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Professor Chiara Armeni and Dr. Maria Lee (University of Brussels/ University College London)

Participation in a time of climate crisis

We argue that a rich conception of rule of law engages with questions of who makes decisions and how, and with questions of power. The emergency framing of the climate crisis exacerbates the vulnerability of legally protected rights to participate in decision-making, making strange bedfellows of technocrats and populists in a shared resistance to procedural constraints on power: for technocrats, climate is a technical problem, with a technical solution to be revealed by technical experts (without pesky outsiders); for populists, the will of 'the people' is already clear, 'outputs' are the focus, and legally protected procedural rights get in the way. This inevitably puts pressure on the rule of law. The legal protection of rights to be involved in decisions is more important, not less, in a time of climate crisis.

Paulina Astroza (University of Concepción)

Chile and Escazú Agreement: a tale of a threat on environmental democracy

The objective of my presentation at the activity organized by the UCL, London, in 2022, will be to analyze and refute the legal and political arguments invoked by the Chilean government to justify its refusal to sign the Escazú Agreement despite the fact that Chile was the country that invited the countries of Latin America and the Caribbean to the treaty, negotiated and adopted it. President Sebastián Piñera decided not to attend the signing ceremony in New York in September 2019 and allowed the period of two years established by the treaty to elapse. By doing so, he left Chile far outside the first environmental justice treaty and environmental participation in Latin America and the Caribbean, which is already in force. I will argue why the new government that is elected in December 2021 should adhere to this important treaty.

Juan Auz (PhD Researcher, Hertie School)

The Political Ecology of Climate Remedies: An Inter-American Human Rights System Prognosis

This paper seeks to answer the following questions: what types of remedies could the organs of the Inter-American Human Rights System (IAHRS) order in a climate change case from Latin America? Moreover, what implementation barriers could those remedies face? In doing so, a doctrinal approach to analyse the remedial typologies of the IAHRS's organs and a political ecology lens to understand the barriers to compliance will be employed. In that vein, the first part of the paper lays bare the practice of the IAHRS vis-à-vis remedies, in particular those cases entailing environmental dimensions, allowing extrapolation to climate-related cases. Secondly, barriers to compliance in those cases will be discussed. Thirdly, three relevant domestic cases with climate dimensions and partial compliance will be juxtaposed with those of the IAHRS to spell out possible explanations of non-compliance. Finally, a prognosis of the effectiveness of remedies in climate cases before the IAHRS will be articulated based on current challenges in domestic climate litigation in Latin America.

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Simon Best (PhD Researcher, Leeds Trinity University)

Freehold covenants and environmental protection: Striking the correct balance right between public and private regulation

Land is a finite resource the enjoyment of which is governed by laws and regulations. Rights in property are not absolute but subject to a wide range of state-imposed limitations and constraints. Yet there is a balance to be struck between public and private regulation in terms of environmental protection. One is not necessarily free to always chose one's own interests over those of the public and or over those of future generations. The role of private covenants, in particular freehold covenants, play an ever more important role in dealing with specific and detailed aspects of land use and environmental protection.

The connections and tensions between private and public regulation, of land, for environmental protection poses significant challenges. Questions arise as to what extent reliance is placed on private covenant based regimes to regulate land use for environmental protection? How effective are private freehold covenants in achieving this and what difficulties exist? What lessons can be learned from other jurisdictions (such as Trinidad and Tobago, New Zealand, Scotland, and Northern Ireland) where their private covenant regime has recently been reformed, in particular in connection with positive covenants; and is the balance right between public and private regulation, if not what can be done to readdress this?

Professor Anuj Bhuwania (O.P Jindal Global University)

Indian Courts and Climate Change: Panacea or Smokescreen?

The Indian higher judiciary is globally renowned for the vanguardist role it has played in evolving its environmental jurisprudence over the last many decades. However, many of these most famous interventions have since been criticized as instances of 'bourgeois environmentalism,' as well as characterized by a 'jurisprudence of exasperation.' These judicial interventions have been made possible by departing from fundamental procedural norms, resulting in a refusal to engage with or even hear key stakeholders adversely affected by drastic actions ordered by judges, or consider alternatives to their vaunted technological solutions. This insistence on looking at procedural justice as an enemy of environmental justice marks not only India's well-known Public Interest Litigation jurisdiction, but also the so-called 'Green Tribunals' established in its image. Such top-down judicial omniscience enable drastic if non-deliberative decisions but further entrench environmentalism as a bourgeois concern, especially since its interventions have often targeted the most vulnerable, while much more environmentally destructive state actions get away. In a public discourse where climate change and environmental concerns still play a peripheral role, and mainstream developmentalist discourse continues to view environmentalism as a pesky nuisance, I argue that the lofty environmental gestures by Indian courts fill a huge void, but at a massive cost.

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Professor Sanja Bogojevic (University of Oxford)

The future of electric cars: the race for lithium and rule of law demands

The presentation will survey the calls made for such an emergency and their related reasoning, then move to the Covid-19 crisis as a flagpost for dangers with labels such as 'emergency', focusing on rule of law concerns.

