
Book Review

YOUTH CLIMATE COURTS: HOW YOU CAN HOST A HUMAN RIGHTS TRIAL FOR PEOPLE AND PLANET

Reviewed by Kenny Ng*

Youth Climate Courts: How You Can Host a Human Rights Trial for People and Planet, by Thomas A Kerns, Routledge, 2022, 124pp: ISBN 9781032109060.

Climate change is an intergenerational issue, in which the climate-related harms of our past and present generations will be inherited by posterity. At the same time, our youth and future generations yet to be born typically do not have any voice or authority in the public affairs of today. The younger generation's increasing consciousness of and concern over this intergenerational issue has led to a growing number of children and young adults taking greater action on climate change, against governmental and corporate inaction.

The youth of the world have instigated demonstrations, protest marches, legal proceedings¹ and other forms of environmental activism at historically unprecedented scales, intensities and regularities. Youth have been campaigning against outdated mindsets, typically (but not exclusively) fostered by older generations who have been unwilling to change for a more sustainable shared environment while remaining sheltered and better represented by their institutions of the status quo. Professor Kerns acknowledges this intergenerational conflict and offers an additional instrument for youth climate activism in this book.

This book introduces readers to Kerns's brainchild of a Youth Climate Court (YCC), a forum through which young people can compel their local governments to respect the human rights that could be adversely impacted by climate change. A YCC is a novel tool with low barriers of entry for climate activists, particularly younger ones, turning the traditional tables of society to empower those who would normally be without authority. Young people, especially those who are not of voting age, are given a voice by means of taking on the roles of a youth judge, a youth prosecutor, and youth jury members who would put their local governments on trial at a YCC. The entire YCC process is initiated, led, organised and conducted by youth. Because this book is catered to "youth" as its title suggests, it is important that the book defines this term, which it does as "young people in their teens and twenties".²

YCCs provide an alternative avenue for youth climate activism to the often less controlled, more convenient and more anarchic forms such as disruptive protests or riots. In return for a greater emphasis on structure, planning and procedures, the YCC framework neatly laid out by Kerns facilitates a more formal, and perhaps civil, alternative for climate activists that relies less on disorder to be successful. This could better attract and encourage the participation of all sides, youth and governments alike, to convene and partake in reasoned discourse. In doing so, YCCs can possess a role as a moral force acting on behalf of our community, humanity and earth to remind governments of their environmental justice obligations under the principles of human rights and accordingly to take more effective action to address the climate crisis.

The book is divided into three chapters that Kerns advises need not be read in sequence. The first chapter explains how Kerns's YCCs work. It details the functions and goals of a YCC, how to organise and conduct one, and explains each role that young people will play within it. Kerns explains how YCC trials can benefit not only youth, but also local governments, encouraging a mindset of self-improvement. He puts forward several reasons for preferring to focus on local governments, rather than on State

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¹ See, eg, *Held v State of Montana* (Montana District Court, 2022) (pending); *Minister for the Environment v Sharma* [2022] FCAFC 35; *Sacchi v Argentina, Brazil, France, Germany, and Turkey*, UN Doc CRC/C/88/D/104-108/2019 (2019); *Juliana v United States of America*, 947 F 3d 1159 (9th Cir, 2020); *Duarte Agostinho and Others v Portugal and 32 Other States* (2020) (Application) Eur Court HR App No 39371/20.

² Thomas A Kerns, *Youth Climate Courts: How You Can Host a Human Rights Trial for People and Planet* (Routledge, 2022) iii.



and federal governments, or corporations, including for greater accessibility, interconnectedness and responsiveness. The book additionally calls for an International Coalition of Youth Courts for greater collaboration among YCCs, in anticipation of more YCCs being successfully conducted across the world.

Kerns's YCCs are grounded on a human rights approach to climate change, drawing from his experience as co-organiser of the Permanent Peoples' Tribunal 2018 Session on Human Rights, Fracking and Climate Change. Because of this human rights core, the second chapter explains what human rights are, and their moral and legal foundations and authority. The second chapter also explains why human rights hold important roles in modern society, which had led Kerns to base his YCCs entirely on human rights as a response to the climate crisis. He quotes Ronald Dworkin that the institution of rights "represents the majority's promise to the minorities that their dignity and equality will be respected",³ which is relevant to governments in their course of governing their citizens, particularly youth.

The third chapter summarises the specific human rights that intertwine with the climate crisis. It begins with an introduction to environmental justice before delving into nine human rights that are intrinsically linked to climate change. Chapter 3 concludes with a short summary on useful human rights documents that are relevant to climate change.

