerously interfere with a stable climate system.” The government knowingly endangered their “health and welfare” by “approving and promoting fossil fuel development,” including “exploration, extraction, production, transportation, importation, exportation, and combustion.” And after “knowingly creating this dangerous situation,” it continued to “knowingly enhance that danger” by “allowing fossil fuel production, consumption, and combustion at dangerous

levels.” These government decisions have caused the planet to warm and the oceans to rise. There is a direct causal line between the government’s policy choices and floods, food shortages, destruction of property, species extinction, and a host of other harms.

The climate kids said these policies not only violate their individual constitutional rights but also transgress the duty of the government to preserve the core natural resources necessary for the well-being and survival of the people. Those resources constitute the “public trust.” They are legally protected as the common property of the people. The climate kids’ suit says that the government has violated its duty as trustee of the public trust by allowing the depletion and destruction of the atmosphere—thereby violating the common property rights of the public and future generations.

The government acknowledged in court that climate change poses “a monumental threat to Americans’ health and welfare” by “driving long-lasting changes in our climate,” leading to an array of “severe negative effects, which will worsen over time.” It then used a barrage of legal technicalities and irrelevant precedents to claim that the climate kids don’t have legal standing to bring such a suit; that climate change is a “political question” that courts should leave to other branches of government; and that anyway courts don’t have the power to halt climate change.

Judge Aiken’s decision cut through this smokescreen to focus on the essential point: “The right to a climate system capable of sustaining human life is fundamental to a free and ordered society.” A stable climate system is quite literally the foundation of society, “without which there would be neither civilization nor progress.”

The youth frame the fundamental right at issue as “the right to a climate system capable of sustaining human life.” If “governmental action is affirmatively and substantially

damaging the climate system in a way that will cause human deaths, shorten human life spans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem,” then the youth have a claim for protection of their life and liberty under the Fifth Amendment. “To hold otherwise would be to say that the Constitution affords no protection against a government’s knowing decision to poison the air its citizens breathe or the water its citizens drink.”

Judge Aiken also allowed the climate kids’ public trust case to go forward, quoting a judicial opinion that the right of future generations to a “balanced and healthful ecology” is so basic that it “need not even be written in the Constitution” for it is “assumed to exist from the inception of humankind.”

The climate kids asked the court to declare that their constitutional and public trust rights have been violated and to order the government to develop a National Climate Recovery Plan to reduce emissions to a climate-safe level. The case will no doubt be fought out for years all the way to the Supreme Court. But the advocates of climate protection need not wait to champion the basic principles enshrined in Judge Aiken’s decision. We can start doing so right now—by climate insurgency.

## Using the Public Trust Frame

Claims that government actions are illegal and unconstitutional have played an important role in empowering social movements. They strengthen participants by lending a sense of clarity that they are performing a public duty. And they strengthen a movement’s appeal to the broader public by presenting action not as wanton lawbreaking, but as an effort to rectify governments and institutions that are themselves in violation of the law.

For the civil rights movement, the U.S. Constitution's guarantee of equal rights meant that those engaged in sit-ins and freedom rides were not criminals but rather upholders of constitutional law—even if southern sheriffs threw them in jail. For the activists of Solidarity, the nonviolent revolution that overthrew Communism in Poland was not criminal sedition but an effort to implement the international human and labor rights laws ratified by their own government.

The constitutional duty of governments to protect the public trust, and the right of the people to life and liberty, can play much the same role in the climate movement that the U.S. Constitution's right to equality played for the civil rights movement and the Polish government's legal commitment to human and labor rights played for Solidarity.

Constitutional and public trust principles make it possible for the climate insurgency to turn the tables on the governments that purport to represent the world's people and to have the authority to rule the world. They stand for the proposition that governments do not have the right to destroy the climate—and that the people have the right to stop them when they do so.

Governments have no more right to authorize the emission of greenhouse gases that destroy the climate than the trust officers of a bank have to loot the assets placed under their care. The people of the world have a right to our common natural resources. And we have a right, if necessary, to protect our common assets against those who would destroy them.

Those who perpetrate climate change, and those who allow them to do so, should not be able to claim that the law is on their side. Those who blockade coal-fired power plants or sit down at the White House to protest fossil fuel pipelines can—and should—insist that they are exercising their fundamental constitutional rights to life and liberty

and their responsibility to protect the atmospheric commons they own along with all of present and future humankind. Climate protesters can proudly proclaim that they are actually upholding the law, protecting constitutional and public trust rights for all.

The idea of using the public trust doctrine to legitimate climate action is spreading. In February 2016, 350.org's organizers for the Break Free from Fossil Fuels actions in the U.S. agreed to use the public trust doctrine to frame U.S. Break Free actions. A working group was established to prepare materials and resources to bring the public trust frame into actions around the U.S. As we have seen in Chapter 1, the public trust became a central part of the Break Free narrative in Albany and elsewhere.

The climate insurgency asserts that nobody has the right to destroy the climate system on which the present and future of humanity and life itself depend. Governments have no higher duty than to protect the earth's climate on behalf of the earth's people. If they fail to do so, the people have a right to protect it themselves. The climate insurgency denies the sovereignty, legitimacy, and authority of those governments that are violating the rights to life, liberty, and the public trust by authorizing and encouraging the destruction of the earth's climate system. The public trust frame can “flip the script” in civil disobedience and nonviolent direct action, making it clear that the fossil fuel industry and the governments that do its bidding are criminals, while the climate insurgency is upholding the Constitution and the public trust.

The people's withdrawal of legitimacy is the ultimate threat, the ultimate sanction, the “nuclear option.” It creates a situation in which millions of people won't stay off the fossil fuel companies' private property, and in which police won't arrest, prosecutors won't prosecute, and judges and juries won't convict—and the public will support the protesters'

defiance of purported law. Hopefully the threat of “inconvenience” will take effect long before the nuclear option. But if those who claim the right to destroy humanity’s future decline to halt their destruction, they should know what to expect.

## Chapter 13

### Dual Power

AS WORLD LEADERS DESCENDED ON THE UNITED NATIONS in the aftermath of the 2014 People’s Climate March, across the street representatives of peoples impacted by climate change from around the globe assembled for a People’s Climate Justice Tribunal. On the basis of their testimony a people’s judicial panel found governments and corporations culpable of climate destruction and defended those who try to halt it. Such tribunals can become a critical part of the climate insurgency, passing judgment on the responsibilities of polluters, authorizing action to protect the climate, and serving as an alternative center of legitimate authority.<sup>1</sup>

After hearing the testimony from people around the world, the tribunal’s judicial panel of respected movement figures, citing the public trust doctrine, addressed the responsibility—and the culpability—of governments:

The governments of the world have a duty to protect the atmosphere that belongs in common to the world’s people. Based on the evidence we have heard here today, the nations of our world are in violation of their most fundamental legal and constitutional obligations. They are violating the most fundamental rights of their own people and the people of the world. Each government should be legally compelled to halt its contribution to climate destruction.