Barasha Borthakur (PhD Researcher, Queen Mary University of London)

Climate-Induced Migration and Citizenship (Amendment) Act, 2019 (India)

With its population diversity, geographical sensitivity, economical fragility, and administrative complexity, Assam — a border state – becomes a very intriguing place to examine the legality of climate-induced migration and citizenship. The researcher poses two critical questions: (a) what are the normative frameworks available for safeguarding the rights and status of people migrating as a result of climate change? and (b) Why is there a lack of consistency and sufficiency in the state's provision of support services?

To address these issues, the researcher looks at how, first and foremost, the sub-national government views climate-related migrations as a developmental concern. Second, elite actors' framing of climate change migration as a developmental concern differs from how street-level administrative players see the issue. Rather, street-level actors' everyday judgments and discretionary powers are intricately linked to the political and socioeconomic realities of their communities. Finally, what legal framework will suit the best for the immigrants whose official documents are demolished by the natural disaster (especially hydro-metrological changes which is common in the state of Assam).

Audrey Boussat (PhD Researcher, University of Lausanne)

Participation of Civil Society in the Decision-Making at COPs

My paper will analyse the access granted to civil society in the decision-making of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC). The following arising questions will be addressed:

First, I will critically assess the procedure NGOs have to go through to get observer status. My aim will be to emphasise the legal obstacles they can encounter in this process and suggest improvements. Second, I will address the effectiveness of this procedure. For civil society to be able to meaningfully participate, there is a prerequisite: the public needs to have sufficient access to information before the COP. Is this the case in practice? One may also wonder if the current kind of participation is the most suitable for the public to properly influence the negotiations, and therefore the development of the law. In the context of the COP, what other possibilities could be granted to civil society to make its voice heard?

To highlight the specific features of this system, I shall compare it to the one in force for public participation at the COP to the Convention on Biological Diversity.

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Gürkan Çapar (PhD Researcher, Sant'Anna School of Advanced Studies)

Rule of Law in Climate Change Regimes

The paper analyses whether and to what extent the climate change regime fulfils the requirements of the rule of law in transnational/international context. It will establish a connection between the concept of authority, normativity and rule of law with the intention to analyse the level of normativity provided by the UN-orchestrated climate change regime. Benefiting from the theories of interactional law on the one hand, and from those of rule of law theories such as Waldron, Fuller, Palombella, and Krygier, the paper aspires to explore the process of climate change regime has undergone with respect to the rule of law compliance, namely, the level of normativity provided by the regime. This without a doubt forces us to go beyond the traditional approaches to the international law, be it positivist adopted by international lawyers or realist embraced by international relation scholars. As such, it will compel us to adopt a concept of law, which is not only essentially contested by also essentially ambiguous. That is, law cannot be understood without adopting and circulating between its dynamic and static dimensions and taking on methodologies suitable to this dualist analysis.

Kristin Casper (General Counsel, Greenpeace International)

Corporate accountability for the climate crisis: How people-powered lawsuits are hastening the demise of fossil fuels

Businesses are on the hook for contributing to the climate crisis. Communities in the global south are holding big polluters accountable for their contribution to climate harms, a trend that will likely increase in other countries with developments like the upcoming EU Due Diligence law. Communities in the Philippines triggered a first-ever human rights investigation into the responsibility of carbon producers for climate-related harm. US communities are suing fossil fuel companies to recover the costs. A Dutch court ordered Shell to dramatically reduce emissions across its value chain, in a case brought by NGOs and 17,000 individuals. People-powered efforts are also aiming to stop greenwashing. A European Citizens' Initiative calling for legislation that bans fossil fuel advertising and sponsorships. How are communities building power through these legal actions, and what are the system-change demands they are making? This presentation offers insights on how communities are leading the way.

Julio Cordano (Chief of Chilean Delegation to the UNFCCC)

Rigidity at UNFCCC institutions and the emergence of Soft Law

During this presentation I will describe and analyze how UNFCCC and COP institutions and processes have become increasingly rigid through inefficient political negotiations. The need to move forward on climate change governance has opened the possibility despite this structures have opened a window for soft law instruments and informal channels to emerge as relevant in current and future

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global climate governance. I will use the "because of the ocean" initiative, where Chile and COP 25 had a important role, to describe these processes.

Dr Damian Cueni (Early Career Fellow, Bonavero Institute of Human Rights)

Litigating Climate Change through Basic Rights Adjudication? Normative Questions with Regard to the Procedural Separation between Law and Politics

The increased tendency to pursue climate change litigation through basic rights adjudication raises fundamental questions about the scope of judicial competences as distinguished from the sphere of politics. My goal in this article is not to utter a final verdict on these issues, but to focus theoretical attention on a highly neglected aspect of this debate. Both the doctrinal and the theoretical discussions by and large assume that the crucial distinction between legal and political questions is to be decided as a substantive issue, and that the relationship between basic rights and climate change should thus by no means be pre-determined at the procedural stage of basic rights adjudication. Against this tendency to neglect the normative significance of procedural requirements, I will present a normative 'middle-range theory' that explains their crucial role in structuring the relationship between individual and collective self-determination in a modern liberal democracy. This reframes the normative and institutional choices involved in whether to permit basic rights-based climate change litigation in a more political key that connects it to the (under)-representation of future generations in contemporary liberal democracies.

