

Florida State University College of Law

Scholarship Repository

Scholarly Publications

2023

Climate Change and the Challenge to Liberalism

Jacob Eisler

Florida State University College of Law, jeisler@law.fsu.edu

Follow this and additional works at: <https://ir.law.fsu.edu/articles>



Part of the Law Commons

Recommended Citation

Jacob Eisler, *Climate Change and the Challenge to Liberalism*, 12 *Global Constitutionalism* 1 (2023),
Available at: <https://ir.law.fsu.edu/articles/778>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Scholarly Publications by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

EDITORIAL

Climate change and the challenge to liberalism

Abstract

In this editorial, we consider the ways in which liberal constitutionalism is challenged by and presents challenges to the climate crisis facing the world. Over recent decades, efforts to mitigate the climate crisis have generated a new set of norms for states and non-state actors, including regulatory norms (emission standards, carbon regulations), organising principles (common but differentiated responsibility) and fundamental norms (climate justice, inter-generational rights, human rights). However, like all norms, these remain contested. Particularly in light of their global reach, their specific behavioural implications and interpretations and the related obligations to act remain debatable and the overwhelming institutionalization of the neoliberal market economy makes clear and effective responses to climate change virtually impossible within liberal societies.

Keywords: climatization of global politics; climate change; climate crisis; intergenerational rights; liberal constitutionalism; neoliberalism; regulatory norms

Introduction

While security studies scholars traditionally have deemed questions of environmental issues and human rights ‘soft’ politics, in recent times climate change has become a significant concern for scholars of global politics. Climate change will disrupt every facet of our current global political system and climate researchers speak of the ‘climatization of global politics’¹ as new economic crises, increased numbers of refugees due to ecological collapse, intensification of resource conflicts, disruption of global supply chains and crises in diplomacy are all likely consequences of a warming planet.

Even this journal’s summer conference happened at the tail-end of the Europe’s 2022 historic heatwave,² a disastrous event in which temperatures reached above 40°C (104°F), fuelled catastrophic fires in France, Italy, Spain and Greece, melted infrastructure in the United Kingdom and caused an estimated 15,000 deaths according to the World Health Organization. The insurance company Aon estimates that climate-related disasters such as floods – particularly the flooding in Pakistan, drought, western hemispheric hurricanes

¹SC Aykut and L Maertens, ‘The Climatization of Global Politics: Introduction to the Special Issue’ (2021) *International Politics* 501.

²M Landler, ‘Europe’s Heat Wave Shatters British Records and Drives Wildfires’, *The New York Times*, 19 July 2022, available at <<https://www.nytimes.com/2022/07/19/world/europe/europe-uk-heat-record-wild-fires.html>>.

and windstorms have cost US\$29 billion³ and claimed thousands of lives. The Intergovernmental Panel on Climate Change (IPCC) projects that between 3.3 billion and 3.6 billion people live in areas highly vulnerable to climate change. The International Monetary Fund (IMF) reports that poorer countries are more likely to be affected negatively by climate change, and less likely to adapt to necessary changes. Existing threats to human and physical security will be worsened. A recent World Bank study projected that there would be up to 216 million internal climate refugees by 2050.⁴

The consensus from activists, scientists, NGOs and international organizations such as the United Nations Environmental Programme grows louder and clearer: ‘Only an urgent system-wide transformation can avoid climate disaster.’ The UNEP’s 2022 *Emissions Gap* report definitively states that, without ‘rapid societal transformation’, staying within the 1.5 degree celsius limit is impossible, thus further exposing vulnerable populations to drought, extreme weather, heat and other disasters.⁵

Yet the world remains stuck at an impasse and, throughout both the liberal and authoritarian worlds, we have seen no real political or economic responses that reflect the severity and urgency of the climate crisis. Countries agreed at the Paris Climate Agreement to limit their carbon and greenhouse gas emissions to avoid the 2°C rise in global average temperature, pledging to only allow 1.5°C. However, under all current energy consumption levels – not including all the new fossil fuel burning projects that are currently in process – the world is on track for a 2.5°C increase by 2100.⁶ The ICPP warned in 2022 that humans will hit the 1.5°C increase by 2040.⁷ Rather than reducing carbon emissions, we are currently on track to *increase* carbon emissions by 13.7 per cent from 2010 levels. But the IPCC’s report states that the world needs to *cut* carbon emissions by 45 per cent by 2030, compared with 2010 levels, to be on track to limit global temperature increases.

