"I don't want a child": an apolitical argument in climate change trials in Switzerland

Clémence Demay
UNIL, Lausanne, Switzerland, and
Mathilde Krähenbühl
SSP, UNIL, Lausanne, Switzerland

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Abstract

Purpose – This paper aims to explore how the argument of "eco-reproductive" concerns was mobilized in climate change trials in Switzerland. Looking at social movements' advantages and constraints when having recourse to the law, the authors interrogate why the symbolism of reproduction and kinship represented a political opportunity to defend the activists in a judicial system where judging is seen as an apolitical act.

Design/methodology/approach – This paper is grounded in legal research and research on social movements. While legal research focuses mainly on the study of legal and written sources, the authors used ethnography and conducted interviews to cross the perspectives of activists, their lawyers and judges.

Findings – In a context where positivist legal tradition remains strong, the "eco-reproductive" argument represented the advantage of being "apolitical," thus audible in court. Used as socio-political tools, "eco-reproductive" concerns translated the activists' political claims into the legal arena. However, judges' conservative beliefs on family reinforced the depoliticization of activists' claims.

Originality/value – While research on "eco-reproductive" concerns has been significantly quantitative and exploratory, the authors look in depth at one case of application and highlight the limits of "eco-reproductive" concerns to appeal to decision-makers.

Keywords Climate trials, Strategic litigation, "Eco-reproductive" concerns, Civil disobedience

Paper type Research paper

1. Introduction

> I will therefore forbid myself the happiness of being a parent Breaking the legacy and the chain of generations For I sacrifice our meeting and our relationship I also know that one day my name and my blood will be extinguished
>
> Poem and plea written by an activist

In recent years, fears – driven by civil society but also in response to various reports from the scientific community – about environmental catastrophe have continued to grow among the population, becoming a primary concern on an international scale (Pomade, 2010; Cabanes, 2016; Ogien, 2021). In response, various social movements emerged in 2018, including "Fridays For Future" (FFF), which was led by the Swedish climate activist Greta Thunberg. This movement calls on young people to go on a school strike to push their governments to take measures to fight climate change. In 2019, the "Extinction Rebellion" (XR) movement, which emerged in the United Kingdom, also gained momentum since its creation on October 31, 2018 and conducted actions of civil disobedience to raise awareness about the climate crisis (Cullan, 2020).

Following these different calls for action, many activists worldwide were exposed to the law (Hayes and Ollitrault, 2012), especially as the climate movement's strategies started to move from only authorized demonstrations and legal ways of participation to more direct

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actions of civil disobedience [1]. Due to the illegality of these modes of action (blockade, occupations and unauthorized demonstrations), climate activists faced repression as the state considered their acts criminal offenses and prosecuted them without any individual complaints. The activists turned these lawsuits into a political opportunity to publicize their demands (Israël, 2020; Rüegger, 2020; Sarrat and Scheingold, 2006). In the second phase, XR actively integrated the courtroom and trials into its strategy instead of merely reacting to repression. Mobilizing the "judicial arena" from the start, the movement declared to use their condemnations to both obtain extended media coverage and raise awareness in the public (Berglund and Schmidt, 2020), relying on the long-lasting tradition of civil disobedience trials in common-law countries (Turenne, 2004).

Although civil society representatives already called for civil disobedience in 2009 at the COP15 (see Michelot, 2019, p. 29; Rochefeld, 2019, p. 8), this turn in the repertoire of action, propelled by local branches of XR and FFF in 2018, marked a turning point in Switzerland (Demay and Loetscher, 2022). Indeed, political contestation in Switzerland was largely limited to the use of semi-direct democratic tools (referenda, initiatives, petitions and elections) and demonstrations (Guigni, 2019; Fritz *et al.*, 2023). Hence, since the end of 2018, Switzerland has faced an explosion of civil disobedience trials in climate litigation (Demay and Loetscher, 2022).

However, the activists encountered difficulties in maintaining their cause's politicization once they appeared before Swiss courts. It is highly unusual for the courts in Switzerland to be used – at least openly – for political ends, and there is no tradition of civil disobedience litigation. Furthermore, as Switzerland is a continental legal system without a constitutional court similar to France or Germany or without juries, its judicial authorities are considered to carry out an activity independent of any political activity. Finally, the positivist approach to law is hegemonic (Papaux, 1999; Demay and Loetscher, 2022). This doctrine is characterized by several features: a separation of the legal discipline from the study of morality or politics, a desire to separate the study of law from the context of its production, a conception of the legal system as a logical and closed system and an ambition to make axiological neutrality a guarantee of the validity of the law system (Troper, 1994, p. 27; Ost, 2016). Positivism, therefore, excludes any questioning about the political or moral aims of law, dimensions considered subjective and unscientific (Roviello, 2005). In such a context, activists' judicial mobilization is doubly subversive. They attacked the judges' role and made any judgment's political dimension visible (De Lagasnerie, 2016). Hence, their appeal overcame the necessity to raise public awareness. They tried to appeal to the judges about their responsibility to become a counter-power in defining climate policy at the national level. From then on, the trials became a political battlefield where the institutional balance of powers was contested.

