

Climate Change Mitigation: The Role the Law Can Play in Addressing the Climate Crisis

Introduction:

Climate change poses one of the most significant challenges for humanity in the modern world - a threat to its very existence. The need for comprehensive and effective mitigation strategies is abundantly clear, and in this essay, I will examine the pivotal role the law can take as part of the solution from various perspectives.

The scope of the law in tackling societal problems such as climate change is often reduced to that of an instrument for the implementation of government policy - the glazier of the Overton window. However, this reductivism is inaccurate, in that the law can address climate change in ways other than legislation - for example, by the outcomes of legal cases, especially in a common law jurisdiction such as Ireland - unhelpful, in that it minimises the importance of legislation in translating the generality of political will into effective action to reduce emissions, and incomplete, in that it neglects the role of constitutional changes in shaping public discourse and policy around climate issues. I will explore each of these contexts - legislation, litigation, and constitutional change - in turn.

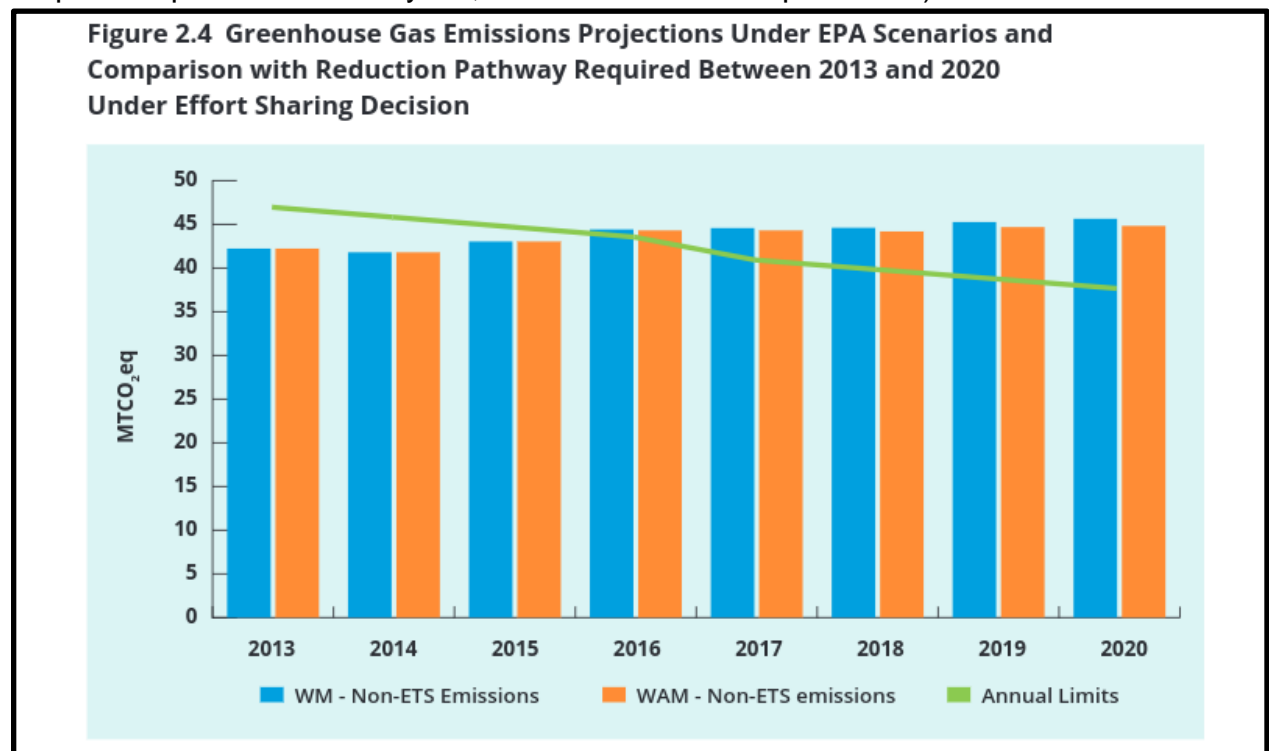
A note on scope - in this essay I take 'climate change' to refer to long-term shifts in weather patterns, to the exclusion of other environmental issues such as biodiversity.

Development:

The most evident role the law can play in mitigating climate change is through direct regulation of sectoral industries, the main emitters of the greenhouse gases driving climate change. An example of this is Ireland's principal piece of legislation in relation to this issue: the Climate Change and Low Carbon Development (Amendment) Act 2021.

The primary provision of this law is the establishment of a national climate objective: "The State shall, so as to reduce the extent of further global warming, pursue and achieve, by no later than the end of the year 2050, the transition to a climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy". It also established the Climate Change Advisory Council, a scientific body to advise the government on achieving its targets, and the "carbon budgets": a restriction on total emissions that can be released over a 5-year period, which are to be set out by the government. Thus, this piece of legislation obliges the current and subsequent governments to take such concrete steps to mitigate the climate change crisis. However, the Act did not originally contain specific GHG emission targets; it was amended after the Supreme Court struck down the National Mitigation Plan that had been developed to implement the Act following *Friends of the Irish Environment (FIE) v the Government of Ireland and Others*; and this brings us to the second role the law can play in addressing the climate crisis: public interest litigation.