Scientists, policy experts and activists agree that transformative action is needed urgently, but our current political system seems unable to implement any solutions. In large part, this reflects the incompatibility of a robust solution to climate change and the premises of most contemporary regimes. The basic model of materialist market capitalism for many liberal and authoritarian societies has relied on high growth and high consumption as either the implicit or explicit basis for its legitimacy and to maintain popular support. The liberal constitutional order, and even the legitimacy of many illiberal states, have long been based on economic performance, jobs and growth. In

³J Masters, ‘World Rocked by 29 Billion-Dollar Weather Disasters in 2022’ (2022) *Yale Climate Connections*, 19 October, available at <<https://yaleclimateconnections.org/2022/10/world-rocked-by-29-billion-dollar-weather-disasters-in-2022>>.

⁴V Clement, KK Rigaud, A de Sherbinin, B Jones, S Adamo, J Schewe, N Sadiq and E Shabahat, *Groundwell Part 2: Acting on Internal Climate Migration* (World Bank, Washington, DC, 2021), available at <<https://openknowledge.worldbank.org/handle/10986/36248>>, License: CC BY 3.0 IGO.

⁵United Nations Environmental Programme, ‘Closing the Window: Climate Crisis Calls for Rapid Transformation of Societies,’ *Emissions Gap Report 2022* (UNEP, Geneva, 2022), available at <<https://www.unep.org/resources/emissions-gap-report-2022>>.

⁶United Nations Climate Change, ‘Climate Plans Remain Insufficient: More Ambitious Action Needed Now,’ 20 October 2022, available at <<https://unfccc.int/news/climate-plans-remain-insufficient-more-ambitious-action-needed-now#:~:text=According%20to%20the%20report%2C%20the,2030%2C%20compared%20to%202010%20levels>>.

⁷PR Shukla, J Skea and A Reisinger (eds), *Climate Change 2022: Mitigation of Climate Change – Summary for Policymakers* (2022), available at <https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf>.

particular, decoupling from fossil fuels creates a clear short-term political challenge, but at the risk of likely future environmental, health, security and political catastrophes of an unparalleled level of severity. As with most problems in the international political sphere, the greatest contributors to this disaster will not be the worst-hit victims, so the uneven distribution of the costs of the climate crisis represents the *contradictions of the current system*.

In this editorial, we consider the ways in which liberal constitutionalism is challenged by and presents challenges to the climate crisis facing the world. Over recent decades, efforts to mitigate the climate crisis have generated a new set of norms for states and non-state actors, including regulatory norms (emission standards, carbon regulations), organising principles (common but differentiated responsibility) and fundamental norms (climate justice, intergenerational rights, human rights). However, like all norms, these remain contested. Particularly in light of their global reach, their specific behavioural implications and interpretations and the related obligations to act remain debatable and the overwhelming institutionalization of the neoliberal market economy makes clear and effective responses to climate change virtually impossible within liberal societies.

Climate change and classic global governance problems

Like nuclear war and air pollution, climate change is a classic global problem that requires a global solution. Even if Country X, a small European coastal state, were to become a green economy with zero carbon emissions in response to organized civil society demands, these efforts would largely be in vain. It would not matter if major polluters continued to act as they currently do. Country X would continue to be equally affected by the negative consequences of climate change, just as it did before, but perhaps it would be worse off because it would have taken political and economic risks to transition to a decarbonized economy. Any solution to climate change must be global, cooperative and redistributive, and needs to meet the needs of the most vulnerable countries, funded with the resources from those countries that have polluted the most and benefited the most from our carbon-based economy.

