

Environmental Constitutionalism

Dr. Liz Hicks

University of Münster, Summer Semester 2024

Monday 13 May – Friday 17 May, AUB 214

Syllabus & Class Plan

1. Administrative Requirements

Please read the information posted by Esther Gierse in LearnWeb.

FFA students:

- This is a Vertiefungskurs for the FFA Common Law and the FFA International Law. It requires the C Test (or recognised equivalent that has been approved by Dr. Beile-Meister).
- You must register for the course via the Sprachenzentrum. Registration on LearnWeb is insufficient.
- Class attendance is compulsory. As the class is a block course, only one absence is permitted.

Dt. Fr. Recht students:

- This course qualifies as your ‘Common Law/International Law’ course.

International / Erasmus students:

- Please ensure that you register for the course with SiZ.

Students who fall outside the above categories:

- You are only permitted to take this course if you have passed the C test with 70+ points (or equivalent – see above) *AND* if there are places available. Please contact the FFA office.

2. Consultations

For questions about administrative requirements or substantive content, please contact me at ehicks@uni-muenster.de.

I am also available for Zoom consultations about course content. Please email me to set up an online appointment.

3. Description of the Course

This course explores the relationship between constitutions, environmental problems and environmental politics. Societies and cultures attach multiple values to the environment that reflect in constitutions and that environmental crises can bring into contradiction. We will compare case studies across constitutional systems to explore how constitutions can shape environmental politics and problems, and how various actors and movements make use of constitutions and public law initiatives to engage with those problems. The course will explore:

- the nature of environmental problems and their societal dimension;
- how understandings of, and assumptions regarding, the relationship between society and the natural world have shaped important public law concepts and models of electoral politics;
- the role of constitutional structures such as federalism and supranational structures in shaping environmental problems and politics;
- democratic initiatives such as citizens assemblies and environmental referenda that seek to increase participation in environmental political decision making;
- rights-based initiatives such as the right to a healthy environment, collective rights and the rights of nature movements;
- climate litigation;
- indigenous environmental governance; and
- alternative forms of environmental politics such as civil disobedience, and their constitutional treatment.

A significant component of the course considers how narratives and framing shape the relationship between the law, environmental politics and the physical environment. Legacy concepts and understandings of the natural world have shaped the development of multiple areas of law, including constitutional law. These legacy understandings have influenced how environmental problems are framed and digested in environmental politics. How contemporary actors frame environmental problems and invoke narratives and legal concepts shapes how law engages with those problems. The course will provide an introduction to the areas listed above, as well as encourage students to critically ‘read’ environmental law and politics narratives and frames. This aims to provide students with the skills needed to engage with emerging legal and constitutional problems raised by rapidly developing environmental and climate crises.

4. Teaching Style

The style of teaching is interactive, with students encouraged to actively participate in class discussion and smaller group work to then present to the class. Some group work will require access to the internet. Students should bring a laptop with them to class.

To prepare for this style of teaching, students are asked to complete some ‘pre-reading’ for each class, as set out below. The reading will be made available to download on LearnWeb. You should complete the required reading before the class. Readings listed as ‘recommended’ are suggested for further interest or as prompts for writing your essay.

5. Assessment

Assessment will involve an essay / Hausarbeit. Students may choose their own topic. Please confirm your choice of topic with me before you start writing so that I can advise on its suitability.

Some suggested topics will also be made available on LearnWeb.

The essay must have a word count of **2,000 words +/- 10%**, not including footnotes. It is due on **30 June 2024**. Further information about submission, formatting and referencing requirements will be uploaded to LearnWeb.

6. Class Outline and Reading

Date	Class
Monday 13 May 4pm – 9pm	1. Introduction: Environmental Problems and Constitutional Law
	2. Actors in Environmental Conflicts and Constitutional Mobilisation
Tuesday 14 May 4pm - 9pm	3. Public Law Concepts and the Natural World
	4. Democratic Concepts and the Natural World
Wednesday 15 May 4pm – 9pm	5. Democratic Problems
	6. Democratic Initiatives
Thursday 16 May 4pm – 9pm	7. ‘Anthropocentric Rights’
	8. ‘Ecocentric Rights’ and Rights of Nature
Friday 17 May 10am – 2pm	9. Organisation: Federalism and Supranational Governance Structures
	10. Indigenous Perspectives, Co-Management and Pluralism

Pre-Reading

Readings are available on LearnWeb. We will discuss the readings in class, so please prepare accordingly.