In attending multiple hearings and trials, we were struck by the recurring theme of activists' reproductive histories, just like the poem opening the article. In various pleas, activists and their lawyers spoke of their children or the children they would not have because of the environmental catastrophe. In this sense, it was common for the lack of desire for children to be used to describe the defendants and, by extension, to justify the use of civil disobedience. In this way, the activists are presented as belonging to a generation that no longer believes in the future and has to give up some of the things their parents enjoyed: eating meat, buying new clothes, traveling by plane, completing their studies, having children and wishing them a bright future. Encompassing two different arguments – the fear of the future and the ecological impact of procreation – the mobilization of reproductive anxieties during the trials echoed the broader debate on "eco-reproductive" concerns. For the past two decades, North American and European media have reported individual discourses about being environmentally childfree (Courtenay-Smith and Turner, 2007; Hunt, 2019; Wei, 2020) [2]. Recently, we also noticed similar information about youth in "Global South" countries (Ahmed, 2022; UNICEF, 2022). These accounts sometimes take the form of collective campaigns to alert politicians to the climate emergency, such as the Birth Strike campaign in

the UK and #NoFutureNoChildren in Canada. In French-speaking Switzerland, this discourse has been observed at the individual level. Some people forgo parenthood because of the uncertain future and the responsibility not to generate more pollution (Krähenbühl, 2022).

As shown by research on judicial mobilization, having recourse to the law generates certain constraints and advantages for social movements. Inscribing our work in similar research (see Miaz, 2017; Rüegger, 2020) and applying those findings to environmental activism in Switzerland, we observe how the law compels political action and organization. Not limiting our investigation to activists, we sought to identify how the lawyers have engaged and how the judges have perceived the trials (Israel, 2020). By crossing the perspectives of different actors – lawyers, judges and activists – we highlight the difficulties of understanding between each group (Chappe, 2013; Hayes and Ollitrault, 2012) and the depoliticization of activists' claims through the judicial system (Codaccioni *et al.*, 2015).

While the activists hoped to defend a political project in court, we found that the lawyers and the judges were constrained by the positivist judicial framework where "the law is not politics" (see Section 4). In this context, we suggest that the argument of "eco-reproductive" concerns represented a political opportunity for the activists and their lawyers. The symbolic power of reproduction was advantageous to translate activists' political motivations into a language that was audible in court and that would emotionally reach the judges without being heard as political. However, we develop in Section 5 what the consequences of the argument about "eco-reproductive" concerns are. Judges' vision of the objectivity of judicial activity and their mostly conservative beliefs on family led them to perceive that the defendants suffered from eco-anxiety instead of convincing them of a climate emergency. In other words, "eco-reproductive" concerns reinforced the depoliticization of activists' claims. Through the exploration of this particular case, we highlight the limits of the "eco-reproductive" argument to appeal to decision-makers.

2. Theoretical and conceptual background

Due to the nature of our research object, this research stands at the crossroads of different fields of study and theoretical perspectives. Firstly, we grounded our work in legal research since we looked at the mobilization of the courtroom by environmental movements. Because the activists grounded their actions in a tradition of strategic litigation and turned the courtroom into a political battlefield, we adopt the perspective developed in the sociology of mobilization literature describing the opportunity of the judicial arena (Doherty and Hayes, 2014; Israël, 2020). Secondly, as we look specifically at the mobilization of reproductive anxieties in the courtroom and aim to understand what kind of argumentative opportunity it represented, we also grounded our research in the emerging field interested in "eco-reproductive" concerns. Arguing that "eco-reproductive" concerns can be used as socio-political tools, we specifically adopted theories that are helpful to understand the symbolic power of reproduction, kinship and the child figure.

The sociology of mobilization studied the different tools of activists' repertoire of action and their (dis)advantages (following Tilly, 2008). On the one hand, they have shown that legal mobilization represents a solid political opportunity. It can lead to important victories when a judgment is overruled or a law is invalidated. It gives high legitimacy to the activists' claims and then produces a generalized effect nationally (Hayes and Ollitrault, 2012; Miaz, 2017; Rüegger, 2020). On the other hand, they have observed that activists had to mobilize some legal expertise they usually do not have. They also have to accept that the trial logic is largely different from the one of traditional political contestation since it is built on individual responsibility and must be framed – at least in continental law countries – in a way compatible with the positivist approach to law (Turenne, 2004; Doherty and Hayes, 2014; Israël, 2020). Therefore, using the court as an arena is associated with great risks of depoliticizing activists' claims (de Lagasnerie, 2016, p. 62; Agrikoliansky, 2010; Chappe, 2013).

