

**The Harvard
Environmental Law Review**

presents

**CLIMATE CHANGE
AND GLOBAL JUSTICE**

Crafting Fair Solutions for Nations and Peoples

THURSDAY, MARCH 5, 2009
HARVARD LAW SCHOOL
LANGDELL NORTH



Made possible with the generous support of the Milbank,
Tweed, Hadley & McCloy Student Conference Fund

Schedule of Events

Opening Remarks **3:30pm**

Seth Johnson
Editor-in-Chief, Harvard Environmental Law Review

Allocating Costs among Nations **3:35pm**

David A. Wirth – *moderator*
Dr. Brooke Ackerly
Jason Scott Johnston
Michael P. Vandenberg
Jonathan B. Wiener

15 Minute Break

International Human Rights Obligations **5:00pm**

Dr. Siobhán McInerney-Lankford – *moderator*
Bonnie Docherty
Tyler Giannini
John H. Knox
Marc Limon

Reception **6:30pm**

Harkness Common, 2nd Floor South

About the Symposium

The *Harvard Environmental Law Review* (HELRL) is proud to present “Climate Change and Global Justice: Crafting Fair Solutions for Nations and Peoples.” In addition to this event, HELRL will publish in its summer issue several articles written by today’s participants. This symposium marks our first such event since 2001, and the first time since 1999 that we have hosted a symposium and published academic papers from it.

The current HELRL Executive Board began its tenure with the plan of hosting a symposium to bring focused scholarly attention to a pressing issue in environmental law. Thanks in part to valuable advice from Harvard Law School professors, the insights and enthusiasm of the Board members, and the wealth of resources that HLS offers, including our fellow students, we believe we have managed to do that. We also believe that we have located an interplay among issues relating to climate change that is both timely and not yet well addressed in the academy or in practice.

Global climate change will have tremendous impacts on all people, but its effects will not be felt evenly. Those who feel the most serious impacts may be in the worst position to address them -- and may have done the least to create them. This disparity raises challenges both of institutional design and of basic human rights.

With this symposium, we aim to highlight those distributive problems and to explore how best to craft legal frameworks that are sensitive to the distributive concerns among both nations and individuals. We have brought together scholars with a variety of perspectives, legal practitioners, and representatives of affected nations to discuss possible responses to the distributive challenges climate change presents. We look forward to a stimulating conversation that we hope will provoke new thinking in the academy and in the search for practical solutions to these serious problems. Thank you for joining us in this conversation.

Biographies of Participants

Dr. Brooke Ackerly

Dr. Brooke Ackerly is an associate professor of political science at Vanderbilt University. She received her Ph.D. from Stanford University. Her research interests include democratic theory, feminist methodologies, human rights, and social and environmental justice. She integrates into her theoretical work empirical research on democratization, human rights, credit programs, and women’s activism. She teaches courses on feminist theory, feminist methods, human rights, contemporary political thought, and gender and the history of political thought. Dr. Ackerly is the founder of the Global Feminisms Collaborative, a group of scholars and activists developing ways to collaborate on applied research for social justice. Her publications include *Political Theory and Feminist Social Criticism* (Cambridge University Press, 2000) and *Universal Human Rights in a World of Difference* (Cambridge 2008). She is currently working on the intersection of global economic, environmental, and gender justice.

Along with her colleague Michael Vandenberg, Dr. Ackerly will offer an analysis that suggests that climate and justice goals cannot be achieved by simply better-allocating the emissions reduction burdens of current carbon mitigation measures. Instead, achieving even just the climate goal without exacerbating justice concerns, will require re-conceptualizing social success and inducing fundamental changes in development patterns to generate greater levels of well-being with reduced levels of material throughput. They then identify examples of the short- and long-term measures that can improve the prospects for achieving emissions reduction targets while attending to justice concerns. Their near-term approach recognizes that a focus on public law remedies and nation-states is necessary but not sufficient. They then draw on the private governance literature to suggest a feasible new mechanism, equity micro-offsets, that could reduce emissions while improving well-being among the poor.

Bonnie Docherty

Bonnie Docherty is a lecturer on law and clinical instructor at the International Human Rights Clinic in Harvard Law School’s

Human Rights Program and a researcher in the Arms Division of Human Rights Watch. At the Clinic, her areas of focus include human rights and the environment, international humanitarian law, and freedom of expression. She co-teaches a class on human rights and the environment, and last fall, she supervised the Clinic's first project of a new initiative on climate change and human rights. Docherty is an expert on international humanitarian law, particularly involving cluster munitions and civilian protection during war. Through her work on weapons issues, she has gained extensive experience in treaty negotiations, which she is now applying to the climate change context. She actively participated in the process to create the new Convention on Cluster Munitions, lobbying states and providing legal advice at treaty conferences from 2007–08. She received her A.B. from Harvard University and her J.D. from Harvard Law School, where she was Editor-in-Chief of the *Harvard Environmental Law Review*. Docherty has published extensively in journals including the *Harvard Human Rights Journal*, *NYU Environmental Law Journal*, and *Harvard Environmental Law Review*.

