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Local Approaches to Transnational Corporate Responsibility: Mapping the Role of Subnational Climate Change Litigation

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I. INTRODUCTION

As world oil reserves decline,[1] coal-based energy becomes an ever-hotter topic in the climate change debate. "Clean coal" technology was a major focus of the inaugural meeting of the Asia-Pacific Partnership on Clean Development and Climate, which was established by the United States, Australia, and several Asian nations as an alternative to the Kyoto Protocol approach.[2] Several U.S. states have begun to support and develop "clean coal" power plants.[3] Key leaders in the energy industry, in dialogue with mining companies, are at the forefront of exploring this new technology as a business opportunity while debates continue over the extent to which coal can be simultaneously "clean" and affordable.[4]

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1. Even the most conservative projections indicate that oil production will likely peak within the next 110 years. *See, e.g.*, Robert L. Hirsch, Roger Bezdek & Robert Wendling, *Mitigating a Long-term Shortfall of Oil Production*, WORLD OIL MAG. (May 2005), *available at* http://www.scag.ca.gov/rcp/pdf/summit/WorldOil-May05Bezdek.pdf (last visited June 25, 2007) (summarizing scenarios); Long Term World Oil Supply, *available at* http://www.eia.doe.gov/pub/oil_gas/petroleum/presentations/2000/long_term_supply/index.htm (last visited Feb. 7, 2006) (predicting a peak between 2021 and 2112).

2. For a description of the meeting, as well as reactions to it, see Fiona Harvey, *FT Report – The World 2006*, FT REP. 6, Jan. 25, 2006; *Asian Environmentalism: More Hot Air*, ECONOMIST 9, Jan. 14, 2006; Nigel Wilson & Andrew Trounson, *Critics Rain Scorn on Climate Summit*, AUSTRALIAN (Newspaper) 33, Jan. 14, 2006; *Asia-Pacific Pact Members Launch Clean Energy Fund*, *available at* http://www.scidev.net/News/index.cfm?fuseaction=readNews&itemid=2591&language=1 (last visited Feb. 10, 2006).

3. *See Wyoming Transmission Agency May Add 'Clean Coal' Power Plants to Mandate*, ELECTRIC UTIL. WK. 17, Nov. 14, 2005; *Texas Decision May Boost Push for Clean Coal in State Air Permits*, CLEAN AIR REP., Dec. 15, 2005; Owen Covington, *Bush's Plan Could Benefit Kentucky: He Proposed More Money for 'Clean Coal Technology'*, MESSENGER-INQUIRER (Owensboro Ky.), Feb. 5, 2006; Mike Denison, *Governor Says state Can Lead the World on Clean Coal Technology*, MISSOULIAN (Mont.), Oct. 20, 2005; *Features Page*, GUARDIAN 12, Feb. 3, 2006.

4. *See* Greg Griffen, *Xcel Seeks Miners' Backing: The Power Company Wants to Build a Clean-Coal Demonstration Plant*, DENV. POST C2, Feb. 8, 2006; *Oil-from-Coal Projects May Fizzle Out*, S. CHINA MORNING POST 2, June 11, 2007; *see also* Intergovernmental Panel on Climate Change, Special Report on Carbon Dioxide Capture and Storage (Bert Metz et al. eds., 2005). For a broader scientific analysis of climate change, see Intergovernmental Panel on Climate Change, *Climate Change 2007: The Physical Basis, Summary*

These developments highlight the importance of examining an often-overlooked context in which the debate over the contribution of traditional coal-based power plants to climate change has been debated for over a decade: subnational tribunals. State courts in the two major developed countries who are not party to the Kyoto Protocol—the United States and Australia—have made rulings that include carbon dioxide emissions from these plants as an important environmental impact. This article focuses on two representative examples of this phenomenon that span the period in which the Kyoto Protocol went from a draft under negotiation to an enforceable treaty. In 1998, well before the United States pulled out of the Kyoto Protocol, the Minnesota Court of Appeals supported the inclusion of these emissions in the state's environmental valuation scheme.[5] In 2005, as the Kyoto Protocol was coming into force without Australia, the Victoria Civil and Administrative Tribunal did the same with an environmental review.[6]

Both of these cases represent the long-held environmental maxim "think globally, act locally," as well as its converse. In a discourse dominated by debates over the Kyoto Protocol and nation-state behavior, subnational efforts, of which this litigation is only a small piece, provide some of the most innovative steps toward meaningful reductions. Moreover, this litigation occurs in a broader context in which tribunals, at multiple levels of governance, are considering climate change petitions.[7] Increasingly, subnational tribunals hear petitions with transnational dimensions, and scholars and policymakers debate the role of international and foreign law in U.S. courts.

This article enters the dialogue over these issues from a law and geography perspective.[8] It analyzes the place-based relationships that undergird the dialogue of this litigation, and the scales at which these relationships occur. It then

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for Policymakers, available at http://www.ipcc.ch/SPM2feb07.pdf.

5. In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794, 796–97 (Minn. App. 1998). For an interesting discussion of this case, see Stephanie Sterm, *State Action as Political Voice in Global Climate Change Policy: The Minnesota Environmental Cost Valuation Regulation, in* ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky, eds.) (forthcoming 2007, Cambridge University Press).

6. Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004). For a discussion of this and other pending Australian cases, see Lesley K. McAllister, *Litigating Climate Change at the Coal Mine, in* ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky, eds.) (forthcoming 2007, Cambridge University Press).

7. For an analysis of these actions, see William C. G. Burns, *The Exigencies That Drive Potential Causes of Action for Climate Change Damages at the International Level*, 98 AM. SOC'Y INT'L L. PROC. 223 (2004); Osofsky, *infra* note 12; Richard W. Thackeray, Jr., *Struggling for Air: The Kyoto Protocol, Citizens' Suits Under the Clean Air Act, and the United States' Options for Addressing Global Climate Change*, 14 IND. INT'L & COMP. L. REV. 855 (2004) (Note).

