



ENVIRONMENTAL JUSTICE AND CLIMATE LITIGATION: A COMPARATIVE STUDY OF COMMON LAW AND CIVIL LAW JURISDICTIONS

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Abstract

Environmental justice and climate litigation have become crucial mechanisms for addressing the urgent challenges posed by climate change. This study provides a comparative analysis of how common law and civil law jurisdictions approach environmental protection and climate accountability. In common law systems, litigation primarily relies on judicial precedents, tort law, and human rights frameworks to compel governments and corporations to act responsibly. In contrast, civil law jurisdictions emphasize codified statutes, administrative regulations, and regulatory enforcement mechanisms to ensure compliance with environmental obligations.

The study highlights the challenges faced by both legal traditions, including balancing economic development with ecological preservation, safeguarding intergenerational equity, and providing access to justice for communities disproportionately affected by climate change. Despite differences in approach, both systems increasingly recognize the courts' role in shaping public policy, advancing environmental justice, and holding stakeholders accountable for environmental harms.

This comparative analysis concludes that integrating the flexible, precedent-driven mechanisms of common law with the structured statutory frameworks of civil law can strengthen climate governance, promote sustainability, and enhance the effectiveness of environmental justice. Future reforms should focus on improving legal accessibility, fostering cross-jurisdictional learning, and developing harmonized strategies to address transboundary environmental challenges.

Introduction

Climate change is one of the most pressing global challenges of the twenty-first century, affecting ecosystems, economies, and human societies worldwide. The increasing frequency and intensity of extreme weather events, rising sea levels, and environmental degradation have intensified the need for effective legal mechanisms to protect both the environment and vulnerable populations. In this context, environmental justice and climate litigation have emerged as pivotal tools for ensuring accountability and promoting sustainable development.

Environmental justice emphasizes the fair distribution of environmental benefits and burdens, particularly focusing on communities disproportionately impacted by environmental harm. Climate litigation, as a legal strategy, allows individuals, groups, and organizations to hold governments and corporations accountable for contributing to or failing to mitigate climate change. These legal actions not only seek redress for affected communities but also aim to influence public policy and regulatory practices.

Different legal traditions offer varied approaches to environmental protection and climate accountability. Common law jurisdictions rely heavily on judicial precedents, tort claims, and human rights-based arguments to enforce environmental obligations. Landmark cases, such as *Juliana v. United States*, illustrate how courts can play an active role in compelling government



action on climate change. Conversely, civil law jurisdictions emphasize codified statutes, administrative procedures, and regulatory frameworks that provide structured and predictable mechanisms for environmental governance.

This comparative study explores the similarities and differences between common law and civil law approaches to environmental justice and climate litigation. By examining the legal frameworks, strategies, and outcomes in these jurisdictions, the study aims to identify effective practices, challenges, and opportunities for enhancing climate governance. Ultimately, understanding these comparative dynamics can inform future reforms and contribute to more equitable and effective environmental protection worldwide.

1. Conceptual Framework of Environmental Justice

Environmental justice is a multidimensional concept that focuses on the equitable distribution of environmental benefits and burdens across society. It emphasizes that no community, particularly marginalized or vulnerable groups, should disproportionately bear the negative impacts of environmental degradation or climate change [1]. The concept emerged in response to historical patterns of environmental inequality, where industrial activities and urban development often affected low-income or minority communities more severely than others [2].

In addition to distributive justice, environmental justice also encompasses procedural justice, which ensures that all stakeholders have a meaningful opportunity to participate in environmental decision-making processes [3]. Access to information, transparency in regulatory practices, and the ability to influence policy are critical components of procedural justice, which empower communities to advocate for their rights and environmental protection.

Another important dimension is recognition justice, which acknowledges the cultural, social, and historical contexts of affected communities. Recognition justice seeks to respect local knowledge, indigenous practices, and traditional environmental stewardship in shaping climate policies and litigation strategies [4].

Climate litigation has increasingly become a mechanism to operationalize environmental justice. By holding governments and corporations accountable, litigation enforces obligations that protect vulnerable communities and promote intergenerational equity. In common law jurisdictions, plaintiffs often invoke tort law, human rights, and public trust doctrines, whereas civil law jurisdictions rely on statutory provisions and regulatory enforcement mechanisms [5]. This comparative approach underscores the necessity of understanding how legal traditions shape the pursuit of environmental justice globally.

2. Climate Litigation in Common Law and Civil Law Jurisdictions

Climate litigation has emerged as a significant tool for enforcing environmental obligations and advancing environmental justice. In common law jurisdictions, litigation strategies often rely on judicial precedents, tort law, and human rights frameworks to hold governments and corporations accountable for climate-related harm [6]. Landmark cases, such as *Juliana v. United States*, illustrate how courts in common law systems can compel government action by asserting duties of care towards current and future generations [7]. Common law's flexible approach allows courts to adapt to new scientific evidence and evolving societal expectations, making it particularly effective in addressing emerging climate challenges [8].

In contrast, civil law jurisdictions emphasize codified statutes, administrative procedures, and regulatory enforcement mechanisms to ensure compliance with environmental obligations [9].



Governments in civil law systems often enact comprehensive environmental codes that define clear obligations for corporations and public authorities, enabling administrative bodies to enforce emission reductions, land use regulations, and pollution control measures [10]. Civil law litigation generally focuses on statutory violations rather than precedents, which can provide predictability but may limit the adaptability of legal remedies in novel climate disputes.

