

Transcript of 'Environmental Law'

Season 1, Episode 22, Transforming Tomorrow

[Theme music]

Paul: Hello, and welcome to Transforming Tomorrow the podcast from the Pentland Centre for Sustainability in Business here at Lancaster University Management School.

I'm Paul Turner.

Jan: And I'm Professor Jan Bebbington.

Paul: Jan, it's our second week of having a lawyer in the studio. We were on our best behaviour last time so that we didn't, you know, run into any trouble, and we'll need to be doing the same thing again.

Are you ready to be on your best behaviour?

Jan: I'm always on my best behaviour.

Paul: If you say so. So, we're delighted to welcome Camilo Cornejo Martínez to the studio with us. Camilo is a PhD researcher in the Law School here at Lancaster University. And he moved here from Chile to study at Lancaster, firstly for a master's degree and now for his Doctorate in Law. He works on areas of a just transition across nations as the world moves towards a new net zero reality.

[Theme music]

Paul: Welcome, Camilo.

Camilo: Hi, Paul. Hi, Jan. Thank you very much for having me. And thank you very much for this opportunity to share part of my research with all the Transforming Tomorrow's community.

Paul: Can you tell us a little bit about yourself, Camilo? How, what were you doing before you came to Lancaster, and how did you come to be here?

Camilo: To be honest I'm not quite good with numbers, so, uh, I couldn't be an accountant. Sorry, Jan...

Paul: ...that's delightful. [Camilo and Jan laugh] I'm perfectly happy that we don't have another accountant in the studio...

Jan: ...I think...

Paul: ...they cause more trouble than anyone else...

Jan: ...you two boys are ganging up on me. [Everyone laughs]

Paul: Yeah, I, I will say before the, this, uh, we've had met here today, uh, the, the email from you that said I just want to assure you I'm not an accountant. [Jan laughs] It was delightful!

Camilo: Yeah.

Paul: Good.

Jan: Good, we, we like all sorts of non-accountants.

Camilo: Well I'm, I'm not an accountant but I have been very close to the idea of accountability, so that could be my starting point.

Uh, I study law at the University of Chile, and I was admitted as barrister by the Chilean Supreme Court. That sounds very pompous, but just mean that I can defend your case in front of any judge or tribunal in my country.

Paul: Ju, just to check, can you prosecute us in this country?

Camilo: No. No, no...

Paul: ...we're safe Jan, we can say what we like...

Jan: ...yeah...

Camilo: [laughing] ...yeah, yeah, you're totally free.

So, uh, yeah, I, I study law, um, but I was focused on a very specific kind of conflict, uh, the social environmental conflict or sustainability conflict. I start in that, uh, in that area from the very beginning of my, of my career.

I work in a one of the major law firm in South America and Chile. And I was part of the team of the environmental dispute resolution. So in that role I had the chance to see how some companies need legal advice and need to develop legal strategies for very different reasons connected all with sustainability, like for example investment in mining, investment in fisheries or, for example, a partnership with companies that are currently working on, on Chile.

So in, in that role I totally felt in love with this idea of companies making decision on sustainability. But at the same time, and most of time, struggling with community engagement, uh, sustainable goals and follow the, the regulation. That sounds easy but it's not.

After that I, I was so in love with the topic that I had the chance to move briefly for a kind of academic position where I had the chance to go more deep in the research of environmental conflicts.

But life give me again another chance and this time, uh, I could join a new position in a environmental court in Chile. That is an specialised tribunal that is focused on social environmental conflicts. So I was working on, in a research area in that point. And, yeah, that's me.

Jan: And environmental courts, do they exist all over the world to, to actually achieve this particular aim of that mediating between some of these conflicts?

Camilo: Um, no, to, to be honest, uh, is not so usual, but exist in many different countries, uh, this court. But one thing that exists in different countries is, uh, the resolution of disputes between community and companies on communities, companies and governments on environmental issues.

