

Climate Change Adaptation: Law and Public Health

Professor Robert Lee
Co-Director, ESRC Research Centre for
Business Relationships, Accountability,
Sustainability and Society (BRASS)
Cardiff University



Public Health Impacts – Climate Change

- Extreme temperatures
- Vector borne diseases
 - Human health
 - Bio-security
- Declining fish stocks
- Ground level ozones
- Skin cancers
- Cataracts
- Allergies



Public Health Impacts – Water Borne

- Water shortage
- Storm damage
- Flooding
- Disease
 - Sanitation failures
 - Cholera
- Population movements





Food Futures:
Rethinking UK Strategy
A Chatham House Report
Susan Ambler-Edwards, Kate Bailey,
Alexandra Kiff, Tim Lang, Robert Lee,
Terry Marsden, David Simons, Hardin
Tibbs
www.chathamhouse.org.uk
Food Futures:



Food for Wales: Food from Wales



Welsh Food Strategy

“These demand and resource pressures combined with the challenges posed by climate change and uncertainties over global responses to them. As a result, we are likely to be entering a period of significant change, with potential for high supply volatility and pressure to increase food prices. The twin issues of food sustainability or security and the need to develop sustainable food production and consumption systems for the well being of our people will be key concerns for the coming decade.”

The logo for BRAS2 features the letters 'BRAS2' in a dark blue, serif font. The number '2' is stylized, with a green heart shape integrated into its upper curve.

The Centre for Business Relationships
Accountability, Sustainability & Society

Time for Precaution?

- Principle 15 Rio Declaration
 - Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- Mitigation or adaptation?
- Inter or intra generational equity?

BRAS 

The Centre for Business Relationships
Accountability, Sustainability & Society

Concepts of Adaptation

- Adaptation
 - Change in system design to maintain services
- Sensitivity
 - Systemic effects and responses
- Exposure
 - Resources at risk
- Capacity
 - Ability of systems to adjust
- Vulnerability
 - Susceptibility to climate change impacts

Adaptation and Environmental Justice

- Exposure includes public health impacts of climate change
- Impacts dependant on sensitivity
- Vulnerability and health inequalities
- Capacity to adapt requires financial resources
- Measuring adaptive success





BRAS2
The Centre for Business Relationships
Accountability, Sustainability & Society

Climate Change Litigation: Public or Private Law?

- Adaptation is dynamic and complex
- Will involve winners and losers
- Values may be in competition
 - *R (Boggis) v Natural England* [2009] EWCA Civ. 1061
- May be reactive or anticipatory
- If the latter, will involve design of strategic change
- To the extent that it is managed, may be in the public rather than the private domain

