

# The Wheels of Justice

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The wheels of justice turn slowly, perhaps more so on the most important matters. Yet the courts, with their ability to take a long view and minimize politics, are crucial in the fight to stabilize climate and preserve our planet for young people and future generations.

Here I comment on the status of “atmospheric trust” cases and note the appeal of an “equal rights” case. I also argue that the legal approach is an essential component in a coordinated multi-front approach that is required for success in what will be a long battle for justice.

**Atmospheric Trust.** I wrote recently<sup>1</sup> about *Alec L. v. McCarthy*, a suit filed by young people against the (U.S.) federal government. Their case is based on the trust concept, that we have an obligation to future generations, a concept well appreciated by the founders of our nation<sup>2</sup>, specifically the atmospheric trust concept<sup>3</sup> developed especially by legal scholar Mary Wood.

On the face of it, the 5 June ruling by the U.S. Court of Appeals for the District of Columbia Circuit, affirming the earlier dismissal of the youths’ case, is a setback. However, the Court’s ruling positions the case to proceed to the Supreme Court on the question of whether the federal government has a public trust obligation to its citizens. The Court of Appeals focused on a recent U.S. Supreme Court case, *PPL Montana v. Montana*, which the D.C. Circuit found to exclude any federal public trust obligation, leaving all public trust obligations to the states. However, that interpretation leads to the implausible requirement for states to take actions to stabilize climate and negotiate international agreements for that purpose. Thus one route to the Supreme Court will entail challenging the concept that the federal government has no trust obligations, with the climate case itself providing clear evidence to the contrary.

Progress was achieved in a state “atmospheric trust” case on 11 June when the Oregon Court of Appeals ruled that the courts, not the legislative or executive branches, must determine whether citizens are entitled to governmental protection of the atmosphere as a trust resource. The ruling clarified that the judiciary should decide what atmospheric protection is required by law, which the other branches of government must then implement.

These cases, and additional ones in other states, were filed by Our Children’s Trust on behalf of young people, with “Assessing Dangerous Climate Change”<sup>4</sup> providing the principal scientific basis, including specification of emission reductions required to stabilize climate this century. Progress may seem slow, but I argue below that the legal approach is an important component of a multi-front approach that must be taken to achieve rapid phasedown of fossil fuel emissions.

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<sup>1</sup> [Young People’s Day in Court](#) and [Young People’s Day in Court: Part II](#).

<sup>2</sup> [Our Government and the Case for Young People](#).

<sup>3</sup> Mary Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (Cambridge University Press, 2013).

<sup>4</sup> Hansen, J., P. Kharecha, M. Sato, V. Masson-Delmotte, F. Ackerman, D. Beerling, P.J. Hearty, O. Hoegh-Guldberg, S.-L. Hsu, C. Parmesan, J. Rockstrom, E.J. Rohling, J. Sachs, P. Smith, K. Steffen, L. Van Susteren, K. von Schuckmann, and J.C. Zochos, 2013: [Assessing "dangerous climate change": Required reduction of carbon emissions to protect young people, future generations and nature](#). *PLOS ONE*, **8**, e81648, doi:10.1371/journal.pone.0081648.

**Equal Rights.** Young people’s expectation of a healthy planet derives from fundamental rights. Our nation was founded on the “self-evident” concept that all people have equal rights. The U.S. Constitution’s purpose to “provide the blessings of liberty to ourselves and our posterity...” implies obligations to the young and unborn. The Constitution assures that all people will receive “equal protection of the laws” and cannot be deprived of property without “due process” of law. These fundamental rights have global relevance because of substantial commonality of our Constitution with the Universal Declaration of Human Rights adopted by the UN in 1948.

The legal concept that young people have equal rights may provide a relatively fast track toward judicial pressure on governments to slow emissions consistent with climate stabilization. Therefore I am glad that Our Children’s Trust is considering, in addition to pursuing the issue of “atmospheric trust” to the Supreme Court, a new constitutional case on behalf of a new group of youth plaintiffs on the basis of these most fundamental rights protected by our Constitution.

Success of the legal approach, via either atmospheric trust or equal rights, requires skilled, dedicated legal experts. They are competing against the best lawyers that the government can muster and the best lawyers that the government’s “friends in court” can buy. In the federal case their friend in court is the National Association of Manufacturers.

The activities and legal support for cases brought by Our Children’s Trust to a large extent are obtained *pro bono* or at very low cost, but there are still substantial expenses associated with the legal cases. I recommend, to those persons who can afford it, [donating](#) to Our Children’s Trust. However, in any case, please go to [www.OurChildrensTrust.org](http://www.OurChildrensTrust.org) to see their story.

**Multi-Front Strategy.** Given (1) the slow turning of judicial wheels of justice, (2) the ongoing effort by the Obama Administration to reduce U.S. carbon emissions, and (3) the likelihood that international agreements, even if limited, will be reached at UN talks in 2015, is it necessary to pursue the legal approach? Yes. I will explain that answer further in a moment, but first let me make a general statement and note why a multi-front strategy is necessary.