So countries used to have different institutionalities, sometime is more close to an administrative perspective, like public servants. And in other case is more close to the, uh, not close to the branch executive, more close to the judiciary power.

So in the Chilean case we decide to take this environmental court because, actually was one of the recommendations from, uh, the sustainable development goals agenda. So one of the advice for Latin America in general, and particularly for Chile, was that we need to improve our institution. We need to make strong institution to, uh, improve at the same time all level of peace in this kind of conflicts.

Um, more certainty, and with that more certainty plus peace could be a good chance to, uh, continue in more environmental investment.

So that was the, the option of Chile.

Paul: So you've talked us through your time in Chile. How then did you end up in Lancaster? What was it that drew you from your work in the practical application of law in Chile to be a researcher over here?

Camilo: In parallel, in that research position in the environmental court, I was starting a career as academic. Uh, but in my University, uh, and in that context I was awarded with an scholarship. Originally was just for one year, for a master degree, uh, and that was when Lancaster appears in my life, and has been one of the better things that have happened to me.

Because I had that chance to go deeper in, in a intersection between human rights and environment. And Lancaster offer a special programme in that area.

But I think that most important for me were two factors. The first was the international context of Lancaster uh, well Lancaster University is a very well-known university, very high in the rankings, but at the same time it's a very global institution.

So, uh, I was looking for that chance, not just to see what is happening with environmental conflict in Chile, also to see the international perspective, and Lancaster was one of the best chances for that.

And the second is Pentland Centre. I was looking for research across different disciplines so...

Paul: ...someone's buttering you up here Jan.

Jan: Just speaking, speaking truth. [Camilo laughs] That's all you can do is speak the truth. He's a lawyer [everyone laughs], so he will speak the truth!

I know from your description about the environmental court in Santiago, is that that also had an interdisciplinary perspective, and that you require scientific expertise and knowledge to enter the court and be part of the judgments.

So is that common to see the sort of environment and law, uh, disciplines to be working together in this way?

Camilo: Uh, yeah, well, in the case of the environmental court is not so common because in the Chilean case we have one of the judge, we work with three judges for court, and one of them needs to have a, a background on science or natural science.

Jan: ...ooh, yeah...

Camilo: ...uh, but although other kind of courts could have, or not, this specific judge with a scientific background, uh, there is always in environmental law this intersection between law and, and natural science.

So sometimes it's just like, uh, some research on the area, and other is a more a deep connection like working, like, hand by hand with other disciplines. But it's a common thing and actually it's one of the thing that makes environmental law different to other law areas.

So that has profound implications, for example, in the way that we research on environmental law.

Jan: And I think in that way, contrasts with the interview we did in the previous podcast, which was corporate governance and corporate law, which feels, felt much more sort of procedural and quite sort of hard law, and even though there's soft law elements in it in, in the way that um Rafael spoke about it.

So it seems in, in the context of international environmental law, we're talking about softer law, so more of a soft law context, but then you've got this whole connection to human rights as well.

So that strikes me as a very strong connection between people and the environment and we, we, I'm sure that we'll come back to that.

Camilo: Yeah definitely and, and just to, to add another idea to that, like this connection between human rights, environment and a bigger approach to, to disciplines is having implication in one of the new theory that is called mother law approach, or planetary law approach, in environmental context.

And that basically stand for that, at the end the environment and the ecosystems are interconnected. So the frontiers is just a geopolitical thing and not a natural thing.

So in that context if we are going to research, if we are going to solve any legal question regarding the environment, we need to consider that all the ecosystem are interconnected.

Paul: Going to a geopolitical framework though, what kind of major issues and questions are there around sustainability in Chile, in South America as a whole? Is it different to what we have over here?

Camilo: We can have a, a podcast just for that [Jan laughs] or no. [laughs] But it's very difficult question.

Uh, I would like to say a, a bullet point, a series of ideas, and then briefly try to articulate an explanation of why, what is happening in South America.

