

Can the courts save us?

#Cut 11 Percent

For young people desperately looking to world leaders to properly deal with the climate crisis, there was a lot of optimism and media coverage around the 2015 Paris Agreement. However, it fell short of being a decisive step that would have enabled courts to take legal action to mitigate climate change.

As it turned out, the agreement, vague in all the mechanical details, did not actually commit the signatories to any real climate targets. Despite them being explicit about limiting global heating to well below 2,0°C (and preferably 1,5°C), the lack of these binding agreements means that we are still on track for over 4°C. In fact, there is not that much point counting over 4°C – rather like the fact that nobody is that interested in exactly how many stab wounds it took to kill a victim, beyond the word ‘multiple’. And it is the Very High Developed Nations of the world that are doing most of the damage.

4°C is unimaginably bad for human civilisation, especially for every young person. In a recent study in *Nature Communications*¹, the picture painted of our critical condition is ugly reading. It argues that ‘bottom-up’ tactics are just not working, and that realistic, robust ‘top-down’ measures are urgently required². Some things have just got to be fixed at a high level.

This has left citizens around the world pleading for help from the courts to mitigate climate change. In the Netherlands, the Urgenda Foundation, a Dutch environmental group, and 900 Dutch citizens sued their government, requiring it to do more to prevent global climate change.

In Britain, Plan B, a charitable incorporated organisation committed to legal action to mitigate climate change, has already gone to court twice for the UK government’s failure to act on the ambitions of the Paris Agreement. The Dutch case won, the first British case lost on a technical problem of resolving the bridge between international law and British law. A decision that exposed the problems of a lack of clarity and resolve in global climate agreements. However, the second case concerning Heathrow Airport won on appeal.

And so, the question remains: can the law save us? Judicial independence guarantees, in theory, that the courts keep their distance from political hassle and deliver justice for a country's citizens. Indeed, a theoretical approach to climate change mitigation will show that laws should have been passed decades ago. We have known about this basic chemical problem since 1859 when John Tyndall first evidenced the 'greenhouse effect'.

Unfortunately, we do not live a green utopia.

In the same way we could see with the controversy surrounding Obamacare and the Mueller report, a meaningful issue is never without unmeaningful political side-taking. Furthermore, as sad as it is, doing away with a holiday to Spain or a comfortable car ride to school each morning does not sound too appealing – not even to me. This means that it is very difficult for politicians to promote cuts in everyday luxuries without losing critical votes.

I do not blame them. However, there is a moral responsibility that each of us has to fulfil. We need to do what is right, not what we want to be right.

It is then obvious that the courts, the upholders of justice, should do the right thing. Immanuel Kant was an advocate of clear-minded reflection against our blind impulses. He believed that we are all capable of turning to reason instead of following our desires. According to Kantian

I attended the first court case that was heard, rather symbolically, on July 4th (2018). This case pointed to a strange fact about the UK's response to climate change. The UK often claims to be a world leader in climate change – something that statistics do not support (see our webpage: www.cut11percent.org).

Indeed, although the Committee on Climate Change (CCC/theccc.org.uk), an independent, statutory body to assess and advise the government, had been established in the 'Climate Change Act' (2008), and although this committee had observed that the UK was far behind in its actions, the official advice of the CCC to the government was, effectively, 'carry on failing'.

The second court case challenged the expansion of Heathrow Airport, and won. A major breakthrough in climate litigation on Feb 27th, 2020, that will hopefully have a deep impact across government infrastructure plans, and beyond.

1 <https://www.nature.com/articles/s41467-018-07223-9>

2 It should be noted that the way in which the authors of this article attribute responsibility for the emissions is not equitable, because they do not divide the GHG emissions per capita (for example). Which means that China comes out far ahead of more irresponsible countries like Luxembourg.

3 Evidently, not all members of the G20 are democracies and the 79% is calculated here on a lot of different assumptions – but the overall point made here is clear enough.

thinking then, we must urgently implement laws that require companies and public institutions to cut their emissions radically. Yes, radical for two reasons. Firstly, because the danger we are in is radical, even though we have no sense of the scale of it.

Secondly, because the laws that need to be implemented may be too radical for Western democracies to handle - our short-term desires might be too strong to control with reason. The problem just cannot be sorted out by reducing plastic consumption, recycling, or merely by accepting a fruitless cap-and-trade scheme. These are just soft actions for a very potent problem.

Courts need to hold governments to account for their colossal failures. For example, the G20 countries which account for "79% of global greenhouse gas emissions"³ are still paying titanic fossil fuel subsidies, "\$63.9bn per year on coal alone – the most polluting fossil fuel"¹. What is required is a demand that the governments invest in green energy at a level that far beyond anything seen before.

But courts do not exist in a vacuum. This short essay will leave to the side those countries who explicitly do not even pretend to be democratic or that interested in human rights (such as Saudi Arabia). But for those that are modern and liberal democracies, it has to be admitted that human rights always require interpretation. Big principles always hit real life in way that creates messy details. The problem is even made even more complicated when it is not the 'Universal Declaration of Human Rights' (1948) that is being upheld. In national parliaments, there

is a constant battle to define what laws are needed for their particular, national priorities. In strong democracies no laws can be passed easily, and rightly so. This is because democracy is slow – to give it stability. Giving each and every citizen, a voice is important, and although the separation of powers makes life complicated, it is very obvious that such a division is needed. (If the dictatorships that characterised the 20th century taught us this lesson with force, Donald Trump is showing us the same lesson in his own awful way.)