Ludivine Delaloye (PhD Researcher, University of Oxford)

The "Climate Necessity Defence": Does the Noble End Justify the Criminal Means?

Environmental activists engage in civil disobedience to advance their cause, invoking the 'necessity defence' against subsequent criminal charges. Their argument is straightforward: the consequences of global warming – that are not only imminent but are becoming increasingly apparent – far outweigh any harm caused by non-violent protest. In my research, I explore the contradictory attitude of Swiss Courts towards climate change necessity defence. I suggest that one possible motive of the Courts to deny the necessity defence is a belief that climate change is a political issue that does not belong in the courtroom. I argue that this approach is misguided and produces three errors in the analysis of the requirements of necessity defence: the courts fail (i) to properly interpret and apply the imminence requirement, (ii) to recognise the efficacy of climate actions in mitigating global warming, and (iii) to recognise the lack of effective legal alternatives. I claim that the trend of denying the necessity defence ought to be reversed and explain how this defence ought to be applied. The approach that I advocate is sufficiently narrowly tailored to protect activists in appropriate cases, without giving justification to all those who practice civil disobedience.

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Professor Jonas Ebbesson (University of Stockholm)

Challenging and developing legal concepts through climate lawsuits: how does that square with the rule of law?

Climate lawsuits are important for climate transformation through democratic means and the rule of law. In addition to implementing and enforcing laws on climate change, climate lawsuits challenge established legal concepts, bring about new understandings of them and compel us to think anew. This includes issues such as standing, prevention and precaution, injunctions, allocation of responsibility, causality, participatory rights, justice, human rights and effective remedies. The understanding of human rights in climate change contexts is a case in point. While the connection between environment protection and human rights is not new, climate lawsuits bring this relation to a new level.

How does this square with the rule of law, which not only constrains the power of governments, but is also conventionally understood as ensuring legal certainty and predictability? Moreover, by changing and developing already existing legal concepts, do lawsuits thereby create climate laws in the place of the legislator?

Professor Piet Eeckhout (University College London)

Climate change and the right to regulate

The global nature of climate change produces a complex collective action problem. The effects of climate change differ between jurisdictions. So does the pollution causing climate change, as well as the financial and technological capacity to reduce carbon emissions. National/regional policies may be ineffective due to carbon leakage. International negotiations are bedevilled by the prisoner's dilemma, as fighting climate change is perceived to be costly and anti-competitive. The Kyoto Protocol and the Paris Agreement provide a general framework, but are inadequate on their own. It is for States and regional organisations such as the EU to devise and implement effective policies. The paper looks at this collective action problem through the lens of the so-called "right to regulate", in the relationship between the EU and the UK after Brexit. Both the EU and the UK insist on a certain level of regulatory sovereignty, including in the areas of environmental and energy policy. The paper will examine the contours of this right to regulate, as articulated in the Trade and Cooperation Agreement. It will explore the ramifications of the insistence on regulatory sovereignty for an effective fight against climate change. And it will normatively critique the return to sovereignty discourse in the face of the climate change emergency.

Professor Liz Fisher (University of Oxford)

Climate Change, Statutory Construction, and Legal Imagination

Courts do not operate in splendid legal isolation. Much of their adjudicatory work in relation to climate change concerns evaluating the legality of certain types of statutory construction and interpretation. These are exercises grounded in public law doctrine and thus the public law

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imagination. Using recent case examples from common law courts it is shown how climate change requires an expansion of the public law imagination in regard to legislation. As illustrated by cases this is not a revolutionary but an evolutionary exercise. It is also an inherently legal one – requiring the development of robust legal reasoning.

Osvaldo de la Fuente (PhD Researcher, Universidad de Chile and Universitat Pompeu Fabra)

Towards a Philosophy of Environmental Law

Why is it so hard to improve the institutional outcomes that address environmental problems? I argue that the problem arises in Kant's distinction between the natural world and the intelligible world, which has forged our understanding of the law as a system of liberties. This conception of the law works without an image of our environment and makes it hard to process environmental problems within the law.

To deal with this problem, I argue for a complex image of the law: an institutional approach that focuses on the structure and functions of our legal institutions. In environmental law, three of them are relevant: liability, human rights, and regulation. The study of these institutions from an institutional approach reveals the limits of legal discourse and its potential to deal with environmental problems. Also, it shows that in public discussions, it is possible to identify three attitudes towards environmental issues: the activist, the technician, and the jurist. This analysis can contribute to an understanding of environmental law from an intra-disciplinary approach that is open to other legal areas. Moreover, it explains the impotence of the so-called environmental principles.

Sarah de Gay (Visiting Professor, Independent Committee Member, Non-Executive Director, Trustee, Junior Warden and Solicitor)

Do E&W solicitors have a legal duty to advise their clients on climate related issues?