While a few earlier studies attested that environmental preoccupations, notably concerns about overpopulation, coincided with a desire to limit childbearing (Fischer, 1972; Houseknecht, 1987; Park, 2005), it is only recently that a field of interest in "eco-reproductive" concerns emerged. Researchers, mostly from social sciences and psychology, got more invested in understanding the relations between pro-environmental behaviors, environmental concerns and reproductive attitudes. When using the data collected among college students or people who self-identify as concerned by environmental changes, the research found less positive attitudes toward having children (Arnocky *et al.*, 2012; Davis *et al.*, 2019; Schneider-Mayerson and Leong, 2020; Marks *et al.*, 2021). Differently, studies that mobilize more representative samples do not find a correlation between environmental concerns and reproductive attitudes (De Rose and Testa, 2013).

Going beyond the statistical relationship between pro-environmental concerns and anti-reproductive attitudes, researchers are more specifically focused on describing how people experience "eco-reproductive" concerns and their motivations for limiting childbirth (Nakkerud, 2021; Bodin and Björklund, 2022). Motivations range from societal and macro factors such as overconsumption and overpopulation (Helm *et al.*, 2021) to personal relationships with the landscape and the environment (Smith *et al.*, 2022). In French-speaking Switzerland, the projections of an uncertain future were more significant than the ecological footprint of procreation to explain people's hesitancy to become parents (Krähenbühl, 2022).

To better characterize "eco-reproductive" concerns and produce research about birth strikes as a form of environmental politics, research also interrogated the political dimension of being environmentally childfree. Schneider-Mayerson (2021) suggested that reproductive behaviors have entered the ways in which people think of themselves and act as environmental actors, highlighting the intimate intersection between private action and movement participation. Similarly, asking whether living environmentally childfree is related to private-sphere environmentalism or activism, Nakkerud (2023) suggested that "eco-reproductive" concerns are both individual and collective forms of environmentalism, as they are also mobilized "to influence structures beyond one's own immediate impact" (Nakkerud 2023, p. 7). We ground our research in a similar attempt to analyze how "eco-reproductive" concerns are used as socio-political tools to appeal to decision-makers. Following efforts to understand the political dimension of "eco-reproductive" concerns, we look at how different actors have mobilized and received arguments about being childfree for the environment in the court. We do so notably because we believe that the literature on "eco-reproductive" concerns – which has been significantly quantitative and exploratory – would benefit from situated and case-oriented research to produce detailed accounts of the logic at play in reproductive anxieties. Moreover, the courtroom has been under-investigated by social scientists (Faria *et al.*, 2020), and we need a better understanding of how defendants mobilize the intimate to build a political subject in power centers. Indeed, we argue that such mobilizations reveal the power structures at play (Doherty and Hayes, 2014; Faria *et al.*, 2020).

To analyze the political opportunity that "eco-reproductive" concerns represented in the court, we went back to the literature emphasizing the symbolic power of reproduction, kinship and the child figure. As Carsten (2003) has argued, assuming that kinship in the West is significant only in the private sphere while constituting the public political order in non-Western societies, we foreclose the possibility of understanding how kinship may become a powerful political symbol. Building on this, we suggest that reproduction is compelling when related to the future. For instance, by encouraging the "right" people to have babies, movements such as eugenic ideologies, nationalism and neo-Malthusianism have linked reproduction to brighter futures free from disease, crime, disability and poverty.

A part of the emotional power of kinship lies in the naturalization of specific social ties that carry not only filiation, transmission and the hope for a better future but also the gendered structure of Western societies. In a binary system distinguishing between men and women,

kinship and reproduction assign different social functions that ensure the social order (Tabet, 1998; Delphy and Leonard, 2019). Furthermore, while kinship represents stability and continuity, childhood's supposed indeterminacy and plasticity make it a fertile figuration. As Rogers (2019, p. 61) noted, "from an anthropocentric perspective, our most powerful fears about climate change crystallize in the figure of the human child." However, indeterminacy and plasticity offer the possibility to portray children not only as victims. Going back to Arendt's work, Pierron (2006, p. 58) explained that "our modernity has made the child, with its spontaneity and vitality, capable of commitment and innovation, the miracle that saves the world [3]." More specifically, mainstream environmentalism and environmental reproductive justice movements have made the child, the fetus and the reproductive woman key figures under conditions of planetary threat (Sheldon, 2016; Lappé *et al.*, 2019). For instance, Lakind and Adsit-Morris (2018) show that 21st-century environmental movements have portrayed children as a resource to rescue us from the future and reestablish a connection we have lost with nature, marking the passage from the child in need of saving to the child who saves. Youth-led movements such as FFF, XR and the multiple lawsuits initiated by young activists against their governments embody the figure of the child as the hopeful speaker for future generations. The particularity of our case is to show that discourses on "eco-reproductive" concerns endanger this figure.

