

CLIMATE CHANGE AND THE VOICELESS: PROTECTING FUTURE GENERATIONS, WILDLIFE AND NATURAL RESOURCES by Randall S. Abate

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Providing adequate legal and judicial protection to the ‘voiceless’ is probably the major legal challenge of the 21st century. But who are these entities that the author gathers under the ‘voiceless’ label? In this book, Randall S. Abate focuses on three main subjects whose voice goes too often unheard: future generations, wildlife and the natural heritage. The book provides a broad overview of what has already been done, and what can still be done, to protect these (potential) legal subjects under national and international law.

Abate’s book is divided into six chapters. The first chapter sets the stage and explains why we need to also consider ‘inanimate’ entities in the Anthropocene era. Here, Abate looks at the bigger picture and the need for systemic changes to facilitate a transition to an ecocentric paradigm. In a subtle way, he criticizes the ‘flawed premise’ of the well-established climate change treaty regime, rooted in the United Nations Framework Convention on Climate Change. According to the author, the climate regime is based on the assumption that ‘resources are to be harnessed and consumed for human use. Therefore, the only “management” involved in this approach to natural resources is in regulating how much will be consumed and how soon. The discussion is hardly ever about a “no consumption” or “no development” option” (at 9). Against this background, Abate calls for a paradigm shift, since this ‘pro-development, pro-consumption approach’ to environmental management is ‘fundamentally unsustainable’ (at 9). Indeed, Abate argues that ‘despite our blind assumptions about their inexhaustible supply, the planet’s resources are finite and ecosystems have collapsed and continue to collapse under this exploitative pressure’ (at 9). In defiance of such criticism, the author offers an optimistic reading of current changes occurring in international law. For Abate the paradigm shift is already happening and there are many concrete examples to prove his point. These include the ‘bold ambition’ of the Green New Deal proposal in the United States, the advancement of the rights of nature movement, or – outside the legal realm – Pope Francis’ encyclical letter *Laudato Si* on ‘care for our common home’ (at 12–14).

After an introductory overview of the theoretical framework in which Abate’s research is embedded, in the second chapter, the author reflects on how climate change litigation has raised awareness on the human rights implications of climate change. From the *Inuit petition* submitted to the Inter-American Commission on Human Rights in 2005,¹ to the Dutch rulings in *Urgenda*,² and the more recent *Carbon Majors* case,³ the author digs into the ‘rights turn’⁴ in climate litigation to contextualize the rights-based approach he then unpacks in the following chapters.

Indeed, the third, fourth and fifth chapters focus on the legal protection of three categories of ‘voiceless’ subjects and provide a number of case studies that show what has already been achieved in different jurisdictions around the globe. From instruments dealing with intergenerational equity concerns to the legal personality of wildlife and natural entities, Abate offers a useful contribution to understand at what stage we are, from both a legislative and a judicial point of view. The role of courts, in particular, is pivotal in the author’s analysis. Abate stresses the relevance of cases like *Juliana v United States* for intergenerational equity,⁵ the Indian *Dolphins* case for wildlife protection,⁶

¹ *Petition to The Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (Inter-American Commission on Human Rights, 7 December 2005).

² *Urgenda Foundation v The Netherlands* [2015] HAZA C/09/00456689 (24 June 2015); aff’d (9 October 2018) aff’d (20 December 2020) (District Court of the Hague, The Hague Court of Appeal and Dutch Supreme Court).

³ *Greenpeace Southeast Asia et al.*, 2015 – ongoing (Commission on Human Rights of the Philippines, 2015).

⁴ J Peel and H Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2018) 7 *Transnational Environmental Law* 37.

⁵ *Juliana v United States*, 217 F.Supp.3d 1224, 1233 (D. Or. 2016).

⁶ T Bancroft-Hinchey, ‘India: Dolphins Declared Non-Human Persons’ (Pravda, 5 August 2013), <https://www.pravdareport.com/science/125310-dolphins_india/>.

and the *Amazon v Chevron/Texaco* case in Ecuador that enabled to successfully prevent environmental damages caused by big corporations.⁷ By underlining the efforts made by the judiciary across the globe, Abate recalls the essential duty that judges are called upon to undertake, namely the protection of citizens' rights. This is more than ever the case in times of climate emergency.