To what extent do or might solicitors in England and Wales have a legal duty in Tort to advise their clients on climate-related issues? Is the position of law firms which have signed up to the UN's Sustainable Development Goals or similar initiatives any different? And what about the rules of the profession's regulator (the Solicitors Regulation Authority), do they address climate change or have any ambitions to do so? Sarah will begin by addressing these narrow but compelling questions before moving onto more existential matters. As more large law firms decide to become purpose-led organisations are they (as opposed to the SRA) leading the charge in what it means to be professional in a world which is facing a climate change crisis? And will others have to follow if they are to win the war for talent and themselves be sustainable in the very ordinary sense of the word?

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Professor Gitanjali Gill (Northumbria University)

Climate Change and the Indian Judiciary through a Transformative Lens

My current research focuses on Sustainability Transformations discourse in social sciences. Sustainability transformations involve reorientation and restructuring of governance processes and actions. My proposed panel presentation is based on the recognition of sustainability transformations underpinned by the (environmental) rule of law through robust institutions including the judiciary. Drawing on this literature allows me to analyse India's climate change cases and the role of its judiciary. The Indian judiciary, noted for expansive thinking, and acting as a 'lever of transformation', are slowly addressing climate cases despite the absence of comprehensive domestic climate change legislation. I have categorised climate change cases in three ways (consciousness, accountability, and futurity) to reflect progressive cumulative outcomes, albeit incremental, but that enable conditions for transformative change. Judicial intervention, as a strategic tool, can effect transformative changes through implementation, development and enforcement of environmental laws and promoting a sustainability agenda.

Sonam Gordhan (PhD Researcher, University College London)

Exploring the Institutional Foundations of Climate Change Litigation

Much hope is placed on the outcomes of climate cases to address governance gaps, however this assumes a particular role for courts and does not account for the complicated (and often messy) institutional context that shapes the adjudicative process. My paper uses common law theory to show that courts reason climate cases subject to institutional constraints, and that climate change legal disputes do not fit neatly into conventional accounts of adjudication. I draw on three particular features of adjudication to illustrate this complexity: the constitutional competence of courts, the doctrine of precedent, and doing justice between the parties. The problem is not whether courts should or should not adjudicate climate change – it is that scholarship has not yet evaluated how courts have responded to the legal issues that arise in climate change disputes. By adopting a jurisprudential approach, my paper provides a method for evaluating how courts perform their dispute resolution function in climate litigation and whether their approach is justified. This is an essential exercise before making any assertions about the role that courts should play, or in critiquing where they fall short.

Professor Chris Hilson (University of Reading)

Climate and the Court of Justice: EU judicialisation of politics, populism and the rule of law

The paper examines the double standards employed by the CJEU in relation to the judicialisation of politics – keen to promote it for national courts as part of the project of 'integration through law' or 'Eurolegalism', but much less keen to apply it to itself. The paper then explores the relationship and tensions between the judicialisation of politics, the rule of law and populism, drawing on e.g. the history of the reception of EU law by the French courts. This then sets the scene for an analysis of climate change litigation in the CJEU, which, it is argued, reflects these various tensions. The Carvalho

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and Sabo (biomass) cases are both discussed as examples of Green populism, representing a particular vision of the rule of law, but one countered by the Court's own conception.

Professor Ademola Jegede (University of Venda, South Africa)

Struggling to be heeded! Climate rule of law and the protection of indigenous peoples' lands rights under the AHRS

Climate change affects indigenous peoples adversely in Africa, although they contribute least to its causation. It affects land rights that are central to their collective cultural, physical and spiritual survival. The plight of indigenous peoples has been a subject of complaints and application of regional law before the treaty monitoring bodies of the African Human Rights System (AHRS). Despite the development, there is no pioneering litigation on climate change touching their land rights. Also, the implementation of existing decisions of the AHRS which touches on their land remains largely problematic at the national level. Arguably, climate rule of law as a reflection of environmental rule of law is necessary for climate justice and demands that quasi- judicial and judicial bodies and other actors ensure equal access, effective application and enforcement of laws at all levels of governance. This is not yet achieved for indigenous peoples. This paper interrogates the challenges of indigenous peoples under the prism of climate rule of law and argues how key actors within the AHRS can play a useful role in ensuring climate justice for indigenous peoples' land rights at the domestic level in Africa.

Esther Marigu Karanja (Legal Researcher, High Court of Kenya)

Climate Justice and Judicial Activism in Kenya

In Kenya, the Climate Change Act 2016 has domesticated the overarching framework of international law and provides the national agenda for enhancing climate change. This paper aims at analyzing the contribution made by the Judiciary to access climate justice and the development of progressive and principled climate change law and policy. In particular, the paper will explore the impact of climate litigation has, inside and outside the legal proceedings of climate change-related cases. In addition, the paper will explore the judicial decisions that have propelled the Judiciary into judicial activism by holding the government accountable to climate change. The paper seeks to examine the actions taken by courts to compel state actors to take action, and pursue climate change mitigation and adaptive goals in the decision-making process and disclose climate-related risks. The paper will correspondingly compare the climate justice in Kenya with that in South Africa and Brazil, to identify lessons that Kenya can learn in ensuring climate litigation continues to be a key activism strategy in reinforcing climate change justice. In conclusion, the paper will outline key observations and recommendations to the Judiciary on enhancing climate justice.

