

Observations on Ireland's approach to Climate Law

Dear Editor,

Climate change is a matter of significance for each and every person living on the island of Ireland, to say nothing of the wider world beyond. The science behind the issue runs as follows. A stock of greenhouse gases present in the earth's atmosphere traps a portion of the sun's heat and duly contributes to the warming of the planet. Since the inauguration of the modern industrial revolution human activity has been contributing radically to an increase in this atmospheric stock through the sustained burning of fossil fuels. The scientific community has identified a correlation between this anthropogenic (i.e., human-induced) increase in the stock and an associated increase in global warming. It is this global warming that in turn produces the anthropogenic climate change with which climate law is chiefly concerned.¹

A young but developing web of climate law is beginning to manifest across the international community in an effort to both mitigate and adapt to the effects of this climate challenge. In particular, the United Nations Framework Convention on Climate Change (UNFCCC) came into force in 1994 and has presently been ratified by 195 countries. The UNFCCC establishes in law the duty to redress the dangers posed by climate change, and in doing so places an onus upon developed nations – the most abundant contemporary and historic emitters – to lead the way in an international emissions reduction drive. In 1997 the Kyoto Protocol committed nations listed in Annex I to the UNFCCC to specific greenhouse gas reduction targets for the period 2008–2012. The European Union (EU) received an aggregated target under these arrangements, and within the target bubble Ireland was obligated to cap its greenhouse gas emissions at a maximum 13% increase on 1990 levels. The compliance period expired in 2012 and a second phase is presently in negotiation.

The EU has emerged as a positive supporter of robust emissions reduction. Whilst pushing for progress at the international level it has simultaneously implemented its own internal strategies. By 2020 the EU has legally obligated itself to achieve: a 20% reduction in greenhouse gas emissions from 1990 levels; a 20% increase in renewable energy; a 20% improvement in energy efficiency.² Under this framework energy generation and heavy industry in Ireland have become subject to an EU Emissions Trading Scheme (ETS). Ireland is also required by 2020 to source 16% of its gross final energy consumption from renewables and to reduce non-ETS emissions by 20% from 2005 levels.

Notwithstanding their mandatory adherence to the EU's supranational climate framework, Ireland and the other EU Member States are nonetheless afforded significant room to manoeuvre, and Ireland has successfully brought some semblance of its own national

¹ In the Western legal tradition climate law is roughly understood to fall within the remit of environmental law.

² Directive 2003/87/EC (ETS Directive); Directive 2009/29/EC (ETS Amending Directive); Directive 2009/28/EC (Renewable Energy Directive); Directive 2012/27/EU (Energy Efficiency Directive).

character to domestic climate law.³ Most recently, in February of last year Ireland's outline Climate Action and Low Carbon Development Bill 2013 was published. Hearings on the document were conducted in July 2013. The outline proposes to obligate the Government to establish both a series of plans designed to plot out Ireland's transition away from greenhouse gases and a national roadmap that paves the way toward a low carbon 2050. A stream of progress reports is to be laid before Dáil Eireann, and an Expert Advisory Body on National Climate Change is to be created. If sufficient support is forthcoming the proposals will be developed into Ireland's first major climate statute. This Act would approximate in Irish terms to the United Kingdom's Climate Change Act 2008 (CCA 2008).

The UK's CCA 2008 constitutes that most endangered of legal species, a genuinely impressive national climate statute.⁴ The Act represented the first major example in the world of one country placing upon itself robust long term legally binding greenhouse gas emissions reduction targets, and its provisions presently commit the UK to reductions of: 80% from 1990 levels by 2050; 34% from 1990 levels by 2020.⁵ It establishes a pan-national carbon budgeting framework in order to realise these objectives in practice and bolsters the process with an intricate set of reporting arrangements and the establishment of an independent advisory Committee on Climate Change.

A recent in-depth study by Irish and UK environmental policy expert Peter Doran has scrutinised the outline Irish Bill and juxtaposed its framework with the CCA 2008. The research convincingly concludes that in failing to establish long term legally binding reduction targets, and in thus lacking a carbon budgeting / comparable reduction system designed to meet those targets, and in further failing to establish an *independent* climate change committee that can exist at a remove from political wrangling and associated influences, the present Irish legislative agenda is comparatively weak.⁶

What concluding observations might be drawn here? In truth, Ireland seems to be making a reasonable effort to keep pace with its EU obligations, and the outline climate Bill does not significantly undermine those reasonable efforts *per se*. Yet one also wonders what concluding observations John Tyndall (1820-1893) might draw, were he alive today. Remembered as 'one of the outstanding scientific personalities of the Victorian age', Tyndall's experiments profoundly contributed to the modern understanding of global warming: he remains 'deservedly credited' by history 'with establishing the experimental

³ Yvonne Scannell, 'Climate Change Law in Ireland – Part 1' (2011) 18 Irish Planning and Environmental Law Journal 1, 4-10; Yvonne Scannell 'Climate Change Law in Ireland – Part 2' (2011) 18 Irish Planning and Environmental Law Journal 2, 56-66.

⁴ Harriet Townsend, 'The Climate Change Act 2008: Something to be Proud of after all?' (2009) 7 Journal of Planning and Environment Law, 842-848; Thomas L Muinzer, 'The Climate Change Act 2008: A "Huge Step in the Fight against Climate Change" or "Legislation at its Worst"?' (Queen's University Belfast (Dissertation): Belfast, 2011).

⁵ Climate Change Act 2008, s 1(1), s 5(1)(a).

⁶ Peter Doran, 'The Climate Action and Low Carbon Development Bill (Draft heads) – Part One' (2013) (*forthcoming*); Peter Doran, 'The Climate Action and Low Carbon Development Bill (Draft heads) – Part Two' (2013) (*forthcoming*).

basis for [the] “greenhouse effect””,⁷ and the UK’s distinguished *Tyndall Centre for Climate Change Research* is today named in his honour. Born and raised in County Carlow, perhaps ‘calling to the mind’s eye’ the memory of this genuinely remarkable Irishman might embolden the vision of Ireland’s legislators.⁸ No longer content with mere reasonable efforts that falteringly endeavour to toe a common-denominator EU baseline, perhaps they might craft climate law that excels those standards and thereby helps to set another remarkable Irish example to the world.

Is mise le meas

Thomas L Muinzer

⁷ Mike Hulme, *Why we Disagree about Climate Change* (Cambridge UP: Cambridge, 2009), 45.

⁸ ‘On the grey rock of Cashel the mind’s eye / Has called up the cold spirits’, WB Yeats.