Despite verbal commitments by various actors to fighting climate change, many states fear that taking drastic steps to de-carbonize their economies will put them at a disadvantage; these fears reflect both domestic and international concerns. This is a phenomenon that sustainable business scholar Gregory Unruh calls ‘carbon lock-in’,⁸ which occurs when industrial economies are institutionally, socially and technologically stuck in their carbon-emitting processes in a path-dependent manner that leads to positive short-term returns. (Carbon lock-in explains why, despite a robust green movement and available presence of alternative energy technologies, so many states fail to act). These dynamics have perhaps worsened as a result of COVID-19, as the United States and China continue to jockey for global hegemony. Curiously, COVID-19 has increased *individual* levels of concern over climate change, although not necessarily support for green policies.⁹

⁸GC Unruh, ‘Understanding Carbon Lock-in’ (2000) 28(12) *Energy Policy* 817–30.

⁹A Mohommad and E Pugacheva, ‘Impact of COVID-19 on Attitudes to Climate Change and Support for Climate Policies. International Monetary Fund, WP/22/23, 4 February 2022, available at <<https://www.imf.org/en/Publications/WP/Issues/2022/02/04/Impact-of-COVID-19-on-Attitudes-to-Climate-Change-and-Support-for-Climate-Policies-512760>>.

The general inaction by industrial economies presents a significant challenge to global constitutionalism. Liberal societies are supposedly the best equipped to protect human rights, meet citizens' needs and promote political participation, yet their carbon lock-in has rendered many industrialized liberal democracies ineffective and non-responsive to growing social movements about climate change. The looming threat of climate change therefore weakens liberalism¹⁰ because of its commitment to the free market. The unfettered fossil fuel-driven growth had led to disastrous outcomes, without any mechanisms in place to limit consumption or carbon-based energy use. Capitalist growth relied heavily on the creation of environmental externalities,¹¹ with the true environmental costs of economic development and productivity unevenly distributed within and across countries. Electoral responsiveness of short-term economic interests has led to 'punishment' for any measure that benefits the environment at the cost of immediate economic growth, creating few incentives beyond ideological commitments to engage in the mass transformative changes necessary to move away from climate disaster and environmental degradation.

The failure to act decisively on climate change hurts liberal democracy by undermining the legitimacy of liberal democracy in many people's minds – especially those of young voters. Polling data shows that climate change and environmental issues remain at the top of political concerns for youth in the United States¹² and Europe,¹³ evidenced by the work of youth activists.¹⁴ Youth in the Global South who recently participated in the COP-27 climate summit have also reported dismay about their future, including questioning having children,¹⁵ fear about future extreme weather, water, threats to their family, concerns of having to migrate and general hopelessness. Young people have also expressed less support for democracy in recent years,¹⁶ driven by the ineffectiveness of political leadership to respond to crises that will acutely affect their futures.

The potential economic and social loss of any transition away from a carbon-based society has drawn clear political lines. Public opinion research in the United States has demonstrated strong partisan divides over belief in the scientific consensus around climate change.¹⁷ Thus, any moves towards greater cooperation by the United States, the biggest carbon emitter in the world, is immediately politicized and demonized by the

¹⁰AF Lang, 'Global Constitutionalism: A Practical Universal' (2021) *Global Constitutionalism* 10(2): 367–75.

¹¹PS Adler, 'Book Review Essay: The Environmental Crisis and Its Capitalist Roots: Reading Naomi Klein with Karl Polanyi, This Changes Everything: Capitalism vs the Climate' (2015) 60(3)*Administrative Science Quarterly* NP13–25.

¹²V Montalbano, 'For Gen Z Voters, Combating Climate Change is Top of Mind', *The Washington Post*, 31 October 2022, available at <<https://www.washingtonpost.com/politics/2022/10/31/gen-z-voters-combatting-climate-change-is-top-mind/>>.

¹³European Environmental Bureau, 'Pan-European Survey – Climate Top Priority for Youth', 21 April 2021, available at <<https://eeb.org/library/pan-european-survey-climate-to-priority-for-youth>>.