Monday 13 May: Environmental Problems and Constitutional Mobilisations

1. Introduction: Environmental Problems and Constitutional Law

The first class will introduce students to various ways of thinking about the relationship between constitutions and the environment. It will encourage students to critically reflect on emerging initiatives in constitutional law directed toward environmental protection. It will also allow students to challenge the normative framing of the current discourse on ‘environmental constitutionalism’ by recognising the role that constitutions have always played in organising and producing distinct forms of environmental politics. We will challenge the idea that constitutions can be ‘neutral’ with respect to environmental politics and values.

We will also look at the nature of environmental problems and their societal dimension. We will consider how different interests in the environment compete in society, how environmental crises can bring these interests into conflict, and how public law can shape the nature of these conflicts and how they evolve.

2. Actors in Environmental Conflicts and Constitutional Mobilisation

The second class will consider actors that engage in environmental conflict – such as indigenous and First Nations peoples, youth movements, political parties, industries, communities in what are described as the Global North and South – and explore various ways that these actors engage with constitutional ideas, principles, institutions and structures. It will provide a high level overview of the initiatives that we will explore in subsequent classes and introduce the concepts of ‘legal mobilisation’ and ‘political mobilisation’.

In groups, students will also be assigned a case study of an environmental political problem, explore the different ways that specific constitutional and governance structures have shaped that problem, and how various actors have engaged with public law features to manage that problem and protect certain interests in the environment.

Required readings:

Sam Bookman, Cristy Clark, Julia Dehm, Elizabeth Hicks and Ron Levy, “Constitutional Mechanisms for Environmental Governance” in Lindley and Brears (eds), *The Palgrave Handbook of Environmental Policy and Law* (forthcoming) pp. 1 – 16.

Andrew Dobson, “Movements, parties, policies” in Andrew Dobson, *Environmental Politics: A Very Short Introduction* (Oxford University Press, 2016) pp. 66 – 92.

Jan Dutkiewicz, “How rioting farmers unraveled Europe’s ambitious climate plan” *Vox* (2 May 2024) <<https://www.vox.com/future-perfect/24146466/europe-farmer-protests-eu-climate-environmental-policy-subsidies-livestock>>

Elizabeth Fisher, “Environmental Problems” in Elizabeth Fisher, *Environmental Law: A Very Short Introduction* (Oxford University Press, 2017) pp. 42 – 59.

William F. Lamb et al., “Discourses of climate delay” (2020) 3 *Global Sustainability* pp. 1 – 15.

Case studies (to read in groups):

i. Emissions reductions policies in France

Charles Girard, “Lessons from the French Citizens’ Climate Convention: The role and legitimacy of citizens’ assemblies” *Verfassungsblog* (28 July 2021) <<https://verfassungsblog.de/lessons-from-the-french-citizens-climate-convention/>>

Patrick Liddiard, “The Trouble with Political Parties and the Rise of the Yellow Vests” <<https://www.wilsoncenter.org/publication/the-trouble-political-parties-and-the-rise-the-yellow-vests>>

ii. Emissions reductions policies in Germany

Jan Dutkiewicz, “How rioting farmers unraveled Europe’s ambitious climate plan” *Vox* (2 May 2024) <<https://www.vox.com/future-perfect/24146466/europe-farmer-protests-eu-climate-environmental-policy-subsidies-livestock>>

Ajit Niranjana, “Why Europe’s farmers are protesting – and the far right is taking note” *The Guardian* (15 January 2024) <<https://www.theguardian.com/environment/2024/jan/15/why-europe-farmers-are-protesting>>

German Federal Constitutional Court, *Climate Protection Act decision*, 24 March 2021, headnotes, paras [182]-[192], paras [243]-[255].

iii. Constitutional reform and the extraction economy in Ecuador

Maria Akchurin, “Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador” (2015) 40(4) *Law and Social Inquiry* pp. 937- 968.

Lena Koehn and Julia Nassl, Judicial Backlash Against the Rights of Nature in Ecuador (27 April 2023) <<https://verfassungsblog.de/judicial-backlash-against-the-rights-of-nature-in-ecuador/>>

iv. South Africa

Melanie Murcott and Clive Vinti, “South Africa’s laws aren’t geared to protecting against climate change: judges are trying to fill the gap” *The Conversation* (1 April 2024) <<https://theconversation.com/south-africas-laws-arent-geared-to-protecting-against-climate-change-judges-are-trying-to-fill-the-gap-225103>>

Recommended readings:

Kim Bouwer and Joana Setzer, *Climate Litigation as Climate Activism: What Works?* (The British Academy, 2020).

