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Climate Change Liability: Transnational Law and Practice, edited by Richard Lord, Silke Goldberg, Lavanya Rajamani & Jutta Brunnée
Cambridge University Press, 2011, 690 pp, £31.99 pb, £70 hb, ISBN 9781107673663 pb, 9781107017603 hb

Climate Change Liability, edited by Michael Faure & Marjan Peeters
Edward Elgar, 2011, 304 pp, £75 hb, ISBN 9781849802864

The two books discussed in this review provide a broad analysis of climate change liability. They address the matter under several different legal regimes, including public and private law and other laws. They constitute an important addition to an area of study that is still relatively novel.

Both volumes suffer from disadvantages that are typical of a collection of articles by different authors: there are differences in style, length, approach and degree of consideration given to the topic – always difficult challenges for the editors. The book edited by Lord et al. has sought to minimize these challenges by imposing a standardized structure on each contribution. The division of chapters – into (a) introduction, (b) public law, (c) private law, (d) other law, and (e) practicalities – is very helpful. It does not, however, fully eliminate the disadvantages mentioned above, since the structure cannot be applied rigidly to all topics considered.

The diversity of contributions and approaches makes it all the more fundamental that an edited volume is supported by introductory and concluding remarks in which the editors amalgamate the different contributions and help the reader to digest the key message.

The concluding remarks by Faure and Peeters in their edited work are therefore very valuable: they provide a useful summary of the possible solutions as well as the potential hurdles that an individual suffering from climate change damage may face. This makes the book a useful step towards successful claims in the area of climate change liability in the future. The book edited by Lord et al. does not include conclusions; it is difficult, furthermore, to see the added value of the two introductory chapters by the editors. More effort could have been devoted to this aspect of the book. The editors' contribution entitled 'Overview of legal issues relevant to climate change' (Chapter 3) introduces a list of concluding remarks that will seem relatively obvious to readers familiar with the topic. In particular, questions concerning liability and developing countries could have been explored more thoroughly. The editors' 'Policy considerations' contribution (Chapter 4) contains several inaccuracies and it is difficult to see the real need for this chapter. For the international climate change negotiations, it would have been much more helpful – and innovative – to identify how and in which forms liability could be better addressed under the international climate regime. Preferably, such analysis could have been included at the end of the volume.

The book edited by Faure and Peeters is divided into five parts, including an introduction and conclusions. Part II concentrates on the role of the precautionary

principle in climate change cases. Parts III and IV form the core of the book. Part III focuses on the European perspective, covering topics from the liability of Member States to the responsibility of polluters under European Union (EU) law and the Council of Europe's European Court of Human Rights (ECtHR). Part IV provides a useful review of national cases on civil liability in the United Kingdom (UK), the United States (US) and the Netherlands.

The book edited by Lord et al. is structured on the basis of geographical distribution: Asia and the Pacific, Africa and the Middle East, Europe and Eurasia, North America, and Central and South America. There is no explanation for this choice; nor is it clear why countries with so many differences have been mixed together: developed and developing countries, countries with economies in transition, and so on. The perspective of small island developing states and least developing countries is missing from both volumes.

The chapters on India, Germany, England and Poland in the book edited by Lord et al. merit a special mention. Chapter 7, by Lavanya Rajamani and Shibani Gosh, highlights the several hooks in Indian law for climate related litigation and contains a very useful discussion of case law. By the same token, the contributions on Germany (Chapter 15) and England (Chapter 17) provide a full picture of the national legal systems and potential legal avenues that could be explored by private parties. On a less positive note, Chapter 14 on EU law focuses on litigation on procedural matters relating to the implementation of Directive 2003/87/EC Establishing a Scheme for Greenhouse Gas Emission Allowance Trading within the Community.¹¹ It is therefore less relevant to the issue of climate change liability.

In the book edited by Faure and Peeters, the chapters addressing the EU perspective discuss the responsibility of Member States with respect to the main obligations under the Kyoto Protocol¹² under both EU and international law. In particular, the limits of the EU Emissions Trading Scheme are highlighted in terms of polluters' responsibility for damage caused within the framework of such an instrument. Chapter 6 by Armelle Gouritin, on the potential liability of European states under human rights law, showcases the case law and dynamism of the ECtHR in this area, indicating a potential route to be explored by private citizens facing a state's climate change liability.

The chapters on national perspectives highlight interesting avenues to address questions of standing and causation. This part of the book also confirms the lack of exhaustive jurisprudence on climate change liability and draws attention to the difficulty of making a successful compensation claim for climate change under any legal regime in the near future. Also interesting is the guide in Chapter 7 by Giedre Kaminskaite-Salters on the practical steps in a climate change case before a British court, which lays down building blocks for a hypothetical climate-based tort case. The overview in Chapter 8 by Elena Kosolapova of climate change cases in the US

¹¹ [2003] OJ L 275/32.

¹² Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: http://unfccc.int/kyoto_protocol/items/2830.php.

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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Climate Change Justice, by Eric A. Posner & David Weisbach
Princeton University Press, 2010, 240 pp, \$27.95 hb, ISBN 9780691137759

Human Rights and Climate Change, edited by Stephen Humphreys
Cambridge University Press, 2010, 368 pp, £62 hb, ISBN 9780521762762

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).