¹⁴European Union, 'Generation Climate: Young People at the Forefront of Change', *European Climate Pact*, 16 February 2022, available at <https://climate-pact.europa.eu/news/generation-climate-young-people-forefront-change-2022-02-16_en>.

¹⁵United Nations, 'Young People Reconsidering Parenthood Due to Climate Change, UNICEF Poll Reveals', *UN News*, 9 November 2022, available at <<https://news.un.org/en/story/2022/11/1130377>>.

¹⁶RS Foa and Y Mounk, 'The Danger of Deconsolidation: The Democratic Disconnect' (2016) 27(3) *Journal of Democracy* 5–17.

¹⁷T Bolsen and JN Druckman, 'Do Partisanship and Politicization Undermine the Impact of a Scientific Consensus Message About Climate Change?' (2018) 21(3) *Group Processes & Intergroup Relations*: 389–402.

right, as evidenced by former president Donald Trump's own words in 2017, when he officially withdrew the United States from the Paris Climate Agreement. (The Biden Administration rejoined in 2021.) According to Trump, the agreement would create 'draconian' environmental standards on American businesses and was an attack on US sovereignty, a move that Republican leadership quickly praised.¹⁸ The fact that such large-scale transformation could be politically unpopular with segments of the electorate was not lost on US Republicans, who quickly vilified the Green New Deal popularized by Democratic leaders such as Alexandria Ocasio-Cortez and youth movements such as Sunrise. Republican Senator Mitch McConnell declared that the Green New Deal would cause 'self-inflicted economic ruin that would take a sledgehammer to America's middle class'.¹⁹ Former White House adviser Sebastian Gorka called it 'Stalinism',²⁰ while Republican Rob Bishop of Utah claimed that the policies would be 'tantamount to genocide'.²¹

As the United States is a major global carbon contributor, it must commit to quantitative carbon reduction targets and financial commitments to help vulnerable countries as a necessary (although insufficient) condition for responding to the climate change for which it bears significant responsibility. However, because China is the second biggest emitter of greenhouse gas, the United States is reluctant to sign onto any commitments without limitations on China as well, demonstrated its fear of a 'sucker's payoff',²² a classic cooperation problem in international relations. Yet, despite this underlying tension, the bilateral talks between China and the United States were a bright spot of COP-26, with the two countries issuing their joint Glasgow declaration²³ on climate cooperation in 2021. When climate talks between China and the United States ended abruptly in August 2022, prior to COP-27 (in retaliation for former US House Speaker Nancy Pelosi's visit to Taiwan), representatives from the two biggest polluters resumed talks in November 2022, during the COP-27 talks.²⁴ Yet tensions remain, as the United States wants deeper commitments from China to cut its carbon emissions.

Anthony Lang argues that climate change may be undermining the legitimacy of liberalism, pointing out that a 'Green New Deal' would solve both political and ecological problems by transitioning to more sustainable energy sources²⁵ and address growing socio-economic inequality in many liberal societies through distribution. However,

¹⁸M Shear, 'Trump will Withdraw US from Paris Climate Agreement', *The New York Times*, 1 June 2017, available at <<https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html>>.

¹⁹T Gardner, 'Republicans Defeat Green New Deal in U.S. Senate Vote Democrats Call a Stunt', Reuters, 27 March 2022, available at <<https://www.reuters.com/article/us-usa-climate-greennewdeal/republicans-defeat-green-new-deal-in-u-s-senate-vote-democrats-call-a-stunt-idUSKCN1R71BZ>>.

²⁰J Wise, 'Gorka: Ocasio-Cortez's Green New Deal is "Socialism 'Stalin Dreamt About"', *The Hill* 28 February 2022, available at <<https://thehill.com/policy/energy-environment/432060-gorka-ocasio-cortezs-green-new-deal-is-socialism-stalin-dreamt>>.

²¹A Harder, 'GOP Lawmaker: Green New Deal is Like Genocide', *Axios*, 14 March 2019, available at <<https://www.axios.com/2019/03/14/gop-lawmaker-compares-green-new-deal-to-genocide>>.

