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Judicial Remedies for Climate Change in Domestic Courts

How Civil Lawsuits Can Sustain Engagement between the Present and Future Generations. Insights from a Civil Law Perspective

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Abstract

The essay explores the systematisation of climate change litigation within civil law jurisdictions, with a particular focus on the role of civil courts in securing new rights for future generations. It argues that climate litigation is not an isolated issue, demonstrating how civil courts continually influence legal developments. Through an analysis of the global prevalence of climate litigation, the essay emphasises the evolving contribution of courts to legal frameworks concerning environmental protection and the welfare of future generations. In its second part, the paper further examines the concept of vertical climate litigation and its potential long-term effects. It assesses whether vertical climate litigation operates as a temporary measure, especially within Europe, possibly concluding by 2050 in line with the EU's pursuit of climate neutrality, or if it can function as a lasting supranational or EU enforcement tool to oversee the implementation of States' climate policies.

Keywords

civil courts – climate change – historical continuity in civil procedure – judicial – interpretation – private enforcement instruments

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Part 1 Setting the Context. Top-Down and Bottom-Up Strategies for Addressing Climate Change

Tackling climate change is one of the greatest societal challenges of our time, following decades of warnings from scientists about its potential human impacts. While legislation at all levels (international, European, and national) can play a crucial 'top-down' role in sustainable development and the reduction of climate-damaging greenhouse gas emissions,[1]'bottom-up' strategies are increasingly gaining popularity, particularly in countries of the Global North.[2] These strategies aim to persuade governments and politicians to address climate change for the benefit of both present and future generations, i.e., to adopt mitigation and/or adaptation measures.

At the EU level, EU Regulation No. 1999 of 2018 EU Regulation No. 1999 of 2018, on the Governance of the Energy Union and Climate Action, seeks to combine the aforementioned 'top-down' and 'bottom-up' strategies in the realm of environmental law. The aim is to address climate change by formalizing public participation (referred to as the 'collectivisation of decision-making processes') as a legally mandated procedure at both national and local tiers.

The EU has strongly encouraged citizen and other energy stakeholder involvement at the local level – within the national sphere – through the Sustainable Energy and Climate Action Plan. This theoretical foundation of the EU draws upon climate and environmental studies that reveal the effectiveness of bottom-up public participation and the active engagement of NGOs in reducing emission levels. These efforts serve to counterbalance the considerable influence held by private interest groups and lobbies (such as the industry), which typically attempt to exert pressure on public administrations to lower gas emission standards and secure profits.

However, in contrast to traditional local environmental cases,[3] the issue of climate change caused by gas emissions – referring to alterations in average weather conditions or temporal weather variation within longer-term

1 C. Voigt, *Climate Change as a Challenge for Global Governance, Courts and Human Rights*, in W. Kahl and MP. Weller (eds.), *Climate Change Litigation* (München-Baden-Baden-Oxford, Beck/Hart/Nomos, 2021), 3 ff.; A. Pisanò, *Il diritto al clima, Il ruolo dei diritti nei contenziosi climatici europei* (Napoli, Esi, 2022), 7 ff.

2 However, the amount of climate change litigation in the global south continues to grow (https://cil.nus.edu.sg/blogs/climate-change-litigation-a-view-from-asean/), although these types of disputes have limited prospects in countries with weaker judiciaries or more authoritarian governments.

3 Whereby pollutants introduced into the natural environment by an entity (usually a corporation) cause adverse effects, namely environmental damages.

averages due to persistent and emerging pollutants (as substantiated by scientific evidence) – gives rise to distinct bottom-up challenges with unique characteristics.

Firstly, the effects of climate change often have a long latent period. As the harm remains latent and is frequently imperceptible at the local level, citizens must be motivated to engage in bottom-up initiatives.

Secondly, information about pollutants and their climate change implications is frequently highly technical. In other words, assessing the extent of gas emission reduction can be complex. This complexity makes it challenging for citizens to identify instances of rent-seeking.

Despite these challenges, climate change has gained considerable media attention in recent years, particularly since teenage activists like Greta Thunberg commenced their efforts in 2018. Teenage activism is spurred by the realization that younger generations are likely to experience the most pronounced effects of climate change. A multitude of hazardous climate shifts will inevitably transpire over the next decades unless adequate mitigation and adaptation measures are implemented. Specifically, since 2018, youth-led student activist groups worldwide have undertaken numerous actions, including pursuing legal cases.[4]

1.1 *The Strategic Role of Domestic Civil Courts: An Overview*

Among the bottom-up strategies to combat climate change, the most significant are the various initiatives established by NGOs and by national activists who, as citizens, have taken their Governments to court in many national civil (or administrative) courts around the world, including the European Union.[5] In the EU, 60 climate change litigation cases were reported in 2022.

4 For instance: "Fridays for Future" stands as a global climate strike movement, organized and led by the youth. Its inception traces back to August 2018 when 15-year-old Greta Thunberg initiated a school strike for the climate. In the three weeks leading up to the Swedish election, she positioned herself outside the Swedish Parliament each school day, demanding immediate action to address the climate crisis. Greta and her fellow students chose to sustain their strike until Swedish policies charted a secure path well below the 2°C threshold, aligning with the Paris Agreement objectives. Their movement adopted the hashtag #FridaysForFuture and extended an invitation to young individuals worldwide to join their cause, sparking the inception of the global school strike for climate. "Fridays for Future" has now evolved into an international organization committed to maintaining global temperature increase below 1.5°C and upholding the principles of the Paris Agreement.

5 Proceedings before international, European (ECHR) – e.g. the cases Duarte and others V Portugal and others, KlimaSeniorinnen v Switzerland and Carême (former mayor of the city of Grande-Synthe) v France – or domestic constitutional courts (Recurso de amparo/ Verfassungsbeschwerde)–such as the decision rendered by the German Constitutional

This type of litigation aims to put pressure on States to be more ambitious and effective in the fight against climate change by reducing emissions and/or filling the gaps left in the legislation (so-called "vertical climate action"[6]: press

Court on 24.05.2021, in the case Neubar – 1 BvR 2656/18 -1 BvR 78/20 – 1 BvR 96/20 – 1 BvR 288/20- will not covered by this essay, as it only focuses on domestic civil lawsuits.