8. Law and geography explores the way in which place, space, and time intertwine with law and legal institutions. *See* David Delaney, Richard T. Ford & Nicholas Blomley, *Preface: Where is Law* at xxi, in THE LEGAL GEOGRAPHIES READER (Nicholas Blomley, David Delany & Richard T. Ford eds., 2001); *see also* NICHOLAS K. BLOMLEY, LAW, SPACE, AND THE GEOGRAPHIES OF POWER (1994) (providing an overview of law and geography); LAW AND GEOGRAPHY (Jane Holder & Carolyn Harrison eds., 2004) (same).

considers the implications of these multiscalar dynamics for the spaces that exist in the transnational legal structure. It considers the extent to which this litigation can and should expand the space occupied by subnational tribunals. The article concludes with reflections on how a legal and geographical analysis of innovative approaches to litigation might advance the international legal community's ability to address cross-cutting problems like human-induced global climate change.

II. PLACE-BASED PERSPECTIVES ON SUBNATIONAL CLIMATE CHANGE LITIGATION

Subnational climate change litigation takes place in localized fora, but its actors and claims represent a multiscalar geography.[9] This structure is indicative of transnational litigation, and such complexities have been explored extensively in the scholarly literature.[10] In fact, by the end of the first year of law school in the United States, students—through their study of personal jurisdiction in federal court cases like *Asahi Metal Industry Co. v. Superior Court*[11]—should be familiar with parties and claims that represent multiple ties to place.

Although complex, multiscalar dynamics occur in many contexts besides climate change litigation, a study of its geography provides insights into how it should fit within broader law and policy dialogues. My recent article entitled "*The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance*" analyzes relationships to place in subnational, national, and supranational climate change litigation and models the resulting geography.[12]

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9. As I have discussed elsewhere, "scale" is a contested term in the geography literature, and legal analysis could benefit from engaging its nuances. *See* Hari M. Osofsky, *A Law and Geography Perspective on the New Haven School*, 32 YALE J. INT'L L. (forthcoming 2007); Hari M. Osofsky, *Climate Change Litigation as Pluralist Legal Dialogue?*, STANFORD ENV. L.J. & STANFORD J. INT'L L. (forthcoming 2007); *The Intersection of Scale, Science, and Law in* Massachusetts v. EPA, OREGON R. INT'L L. (forthcoming 2007) (Symposium Issue) (will be reprinted in ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky, eds.) (forthcoming 2007, Cambridge University Press)). I use "multiscalar" to connote something taking place at more than one level of governance (i.e., personal, local, state, national, international).

10. The international law and international relations literature provides many theories about the broader process of transnational rulemaking. These include, among others, transnational legal process, *see, e.g.*, Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996) (explicating this theory), transgovernmental network theory, *see,e.g.*, Anne-Marie Slaughter, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 MICH. J. INT'L L. 1041 (2003) (explicating this theory), and cosmopolitanism, *see, e.g.*, Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002) (explicating this theory in the context of transnational jurisdiction). For an overview of a norm-based and interest-based theories, see OONA A. HATHWAY & HAROLD HONGJU KOH, FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS (2004).

11. 480 U.S. 102 (1987).

12. *See* Hari M. Osofsky, *The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance*, 83 WASH U. L.Q.1789 (2005). This symposium piece is one of several interlocking pieces I am writing on climate change litigation. The article cited above is the descriptive component of a three-article exploration of the geography of climate change litigation. I also am co-editing a book on climate change

The following section builds upon that work to examine the subnational relationships through the lens of "scale," which is one of the axes along which the relationships in climate change litigation lie.[13] It dissects the subnational, national, and supranational ties imbedded in this type of adjudication.

This exploration of connections to multiple levels of governance seeks to delve deeper than the obvious descriptive point that transnational litigation connects to place at multiple levels of governance. As both Leti Volpp and Madhavi Sunder have explored in their work, legal choices and categories intertwine deeply with cultural identity.[14] The ties to place and levels at which they occur in this litigation help to clarify the dynamics that drive these parties into these fora. A descriptive analysis in this section of law and place in subnational climate change litigation thus provides the basis for moving in the next section to an engagement of law and space.[15]

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litigation, ADJUDICATING CLIMATE CHANGE: SUBNATIONAL, NATIONAL, AND SUPRANATIONAL APPROACHES (William C.J. Burns & Hari M. Osofsky, eds.) (forthcoming Cambridge University Press 2007), co-authoring a casebook complement, WILLIAM C.J. BURNS & HARI M. OSOFSKY, CLIMATE CHANGE AND NUISANCE LAW: A CASEBOOK COMPLEMENT FOR PROPERTY (Global Dimensions Series) (forthcoming Aspen Publishers 2007), and authoring several other articles, symposium pieces, and book chapters. This series of pieces on climate change litigation fits within a broader analysis in which I engage the law and geography of litigation at transnational environmental intersections.

13. This "multiscalar" axis was one of the three axes I found underlying the geography of climate change litigation. The other two axes were "multibranch" and "multiactor." *See* Osofsky, *The Geography of Climate Change Litigation*, *supra* note 12. That piece provides a more in-depth geography of the subnational cases, whereas this one focuses more specifically on scale. *See id.* A full reiteration of that geography is beyond the scope of this paper, but its larger theoretical context is worth mentioning, especially given the subnational emphasis of this piece. As I noted in passing in that article (and plan to explore in more depth in the future), the spatial map of those cases looks somewhat like the model that Anne-Marie Slaughter presents in *A New World Order*, both in terms of its vertical and horizontal relationships and its three-dimensional quality. It differs, however, in its stronger emphasis on nongovernmental actors, and the focus of the third axis. Moreover, although the model Slaughter presents certainly includes substate actors as part of the disaggregated state, her vertical analysis in the book predominantly focuses on the relationship between national and supranational actors. *Compare* SLAUGHTER, *infra* note 46 *with* Osofsky, *The Geography of Climate Change Litigation*, *supra* note 12.

14. *See* Madhavi Sunder, *Cultural Dissent*, 45 STAN. L. REV. 495 (2001); Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399 (2003); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002); Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001); Leti Volpp, *Migrating Identities: On Labor, Culture, and Law*, 27 N.C. J. INT'L L. & COMM. REG. 507 (2002); Leti Volpp, *"Obnoxious to Their Very Nature": Asian Americans and Constitutional Citizenship*, 8 ASIAN L.J. 71 (2001).