²²C Lipson, 'International Cooperation in Economic and Security Affairs' (1984) 37(1) *World Politics* 1–23.

²³Office of the Spokesperson, US Department of State, 'US–China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s: Media Note', 10 November 2021, available at <<https://www.state.gov/u-s-china-joint-glasgow-declaration-on-enhancing-climate-action-in-the-2020s>>.

²⁴J Tankersley and L Friedman, 'U.S. and China Restart Climate Talks', *The New York Times*, 14 November 2022, available at <<https://www.nytimes.com/2022/11/14/business/china-us-climate-change.html>>.

²⁵Lang, 'Global Constitutionalism' (n 10) 370.

despite their popularity,²⁶ such large-scale programmes have not passed because of organized political opposition, which in turn has led to admiration of the Chinese model of energy policy:

Many have looked with admiration to the way in which the Chinese managed economy has pushed forward reforms to its energy and environmental sector in a rapid and efficient way. The ability of the state to undertake this agenda, however, results in large part from the lack of any real political opposition from business, industry or financial services, the parties opposed to change in many liberal democracies.²⁷

The very strength of liberal democracy – its pluralism – becomes its weakness during such critical circumstances, in which the rational pursuit of a singular goal takes precedence over political and economic rights.

In terms of constitutional protections for climate, recent years have included both setbacks and bright spots. Perhaps the most heartbreaking setback to constitutional protections of climate was the defeat of the new proposed Chilean constitution in 2022, which would have replaced the illiberal components of the post-Pinochet regime with radical new democratic institutions and protections of rights, including far-reaching environmental protections. Over 60 per cent of Chileans voted decisively against a new constitution,²⁸ convinced by a heavily financed ‘no’ campaign.²⁹ But within the South Cone region, a narrow victory for Workers’ Party presidential candidate (and now Brazilian president) Luiz Inácio de Silva’s presidency could potentially be beneficial to many key environmental protections, including stewardship of the Amazon rainforest and resumption of US–Brazil environmental negotiations. During his appearance at COP-27, Lula promised to protect the Amazon.³⁰

The legal status of environmental human rights as a means to fight climate change remains under development.³¹ Recent successful cases of climate litigation in Germany³² and in the Netherlands made international headlines.³³ Notably, the German Supreme

²⁶Data for Progress, ‘Memo: U.S. Voters Strongly Support Bold Climate Solutions’, 19 March 2019, available at <<https://www.dataforprogress.org/the-green-new-deal-is-popular>>.

²⁷Lang, ‘Global Constitutionalism’ (n 10) 370.

²⁸C Farias, ‘Chile’s Constitutional Moment is Not Over’, *The New York Times*, 11 September 2022, available at <<https://www.nytimes.com/2022/09/11/opinion/chile-referendum-constitution-rejection-boric.html>>.

²⁹M Carrasco, ‘Why We Failed to Approve the New Chilean Constitution: The Need for a Cultural Transformation’, LSE Latin America and Caribbean, 14 September 2022, available at <<https://blogs.lse.ac.uk/latamcaribbean/2022/09/15/why-we-failed-to-approve-the-new-chilean-constitution/>>.

³⁰J Spring and W James, ‘COP27: Greeted Like a Rock Star, Brazil’s Lula Promises to Protect Amazon’, Reuters, 16 November 2022 available at <<https://www.reuters.com/business/cop/brazils-lula-put-climate-center-first-post-election-speech-abroad-2022-11-16/>>.

³¹M Murcott and EJ Webster, ‘Litigation and Regulatory Governance in the Case of Fracking in the Karoo’ (2020) 11 *Transnational Legal Theory*: 144–64.

³²K Bennhold and M Eddy, ‘Skateboards, Climate Change and Freedom: Germany’s Next-Generation Parliament’, *The New York Times*, 3 October 2021, available at <<https://www.nytimes.com/2021/10/03/world/europe/germany-elections-young-voters-greens.html>>.

