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***Climate Change Justice*, by Posner Eric A. & Weisbach David Princeton University Press, 2010, 240 pp, \$27.95 hb, ISBN 9780691137759**
***Human Rights and Climate Change*, edited by Humphreys Stephen Cambridge University Press, 2010, 368 pp, £62 hb, ISBN 9780521762762**

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to date outlines the difficulties of establishing climate change liability (political questions, standing, causation, attribution and retroactivity) and, at the same time, provides key lessons for compensation claims under any other regime.

The identified shortcomings notwithstanding, both books contain valuable and broad analysis of the issue of climate change liability. In particular, they contribute to our knowledge about the organization and prospects for climate change litigation under different legal regimes.

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The two books under review focus on the relationship between climate change and justice. In their book, Posner and Weisbach set out to confute arguments that the international climate regime should reflect principles of corrective and distributive justice. Instead, they view competing claims about justice as largely responsible for the failure of countries to agree on effective climate action and regard the stalemate in the international negotiations as a result of disparity between developed and developing country obligations.

To substantiate their claims, Posner and Weisbach offer a sophisticated analysis of issues relating to *per capita* emissions and discounting. The gist of their argument is that the climate regime is hardly a suitable forum for tackling questions concerning intragenerational and intergenerational equity. They consequently suggest that these be addressed through other devices, such as development aid. On corrective justice, the authors maintain that a climate treaty cannot be an instrument to settle scores and address questions of liability.

The alternative proposed by Posner and Weisbach is an ‘international paretianism’ paradigm, through which all states would be better off as a result of agreement. The authors define an ‘optimal climate treaty’ as one where the marginal cost of reducing emissions equals the marginal benefits (p. 55). They also insist that to resolve the climate crisis, large-scale financial transfers to the poor cannot form a part of the international climate treaty, and that ‘no principle of justice requires that these problems be addressed simultaneously or multilaterally’ (p. 197).

The Posner and Weisbach book has proved to be controversial, attracting criticism from several fronts. Some have questioned its 'conventional thinking' about economics;¹³ others have argued that rejecting the ethical arguments of developing countries holds the potential for derailing the negotiations, also remarking that the idea of an optimal treaty is in itself a utopia.¹⁴ It is difficult to disagree with such criticism. *Climate Change Justice* leaves the reader questioning the added value of the authors' analysis, which seems to seek to justify the status quo and provides a rather gloomy outlook for the future of international climate cooperation.

Confronted with a tidal wave of criticism, Posner and Weisbach have subsequently sought to clarify that paretianism is not an ethical principle, but a 'feasibility constraint' intended to function as 'a device to discipline our thinking' about possible solutions to climate change.¹⁵ In their view, an international climate regime needs to be particularly sensitive to feasibility, leaving out questions of wealth redistribution.

The book edited by Humphreys takes an almost diametrically opposed view of the issue. It includes excellent and thought-provoking analysis by 12 distinguished experts on the relationship between human rights and climate change. The link between climate change and questions of justice and distribution is emphasized in several pieces. The *fil rouge* is that climate change will undermine the realization of a broad range of internationally protected human rights. Tackling climate change will require revisiting development models and making far-reaching decisions on access and use of resources. Despite developments since its publication in 2010, the volume provides a valid overview of the human rights questions posed by climate change, as well as tools to address these challenges in an integrated fashion.¹⁶

In his introductory piece, Humphreys underscores that, while it is widely accepted that developed countries have greater obligations than developing ones with respect to climate change, the level of such obligations has been the subject of much contention. He suggests that human rights standards may offer a way to manage this dilemma by providing 'benchmarks of acceptable outcomes based on widely agreed principles and legal structure' (p. 23). Failure to integrate a human rights perspective could result in a missed opportunity to promote and fulfil extant human rights.

The subsequent chapters explore these questions in greater detail, skilfully outlining possible human rights responses to climate change. While some contributors focus on risks and global inequities, others reflect on climate change and justice

¹³ C. Tickell, 'Climate Change Justice', *The Financial Times*, 12 Apr. 2010, available at: <http://www.ft.com/cms/s/2/5dc7acb8-4360-11df-833f-00144feab49a.html>.