In this case, FIE, a non-profit environmental organisation, took the Government of Ireland to court over the National Mitigation Plan - the strategy developed to implement the goals set out in the Climate Change and Low Carbon Development Act 2015. The case set out by FIE alleged that because the projected emissions under the Plan exceeded the limits set out as part of the National Transition Objective (NTO) in Section 3 of the Act, and that for this reason the Plan was *ultra vires* the relevant legislation. Also, it was argued that the plan's failure to implement a reduction in emissions was a violation of rights guaranteed by the Constitution and the European Convention on Human Rights (ECHR) - specifically, the rights to life and bodily integrity under the Constitution, and Article 2 of the ECHR (the right to life) and Article 8 (the right to respect for private and family life, the home and correspondence).



Excerpt from the National Mitigation Plan 2017

The government's defence was to argue that the Plan was not justiciable; that because the plan only extended to 2020, it would be continuously updated with new targets in the future that would lead to achieving the NTO by 2050; and that FIE, as a Company Limited by Guarantee, did not have standing to litigate personal rights under the Constitution and the ECHR.

The High Court ruled in favour of the Government, however, the Plan was quashed after FIE appealed the result in the Supreme Court. The Court found that whether or not the Plan met its requirements to specify how it was to achieve the NTO was justiciable, and

that the enactment of the 2015 Act had transformed the policy into law. I believe that this was a fair decision, as the National Mitigation Plan was *ultra vires* the 2015 Act, and the Court striking it down because of this was not an overreach into legislature policy, but an upholding of the legislation. It led to the formation of the National Energy and Climate Plan to give further effect to the National Mitigation Plan, and the amendment of the 2015 Act to stipulate the inclusion of specific GHG emission targets for the lifetime of the NTO. In this way, FIE used the law - through the process of litigation - to help address and mitigate climate change.

Finally, the constitution can play a role in helping us through the climate crisis, potentially by enshrining additional rights such as the rights of the environment itself and the human right to a healthy environment. Both these changes were recommended by the 2022 Citizens' Assembly on Biodiversity Loss, and were subsequently debated in the Joint Oireachtas Committee on Environment and Climate Action - specifically, the potential for a referendum on amending the Constitution to include "substantive rights of nature, recognising nature as a holder of legal rights, comparable to companies or people e.g. to exist, flourish/perpetuate and be restored if degraded; not to be polluted/harmed/degraded" and "procedural rights of nature, e.g. to be a party in administrative decision-making, litigation." In the debate, Dr. Orla Kelleher argued that the advantages of such an amendment would include providing a safety net where there are gaps in current legislation, creating a level playing field *vis à vis* other rights, and providing a valuable enforcement tool if individuals and NGOs could litigate with respect to it. In this way, a Constitutional right of the environment would strengthen the potential of the law to address the climate crisis in other areas, and also intrinsically serve to protect the environment from the destruction wrought by climate change. Although concerns were raised during the debate by Senator Timmy Dooley on the potential for the public to misinterpret the wording of the referendum, and Deputy Richard Bruton on the importance of clarity in the amendment for the judiciary, these qualms strike me as constituting obstacles to be overcome rather than positive reasons for inaction.

Conclusion:

What role can the law play in addressing the climate crisis? In this essay, I have drawn the reader's attention to the multiplicity of avenues through which the law can help mitigate both the causes and effects of this problem, and how its role extends far beyond regulatory legislation, into areas such as litigation and the Constitution.

In an issue such as climate change, the law serves as more than a tool to implement the policies of those who wield power - it also serves as a mechanism for members of the public to effect change by holding those who make the law to account, and to make their voice heard in amendments to Bunreacht na hÉireann.

The interplay between law, politics, and science in this issue contributes to its complexity - but if there is anything to be taken from the examples I have provided here to illustrate this interplay, I believe it is that every citizen has a responsibility to understand the laws pertaining to climate change, and to use these where they can to effect change for the better.

FIE is currently once again taking the government to court over an alleged lack of specificity in the Climate Action Plan 2023. I hope to see them win this case, and also to see a referendum on the rights of the environment in the Constitution in the coming years.

Reflection:

I wholeheartedly enjoyed writing this essay, and found it especially interesting to discover what a wealth of resources there are for finding out about the law. At times, I struggled to articulate my ideas, and impose a coherency on the arguments presented - but the process of doing so challenged me to find the heart of the message I was trying to convey. Thomas Jefferson said that ". . . government is the strongest of which every man feels himself a part." To take the hypermetropic perspective, writing this essay has reminded me of how the law is not necessarily a barrier for, but can be a weapon in the arsenal of, the activist; and at a personal level, it has made me feel more empowered as an individual - more a part of the governing of my country.

Sources:

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