6 For a definition of the terms "climate litigation" and "vertical climate actions" see MP. Weller and M. Tran, Climate Litigation against Companies, in Issue 1:14, Climate Action (2022), pp. 1–17.

Examples of successful (or still pending) vertical climate actions within the European Union are:

i) the Urgenda case (https://www.urgenda.nl/en/home-en/), which, after the first instance ("Urgenda 1") and the appellate decision ("Urgenda 2"), ended with the judgment of the Hoge Raad of 20.12. 2019 – Case 19/00135 ("Urgenda 3") ordering the Dutch government to reduce the country's greenhouse gas emissions by 25%, compared to its 1990 emissions, by the end of 2020;

ii) the French Affaire du Siècle (https://laffairedusiecle.net/laffaire/), decided by the administrative Tribunal of Paris with two decisions (the first rendered on 3.02.2021 and the second enacted on 14.10.2021, in which the French State was ordered to remove the consequences of its unlawful inactivity against climate change by 31.12.2022. However, the French Government has not complied with the decisions.

iii) the Belgian Klimaatzaak case, brought by an organisation of concerned citizens and 58,000 co-plaintiff citizens, arguing that Belgian law requires the Belgian Government's approach to reducing greenhouse gas emissions to be more aggressive. With a decision rendered on 17.06.2021, the Brussels Court of First Instance held that the Belgian Government had breached its duty of care by failing to take the necessary measures to prevent the harmful effects of climate change, but declined to set specific reduction targets on the grounds of separation of powers. Subsequently, on 30.11.2023, the Court of Appeal of Brussels decided in favour of the climate activists. They instructed the Belgian state, as well as the Flemish and Brussels regions, to lower their greenhouse gas emissions by a minimum of 55% by 2030.

iv) the Italian Giudizio universale (https://giudiziouniversale.eu/home-english-version/), decided in first instance the Tribunal of Rome. On 5 June 2021, an environmental ngo together with more than 200 Italian citizens filed a lawsuit alleging that the Italian Government, by failing to take the necessary actions to meet the temperature targets established by the Paris Agreement, is violating fundamental rights, including the right to a stable and safe climate. The plaintiffs sought, among other things, a declaration that the Government's inaction is contributing to the climate emergency and a court order requiring it to take the necessary steps to reduce its emissions by 92% from 1990 levels by 2030. The Court of Rome, in a decision dated 06.03.2024, declared an absolute lack of jurisdiction, stating that the determination of strategies to be adopted to counter the effects of climate change falls within the competency of the state and not the judiciary. An appeal is pending.

For more detailed information about vertical climate change litigation in Europe and worldwide, see the Columbia database on climate change litigation available at http://climatecasechart.com.

States for regulation and assess regulation through injunctive reliefs[7]). The plaintiffs, usually crowdfunded, seek remedies that go beyond the situation of individual litigants and beyond the courts, thus contributing to the intended policy and regulatory impacts.

Vertical climate litigation can therefore also be defined as "strategic climate litigation", which aims to pursue its goals beyond the individual case through its media impact and public debate.[8] A closer look at the pending cases reveals that the plaintiffs are complaining of the actual and/or potential impact of energy malpractice on climate change. It is no coincidence that most strategic climate lawsuits have a website, which usually contains the English versions of all court documents.[9]

In Europe, this scenario seems to create tension between the right of citizens to public participation in energy and climate issues, as outlined by the EU legislator, and the extent to which such issues are challenged in the Member States.

It is a conflictive process, between the "to be" and the "must be" characterising the public opposition against Governments through 'citizen litigation' for causing irreversible climate consequences. Citizens tend to see vertical litigation with climate change as a central issue as a regulatory tool to

7 A. Rocha, *Suing States: The Role of Courts in Promoting States' Responsibility for Climate Change*, in Gm. da Gloria Garcia, A. Cortes (eds.), *Blue Planet Law* (Cham, Springer, 2023), pp. 99–108; B. Mayer, Prompting Climate Change Mitigation through Litigation, in Vol. 72, Issue 1, International & Comparative Law Quarterly (2023) 234, where the author draws a distinction between holistic and atomistic decisions. In Mayer's perspective, holistic decisions pertain to cases where the court establishes the conditions necessary and sufficient for an entity to implement a comprehensive mitigation obligation at a specific point in time. On the other hand, atomistic cases involve the determination of necessary but insufficient conditions for an entity's general mitigation obligations. Mayer argues that climate mitigation outcomes are more likely to arise from atomistic cases, given their higher likelihood of success in court and their potential to influence States and other entities beyond the immediate case.

8 J. Peel and R. Markey-Towler, *Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases*, in *German Law Journal* (2021) pp. 1484–1498; M. Rodi and M. Kalis, *Klimaklagen als Instrument des Klimaschutzes,* in Issue 1, Klima und Recht (2022) pp. 5–10; W. Hau, *Informationsverantwortung im Zivilprozess*, in Zeitschrift für die gesamte Privatrechtswissenschaft (2022) pp. 154–176, 172; B. Hess, *Strategic Litigation: A New Phenomenon in Dispute Resolution*, in Issue 3, Max Planck Institute Luxembourg for Procedural Law Research Paper Series (2022) pp. 1–36.

In the preceding century, P. Calamandrei had already formulated and expanded upon the notion of "strategic litigation" in his masterpiece "*Il processo come giuoco*": P. Calamandrei, *Il processo come giuoco* ("Civil Proceedings as a Game") in *Opere giuridiche*, vol. I, (Napoli, Morano editore, 1965), pp. 537–562, 548.

9 Supra, footnote number 6.

proactively address the lack of sufficient or efficient State regulatory initiatives on climate change, such as the failure to enforce legislation establishing adaptation and mitigation measures.

Thanks to "vertical climate actions," the judiciary assumes a pivotal role in addressing the root causes of climate change for the betterment of future generations, all while operating within the confines of the separation of powers ("courts as agents of change and legal development").

