Palsgraf v. Long Island Railroad

Palsgraf is a case known to every American law student. It involves a bizarre accident: a train employee negligently caused a passenger to drop his bag, which contained fireworks, which went off, which caused freight scales at the other end of the platform to fall over, which hit Mrs. Palsgraf and caused her emotional distress. Justice Cardozo's famous opinion for the New York Court of Appeals held that Mrs. Palsgraf couldn't recover, essentially because this chain of causation was just too ridiculous. Lawyers call that an"absence of proximate cause." What, you might well ask, could that *possibly* have to do with environmental law? A lot more than you might think.

The core idea behind the doctrine of proximate cause is that it may be unfair to hold people responsible for harm even though they did in fact cause it, because of tenuous relationship between their action and the harm. Here are some environmental questions that courts, agencies, and commentators have analyzed with the concept of proximate cause.

1. Should a government license for a coal plant trigger review be subject to the requirements of the Endangered Species Act? That depends on whether you consider the license to "endanger" polar bears or the operation of the plant to "harm" to their habitat — and that in turn is at heart a question of proximate cause.

2. Must the government discuss the risk that a nuclear power plant will release radioactive materials because of a terrorist attack? No, according to the Third Circuit, because licensing the plant would not be the proximate cause of the radiation leak.

3. Should the U.S. have to compensate the inhabitants of small Pacific Islands whose homelands are disappearing beneath the waves due in large part to massive U.S. carbon emissions?

4. Does a person who owns seacoast property have standing to challenge govern ment failure to regulate greenhouse gases? That depends on whether the sea level rise can be "fairly attributed" to the government, which is just proximate cause under a different name.

There is a good deal of intuitive sense to the idea that responsibility runs out at some point even though a factual connection exists between an act and a harm. The trouble — as every law student soons learn in Torts class — is that it's virtually impossible to figure out where to draw the line or to make sense of the myriad judicial decisions on this topic. So we might be better off in environmental law if we could replace proximate cause with some more

pragmatic test. So far, however, courts, agencies, and others often seem to slap a conclusory label on a problem — "proximate cause"/"no proximate cause" — rather than really digging into the issues.

(For torts purists, a couple of footnotes about Palsgraf. First, although everyone thinks about the case as involving proximate cause, it technically involved the separate question of "duty," although the only practical difference is that one question is for the judge and the other is for the jury. Second, the version of the facts given above is from the opinion, but it's very unlikely that it happened that way.)