So critical minerals for green energy transition. Uh, renewable energies, water scarcity, food poverty and clean energy access. Uh, marginalised communities, social inequalities, uh, sacrifice zones, uh, but at the same times indigenous communities, traditional knowledge, biodiversity protection, key ecosystem like Amazonas, southern glaciers, among others.

That, those ideas that sounds very different and probably are not all what is happening in in South America, are in advance at this moment, surrounding this idea of, of sustainability.

So it's very difficult try to articulate a accurate, accurate picture of what is happening. Uh, but I said uh taking one of the previous ideas that we discuss, one of the reports from CEPAL, one of the organisation of Latin America, said that one of the biggest problem at this moment in Latin America and Chile is that we need to work more on strong institutions.

And we need to work more in strong institution because we are facing deep economic problems, inequality among them. And at the same time we are having an unique opportunity with this chief for a sustainable world.

We can take this opportunity to make more sustainable business as a great chance to make also uh, strong communities and strong institutions to start growing up as, as a community.

And in that context our major challenge is start working on peace, uh, and the respect of human rights and give more stability to the region, to take this opportunity and start making more jobs, green jobs, opportunities.

Jan: Do you see equivalents of those kind of debates and issues coming through within the UK as well, given you've been here, you know, a few years now?

Camilo: This is my, my first approach in in UK. Since last year I am discovering a new world. Uh, and, and I thought that the question originally were totally different that what is happening in, in South America and in my country.

But surprisingly there are some question, or there are some patterns, that are very similar. Like, for example, this idea of recovery post pandemic and how pandemics and how the problems on ecosystem can make a huge problem for communities and economies.

At the same time the problem with the cost-of-living crisis, um, political uncertainty, the immigration is impacting both regions. So there were some

similar question. But I said, well first of all that probably is one of the aspect that we need to research more, there is a gap on that. What are the similar patterns and what are the different things that are happening in in UK and South America?

As far as I know, one of the biggest difference is how we are approaching this idea of sustainable transition. I have seen in the public discourse here that is more close, or is more connected, with the idea of economic cost. So, uh, sustainable as a cost for companies or sustainable as a cost for governments.

I said that there are so many voices in South America that are advocating for a new perspective, like seeing this sustainability as an opportunity. And I said before as an opportunity to growth more peaceful and respectful communities. And that discourse is not quite potent here, I said.

Paul: From, uh, a legal perspective do you notice different attitudes within the legal frameworks, within what maybe is already in place, what the thoughts are of legal scholars and legal practitioners between here and, uh, at home in Chile?

Camilo: Well taking from, from the, the previous idea that we can have in South America an opportunity with this sustainability movement. Uh, in terms of the practice, uh, environmental practice and the regulatory reaction of that practice has been focus also to give, uh, new frameworks and new regulations, and also bring creativity from the legal background to give space for business to adapt to this new world, uh, and also give the business the, the opportunity to start moving from an old paradigm to a, a new relationship.

Uh, and in that discourse, and in that idea of bringing creativity to the environmental law realm, uh, is connected with other ideas that are happening in South America, like for example, the right of nature.

So that is also a challenge for business and for lawyers and for practitioners in general because, uh, we are facing some hard law regulations, as you said Jan, with soft law regulation, but also these new ideas coming from very different part of the, of the practice.

Jan: And indeed, we're back to the Pacific, I think, [everyone laughs] which, which Paul was very keen that I take him to the South Pacific um in a previous podcast.

Because this is one of the early conversations that you and I had about the rights of nature, in particular there are some cases in Aotearoa New Zealand where the rights of nature have been formerly recognised in the law with, with legal standing.

But, but a lot of that is, it comes from the country but also is inspired and is similar to other activities, many of which are in the, the South American, Latin American context.

So could you tell us something about this rights of nature debate, the history of it and what, what's happening there at the essence?

