

TRANSFORMATIVE CONSTITUTIONALISM: COMMON PATHWAY FOR A SUSTAINABLE FUTURE?

In 2015, the United Nations Sustainable Development Goals called for profound societal transformation processes involving the reconciliation of social, environmental and economic development, the consideration of impacts beyond national borders, and the freedom rights of future generations. In this respect, law – particularly national constitutions – and the judicial system can play a key role in accompanying these processes of societal transformation.

In Germany, the Grundgesetz (Basic Law) and its fundamental rights have traditionally been interpreted as an “objective order of values” (objektive Werteordnung) with fundamental rights providing a strong shield against state interference, while the state's duty to protect remains less developed. This has been turned upside down with the Constitutional Court's ruling in 2021, which declared that Germany had not sufficiently stipulated concrete measures to mitigate climate change beyond 2030 and had thus failed in its obligation to safeguard freedom rights in the future.

In contrast, in South Africa, the legal doctrine of transformative constitutionalism has developed, including distributive justice, a substantive understanding of equality, the horizontal application of fundamental rights, participatory democracy, and judicial enforcement of the state's affirmative duties. Yet, concerning climate change, the Constitutional Court has yet to pronounce on whether the state is doing enough to mitigate its effects.

Against this backdrop, the conference seeks to understand the theoretical foundations and current expressions of transformative constitutionalism in light of the SDGs. While South African studies promise a theoretical understanding of transformative constitutionalism, the decision of the German Constitutional Court might serve as a strong example of actual transformative constitutionalism.

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6TH BIENNIAL GERMAN-SOUTH AFRICAN
DIALOGUE ON DEMOCRACY

TRANSFORMATIVE CONSTITUTIONALISM: COMMON PATHWAY FOR A SUSTAINABLE FUTURE?

[7 – 8 JULY 2022]

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PROGRAMME

THURSDAY, 7 JULY 2022

Lecture Hall 3

6 p.m. **Public Lecture**

Prof. Dr. Andreas Paulus, Judge at the German Federal Constitutional Court

“Transformation by judicial fiat? One year after the climate change decision of the Federal Constitutional Court”

FRIDAY, 8 JULY 2022

Room 40.606 (Central Building)

9 a.m. **Registration and Coffee**

9.30 a.m. **Welcome and Introduction**

Prof. Dr. Jörg Terhechte, Vice President & Prof. Dr. Jelena Bäuml, Leuphana University Lüneburg

10 a.m. **Panel 1: Transformative Constitutionalism: Idea, Concept and Practice**

Chair: Prof. Dr. Wessel Le Roux, University of the Western Cape

– Prof. Dr. Markus Kotzur, University Hamburg

“(Not) Living up to great expectations – a European eye on transformative constitutionalism beyond the state”

– Prof. Dr. Henk Botha, Stellenbosch University
“Fetishizing law or speaking truth to power? Transformative constitutionalism from a South African perspective”

12–1.30 p.m. **Lunch Break**

1.30 p.m. **Panel 2: Transformative Processes: Towards a Sustainable Future?**

Chair: Prof. Dr. Jelena Bäuml, Leuphana University Lüneburg

– Prof. Dr. Jörg Fedtke, University Passau

“Ingredients of transformative (environmental) constitutionalism?”

– Dr. Caiphaz Brewsters Soyapi, North-West University
“Ecological proportionality: a primer for transformative environmental constitutionalism”

3.30–4 p.m. **Coffee Break**

4 p.m. **Panel 3: The Power of Courts: Threat or Challenge?**

Chair: PD Dr. Nils Schaks, University Mannheim

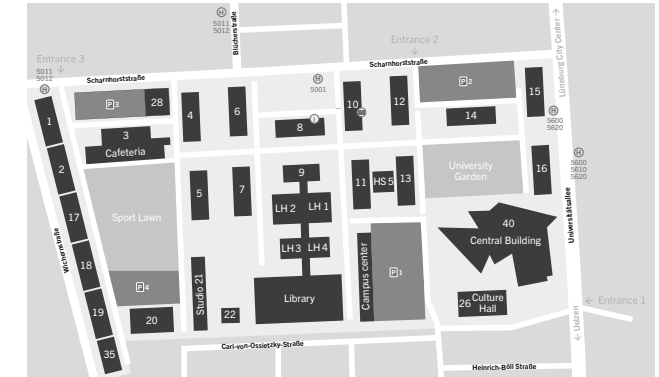
– Dr. Angela van den Berg, University of the Western Cape







“Judicial activism or 'impermissible interference'? Assessing the role of the judiciary in advancing climate democracy in South Africa”

– Prof. Dr. Marten Breuer, University Konstanz
“Climate change litigation – a competence overstretch for the judiciary?”

6 p.m. **Concluding Remarks**

AT A GLANCE



-  The Conference's language is English.
-  The Conference is free of charge.
-  The Conference will take place at the Central Campus of Leuphana University Lüneburg (LH 3 (Thursday) and Central Building (Friday)).
-  The entire campus was made barrier-free and handicapped accessible. Please feel free to contact us if you have any further questions in this regard.
-  Please register for the Conference until 15.6.2022 via e-mail to Julieta Sarno: sarno@leuphana.de.
-  For additional information, please contact Julieta Sarno via e-mail: sarno@leuphana.de.

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