Courts must exercise caution to avoid disrupting the delicate equilibrium between the judicial and political spheres. The responsibility of making political determinations necessary for decisions regarding the reduction of greenhouse gas emissions lies with the Government and Parliament, not the judiciary. Nevertheless, it falls within the purview of the courts to ascertain whether the Government and Parliament have abided by the bounds of international, European, and national laws to which they are beholden, or if their actions have disadvantaged citizens by failing to do so.[10]

10 The demarcation between the judiciary and political authority is delineated by the fact that the court's role is confined to the resolution of legal matters. To be more precise, as emphasized by the High Court of Justice, Queen's Bench Division, in its judgment dated 17.02.2022, Finch v Surrey County Council [2022] EWCA Civ 187, "such matters must not venture into the sphere of political assessment, which falls within the jurisdiction of the executive branch, rather than the courts, or delve into the realm of policy formulation or the substantive merits of the contested decision. This guiding principle is equally applicable to cases addressing greenhouse gas emissions and climate change as it is to other contexts." More recently, in its judgment of 09.04.2024, the ECHR, in the case Verein KlimaSeniorinnen Schweiz and Others v Switzerland, from para 412 onwards, makes some important clarifications on this matter. After stating that "Judicial intervention […] cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government", it adds that "democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law." Therefore (para 543), it draws a distinction between "the scope of the margin as regards, on the one hand, the State's commitment to the necessity of combating climate change and its adverse effects, and the setting of the requisite aims and objectives in this respect, and, on the other hand, the choice of means designed to achieve those objectives." The ECHR concludes (at para 550) that when assessing whether a State has remained within its margin of appreciation, the judiciary will examine whether the competent domestic authorities, be it at the legislative, executive, or judicial level, have had due regard to the need to:

(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;

(b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;

For instance, in the Urgenda 3 case,[11] the Dutch Hoge Raad determined that these constraints were derived, among other sources, from the European Convention on Human Rights, of which the Netherlands is a signatory. Notably, Articles 2 and 8 of the European Convention on Human Rights mandate that States Parties take appropriate measures to safeguard their residents, including those in the Netherlands, from perilous climate changes.[12] In ruling on this vertical climate action, the Dutch courts merely applied the provisions of the Convention and did not overstep the mark by entering into the realm of politics.[13]

Should the State be unsuccessful in the litigation, it is compelled to adhere to the court's decision. If the State does not voluntarily comply with the judgment, the prevailing party can, if permitted by the applicable civil procedure, seek the imposition of a fine (*astreinte*) as a means to encourage governmental compliance with the court's ruling.[14]

Alongside "vertical climate actions", a further growing judicial phenomenon is that of "horizontal climate actions"[15]brought in civil courts by individuals or,

(c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see sub-paragraphs (a)-(b) above);

(d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and

(e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

11 *Supra,* footnote number 6.

12 The subject matter is thus interconnected with the realms of Judicial Safeguarding of Human Rights on both national and international scales, a topic that formed the central focus of the International IAPL (International Association of Procedural Law) conference convened in Bologna in 1988. The general reports are freely available at https://www.iaplaw.org/images/PDF/Bologna1988_1.pdf.

13 For an in-depth exploration of this pivotal matter, a comprehensive analysis can be found in M. Payandeh, *The Role of Courts in Climate Protection and the Separation of Powers*, in W. Kahl and MP. Weller (eds.), *Climate Change Litigation* (München-Baden-Baden-Oxford, Beck/Hart/Nomos, 2021), 62 ff., 76 ff. It appears that the reluctance of the Dutch courts to transgress the boundary between the judiciary and politics led them to decline the plaintiff's request for an "information order." This proposed order would have mandated the State to monitor and report on the progress made in achieving emission reduction objectives, and no directive for a reporting-back mechanism was issued.

14 In its judgment of 09.04.2024, the ECHR, in the case Verein KlimaSeniorinnen Schweiz and Others v Switzerland, in paras 247–251, provides some examples of orders and coercive fines imposed on States (France and Belgium) in climate cases.

15 MP. Weller and M. Tran, *Climate Litigation against Companies*, in Issue 1:14, Climate Action (2022), 3.

where permitted, by representative associations, financed by a private funder (in the case of high value damages claims[16]).

The target of these horizontal climate actions is greenhouse gas emitter companies.

The overarching objective is to obtain a condemnatory judgment for torts or violation of body or property, proportionate to the company's level of impairment (share of global greenhouse gas emissions).[17]

16 Third party funding, as a private financing instrument, is just for high value claims. For more details, see: the research paper "State of play of the EU private litigation funding landscape and the current EU rules applicable to private litigation funding", annexed to the European Added Value Assessment on "Responsible private funding of litigation" (available at https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf) 50 ff.

17 Examples of successful or still pending horizontal climate actions within the European Union are:

i) Milieudefensie et al. v Shell. In 2019 the environmental group Milieudefensie/Friends of the Earth Netherlands and co-plaintiffs requested a ruling from the Court ordering Shell to reduce its CO_2 emissions by 45% by 2030 compared to 2010 levels and to zero by 2050, in line with the Paris Climate Agreement. The plaintiffs argued that given the Paris Agreement's goals and the scientific evidence regarding the dangers of climate change, Shell had a duty of care to take action to reduce its greenhouse gas emissions. The plaintiffs based this duty of care on Article 6:162 of the Dutch Civil Code as further informed by Articles 2 and 8 of the European Convention on Human Rights, which protect the right to life (Article 2) and the rights to a private life, family life, home, and correspondence (Article 8). The plaintiffs emphasised Shell's long-standing knowledge of climate change, its misleading statements on climate change, and its inadequate actions to reduce climate change. The Hague District Court (Rechtbank Den Haag), with a judgment dated 26.05.2021 – Case C/09/571932/HAZA 19-379, ECLI:NL:RBDHA:2021:5339 (English translation) ordered Shell to reduce its emissions by 45% by 2030, compared to 2019, across all activities, including both its own emissions and end-use emissions. The Court ordered Shell to reduce its emissions by a net 45%, including those from its own operations and those from the use of the oil it produces. After this judicial victory, in January 2022 Milieudefensie launched a campaign demanding that a further 29 companies publish plans for a far-reaching reduction in greenhouse gas emissions (at least 45% compared to 2019 levels by 2030), https://en.milieudefensie.nl/news/logo-the-solution-is-less-pollution-milieudefensie-friends-of-the-earth-netherlands-demands-climate-plan-from-30-major-climate-polluters.