Camilo: Yeah, well, right of nature, I said that is a rediscovery that we are having in South America. It's quite difficult to say well right of nature start in this point, in this year with this, uh, case or with this movement, because actually for us the idea of right of nature came from indigenous communities. And particularly Andean indigenous communities.

So for some part of our history we were so focused on the idea of development as synonym of GDP, that we forget actually what means development for us.

And in the recent years, particularly as consequence of the globalisation, uh, we start thinking again well, what means, u,h development for us. In that answer, uh, appears again the place that nature has in South America.

So, we start looking what is our tradition. We start looking what are the knowledge of indigenous communities. And we see that nature is much more than capital for us. Uh, nature is part of our idiosyncrasy.

So in that context if we acknowledge that nature is so relevant in our daily life, in our beliefs. So we wonder if, is nature playing another role different to just a capital in, in this economic view. From that perspective the idea of right of nature is still, is stand gaining more traction. And the argument, well let's play uh just to, to explain this a, a little game.

Imagine that we are running a company, and that we are, we need to buy some cars. Uh, so can you list who is relevant in that decision? Like for example I, I can start, like the workers that are going to drive that car.

Jan: I suppose for me it would be who made the cars, and the people who transported the cars from somewhere to me.

Paul: I thought you were going to say the accountants who need to decide [Jan and Camilo laugh] how much money is spent on said cars, and how much budget is available, and what's the best use of resources.

Camilo: Yeah, that's good. And do you have another stakeholder that could be relevant in this decision?

Paul: Well, from what you're saying, nature, essentially...

Camilo: ...yeah...

Paul: ...are you going to buy gas guzzling cars that pump out ridiculous amounts of diesel, or petrol, fumes, or are you going to buy an electric car or you know things along those lines.

Camilo: Yeah, exactly.

Jan: And presumably if you buy the electric cars you want to know about the batteries, which is coming round to some of the issues that you identified earlier on as well.

Camilo: Yeah, and exactly, and that's the point of the right of nature movement in South America.

So every decision that we're going to take, when we start think thinking is, who is involved in that decision, we used to think that just in human needs and human uses.

But the argument is that if we consider the indigenous communities, we also need to consider the right of nature. And that means that if we are going to take the decision for buying a car, we need to also consider, uh, how that car is impacting nature, and take that idea, uh, and apply to every decision that we're going to take.

Paul: How hard is it for nature to have a voice? Because, obviously, all the other groups there's a physical voice that you can hear, there's people who can represent them and speak for them. Nature itself cannot have that voice in a human form, so does that make it more difficult to represent nature fairly rather than representing nature from a human perspective?

Camilo: That sounds like a PhD research... [laughs]

Jan: ...there we are Paul...

Camilo: ...yeah... [Jan and Camilo laugh]

Paul: I'm busy that week. [everyone laughs]

Camilo: Yeah. No, but actually is precisely the debate that we are having at this, at this moment.

There are different models. For, for example one way is to say well, this ecosystem or this element of the ecosystem, like this river, is going to be represented by a special institution.

So people decide to put the taxes and use that money on that institution and that institution is going to represent the element of the ecosystem, of the entire ecosystem.

But the problem with that model is that communities start claiming that if there is one governmental institution that is protecting what happened with the community and the voice of the community.

So the, the problem with nature is that, as you said, it doesn't have a voice uh and the voice of the nature is constructed from the community, and not from an office, uh, from a governmental institution.

So we have these two models. From one side, a government institution, on the other side a community, and we have between those models different alternative. But it's an ongoing debate, and at this point I said that one of the biggest improvement that we have is a kind of mix, with a participation of institutions, government, but participation of communities, and holding both hands is the scientific community.

Jan: And I think sometimes you can frame it as, almost, things that you can't do. So if you, if a river is going to have it, its rights, then you probably don't dam it, [laughs] okay...?

Camilo: ...yeah...