¹⁴ D.A. Farber, 'Climate Justice', 10 July 2011, at p. 6, available at: <http://ssrn.com/abstract=1883186>; C. Heyward, 'Climate Change Justice' (2012) 6 *Carbon and Climate Law Review*, pp. 89–94, at 94.

¹⁵ E.A. Posner & D.A. Weisbach, 'International Paretianism: A Defense', University of Chicago Institute for Law & Economics Olin Research Paper No. 606, 12 July 2012, available at: <http://ssrn.com/abstract=2120650>.

¹⁶ A burgeoning literature has subsequently emerged on the topic: see S. McInerney-Lankford, M. Darrow & L. Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions* (World Bank, 2011); S. Humphreys, 'Climate Change and International Human Rights Law', in R. Rayfuse & S. Scott (eds.), *International Law in the Era of Climate Change* (Edward Elgar, 2012); and the literature quoted at n. 13 above. Institutional developments have also taken place, including at the UN Human Rights Council: see www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCClimateChangeIndex.aspx.

more broadly, providing a particularly interesting counter-view to the argument by Posner and Weisbach.

Humphreys' own contribution reviews in detail corrective, substantive, procedural and formal justice claims that have been raised in the context of climate change. He emphasizes that while none of these claims may be translated unproblematically into human rights language, human rights occupy much of the space of justice discourse and therefore represent an essential term of reference to address justice in the context of climate change (p. 45).

In his piece, Simon Caney suggests that an approach to climate change that takes human rights into consideration entails several advantages in comparison to approaches that prioritize cost–benefit analyses. He argues that such an approach helps to identify what climate impacts should be given priority, what kind of action should be taken, and who should bear the costs of action.

The respective chapters by Dinah Shelton and Sam Adelman regard unfettered sovereignty as the main obstacle to effectively addressing climate change. According to Adelman, climate change provides an opportunity for more than just global governance by conveying 'intragenerational equity through an equitable redistribution of resources from countries primarily responsible for the problem to those with inadequate resources' (p. 178).

Other contributions in the volume emphasize that if the climate regime is to function effectively, key issues, such as equity and accountability, need to be defined. Human rights may offer the means for doing so and the editor concludes that a dialogue between the two highly specialized branches of the law may forge 'an increased capacity for justice in an interdependent world' (p. 317).

Human Rights and Climate Change has been well received and widely quoted, becoming essential reading for those researching the field. The views expressed by the contributors have been commended for pushing the boundaries of legal thinking, and as a useful conceptualization of the human rights implications of climate change.¹⁷

Thus, these two engaging volumes offer perspectives on the climate justice debate from the opposing ends of the spectrum. Posner and Weisbach put forward a disenchanting view of the international legal system, arguing that states' self-interest provides the main (if not the only) reasonable foundation for an international regime to effectively tackle climate change. In contrast, the volume edited by Humphreys emphasizes the need to consider the human rights implications of climate change, arguing that this may also assist in finding an equitable solution to the climate crisis.

Both arguments hold some truth. As Posner and Weisbach suggest, grand statements on principles of justice are unlikely to deliver a global agreement on climate change. The volume edited by Humphreys, however, provides resounding evidence that a global deal on climate change remains ephemeral if it does not provide a solution to justice questions. Eventually, Posner and Weisbach also have conceded

¹⁷ T. Koivurova, 'Review: Human Rights and Climate Change' (2012) 106(2) *The American Journal of International Law*, pp. 437–43.

some space to ethical concerns.¹⁸ Phrasing these considerations in terms of justice is a mere matter of semantics. Still, the two volumes diverge dramatically over what could and should be done to tackle climate change. Given the lack of meaningful progress in the international climate negotiations, the creative and visionary thinking in these two volumes offers welcome food for thought for those entrusted with finding a solution to the climate crisis.

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¹⁸ Posner & Weisbach, n. 15 above, at p. 10.