Dialogue on Global Climate Change Broadens Legal Views

In true Chicago fashion, authors of Climate Change Justice invited their best critics to the Law School.

By Sarah Galer
Reaching an international agreement to address global climate change has been notoriously difficult, despite broad international ambition and years of debate.

One major roadblock has emerged from disputes between rich and poor countries about who should bear the cost and responsibility for cutting carbon dioxide emissions. For example, just before the 2009 Copenhagen climate meetings, a protest of 20,000 people in London called for $150 billion a year in payments from industrialized nations to offset the cost of reducing emissions in poorer countries.

Such demands may have moral appeal, but they are ultimately impractical and unlikely to yield results, argue University of Chicago Law professors Eric Posner and David Weisbach in their book *Climate Change Justice*. If there is to be any hope of meaningful steps on climate change, the authors say, the strategy should appeal to nations’ self-interest rather than moral obligation.

“The problem is that some countries are arguing for a climate treaty that accounts for historical injustices, colonialism, and the unfair global distribution of wealth,” says Posner, Kirkland & Ellis Professor of Law. “But wealthy and rapidly developing countries traditionally do not respond well to these sorts of arguments and are not going to enter into a treaty unless the treaty is in their interest.”

Posner and Weisbach’s fresh perspective on how the international community should address climate change has ignited debate among their peers. Some scholars believe concerns about justice, including the fair treatment of indigenous peoples, are inseparable from the question of how to remedy climate change.

Rather than simply forge ahead with their side of the debate, Posner and Weisbach invited a host of their critics to the Law School earlier this year for a conference on climate change justice. In true Chicago fashion, the conference participants took a deep look at the issue, challenging the authors’ ideas not just from a legal perspective but also from the vantage points of philosophy, political science, international affairs, and the physical sciences.

**Incubating ideas through debate**

“The greatest success for Chicago scholars is to provoke people who disagree to think about the reasons why,” says Omri Ben-Shahar, Frank and Bernice J. Greenberg Professor of Law and Kearney Director of the University of Chicago Institute for Law and Economics. “In the course of people offering contrasting views, we all better understand the topic.”

Ray Pierrehumbert, Louis Block Professor in Geophysical Sciences, and Henry Shue, a professor at Oxford University, reminded the other scholars of the linearity of temperature increase to carbon dioxide emissions. This means that even if the world achieves dramatic reductions in carbon dioxide emissions, the temperature will continue to rise, albeit at a slower rate. However, emissions eventually have to go to zero if we hope to stop the process.

While the aim of Posner and Weisbach’s book was to find the most feasible way to a climate treaty, Pierrehumbert and Shue’s presentations were a reminder that achieving that goal, as difficult as it might be, can only be the beginning. The consequences of carbon dioxide emissions are just too dire to go only partway.

“I had never fully focused on the stark implication that you have got to go to zero,” says Weisbach, Walter J. Blum Professor of Law. “Eventually everyone in the world, rich
and poor, have to stop emitting carbon dioxide or the temperature will continue to increase indefinitely. It is dramatic when you see it that way, which people have not really focused on yet.”

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Several other participants from various disciplines used the conference to voice their disagreement with one of Posner and Weisbach’s central claims. The authors argue that a treaty is only possible if it advances the interests of all the states that sign it, without making any state worse off—something they call “international paretianism.”

Some commentators claimed that Posner and Weisbach’s view of international paretianism is “morally repugnant because it means that wealthy, powerful states do not have to make any sacrifices,” says Posner.

“The feedback we received from our peers at the conference led to us write a response to explain international paretianism more thoroughly, which I think is useful,” Posner says. “Our hope is to influence the academic debate on climate change. The academic debate will then help to inform the political debate.”

Posner and Weisbach’s response, in addition to papers from each of the conference participants, will appear in the winter 2013 issue of Chicago Journal of International Law.

Global initiative, global implications
The conference was part of a major new Law and Economics 2.0 Initiative at the Law School, one goal of
which is to globalization the impact of the field of law and economics, transforming legal systems around the world. Since its founding at the Law School nearly 80 years ago, the application of economics to the study and practice of law has been applied to entire bodies of legal study, from antitrust and tort to contract and corporate law. As part of the new initiative, Law School scholars are drawing on this storied history to expand the study of law and economics to new areas, including immigration law and climate change—both focuses of international Law School conferences this spring and summer.

“Law and economics has been so successful in illuminating issues in American law, but it has been largely ignored as a tool by other countries,” says Ben-Shahar. “This conference managed both to engage the international community with the law and economics perspective and to use that perspective to illuminate issues at the core of international law.”

Weisbach is in the process of writing a follow-up book to Climate Change Justice, on how theories of justice should affect climate change policies, drawing in part from the academic debate ignited by their book. He says the world’s biggest concern in negotiating a climate change treaty should not be justice but technology.

“People ask how poor nations can stop being poor if they cannot use energy, because energy is what creates emissions,” he says. “However, if no one can emit, everyone is going to be poor. The principal focus of the international community must be to find a way to harness ‘clean’ energy sources like solar power, nuclear energy, and wind power well enough to fuel our economies. If we cannot do that, then everyone is going to be poor or the Earth is going to become very, very hot.”

Weisbach says, “The way to solve the problems of technology is not through claims about justice but incentives to create renewable energy sources.”