ii) Saúl Ananías Luciano Lliuya v RWE AG (RWE), currently pending before the Higher Regional Court (Oberlandesgericht) of Hamm. In 2015, Saúl Luciano Lliuya, a Peruvian farmer living in Huaraz, Peru, filed claims for declaratory judgment and damages in the District Court of Essen, Germany against RWE, Germany's largest electricity producer. The plaintiff asked for the Court to determine that the respondent was liable, proportionate to its level of impairment (share of global greenhouse gas emissions), for covering the costs of appropriate safety precautions for the plaintiff's property due to a glacial lake outburst flood from Lake Palcacocha

Typically, plaintiffs also seek injunctive relief aimed at future emissions reduction and the cessation of activities causing harm. While the damages awarded may not directly address climate change or alleviate its effects, the fundamental idea behind "vertical climate litigation" is that the possibility of various jurisdictions mandating compensation (as a risk management tactic) will prompt emitter companies to revise their climate policies. The concept is that the threat of litigation will steer corporate decision-making processes towards more impactful climate change mitigation efforts.

Nevertheless, it is crucial to recognize the primary substantive challenge faced in "vertical climate actions," especially when pursued under tort claims: the issue of causation. Plaintiffs must establish and substantiate a causal link for a successful case outcome, which requires interpretation through a probabilistic lens. This is because the unlawful event relies on a statement of probabilities in a scenario where there are multiple emitters of greenhouse gases (cumulative causation).

1.2 *Goal of the Essay: Systematizing Climate Change Litigation in The Context of Judicial Role in Civil Law Jurisdictions*

The responsibility of a senior academic acting as a moderator at the IAPL summer school focused on "Challenges for Procedural Law" should involve

(Peru). While the district court dismissed all of the plaintiff's requests as no "linear causal chain" could be discerned, the Court of Appeal (Higher Regional Court of Hamm) declared the complaint well-pled and admissible, allowing the case to move into the evidentiary phase.

iii) Deutsche Umwelthilfe, Fridays for Future and Greenpeace v German automakers (BMW AG, Mercedes-Benz AG and Volkswagen AG) and Germany's largest oil and gas company (Wintershall Dea AG). The plaintiffs requested before many German courts an order for the automakers to cease and desist from selling vehicles operating by way of internal combustion engines beyond 2029 (Volkswagen AG) and 2030 (BMW AG and Mercedes-Benz AG) and to prevent Wintershall DEA AG from exploring new oil and gas fields beyond 2025. They relied on the landmark decision of the German Federal Constitutional Court dated 24.03.2021 (Neubar), in which the Court found that the then current version of the German Climate Change Act (Bundesklimaschutzgesetz) violated fundamental rights guaranteed by the German Constitution. By judgment dated 13 September 2022, the Regional Court of Stuttgart (Landgericht) dismissed the claim against Mercedes-Benz AG on the merits. According to the Court's view, the resulting impairment on the plaintiffs from the sale of vehicles operating by way of internal combustion engines should be at least foreseeable. However, such circumstances were not established in the court's view. The Landgericht held that the plaintiffs assume that CO_2 emissions will remain at the current level and that there will be no developments leading to a reduction of greenhouse gas emissions into the atmosphere. However, as this is not certain, it is not foreseeable that the sale of vehicles operating by way of internal combustion engines will lead to future restrictions by the German legislator.

providing a structured framework for young civil justice scholars. This framework serves as a support structure, allowing them to place their research within the context of the emerging aspects of civil procedure, particularly involving horizontal and vertical climate action.

With this goal in mind, Part two of this essay explores the traditional role fulfilled by civil courts within civil law. This role entails heightening the degree of legal safeguarding, fostering legal advancement, and securing "new rights" for the betterment of forthcoming generations. In particular, it aims to illustrate that climate litigation is far from an isolated occurrence in this regard. The global prevalence of climate litigation – attributed to its foundation in international or European conventions such as the European Convention on Human Rights – amplifies the assertion that courts perpetually contribute to the evolution of both European and national legal frameworks ("courts as change agents"). To sum up: the phenomenon of courts adapting the law to changing social needs and thereby prompting legislators to take action is not new. However, climate change litigation allows young scholars to examine it in a new light due to its global nature. Therefore, in this essay written by a senior academic, potential areas of interest for young procedural civil law scholars' scientific research on these topics will also be identified.

Finally, para A of Part 2 will shift its focus to an area of research that holds promise – namely, the realm of vertical climate policies ("the being"). The intent behind this investigation is to ascertain whether:

– Vertical climate litigation is solely a transitory legal, social, and political phenomenon designed to propel States toward a more advanced form of democracy characterized by social cohesion. As such, these policies may be envisaged to conclude in 2050, at least within the European Union, coinciding with the EU's attainment of climate neutrality.
– Vertical climate litigation can serve as a long-term supranational or EU private enforcement instrument to monitor the correct implementation of supranational, EU or national climate change strategies, and thus the commitment of the present generation to the future.

Part 2 Exploring Judicial Role and Climate Litigation. The Synergy between Statutory Law and Judicial Interpretation

In ancient times, especially during the era of ancient Rome, a unique legal structure existed where substantive law was closely linked with procedural law, known as the "actio-system." In this framework, the central concept was the "actio" or claim, rather than the "right." Notably, the "actio" held a paramount

position, representing the "prius" or precursor, as opposed to the "posterius" or subsequent elements.[18] During this period, the evolution of civil law emanated from the efforts of praetors.[19]

Praetorian law was cultivated from the grassroots, namely within the courts, through the actions of praetors. This development transpired via "actiones honorariae",[20] which were granted in alignment with an annually promulgated praetorian edict, and "actiones in factum," bestowed directly by the praetor himself without relying on an edict. The latter actions were designed to safeguard novel and emerging legal interests.[21]

In contemporary times, particularly after the codification movement in Europe,[22] a contrasting top-down approach known as the "system of rights" prevails, particularly evident in continental Europe. Within this framework, substantive law governs society, and the establishment of civil courts primarily serves as a mechanism for enforcing this established legal structure, thereby maintaining the *status quo* ("to invoke the existing law").

Within such a context, individual rights, which serve as the foundation of civil actions, represent the crystallization of an abstract legal principle into a tangible entitlement for an individual.