³³*Neubauer et al. v. Germany and Milieudéfensie and Others v. Shell*. See <https://climate-laws.org/geographies/germany/litigation_cases/neubauer-et-al-v-germany, and <https://climate-laws.org/geographies/netherlands/litigation_cases/milieudéfensie-et-al-v-royal-dutch-shell-plc for the case law, and for an

Court in 2021 upheld the most stringent emissions reduction targets in the Climate Change Act in a victory for ‘intergenerational rights’. The court ruled that the Act lacked specificity on how Germany would reach its target of near-zero emissions by 2050 (after 2023), and this omission was unconstitutional for its failure to adequately safeguard the environment for future generations.³⁴ Also in 2021, the UN Human Rights Council adopted the right to a ‘clean, healthy and sustainable environment’ as a human right, although the resolution was not binding, but rather a soft law instrument.³⁵

One recent bright note has been the successes of COP-27, the United Nations’ climate summit, also known as the Sharm El-Sheikh Climate Change Conference. The summit included the successful negotiation of a loss and damage fund, to which G7 countries would contribute in order to help out vulnerable Global South countries, also called V20,³⁶ which face economic hardship from climate change. This idea behind the fund was largely designed by Vanuatu.³⁷ This was a breakthrough because countries such as the United States had long blocked such a fund. The exact details of the loss and damage fund are not yet fully ironed out, and the domestic political context of the United States matters a great deal (as any contribution would need to be authorized by Congress) for its meaningful participation. The US representative wanted assurance that China, classified as a developing country but the second biggest carbon emitter, would contribute to the fund.

However, despite this breakthrough, countries refused to decisively commit to reducing greenhouse gas emissions, instead using the 2021 language of ‘phase-down-of-coal’ and ‘low emission’ energy (which may refer to natural gas), suggesting some reluctance by states to actively move away from such sources.³⁸ Of course, earlier commitments to a similar US\$100 billion similar fund by 2020 had not yet been met, demonstrating the potential shallowness of such commitments.³⁹ Furthermore, 2022 was the first UN climate summit that fossil fuel companies were invited to officially attend (not just as

overview, see J Setzer and C Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot*, 26 et seq, available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/08/Global-trends-in-climate-change-litigation-2022-snapshot.pdf>>.

³⁴M Eddy, ‘German High Court Hands Youth a Victory in Climate Change Fight’, *The New York Times*, 29 April 2022, available at <<https://www.nytimes.com/2021/04/29/world/europe/germany-high-court-climate-change-youth.html>>.

³⁵International Union for Conservation of Nature, ‘The Right to a Healthy Environment’, *New and Events*, 29 October 2021, available at <<https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>>.

³⁶The V20 countries include Afghanistan, Bangladesh, Barbados, Bhutan, Costa Rica, Ethiopia, Ghana, Kenya, Kiribati, Madagascar, the Maldives, Nepal, the Philippines, Rwanda, Saint Lucia, Tanzania, Timor-Leste, Tuvalu, Vanuatu and Vietnam. See World Bank ‘“Vulnerable Twenty” Ministers Call for More Action and Investment in Climate Resiliency and Low-Emissions Development’, 8 October 2015, available at <<https://www.worldbank.org/en/news/feature/2015/10/08/vulnerable-twenty-ministers-more-action-investment-climate-resilience-low-emissions-development#:~:text=Afghanistan%2C%20Bangladesh%2C%20Barbados%2C%20Bhutan,all%20members%20of%20the%20V20>>.

³⁷L Sommer, ‘Do Wealthy Countries Owe Poorer Ones for Climate Change One Country Wrote Up a Bill’, National Public Radio/WNYC/Climate, 7 November 2022, available at <<https://www.npr.org/2022/11/07/1133270753/climate-change-loss-damage-cop27>>.

³⁸United Nations Emissions Programme, ‘COP27 Ends with Announcement of Historic Loss and Damage Fund’, available at <<https://www.unep.org/news-and-stories/story/cop27-ends-announcement-historic-loss-and-damage-fund>>.

