21st Annual Conference (2025) of the Italian Society of Law and Economics
University of Catania
December 11-13, 2025

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The (ever-)evolving meaning of sustainability: climate litigation as a cost allocator tool

Climate change constitutes the quintessential global externality. Its causes are transboundary, its effects transnational, and yet the regulatory responses developed so far remain predominantly regionalized and fragmented. With the notable exception of the Paris Agreement, which stands as a coordinated global endeavour, climate governance remains largely uneven.

Even this multilateral effort has shown its fragility. For example, the United States illustrates the oscillating nature of climate governance in particularly striking ways. At the federal level, disengagement has been explicit. The decision to exit the Paris Agreement was emblematic of a broader retrenchment, which has been accompanied by anti-ESG bills aimed at curtailing the scope of sustainability obligations. In 2024 the Securities and Exchange Commission adopted climate-related disclosure rules to address information asymmetries in capital markets but soon suspended their implementation and withdrew their defence in court, declaring it lacked regulatory authority. This reversal epitomizes the unstable trajectory of federal climate regulation, which generates uncertainty and raises transaction costs for firms and investors. By contrast, California has pursued a proactive strategy through SB 253 and SB 261, imposing disclosure obligations on large companies concerning greenhouse gas emissions and climate-related financial risks. From a law and economics perspective, these measures exemplify attempts to internalize transition costs and correct market failures. However, the coexistence of state-level innovation and federal retrenchment illustrates the fragmented nature of U.S. climate governance, where efficiency gains are offset by institutional incoherence.

The European Union provides another illustration of ineffective pollical player in this field. Initially, the EU emerged as the global leader in climate governance, designing ambitious frameworks such as the Taxonomy Regulation, and more recently the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive. Initiatives of this kind were welcomed as pioneering examples of integrating climate considerations into market structures. Yet momentum has slowed. The 2025 Omnibus Package Proposal reopened major pieces of legislation, while the Council approved the competition-friendly "Stop-the-clock" Directive, which delays the entry into force of sustainability reporting and due diligence obligations. The Commission's recent withdrawal of the Green Claims Directive reinforces the perception of a regulatory agenda in retreat.

Against this background, climate litigation has emerged as an unexpected counterforce. Recent years have witnessed a proliferation of cases in national courts and specialized tribunals, many of which have leaned, sometimes surprisingly, in favour of claimants invoking obligations inspired by the Paris Agreement. Litigation has become a bottom-up mechanism capable of translating aspirational international commitments into enforceable domestic duties. By holding corporations and governments accountable, courts are reshaping climate governance from below, reallocating the costs of inaction in ways that neither markets nor politics have achieved. From a law and economics perspective, litigation could be understood as a corrective device that addresses externalities and reduces inefficiencies.

Litigation contributes to efficiency in several ways. It reduces information asymmetries by assessing and qualifying climate-related risks. It mitigates free riding by assigning concrete liabilities to specific

actors rather than diffusing costs across the global community. It strengthens deterrence by signalling that inaction triggers significant financial and reputational consequences. Courts clarify liability rules, thereby lowering transaction costs and encouraging more efficient bargaining. Moreover, the very prospect of litigation may create incentives for firms to adopt *ex ante* sustainable practices, thus preventing disputes and fostering innovation. At the same time, litigation is not without risks: outcomes and enforcement vary across jurisdictions, producing fragmented and sometimes inconsistent cost allocations that may discourage investments. Litigation also remains reactive, intervening only after harm has occurred, which underlines the necessity of complementarity with regulatory frameworks.

Another central aspect concerns distributive justice. The costs of climate change fall disproportionately on vulnerable communities and future generations who contribute least to emissions. Courts have begun to recognize this imbalance by establishing causal links between emissions and localized damage.

Climate-related litigation reshapes the governance of climate change by transforming international commitments into enforceable duties. It deters inefficient conducts, lowers transaction costs, and addresses distributive justice concerns. Courts are thus becoming institutional entrepreneurs, reallocating costs and risks in ways that neither markets nor politics have been able to achieve. Such corrective capacity, therefore, may prove decisive in sustaining the objectives of the Paris Agreement in a world where climate governance remains oscillating, and regionally localized.

By cross-referencing quantitative data with judgments from different jurisdictions, the research's objective is to highlight how courts are emerging as *de facto* allocators of transition costs, correcting inefficiencies produced by fragmented political responses. The argument advanced is that litigation, though reactive, functions as a powerful mechanism to enforce climate-friendly behaviours, realign incentives, and internalize costs that would otherwise remain externalized. It simultaneously fosters efficiency by clarifying rules and deterrence and promotes equity by preventing disproportionate burdens from falling on those least responsible.

Our aim is to build on these developments and to analyse the "unexpected virtue" of climate-aligned litigation through a law and economics lens, demonstrating that climate litigation does not only constitute an ancillary phenomenon, but it envisages structural instrument for efficient cost allocation in the green transition. Combining quantitative and qualitative analysis of judgments, the research intends to show how courts operate as implicit regulators when political processes falter, and to underline the conditions under which litigation is able enhance both efficiency and fairness. The contribution thus aims to provide an analytical tool to understand the economic importance of climate litigation and to design more coherent frameworks where law and economics interact to sustain climate governance.