Along with her colleague Tyler Giannini, Docherty will be discussing “climate change refugees,” those who may be forced to flee their homes from the effects of climate change. They argue that a binding legal instrument should be negotiated to protect them, modifying the traditional definition of refugee to fit the circumstances of climate change refugees and ensuring protection of their basic human rights. The instrument should also respect national sovereignty while taking into account the need to share burdens across the international community.

Tyler Giannini

Tyler Giannini is the Clinical Director of Harvard Law School's Human Rights Program, and a lecturer on law at the Law School. He teaches clinical courses on human rights and the environment, as well as business and human rights. While at the Clinic, Giannini has overseen numerous projects involving the link between environmental issues and the international rights regime. He has conducted research missions in numerous countries, including Cambodia, Papua New Guinea, South Africa, and Thailand. Prior to coming to Harvard in 2004, Giannini was Co-Director of EarthRights International (ERI), an organization at the forefront of efforts to

examine the nexus between human rights and environmental protection. As a founder of ERI, Giannini spent a decade in Thailand conducting fact-finding efforts on human rights abuses in Burma and groundbreaking corporate accountability litigation. Giannini holds graduate degrees in law and foreign policy from the University of Virginia, where he was a member of the law review. He is a member of the Virginia State Bar, and has co-authored several major publications, including *Total Denial Continues: Earth Rights Abuses along the Yadana and Yetagun Pipelines in Burma* and *Earth Rights: Linking the Quests for Human Rights and Environmental Protection*.

Along with his colleague Bonnie Docherty, Giannini will be discussing “climate change refugees,” those who may be forced to flee their homes from the effects of climate change. They argue that a binding legal instrument should be negotiated to protect them, modifying the traditional definition of refugee to fit the circumstances of climate change refugees and ensuring protection of their basic human rights. The instrument should also respect national sovereignty while taking into account the need to share burdens across the international community.

Jason Scott Johnston

Jason Scott Johnston is the founding Director of the Program on Law, the Environment, and Economics and in 2001 became the Robert G. Fuller Jr. Professor of Public Law at Penn Law School. After graduating summa cum laude from Dartmouth, Professor Johnston obtained his J.D. and Ph.D. in economics from the University of Michigan, where he was an Alcoa Fellow in Law and Economics and was elected to Order of the Coif. He served as law clerk for U.S. Court of Appeals Judge Gilbert Merritt and was a civil liability fellow at Yale Law School. Johnston's research includes both theoretical and empirical projects exploring various aspects of natural resource and environmental law and policy, as well as more general studies of legal rights and entitlements. He is currently in the midst of book-length projects on the law and economics of corporate environmentalism and the centralization of environmental and natural resource regulation, and is organizing a first-of-its kind interdisciplinary conference on the law, economics and science of liability for global warming. Johnston has published dozens of articles in journals such as the *Yale Law Journal*, *Virginia Law Review*, *Journal of Law, Economics and*

Organization, and the *Journal of Legal Studies*. He has served as a Regent for the Policy Academy of the Multistate Working Group on Environmental Management Systems, on the Board of Directors of the American Law and Economics Association, and on the National Science Foundation's Law and Social Science grant review panel.

Today, Professor Johnston will discuss how cost allocation across countries fits with global development policies, and primarily will focus on whether climate change mitigation and compensation by developed world countries is actually likely to improve the welfare of people living in developing countries that are likely to be most affected by global warming in the short to medium term.

John H. Knox

John H. Knox is a professor of law at Wake Forest University, where he teaches and writes in the areas of human rights, international environmental law, and international trade law. In the last year, he has advised the Center for International Environmental Law as it helps the Republic of Maldives make the case to the United Nations that climate change interferes with their human rights. His recent scholarship includes "Horizontal Human Rights Law," published in the *American Journal of International Law* in 2008, and "Diagonal Environmental Rights," a chapter in a book entitled *Extraterritorial Obligations in Human Rights Law*, to be published in 2009. Before becoming a professor, he worked from 1988 to 1994 as an attorney in the Office of the Legal Adviser to the U.S. Department of State. He received his law degree in 1987 from Stanford University.

Today, Professor Knox will focus on the recently-released report of the Office of the High Commissioner on Human Rights describing the implications of climate change for human rights. The report, requested by the Human Rights Council, is the first authoritative treatment of the connection between climate change and human rights by a UN body. It is being presented to the March 2009 session of the Council, and will inform the Council's decision (if any) as to how to continue its consideration of the topic.

