

Climate change litigation in European private law

Or: Environmental constitutionalism
and European civil courts

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IUCN Webinar
4 September 2020

Structure of this presentation

1. Background: research project
2. Theory: role of the judiciary and Habermas' co-originality thesis
3. Climate cases in European private law as a contribution to the public sphere; parallel with civil disobedience
4. Constitutionalisation of the environment
5. Concluding remarks

- PhD Thesis -

Justitia, the People's Power and Mother Earth
Boundaries of democratically legitimate judicial law-making
in European private law on climate change

- I. Introduction
- II. Boundaries of democratically legitimate judicial law-making in European private law
- III. National boundaries. People abroad
- IV. Temporal boundaries. Future Generations
- V. Conclusions
- VI. Epilogue: Boundaries of Imagination. Non-human entities

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II. Boundaries of democratically legitimate judicial law-making in European private law



Article **‘Should Judges Make Climate Change Law?’**
published open access in *Transnational Environmental Law*

Climate change: law versus politics

- Global climate change litigation: over 1000 cases (nine in European private law)
- “We believe that climate change is a complex societal challenge that should not be addressed by courts”
 Shell, 4 April 2018
- Academic critique to 2015 *Urgenda* decision by Hague District Court: Court overstepped its role in separation of powers

Role of the Judiciary

- Habermas
- Democracy principle
→ means boundaries to the role of the judge
- The ‘system of rights’
- Co-originality thesis



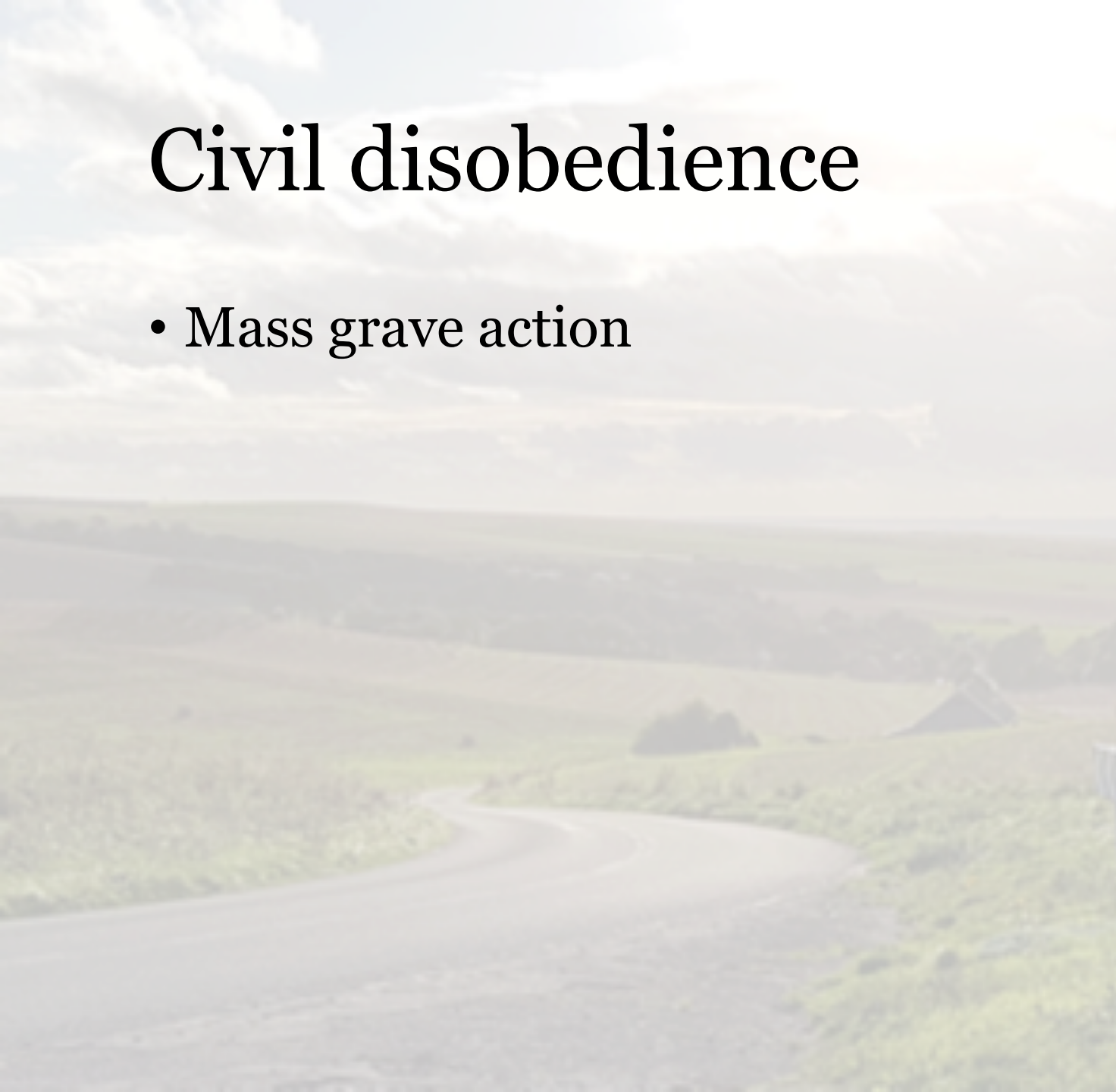
Climate change litigation

1. Aimed at (judicial) law-making
2. Contribution to the 'public sphere'



Civil disobedience

- Mass grave action



Timeline contributions to public sphere

1. 'Regular' contribution (op-ed, protest march, etc)

→ Law must change in the future

2. Civil disobedience

→ Law must change right now

3. Climate change litigation

→ Law has already changed

Constitutionalisation of the environment

- A 'rights turn' in climate change litigation (Peel & Osofsky 2018)
- (Global) environmental constitutionalism

Constitutionalisation of the Environment

- 2015: *Urgenda* case on first instance, the Netherlands
→ Articles 2 and 8 ECHR *relevant*
- 2017: *Magnolia* case, Sweden
→ no damage, but climate change within scope articles 2 and 8 ECHR
- 2017: *Arctic oil* case, Norway
→ case lost, yet constitutional provision justiciable on climate change
- 2018: *Urgenda* case on appeal, the Netherlands (confirmed 2019 by SC)
→ directly relies on Articles 2 and 8 ECHR
- 2019: *People's Climate Case* against the EU
→ appeals to human rights as an *independent* basis for the claim

Concluding remarks

Climate change litigation indicates a growing consensus that a sound environment forms a constitutional norm, and is therefore a prerequisite for democracy, to be protected by judges

Questions? Remarks? Criticism?

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