15. Concepts of "place" often invoke physical location, whereas "space" tends to involve the categories that order "political, social and economic life." BLOMLEY, *supra* note 8, at xi. But the two concepts are inextricably connected to one another. *See* YI-FU TUAN, SPACE AND PLACE: THE PERSPECTIVE OF LIVED EXPERIENCE 6 (1977); *see also* DOREEN MASSEY, FOR SPACE (2005); Helen Couclelis, *Location, Place, Region, and Space*, in GEOGRAPHY'S INNER WORLDS: PERVASIVE THEMES IN CONTEMPORARY AMERICAN GEOGRAPHY 215, 215 (Ronald F. Abler, Melvin G. Marcus & Judy M. Olson, eds., 1992); Michael R. Curry, *On Space and Spatial Practice in Contemporary Geography*, in CONCEPTS IN HUMAN GEOGRAPHY 3, 3 (Earle Carville, ed., 1995). In this article, I use "place" to refer to ties to geographic locations, "space" to refer to legal, socio-political, and economic constructs, "time" to refer to when something occurs, and "scale" to refer to the level of governance at which it occurs.

A. Overview of Cases

Both of the cases on which this article focuses take place in state courts, primarily under state law. Each one engages the way in which carbon dioxide emissions from coal-burning power plans should be "counted."

The Minnesota courts first engaged these issues in the mid-1990s. When the Minnesota Public Utilities Commission included carbon dioxide in its environmental cost valuation scheme in 1994, a trade association that represented lignite coal producers, users, and suppliers sued.[16] The Minnesota Court of Appeals in *In the Matter of Quantification of Environmental Costs* ("Minnesota Case") upheld the inclusion as supported by substantial evidence in 1998,[17] and almost a decade later, utilities still must include these emissions in the direct cost of energy generation.[18]

In Victoria, Australia, a similar issue arose even more recently. The Hazelwood Mine and Power Station provides almost a quarter of Victoria's base load of electricity through reliance on coal.[19] When it sought to expand into an additional coal field, environmental groups advocated to have the greenhouse gas emissions from the energy production process be included as part of the environmental review.[20] In *Australian Conservation Foundation v. Minister for Planning* ("Victoria Case"), Victoria's Civil and Administrative Tribunal held that submissions on greenhouse gas impact had to be incorporated.[21] As a result of this ruling, the Victorian government signed its first ever greenhouse gas reduction deed with International Power Hazelwood.[22] The deed caps emissions, encourages renewable energy projects, requires the surrender of some of its coal, and sets milestones and reporting requirements.[23] The deed has been criticized, however, by Environment Victoria and other non-governmental organizations ("NGOs") as "window-dressing" for Hazelwood being given "the right to pump out vast amounts of additional greenhouse pollution."[24]

Although the cases are separated by time and distance, they both illustrate the complex relationships among actors interested in greenhouse gas emissions'

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16. In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794, 796–97 (Minn. App. 1998). This inclusion was based on MINN. STAT. § 216B.2422(3)(a), which was passed in 1993.

17. *See* 578 N.W.2d at 796-97.

18. *See* http://www.revisor.leg.state.mn.us/bin/getpub.php?type=s&year=current&num=216B.2422 (statute); Environmental Externalities Values Updated Through 2004 (on file with author).

19. Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004).

20. *See id.*

21. *See id.*

22. *See* Greenhouse Gas Reduction Deed, *available at* http://www.doi.vic.gov.au/DOI/Internet/Energy.sf/AllDocs/88831B7277C9437DCA25701B00248D59?OpenDocument (last visited Feb. 7, 2006).

23. *See* Fact Sheet 1, Greenhouse Gas Reduction Deed with IPRH, *available at* http://www.dpi.vic.gov.au/dpi/dpinenergy.nsf/9e58661e880ba9e44a256c640023eb2e/d849ecc0b92bfa2bca2572c100040020/$FILE/Fact_Sheet1.pdf (last visited June 25, 2007).

24. Environment Victoria, *Bracks' Condemns Victoria to Climate Change*, http://www.envict.org.au/inform.php?menu=4&submenu=20&item=966.

reductions. As detailed in the sections that follow, despite their apparent subnational character, the cases are deeply multiscalar.

B. Subnational Relationships

Subnational adjudication always has one core subnational actor: the tribunal itself. Unsuprisingly, in both the Minnesota Case and the Victoria Case, state courts made the decisions and many other ties to the states existed. Doctrines such as jurisdiction and venue generally assure forum ties, and climate change litigation is no exception. Both the actors and claims intertwine deeply with the state in which the claim is being adjudicated. What makes the analysis more interesting, however, is that many of the actors in these two cases also have ties to other subnational entities.

In the Minnesota Case, two of the petitioning parties, Minnesota Power and Otter Tail Power Company, are Minnesota-based companies.[25] A third, Dairyland Power Cooperative, serves Minnesota customers but is based in Wisconsin.[26] Similarly, in the Victoria case, Environment Victoria is based in the state of Victoria,[27] as is the Australia Conservation Foundation[28] and World Wildlife Fund (WWF)-Australia also has an office in Victoria.[29]

Moreover, many of the petitioners in the Minnesota case have clear connections to states surrounding the Minnesota region. Northern States Power Company, like Dairyland Power Cooperative, is based in Wisconsin. Western Fuels Association has headquarters in Colorado, Lignate Energy Council lists its address in North Dakota, and over half of Otter Tail Power Company's customers live in North or South Dakota.[30] The Victoria Case demonstrates a

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25. The petitioners include Western Fuels Association, Dairyland Power Cooperative, Minnesota Power and Light, Center for Energy & Economic Development, Northern States Power Company, Otter Tail Power Company, and Lignate Energy Council. *See* In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794, 796–97 (Minn. App. 1998). For detailed research into the geographic ties of each company, see Osofsky, *supra* note 12. For the specific information on Minnesota Power and Otter Tail Power, see Minnesota Power Website, http://www.mnpower.com/about_mp/facts.htm (last visited Feb. 7, 2006); Otter Tail Power Company Website, http://www.otpco.com/AboutCompany/QuickFacts.asp (last visited Feb. 7, 2006).