We are in a long battle against forces favoring the status quo, forces with the resources to heavily lobby and influence our governments. As in the long battle for civil rights, the courts have the potential to help move change, because they are less subject to financial influence of lobbyists.

The courts cannot design a plan to stabilize climate. However, in the case of civil rights courts required the executive branch to present their plans for guaranteeing civil rights, and they could review whether proposed remedies were real and satisfactory. Similarly, the courts can require plans for reducing emissions consistent with what science indicates is needed.

Yet courts seldom get far ahead of the public. Civil rights advances, such as fair voting rights and school desegregation, were ordered by the courts only after widespread public support became obvious and large-scale demonstrations occurred.

Thus public involvement is a second essential front in this battle. That front is led by 350.org. The number of people is growing rapidly, but it must rise to even higher levels. The next big jump should be The People’s Climate March on 21 September in New York City, when world

leaders will be meeting for a UN summit on the climate crisis. Let's help make this the largest climate march in history. You can sign up for The People's Climate March at [www.350.org](http://www.350.org).

However, no matter how many people participate, if young people do not demand a policy that will actually work, the effort may be largely wasted. As long as fossil fuels are allowed to be the cheapest energy, they will continue to be used. They are cheapest because they are subsidized and do not pay their costs to society caused by human health impacts and climate disruption.

The workable solution is to collect a gradually rising carbon fee from fossil fuel companies and distribute 100% of the funds in equal payments to all legal residents. Thus people doing better than average in limiting their fossil fuel use will come out ahead. This approach is necessary not only to gain public approval of a rising fee, but because it will spur innovations and economic development, leading to the most rapid possible phase out of fossil fuel emissions.

This third front is led by Citizens Climate Lobby. They have been growing rapidly, including chapters in several countries. If this growth continues, especially if the transparent fee-and-dividend is demonstrated somewhere, it may be possible to overcome the ingrained tendency of politicians to grab funds to make the government bigger. It costs nothing to join CCL. You can participate in a local chapter or start a local chapter. The aim is to educate both the public, e.g., via op-eds and letters-to-the-editor, and politicians via discussions with them on local, state, and national levels. Go to the CCL website at [www.citizensclimatelobby.org](http://www.citizensclimatelobby.org) to learn more.

CCL commissioned a study by non-partisan REMI (Regional Economic Models, Inc.), available as a [3-page summary](#) or [full report](#). A fee of \$10/ton of CO<sub>2</sub>, increasing \$10/ton/year, with 100% of the revenue returned to households, would spur the economy, increasing jobs and GDP, while reducing emissions 33% in 10 years and 52% in 20 years.

Fee-and-Dividend, or Fee-and-Clean-Energy-Rebate, makes energy costs honest. The economy is spurred and efficient; energy infrastructure is modernized; energy efficiency is rewarded. There are great benefits for energy security, national security, economic growth and job creation.

Fee-and-dividend contrasts sharply with the "fight subsidy with subsidy" approach, most notably "renewable portfolio standards" for electricity. The latter subsidy increases electricity costs for consumers, but the greatest cost is hidden, borne by all tax payers. Such forced growth of non-hydro renewable energies can be maintained only while the annual-mean contribution of these energies is a small fraction of total energy use. Yet the forced fast growth (in percent) of renewables feeds the misconception that the sun and wind will soon supply all of our energy.

Observing this, the fossil fuel industry gratefully festoons its web sites with solar panels and windmills, meanwhile investing hundreds of billions of dollars in technologies to extract more fossil fuels, realizing that fossil fuels are not actually being threatened by government policies. Reality then forces politicians, even liberal ones, to approve expansion of fossil fuels, including fracking for gas and oil, off-shore drilling, Arctic drilling, and continuation of coal mining.

Our captains of industry are ready and willing to be part of the energy and climate solution. However, they will not be so until government policies provide appropriate incentives.

**Managing the End-Game.** Leaders of the United States and other major nations are not crooks. However, the deception they practice, probably unwittingly in some cases, is so consequential that they may as well be.

The deception is their presumption that they can solve the problem via “caps” on emissions. They avoid exposing the impossibility that this approach will work by diverting attention to discussion to a barely relevant “goal” for a limit on global temperature rise.

Young people, please listen and think about this matter. It is not rocket science. If you do not understand what is needed, and demand it, the planet and you are in deep trouble.

As climate change becomes obvious, it is crucial that actions to address it not be left to politics-as-usual controlled by vested interests. You must influence the course of events. Otherwise, there is a real danger that history will repeat itself. I refer, for example, to the ineffectual efforts at Kyoto in 1997 and the United States in 2008.

Consider 2008. Obama had a huge debt to young people, who had turned the tide for him in the primaries and worked tirelessly to get out the vote in the election. Then they trusted their elders to do what was needed for their future. A farcical 3000 page cap-and-trade-with-offsets bill was produced. It looked like it had been written by Goldman Sachs and JP Morgan Chase. Perhaps it was, given the revolving door for economists between Washington and Wall Street. Cap-and-trade allows banks, with skilled trading units, the opportunity to make billions as carbon prices fluctuate, every dime coming out of the public’s pockets. Fluctuating prices have negative value, compared to a steadily growing carbon fee; the latter is what entrepreneurs, business people, and the public need to guide economic decisions and consumer choices.