Andrew Dobson, “Origins” and “Ideas” in Andrew Dobson, *Environmental Politics: A Very Short Introduction* (Oxford University Press, 2016) pp. 27 – 65.

Elizabeth Fisher, “Why I Don’t Talk in Terms of ‘Strategic Climate Litigation’” in Aristova and Lim eds, *Climate Litigation in Europe Unleashed: Catalysing Action against States and Corporations* pp. 35-38.

Katrina Kuh, “The Legitimacy of Judicial Climate Engagement” (2019) 46 *Ecology Law Quarterly* pp. 731 – 764.

James R. May and Erin Daly, *Judicial Handbook on Environmental Constitutionalism* (United Nations Environment Programme, 2017).

Tracey Skillington, “Politics and the struggle to define: a discourse analysis of the framing strategies of competing actors in a ‘new’ participatory forum” (1997) 48(3) *The British Journal of Sociology* pp. 493 – 513.

David A. Snow and Robert D. Benford, “Ideology, Frame Resonance and Participant Mobilization” in Bert Klandermans, Hanspeter Kriesi and Sidney Tarrow (eds), *From Structure to Action: Social Movement Participation Across Cultures* (JAI Press, 1988) pp. 197 – 217.

Lisa Vanhala, “Environmental Legal Mobilization” (2022) 18 *Annual Review of Law and Social Science* pp. 101-17.

Tuesday 14 May: Constitutional Concepts & the Natural World

3. Public Law Concepts and the Natural World

In Tuesday's class we will explore how assumptions regarding the natural world and its relationship to human society have shaped important concepts in public law. We will consider the literature on 'law and the Anthropocene' and 'earth system law' and explore what these means in real world terms, applied to practical case studies. We focus particularly on the concepts of sovereignty, personhood, dignity, freedom and proportionality. We consider how these have evolved alongside understandings of property and property law. In groups we will explore how these concepts evolved in a particular historical context in response to particular societal problems, the extent to which these have fused with Western conceptions of prosperity and political economy, and the consequences that this background has for how contemporary environmental problems are framed.

We will consider case studies of litigation that has engaged with ideas of sovereignty, dignity, freedom and proportionality and the contradictions within them that environmental problems produce. We will also look at examples of concepts and principles developed within various legal cultures – such as *buen vivir* or *Sumak Kawsay* in Bolivia and Ecuador – and how these have influenced environmental politics and systems of governance in those contexts.

4. Democratic Concepts and the Natural World

In Tuesday's second class we extend our discussion on public law concepts and assumptions about the natural world to theories and concepts of democracy. We reflect on how concepts of representation, compromise, negotiation, and popular consent underpin both theories of democracy and the understandings of a "good" democratic decision in political practice. In groups we reflect on how these understandings shape environmental problems and are invoked in environmental politics. We consider how some of these democratic concepts have shaped the environmental problem case studies that we explored in groups in Monday's class. We will also consider different forms of democratic theory – liberal, republican deliberative and radical – the contexts in which they developed, and the assumptions about the natural world upon which they rest.

Required readings:

Thomas Fatheuer "Buen Vivir: A brief introduction to Latin America's new concepts for the good life and rights of nature", *Heinrich Böll Foundation Publication Series on Ecology*, vol 17 (Heinrich Böll Foundation, 2011).

Lydia Millet, "If Corporations Are People, Then Animals Should Be Too" *New Republic* (2 May 2024) <<https://newrepublic.com/article/181144/corporations-people-animals-rights-of-nature>>

German Federal Constitutional Court, *Climate Protection Act decision*, 24 March 2021, headnotes, paras[182]-[192] (on freedom), paras [243]-[255] (on proportionality and freedom).

Lahore High Court (Pakistan), *Leghari v. Pakistan*, 4 September 2015, para [7] (on rights to life, human dignity, property, and right to information).

Recommended readings:

Juan Auz, “The Political Ecology of Earth System Law: Outlining a Lex Capitalocenae” (2024) 40(2) *Wisconsin International Law Journal* pp. 217 – 244.

