

2009 winning essay by Melanie Strickland

**'The law is useless as a tool to deal with climate change.' Discuss.**

Climate change is the biggest social justice issue of our times. The law, which has at its ultimate aim the promotion of justice, must be and is a key tool in managing climate change.

Thus far the primary function of the law in helping to manage climate change has been to set a framework for states and/or organisations to work within. The Kyoto Protocol, for example, whilst it has been a failure in terms of results, has been deemed a success in terms of *process*. The end of that process was a framework by which signatories can reduce their emissions in a fair way. 'Kyoto 2', to be agreed in Copenhagen in December, is likely to follow the same process as the Kyoto Protocol, although the targets for emissions reductions need to be much stronger if Kyoto 2 is to secure the future of the planet and humanity.

The EU Emissions Trading Scheme (EU ETS), the largest carbon market in the world, was created through law.<sup>1</sup> The scheme is the primary instrument to cut emissions in the EU. Without this framework to make the cost of emitting CO<sub>2</sub> progressively more expensive, companies in the energy intensive sector would be unlikely to invest in low carbon technologies or take steps to reduce emissions through efficiency measures.

The proposed Renewables Directive, which commits the EU to sourcing 20% of its energy from renewable sources by 2020, is also intended to contribute significantly to the reduction of emissions in the EU. The Directive will send a signal to business that it is safe to invest in renewables, and, combined with the EU ETS, will create a stable regulatory framework.

The UK's crowning achievement in the area of climate change is the Climate Change Act 2008. The UK was the first nation globally to pass a piece of legislation committing to a legally binding framework to tackle climate change. Some key provisions of the Act include an emissions reduction target of 80% by 2050, against a 1990 baseline, to be achieved through the setting of five-year carbon budgets, and the creation of an independent Committee on Climate Change (CCC). The CCC's

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<sup>1</sup> Directive 2003/87/EC - (EU ETS) Directive.

primary duties are to advise the Government on the setting of the carbon targets and to report to Parliament on progress made in reducing emissions. So far the Government has taken up the CCC's recommendation to increase the target from 60% to 80%, and also to include international shipping and aviation in the carbon budgets. This is surely a sign that the CCC has clout.

The Government intends to use enabling provisions in the Climate Change Act to pass a Regulation on the Carbon Reduction Commitment (CRC). The CRC is a UK-wide compulsory emissions trading scheme. It is aimed at large public and private sector organisations who are non-intensive energy users. Organisations caught will be required to report on energy-use emissions from fixed point sources and buy allowances to cover their emissions. Participants in the scheme will have their performance published in a public league table. This provides an important reputational incentive for organisations to improve their emissions record. The Government hopes that the scheme will save four million tonnes of CO<sub>2</sub> a year by 2020. The same result could not be achieved by merely issuing good practice guidelines or by relying on the market alone – the legislative framework is necessary to give organisations the necessary 'stick' to act.

The above are just some of the main instruments by which the UK intends to tackle climate change. Clearly law is the main tool in our toolbox to tackle climate change. The more fundamental question is whether our laws are sufficient to meet our desired ends. There is much talk about how we tackle climate change but are we clear about what our goals are? Stabilising temperature increases below 2° C above pre-industrial levels is the goal adopted by the EU (and implicitly by the UK Government). We know from authoritative sources such as the IPCC that a rise in temperatures above 2°C is likely to lead to devastating consequences, such as water shortages, coastal flooding, annual bleaching of the Great Barrier Reef, heatwaves in Europe becoming commonplace, 30% of species at risk of extinction, and many thousands of 'climate refugees' on the move.<sup>2</sup>

Ignoring the question of whether our current laws are indeed robust enough to prevent even a 2° C increase - is the 2° C limit actually what we ought to aim for? The

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<sup>2</sup> IPCC, 2007: Summary for Policymakers. In: *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds., Cambridge University Press, Cambridge, UK, 7-22.

best we can hope for with the 2° C limit is to narrowly avoid the likelihood of mass devastation. Surely we have set our expectations too low. We have the knowledge and resources to totally reconfigure our economy and our lifestyles so that they no longer place an excessive burden on the planet. Our laws should aim at reversing the present trend of environmental degradation. Furthermore, law should aim at securing a healthy and flourishing planet.

There are some interesting ideas about how we can make this a reality, such as the proposal for a UN Declaration on Planetary Rights.<sup>3</sup> The UN Declaration of Planetary Rights will ensure that persons are no longer free to exploit the environment endlessly. Our rights must be balanced with the rights of nature. This idea deserves further consideration.

However, the law is not a silver bullet for tackling climate change. The fact that something is a law does not mean people will abide by it. Laws may be broken with impunity, especially where enforcement is difficult. Policies aimed at behavioural change are also important. At the international level, economic and financial incentives are likely to be necessary to secure the agreement of developing countries to a global deal. China is seeking technological transfer so it can burn coal cleanly. If we are to tackle climate change effectively, we need every tool in our toolbox - all the aforementioned measures will be vital.

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<sup>3</sup> Polly Higgins, a barrister in London, has been campaigning for the UN Declaration on Planetary Rights. See: <http://www.treeshaverightstoo.com/>