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Peter Kellett (Director of Legal Services, Environment Agency)

A changing climate for in house lawyers? What should they really say to clients?

In-house lawyers face particular challenges in advising on climate change issues given their positions of relative influence and the tensions and uncertainty around what constitutes professional advice and what the evolving law actually is. What lessons might be drawn from the experiences of the English Environment Agency as an operator (given its policy to become a Net Zero organisation despite a heavy carbon footprint), as a regulator (given legal roles on carbon mitigation and adaptation) and of its separate Pension fund (which is a world leader in sustainable investment)? At some point either legal regulators or the Courts may decide what constitutes competent climate change legal advice. Before then what might clients reasonably expect and deserve from legal professionals given the clearer impacts of climate change and the revolution of climate related regulatory and market interventions which now touch so many areas of law?

Professor Jeff King (University College London)

Populism vs. (Rule of Law/Expertise/Democracy)

I aim to explore the manner in which populism poses a compound threat to the ability of states to address harmful climate change. Populism in some nations has tended to devalue or undermine technocratic expertise, the rule of law, and democracy all at the same time. Responding to any of these threats in isolation is likely to fail. Responding to the former two would fail because of vulnerability to charges of elitism. Responding to the latter would need to overcome the 'will of the people' rhetoric, by making a full case for a representative rule of law democracy that can legitimate a leading role for technical expertise. The paper will illustrate these claims by reference to environmental policy as well as in respect of responses to Covid-19, where the same underlying challenges are at work.

Dan Leader (Partner, Leigh Day)

The developing legal landscape on parent company liability - is corporate impunity drawing to a close?

Historically, multinational corporations have operated with impunity in many developing world countries. In situations where foreign subsidiaries of global corporations have perpetrated serious environmental harms or human rights abuses, the victims are often powerless to hold them to account. The legal landscape is, however, changing fast making it increasingly making it possible to hold corporations to account in the global north. In the UK, the Supreme Court has recently held in two separate landmark cases (Lungowe v Vedanta and Okpabi v. Shell) that parent companies can be held legally liable for environmental harms caused by their foreign subsidiaries. Furthermore, the scope of such potential liability as stated by the Supreme Court is very broad. This is matched by recent developments in EU countries which are creating statutory duties for multinationals to conduct human rights and environmental due diligence within their corporate groups and within

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their supply chains. I will argue that the space for corporate impunity is narrowing and that this is a vital development in the fight against climate change.

Agnes Harriet Lindberg (PhD Researcher, University of Cambridge)

Climate change mitigation as a value - a parallel to the rule of law concept

In this paper, I will explore how a duty to mitigate climate change can be viewed as having similar features as the rule of law concept. A duty to mitigate climate change, which includes the need to undertake impact assessments and set carbon budgets, has a parallel structure to the concept of the rule of law. Examples of principles derived from the abstract value of the rule of law include the need for an independent judiciary, non-retrospectivity and generality of legislation.

Because these concretisations of the value are formal, they do not in themselves guarantee a particular outcome. However, there is a question as to whether the value of climate change mitigation also encompasses a substantial side, justifying and informing its application. This ambiguity is a feature that a duty to mitigate as a value also would share with the rule of law concept, making it relevant to draw on the theoretical debate regarding the rule of law.

I will argue that this approach to a duty to mitigate can explain some of the current legal development regarding both enacted climate change laws and successful climate change litigations, thus providing both descriptive and prescriptive insight.

Monserrat Madariaga Gómez de Cuenca (PhD Researcher, University College London)

Democracy, public participation and indigenous people's right at stake on COP 25

My PhD research is a legal biography of COP 25, an international climate change law negotiation meeting. It is studied from the Chilean perspective, as president and proclaimed host country of COP 25. The legal biography covers multiple aspects of the event and it impact on Chilean climate change law and governance, as recalled from the experiences of main actors involved in them. This presentation will focus on a particular aspect of this legal biography, presenting preliminary findings on how coherent the government actions leading to the planning of COP 25 were to essential rule of law values, such as democracy, public participation and indigenous people's rights. These findings will show how stressed these values, and how key actors in what is a multi-actor governance space felt excluded from a technocratic-elitist exercise of power by the Government.

Professor Jane McAdam (University of New South Wales)

A question of timing? Addressing displacement in the context of climate change

How can international law and policy harness the sense of urgency generated by COVID-19 for the longer-term climate crisis, especially when it comes to protecting people displaced by the impacts of climate change, disasters and environmental degradation? Disasters now trigger three times as much internal displacement than conflict, a trend likely to continue as climate change amplifies their frequency and intensity. Cross-border movement is anticipated to increase as well if people cannot

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find safety within their own country. Existing international protection mechanisms offer an incomplete solution, in part because some impacts will take years to manifest at a level considered sufficiently harmful under international refugee law and human rights law. What legal and policy interventions are needed now to avert future shocks?