Jan: ...because it's changing the integrity of, of the river to do what it wishes to do, wherever it is.

So there must also be some things that sort of are blocked out of, if you've got that at the heart, beyond how you organise, you know, the debate and the conflicts between that.

Camilo: Yeah, and actually that bring us to another of the very difficult question on what, at the end, what means that a river has rights? And what rights those rivers, or those ecosystem, can have.

For the moment I said that in the Latin American praxis we take the decision to say that the, the rights that those ecosystem are having is to exist, uh, to maintain their ecosystem service, uh, and to be repaired in case there were damage.

And why is that relevant, is because, uh, when we take decisions, doesn't matter if you're a company, if you're a community, whatever, if you take decisions you need to consider that your decision should too respect that right to exist, and to not damage the, the entire ecosystem.

Paul: The question you raised there Jan about dams is an interesting one in my mind, because it makes me think of the reintroduction of beavers in this country.

Because obviously a beaver's building a dam and that's one of the intended effects of the reintroduction of beavers. But that's a beaver doing it in a habitat that used to be its natural habitat before they were hunted to extinction.

And therefore, there's got to be a balance there because you're, the beavers are doing the work and building a dam, you're not building it yourself with concrete. But that's still affecting the river because the river wouldn't have had a dam if the beavers weren't put back there by humans.

Jan: Yeah, and I guess it's also, and Camilo will be much more able to answer this than I can, so what is nature, the beaver's nature, [laughs]. The beaver's character is nature, um, but also we're nature as well, we're a special kind of sometimes slightly odd bit of nature. So, actually, where you draw the boundaries become really tricky.

Paul: And it's the same argument of what animals get reintroduced where. That you reintroducing things like types of eagles or birds of prey, you're reintroducing predatory animals in certain places, like maybe, say, the wildcat or the lynx or something like that.

And the arguments always come, well, if you introduce the, these predatory animals the farmers will say they're going to eat all my sheep, and I'm going to lose all my sheep, my livelihood. So there's a human effect of what nature is doing and then you've got to consider all the bad stuff. It, it sounds like it's a very complicated area of legal consideration.

Camilo: Yeah, I, I was not totally prepared for that! [everyone laughs]

Paul: And yet we want an answer right now! [everyone laughs]

Camilo: Yeah, I, I think that I can give some clues on, on that question, because it's an ongoing debate. Uh, but I would like to start from that idea that, uh, Jan brings to us, that we are nature, also, as humans.

So, and that is very relevant for the right of nature discourse. Because the right of nature is not advocating for a clear and pristine ecosystem with no intervention.

The right of nature is putting the question on how we are going to distribute the burdens, the benefits and the damage, uh, for some activities. So, for example, in your case, Paul, you said, well, we need to reintroduce some species so we need to account, uh... [laughs, pauses]

Paul: Accounting, accounting.

Jan: Accountability, we're there!

Camilo: We, we need to account, uh, how we are going to be benefit as humans, but also which species are going to be benefit, and which, or who is supporting the consequence of that benefit.

And at the end is trying to balance, so if someone is going to be benefit that, uh, in the case, for example, a new species, we need to also try to bring how that species could help to the ecosystem to keep surviving. Or if we need to take another extra additional measure to keep that environment alive.

Uh, and it's the same with the human activities. If we are going to use for example the, the forest as forestry companies, we're going to use that resources that are relevant for the ecosystem, we're going to be benefited, but at the same time we need to be worried how we can keep that ecosystem living.

And, and at the end that's the right of nature. Keep living in, in a natural way.

Jan: And I think that's a really nice way of conceiving of it, 'cause it's not setting something, sort of, aside and in pristine, in some sort of imagined pristine form and never touching again.

But that brings us on to your PhD topic, which is about the international regulatory framework of just transitions. Because just transitions, you know, imply, well, justice and we've just been talking about some of the distributive

procedural recognition as justice principles. But also transition implies a change as well.