26. *See* In the Matter of the Quantification of Environmental Costs, 578 N.W.2d at 796–97; Dairyland Power Cooperative Website, http://www.dairynet.com/ (last visited Feb. 7, 2006).

27. Environment Victoria Website, http://www.envict.org.au/inform.php?item=2&PHPSESSID=0fcaf3e4e00558d6b16679fe89931813 (last visited Feb. 7, 2006).

28. *See* Australian Conservation Foundation Website, http://www.acfonline.org.au/news.asp?news_id=487 (last visited Feb. 7, 2006).

29. *See* Enquiries and Office Contact Details, http://wwf.org.au/about/contactdetails/ (last visited Feb. 7, 2006).

30. *See* Western Fuels Association, Securing Your Energy Future, 2005 Annual Report, at 15, http://www.westernfuels.org/about/2005_WFA_AR.pdf (last visited Apr. 10, 2007); Dairyland Power Cooperative Website, http://www.dairynet.com/ (last visited Feb. 7, 2006); Business.com Directory, http://www.business.com/directory/energy_and_environment/electric_power_utilities/northern_states_power_company/profile/ (last visited Feb. 7, 2006); Otter Tail Power Company Website, http://www.otpco. com/AboutCompany/QuickFacts.asp (last visited Feb. 7, 2006); Lignate Energy Council Website, http://www.lignite-energy-council.org/about/Index.htm (last visited Feb. 7, 2006).

similar pattern; Australian Conservation Foundation, WWF–Australia, and Climate Action Network Australia have offices or other ties in specific localities throughout the country.[31] The respondents in both cases represent a similar mosaic of subnational relationships.[32]

The claims in each case add subnational elements connected to the state of the tribunal. The Minnesota Case focuses on an environmental cost valuation system that applies within the state and just beyond its borders. In addition, all of the statutory and case law relied upon in the opinion is Minnesota-based.[33] The Victorian Case also involves predominantly subnational law, and a locally based planning process.[34]

These cases, therefore, do not simply take place in a subnational tribunal, but rather interact with multiple subnational places. The Minnesota environmental cost valuation scheme and Hazelwood power plant expansion involve issues that matter locally and across a broader map. Each case's center of gravity is certainly Minnesota or Victoria respectively, but they have relevance at a subnational level in many other places.

C. National Relationships

Characterizing these cases as simply subnational based on where they are occurring and how they connect to the forum state and other nearby states, however, would miss important aspects of their geography. Despite their subnational core, the cases reflect the national stature of the environmental and coal lobbies and their complex relationships with each other and with human-induced global climate change.

In both cases, key actors on each side of the litigation have a national presence. In the Minnesota Case, two of the petitioners, Center for Energy and Economic Development and the Lignate Energy Council, are organizations committed to promoting coal-based energy.[35] One of the respondents, Environmental Coalition, consists of seven groups, including nationally-based groups such as the American Wind Energy Association and the American Lung Association.[36] In the Victoria Case, three of the four plaintiffs are nationally

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31. Australian Conservation Foundation Website, http://www.acfonline.org.au/news.asp?news_id=487 (last visited Feb. 7, 2006); Enquiries and Office Contact Details, http://wwf.org.au/about/contactdetails/ (last visited Feb. 7, 2006); CANA Website, http://www.cana.net.au/index.php?site_var=10 (last visited Feb. 7, 2006).

32. For detailed research into the geographic ties of each of the respondents, *see* Osofsky, *supra* note 12.

33. *See* In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794, 800–02 (Minn. App. 1998).

34. *See* Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004).

35. *See* Center for Energy and Economic Development Website, at http://www.ceednet.org/ceed/index.cfm?cid=7504 (last visited Feb. 7, 2006); Lignate Energy Council Website, http://www.lignite-energy-council.org/about/Index.htm (last visited Feb. 7, 2006).

36. *See* Initial Brief of the Environmental Coalition on Substantive Issues, In the Matter of the

based NGOs,[37] and Australian National Power is the Australian subsidiary of the international company that owns Hazelwood Mine and Power Station.[38] Despite the subnational fora in which these lawsuits take place, many key actors' primary ties are not to those states.

The national-level connections are not limited to actors alone. Although the Minnesota Case focuses entirely on state law, the Victoria Case references a national statute.[39] Beyond these explicit connections noted above, the legal actions take place in countries that are significant national greenhouse gas contributors, but have rejected the Kyoto Protocol in the timespan between the cases. Australia and the United States have advocated for the value of "clean-coal" technologies, and have both participated in the first meeting of Asia-Pacific Partnership on Clean Development and Climate in which these technologies were an important discussion point.[40] In this context, these cases form part of the national policy dialogue over coal and climate change.

The national-level analysis also underscores the interlocking nature of these scalar categories. Not only are subnational and national actors cooperating, but some individual actors have more than one place-based identity. The national-level environmental advocacy groups in the Victoria Case, for example, were also part of the subnational analysis because of their localized ties. An attempt to separate out the distinctly national elements reinforces the multilayered ties to place infusing subnational climate change litigation.

D. Supranational Relationships

The geography of the actors and claims is not bounded by nation-state borders. At the core of both cases is a concern about a supranational phenomenon. The focus on greenhouse gas emissions engages the contribution of local coal-based energy production to global climate change. These cases are transnational because they tie the local, state, national, and global levels together.

Moreover, in the Victoria Case, the actors themselves have supranational dimensions. Both WWF–Australia and the Climate Action Network Australia are national offices within international non-governmental networks.[41] International

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Quantification of Environmental Costs, MPUC Docket No. E-999/CI-93-583 (January 12, 1996), available at http://www.me3.org/projects/costs/ecbrf1.html; *see also* Osofsky, *supra* note 12 and accompanying text.

37. *See* Australian Conservation Foundation Website, http://www.acfonline.org.au/news.asp?news_id=487 (last visited Feb. 7, 2006); Enquiries and Office Contact Details, http://wwf.org.au/about/ contactdetails/ (last visited Feb. 7, 2006); CANA Website, http://www.cana.net.au/index.php?site_var=10 (last visited Feb. 7, 2006).