Anna McClean (PhD Researcher and Research Assistant, University of Newcastle)

Local planning authority duties to manage flood risk: Issues of enforceability

Increasing flood risk is one of the main impacts of climate change in the UK. Local planning authorities, as the authorities that are responsible for the day-to-day decision making regarding what development takes place and where, are in a position to play a key role in the management of flood risk by ensuring that development contributes to the mitigation of and adaptation to flood risk. Indeed, local planning authorities have a number of statutory duties to address climate change in general and manage flood risk specifically, and the National Planning Policy Framework contains further requirements regarding both climate change and flood risk. There are, however, significant limitations on the extent to which local planning authorities can be held to account for any failure to address flood risk. This paper examines the obligations that local planning authorities have to manage flood risk and finds that the obligations are either purely procedural in nature or are so vague and discretional in nature that it is unclear what local planning authorities need to do to comply with them. It therefore argues that the obligations are largely unenforceable. This paper concludes that if local planning authorities are to fulfil their potential as key players in the management of flood risk the law needs to be reformed so that the obligations on them are specific, measurable and enforceable.

Raphael Oidtmann and Natascha Kersting (University of Frankfurt, University of Cambridge)

Ecocide at the International Criminal Court – A New International Crime Unfolding?

On 22 June 2021, an Independent Expert Panel hosted by the Stop Ecocide Foundation unveiled the definition of a new international crime: ecocide – denoting 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts'– is envisaged to lastingly re-align the contemporary grid system of international justice, while seemingly shifting the regimes focus away from a purely anthropocentric gearing.

With acclaims and critiques, the future prospects of the evolving crime of ecocide are hanging in the balance. Several States have indicated their tentative support for including ecocide into the Rome Statute of the International Criminal Court, but it remains to be seen whether this will be tabled at the upcoming Assembly of State Parties (ASP) and if such a proposal would garner sufficient support. This presentation will present a comprehensive account of the discourses surrounding the introduction of the crime of ecocide, paying attention towards deliberations expected to unfold in the context of the ASP annual gathering in December 2021.

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Stavros Pantos (PhD Researcher, University of Reading)

Protecting the "green swan": evaluating the prudential supervision of climate change risks in Europe

After the UNFCCC Paris Agreement (2015), regulators and supervisors across the world started thinking about climate change considerations, implications and policy implementation for their agenda and action plan. This research looks at recent developments in the underlying legal and regulatory framework in Europe in relation to climate risks and climate reporting for financial institutions, offering a critical analysis of the supervisory approaches towards climate change risks by commenting on disclosures and financial metrics. Specifically, this paper presents a literature review on the existing regulatory prescribed climate change scenarios, developed for financial services in Europe. The focus is placed on the Bank of England CBES and guidance from the NGFS, IPCC and TCFD. The analysis performed adds to the growing literature about the design of scenario planning for physical, transition and liability climate change related risks. This potentially will complement the exercise of regulators and supervisors towards the development of policies for a more sustainable and inclusive post COVID-19 transition for financial services. The economic analysis of law composes the underlying methodology of this empirical legal research adopted, using economic theory to analyse regulation and its effectiveness with regards to the regulation and supervision of climate change related risks. This research examines the financial stability implications of climate change, how they are managed and what is the link of the supervision of climate change related risks with the sustainable development and ESG factors. Preliminary findings include recommendations on governing climate change and advances to the underlying regulatory framework at European level.

Professor Christine Parker (University of Melbourne)

From 'Corporate Governance' to Ecological Regulation: Flipping the Regulatory Story on Climate Change

We earthlings face the existential challenge of abrupt global environmental change and ecological disruption. At the same time social and economic injustice and inequality persists and widens. Widespread support for initiatives like the United Nations' Sustainable Development Goals show that many in business recognise the need for governance to encourage both ecological resilience and social justice. Yet current modes of regulation and governance are inadequate due to their focus on piecemeal solutions to individual environmental and social externalities, and dependence on market-based governance mechanisms that fail to ensure corporate capitalism operates within ecological limits and social justice parameters. I will argue that the dominant 'corporate governance' approach to climate change generally legitimates and sustains a consumptogenic system that drives further social and ecological destruction. I will argue that 'ecological regulation and compliance' is required to flip the story and embed economic activity within regenerated social and ecological systems.

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Professor Jackie Peel (University of Melbourne)

Recipe for Success? Lessons for successful strategic climate claims

One area that definitely interests me and has been a focus of my consultancy work is whether/when climate decisions in the courts make a tangible policy and regulatory impact. I'd be happy to talk to different types of cases (workhorse/showpony), examples of cases that have been 'impactful' (terrible word) and why, and some of the 'enabling conditions' for courts to play this role in advancing a climate-conscious 'rule of law'.

Justice Brian Preston (Chief Justice, New South Wales Land and Environment Court)

Climate Conscious Lawyering

A lawyer's role is to advise on the law. This proposition appears straight forward. Unfortunately it is not. It is especially problematic with respect to problems involving climate change. There are two difficulties. First, lawyers need to advise not only on the legal but also the non-legal dimensions of climate change problems. In short, lawyers need to provide holistic advice. Consider climate-related risks for corporations. Lawyers need to advise on all climate-related risks, the physical risks, transitional risks and liability risks as well as reputational risks, and not just those with direct legal consequences. Second, ascertaining definitively what the law is at any time is difficult. There are choices in finding, interpreting and applying the law. There is rapid evolution of the law – climate law is hot law. Court decisions retrospectively pronounce the law. There is interaction between law, policy and fact. All of these factors operate to make identifying what is the law at any time difficult. Lawyers need to be conscious of both of these difficulties in advising on climate change problems. This involves climate conscious lawyering.