At both a global level and at a national level, the threat of climate change has to be recognised by the law. Climate change has got nothing to do with politics in the narrow sense of the word. It is a question of the most basic human rights – something which both at a UN level, and a national level, the offices of power take pride in protecting.

Climate change will, and has already, manifested in extreme drought, severe food shortages, and disastrous hurricanes. This puts all human beings under serious threat, taking away their 'right to life, liberty and security of person'. Climate change disproportionately impacts the world's poorest nations, whose people suffer from forced emigration from their countries and unpredictable weather conditions that destroy crops. For example, in Mexico a hailstorm on the last day of June 2019 covered at least six neighbourhoods in the city of Guadalajara in ice pellets up to two metres deep². In the same month, severe hailstorms in South East France turned many farmers fruit harvests to pulp, "The sky has



Thomas Hobbes

fallen in on our heads, and the year stops here for us”³. Climate change directly and indirectly threatens the effective enjoyment of all nations’ citizens of their most basic human rights – including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development. Displacement and migration due to climate change is said to be the greatest challenge of our era, with estimates saying that between 150 and 200 million people are at risk of being forced to leave their homes as a result of climate-related problems, such as desertification, rising sea levels and extreme weather conditions⁴. From this it is clear that climate change is the most existential threat to organised society as we know it today.

The 16th century social contract theorist Thomas Hobbes argued that human beings should enter into a ‘social contract’ under a totalitarian sovereign, the Leviathan, whose only job it was to guarantee the security of his citizens. Hobbes understood that safety was the absolute bottom line for any civilisation to do anything. In the Western world, we live, largely, in states that owe a lot to Thomas Hobbes’ thinking. He was the godfather of Human Rights, and although we have mostly followed Locke’s advice to separate the powers of the State, what is clear is that we live inside societies that totally respect the rule of law and the importance of Sovereign offices to uphold them. The key lesson from Hobbes is that the basic role of the state is to provide security.

By ignoring, denying, side-lining and hesitating about climate change, our modern

Thomas Hobbes (1588-1769) observed first-hand the violence and fear that can overrun a country once there is not an absolute acceptance of who is in charge. He saw the English Civil War (1642-1651) make many people’s lives, “solitary, poore, nasty, brutish and short”.

He concluded that the first job of the state is to provide a secure and stable environment. Although he was in favour of totalitarian power, he revolutionized the basis of that power. For Hobbes, a sovereign did not rule ‘because God said so’ (The Divine Right of Kings), he ruled because he was an embodiment of the citizens’ rights.

1 <https://www.odi.org/publications/11355-g20-coal-subsidies-tracking-government-support-fading-industry>

2 <https://www.theguardian.com/world/2019/jul/01/freak-summer-hailstorm-buries-cars-in-mexicos-guadalajara>

3 <https://www.telegraph.co.uk/news/2019/06/17/freak-hailstorms-batter-french-vineyards-crops-prompting-state/>

4 <https://www.weforum.org/agenda/2019/06/how-climate-change-exacerbates-the-refugee-crisis-and-what-can-be-done-about-it/>



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Sebastien Kaye

Interviewed, April 2019.

national and international Leviathans have failed to provide us with this critical security. Our institutions have not given us and future generations the security we need in the face of climate change, thus breaking their part of the social contract. It is only fair that we, who have surrendered our natural rights in order to receive civic rights in return, are given the right to hold our leaders to account for their failure to perform their part of the social contract.

Sebastien, a university student¹ and climate activist, was determined to hold his government to account using the essential science that he learnt through the Homo Sapiens Foundation and his Climate Academy classes in school. During his Gap Year he eventually crossed paths with the international human rights and environmental lawyer Tim Crosland, who established the Plan B legal challenge against the UK government’s climate policies. Sebastien was a key member of the Plan B action, and also one of the claimants in the case. Interviewing Sebastien, he

remarked that his motivation for climate justice is sourced by “an existential sense of urgency and concern for the future stability of organised society as we know it today”. He frequently stressed how little time remains for radical action.

Like Sebastien, we all need to recognise that “climate change isn’t just about [our] future, it’s inter-generational” and that “governments and politicians are the last remaining actors who can put through the large-scale changes to our systems of energy production and consumption in order to avoid climate breakdown”. The unfortunate conclusion, however, is that the courts will not act until we invite them to enforce laws that will protect us and the bio-systems of the planet. Either, there needs to be a surge in climate action votes and campaigns (like Extinction Rebellion) that push the government to legislate for us in Parliament, or there needs to

By Kia Katainen

be a small but powerful group that can challenge the government on the basis of human rights.

There is a necessary tension between individual action and court action; the latter cannot and will not act without some heat from the former. We need to stand up and make our voices heard, loudly enough so that it echoes in all the parliaments and courts of the world - demanding the security against climate change that each of us deserves. Getting enough votes to push through tough climate legislation will probably not happen fast enough in our parliaments, so we will need to call directly on the courts through an appeal to our basic human rights. Time is now against us. This is more than urgent.

The courts can save us, but they alone cannot save us.

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Tim Crosland

Tim Crosland is the director of Plan B, a group consisting of eleven concerned citizens aged 9 to 79, suing the UK government for failing to align the 2050 carbon target to the latest science and the Paris Agreement goal of limiting global warming to 1.5C. Tim graduated from Oxford University in 1992 and from Utrecht