Marc Limon

Mr. Limon is employed at the Permanent Mission of the Republic of Maldives to the United Nations Office at Geneva where he

advises the Mission and the Maldives Ministry of Foreign Affairs on a range of issues including, most notably international human rights policy and environmental policy. For the past year, Mr. Limon has led efforts to draw attention to the human rights implications of climate change as a means of creating a greater moral, legal and ethical imperative for the world to take decisive action. This included the drafting and negotiation of United Nations Resolution HRC7/23 on Human Rights and Climate Change. He also made a significant contribution to the Maldives' four-year democratic and human rights Reform Agenda. Previously, he worked in Brussels as an EU lobbyist for Hill & Knowlton International, where he headed the Foreign Relations and Trade Policy Group. Mr. Limon began his career at the American Chamber of Commerce to the European Union where he advised multilateral companies on EU foreign and trade policy. He has a Masters Degree from Université Libre de Bruxelles (ULB) in International Politics, a Masters Degree in European Studies from Katholieke Universiteit Leuven (KUL), and a Bachelors Degree from Keele University in the UK. He has co-authored a number of books on EU governance and policy, and has also written articles for a number of publications including the *European Voice* (Economist stable), the *International Herald Tribune*, and the *MEA Bulletin* (International Institute for Sustainable Development – IISD).

Today, Mr. Limon will be discussing his article "Human Rights and Climate Change: Constructing a Case for Political Action," which seeks to answer questions on the connections between human rights and climate change. Specifically, he will discuss the value of taking things forward in the Human Rights Committee or the UN Framework Convention on Climate Change, the risks and benefits of such action, and how they could be structured in practice. Limon will try to construct a case for action, based on the political reality of happenings in Geneva in the HRC and Office of the High Commissioner for Human Rights and insight into State positions.

Siobhán McInerney-Lankford

Dr. Siobhán McInerney-Lankford is Counsel in the Environmentally and Socially Sustainable Development and International Law Group, where she works on human rights law and safeguard policies, advising on policy issues and coordinating research and consultations relevant to human rights, as well as representing the

Legal Vice Presidency in a variety of human rights fora. She is co-chair of the OECD Development Assistance Committee Human Rights Task Team and the World Bank representative on the UN High-Level Task Force on the Right to Development. Previously, she worked in private practice in Washington, D.C., focusing on public interest litigation and administrative law. Dr. McInerney-Lankford has published extensively in the areas of human rights law, EU law and anti-discrimination law, and coauthored a book published by the World Bank entitled *The Human Right to Water: Legal and Policy Dimensions*. Her human rights law experience includes work with U.S. House of Representatives on the Subcommittee on International Operations and Human Rights, U.S. Federal District Court (Central District of California), Lawyers' Committee for Civil Rights, Irish Council for Civil Liberties and Free Legal Advice Centers (Dublin). She is a member of the ABA and the State Bar of Rhode Island. Dr. McInerney-Lankford holds an LL.B. from Trinity College, Dublin (First Class Honors), a B.C.L. from Oxford University, an LL.M. from Harvard Law School, and a D.Phil. in EU human rights law from Oxford University.

Today, Dr. McInerney-Lankford will be moderating the panel on international human rights obligations.

Michael P. Vandenberg

Michael Vandenberg is a professor of law at Vanderbilt University Law School. Professor Vandenberg's research explores the relationship between formal legal regulation and informal social regulation of individual and corporate environmental behavior. His work with Vanderbilt's Climate Change Research Network involves interdisciplinary teams that focus on the reduction of carbon emissions from the individual and household sector. His corporate work explores the influence of social norms on firm behavior and the ways in which private contracting can enhance or undermine public governance. Previously, Professor Vandenberg was a partner at Latham & Watkins in Washington, D.C. He served as Chief of Staff of the EPA from 1993–95 and began his career as a law clerk to Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit. In addition to directing Vanderbilt's Climate Change Research Network, Professor Vandenberg serves as co-director of the law school's Regulatory Program.

A recipient of the Hall-Hartman Teaching Award, he teaches courses in environmental law and property.

Along with his colleague Dr. Ackerly, Professor Vandenberg will offer an analysis that suggests that climate and justice goals cannot be achieved by simply better-allocating the emissions reduction burdens of current carbon mitigation measures. Instead, achieving even just the climate goal without exacerbating justice concerns will require re-conceptualizing social success and inducing fundamental changes in development patterns to generate greater levels of well-being with reduced levels of material through-put. They then identify examples of the short- and long-term measures that can improve the prospects for achieving emissions reduction targets while attending to justice concerns. Their near-term approach recognizes that a focus on public law remedies and nation-states is necessary but not sufficient. They then draw on the private governance literature to suggest a feasible new mechanism, equity micro-offsets, that could reduce emissions while improving well-being among the poor.