38. *See* Computer Business Review Online, International Power plc, http://www.cbronline.com/companyprofile.asp?guid=C94E4191-2B68-4B5E-82F9-350FFF746264.

39. *See* In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794 (Minn. App. 1998); Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004).

40. *See supra* note 2 and accompanying text.

41. *See* Enquiries and Office Contact Details, http://wwf.org.au/about/contactdetails/ (last visited Feb. 7, 2006); CANA Website, http://www.cana.net.au/index.php?site_var=10 (last visited Feb. 7, 2006).

Power Hazelwood, the company that owns the power plant, is a multinational corporation that has its headquarters in London.[42]

The supranational level reinforces the intertwined nature of the scales at which the litigation occurs. For instance, the Minnesota Case analyzes evidence in support of climate change, data characterized most appropriately as supranational under state law judicial standards regarding the discretion of administrative law judges.[43] The mix of facts and law considered by the court regarding that evidence thus cuts across levels of governance.

E. Intertwined Scales

As the preceding three sections reveal, ties to levels of governance in these cases are distinguishable, but not truly separable. At a subnational level, for instance, the cases analyze emissions within a bounded geographic area, and the actors have very specific ties—both positive and negative—to those emissions and to that area. The national connects to the subnational, however, and the supranational connects to both the subnational and national. London becomes tied to Latrobe through International Power Hazelwood, and the plant's emissions gain attention around the world through transnational nongovernmental networks.

Subnational climate change litigation embodies a multiscalar geography, and also the mushiness of identity categories within that geography. For example, Hazelwood Mine and Power is a local, coal-based power plant supplying a large portion of subnational state's electricity. A national subsidiary of a multinational corporation, which is regulated by local, United Kingdom, and European Union law, operates this plant. Individuals in the surrounding area who are affected by the pollution become tied to other individuals and governmental and nongovernmental entities. This mix of actors across levels together engage in a regulatory dance. The nature of this description raises crucial questions: (1) What is Hazelwood Mine and Power? and, (2) What space should subnational litigation about its expansion occupy?

III. IMPLICATIONS FOR SPATIAL CATEGORIES

This section begins to formulate an answer to those questions by analyzing two of the spaces that subnational tribunals occupy in this type of litigation. First, the supranational dimensions of these cases make them ideal for testing grounds for theories about subnational tribunals as spaces for transnational issues. In these two examples, state courts are simultaneously serving as transnational actors, fora for transnational claims, and part of substate policy efforts to address global climate change.

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42. *See* Computer Business Review Online, International Power plc, http://www.cbronline.com/companyprofile.asp?guid=C94E4191-2B68-4B5E-82F9-350FFF746264.

43. *In re* Quantification of Envtl. Costs, 578 N.W.2d 794, 800–801 (Minn. Ct. App. 1998).

Second, the geography of these cases raises issues relevant to the scholarly and political discourse about judicial dialogue. Their multiscalar dimensions provide a space for a vertical conversation among different levels of governance.[44] Moreover, this vertical interaction takes place alongside interactions among the multiactor and multibranch axes discussed in *The Geography of Climate Change Litigation*, as well as debates over the role of foreign and international judgments in U.S. courts.

Subnational climate change litigation pushes the boundaries of how we conceptualize state courts and transnational judicial dialogue. As actors on each side of the climate change debate choose to access these tribunals, they necessarily become part of the multiscalar process of addressing greenhouse gas emissions. This section explores the implications of that involvement for the space that subnational tribunals occupy.

A. *Subnational Tribunals as Spaces for Transnational Issues*

Conflicts over climate change and coal-based energy represent just one of the many contexts in which subnational tribunals are playing a leading role in resolving disputes with transnational and international dimensions. For example, in recent cases involving the United States' failure to provide consular consultation rights to foreign nationals facing the death penalty and corporate human rights violations under the Alien Tort Statute, state courts have contributed significantly to moving multiscalar cases to resolution.[45]

This role creates a need to situate subnational climate change litigation within theoretical and policy arguments over state courts as transnational actors. Scholars in multiple disciplines have grappled with the implications of actors other than nation-states playing a major role in international lawmaking, and more broadly with questions of how international law is made and to what extent it matters.[46] It is beyond the scope of this article to resolve these theoretical

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44. Drawing from Anne-Marie Slaughter's work, I use vertical conversation here to engage dialogues among different scales. *See* SLAUGHTER, *infra* note 46, at 20–22.

45. *See* Janet Koven Levit, *A Tale of International Law in the Heartland: Torres and the Role of State Courts in Transnational Legal Conversation*, 12 TULSA J. COMP. & INT'L L. 163 (2004). For analyses of the issues surrounding state court's incorporation of international norms, see Julian C. Ku, *The State of New York Does Exist: How the States Control Compliance with International Law*, 82 N.C. L. REV. 457 (2004); Margaret H. Marshall, *"Wise Parents Do Not Hesitate to Learn from Their Children:" Interpreting State Constitutions in an Age of Global Jurisprudence*, 44 JUDGES' J., Spring 2005; Thomas R. Phillips, *State Supreme Courts: Local Courts in a Global World*, 38 TEX. INT'L L.J. 557 (2003); Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1627–33 (2006); Penny J. White, *Legal, Political, and Ethical Hurdles to Applying International Human Rights Law in the State Court of the United States (And Arguments for Scaling Them)*, 71 U. CIN. L. REV. 937 (2003). Debates over federalism issues repeatedly arise in the context. *Compare, e.g.*, Harold Hongju Koh, Commentary, *Is International Law Really State Law?*, 111 HARV. L. REV. 1824 (1998) *with* Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815 (1997).

