

Book Review: Adjudicating Climate Change

Scott M. Richey

Karla O. Torres

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>

 Part of the [Environmental Law Commons](#)

Recommended Citation

Richey, Scott M. and Karla O. Torres "Book Review: Adjudicating Climate Change Edited by William C.G. Burns and Hari M. Osofsky." *Sustainable Development Law & Policy*, Fall 2009, 77-78.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

BOOK REVIEW

ADJUDICATING CLIMATE CHANGE

Edited by William C.G. Burns and Hari M. Osofsky

*Reviewed by Scott M. Richey and Karla O. Torres**

The U.S. Federal Government has been slow in accepting and adapting to empirical findings of human affected climate change. Some, therefore, are turning to the judiciary to affect change. *Adjudicating Climate Change*¹ is a collection of self-contained essays discussing a range of law suits brought against those who directly or indirectly produce greenhouse gases. The book brings together relevant and topical case studies of recent litigation, many of which are also available online at the Social Science Research Network.²

The book comprises three sections: subnational, national, and supranational litigation. The subnational section includes case studies from the United States, Australia, and New Zealand. Stephanie Stern posits in “State Action as Political Voice in Climate Change Policy: A Case Study of the Minnesota Environmental Cost Valuation Regulation” that litigation, even under substantially symbolic state statutes, opens discourse, encourages further legislation, and pressures private actors to take voluntary regulation. She focuses on a Minnesota statute requiring that public utilities report their environmental impact to a state commission. These reports allow the state to pursue utilities with the lowest societal cost. Although no utility provider has ever been turned down for potentially having too great an environmental impact, Stern points out that no utility company in Minnesota has applied to construct a high-emissions coal-fired power plant in the ten years since enactment of the law.

The national section presents case studies based on federal litigation. In “Tort-based Climate Litigation,” David A. Grossman proposes viable tort theories for climate litigation. The author describes currently pending tort actions for public nuisance, comparing them to pollution and handgun cases. He then suggests that a products liability action might also be viable based on claims for failure to warn and design defect. An action

might be brought against a manufacturer for failing to warn consumers of the dangers of climate change resulting from use of its products. Alternatively, a manufacturer might be found liable for a design defect if an alternative design with reduced or no emissions is possible.

Federal district courts, however, have dismissed public nuisance actions as within the purview of legislators, not judges, and the actions are currently pending on federal circuit court dockets. Grossman contends the Supreme Court has affirmed

justiciability in cases where a producer of noxious pollution in one state was successfully sued by those harmed by the nuisance in another state and this is sufficiently analogous to producers of greenhouse gases. Further, he asserts that the pending actions do not comprise political questions, but rather are ordinary actions in the context of a politically charged problem. While standing, preemption, and justiciability are impediments to a plaintiff’s claims, Grossman seems optimistic in view of

Massachusetts v. EPA,³ in which several states successfully sued the Environmental Protection Agency for its failure to regulate greenhouse gases.

The book’s final section presents supranational case studies highlighting how climate change can be addressed in international forums. “The Inuit Petition as a Bridge? Beyond Dialects of Climate Change and Indigenous Peoples’ Rights,” an essay by co-editor Hari Osofsky, discusses creative lawyering by Inuit in the United States and Canada who filed a petition with the Inter-American Commission on Human Rights in 2005. They asserted that the United States contributed a substantial portion of the world’s greenhouse gases but was not taking adequate

*environmental change
can be affected by
governmental and
nongovernmental actors
through the judiciary*

* Scott M. Richey is a J.D. Candidate, May 2012, and Karla O. Torres is a J.D./M.A. Candidate, May 2011, at American University Washington College of Law.

policy steps to reduce them, and that the resulting global climate change phenomenon had significant impacts on the Inuit. The petition further claimed that these impacts violated the Inuit's rights protected under the Inter-American human rights system, including their rights to life, physical integrity, and security. Osofsky suggests that, notwithstanding the petition's initial rejection, it generated publicity that may have placed pressure on states to change their behavior or at least engage in a dialogue with affected indigenous communities. More importantly, petitions like these reinforce the idea that international human rights tribunals are appropriate forums for addressing problems that cut across several legal issues. Echoing one of the book's goals,

this essay emphasizes how the Inuit petition can serve as a “port of entry” for making progress on climate change and environmental rights issues.

Adjudicating Climate Change presents an interesting survey of climate change litigation at local, national, and international levels. The book optimistically points out how political and environmental change can be affected by governmental and non-governmental actors through the judiciary. Further, the essays describe how such litigation works to create dialogue with and place pressure on slow moving lawmakers and large producers of greenhouse gases.



Endnotes: Book Review

¹ ADJUDICATING CLIMATE CHANGE (William C.G. Burns & Hari M. Osofsky eds., 2009).

² See Social Science Research Network, <http://www.ssrn.com> (searching for the author of a chapter from the main webpage will lead to chapters 1-4, 6, 8, 11, 12, 14, and 16) (last visited Oct. 27, 2009).

³ 549 U.S. 497 (2007).