There are a few challenges faced by Kerns's conception of YCCs, which Kerns also touches on in his book. Foremost, Kerns acknowledges that the YCC is quite a bold construct. First, it brazenly asks government officials to voluntarily put themselves on "trial" and be "prosecuted", for actions that may not even be unlawful, by youth who would typically be less educated, skilled, experienced and mature than themselves, and without any legal expertise. It is especially bold, given the outcome of YCC proceedings would be similar to that of a criminal trial whereby the government in question could be found to be "guilty", and is even more likely to be found so given the YCC's intrinsic environmental slant. So, both the local government and youth should be commended for participating in a YCC. But even if a government decides to attend a YCC, it may only be a tokenistic gesture in knowledge of the YCC's non-binding outcomes, exacerbated by the government's short period of office in many democracies.

Second, a YCC requires its youth to be equally bold themselves. I may be underestimating the youth of our times, but would some of them not feel daunted to speak to a government official, or in certain cases even an adult stranger; let alone to speak out against, "prosecute", or "adjudicate" on, them? This would derive from their disparities in authority, experience, wealth, maturity, expertise, and even physical size. The book's suggestion of live-streaming and publicising the trial may add further pressure on the participating youth. To address this potential issue of boldness, other institutions and older adults could support these youth relationally to instil in them confidence and courage. They may even contribute by providing resources such as venues for YCC trials. There is also a dedicated YCC website which provides additional online resources.⁴

Another characteristic of Kerns's YCCs is that by default, they are quite specific in the scope of matters that they hear, and the approach they take. YCCs have mostly been conceptualised to take on local governments, from a moral human rights perspective on the impact of climate change. This is the central grounding for YCCs, particularly focusing on the local government's failure to fulfil its primary obligation, an obligation which assumes in Kerns's book an American-centric and rights-based definition of protecting the rights of citizens. While envisioning a global application, its American-centric and rights-based approach to scrutinising a local government's performance in protecting its citizens' rights with respect to the climate crisis may prove problematic in being fully applied in some overseas jurisdictions, especially those with scant rights-based jurisprudence. Other than on moral justifications, Kerns does not envisage his YCCs to be heavily based on a legalistic human rights approach, or other legal or non-legal approaches to climate justice, such as under common law, statutes or the rights of nature. Neither do YCCs deal with other equally important environmental matters, nor focus on State and federal governments, or corporate or other entities. Simultaneously, the youth judge and prosecutors usually would have little or no formal expertise and the "remedies" available at a YCC as a forum

³ Ronald Dworkin, *Taking Rights Seriously* (Bloomsbury ed, 2013) 246.

⁴ *Youth Climate Courts* <<https://www.youthclimatecourts.org/>>.

without legal powers are quite restricted. Hence, there would be certain limits in using YCCs to “build a significant body of human rights jurisprudence”.⁵

Nevertheless, Kerns proffers in Chapter 1 liberal flexibility in conducting YCCs, allowing for modifications to the model that he had originally developed. A YCC session held in Sydney in 2020 at the New South Wales Land and Environment Court exemplifies this by substituting the youth judge with a working judge, and taking the form of a moot (with little or no actual local government involvement) without limiting its scope to human rights claims. That session in Sydney was warmly received and had generated useful learning resources available on the YCC website in respect of protecting the Gwydir Wetlands.⁶

While environmental courts are now well established in several parts of the world, they usually do not facilitate the full active participation of youth within their processes, particularly in relation to decision-making. The same applies to most other branches of government and institutions of society. Kerns wishes to make the voice for climate-related human rights more visible, inclusive and accessible to all, particularly to vulnerable persons and more specifically youth, through YCCs.

This guide to YCCs adopts a non-legalistic approach to a multi-generational issue that can easily be dominated by the law, when youth often do not have any authority in relation to most dimensions of the law. YCCs seek to build a bridge across the disconnect felt by youth towards older citizens who would usually wield more power in society than youth. Moreover, YCCs can be useful whenever legal courses of action are not readily available or adequate enough to address climate-related issues, particularly when sought by younger people.

The book is written in an unassuming and straightforward manner, in language that is easy to read and understand even for lay people without a legal background. This comes as no surprise, given the book’s target audience (for “all the young ones to come”)⁷ and intention to expand and deepen the reach of climate justice and activism for a broader and specifically younger spectrum of society. The author is not a lawyer, but his book nonetheless emboldens young individuals to compel their local government to fulfill its obligations of protecting its citizens’ rights.

On top of learning about YCCs, Kerns’s book will be beneficial to young people who wish to understand more about court systems and climate change litigation generally. It will also be useful to anyone interested in a well-summarised outline of how human rights can be used as a basis for climate activism and litigation.

While the YCC has no legal authority, Kerns is hopeful that its moral authority can initiate social change and drive governments to take stronger stances on the climate crisis. YCCs can articulately remind us of the importance of our future generations’ interests, when making the decisions of today.

⁵ Kerns, n 2, 50.

⁶ *Gwydir Wetlands Case, Sydney, Australia – Youth Climate Courts* <<https://www.youthclimatecourts.org/archives/gwydir-wetlands/>>.

⁷ Kerns, n 2, vii.