46. *See, e.g.*, THE FLUID STATE: INTERNATIONAL LAW AND NATIONAL LEGAL SYSTEMS (Hilary

disputes. As Janet Levit aptly noted in analyzing the role of state courts in *Torres v. State of Oklahoma*,

> [w]hatever the theoretical gloss and packaging, these scholars and the present example importantly recognize that the notion of 'international law as treaty' or 'international law as international organization born from treaty' is a woefully static and underinclusive way to conceive of the international lawmaking process.[47]

Whether one views subnational climate change litigation as part of norm integration through transnational legal process, an element in transnational networks, evidence of a movement towards cosmopolitanism,[48] a participant in pluralist legal dialogue,[49] or through one of many other theoretical constructs,[50] this litigation reveals subnational tribunals serving as fora for transnational claims and, in the process, becoming transnational actors. The interwoven subnational, national, and supranational ties to place suggest that subnational tribunals occupy multiscalar space.[51]

Although this space could be characterized as simply a modern incarnation of the long history subnational courts have had in engaging transnational issues, this view would not adequately incorporate the phenomenon of globalization and its connection to the production of environmental problems represented by human-

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Charlesworth et al, eds., 2005) (analyzing dynamics between domestic and international legal systems); ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004) (exploring a three-dimensional world order in which disaggregated states form governmental networks); STATE/SPACE: A READER (Neil Brenner, Bob Jessop, Martin Jones, and Gordon MacLeod, eds., 2003) (analyzing state spatiality in historical and contemporary contexts); PONDERING POST-INTERNATIONALISM: A PARADIGM FOR THE TWENTY-FIRST CENTURY? (Heidi H. Hobbs, ed., 2000) (exploring the implications of post-internationalism, in which the nation-state is viewed as one of several types of "macro actors"); Becky Mansfield, *Beyond Rescaling: Reintegrating 'National' as a Dimension of Scalar Relations*, 29 PROGRESS IN HUMAN GEOGRAPHY 458 (2005) (exploring the importance of engaging the role of the national); Alexander B. Murphy, *The Sovereign State System as Political-Territorial Ideal: Historical and Contemporary Considerations*, in STATE SOVEREIGNTY AS SOCIAL CONTRACT (1996) (discussing the current status of state sovereignty in historical context); *see also supra* note 45 (analyzing state court's usage of international law norms). *See generally supra* note 10 (representing different theoretical approaches to understanding transnational lawmaking).

47. Levit, *supra* note 45, at 180.

48. *See supra* note 10; *see also* Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002).

49. *See* Osofsky, *Climate Change Litigation as Pluralist Legal Dialogue?*, *supra* note 9.

50. For an analysis of compliance-based approaches to international law, see Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823 (2002); *see also* Brett Frischmann, *A Dynamic Institutional Theory of International Law*, 51 BUFF. L. REV. 679 (2003). For an exploration of the ways in which social influence impacts the capacity of international legal institutions, see Ryan Goodman & Derek Jinks, *International Law and State Socialization: Conceptual, Empirical, and Normative Challenges*, 54 DUKE L.J. 983 (2005); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004). For a recently proposed integrated theory of the impact of international treaties on state behavior, see Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 CHI. L. REV. 469 (2005).

51. *See supra* Part II.

induced global climate change. The geography of these cases embodies the explosion of multinational enterprise, technology, and human capacity for environmental impact, and the linkages that this explosion has created.

These subnational cases allow for a recognition of the importance of taking responsibility for emissions at a state and local level. Particular people in Minnesota and Victoria own and operate power plants that burn coal and emit greenhouse cases, This state court litigation, with its multiscalar participants and claims, recognizes that those emitters are connected to the specific harms that climate change causes around the globe.

Moreover, this subnational litigation occurs in a broader context. Municipal and state governments are increasingly providing the most innovative and aggressive policy approaches to limiting greenhouse gas emissions. California's AB 32 is the strongest climate change legislation in the country.[52] From 2003 to 2005, the number of cities and counties in the United States participating in the International Council for Local Environmental Initiatives Climate Protection Campaign jumped from 40 to 152.[53] The 500 participating localities around the world govern territory that produces 8% of global greenhouse gas emissions.[54]

The cities leading the charge serve as laboratories for the complexities of green growth.[55] For example, Portland, Oregon, was the first U.S. city to join the Climate Protection Campaign in 1993. Its 2001 Local Action Plan on Global Warming aimed at cutting carbon dioxide emissions to 10% below 1990 levels by 2010.[56] In implementing its plan, Portland has grappled with how to balance

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52. California Global Warming Solutions Act of 2006 (AB 32), Cal. Health & Safety Code §§ 38500 *et seq.*

53. *See* International Council for Local Environmental Initiatives, Cities for Climate Protection, available at http://www.iclei.org/co2/index.htm.

54. *See id.*

55. *See* sources *infra* note 65. A rich scholarly literature from multiple analytic streams explores the role of cities in a globalizing world. *See, e.g.*, NEIL BRENNER, NEW STATE SPACES: URBAN GOVERNANCE AND THE RESCALING OF STATEHOOD (2004); CITIES TRANSFORMED (Mark R. Montgomery, Richard Stren, Barney Cohen & Holly E. Reed, eds., 2003); GLOBALIZING CITIES: A NEW SPATIAL ORDER (Peter Marcuse & Ronald van Kempen, eds., 2000); GLOBAL NETWORKS: LINKED CITIES (Saskia Sassen, ed., 2002); HEIDI H. HOBBS, CITY HALL GOES ABROAD: THE FOREIGN POLICY OF LOCAL POLITICS (1994); SASKIA SASSEN: THE GLOBAL CITY (2d ed., 2001); H. V. SAVITCH & PAUL KANTOR, CITIES IN THE INTERNATIONAL MARKETPLACE: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT IN NORTH AMERICA AND WESTERN EUROPE (2002); SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL (Kevin R. Cox, ed., 1997); RICHARD SENNET, THE CONSCIENCE OF THE EYE: THE DESIGN AND SOCIAL LIFE OF CITIES (1990); WORLD CITIES IN A WORLD-SYSTEM (Paul L. Knox & Peter J. Taylor, eds., 1995). Gerald E. Frug and David J. Barron innovative new article, *International Local Government Law*, 38 THE URBAN LAWYER 1 (2006), provides an exploration of international local government law, which moves beyond contemporary scholarship regarding cities and globalization by considering cities' dual roles "as simultaneously subordinate domestic governments and independent international actors," *Id.* at 2.