Jonathan B. Wiener

Jonathan B. Wiener is the William R. and Thomas L. Perkins Professor of Law at Duke Law School, Professor of Environmental Policy at the Nicholas School of the Environment, and Professor of Public Policy Studies at the Sanford Institute of Public Policy, at Duke University. Since 2002, he has also been a University Fellow of Resources for the Future. In 2008, Jonathan Wiener served as President of the Society for Risk Analysis (SRA) and was inducted as a Fellow of the SRA. In 2003, he received the Chauncey Starr Young Risk Analyst Award from the SRA for the most exceptional contributions to the field of risk analysis by a scholar aged 40 or under. He has taught courses including Environmental Law, Climate Change and the Law, Risk Regulation, Property Law, and Global Property Regimes. Previously, he was the founding Faculty Director of the Duke Center for Environmental Solutions. This center was expanded in 2005 into the Nicholas Institute for Environmental Policy Solutions, for which he now chairs the faculty committee. Professor Wiener has written widely on U.S., European, and international environmental law and risk regulation, including the books *The Reality of Precaution* (forthcoming), *Reconstructing Climate Policy* (AEI Press 2003, with Richard Stewart) and *Risk vs. Risk* (Harvard Univ.

Press 1995, with John Graham), and articles in diverse journals including the *Yale Law Journal*, *Harvard Law Review*, and *Ecology Law Quarterly*. Previously, he worked on U.S. and international environmental policy at the White House Council of Economic Advisers and Office of Science and Technology Policy, and at the U.S. Department of Justice, in both the first Bush and Clinton administrations. He helped negotiate the Framework Convention on Climate Change, and attended the Rio Earth Summit in 1992. In 1993 he helped draft Executive Order 12866 on Regulatory Review.

In today's panel, Professor Wiener will discuss which mechanisms are best to assist developing countries with climate change, especially considering the issue of emissions abatement.

David A. Wirth

David A. Wirth is a professor of law at Boston College and serves as Director of International Programs. Professor Wirth teaches environmental, administrative, public international, and foreign relations law. Prior to moving to academia, Professor Wirth was Senior Attorney and Co-Director of the International Program at the Washington, D.C. office of the Natural Resources Defense Council. While there, he worked on a variety of international environmental issues, including environmental reform of World Bank and regional development banks, the "greenhouse" effect, Soviet and Eastern European environmental issues, stratospheric ozone depletion, and exports of hazardous substances. Professor Wirth has also been Attorney-Adviser for Oceans and International Environmental and Scientific Affairs in the Office of the Legal Adviser of the U.S. Department of State in Washington, D.C., where he had principal responsibility for all international environmental issues. He holds undergraduate and graduate degrees in chemistry from Princeton and Harvard, respectively. He is the author of more than five dozen books, articles, and reports on international environmental law and policy for both legal and popular audiences. A graduate of Yale Law School, Professor Wirth was editor of the *Yale Journal of World Public Order*. He served as law clerk to Judge William H. Timbers, U.S. Court of Appeals for the Second Circuit, New York, and is a member of the bar in New York and the District of Columbia.

Professor Wirth will be moderating the panel discussion on allocating costs among nations.

In addition to our participants, the Executive Board would like to thank the following people for making this event possible:

Harvard Professors Jody Freeman, Cass Sunstein, Tyler Giannini, and Bonnie Docherty, and Visiting Professor Richard Lazarus, for their wisdom and guidance in the conception of this event.

The Harvard Law School Dean of Students Office, Media Office, Events Office, and Copy Center, for their outstanding logistical support, particularly Jeff Dunn and Sheena Prosper. Special thanks to Anna Bennett, who has provided constant assistance at every step of the planning process.

Kara Jansons of Restaurant Associates, who was of great help in planning the reception.

The members of the HELR Advisory Board, for their continued advice and support of the journal.

Kim Smaczniak, for helpful discussion regarding our panelists.

Zach Gerson, who took the primary role in planning today's event, and whose exceptional dedication was pivotal at every stage.

The staff of HELR, especially Danica Anderson, for helping to plan and publicize today's event.

The Milbank, Tweed, Hadley & McCloy Student Conference Fund, for their generous financial support, without which this event would not be possible.

The Harvard Environmental Law Review (HELRL) is published semiannually and aims to promote scholarly inquiry in the field of environmental law through its publication and discussion of environmental issues on campus. HELRL has adopted a broad view of environmental affairs, including such topics as land use and property rights; air, water, and noise regulation; toxic substances control; radiation control; energy use; workplace pollution; science and technology control; and resource use and regulation.