Rudolf von Jhering encapsulates this phenomenon as "the legal struggle for individual rights in the form of a lawsuit" ("der Kampf des Rechts gegen das Unrecht").[23] In this activity, civil courts have to address facts that already belong in the past.

However, alongside this undeniable retrospective function of the judiciary, which involves determining whether the plaintiff's rights have been violated by the defendant, a parallel forward-looking aspect exists.

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18 Under Roman law, to have an action ("actio") meant that a person was entitled to pursue a remedy for injustice done to him by someone else. For further details, reference may be made to B. Windscheid, *Die Actio des römischen Civilrechts vom Standpunkte des heutigen Rechts* (Düsseldorf, Julius Buddeus, 1865), 1 ff.

19 D. 19.5. 11 (Pomp., 39 ad Q. Muc.) "Quia actionum non plenus numerus esset, ideo plerumque actiones in factum desiderantur. Sed et eas actiones, quae legibus proditae sunt, si lex iusta ac necessaria sit, supplet praetor in eo quod legi deest […]"

20 M. Cappelletti and JM. Perillo, *Civil Procedure in Italy* (The Hague, Martinus Nijhoff, 1965), 4.

21 L. Wenger (translated and annotated by A. Schiller), *Roman Law of Civil Procedure*, in Issue 5, no 3, Tulane Law Review (1930–1931), 364.

22 For more details on the codification movement in Europe, see R. Zimmermann, *The German Civil Code and the Development of Private Law in Germany*, in *Oxford University Comparative Law Forum* (2006), pp. 1–27.

23 R. von Jhering, *Der Kampf um's Recht* (Wien, Manz'schen Buchhandlung, 1872), 8; R. von Jhering, *The Struggle for Law*, translated by J. Lalor (Chicago, Callaghan and company, 1915), 22 ff.

Rudolf von Jhering labels this as "the legal struggle for new rights," signifying the emergence of novel justiciable legal issues arising from societal changes. He contends that the evolution of law is akin to a continuous battle, an "eternal Becoming"[24] ("der Kampf beim Werden des Rechts"[25]), where law, similar to language, undergoes an unintended and unconscious development, commonly referred to as the "historical development of law".[26]

According to Jhering's perspective, individuals, courts, and civil proceedings champion the cause of the law in the interest of society. They serve as protagonists in this ongoing "becoming," as highlighted not only by Rudolf von Jhering but also a few years later by the German author Oskar Bülow.[27]

According to Bülow, the judiciary contributes to the formation and development of the law (referred to as the "law-creating task of the judiciary"). This is because, even within a statutory system, the process of judging is not a mere syllogism or a purely logical and mathematical operation.

Bülow highlighted that a statute is an abstract precept and cannot, therefore, directly create law. Rather, it merely contains a directive – a guideline – as to how the legal order is to be arranged in the case before the court and thus made concrete and "adapted" to social changes.[28] He emblematically writes that "Not the statute alone, but the statute and the judiciary create law!" ("Nicht das Gesetz, sondern Gesetz und Richteramt schafft dem Volke sein Recht!").[29]

He was steadfast in his belief that "within the limits of the statutes there is still plenty of room for the judge to determine the law independently", since "even the most complete legislation cannot complete the legal order by itself". Furthermore, Bülow underscored that " the hope that the legislator could anticipate everything that the future will bring and force it into its rigid, dead rules would be presumptuous".[30]

In essence, judicial law precedes and paves the way for legislative law[31] for the benefit of future generations.

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24 R. von Jhering, *The Struggle for Law*, 13.

25 R. von Jhering, *Der Kampf um's Recht*, 12.

26 R. von Jhering, *Der Kampf um's Recht*, 9.

27 O. Bülow, *Gesetz und Richteramt* (Berlin, Dunker &Humblot, 1885) translated into English by JE. Herget and I. Wade, *Statutory Law and the Judicial Function*, in Vol. 39, No 1 of The American Journal of Legal History (1995), pp. 71–94.

28 O. Bülow, *Statutory Law and the Judicial Function* (1995), 93.

29 O. Bülow, *Gesetz und Richteramt*, 48; Id., *Statutory Law and the Judicial Function* (1995), 94.

30 O. Bülow, *Statutory Law and the Judicial Function* (1995), 86 and 87; Id., *Gesetz und Richteramt*, 30.

31 O. Bülow, *Gesetz und Richteramt*, 48; Id., *Statutory Law and the Judicial Function* (1995), 87:"even today, the judicial legal precept has to precede the legislative one and to prepare the way for it".

The great merit of Oskar Bülow – later echoed by Piero Calamandrei[32] and Mauro Cappelletti[33] – is in emphasizing this creative function of the civil judiciary, commonly referred to as "judge made law", a concept present even in civil law countries.

Numerous instances of this creative attitude of the judiciary can be found in European civil law countries in recent years.

In Italy, a compelling example arises from the creation of specialized labor courts in 1973, which was closely linked to Italy's distinct political atmosphere in the early 1970s. This era was marked by intensified labor conflicts, giving rise to a notable judicial phenomenon known as the "assault praetors" ("pretori d'assalto").

The assault praetors were progressive judges who, among other things, pushed for the creation of specialist courts to deal with labour disputes.[34] They contended that procedural rules were required for the differentiated protection of workers, as opposed to employers. Consequently, when presiding over cases, these assault praetors endeavored to adapt existing rules to align with this perspective and, in deciding the cases before them, they attempted to adapt the existing rules accordingly.

Another recent Italian example can be discerned in a ruling by the Tribunal of Rome of 2022. The Tribunal rendered a decision in favor of a lesbian couple who challenged the prevailing Italian regulations governing information on minors' identity cards. Under the existing rules, such cards must include references to both, the father and mother, or legal guardian. In its judgment, the Tribunal of Rome upheld the right of same-sex parents to be designated as "parents" in a general sense, rather than being specifically identified as "father" and "mother" on their offspring's identity documents.