56. *See* City of Portland & Multnomah County, *Local Action Plan on Global Warming* (April 2001), available at http://www.sustainableportland.org/Portland%20Global%20Warming%20Plan.pdf; City of Portland, *Portland Climate Change Efforts* (April 2003), *available at* http://www.sustainableportland.org/stp_Ptld_climate_sum_2003.pdf; City of Portland, *Sustainable Technologies and Practices, available at* http://www. sustainableportland.org/stp_glo_home.html.

development with emissions reductions. Despite significant per capita emissions reductions between 1990 and 2001, from 16.9 to 15.6 metric tons, its growing population, among other factors, has led to an overall emissions increase of 6%.[57] Portland has successfully encouraged the use of public transportation, which has increased by 65% since 1990, and has doubled the number of bicycle commuters since 1993. However, total and per capital vehicle miles traveled have increased.[58]

States and localities are not simply policy innovators. They play critical roles in litigation and statutory development at other levels of governance and, in so doing, help to move the dialogue on climate regulation forward. The recent U.S. Supreme Court decision in *Massachusetts v. EPA*—a case in which subnational actors were parties on both sides—acknowledges, for example, that emissions from vehicles can, through a global process, have impacts on the Massachusetts coastline.[59] U.S. Congressional representatives from California, a state which was a petitioner in *Massachusetts v. EPA*, are proposing some of the most aggressive statutory approaches to emissions reduction currently being considered.[60]

Subnational climate change litigation provides a crucial testing ground for innovative policy and a check on retrograde approaches. The Minnesota court judgment affirmed the legislative and administrative efforts to incorporate greenhouse gas emissions into environmental cost internalization. The Victorian tribunal pushed both local and state government to view the corporation's greenhouse gas emissions as relevant to the environmental analysis, and as a result, helped them to innovate, albeit in a controversial manner, through the greenhouse gas reduction deed.

In both instances, the subnational tribunals participated in the transnational lawmaking process by providing fora in which these multiscalar disputes could take place, as well as through influencing broader policy as a result of their decisions. The cases' ties to place connected disparate actors and multiple levels that cared about the regulation of greenhouse gases. Understanding the geography of subnational climate change litigation thus plays a crucial role in teasing out the subtleties of these cases' contribution to climate change law and policy.

B. Subnational Tribunals as Spaces for Dialogue

This transnational role firmly situates subnational climate change in another theoretical context: the growing scholarly understanding of the phenomenon of judicial dialogue. Courts around the world have begun to communicate more

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57. *See supra* note 56.

58. *Id.*

59. *See* Massachusetts v. EPA , 127 S.Ct. 1438, 2007 WL 957332 (U.S.) (Apr. 2, 2007).

60. *See, e.g.*, Safe Climate Act of 2006, H.R. 5642, 109th Cong.,2d. Sess (proposed by Henry Waxmun), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5642ih. txt.pdf.

frequently through comparative analysis, innovative approaches to comity, and other, more informal, means. Anne-Marie Slaughter has explored this dialogue as part of the transgovernmental networks among disaggregated states that she claims form a "New World Order."[61] Melissa Waters has argued that this process helps to create a co-constituitive relationship between domestic and international legal norms, in which domestic courts play a mediating role in the development of international law.[62]

The scholarly exploration of judicial dialogue has predominantly focused on national and supranational tribunals.[63] While discussion of the role of state courts in international lawmaking[64] of substate entities in addressing climate change certainly exists,[65] the implications of subnational climate change litigation for this analysis have largely escaped notice. These cases, moreover, have the potential to help expand the space occupied by "judicial dialogue."

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61. *See* SLAUGHTER, *supra* note 46, at 65–103; *see also* Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L.J. 191 (2003); Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103 (2000).

62. *See* Melissa A. Waters, *Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law*, 93 GEO. L.J. 487, 490–97 (2005). For analyses of the U.S. Supreme Court's comparative law analysis in *Lawrence v. Texas*, see Rex D. Glensy, *Which Countries Count?* Lawrence v. Texas *and the Selection of Foreign Persuasive Authority*, 45 VA. J. INT'L L. 357 (2005).

63. *See* Levit, *supra* note 45, at 183–85 (analyzing why the role of state courts has not been a scholarly focus); Joan L. Larsen, *Importing Constitutional Norms from a "Wider Civilization": Lawrence and the Rehnquist Court's Use of Foreign and International Law in Domestic Constitutional Analysis*, 65 OHIO ST. L.J. 1283 (2004).

64. *See id.*; *see also supra* note 45.

65. *See, e.g.*, BARRY G. RABE, STATEHOUSE AND GREENHOUSE: THE EMERGING POLITICS OF AMERICAN CLIMATE CHANGE POLICY (2004) (providing an analysis of state-level initiatives on climate change); Donald A. Brown, *Thinking Globally and Acting Locally: The Emergence of Global Environmental Problems and the Critical Need to Develop Sustainable Development Programs at State and Local Levels in the United States*, 5 DICK. J. ENVTL. L & POL'Y 175 (1996) (recommending how state, local, and regional governments should respond to global climate change); Ann E. Carlson, *Federalism, Preemption, and Greenhouse Gas Emissions*, 37 U.C. DAVIS L. REV. 281 (2003) (analyzing the federalism issues posed by California's innovative regulation of greenhouse gas emissions); David R. Hodas, *State Law Responses to Global Warming: Is It Constitutional to Think Globally and Act Locally*, 21 PACE ENVTL. L. REV. 53 (2003) (exploring the constitutionality of state initiatives to address global climate change); Laura Kosloff & Mark Trexler, *State Climate Change Initiatives: Think Locally, Act Globally*, 18 WTR NAT. RESOURCES & ENV'T 46 (2004) (describing state and local climate change initiatives); Robert B. McKinstry, Jr., *Laboratories for Local Solutions for Global Problems: State, Local and Private Leadership in Developing Strategies to Mitigate the Causes and Effects of Climate Change*, 12 PENN ST. ENVTL. L. REV. 15 (2004) (describing subnational response to climate change); Barry G. Rabe, *North American Federalism and Climate Change Policy: American State and Canadian Provincial Policy Development*, 14 WIDENER L.J. 121 (2004) (exploring the comparative success of substate actors in meeting climate change policy goals); Resnik, *supra* note 45, at 1643–47 (discussing local officials incorporation of Kyoto Protocol standards).

