

CILG Climate Podcast #11 with Randall Abate

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Transcript

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Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen. Hi, we are Beatriz Martinez, Linnea Nordlander and Alessandro Monti. And we are your hosts at the climate show.

00:00:29 Beatriz Martinez

In previous episodes we have explored climate change litigation and many of the experts we interview mentioned the issue of standing as a major obstacle in climate litigation. This can be particularly problematic in some jurisdictions to talk about how standing has been an obstacle, particularly in the US context. We talked to Professor Randall Abate when he visited us in Copenhagen.

00:00:52 Alessandro Monti

Yeah, in this context it's important to identify ways in which litigants can overcome the standing barriers in different countries. In today's talk, we discussed a set of best practices that Randall has identified in his research.

00:01:07 Linnea Nordlander

Beyond this, we also continued our earlier focus on climate change. Vulnerability by discussing how the law can evolve in order to better protect those vulnerable to climate change and in particular in his book climate change and the voiceless, he considers prospects of a stewardship focused and rights based system derived from the concept of sustainable development.

00:01:25 Beatriz Martinez

So a fully packed program for today. Enjoy the show.

We are here today with Randall Abate, who is the assistant dean for environmental law studies at George Washington University Law School. Prior to this, he was professor in the Department of Political Science and Sociology and Monmouth University. Where he served as the director of the Institute for Global Understanding, he is an expert on environmental climate and animal law. Randall, welcome to our podcast. It is a pleasure to have you with us in Copenhagen. Thank you so much for meeting with us. Bienvenido.

00:02:05 Randall Abate

Thank you so much for having me Bea. It's good to be here.

00:02:08 Beatriz Martinez

Within the past two decades, climate litigation has recurred some victories but also suffered defeats around the world, and standing has been a major obstacle in climate litigation in some jurisdictions, but. Only in others we are talking with Professor Randall Abate about the standing in front of the courts for climate change cases. Standing is a barrier or obstacle for access to climate litigation. What's the rationale for this? Is it fulfilling a role?

00:02:32 Randall Abate

Well, in the US, standing does serve an important gatekeeping mechanism for the courts, so it ensures that only meritorious only meritorious plaintiffs are able to bring their claims to the courts attention. So essentially, it is a way to ensure that frivolous claims do not reach the courts, and also it reinforces the respect for the roles of the other two branches of government so that the court does not engage in a law making function by addressing claims that it's not equipped to to redress in its capacity.

00:03:11 Beatriz Martinez

What is the situation like in the US? What are the criteria for standing in the US and how have those affected climate litigation?

00:03:19 Randall Abate

So the US Constitution provides that courts address only genuine cases or controversies, and they the courts have developed a test to ensure that standing is met within this constitutional barrier. So essentially 3 parts of plaintiff must be injured, the injury must be caused by the defendant and there the court must be able to redress the harm to the plaintiff, and so in the climate litigation context, all three of these elements have been difficult to meet because of the global nature of climate change. So in many respects it's difficult to assert an injury. That is concrete and particularized to a plaintiff in the context of a global climate change. Impact also the connection between the defendants action or inaction and the plaintiffs injury is often difficult to establish when we're talking about a global phenomenon like climate change and most significantly redress ability has been a huge concern in the climate litigation because the courts are in a place where they feel that they are not in a place to redress the injury of the plaintiffs. Because in the US in particular, the legislature and the executive branch have not acted so the court feels that this is a claim that it cannot redress even if the plaintiff is injured and the injury is caused by the defendant.

00:04:44 Beatriz Martinez

Is this the same in other jurisdictions?

00:04:47 Randall Abate

It's very different, so standing is a jurisdiction specific phenomenon and in many other countries, universal standing is the norm, which means these claims can come into the court regardless of the nature of their concerns. They're not subject to this kind of strict barrier that we see in the US and jurisdictions like the US. And then there are middle grounds as well. And in countries like France and Australia where they're there is a lower standing threshold for public interest claims or environmental statutory claims, and that's a that's a less restrictive stand standing barrier than what we see in the US.

00:05:22 Beatriz Martinez

In your recent work on this matter, you've been looking into how the standing requirements can become more flexible for climate cases. Could you elaborate on why, when and how these standing requirements should be waived? Are there a set of best practices in this connection?