Despite these differences, both legal traditions increasingly recognize the courts' potential to influence climate policy and promote environmental justice. For instance, civil law courts in Europe have recently ordered governments to accelerate climate action in line with statutory and international obligations, demonstrating convergence in the pursuit of climate accountability [11]. Overall, comparative analysis highlights that while procedural mechanisms differ, the goals of climate litigation—protecting vulnerable communities, promoting intergenerational equity, and enforcing environmental obligations—are shared across legal systems [12].

3. Legal and Ethical Challenges in Environmental Justice

The pursuit of environmental justice through climate litigation faces several legal and ethical challenges across both common law and civil law jurisdictions. One major legal challenge is establishing causation and liability. Climate change is a global phenomenon with multiple contributing factors, making it difficult for plaintiffs to demonstrate direct responsibility of a specific government or corporation for environmental harm [13]. Common law courts often require precise evidence linking defendants to the damage, whereas civil law jurisdictions may rely on statutory obligations that provide clearer pathways for accountability [14].

Another significant challenge is access to justice. Marginalized and vulnerable communities, who are often the most affected by environmental degradation, may lack resources, legal knowledge, or institutional support to pursue litigation [15]. This raises ethical questions about equity, fairness, and the inclusivity of environmental governance mechanisms. Ensuring procedural justice, including public participation and transparent decision-making, is essential to uphold the principles of environmental justice [16].

Ethical considerations also arise in balancing economic development with ecological preservation. Courts and policymakers must navigate the tension between industrial growth and environmental sustainability, while also safeguarding human rights and intergenerational equity. Climate litigation increasingly incorporates human rights arguments to address these ethical dimensions, framing environmental protection as a fundamental component of social justice [17].

Finally, the global and transboundary nature of climate change introduces jurisdictional and regulatory complexities. Differences in legal frameworks, procedural rules, and enforcement mechanisms between common law and civil law jurisdictions can impede cross-border cooperation and effective litigation [18]. Despite these challenges, comparative studies indicate that lessons from both legal systems can inform more equitable, effective, and ethically sound climate governance strategies worldwide [19].

4. Legal Reforms and Ethical Frameworks for Climate Governance

As climate change impacts intensify, the need for robust legal reforms and ethical frameworks has become critical to ensure effective environmental justice. Both common law and civil law jurisdictions are exploring ways to strengthen legal mechanisms for climate accountability while integrating ethical principles into environmental governance [20].



In common law systems, reforms often focus on expanding the scope of tort law, public trust doctrines, and human rights-based claims to address emerging climate issues. Courts are increasingly willing to recognize the rights of current and future generations to a stable and safe environment, compelling governments to implement mitigation measures and policy changes [21]. Civil law jurisdictions, on the other hand, emphasize statutory and administrative reforms, including codified environmental codes, emission standards, and regulatory compliance mechanisms. These reforms aim to ensure predictable enforcement and clear obligations for both public and private actors, enhancing accountability and facilitating access to justice for affected communities [22].

Ethical frameworks play a complementary role, guiding policymakers, regulators, and courts to balance economic development, ecological sustainability, and social equity. Principles such as fairness, transparency, inclusivity, and intergenerational equity are increasingly integrated into climate litigation strategies and legislative reforms [23].

Furthermore, international cooperation and harmonization of legal standards are essential to address transboundary climate challenges. Global initiatives and guidelines, including those by the United Nations and the OECD, encourage cross-jurisdictional learning and the adoption of best practices, ensuring that environmental justice and climate accountability are upheld worldwide [24].

By combining legal reforms with ethical principles, jurisdictions can enhance the effectiveness of climate governance, promote sustainable development, and strengthen the enforcement of environmental justice. This integrated approach ensures that both domestic and international mechanisms work together to protect human rights and the environment in the face of climate change.

5. The Future of Climate Litigation and Global Environmental Justice

The future of climate litigation is poised to play a transformative role in promoting global environmental justice. As climate change continues to threaten ecosystems and human communities, courts worldwide are increasingly being recognized as arenas for enforcing environmental obligations and advancing sustainability goals [25].

One emerging trend is the integration of human rights principles into climate litigation. Legal strategies now frequently invoke constitutional rights, international human rights law, and the rights of future generations to compel governments and corporations to adopt more ambitious mitigation measures [26]. This shift not only strengthens legal accountability but also reinforces the ethical dimension of environmental justice.

Another critical development is transnational climate litigation. Given the global nature of climate change, plaintiffs are increasingly filing cases across borders, targeting multinational corporations and holding them accountable for environmental harm in multiple jurisdictions [27]. Such cases emphasize the need for harmonized legal standards, cross-border cooperation, and shared responsibility among nations and private actors.

Technological advancements, such as environmental monitoring and data analytics, are also shaping the future of climate litigation. These tools enhance evidence collection, facilitate the demonstration of causation, and improve the precision of legal arguments, making it easier to hold violators accountable [28].



Finally, the evolution of climate litigation underscores the importance of public participation and community empowerment. By enabling affected communities to access courts, voice grievances, and influence policy, climate litigation reinforces procedural and distributive aspects of environmental justice. Looking ahead, an integrated approach combining legal innovation, ethical frameworks, and international cooperation offers the most promising pathway to achieving effective climate governance and sustainable environmental protection [29].

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