

Defending the Planet: A Columbia Law Podcast **Episode 0: “Introducing *Defending the Planet*”**

[00:00:07] **Shannon R. Marcoux '21:** Our response to the climate crisis has to be legislated and litigated, and it requires lawyers at every step of the way.

[00:00:16] **Andrew C. Revkin '82 JRN:** We think of these issues as, solve the problem. But they're not like that. This is the ultimate handoff kind of question.

[00:00:24] **Marcoux:** There are courts all over the world hearing climate cases right now. Many of them are presenting really interesting, novel legal arguments.

[00:00:34] **Michael B. Gerrard:** I'm Michael Gerrard. I'm a professor at Columbia Law School, where I teach courses on environmental and energy law and serve as faculty director of the Sabin Center for Climate Change Law. And I'm the host of Columbia Law School's new podcast, *Defending the Planet*. Each week, I'll be joined by guests who are experts in the field, including several of my colleagues at Columbia. In the series, we'll be talking about combating the climate crisis through one of the most important and effective sets of tools at our disposal: the law.

[00:01:12] **Gerrard:** Today, I'm joined by Andy Revkin and Shannon Marcoux. Andy Revkin is one of the nation's most prominent environmental journalists. He's written about climate change for more than 30 years, mostly reporting for *The New York Times*, and is the founding director of the new Earth Institute Initiative on Communication, Innovation, and Impact at Columbia University. Shannon Marcoux is a member of Columbia Law School's class of 2021. She received the Law School's David W. Leebron Human Rights Fellowship, which she'll use to fund a year of environmental and climate justice work with the organization Natural Justice. After her fellowship, Shannon hopes to continue working for grassroots human rights organizations. We'll be talking a little bit about why Columbia Law School is hosting this podcast and what's coming up in the series. But now, I'll turn it over to Andy.

[00:02:04] **Revkin:** It's great to be part of this. And how are you doing, Mike? And, Shannon, congratulations to you.

[00:02:10] **Marcoux:** Thank you.

[00:02:11] **Revkin:** It's a challenging time moving into the world, but you're well equipped. So one of the most basic questions, Mike, is what is the role of lawyers in combating climate change?

[00:02:22] **Gerrard:** Well, lawyers write the laws and regulations. We advise clients on what the laws and regulations mean and how to comply with them. Lawyers bring and defend the lawsuits, and the lawyers who become judges decide the lawsuits. Lawyers also handle the innumerable transactions that are part of the transition of the energy system, the construction of massive amounts of wind and solar capacity and storage and transmission. Each of those involves real estate and corporate and financing and labor and lots of other transactions handled by lawyers. And lawyers will also be litigating the closure of the fossil fuel plants and everything else that is part of the fight against climate change. Lawyers are also central to adaptation to climate change because many land uses are going to need to change. That inevitably involves conflicts which lawyers are going to be in the middle of.

[00:03:21] **Revkin:** But most of the communication, you think about, around laws, either in briefs or in journals or in litigation, why a podcast? What does this bring to the conversation, literally?

[00:03:31] **Gerrard:** Well, climate change cuts across every area of the law, from property rights to human rights to contracts to constitutional law, international law, administrative law, corporate governance. And we felt that it would be useful for an audience that includes a lot of lawyers who are not environmental lawyers, as well as others who are interested in the field, to give a sense of the many ways in which the law is used to fight climate change. It's used by some in the other direction. And Columbia University, in general, and Columbia Law School, in particular, is deeply involved in every aspect of that.

[00:04:11] **Revkin:** So where are you going to go in this discussion going forward in the podcast? What are some of the themes that'll emerge?

[00:04:18] **Gerrard:** So we're going to be talking about the different roles of the federal administration. We have an episode called "The Biden Reset," on how the U.S. is very much changing its policies. We're going to have an episode on the role of the states, one on what happens with the Paris Climate Agreement and moving forward with that. We're going to have an episode on climate litigation in the U.S. and around the world. We'll talk about the climate refugee crisis, and we'll talk about the role of environmental justice. So we'll be covering all of these topics. In covering these topics, we'll have a number of members of the Law School faculty, a number of alumni, including the former governor of Montana and a former high official at EPA, a current high official in the State Department, a current high official in the U.N. system. So we've got a whole variety of people who are going to be contributing to these discussions.