3. Methodology

Legal research focuses mainly on studying legal and written sources. We relied on 48 decisions, but also on 58 newspaper articles, 20 contributions to the law doctrine and 12 activists' pleas. Nevertheless, this research follows a distinct methodological approach inspired by the movement law approach (Akbar *et al.*, 2021). We decided to focus on three trials: (1) the "Lausanne Action Climat" (LAC), where a group of activists close to the Climate Strike decided to occupy a bank lobby to denounce the impacts of Swiss financial investments in fossil fuels; (2) the "Block-Friday", an action organized in November 2019 where activists blocked the entrance of a shopping center and (3) the "Procès des 200," a case where the declared strategy was to provoke many arrests and to obtain a vast public trial to block the functioning of the judicial institutions. All the actors we discussed were involved in one or more of those three actions and their subsequent trials.

As we could not infer the respective positions of the actors only from pleas, press releases and court decisions, we decided to conduct semi-structured interviews to complement the analysis of ethnographic materials collected during the observation of nine hearings and written sources. To respond to the specific demands of organizational settings, where ethnographic "talk" often includes formal interviews (Yanow *et al.*, 2012), we conducted interviews to better understand why several defendants and their lawyers had mobilized the argument of "eco-reproductive" concerns and how the judges had perceived it. Not looking for a representative sample but covering different trials, we circulated the call among people we had met to produce a snowball effect and construct the field (Amit, 2000). Our involvement in the activist milieu in French-speaking Switzerland and our presence as researchers in the court eased access to the actors. Although pre-existing contacts enabled us to recruit research participants, we excluded the actors to whom we were personally the closest. We have interviewed activists, lawyers and judges to cross their perspectives on strategic litigation and "eco-reproductive" concerns. Interviewing judges is especially rare, as those actors are usually inaccessible and legal scholars tend to consider their personal views irrelevant.

Regarding our interlocutors and the context in which they evolved, it is important to note that these trials mobilize a microcosm of judicial actors for a much larger pool of activists. Many interviewees knew each other on the side of the judicial actors, notably because a network of lawyers had been constituted to prepare the activists' defense. Very quickly, we

heard the same names during the interviews, giving the impression that we had gained access to key players, i.e. those who had invested a lot of time and effort in defining the contours of the defense [4]. However, not all activists knew each other, and their accounts were less uniform. In total, we conducted interviews with seven activists, four lawyers and four judges. The activists formed a relatively homogeneous group regarding social class, income and race. They were between 25 and 40 years old. They were students, unemployed or working in different professions, especially teaching and education. Unified by their profession, lawyers and judges, respectively, formed even more homogeneous socio-demographic groups.

We did not follow a strict outline to conduct these semi-structured interviews but systematically covered three themes. Firstly, it seemed crucial to focus on the eco-socialization of all participants. Secondly, we asked them about the preparation of the defense, the development of the trials, the relationship between activists and lawyers and the work of the judges. Finally, we asked the participants about the recurrence of "eco-reproductive" concerns: did they hear such arguments, did they mobilize it and what did they feel when they heard this type of argument? We listened to each interview and transcribed essential parts to analyze the interviews. When we identified recurring themes, we filled out a table for each participant to summarize their political claims, experience of the trials and views on "eco-reproductive" concerns.

4. Internal logics of climate trials

According to the activists, civil disobedience trials represented a political opportunity to change people's minds and provoke a political effect to increase the awakening of the authorities to the climate crisis. Activists were inspired by Gandhi's, Martin Luther King's and Simone Weil's struggles. They also considered the decisions made by the Swiss Supreme Court to legalize women's right to vote in 1990. In other words, they thought that lawyering and legal mobilization could lead to some political victories. Nevertheless, they generally expressed discomfort and a sense of noncontrol over the internal logic of the trial. Once facing the court, they felt dispossessed (de Lagasnerie, 2016, p. 62) of their claims because of the great distance between their position and that of the judges.