There is no practical way to a global cap on emissions. And as long as fossil fuels are allowed to be cheap, they will be burned. What is required is a flat across-the-board rising fee on carbon, collected at domestic mines and ports-of-entry. Border duties would be collected on products from countries that do not have an equivalent carbon fee, providing a strong incentive for other countries to have a carbon fee, so they can collect the money themselves.

Governments in different countries would be free to use collected revenues as they choose (but not to defeat the fee’s purpose by subsidizing fossil-fuel-burning industries). However, in most cases it makes sense to distribute the funds to all citizens, thus mitigating effects of rising fossil fuel prices and obtaining citizen buy-in for clean energy transformation. Yes, fee-and-dividend involves some “income redistribution” as it tends to be progressive; people with large houses, multiple houses, or who travel a lot, will pay more than they receive in dividend. However, the effect is innocuous to a wealthy person, a negligible effect compared with a change of tax rates.

Young people, please beware of smarter-than-thou economists and politicians. Economics is important, but the issues here are readily understandable to all. The fundamental reason that the collected fee must be distributed to the public is that only in that case will the public allow the fee to continually rise until, over a period of decades, fossil fuels are replaced by clean energy. So beware the economist who says “I have a smarter way to use the money; let’s use it to reduce

some existing taxes rather than distribute it to the public.” And beware the politician who uses the phrase “price on carbon” instead of carbon fee; he lacks the courage to tell the whole truth.

Similarly, beware the liberals who will say “I have a better use for the money. Let’s use it to reduce the national debt.” That’s code language for “let’s throw the money in the government pot, so the government can be bigger.” Yes, the government has budget problems, but these need to be balanced on their own. If social security costs exceed expected revenues, e.g., the budget should be balanced internally by adjusting benefits such as retirement age, not by leaving a growing debt for young people or stealing their carbon fee revenue.

In United Nations discussions you must avoid the temptation to mix carbon fee-and-dividend, which is handled within each nation’s borders, with climate reparations. Almost everyone agrees that developed countries responsible for the excess greenhouse gases in the air today owe reparations to developing countries, who are suffering as a consequence while doing nothing to cause the climate problem. Secretary of State Clinton, at a UN meeting a few years ago, suggested a specific level of commitment, as a starting point for discussions.

Fortunately, developed countries require the cooperation of undeveloped countries to achieve climate stabilization. It will be impossible to restore the planet’s energy balance without both rapid reduction of fossil fuel emissions and a large effort to restore carbon to the biosphere and soil, as discussed in our [PLOS ONE paper](#). Further, improvements required in agricultural and forestry practices are beneficial locally, as well as globally. For physical and practical reasons, the greatest potential for biospheric carbon restoration and storage exists in developing countries. In order to assure that the practices are carried out, the formula worked out for reparations should include a factor based on the success of a nation in achieving carbon storage, as judged by regular assessments.

It is important that these conditions be clearly specified and rigorously upheld. By this I mean: (1) the carbon fee must be revenue neutral, which in practice requires 100% distribution to the public, (2) international reparations must be a separate matter, for which there is a clear incentive, as discussed above. Without firm agreement on these principles, there is no chance that conservatives will cooperate.

The time of fossil fuel end-game is approaching, hastened by growing climate impacts. However, it is crucial that the end-game be handled expeditiously. It is possible that little will be accomplished in the 2014-15 UN meetings; so far they are still playing games with “caps” and “goals”. On the other hand, it is conceivable that, say, China recognizes the merits that a carbon fee would have for them (an effective way to reduce local pollution) as well as the long-term threat that climate change poses to them. They may well entertain a mutual across-the-board carbon fee. Even a modest fee would be a huge step toward solution of the climate crisis.

However, if there continues to be no effective leadership, that is no reason at all to give up. Indeed, it is perhaps more likely that effective action will be achieved by separate negotiations among a few of the major powers. Regardless of where the end-game is played out, pressure from the public, especially from young people, can be the deciding factor in determining whether the actions occur in time to avoid large-scale irreversible consequences.

Yes, young people, I understand that managing the end-game is a tall order, but, whether fair or not, it's the task you have at hand. Do not assume that old geezers are taking care of it for you.

Finally, I promised to come back to the matter of why the legal approach is a required part of the climate solution. The reason is the deception and self-deception that leaders sometimes practice. Courts can be effective in making clear that “caps” and “goals” are inadequate, thus refusing to let governments stall with those deceptions.

Note:

Our program, Climate Science, Awareness and Solutions, now has a website. Please visit [csas.ei.columbia.edu](http://csas.ei.columbia.edu). Nicole Crescimanno is our program coordinator. She will update the site with my communications, our scientific papers, links to updated graphs, news articles, events, and more. Please share the link with anyone who is interested.

Note also:

PLOS ONE is making progress in attracting papers that address the climate challenge. See: <http://blogs.plos.org/everyone/2014/07/02/plos-launches-responding-climate-change-collection/>