

CLIMATE JUSTICE

Case Studies in Global and Regional Governance Challenges

Randall S. Abate, Editor

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For present and future generations throughout the world who are suffering from or live in fear of their vulnerability to climate change impacts.

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Introduction

Climate change is one of the most complex political, social, and environmental issues of this century at all levels of governance. Climate change regulation rose to prominence in the 1990s with the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol mitigation mandates. It soon became clear, however, that an exclusive focus on greenhouse gas mitigation in climate change regulation would be insufficient to address the challenge of global climate change. Although climate change mitigation must continue to proceed as ambitiously as possible, severe climate change impacts have occurred and will continue to occur with increasing intensity.

Consequently, climate change adaptation has become an increasingly large focus of global efforts to address climate change. Although climate change adaptation measures are underway worldwide in many forms and in many sectors of society, the international community's attention regarding climate change adaptation has been on developing countries' needs. Consensus emerged that additional protection is necessary to ensure the health and safety of the most vulnerable communities of the world such as the urban and rural poor, low-lying island nations, indigenous peoples, and future generations in the face of climate change impacts. Early case studies that gained international attention regarding the need for effective adaptation include the Inuit indigenous community in the Arctic, and South Pacific island nations like Tuvalu and Kiribati, whose cultures and physical environments are on the brink of extermination from climate change impacts.

Climate justice evolved in response to this need for equity in the global response to these and other challenges associated with the disparate burdens of these impacts. Climate justice can be defined generally as addressing the disproportionate burden of climate change impacts on poor and marginalized communities and as seeking to promote more equitable allocation of the burdens of these impacts at the local, national, and global levels through proactive regulatory initiatives and reactive judicial remedies that draw on international human rights and domestic environmental justice theories. Efforts to define climate justice as a field of inquiry can be elusive and underinclusive, however, because the concept is so vast in scope.

This book provides an overview of the landscape of climate justice from a variety of legal and geographic perspectives in a case study format. It analyzes climate justice from an international law perspective and from the perspectives of legal responses to promote climate justice in several regions of the world, including Pacific island nations, South Asia, North America, and Africa and the Middle East. It addresses proposed solutions to a range of regulatory obstacles under international law, U.S. law, and foreign domestic law in seeking to promote climate justice on a global scale.

The book underscores how climate justice involves multiple legal parameters and regulatory strategies. First, there are procedural and substantive dimensions to promoting climate justice. Procedural dimensions involve efforts to enhance public participation, consultation with affected communities, and access to justice on these issues. Chapter 8 addresses procedural dimensions of climate justice for affected communities in the Gulf of Mexico in the wake of the *Deepwater Horizon* oil spill, whereas Chapter 9 addresses procedural-based climate justice protections for indigenous peoples in Alberta's oils sands region. Substantive dimensions of climate justice involve efforts to assert human rights-based protections as a response to climate change impacts. Chapters 1, 6, and 10 address various dimensions of the potential role of substantive human rights-based protections.

Second, climate justice involves both mitigation and adaptation dimensions. Climate justice can be achieved in part through mitigation policies and efforts at the international level. Examples include international climate regulation negotiations pursuant to the common but differentiated responsibility paradigm addressed in Chapter 2, exploring potential climate geoengineering strategies discussed in Chapter 6, and approving an amendment to the Montreal Protocol stratospheric ozone depletion regime to address hydrofluorocarbons as a potent greenhouse gas, as discussed in Chapter 12. To the extent that climate mitigation efforts are successful, climate justice for vulnerable communities is achieved to some degree. But the focus of climate justice is primarily in the adaptation domain. Legal responses such as the loss and damage mechanism in the Paris Agreement and climate justice litigation strategies focus on helping vulnerable communities adapt to the devastating climate impacts that they are experiencing. Adaptation measures range from financial and technological assistance from developed countries to developing countries, as addressed in Chapter 3, to preservation of cultural heritage and potential relocation of displaced communities and nations, as discussed in Chapters 11–13.

Third, climate justice also explores the role of climate change impacts as a “threat multiplier,” which refers to how climate change impacts can exacerbate an existing context of social and environmental vulnerability. Chapters 14 and 15 address this concept in Kenya and the Middle East. Chapter 14 discusses how climate change impacts such as drought act as a threat multiplier to an already compromised system of agricultural productivity. Chapter 15 discusses how climate change impacts exacerbated an already volatile context for conflict in Syria and South Sudan.

Fourth, the quest for climate justice proceeds in proactive and reactive forms. Both types of responses are necessary. Proactive regulation of climate change adaptation and mitigation have occurred at the international, regional, national, subnational, and local levels of governance. Though well-intentioned, these efforts are incapable of offering complete or even minimally effective responses to promote climate justice. Therefore, much of the focus of recent climate justice has been in response to a dissatisfaction with the adequacy of proactive responses or, in some instances, the failure to implement any form of proactive response. The book contains a unit on climate justice litigation to explore the range of reactive litigation strategies that have been employed, which includes the most famous of these efforts to date—the *Urgenda* case in the Netherlands (Chapter 21). Other climate justice litigation theories explored in the book include atmospheric justice litigation in the United States and abroad (Chapter 20), fossil fuel divestment litigation (Chapter 5), the World Heritage Convention (Chapter 22), and international and regional human rights protections, and domestic law protections, for indigenous peoples (Chapters 10, 23, and 24). These creative and unique litigation strategies share a common theme at their foundation in relying on the principle of intergenerational equity as the basis for their relief.

Within academic circles, climate change law has grown rapidly in the past three decades as a specialty area within environmental law and international law. Dozens of law schools in the United States and abroad offer courses and have developed specialty programs relating to climate change regulation. Climate justice has emerged as a subspecialty in this field and is drawing increased attention. In the international diplomacy context, the prelude to the much-anticipated 21st Conference of the Parties to the UNFCCC climate change negotiations in Paris in November 2015, and the unresolved human rights issues in its wake, have propelled climate justice to the fore front as a focus to help define future efforts to ensure a sustainable planet for future generations through effective climate change regulation.