00:05:38 Randall Abate

Well, certainly the the Why would relate to the climate emergency. Why standing should be a lower barrier in these cases is that there's certainly no guarantee that the plaintiffs are going to be successful if they get into court, so lowering the barrier gives them their opportunity to have their day in court and be able to establish whether they deserve. The successful in their claim. So the nature of the claim and emergency is that in many instances the courts are the last resort for these plaintiffs that the legislature has not acted at all, or has acted insufficiently, and plaintiffs go to the courts to get some kind of relief that they're not able to get elsewhere, and. In the face of this urgent emergency that we face with climate change, what the the IPCC reports are telling us the courts are a way to ensure that the legislature and the executive branches are doing their roles as they ought to. So certainly a lower standing barrier makes sense for those claims to be able to proceed and not be dismissed on standing grounds. As far as how and and and in what under what circumstances, those barriers would be lowered certainly, and for climate justice plaintiffs it would make the most sense. Those that are disproportionately burdened by climate change impacts that have the most to lose that have the least so youth plaintiffs and indigenous communities are are certainly in that in that category. And I think also it's widely recognized that there there are exceptions for certain categories of cases. The way courts hear cases and some can proceed on a more expedited basis than others, and so a climate litigation exception of some kind would certainly be consistent with other practice. In terms of how exceptions are are used and how certain procedural requirements can be waived under certain circumstances, so the Philippines is an example of how standing can be waived by the courts in its in its discretion.

00:07:41 Beatriz Martinez

That's true, but I fear that many voices about making more flexible the requirements for standing in climate litigation is the floodgate problem. What is your opinion on that?

00:07:49 Randall Abate

Well, I think there's a couple of responses there. The first is that many jurisdictions have built in safeguards to avoid frivolous cases, making it into the court system, so that's certainly a check. In the process that we would not see a flood of cases getting into the courts because of that barrier. And then there's also themselves regulating mechanism that the plaintiffs will be subject to, which is that climate litigation is time-consuming. It's costly, it's complex, and there's really a limited number of plaintiffs or organizations that would represent plaintiffs interest that would be able to bring and sustain a claim like a climate litigation. Stays in the courts for several years, so I I really don't anticipate a floodgates problem here.

00:08:35 Beatriz Martinez

In your book climate change and the voiceless, you delve into the legal situation on how to protect those without a voice. In particular, future generations wildlife and natural resources. So bringing back this to the issue of standing, where are the possibilities for bringing claims on behalf of these groups?

00:08:52 Randall Abate

Well, I think this connects to how universal standing is a best practice, but it's not a perfect practice, so so one limitation that we see in jurisdictions that that apply universal standing that essentially allow all of these claims to proceed is that it's limited to. To current humans, humans that now live that would be represented in the universal standing constructs so universal standing could be expanded to enable representation of humans that are yet to be born of non humans like wildlife and natural resources and the law is already equipped in other contexts to recognize and we've seen recognition of legal personhood for animals for natural resources, for for unborn humans. And so we need to kind of connect that that growing revolution, if you will, in other contexts, to the concept of standing so that we can. To have a broader range of representation for climate litigation, plaintiffs that builds on what we're already seeing recognized in other legal contexts.

00:09:57 Beatriz Martinez

Thank you, Randall. One final question. Is there anything that we have not touched on today that you would like to draw attention to?

00:10:05 Randall Abate

Well, I think that the standing issue that we've discussed today is just one small piece of a a radical change in governance that needs to happen to address the global climate crisis. So I think the addressing root causes of the problem seriously is is really where attention needs to be focused. So we certainly want claims to proceed in the courts and not be dismissed on standing grounds. But we also want to make sure that the legislature is doing the best it can to address climate change on a broader scale and in the US, We're seeing initiatives like the. The Green New Deal that that are taking a look at root causes of the problem and not just trying to have very reactive response is essentially recognizing that capitalism is the root of a lot of these. Problems that have caused the the climate change crisis and that we need to really get beneath the surface and and address the root causes to be effective.

00:10:58 Beatriz Martinez

Thank you very much for today's interview. It has been an immense pleasure to have you here with us.

We are looking forward to continue our collaboration. Our conversation on this and seeing you back in Denmark or in the US soon I feel like we should not let you go without saying something in Spanish because I know you speak Spanish so we just grab this random. To our audience, we hope you enjoy this episode of the Climate Show stay tuned for more. Thank you for listening to this episode of the Climate Show. If you're interested in learning more about the work of Professor Bate, including his book climate change, and the Voiceless, check out the show notes.

00:11:43 Beatriz Martinez

Stay tuned for the next episode.