Felix Eckhardt, “Climate Revolution with Weaknesses”, *Verfassungsblog* (8 May 2021) <<https://verfassungsblog.de/climate-revolution-with-weaknesses/>>

Floor M. Fleurke, Michael C. Leach, Hans Lindahl, Phillip Paiement, Marie-Catherine Petersmann and Han Somsen, “Constitutionalizing in the Anthropocene” (2024) 15(1) *Journal of Human Rights and the Environment* pp. 4 – 22.

Louis J. Kotzé, “Earth system law for the Anthropocene: rethinking environmental law alongside the Earth system paradigm” (2020) 11 *Transnational Legal Theory* (2020) 11 (1-2) pp. 75-104.

Christopher D. Stone, “Introduction: The Unthinkable” in Christopher D. Stone, *Should Trees Have Standing? Law, Morality and the Environment* (3rd ed Oxford University Press, 2010) pp. 1 – 8.

Péter Szigeti, “A Sketch of Ecological Property: Toward a Law of Biogeochemical Cycles” (2021) 51 *Environmental Law* pp. 41 – 87.

Marcel Wissenburg, “Liberalism” in Andrew Dobson and Robyn Eckersley (eds), *Political Theory and the Ecological Challenge* (Cambridge University Press, 2006) pp. 20 -34.

Wednesday 15 May: Democracy

5. Democratic Problems

In the first class on Wednesday we consider how democratic concepts and practices interact with environmental decision-making and environmental problems. This builds on Tuesday's second class. We consider various explanations for democratic 'structural problems' or 'failures' that have contributed to environmental and climate crises. We look at how various actors frame and narrate these 'democratic problems' when engaging with constitutional principles and ideas, for example in arguments raised in the course of climate litigation or in proposals for constitutional or governance reform. This builds on Monday's classes. We consider explanations that emphasise the role of (1) lobbying and industry capture, (2) public disengagement and inertia (the 'post-democracy' thesis), (3) short-termism and electoral cycles, (4) the problem of collective action and (5) the diffuse nature of environmental problems, which often sit outside the control of a single political community and the traditional accountability structures of the state.

6. Democratic Initiatives

Wednesday's second class considers constitutional and governance initiatives that seek to respond to the democratic problems we canvassed in the previous class. We consider the emergence and performance of citizens' assemblies in Ireland, France and 'deliberative' proposals that seek to respond to problems party systems and representative democracy. We also look at direct democracy initiatives and 'environmental referenda', including recent examples in Ecuador, Switzerland, Berlin and Ireland. We consider the failed 2022 Chilean constitutional referendum that sought to introduce environmental rights and explore the reasons for that failure.

We take a look at proposals that seek to increase participation in environmental decision making through information and participation rights. We also consider proposals to restrict and reform lobbying in environmental decision making.

We also look at how social movements have engaged in popular mobilisation, including civil disobedience, as a means of engaging with the political construction of environmental problems. We revisit the case studies of civil disobedience movements in France and Germany that we explored in the first class, and investigate how environmental defenders, indigenous groups, and local communities have used blockades and other disruptive strategies as a form of environmental politics. We also consider disruptive protest and movements that have mobilised against mitigation policies with distributive consequences, including the 2019 gilets jaunes protests in France, and the recent 2023 and 2024 'farmers protests' against the removal of agricultural subsidies in Germany and the Netherlands.

We consider the legislative and executive 'backlash' against disruptive protest, how constitutions and courts have engaged with this backlash, and the competing frames and narratives about democracy that are deployed in debates about civil disobedience.

Required readings:

María Carrasco, “Why we failed to approve the new Chilean constitution: the need for a cultural transformation” *LSE Blog* (15 September 2022) <<https://blogs.lse.ac.uk/latamcaribbean/2022/09/15/why-we-failed-to-approve-the-new-chilean-constitution/>>

Jan Dutkiewicz, “How rioting farmers unraveled Europe’s ambitious climate plan” *Vox* (2 May 2024) <<https://www.vox.com/future-perfect/24146466/europe-farmer-protests-eu-climate-environmental-policy-subsidies-livestock>>

Roberto Gargarella, “Rejection of the New Chilean Constitution: Some Reflections” *Oxford Human Rights Hub* (14 September 2022) <<https://ohrh.law.ox.ac.uk/rejection-of-the-new-chilean-constitution-some-reflections/>>

Charles Girard, “Lessons from the French Citizens’ Climate Convention” *Verfassungsblog* (28 July 2021) <<https://verfassungsblog.de/lessons-from-the-french-citizens-climate-convention/?>>

William F. Lamb et al., “Discourses of climate delay” (2020) 3 *Global Sustainability* pp. 1 – 15.