³⁹United Nations Climate Change, ‘COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries’, 20 November 2022, available at <<https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries>>.

lobbyists); this upset civil society actors, who claimed it appears to have become a fossil fuel trade show.⁴⁰ Many of the industry representatives came to promote natural gas, for which the demand has only increased because of Russia's invasion of Ukraine.

As a result of the inaction by liberal governments to promote widescale changes to prevent worsening climate change, activists and advocates are now considering novel methods of protest to bring attention to the problem. While most major climate organizations, such as Extinction Rebellion, 350.org and Sunrise, refuse to consider anything 'violent' (including property damage), some are calling for consideration of tactics beyond 'non-violence.' Andreas Malm's runaway successful book *How to Blow Up a Pipeline*,⁴¹ now a major motion picture, calls for such a conversation. The recent use of the destruction of art, or gallery protests, in which young climate activists deface famous works of art and glue themselves to gallery walls, suggests the ascendancy of a new form of protest.⁴²

Scramble for gas as the current carbon lock-in in the liberal world

The war in Ukraine has limited gas supplies to much of Europe, as Europeans have long relied on Russia for their gas supplies. According to the European Commission, one-third of Europe's energy relied on gas, with 40 per-cent of gas coming from Russia. While gas storage is mostly full for winter 2022–23, members of the European Commission must 'speed up energy efficiency, accelerate the deployment of renewables and heat pumps and reduce gas demand ... or face an even more difficult winter next year', based on the analysis of the International Energy Agency and the World Economic Forum.⁴³

Meanwhile, the high costs of fuel and the economic costs of the fuel limits (furloughs of workers, shutdown of manufacturing) have had political consequences. People are now protesting the high cost of living, and consensus around the trade blockade of Russia and support for the Ukraine shows signs of weakening.⁴⁴ As a result of this limit of gas supplies, European countries are burning coal as a temporary measure. The United States, with its plentiful stocks of natural gas, has benefited economically from the increased prices from EU limits of Russian gas. However, this has not promoted more solidarity between the United States and European Union, long-time security and economic partners, as the United States' profiting from the European Union's energy crisis is leading to grassroots anger and resentment.⁴⁵ German, French, and senior EU

⁴⁰S Pirani, 'Greenwashing Governments and Oil Companies Turned COP27 into a Climate Disaster' *Truthout*, 18 November 2022, available at <<https://truthout.org/articles/greenwashing-governments-and-oil-companies-turned-cop27-into-a-climate-disaster>>.

⁴¹A Malm, *How to Blow Up a Pipeline* (Verso, New York, 2021).

⁴²A Suliman, 'World's Museums Urge Climate Activists Targeting "Irreplaceable" Art to Stop', *Washington Post*, 15 November 2022, available at <<https://www.washingtonpost.com/lifestyle/2022/11/11/climate-change-protesters-art-museums>>.

⁴³E Thomson, 'These Charts Show Europe's Reliance on Gas Before the War in Ukraine', *World Economic Forum*, 10 November 2022, available at <<https://www.weforum.org/agenda/2022/11/europe-gas-shortage-russia>>.

⁴⁴L Alderman and P Cohen, 'Two Minute Showers and a Flotilla of Gas Shipments: Europe Braces for Winter', *The New York Times*, 1 November 2022, available at <<https://www.nytimes.com/2022/11/01/business/europe-energy-crisis.html>>.

⁴⁵B Moens, J Hanek and J Barigazzi, 'Europe Accuses US of Profiting from War', *Politico*, 24 November 2022, available at <<https://www.politico.eu/article/vladimir-putin-war-europe-ukraine-gas-inflation-reduction-act-ira-joe-biden-rift-west-eu-accuses-us-of-profiting-from-war>>.

officials have complained on record about US profiteering, claiming that these prices are having a recessionary effect on European economies. (American consumers pay far less for the same gas because of domestic subsidies.)