Against this backdrop, the concluding chapter of the book lays down concrete proposals for enhanced stewardship and rights-based protection of the 'voiceless'. It is in this chapter that the main contribution of the author lies. Here, Abate suggests feasible measures that could be implemented in different areas of public law. First, he argues that a more binding character should be given to the principle of sustainable development, which should be included among the principles of customary international law, as suggested by the International Court of Justice's Vice-President Weeramantry in his Separate Opinion in the *Gabčíkovo-Nagymaros* case.⁸ Second, Abate suggests creating new administrative bodies in charge of enforcing the mandate stemming from the obligations that sustainable development entails, such as the Israeli Commission for Future Generations (operating from 2001 to 2006), which was authorized to examine any parliamentary bill and secondary legislation whenever potential harms on future generations were at play. Third, he proposes the establishment of solid procedural mechanisms that would help holding public authorities and private actors accountable for the environmental impacts of polluting and harmful activities. Finally, he advocates for courts – at any level – to provide alternative interpretations of the procedural requirements allowing for access to justice under national law, so as to allow citizens to act as stewards of the 'voiceless'. Once again, such proposals do not merely represent a creative exercise carried out by the author but consist of tangible examples inspired by different administrative and judicial solutions already set forth in a number of jurisdictions. The first proposal, for example, which suggests recognizing the legally binding character of the principle of sustainable development, aligns with Weeramantry's Separate Opinion, and shows that this could be done without any legislator's intervention, as this binding nature would unfold from the recognition of the principle of sustainable development as a rule of customary international law.

The added value of his book is twofold. On the one hand, his research orders and structures the debate. Legal scholars are striving to quantify, label and categorize the increasing climate-related legislation and case law. In this respect, Abate's contribution provides a compass guiding the reader through the 'jungle' of climate cases that have been decided in the last decades. On the other hand, in suggesting ways of filling the gaps in climate change law with regard to the protection of the 'voiceless', the book takes a pragmatic approach by looking into actual legislation and cases. It also argues for concrete proposals that – far from being purely theoretical – have already been implemented in a number of countries. Abate's pragmatism is also confirmed by two interesting interviews he carried out with local practitioners personally involved in some of the main case studies described in the book. These practitioners are Gabriela Eslava (lawyer at Dejusticia and one of the protagonists of the homonymous Colombian climate case) and Dr. Michelle Maloney (Co-Founder and National Convenor of the Australian Earth Laws Alliance involved in the granting of legal rights to the Australian Great Barrier Reef).

Despite the appreciable pragmatism shown by the author and the indisputable added value of his contribution, I have two substantive and one methodological critiques. The first substantive critique is that the author seems to take too many aspects for granted when dealing with the rights-based approach to legal protection for the entities he qualifies as 'voiceless'. I expected Abate to engage with counterarguments questioning, for instance, the adequacy of providing wildlife and natural entities with rights or legal personhood. On this issue, a lively debate on the rights of nature is still ongoing in legal and philosophical scholarship,⁹ but Abate seems unwilling to consider other

⁷ *Chevron/Texaco Case*, Global Alliance for the Rights of Nature <<https://therightsofnature.org/chevron-texaco-case/>>.

⁸ *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* (Judgment) [1997] ICJ Rep 7.

⁹ See, e.g., C D Stone, 'Response to Commentators' (2012) 3 *Journal of Human Rights and the Environment* 100; J Bétaille, 'Rights of Nature: Why it Might Not Save the Entire World' (2019) 16 *Journal for European Environmental and Planning Law* 35.

perspectives on the legal questions that his book touches upon. In other words, the author's pragmatic take on the legal issues affecting the 'voiceless' leaves behind a more theoretical discussion on why a rights-based approach should be preferred. There is no doubt that a transition towards a more sustainable way of inhabiting the Earth is needed, but there is literature questioning whether human (and nature's) rights ought to be the main tools for achieving it. The book fails to critically engage with such literature.

This leads to the second substantive critique, which relates to the (mainly) descriptive nature of the book. Indeed, the core of the analysis is based on a long list of legislations and judgments from different jurisdictions. Although such a list allows the reader to get a comprehensive overview of the complex legislation and case law governing the matter at both international and national levels, this legal material is often mentioned without critical appraisal. This is why I found the final part of the book – which lays down actual proposals for enhanced stewardship and rights-based protection of the 'voiceless' – particularly stimulating, since it is there that the author's own critical judgment is best articulated.

The final critique deals with a methodological aspect, namely the choice to interview only two practitioners involved in specific case studies addressed in the book. More interviews of practitioners directly involved in the cases would have been welcome. At least, a justification of the selection of these two interviewees would have helped the reader better understand the author's choice.

To conclude, *Climate Change and the Voiceless* offers a precious investigation into the relevant legislation and case law concerning legal and judicial protection of those whose voice cannot be heard. Abate's capacity to guide the reader through such complex and dense material is remarkable, and his final proposals provide environmental scholars, activists, lawyers and other practitioners with concrete tools to accelerate the transition towards a society capable of living within the limits of the planet.

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