The distinct political views of activists and judges about justice, democracy and environmental crises reinforced the feeling of distance. Indeed, their conceptions were implicitly grounded in very different philosophical traditions (Demay, 2022). Thus, the judges did not clearly understand the activists' motivations. This distance led, in practice, to genuine questions and misunderstandings about the activists' intentions. One example of this misunderstanding was illustrated in the account of one of the judges, who wanted to show us that activists were detached from the reality of the judicial field and a little naïve about the activity of the courts. She reported that, before one of the trials, a group of activists came to deposit a plastic sword at the court registry. The activists wanted to symbolize their dependence on the sword of justice, appealing to its impartiality. In practice, this led to a stressful reaction for the bailiffs. They interpreted the deposit as a threat to the judges rather than an allegory. This example underlines that the transition from one field [5] to the other was made complex by political views and professional practices that were much more distinct than expected.

At the heart of this misunderstanding also resides a distinct conception of politics and whether a judgment is a political activity. Indeed, the activists were aware of the political dimension of the law but were total strangers to its application in front of the court. For many, this was their first confrontation with the judicial institution, and a combination of hope and mistrust tinged their relationship with justice. However, they paradoxically accepted that part of their political argument was not made explicit in their pleadings for strategic reasons, on the advice of their lawyers. In so doing, they have accepted as a necessity that some of their

political demands be transformed into a legal argument and smoothed out their anti-capitalist foundation.

On the judge's side, the positivist approach led them to think that they were not concerned by the political dimension of these lawsuits but only responsible for the sanctions they would apply to the activists' offenses. The rejection of any micro- or macro-political power (Moor, 2005) was explicit and clear. They were not the right people to address the climate crisis and its effects on the activists' future. Indeed, judges' activity is, above all, dominated by a common professional ethos grounded in the idea that their purpose is to succeed in "making people understand" what the law is. In their view, judicial activity is, hence, not political. Their role is to apply the law, regardless of their sympathy for the activists' cause. In such a framework, civil disobedience actions are not likely to affect judges who believe they have no room for maneuvering. As one judge pointed out, they "all apply the laws in the same way" (interview quote). Refusing to make a political case, although he agreed with activists' claims, another judge said, "Political pleading is touching, but it does not change the judgment" (interview quote). Finally, another one added:

> The court does not choose which cases it receives and which ones it wants to judge. It does what is brought to it, the judge . . . whether he sighs or not. We only had the criminal section, and so the judge took it. What bothered me was that they used the court as a political forum, which bothered us a bit because we don't feel we should be doing politics, not party politics, but political problems in the broadest sense. (Interview quote)

In this regard, the spheres of the activists and one of the judges were *a priori* hermetic to one another, illustrating one of the classical difficulties faced by social movements when choosing to use strategic litigation. Even though they felt unable to grasp the internal logic of the trials, the activists thought the court was an arena of power worth investing in. Activists needed translators to overcome their lack of knowledge of the judicial system. Therefore, they delegated tactical decisions to lawyers to draw the defense's strategy. They believed that the lawyers could translate their political claims into a language audible to the judges, respond to the constraints of positivism and obtain acquittals or recognition by the judges. In other words, the lawyers' defense implied an effort to translate the logic of political action into the judicial sphere. In this sense, they were responsible translators from one sphere to another (Johnes, 2006; Chappe, 2013). They had to respond to different, often incompatible, goals (Shdaimah, 2006).

On the one hand, they elaborated collective strategies such as joint pleading or joining causes to politicize the cases within the limits of what is acceptable in the court. On the other hand, they had to defend "courageous individuals" and not a movement because the legal system is made to judge individuals (and not collectivities). This process of individualization led to the depoliticization well documented by the sociology of mobilization. Therefore, their room for maneuvering was extremely thin, as they had to construct their arguments knowing that the judges would merely reject political claims. As they told us, this led them to set aside any element suggesting their intervention was political. They knew that the positivist approach to the law was dominant and would ruin their chances of success. The account of one lawyer was emblematic:

> In fact, I try not to make it a political issue, i.e. I absolutely do not want the judge to think that we are doing something militant or political in any way. And I'm very careful to really have legal arguments. But that doesn't mean mechanically applying the law. It means thinking about the function of the judiciary in a democracy and its prerogatives and the limits of its prerogatives (interview quote).

Alongside the positivist dichotomy between law and politics we have already discussed, the stigma of the "cause lawyer" explains her caution (Sarrat and Scheingold, 2006). To avoid the stigma, the lawyers must convince the judges that their arguments are not political and that

there are legal solutions to these problems to increase the chances of success. The lawyers must be more careful not to appear committed to these trials and to neutralize their emotions so the judges cannot discredit them. It is why lawyers from all political backgrounds formed a collective to avoid suspicion in the LAC case. From then on, they are inclined to sort and weave a narrative that can fit into existing legal categories while adhering to several frameworks and values (e.g. by referring to the climate necessity defense or fundamental human rights).