Astrid Puentes Independent Legal Consultant (Former Co-Director, Interamerican Association for Environmental Defense)

Climate Crisis: the Banana Republics turning into fossil fuel Republics, and why climate justice matters

The climate crisis is real, as communities and scientists have been saying for decades. More recently the IPCC concluded that its "unequivocal" that humans are responsible for it. While it is true that humans caused it, it is also true that not every human is equally responsible. Extractive industries are massively responsible for it, as the carbon majors research has demonstrated: more than 60% of global historic emissions are linked to about 90 companies worldwide. These companies have for decades denied their responsibility for the climate crisis, as well as their negative impact on environmental and human rights worldwide. Latin America is one of the regions that reflects this situation, due to its richness in oil, coal and gas, which has been an important driver of national economies. The high dependency on extractives has meant that even today, despite the scientific evidence of the causes and the measures needed to solve this crisis, the transition is still far from happening. Using the examples of coal and fracking in Latin America, I will share how the resistance

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to change has prevented effective measures needed to control the industry, and also has impacted the rule of law.

Professor Lavanya Rajamani (University of Oxford)

CoP26 outcomes and rule of law

This presentation will explore the outcomes of CoP 26 through a rule of law lens.

Caoimhe Evelyn Ring (PhD Researcher, University of Oxford)

The Ambiguous Role of Technology in Climate Targets

Targets are about legitimacy; holding decision-makers accountable in planning our low-carbon future. The difficulty with climate targets, however, is that they do not readily give rise to explanations as to their feasibility, or realism. Governing climate change involves picking between many paths to net-zero, determined by socio-political factors and scientific uncertainty. Climate targets rely on assumptions about our technological options. These represent commitments to specific technologies, deemed necessary to climate stabilisation. But without communication to citizens on the role of technology in planning our climate futures, a role which is often ambiguous, the gap between citizens and policymakers widens. Targets are about legitimacy; but what are the legitimating forces that determine the content of those goals? In response, this paper examines the impact of technology on climate targets, and its challenges for climate change governance. Part A describes the relationship between the Paris targets, science and technology from past to present; arguing that these targets act as focal points to overcome epistemological problems in appreciating the threat posed by climate change. Part B describes the innovation policy dilemma about technology in climate stabilisation prediction. Part C contends that transparent communication about the technological options behind climate target-setting has a legitimating function. It concludes to reflect on unresolved uncertainties about technology in climate targets and its challenges for governance.

Qi Ruona (PhD Researcher, University of Cambridge, Wuhan University)

Mongolian Traditional Ecological Knowledge and its Adaptation to Climate Change in China: A Cultural and Legal perspective

Although the causes of climate change are global, the adverse impacts of this problem are disproportionately burdening indigenous peoples. Climate change is causing indigenous people to lose land and natural resources that are crucial to their subsistence lifestyle. While the Chinese government has recently made major strides in protecting both the environment and indigenous peoples, significant challenges remain. These complex issues of how to situate the indigenous people in existing legal structures lead to deeper questions of culture and identity arising in the dynamics among indigenous peoples' legal systems and national legal systems.

Mongolians in China are one of the few indigenous groups that practice nomadic livestock herding on

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a large scale. Mongolian herders depend on pasture and water resources for their livestock and are therefore among the most vulnerable groups to climate change impacts. Over the years the government has discouraged pastoralism as a viable way of life but has instead been pressurizing Mongolian herders to become sedentary herders. This article tries to identify climate change-related harms for those Mongolian herders in China and tries to analyze whether the government policy which ignores TEK is effective or not.

Christoph Schwarte (Executive Director, Legal Response Initiative)

The Paris Agreement and the Rule of Law

The UN defines the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. In their relations with each other, states also need to abide by all their obligations under international law and seek to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. Following the climate conference in Glasgow, I would like to assess if and to what extent states currently meet these expectations and comply with their commitments specifically under the Paris Agreement to, for example, update their NDCs, enhance ambition, notify the secretariat of individual emission levels (in case of a joint NDC), negotiate and pursue the goals of the agreement in good faith or cooperate in line with their CBDRRC.

Professor Eloise Scotford (University College London)

The Disappointment of Climate Change Legislation: Climate Change Acts and their Legal Limits

Climate change legislation sits in a delicate place in many legal-political cultures, and a rule of law lens highlights their complex legal functionality and also their limits as legal guarantees of an ambitious and successful future for climate policy. This paper will explore why climate change legislation has been so prolific and important but also what climate change Acts legally do and can achieve within dense national bodies of law and regulation, focusing on the UK Climate Change Act as a case study. In some ways, climate change Acts construct extensive but routine administrative law architectures for government policymaking on climate change. In other respects, there are complex rule of law issues in the very construction of such Acts, which set a legally binding long-term vision of climate policy. Such issues concern the accountability of public power in devising and implementing climate policy, what courts can direct governments to do under ambitious climate legislation, issues of present legal certainty etc.