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32 P. Calamandrei, translated by Jc. Adam and H. Adams, *Procedure and Democracy* (New York, New York University Press, 1956), 35, where he stated: "The judge cannot function like an adding machine which gives the right answer if one presses the right buttons […]". On the contrary, a judicial decision "is not the product of an arithmetic operation but the result of a moral choice"; P. Calamandrei, *Giustizia e politica: sentenza e sentimento*, in *Processo e democrazia. Opere giuridiche*, I, 637 ff., 647–648 (Napoli, Morano editore, 1965). This elucidates why, as argued by Calamandrei, in civil law systems lacking binding precedent, it is possible to encounter two courts applying the same rule to identical circumstances and yet arriving at opposing conclusions, thus leading to conflicting case law.

33 M. Cappelletti, *Giudici legislatori?* (Milano, Giuffre, 1984), 63 ff.

34 L. Corazza, IN SEARCH OF INDUSTRIAL SELF-REGULATION OR EFFICIENT SETTLEMENT OF EMPLOYMENT DISPUTES? THE CASE OF ITALIAN ARBITRATION REFORM, in Comparative Labor Law & Policy Journal (2012) pp. 235–236.

According to the Tribunal of Rome, same-sex parents have the right to be referred to as "parents" in general, rather than specifically as "father" and "mother" on the identity documents of their offspring.[35]

Comparable instances of such a civil judicial creativity can certainly be found in other civil law jurisdictions around the world.[36]

Within this framework, climate change litigation, aimed at urging courts to compel national legislators and corporations to adopt more ambitious and impactful (adaptation or mitigation) measures in addressing climate change, does not seem to be a novel phenomenon in terms of the role and functions of the civil judge and their relationship with the legislative power.

The aspect of novelty arises from the fact that it is a global phenomenon, affecting both northern and southern regions, as climate change impacts the entire planet. Hence, climate litigation from various western jurisdictions can be examined on a transnational scale to understand how such cases contribute to shared narratives about the future global climate.

Therefore, young scholars attending the IAPL Summer school and undertaking research in this field will be tasked with tackling a classic and fundamental issue in procedural law – the judiciary's role in shaping legislation – with a fresh perspective.[37]

Indeed, the fact that climate litigation in civil courts is a global phenomenon generates introduces new and shared "procedural" characteristics which need to be analysed closely by those who aim to increase their number in the short-term in order to force States and companies to take action against climate change. Specifically, the procedural features common across jurisdictions that need to be further explored in order to increase the number of climate litigation cases seems to include:

a) Plaintiff's standing (vertical climate change actions only): In vertical climate change litigation, the plaintiffs are usually groups of young citizens (or associations, if permitted by national procedural law or by EU law[38]).

35 Tribunal of Rome, 9.09.2022, not appealed by the Italian Government.

36 For Germany, with reference to labour and civil laws, see R. Stürner, The Role of Civil Procedure in Modern Societies, in Ritsumeikan Law Review (2016), 74 ff.

37 The "fresh perspective" referred to in the text relies, to some extent, on the courts' capacity to navigate the uncertainties and rapid advancements in scientific knowledge related to climate change. Furthermore, this "fresh perspective" is influenced by the need for scientific and legal terminology to converge within this domain.

38 Recently, the ECHR addressed this issue in its judgment of 09.04.2024, in the case Verein KlimaSeniorinnen Schweiz and Others v Switzerland, outlining the requirements for an association to invoke the human rights guaranteed by the European Convention on Human Rights. For an association to have the right to act on behalf of individuals and submit an application regarding a Contracting State's alleged failure to take adequate

Their aim is to urge the State to implement measures conducive to climate improvement for the benefit of future generations. In this pursuit, they typically invoke emerging constitutional or European Convention human rights, asserting their rights as citizens, with the objective of compelling the State to undertake climate-conscious initiatives for the betterment of posterity. These articulated rights encompass various aspects, including the rights of nature,

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measures to protect them against the adverse effects of climate change on human lives and health, the Court established three criteria:

1. First, the association must be lawfully established in the jurisdiction concerned or have standing to act there.
2. Second, it must demonstrate that it pursues a dedicated purpose in line with its statutory objectives, defending the human rights of its members or other affected individuals within the jurisdiction concerned. This could involve collective action for the protection of those rights against threats arising from climate change.
3. Third, it must demonstrate that it is genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who face specific threats or adverse effects of climate change on their lives, health, or well-being as protected under the Convention.

With regard to environmental protection, a topic closely linked to, though not synonymous with, climate change litigation, reference can be made to the following case law concerning plaintiff's standing:

– CJEU, judgment of 08.03.2011, Lesoochranárske zoskupenie vlk v Ministerstvo životného prostredia Slovenskej republiky, C-240/09, EU:C:2011:125, in which the European Court held that national procedural law shall be interpreted in light of the Aarhus Convention, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005. Accordingly, the national courts of the Member States shall interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring […] judicial proceedings in accordance with the objectives of Article 9(3) of that Convention and the objective of effective judicial protection of the rights conferred by European Union law, so to enable an environmental protection organisation […], to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law. This conclusion was confirmed by the judgment of 20.12.2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, para. 45;
– CJEU, judgment of 8.11.2022, DEUTSCHE UMWELTHILFE, C-873/19, EU:C:2022:857, related to the Volkswagen diesel scandal, where the Court, at para. 67, clarified that the proceedings envisaged by Article 9(3) of the Aarhus Convention, intended to ensure effective environmental protection, would be deprived of all useful effect, and even of their very substance, if it had to be conceded that, by imposing criteria laid down by national law, certain categories of 'members of the public' – a fortiori 'the public concerned', such as environmental associations that satisfy the requirements laid down in Article 2(5) of the Aarhus Convention – were to be denied of any right to bring proceedings against acts and omissions by private persons and public authorities which contravene certain categories of national law provisions

rights of future generations, rights of children, other group rights, and the right to a clean and healthy environment.[39]

Given these considerations, the question arises: What is the effectiveness of existing representative or collective actions in driving the expansion of vertical climate change litigation? Are they the most effective means to promote the advancement of vertical climate change actions, or do they require adjustments?