For their part, the judges have avoided the political dimension of trials when it was present. For instance, they did not pay particular attention to activists' insistence on elements such as the joining of cases or the hearing of experts. To them, these elements did not impact their reading of the law. Although one judge admitted hearing experts and said it provoked a "mini-intellectual revolution," he still admitted "having doubts about the effectiveness of what the lawyers pleaded." In this sense, some judges were offended to be subjected to "trials of intention" when they felt they had only done their job. They were frustrated to observe that it was an impossible dialog. At the same time, they underlined that these trials were anecdotal matters because the penalties were minor. Therefore, the awareness of belonging to a group of professionals that must remain neutral kept the judges distant. The same sense of belonging explains why some judges thought that their colleagues who would deviate from the dominant interpretation would be "betraying a system." Thus, the apparent tendency toward legalism and its rejection of all politics worked against the activists' strategy to use the court as a political arena.

Moreover, several judges accounted that the lawyers had reinforced rather than thwarted the distance between activists and judicial actors and fueled their feelings of being faced with "indoctrinated" young people. They thought activists had little agency and were suffering from a pathology called eco-anxiety. They relegated the political dimension of their demands to the realm of individual discomfort. Indeed, activists were generally perceived as "victims of a particular catastrophist ideology" that altered their capacity for discernment. It was particularly evident in what some judges identified as a "lack of nuance" among activists, whose discourse seemed monolithic and, therefore, "totalitarian." Thus, according to the judges, the defendant's ability to think freely is crucial. Surprisingly, judges seemed unaware that activists' discourses were strongly influenced by the dynamics of the trial, what lawyers expected them to say and the short time they had to develop their statements. Indeed, activists had to hit the nail and mobilize arguments that they believed would individually reach the judges. In this sense, the judges criticized the activists for not having a complex discourse when everything in the trial was set up to prevent them from developing such arguments.

5. "Eco-reproductive" concerns in court cases

5.1 A descriptive argument?

After describing how legal positivism constrained the trials, we now turn to "eco-reproductive" concerns to show that lawyers pleaded activists' reproductive intentions precisely because this argument was perceived as apolitical. According to the lawyers, the argument about reproductive anxieties came *only* from the activists. While the lawyers are used to asking their clients to mention specific elements to support their defense strategies, they told us that the question of being environmentally childfree came up in the defendants' hearings. One lawyer assured, "We didn't make them say it *a priori* because we hadn't felt all that eco-anxiety" (interview quote). She told us that, four days before the hearing, she discovered that her client did not want children for ecological reasons. It profoundly affected her understanding of his case, highlighting the generational gap with the activists. She then decided to plead it because "it's a powerful argument," describing the distress of the

defendants: "It's just an observation; in fact, it's just an observation that they are scared to death" (interview quote). Another lawyer reported that they advised the activists to tell the judge about their "eco-reproductive" concerns so that the magistrate would realize how worrying the situation was, to the point where it was no longer possible to give birth to a child. She insisted, however, that the point was not to beg the judge for mercy but rather to offer an objective panorama of the experience of a significant part of the younger generations.

Lawyers thought "eco-reproductive" concerns were powerful because they *described* a state of affairs and an objective panorama instead of a political argument. Indeed, "eco-reproductive" concerns were evidence, demonstrating the absolute necessity to acquit the defendants. Moreover, reproductive choices fit the individual framing of trials as they offered lawyers the opportunity to defend individuals instead of a group. For these different reasons, "eco-reproductive" concerns operated as an effort of translation from the activists' political claims to the judicial arena. The lawyers, being the vector of this translation, invoked it during the pleadings, even though the argument initially came from the activists. One lawyer reported how she seized this argument by asking the activists in court, "I thought it was essential that it came out because, for me, it's one of the strongest elements, too. At least for my generation, this refusal to birth children is one of the things that has upset me the most" (interview quote). Hence, we observed that the activists' doubts about parenthood led to a collective emotional experience among lawyers. The trial became the lawyers' fight to safeguard their children's and grandchildren's futures.

While the lawyers were surprised that their defendants were giving up parenthood, "eco-reproductive" concerns were common among the activists. However, the accounts of the activists who had chosen to talk about their reproductive futures in court nuanced the lawyers' observation that being environmentally childfree was *only* a descriptive argument [6]. One activist explained that he authored a poem on his childlessness to touch "the human behind the judge" (interview quote). Another one recounted that he had to carefully choose which key element he wanted to convey to the judge, given the little amount of time he had to speak in the second instance:

> I didn't really know what to say. I had dozens of things to say. I had dozens of things to say. And I said: Well, go ahead, I'll take the kids' thing. I don't know if it's the thing that came out the most, but it's something that comes out extremely regularly . . . because it appeals to our parents' generation like crazy. Because for the people who judge us, who are 50–60 years old, people who decide in this world, it's a fundamental objective to have children, it's a mode of operation, it's really a mode of social success, the family (interview quote).