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Alberto Mattia Serafin (PhD Candidate, University of Cassino)

Non-Financial Disclosure and Climate Change

Directive 95/2014/EU ("Non-Financial Reporting Directive" or NFRD) introduced – for large undertakings– the obligation to include in the management report a "Non-financial statement" (NFS), containing information related to the so-called ESG issues ("Environmental, social and governance"), including, inter alia, "environmental" aspects.

Such mandatory disclosure radically changes the traditional voluntary approach to CSR ("Corporate Social Responsibility"). On the contrary, entities subject to the NFRD are formally obliged to issue the NFS, and in its 2019 guidelines the EU Commission clarified that the core of the «environmental» aspect is represented by "climate change".

My presentation will look at its relationship with disclosure from a global perspective, especially engaging in a preliminary comparison with the U.S., which are still characterized by a "non-compulsory" approach, authoritatively defined as "private ordering" (V. HARPER HO). Secondly, I will emphasize the benefits of disclosing information from both a normative (art. 3, para 3, TEU) and empirical perspective.

Professor Sharon Turner (Independent Consultant and Expert Adviser to the European Climate Foundation Governance Programme)

'Long term framework climate laws: virtue signalling or cornerstone of effective climate governance?'

Since the adoption of the Paris Agreement a pattern has emerged amongst climate ambitious countries of adopting what could be described as 'long-term framework climate laws'. This pattern began in the UK with the adoption of the Climate Change Act but accelerated noticeably in the wake of the Paris Agreement. Although the design of these laws has differed as between countries – they share an emphasis on setting binding targets for achieving net zero (or similar), creating processes designed to ensure governments are accountable for policy consistency with those targets and that climate policy is back casted from a scientifically credible target; dedicated institutions designed to ensure trust and transparency about the real policy options and participative processes aimed at engaging citizens and cross-party engagement in decision making. The EU is the most recent member of the climate law club. The value of these frameworks is now becoming the subject of significant attention in the academic and think tank community. The framework laws are considered to deliver a very different governance function to laws that relate to specific sectors – such as energy and transport legislation – and are emerging as a signal of seriousness about climate action.

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Professor Steven Vaughan (University College London)

Climate Change and the Rule of Law(yers)

This paper will consider lawyers and the legal profession as legal actors and bodies that have contributed to, as Bob Gordon frames it, "constructing the complex of norms, institutions, specialized staffs, and cultural dispositions that make up the (incredibly plural and contested) set of social practices that are grouped under the broad umbrella label of the Rule of Law". It will explore the role of various lawyers (corporate, in-house, civil servant, NGO, 'activist', and so on) in relation to climate change as lubricators (making things happen), lobbyists (shaping the law before it has legal form), legislators (engaging in norm creation themselves), and litigators (advancing one preferred version of the law over another) asking, for each role, the extent to which those lawyers are helping or hindering access to justice, the quality of justice, the protection of democratic standards, and the upholding of the rule of law and human rights.

Juliana Vélez-Echeverri (PhD Researcher, University of Reading)

Climate change and the rule of law in a context of violence. A case study in Medellín, Colombia

This paper discusses the contradictions relating to the use of the law by communities experiencing (im)mobility linked to climate change in urban areas partly controlled by non-state armed actors in Medellín, Colombia. The paper argues that violence could impact the use of legal mechanisms in two opposing ways. Advancing a legal claim may imply assessing risks associated with non-state armed actors' interests —mainly related to their control of land boundaries and human mobilities in the context of a climate-related disaster. On the contrary, armed actors could be more tolerant towards legal mobilisation when it does not involve claims that could hinder their land control, hence legal mobilisation is unlikely to be viewed as a threat. The paper concludes that violence in the form of physical attacks does not necessarily deter the use of legal mobilisation mechanisms, but instead might shape claims-making processes. Violence is an under-explored variable that might explain the use of the law in the so-called Global South. This paper seeks to bring attention to post climate-related disaster litigation that addresses people's needs, concerns and rights at risk in places where the rule of law is partially absent.

Professor Ceri Warnock (University of Otago)

The Principle of Legality: Normalising Climate Change Considerations in Litigation?

In common law jurisdictions, the principle of legality is an approach to statutory construction that protects fundamental rights. With the legal link between climate change impacts and human rights crystallising, can the principle of legality help infuse climate change considerations within litigation more widely? This presentation considers the historical development of the principle, its use to date and its potential for development in this sphere.

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Professor Rebecca Willis (Lancaster University)

The role of democratic participation in climate law and governance

This presentation will draw on the findings of Climate Assembly UK, the national Citizens' Assembly on climate change commissioned by the UK Parliament, and the work of the Climate Citizens project at Lancaster University. It will examine the role of democratic participation in climate policy and governance, and ask how citizens can be engaged in the development of policies and laws. It will also address the extent to which citizen engagement and deliberation can help to counter the influence of established economic interests, who tend to play a disproportionate role both in policy formulation and in legal proceedings on climate change.