The opinions in these cases, unlike many of the interactions discussed in the judicial dialogue literature, do not include direct contact with judges or case law of other tribunals engaged in resolving climate change litigation. The Minnesota case predates the recent explosion of this type of litigation, and the Victoria case focuses on greenhouse gas emissions as a substate issue.[66]

Both opinions, however, evidence an awareness of being part of broader policy conversations. The Minnesota opinion, for example, in responding to claims of the speculative nature of the evidence relied upon in setting carbon dioxide values, notes that the administrative law judge's "careful review" included "Intergovernmental Panel on Climate Change (IPCC) research and the peer review process."[67] Similarly, the Victorian tribunal references another company's interest in developing a nearby power station relying on "new coal gasification technology" and notes that "a planning scheme could contain a provision directed at reducing the emission of greenhouse gases from a coal-burning power station—not only to maintain an ecological process, but to balance present and future interests."[68]

Each case, as noted above, has played into multiscalar, multibranch, multiactor dynamics.[69] They occur not only in their subnational policy setting, but in a transnational context in which the pace of climate change litigation is accelerating. Decisions and filings at many levels of governance are occurring on an almost weekly basis and this type of litigation has grown in prominence, especially with the U.S. Supreme Court deciding to engage it positively.[70] Even if the subnational courts are not directly citing the many other cases involving climate change, transnational networks and information technology ensure that the key actors in each case are aware of individual cases as part of this phenomenon.[71]

Although these subnational tribunals are not engaged in direct judicial dialogue, the multiscalar ties to place in these cases and the tribunals' reference to policy questions regarding greenhouse gases suggests that they should be viewed as involved in a form of indirect judicial dialogue. Rather than reinventing the issues in each case, they are connecting to a transnational discussion over human contributions to global climate change. Moreover, as this litigation becomes more common and indirect dialogue increases as a result, the chance of direct cross-pollination rises. At the very least then, subnational climate change litigation plays a role in the process of norm internalization that Harold Koh has described in his theory of transnational legal process.[72]

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66. *See* In the Matter of the Quantification of Environmental Costs, 578 N.W.2d 794 (Minn. App. 1998); Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004).

67. In the Matter of the Quantification of Environmental Costs, 578 N.W.2d at 800.

68. Australian Conservation Foundation v. Minister for Planning [2004] VCAT 2029 (Oct. 29, 2004).

69. *See supra* Part III, Section A.

70. *See* Massachusetts v. EPA , 127 S.Ct. 1438, 2007 WL 957332 (U.S.) (Apr. 2, 2007).

71. *See, e.g.*, http://www.climatelaw.org/cases (tracking the climate change cases worldwide).

72. *See Koh, supra* note 10.

Expanding the space of what is viewed as "judicial dialogue" to include this indirect process of courts as both norm creators and norm internalizers has implications beyond the climate change context. In the United States, for example, policymakers, scholars, and courts have been involved in a heated debate over the proper role of foreign and international law in U.S. courts.[73] Viewing more indirect judicial dialogue as part of a broader dynamic of judicial interaction with transnational law and policy development, as represented by the example of the geography of subnational climate change litigation, helps to inform this conversation. Judith Resnik, for example, has argued for a fuller conception of the way in which international rights move across borders in the U.S. federalist structure.[74] Such an approach to thinking about "dialogue" allows for recognition of a continuum of multifaceted interactions on which direct reference to foreign and international sources lies but only forms a small part.[75] As globalization brings cross-cutting issues like climate change to the fore, courts must engage the subnational, national, and supranational dimensions of cases simultaneously in order to competently address the issues before them.

IV. CONCLUDING REFLECTIONS

A geographic analysis of the Minnesota and the Victoria cases reveals subnational climate change litigation as an example of law and legal institutions attempting to grapple with the implications of globalization.[76] This litigation's intertwined, multiscalar ties to place challenge judicial institutions, as well as the other governmental entities.

The state courts in the two case examples rose to this challenge by acknowledging the transnational dimensions of the cases while resolving the subnational claims being raised. In so doing, they pushed the boundaries of the spaces that they occupy. They revealed themselves as transnational actors involved in the process of norm development in the same moment as they asserted their clearly subnational character.

Just as state and local efforts to address global climate change can serve as laboratories for exploring the cross-cutting issues involved, subnational climate change litigation provides an opportunity for much needed analysis about the role

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73. A recent agora of the *American Journal of International Law* devoted itself to this debate. *Agora: The United States Constitution and International Law*, 98 AM. J. INT'L L. 42 (2004).

74. *See* Resnik, *supra* note 45.

75. As I have discussed in depth in *Climate Change as Pluralist Legal Dialogue?*, *supra* note 9, a more pluralist perspective on climate change litigation helps to create a fuller narrative of its significance.

76. An extensive literature exists on law and globalization, and an in-depth examination of this topic is beyond the scope of this brief article. For an exploration of some of the major debates, see David Held & Andrew McGrew, *The Great Globalization Debate: An Introduction*, *in* THE GLOBAL TRANSFORMATIONS READER: AN INTRODUCTION TO THE GLOBALIZATION DEBATE 1 (David Held & Andrew McGrew, eds., 2d ed., 2003); *see also* Terence C. Halliday & Pavel Osinsky, *Globalization of Law* 32 ANNUAL REV. SOCIOLOGY 447 (2006).

of subnational tribunals, the transformative impacts and demands of globalization, and the required creative balancing between economic growth and environmental protection. Dissecting this litigation with geography's analytic tools puts it in physical and conceptual context, and allows for more nuanced analysis.

Law and geography perspectives have relevance beyond the narrow confines of climate change litigation. As globalization forces a rethinking of traditional notions of place and the shifting legal spaces that accompany them, law increasingly must address cross-cutting problems that fit poorly in existing categories. Addressing ties to place and their relationship over time to those spaces can play a crucial role in crafting appropriate responses and allowing for proactive, rather than reactive, measures.

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