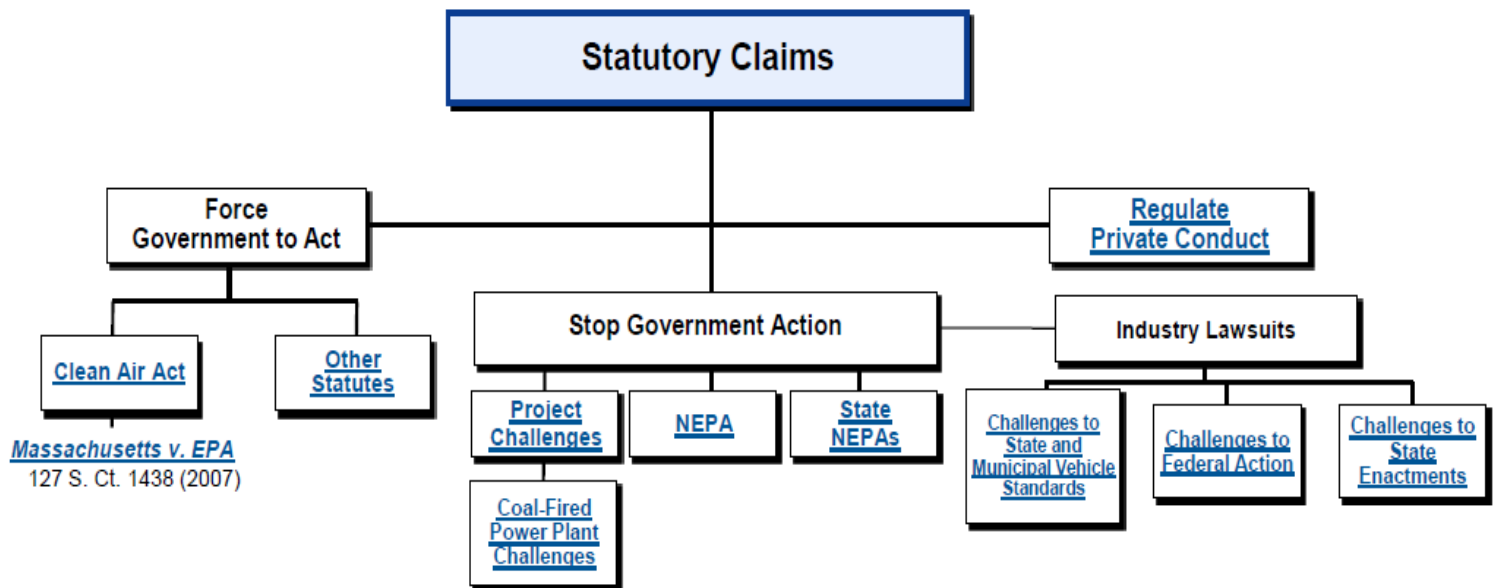
BRAS2

The Centre for Business Relationships
Accountability, Sustainability & Society

URL: www.climatecasechart.com

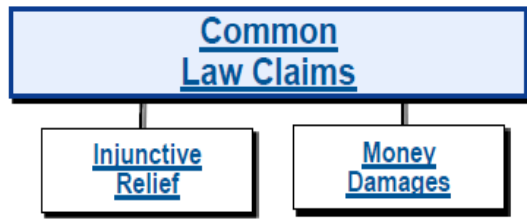
To receive email updates to this chart,
send a request to
cullen.howe@aporter.com

CLIMATE CHANGE LITIGATION IN THE U.S.



[Climate Legislation Resource Center](#)
(texts of climate bills pending in Congress plus hearings, markups and other material)

[Non-U.S. Climate Litigation Chart](#)



For detailed legal analysis, see
[Global Climate Change and U.S. Law \(ABA 2007\)](#)

Created by:
[Michael B. Gerrard](#) and [J. Cullen Howe](#)
Date last updated:
May 5, 2010
Please send updates to:
michael.gerrard@law.columbia.edu

Judicial Review and Resource Allocation

- Judicial inhibition and welfare priorities
 - *“Health authorities may find that they have too few resources either human or material...It is their duty to make choices.” (Re J [1993] Fam 15)*
 - *“Wholly understandable but nonetheless misguided (attempt) to involve the courts in a field of activity where it is not fitted to make any decision...” (Re B [1995] 2 All ER 129 at 138)*
- *R (Rogers) v Swindon NHS PCT [2006] EWCA Civ. 392*
- *R v Secretary of State for the Environment, Transport and the Regions, ex parte Alconbury Developments [2001] 2 All ER 929*
 - *“The Human Rights Act 1998 was no doubt intended to strengthen the rule of law but not to inaugurate the rule of lawyers.”*

BRAS2

The Centre for Business Relationships
Accountability, Sustainability & Society

Climate Change Adaptation and Human Rights

- *Marcic v Thames Water* [2004] AC 42
 - “A fair system of priorities necessarily involves balancing many intangible factors. Whether the system adopted by a sewerage undertaker is fair is a matter inherently more suited for decision by the industry regulator than by a court.”
- *Fadeyeva v Russia* (2007) 45 EHRR 10
- *Budeyeva v Russia* [2008] ECHR 15339/02
- Article 8(2)
 - “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
- Article 1 of Protocol 1
 - “except in the public interest and subject to the conditions provided for by law ...the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

Conclusion

- Public health impacts of climate change
- Adaptation challenging
- Courts reluctant to review resource decisions BUT
- Centrality of fairness
- Major issues of state obligations to manage adaptation