German Federal Constitutional Court, *Climate Protection Act decision*, 24 March 2021 p. 61 para [206].

European Court of Human Rights, *Verein Klimaseniorinnen Schweiz v. Switzerland*, 9 April 2024, para [199] (on democracy and future generations), para [412] (relationship between democracy and rule of law in environmental contexts).

Recommended readings:

Alyssa Battistoni and Jebediah Britton-Purdy, “After Carbon Democracy” (2020) 67 *Dissent* pp. 51-60.

Colin Crouch, “Why Post-Democracy” in Colin Crouch, *Post-Democracy* (2004) pp. 1 – 28.

Hélène Landemore, “No Decarbonization without Democratization: To Save the Climate, Open Democracy” in David W. Orr (ed), *Democracy in a Hotter Time: Climate Change and the Democratic Transformation* (MIT Press, 2023) pp. 37 – 50.

Ron Levy, “Fixed Constitutional Commitments: Evaluating Environmental Constitutionalism’s ‘New Frontier’” (2022) 46(1) *Melbourne University Law Review* pp. 82 – 122.

Matto Mildemberger, *Carbon Captured: How Business and Labor Control Climate Politics* (MIT Press, 2020) pp. 21 -37.

Thursday 16 May: Rights

7. Anthropocentric Rights

Thursday's first class focusses on constitutional litigation and constitutional reform proposals centred on the fundamental rights of human persons. We begin by reflecting on the theological origins of fundamental rights in ideas of human dignity, and how these spread as a vocabulary and restraint on the state in the post-war wave of constitution making. We also reflect on the influence of property rights and particular models of political economy on the development of fundamental rights, including the extension of fundamental rights to corporations and other 'legal persons'.

We then consider how environmental movements began to employ the language of fundamental rights to intervene in conflicts about interests in the environment in the late 1970s and 1980s. We will explore reasons why environmental movements employed framing and instruments organised around fundamental rights. We will then explore the 'wave' of rights based litigation seeking to compel states to develop more ambitious climate litigation policies. We will look at the case studies of *Leghari v. Pakistan* (Pakistan, 2015), *Urgenda Foundation v Netherlands* (Netherlands, 2018), *Future Generations v. Ministry of Environment* (Colombia, 2018), *Climate Protection Act decision* (Germany, 2021) and the recent trilogy of litigation in the European Court of Human Rights (2024). We will consider the extent to which, in each of these cases, plaintiffs looked to narratives and frames that were already accepted within a legal culture as a means of framing interests in the environment and creating a platform for legal mobilisation. We will study how actors — movements, plaintiffs and courts — engaged in this litigation have dealt with doctrinal hurdles and constraints involved in classical rights framing, including standing, control, breach, and extraterritoriality.

We will also consider how rights framing can be used to protect interests in extracting value from the environment in ways that undermine sustainability, including through rights of private property.

8. Rights of Nature

In Thursday's second class we consider the 'rights of nature' movements that seek to reject the 'anthropocentric' framing of traditional fundamental rights. We will discuss how these movements have emerged through engagement with Indigenous worldviews and as a response to problems with the way legal systems organise a particular relationship with the environment. In groups we will look at case studies of rights of nature mechanisms in Aotearoa New Zealand, Bangladesh, Ecuador and Bolivia and Colombia. We will consider the extent to which recognising rights of nature has created new platforms for legal mobilisation to intervene in conflicts about the environment.

We will also consider proposals that seek to 'transplant' rights of nature to European jurisdictions. We will critically reflect on the extent to which rights of nature are truly 'ecocentric', or whether they reflect social values or interests in the environment of a different kind.

Required readings:

Verein Klimaseniorinnen Schweiz and Others v. Switzerland esp. paras 410-422.

Charlotte Blattner, “Separation of Powers and KlimaSeniorinnen” *Verfassungsblog* (30 April 2024) < <https://verfassungsblog.de/separation-of-powers-and-klimaseniorinnen/> >

Corina Heri, “On the *Duarte Agostinho* Decision” *Verfassungsblog* (16 April 2024) < <https://verfassungsblog.de/on-the-duarte-agostinho-decision/> >

Rónán Kennedy, “Trees, rivers and mountains are gaining legal status — but it’s not been a quick fix for environmental problems” *The Conversation* (17 August 2023) < <https://theconversation.com/trees-rivers-and-mountains-are-gaining-legal-status-but-its-not-been-a-quick-fix-for-environmental-problems-211542>>

Lahore High Court (Pakistan), *Leghari v. Pakistan*, 4 September 2015, para [7] (on rights to life, human dignity, property, and right to information).