And so, tell us a, a little bit about your PhD and how this topic plays out.

Camilo: This idea of just transition is not, uh, new. This idea of just transition start in the 70s at least with some worker movements in coal mining sector.

So at that point there were new regulation. And because of that new regulation there were some coal mining that need to close. And the claim for the workers at that point was a very easy one, like, if you're going to close, to close my job then I need some help to, until I can find a new job.

And some research had identified that the effect of that regulations was so deep, that was not just one generation affected by the effect of new regulations, was between, something between four and six generations.

And actually Wales is a pretty well case, and it's a documented case of that effect of how some environmental regulations could have a deep effect in vulnerable communities.

So they did this claim, so if you, if you are going to take some measures in this environmental, uh, regulation you need to help me to move to a, a new position, you need to help me to find a new job. And then the idea was not so common until, uh, climate change arrived to our daily lives.

But the paradox is that, at this point the idea of just transition instead, instead of being used by workers, start being used by companies. So companies said, well, I already have this investment on fossil fuel. If I move this money, money to another business, uh, probably I'm going to affect vulnerable communities that live on this, uh, fossil fuel companies.

So the paradox is that now are companies that are using the argument to say unfortunately I can't do too much, uh, to achieve climate goals, because is, if I start taking more, uh, fast and growing measures I'm going to make poverty, I'm going to affect the economy of the community, the country or even the world. So I can do nothing. And by the other side... [Jan laughs]

Jan: ...sorry. For, for listeners I was looking a bit bad tempered at that statement! [laughs]

Camilo: [laughs] Yeah, exactly!

On the other side the argument was, well, the problem is that if we uh keep that logic and we do nothing, and we keep the investment on fossil fuel, uh, the most vulnerable communities are also the most affected by climate consequence, climate hazard.

So we end in this game of sum zero, well, whatever we do we are going to potentially affect, uh, vulnerable communities.

Paul: And that ties back to the conversation we had with Celine a couple of weeks ago, where she was saying about how that there's the options there of how you might think about things, you think, oh, that was going to happen anyway so it's just going to happen. Oh, there's nothing we can do about it. And, yeah, the different ways of communicating and you know thinking about that overall.

Camilo: I will like to take also an idea that was discussed in one of the previous podcast of Transforming Tomorrow, uh, the special for the COP 28. Uh, and in that podcast one of the discussion, or one of the topic, was well, uh, what we can do as a world community. What states can do to promote this transition to new climate scenario.

And in that podcast you, Jan and Paul, discussed the, the, some of the consequences of COP 28. And in that COP also one of the thing that was discuss was a new fund for just transition.

So now, in the international context, we are discussing how we can support this transition, but uh that bring us again to the question, so what mean 'just' in this transition?

Because for the moment what we know is that if we take fast and deep measures we're going to provoke a huge change economically and social, socially speaking.

But if we do nothing, also, we're going to face a big challenge in terms of environmental consequence.

[Theme music starts playing]

Jan: And that's, that's the wickedness of the setting isn't it?

Camilo: Yeah.

Paul: We'll be discussing wickedness very soon. [Jan and Camilo laugh]

I think we're going to have to draw this to a close. But I'm aware there was one topic that we haven't discussed, and it's introducing a new word to the English language again...

Jan: ...yeah, that's right...

Paul: ...glocal, glocal...

Camilo: ...yes.

Paul: Oh. Can I suggest we reconvene for a special mini episode, a bonus episode with you very soon Camilo? But for the moment I think we'll say, thank you very much, because that has been a fascinating conversation.

Jan: Absolutely, thank you.

Camilo: Thank you very much.

Paul: Until next time, if you do have any questions for us please do email pentlandcentre@lancaster.ac.uk and we will attempt to answer any and all of them we can in an upcoming episode.

So, until next time, I'm Paul Turner.

Jan: And I'm Professor Jan Bebbington.

[Theme music]