For instance, in Italy, the "Giudizio universale" ("Last Judgment")[40] against the Italian Government was not initiated by the plaintiffs – an environmental NGO along with over 200 Italian citizens – through the collective proceedings ("Class actions rules") outlined in Article 840 bis of the Italian Code of Civil Procedure. Although this procedure is not exclusively limited to consumers, it is solely a collective action for damages and not a means to obtain an order to compel action, such as climate mitigation measures, which is precisely what the plaintiffs were pursuing.

b) Defendant's standing (vertical climate actions only): Vertical climate actions involve the State (or other public entity) as the defendant. However, owing to the principles of state immunity, a State can solely face a lawsuit in its domestic courts for its alleged failure to enact sufficient measures against climate change. As of now, there is no mechanism available to commence a strategic climate change action aimed

relating to the environment. Moreover, "although they imply that Member States retain discretion as to the implementation of that provision, the words 'criteria, if any, laid down in its national law' in Article 9(3) of the Aarhus Convention cannot allow those States to impose criteria so strict that it would be effectively impossible for environmental associations to challenge the acts or omissions that are the subject of that provision". In this decision, Article 9(3) of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters is read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, and therefore interpreted as precluding a situation whereby an environmental association, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an administrative decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

39 See, for instance, District court of Montana, 14.08.2023, available at https://westernlaw.org/wp-content/uploads/2023/08/2023.08.14-Held-v.-Montana-victory-order.pdf.

40 *Supra*, footnote number 6.

at multiple States within a single national jurisdiction. What procedural tools could be helpful in addressing the issue?

c) Social Media and NGOs: Social media and digitalization are crucial in empowering young citizen activists to initiate legal actions against States (vertical climate actions), while non-governmental organizations (NGOs) encourage affected parties to file lawsuits against greenhouse gas emitters (horizontal climate actions), effectively supporting both types of cases. These mechanisms seem to act as catalysts for increasing the number of ongoing cases in the short to medium term. Therefore, what are the levers to enhance these tools and, consequently, increase the number of climate change litigations in the years to come?

d) Litigation Costs: Climate change litigation is commonly financed through private litigation funding avenues, including crowdfunding (in vertical climate litigation, seeking orders to implement mitigation measures within a specific timeframe) and third-party funding (in substantial horizontal climate litigation, pursuing compensation). The proposition of introducing a public funding mechanism specifically designated for climate change litigation can be debated. Nonetheless, does crowdfunding inherently signify the existence of a communal interest in safeguarding individuals from climate change, transcending the singular case presented to the court?

e) Evidential standard of proof and burden of proof (horizontal climate change litigation only): Establishing a direct link between a defendant's (an emitter's) actions and an individual citizen's particular loss due to global warming proves highly challenging. How might this predicament be effectively addressed? Does the "but for" rule apply?[41] Who bears the burden of proof to demonstrate that States with their inaction or companies with their greenhouse gas emissions have caused a worsening of global climatic conditions?

f) Length of proceedings: Given the objective of contrasting or mitigating climate harm, prompt resolution is essential in climate change litigation. Consequently, this type of legal action is notably more susceptible to

41 The ECHR addressed this issue in its judgment of 09.04.2024, in the case Verein KlimaSeniorinnen Schweiz and Others v Switzerland, giving a negative answer to the question. See, in particular, para 444, where it states that "The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm".

undue delays compared to other litigation forms. How might this issue be effectively managed, particularly in states where civil justice proceedings are lengthy?

g) Transnational network and cross-fertilisation: Transnational networks have been crucial to the success of climate litigation, as plaintiffs have often benefited from the expertise of a wide range of lawyers and other experts both within the forum and abroad. In particular, within the EU Member States, plaintiffs and courts can refer to each other, as all EU Member States are not only bound by EU law, but are also parties to the European Convention on Human Rights.[42] As a matter of fact, lawyers involved in pending climate change cases across Europe are in contact with each other and a part of a single network. How might this fruitful cross-fertilisation be enhanced to better combat climate change?

h) Strategic litigation: Strategic plaintiffs have an interest in the matter that extends far beyond the subject matter of the dispute to be adjudicated. Even during a historical period when governments are advocating for the use of Alternative Dispute Resolution (ADR), litigation appears to be the preferred method for resolving strategic disputes due to its capacity to attract media attention. To garner public attention, States with more time-efficient civil justice systems (and public and recorded trials) are favoured. How can this phenomenon be explained from a sociological and civil procedure perspective?

i) Enforcement (vertical climate actions only): Following a successful outcome in a case against a State, the issue of enforcement arises if the State neglects to adhere to a civil court mandate or a directive to strengthen climate change mitigation by revising existing laws. Pursuing enforcement measures against the Government or Parliament is presently implausible. Pursuing enforcement measures against the Government or Parliament is currently impractical. Could penalties be considered effective and sufficient measure, or should another de jure tool be contemplated? How might this challenge be effectively addressed?

2.1 *The Durability of Vertical Climate Actions: A Transient or Long-Lasting Private Enforcement Mechanism?*

It is possible that in the near future, the advocacy for vertical climate lawsuits against companies that emit pollutants will continue, with the goal of seeking

42 C. Voigt, Climate Change as a Challenge for Global Governance, Courts and Human Rights, in W. Kahl and MP. Weller (eds.), *Climate Change Litigation* (München-Baden-Baden-Oxford, Beck/Hart/Nomos, 2021), 17–19.

compensation for potential harm caused and potentially influencing the behaviour of major emitters. On the other hand, one of the most complex and thought-provoking aspects of climate change litigation, worth exploring by upcoming legal scholars, lies in determining whether vertical climate actions are just a temporary legal, social (and political) phenomenon that will cease, at least within the European Union, in 2050, when the EU becomes climate neutral. Much like the decline seen in Italy for the authority of assault praetors in the 1970s, will vertical climate actions follow a similar trajectory? Alternatively, could they evolve into enduring, well-coordinated, and cohesive private (supranational or EU) enforcement mechanisms designed to oversee the proper governmental approach, like the implementation of supranational or EU strategies for climate protection, and thereby uphold the commitment of the current generation to the future generation (similar to the American IBA Model Statute for Proceedings Challenging Government Failure to Act on Climate Change)?

As widely acknowledged, the notion of a private enforcement mechanism involves the practice of enabling private individuals to seek redress in cases where the State fails to uphold climate change laws or regulations. This mechanism acts as a tool to influence the behaviour of States, compelling them to comply with the legal frameworks established to tackle climate change.