Case studies (to read in groups):

i. Aotearoa New Zealand

Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript, 2022) pp. 87 – 94.

ii. Bangladesh

Mohammad Sohiful Islam and Erin O’Donnell, “Legal rights for the Turag: rivers as living entities in Bangladesh” (2020 23(2) *Asia Pacific Journal of Environmental Law* pp. 160-177.

iii. Ecuador and Bolivia

Andreas Gutmann, “Monkeys in Their Own Right: The Estrallita Judgment of the Ecuadorian Constitutional Court” *Verfassungsblog* (22 February 2022) < <https://verfassungsblog.de/monkeys-in-their-own-right/>>

Gustavo Prieto, “The Los Cedros Forest has Rights: The Ecuadorian Constitutional Court Affirms the Rights of Nature” *Verfassungsblog* (10 December 2021) < <https://verfassungsblog.de/the-los-cedros-forest-has-rights/>>

Mihnea Tănăsescu, Elizabeth Macpherson, David Jefferson and Julia Torres, “Rights of nature and rivers in Ecuador’s Constitutional Court” (2024) *The International Journal of Human Rights* (advance) pp. 1 – 23.

iv. Colombia

Supreme Court of Colombia, *Judgment STC4360-2018 (Future Generations v Ministry of Environment)* (extracts online)

Constitutional Court of Colombia, *Judgment T-622/16 (The Atrato River Case)* (read summary in online article: Liz MacPherson and Felipe Clavijo Ospina, “The pluralism of river rights in Aotearoa, New Zealand and Colombia” 25(6) *Journal of Water Law* pp. 15 – 24 (extracts online))

Recommended readings:

Maxim Bönnemann and Antonia Tigre, “The Transformation of European Climate Change Litigation: Introduction to the Blog Symposium” *Verfassungsblog* (9 April 2024) < <https://verfassungsblog.de/the-transformation-of-european-climate-change-litigation/> >

Peter D. Burdon, ‘Environmental Human Rights: A Constructive Critique’ in Anna Grear and Louis Kotzé (eds) *Research Handbook on Human Rights and the Environment* (Elgar, 2015) pp. 61-78.

María Daniela de la Rosa Calderón, “Rights-based Climate Litigation in Colombia: An Assessment of Claims, Remedies, and Implementation” (2024) *Journal of Human Rights Practice* (advance) pp. 1 – 12.

Mary Ann Glendon, “The Environment as a Human Rights Issue” in Donald K. Anton and Dinah L. Shelton (eds), *Environmental Protection and Human Rights* (Cambridge University Press, 2012) pp. 118 – 150.

E Jones, “Posthuman International Law and the Rights of Nature” (2021) 12(1) *Journal of Human Rights and the Environment* pp. 76 – 101.

Elizabeth Macpherson et al, “Where Ordinary Laws Fall Short: ‘Riverine Rights’ and Constitutionalism” (2021) 30(3) *Griffith Law Review* pp. 438 – 473.

Matthias Petel, “The Illusion of Harmony: Power, Politics, and the Distributive Implications of Rights of Nature” (2024) *Transnational Environmental Law* (advance) pp. 1 – 23.

Alex Putzer, Tineke Lambooy, Ronald Jeurissen and Eunsu Kim, “Putting the rights of nature on the map: a quantitative analysis of rights of nature initiatives across the world” 18 *Journal of Maps* pp. 89 – 96.

Savaresi and Setzer, “Rights based litigation in the climate emergency: mapping the landscape and new knowledge frontiers” (2022) 13(1) *Journal of Human Rights and the Environment* pp. 7-34.

Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript, 2022).

Paola Villavicencio Calzadilla and Louis Kotzé, “Re-imagining Participation in the Anthropocene: The Potential of the Rights of Nature Paradigm” in Birgit Peters and Ev Julia Lohse (eds), *Sustainability through Participation? Perspectives from National, European and International Law* (Brill, 2023) pp. 51 – 72.

Carissa Wong, “Do climate lawsuits lead to action? Researchers assess their impact” (25 April 2024) 628 *Nature* pp. 628-629.