The invasion of Ukraine thus highlights both how failure to take decisive, structurally transformative action on climate change (e.g. adopting alternatives to fossil fuels for energy) can worsen the climate crisis, and how a robust, proactive and sustainable response can yield benefits beyond environmentalism. Turning back to coal in light of a disruption of natural gas supplies is an environmentally disastrous response. Yet if nations respond to Russian throttling of gas supplies by adopting less carbon-intensive modes of energy generation, they will not only benefit the environment but reduce the political and economic power of a repressive regime. Environmentalism, democratic justice and global security are thus intimately interlinked.

If liberal democracies cannot find a way to overcome the constraints of carbon lock-in, there is no guarantee that the solution to the climate crisis will be inclusive, democratic or based on human rights. In fact, the ascendancy of the right in many political contexts, simultaneous to the pressing concerns about the environment, may lead to a political response based on exclusion, hoarding of resources, insistence on racialized and purity-based concepts of the nation and anti-immigrant/anti-refugee attitudes. We can easily envisage a future in response to the climate crisis that is one of green nationalist, eco-fascism, or far right ecologism,⁴⁶ given that right-wing politics – particularly in Europe – focuses on immigration and cultural politics. Sentiments include concerns about ‘overpopulation’. Eco-modernism and techno-futurism believe that political responses are not necessary because of the role of the technological and free market advances to solve the climate and energy crisis. Koch’s work finds that illiberal populist parties question climate change science, seek to stop their country’s participation in climate agreements and see climate cooperation as an unnecessary EU concession.⁴⁷

Considering the divisiveness of immigration policy in liberal democracies, we must confront more concisely how the climate refugee crisis will contribute to other challenges of the liberal (international) order.⁴⁸ Most climate refugees will likely be internal, according to the World Bank,⁴⁹ but large movements of people within borders will still cause resources strain, reactionary politics and challenges to liberal norms. When climate refugees cross borders, these problems will intensify. The global normative order has clear expectations about the status of socio-economic migrants, but currently there is no formal consensus around the validity of climate refugee rights.⁵⁰ These are

⁴⁶B Lubarda, ‘Far-Right Grassroots Environmental Activism in Poland and the Blurry Lines of “Acceptable” Environmentalisms’ (2021) *Politics and the Environment in Eastern Europe*: 121.

⁴⁷CM Koch, ‘Varieties of Populism and the Challenges to Global Constitutionalism: Dangers, Promises and Implications’ (2021) 10(3) *Global Constitutionalism* 400–38.

⁴⁸Compare DA Lake, LL Martin and T Risse, ‘Challenges to the Liberal Order: Reflections on International Organization’ (2021) 75 *International Organization* 225–57.

⁴⁹World Bank, ‘Millions on the Move in Their Own Countries: The Human Face of Climate Change’, 13 September 2021, available at <<https://www.worldbank.org/en/news/feature/2021/09/13/millions-on-the-move-in-their-own-countries-the-human-face-of-climate-change>>.

⁵⁰LC Iommi, ‘Norm Internationalization and Norm Contestation and the Life of Norms at the Extreme of the Norm Cascade’ (2020) 9(1) *Global Constitutionalism* 76–116.

still questions that need to be addressed, and the reactionary, anti-liberal response to the stressors of climate issues suggests an inclusive consensus remains elusive.

Susan Kang 


*John Jay College of Criminal Justice,
524 West 59th Street, New York 10019, United States
Email: skang@jjay.cuny.edu*

Jonathan Havercroft 


*University of Southampton, West Highfield Campus,
University Road, SO17 1BJ, United Kingdom
Email: j.havercroft@soton.ac.uk*

Jacob Eisler 

*University of Southampton, West Highfield Campus,
University Road, SO17 1BJ, United Kingdom
Email: j.eisler@soton.ac.uk*

Antje Wiener 

*University of Hamburg, Faculty of Business,
Economics and Social Sciences,
Max-Brauer-Allee 60, 22765 Hamburg, Germany
Email: glob-gov.wiso@uni-hamburg.de*

Jo Shaw 

*Edinburgh Law School, University of Edinburgh,
Old College, South Bridge, Edinburgh EH8 9YL,
United Kingdom
Email: jo.shaw@ed.ac.uk*