

Litigating on Behalf of Humanity

by Theodore Dalrymple



Just as there is nothing so foolish that some philosopher has not said it, so there is no litigation so outrageous that some court has not entertained it. No lawyer wants to discourage litigation, after all, and it would be against human nature if courts had not developed vested interests of their own.

The European Court of Justice has recently ruled that ten private citizens, from Portugal, Germany, France, Italy, Romania, Kenya, Sweden and Fiji [can sue the European Union](#) for negligence in its inaction on climate change. The litigants claim that the objective of the Union – a lowering by 40 per cent of greenhouse gas emissions by the year 2030 by comparison with those of 1990 – is insufficient to guarantee their fundamental rights to life, health, and property.

The plaintiffs in the action say that they do not seek monetary compensation, and though in general I do not believe plaintiffs when they claim that it is not financial recompense that they are after but only justice and to teach the wrongdoer a lesson so that others after them do not suffer what they have suffered, in this case I think the plaintiffs are probably telling the truth. Rather, they are proving to themselves and others what fine selfless people they are, working for the benefit of the whole of humanity.

The plaintiffs are supported by various pressure groups, including *Notre affaire à tous*, in effect Everyone's Business, whose president said 'We hope that the judges hand down a decision that will force the European Union and its states to keep to their verbal promises.'

Of course, allowing the litigation to take place and coming to a judgement are two different things. The matter is not a foregone conclusion. The European Parliament and Council have two months to prepare their defence. But the scale of the judicial activism to which the court obviously thinks it is entitled not only dwarfs all previous judicial activism but makes the court in effect the ruler of Europe. Of course, many of the judges on the court come from countries in which neither democracy nor the rule of law has been the first characteristic of its past century of their political history and may not be juridically very distinguished. But who cares about the means when the end is so important?

One of the advocates for the plaintiffs, Roda Verheyen, managed in 2017 to get the [German courts to examine the case of a Peruvian farmer and mountain guide](#), who claimed that a German energy company had damaged the Peruvian environment by its emissions (into the world atmosphere) of carbon dioxide. It is difficult to see why this company should have been selected of all the carbon dioxide emitters in the world, though presumably it had sufficient money to make it a lucrative target. The difficulties of proving causation are so

obvious and manifold that one can only regard the German courts, in allowing such a case to be brought, as being engaged upon some surreptitious kind of employment scheme for lawyers.

It is not only in Europe that such cases are brought. A group of twenty-one Americans, some of them minors, are suing the American government for having disregarded their constitutional right to life, liberty, and property by permitting subsidised fossil fuel companies to operate, thereby contributing to global warming.

Of making many books there is no end, but the author of [Ecclesiastes](#), whoever he was, might write instead, were he alive today, that in the making of much litigation there is no end, especially under the present legal dispensation (I almost said in the present legal climate). For if carbon dioxide emission in Germany can give rise to redressable wrongs committed in Peru, what limit could there possibly be to litigation? Why not sue local governments because they allow the passage of motor vehicles that pollute the air, lung, and other diseases having been shown to be statistically associated with such pollution? The possibilities are infinite. Samuel Johnson's great poem, [The Vanity of Human Wishes](#), begins:

Let observation, with extensive view,

Survey mankind from Chins to Peru...

If he returned to earth, he would now write:

Let lawyer, with extensive view,

Search victim from China to Peru...

What seems to me to unite the litigants and their advocates is a profound self-righteousness and assurance that that they

know the causes of the ills of the world, which they have taken upon themselves to right by means of legal action. They entertain no doubt about effects that must, to put it mildly, be very remote from their supposed causes, if they exist at all. There is a religious fervour about the litigants that is quite dissociated from true religious feeling, for which perhaps it is a substitute.

They see everyone's vested interest but their own. This, of course, is a normal human failing, and no doubt we are all often guilty of it. But in my time I have known a number of litigation lawyers who have made an excellent living, not to say fabulous sums, from their legal exertions on behalf of humanity, and who struck me as among the most conceited people I have ever encountered.

It is a reasonable assumption that ten citizens who are suing the European Union risk nothing of their own in doing so, except the expenditure of time (though their sense of purpose and of their own virtue will sustain them and more than compensate them for it). It will not have crossed their minds that they could be doing harm rather than good, or that the bill for their moral enthusiasm would be paid by others than themselves.

The European Union will prepare its defence, we are told. How much will it spend in doing so? It will have no incentive to be careful of the cost, because such entities rarely count cost and indeed all the incentives are to maximise it. The sum will not be very large when divided by the total number of taxpayers in the Union. But the waste of effort will not therefore be negligible. The exertions of the judges, the advocates on both sides, the experts, the other witnesses, and so forth, will add up to considerable sum-total of effort, intelligence, and no doubt ingenuity worthy of a better object. When you multiply this wastage by the number of times similar litigation will now take place, to the great benefit and advantage of an activist court without countervailing

power, you glimpse how sclerosis increases and a form of soft authoritarianism comes to pervade our lives, all in the name of fundamental rights to life, liberty, and property.

First published in the