Friday 17 May: Constitutional Structure, Organisation and Governance Models

9. Constitutional Organisation

In Friday's first class we explore the role of constitutional structure and organisation in shaping environmental governance and producing particular forms of environmental politics. We begin with a discussion of 'environmental federalism', looking at debates about the 'optimal' level of government for environmental management and the tension between centralisation and decentralisation. In groups, we compare the role of federalism in shaping politics around the renewable transition in Australia, Canada, Brazil and the United States. We also consider the role of environmental agencies and advisory bodies in making environmental decisions and shaping environmental politics, and the importance of their constitutional protection.

We also consider the role of supranational structures such as the European Union in organising environmental governance. We take a look at the European Green Deal and explore the 'backlash' against it within member states that may shape upcoming European elections. We also look at the interaction between supranational, regional and domestic courts — such as the European Court of Human Rights and the Inter-American Court of Human Rights — in shaping the kinds of legal mobilisation that we explored in Wednesday's class.

We then consider proposals to organise political communities around ecological communities such as through 'bioregionalism'.

10. Indigenous Perspectives

In Friday's final class we explore indigenous movements and their perspectives on the relationship between constitutions, law and the environment. We look at the origins of many constitutions in colonial dispossession and as a means of facilitating resource extraction and wealth production. We explore how ongoing conflicts between settler constitutional structures and indigenous peoples have shaped environmental politics and forms of environmental management, looking at case studies of the former British settler colonies of Australia, Canada, the United States and Aotearoa New Zealand.

We also explore governance innovations that have sought to integrate indigenous and settler perspectives, including through indigenous co-management. We look at power sharing governance arrangements in Aotearoa New Zealand and Canada.

Required readings:

Mariachiara Alberton, "Climate Governance and Federalism in the European Union" in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp.128 – 149.

Sam Bookman, Cristy Clark, Julia Dehm, Elizabeth Hicks and Ron Levy, "Constitutional Mechanisms for Environmental Governance" in Lindley and Brears (eds), *The Palgrave Handbook of Environmental Policy and Law* (forthcoming) pp. 8 – 10.

Tristan Bove, “Bioregionalism: A Model for a Self-Sufficient and Democratic Economy” *Earth.Org* (16 March 2021) <<https://earth.org/bioregionalism/>>

Client Earth, “What is the Chile and Colombia Inter-American Court of Human Rights initiative?” Client Earth (15 March 2024) <<https://www.clientearth.org/latest/news/what-is-the-chile-and-colombia-inter-american-court-of-human-rights-iachr-initiative/>>

Erin O’Donnell, Anne Poelina, Alessandro Pelizzon and Cristy Clark, “Stop Burying the Lede: the Essential Role of Indigenous Law(s) in Creating Rights of Nature” 9(3) *Transnational Environmental Law* pp. 403-427.

Case studies (to read in groups):

i. Australia

Alan Fenna, “Climate Governance and Federalism in Australia” in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp. 14 – 40.

ii. Brazil

Fabiana Barbi Seleguim and Fernando Rei, “Climate Governance and Federalism in Brazil” in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp. 41 – 63.

iii. Canada

Kathryn Harrison, “Climate Governance and Federalism in Canada” in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp. 64 – 85.

iv. United States

Barry Rabe and Hannah Smith, “Climate Governance and Federalism in the United States” in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp. 306 – 327.

Recommended readings:

Mattia Bonfanti and Irene Chiocchetti, “A vision for delivering the European Green Deal in the new EU policy cycle” *Heinrich Böll Foundation* (6 February 2024) <<https://eu.boell.org/en/2024/02/06/european-green-deal-new-eu-policy-cycle>>

Alan Fenna, Sébastien Jodoin and Joana Setzer, “Climate Governance and Federalism: An Introduction” in Alan Fenna, Sébastien Jodoin and Joana Setzer (eds), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press, 2023) pp. 1 – 13.

Martin Jänicke, “The Multi-level System of Global Climate Governance: the model and its current state” (2017) 27(2) *Environmental Policy and Governance* pp. 108 – 121.

Stephanie Luke, “Shades of green: the 2024 European Parliament elections and the EU’s Green New Deal” *UK in a Changing Europe* (18 March 2024) <<https://ukandeu.ac.uk/shades-of-green-the-2024-european-parliament-elections-and-the-eus-green-deal/>>