[00:05:18] **Revkin:** So anyone who's tuned into these issues these days knows that Columbia has launched a Climate School, a school of climate like the School of Rock, and it has, it's emergent. It's fantastic in principle, and it does connect to the Law School. I think that's a wonderful thing. How do you see that going forward, too?

[00:05:39] **Gerrard:** The idea of President Lee Bollinger when he took the initiative to set up the Climate School is that climate change is the premier existential threat to humanity and to so many other species and that addressing it involves every imaginable

discipline, academic discipline, including probably some disciplines we haven't yet imagined. And it involves the classic academic activities of education and research and service but also impact in the larger world. So the Climate School is going to include the entire existing Earth Institute but will also draw in people from throughout the university to be bringing in new resources so that we can do research and education and have an impact on the outside world. We also need to talk about the central role of the universities, and particularly law schools, in training the next generation of lawyers who are going to carry forward and develop these new techniques and are going to have to cope with the problems that our generation is leaving to them.

[00:06:45] **Revkin:** So, Shannon, as a young person coming into the climate arena, I guess there's no easy parts of this challenge, but law feels like a particularly tough one. So what has lured you in? Why are you here?

[00:06:59] **Marcoux:** While climate science and technology have progressed so much in my lifetime, I have always felt like climate law and policy are really lagging behind. And so I saw it as a field where there was a lot of opportunity and where there was a lot of necessity for a focus on climate change. And as we've already begun to see, especially here in the U.S., our response to the climate crisis has to be legislated and litigated, and it requires lawyers at every step of the way, whether we like it or not. And so, I saw the legal profession as one that was going to have an immense impact in the coming years, and I also, kind of, see the legal field as a broad umbrella with a whole variety of tools, whether that's human rights law and international law or domestic law and policy. I just saw a lot of different angles to tackle the climate crisis, and I find it really interesting and exciting.

[00:08:06] **Revkin:** It's good that, it's good that your generation is part of this. I think we think of these issues as, solve the problem, but they're not like that. This is the ultimate handoff kind of question. One of the opportunities, maybe this is one of the potential innovations that I saw 10 years ago, Carolyn Raffensperger had pushed forward the idea that the future needs a legal guardian. Is that the kind of innovation that you think of, Shannon?

[00:08:32] **Marcoux:** You know, there are courts all over the world hearing climate cases right now. And they're, many of them are presenting really interesting, novel legal arguments. And so I think that's the kind of creativity that's needed. You know, in U.S. courts, it's not always as welcome as it is in courts elsewhere, but we're working with a limited tool set in some ways. And so we need to think creatively about how best to utilize the avenues that are available to us to really kind of make a change in this space.

[00:09:07] **Revkin:** There have been some landmark moments like when the Supreme Court heard the case for CO₂ to be regulated, the carbon dioxide, the main greenhouse gas to be regulated under the Clean Air Act. It was an interesting moment rhetorically. Justice Scalia made some interesting points, but it really has seemed like a foundational moment. Are there other foundational moments you're hoping for? Is there some bright shining object sitting just out over the horizon?

[00:09:36] **Gerrard:** Well, we'd love for Congress to actually act for a change and to pass a climate law.

[00:09:40] **Revkin:** Oh, that.

[00:09:41] **Gerrard:** That would be the brightest shining moment.

[00:09:44] **Revkin:** Shannon, do you have some sense of that too, like when you wake up in the morning, you know, thinking, running out the door to be a climate lawyer, what's in your foreground?

[00:09:55] **Marcoux:** Oh, gosh. I think I'm with Professor Gerard on this. Actual climate legislation or more international agreements with teeth that actually hold responsible actors accountable and drive some real change. But they're big goals, big goals.

[00:10:13] **Gerrard:** A central tenet of international law is that countries are only bound by treaties that they agree to. And so even though a great majority of countries may agree that a certain mechanism is important, they can't bind the outliers. And so if you can't tell the United States and China—the world's leaders, leading emitters by far—what to do or what not to do, you're really relying on the domestic politics in each of these countries, it can't be imposed from the top.