Michael was determined to remain childfree because he did not want his children to reach the age of 20 in 2050. Although he had always imagined himself as a father, he was peaceful about being childfree and did not experience it as a sacrifice. Hence, Michael made the *strategic choice* (in his words) to make it vocal to the judge even though being environmentally childfree was not a problem for him. Although he was afraid to beg the judge's mercy and circulate an essentialist vision of childbearing that does not fit his acceptance of childlessness, Michael imagined that it could raise more awareness than, for example, the decision to stop eating meat. What is significant is that Michael anticipated that the judges would have a conservative political vision. Arguing that he had to renounce fatherhood, he hoped to touch the judge's core values and overcome their different politicization. One lawyer also recounted that she asked her colleagues, "Do you have children?" to convince those most reluctant to defend this type of judiciary case.

Hence, activists and lawyers invoked future generations (or their absence) as an argument of last resort to convince actors who had a different politicization, who were not convinced of the climate emergency or who disapproved of civil disobedience actions. Here again, we found that "eco-reproductive" concerns operated as a translation from one sphere to the other. This

translation was efficient for the lawyers because "eco-reproductive" concerns would be perceived as an apolitical argument. On their side, the activists were conscious of mobilizing a strong symbolic register rather than describing a "state of affairs." In doing so, they transformed their reproductive choices into political tools. In other words, they bridged the gap between the intimate and the political, invoking the former to denounce the inaction of judges.

5.2 Kinship and reproduction: powerful symbols

According to us, the symbolism activated by "eco-reproductive" concerns operated at different levels. By giving a prominent place to children or their absence, activists and their lawyers have played, sometimes unconsciously, with the fact that children represent nature and hope. In the collective imagination, it is natural to want children, and offspring are what connect present generations to desirable futures. It is *for future generations* that lawyers should defend the activists, and judges should acquit them. Hence, children were used to reduce the emotional distance some actors maintained with climate change and to activate "intergenerational guilt" (see Rogers, 2019, pp. 61–63). One lawyer confessed, "In fact, when you imagine global warming at 40 or 60 years old, and you are my age, you think 'well, it's not very serious . . . I'll get through it somehow'. On the other hand, when you tell yourself that your children are going to be affected . . . umm, you are immediately much more concerned" (interview quote). Not only projecting adults into the future, children are connected with hope because they represent simultaneously novelty and purity. Children are guarantors of a true, neutral and universal nature (Lakind and Adsit-Morris, 2018, p. 33). In turn, the reproduction of children symbolizes the reproduction of the natural order of things and the continuity of life. Moreover, in social imagination, procreation belongs to the intimate sphere of individual choices. It is why the trials' actors considered "eco-reproductive" concerns apolitical.

At the same time, the particularity of "eco-reproductive" concerns is that they feinted to suppress this natural order. The activists said between the lines that there would be no one to protect nor would there be saviors. Not only can they not themselves "save the world," but they also cannot raise children who will be assigned such responsibilities. In a way, activists told the judges that they had a responsibility to act in the present not only to protect future children but also to assure that a future generation will ever exist. Judges were indirectly asked to protect the continuous reproduction of life. Indeed, "eco-reproductive" concerns profoundly challenged the notion of continuity by symbolizing the absence of children. In doing so, they reassessed a catastrophist vision of the future – a vision partly excluded from mainstream environmentalism since the establishment of the sustainability paradigm (Semal, 2019). Partly excluded from environmentalism, catastrophes and emergencies are nevertheless critical to climate litigation. Indeed, Rogers (2019, p. 70) noted that "without the requirement of urgency, the lawsuits lose much of their impetus. If the time to act has passed, the lawsuits are futile." We argue that "eco-reproductive" concerns represented an attempt to more powerfully compel catastrophe since the renunciation to parenthood symbolized the renunciation of the future and life. One lawyer told us, "There is something very mortifying about the idea of giving up having children" (interview quote).

"Eco-reproductive" was a powerful symbolic register not only because it threatened the reproduction of life but also because it attempted to disrupt the reproduction of the gendered social order. It is helpful to go back to the interview of one activist who recounted how she "consciously" mentioned the hesitations of young people about parenthood during a press conference. According to her, while being childfree is socially perceived as selfish, arguing that she *wanted* children but *could not* have them for environmental reasons allowed her to "get to the heart of the matter." She underlined that her decision to be environmentally

childfree would be impactful precisely because she is a nondisabled, white and upper-middle-class woman. In a way, she played with pro-natalist social injunctions that assign certain women to motherhood and exclude others. She knew she represented a symbolic threat because she was part of those society considers worth reproducing. Gendered injunctions were also visible when lawyers primarily questioned women about their reproductive desires before the judges. Implicitly, they expected that making women vocal about their reproductive anxieties was more convincing than asking the same question to men. Both activists and lawyers activated an essentialist vision of childbearing to convince the judges that the situation was alarming enough to push young adults to renounce something as "natural" as procreation.