Hence, young scholars have the chance to delve into whether the current vertical approach to climate change litigation could transform into a sustainable private enforcement mechanism in the long term. This could potentially involve actions such as filing civil penalties or claims for damages in civil courts, with the aim of scrutinizing and challenging the actions of States and other public authorities in addressing climate change.

In this context, vertical climate change litigation holds the potential to complement international, European, and possibly national climate change laws by providing a flexible and timely avenue for seeking compensation in the face of potential governmental inaction and ineffectiveness. Furthermore, private enforcement offers the advantage of relying on the judicial system, which is less influenced by lobbying compared to the political sphere.

For young scholars, an initial area of exploration could involve investigating the feasibility of creating a new private enforcement mechanism for climate change litigation, potentially drawing inspiration from the Antitrust Damages Directive No. 2014/104. This Directive introduced provisions for private enforcement of EU competition law and could offer a blueprint for shaping a similar framework within the realm of climate change litigation.

A further interesting aspect to analyze is the potential preference for this (private enforcement)"litigation" instrument over alternative dispute

resolution mechanisms in the current era where alternative dispute resolution methods are increasingly favoured for resolving conflicts. This is due to the fact that the aims of private enforcement, encompassing reputational repercussions, are more effectively pursued within the realm of the judiciary, rather than through an alternative dispute resolution (ADR) avenue.[43]

Aside from this aspect, the critical question that requires attention focuses on addressing the complexities emerging from the collective interests at stake, like greenhouse gas emissions mitigation. Research on this subject must ascertain if there is a necessity to create an all-encompassing framework of European (or potentially national) regulations that establish a specialized private enforcement mechanism crafted to handle these specific types of disputes. Taking inspiration from EU Directive 2020/1828, this mechanism would strive to obtain a court order against a Government to ensure remedy in cases of non-compliance with EU climate change policies.

As is commonly understood, the fundamental issue concerning "collective interests" lies in the circumstance where numerous citizens are impacted by the same risk resulting from climate change ("the common interest rationale"). In such a scenario, either no individual possesses the right to seek redress for the violation of the collective interest (due to the State's negligence in mitigating climate change effects), or the individual stake in rectifying the infringement is too trivial to motivate the pursuit of enforcement for damages stemming from the State's inaction.[44]

Essentially, the core question pertains to whether the collective nature of interests at hand and the particular measures being pursued warrant a shift away from an individualistic litigation approach, moving towards the adoption of a representative framework for judicial protection. This presents another enduring theme deserving of investigation, a topic eloquently discussed by Mauro Cappelletti during the VII IAPL World Congress held in Würzburg in 1983.[45]

Furthermore, if there is a genuine aim to establish an effective private enforcement instrument within the domain of climate change, it is crucial to

43 Regarding this enhanced contribution of litigation, refer to H. Prütting, Der Zivilprozess im Jahre 2030: Ein Prozess ohne Zukunft? in Anwaltsblatt (2013), 405.

44 M. Cappelletti, Access to Justice: Comparative General report, in Rabels Zeitschrift für ausländisches und internationales Privatrecht (1976), 680 ff.

45 See M. Cappelletti and BG. Garth, The Protection of Diffused, Fragmented and Collective Interest in Civil Litigation, in *Effectiveness of Judicial Protection and Constitutional Order* (Bielefeld, Gieseking, 1983), pp. 117–161; F. Carnelutti, *Lezioni di diritto processuale civile* (Padova, Cedam, 1930) 3 ff.; Id., *Sistema di diritto processuale civile*, I, (Padova, Cedam, 1936), 7 ff.

thoroughly examine the issues outlined earlier in II, part 2, points a) to i) with this objective in mind. This involves giving particular attention to tackling the challenge posed by litigation costs, which could hinder the effective utilization of such a mechanism. It is essential to assess the feasibility of introducing public funding mechanisms, especially in the context of implementing a private enforcement mechanism against States, and to consider whether private funding mechanisms may be more appropriate. This evaluation is indispensable, as the private enforcement instrument should ultimately serve as a compensatory tool.

Another aspect requiring scrutiny pertains to the potential need for tempering the "loser pays" principle, as exemplified in Article 12 (paragraphs 2 and 3) of the EU Directive 2020/1828. This provision stipulates that "Individual consumers concerned by a representative action for redress measures shall not pay the costs of the proceedings" with the caveat that "in exceptional circumstances, an individual consumer concerned by a representative action for redress measures may be ordered to pay the costs of proceedings that were incurred as a result of the individual consumer's intentional or negligent conduct."

A variety of crucial topics stand ready for investigation by young scholars in the intriguing and multidisciplinary field of civil procedural law concerning climate change.

3 Conclusions

Despite the obstacles and challenges unique to each historical period, procedural law, through the judiciary, has consistently strived to adapt to the needs of both current and future generations. It has played a crucial role in establishing new substantive rights. This mechanism is age-old and continuously renews itself. Substantive law and societal progress are closely intertwined; changes in one often require adjustments in the other.[46]

In this context, climate change litigation is not a new or rare occurrence. Rather, it seems to be the latest and most prevalent manifestation of the traditional judicial function mentioned earlier – a concept beautifully articulated by the pioneers of our field such as Rudolf von Jhering, Oskar

46 F. Klein, *Zeit- und Geistesströmungen im Prozesse* (Frankfurt am Main, Vittorio Klostermann, 1958) 8; P. Calamandrei, *Procedure and Democracy* (New York, New York University Press, 1956), 76; M. Cappelletti, Access to Justice: Comparative General Report, in Rabels Zeitschrift für ausländisches und internationales Privatrecht (1976), 673.

Bülow, Piero Calamandrei, and Mauro Cappelletti. Their groundbreaking studies represent a legacy passed on from previous generations to those yet to come.

Therefore, my final message to the young academics participating in this 4th edition of the IAPL Summer School is to always remember that understanding the present requires acknowledging the past. In any era, no legal phenomenon emerges completely new and disconnected from historical roots. Thus, it is crucial to delve into the depths of our legal history, studying the luminaries of our field. By revisiting and reexamining their work, we realize that none of our contemporary civil procedural issues and challenges are truly unprecedented. They are all part of an ongoing continuum, offering valuable insights and thoughtful reflection for future generations.