[00:10:42] **Revkin:** So what are the tools that are at hand to get things done here in the legal sense?

[00:10:49] **Gerrard:** Well, lawsuits against government to do more, lawsuits against polluting companies to force them to comply with the law, lawsuits and administrative actions to stop environmentally destructive practices and projects, drafting and promoting statutes and regulations, advising companies on what the law says that they need to do, devising ways to finance clean energy projects, handling clean energy transactions. So there's a very large and growing toolbox available to lawyers to participate in the fight against climate change.

[00:11:26] **Revkin:** And is there something that distinguishes a climate lawyer from an environmental lawyer. Is it just a subset or is it different fundamentally?

[00:11:34] **Gerrard:** Well, in the United States, since we don't have a federal climate statute, we don't have a lot of people who are purely climate lawyers, like we have antitrust lawyers or trademark lawyers. For the most part, climate law is a subset of environmental law, although it also bleeds over into energy law and now, increasingly, into all of these other areas of law. Europe got a head start. Europe began the emissions trading system a couple of decades ago. So there are a lot of climate lawyers in Europe. Just now are we beginning to see pure climate lawyers in the United States.

[00:12:15] **Revkin:** Shannon, from your emerging generation of lawyers, do you have a sense of how many people get this at this point?

[00:12:23] **Marcoux:** I think that there's a growing sense among law students that we all need to care about the climate crisis. And we've seen initiatives run by law students to even rank and evaluate Big Law firms based on their performance on climate issues or who they're representing and what kind of transactions they handle. So I think even for

those students going into the corporate space, there is more awareness around this as a crisis we all need to care about. And, certainly, I think, I have felt supported in going into a part of the field at the intersection of climate justice and human rights law and trying to carve out that niche. I've felt very supported in that, I think in large part because law students are being more creative in the way that they approach their careers. And I think a lot of us are going into the climate space from all different angles, both working here, domestically, and abroad as well.

[00:13:23] **Revkin:** That's exciting to hear that the young generation going into law firms might be able to sort of stimulate the law firms themselves to make different choices about who they represent. So maybe there's some hope there, too: The young generation can say, if you want the best lawyers coming out of Columbia Law School or the rest, you better pay attention to these kinds of issues. Shannon, was there anything in particular about being at Columbia that led to you feeling confident you have the toolkit, as Mike was saying, to dive in on these challenges?

[00:13:53] **Marcoux:** Columbia's focus, I mean, whether it's the Sabin Center or the Earth Institute or the Center on Sustainable Investment, all of the opportunities to explore the climate crisis from numerous different angles, just in my three short years on campus, really shaped my legal education and how I am, kind of, entering the field. And I do feel that it has prepared me well. As has going to law school in such a turbulent time politically and in the legal field. I think that prepared all of us for, to expect the unexpected and learn to adapt to it in the legal field and in the broader world.

[00:14:33] **Revkin:** We're in a time of epic cross-connected risk and opportunity, and the pandemic taught a huge amount of lessons about our systems as they exist. And the legal system as it exists and the legislative history in the United States feels like it needs a real big prod. So having a new generation willing to get into that, into the weeds and with the big picture in mind, feels really important. It's been great to be part of this conversation today. Michael, any last thoughts?

[00:15:02] **Gerrard:** Thank you for joining us. And I hope that all of the people who are listening continue to stay tuned to this podcast and learn even more about what's happening with climate and the law and Columbia.

[00:15:15] **Marcoux:** Thanks so much for having me. It was great to be part of this conversation, and I'm looking forward to listening to the rest of the series.

[00:15:21] **Revkin:** One thing that I think is clear is this conversation going forward will be a great one. And these, the podcast episodes are going to be something I'll be listening in on. Thanks for having me be a part of it.

[00:15:36] **Gerrard:** I hope you'll join us on *Defending the Planet*. Make sure to follow us wherever you get your podcasts. Thanks so much for listening.

[00:15:42] **Gerrard:** *Defending the Planet* is brought to you by Columbia Law School and is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Nancy Goldfarb, and Cary Midland, producers. Editing and engineering by Jake Rosati. Writing

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