However, the argument did not work as the defendants imagined. Although the judges said they felt sad and worried when they heard about young women with tubes tied for environmental reasons, they did not take them seriously. When activists said they would not have children, judges heard, "There is no more hope." Consequently, "eco-reproductive" concerns reinforced among the judges the idea described earlier: activists were in the grip of a totalizing and catastrophist ideology. They generally considered the activists' responses to environmental crises inadequate and extreme, even though they empathized with some of their experiences. One judge pointed out that social change cannot be built on despair and deprivation. That activists were giving up parenthood did not convince the judges of the urgency of climate change but that they suffered from "eco-anxiety." It reinforced an individualist understanding of the experience of climate change instead of highlighting a systemic problem. Therefore, the catastrophist vision turned against the activists and reinforced the depoliticization already at play in judicial mobilization. In a social context where we automatically associate children, the future and hope, suppressing children meant suppressing the object of environmental action. While they had imagined that "eco-reproductive" concerns would strike the judges, they had not anticipated that it would lead the latter to deprive them of hope and rationality.

6. Conclusion

The transition from the activists' spheres to the court was complex because the actors' perceptions and political backgrounds were distinct. Activists used judicial mobilization to raise awareness about the climate emergency and defend a political project in the courtroom. On their side, the judges estimated that the legal arena was not a political one. As a result, their role as guardians of neutrality prevented them from acquitting the activists. The lawyers who were translators during the trials knew that the judges would not go beyond "applying the law" to judge individual offenses. Therefore, they had to construct apolitical strategies based on an individualist framing. We have argued that "eco-reproductive" concerns fit these criteria because the lawyers used it to describe an intimate "state of affairs." In a social context where the intimate is dominantly considered apolitical, reproductive anxieties represent an appropriate translation from one sphere to the other. On their side, activists consciously overplayed a natural vision of reproduction, where it is impossible to think of the future apart from biological filiation. In doing so, they transformed their reproductive intentions into socio-political tools to affect the judges who did not share their concerns about environmental catastrophe. Nevertheless, making "eco-reproductive" concerns the extension of eco-anxiety, activists and their lawyers displaced the judges' attention. Less convinced of the emergency of climate change than of the anxieties and problems of the defendants, the judges' negative perceptions were reinforced. To conclude, we argue that "eco-reproductive" concerns reinforced the depoliticization already at play in judicial mobilization and failed to appeal to the judges.

However, the depoliticization did not only result from defense strategies. The internal logic of the trials also led to the homogenization of activists' experiences. Indeed, the time allocated to the activists and the need to construct a perceptible discourse audible in a positivist legal system were decisive. However, even in such a system, the law must be interpreted (Papaux, 1999; Moor, 2005), and the activists' arguments could have moved the lines. Following the development of jurisprudence in Germany, childlessness could, for example, have been transposed to the rights of future generations or motivated recognition of a right to a healthy environment to protect the reproductive choices of the activists. In that regard, our research showed that in a continental law system and within a positivist approach to law, where judicial activity has apparently nothing to do with politics, activists cannot simply apply the strategies developed by movements using civil disobedience in other judicial systems. Thus, further research could investigate how national legal specificities constrain the application of globalized political tactics. We also showed that "eco-reproductive" concerns did not work as expected. Nevertheless, subsequent comparative research is needed to see if that argument worked in other jurisdictions and what explains the different results. What is certain is that further trials are underway and that new strategies will be tested in the years to come.

Notes

1. For activists, illegal/unauthorized actions complement other legal means of action and constitute different facets of strategic climate litigation (Rochfeld, 2019, p. 180; Guigni, 2019, p. 30).
2. Intertwining human reproduction and the environment, these alerts do not emerge in a conceptual vacuum but call upon a situated scientific and political discourse that needs to be made explicit. For critical perspectives on how "eco-reproductive" concerns can be linked to the "overpopulation" debate and neo-Malthusian perspectives, see the work of Ojeda *et al.* (2020), Sasser (2018).
3. Our translation.
4. The association "Avocat.e.s climat" was then created and extended this network. See: https://avocatclimat.ch/
5. In the sense of Bourdieu (1981).
6. It should be noted that not all activists used this argument, and some were even opposed to it for political reasons.

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Corresponding author
Clémence Demay can be contacted at: clemence.demay.reb@gmail.com