Law as Narrative in the Democratic Transformation Process: Ideational Power in European Climate Change Litigation

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Abstract

European law has long been a basis as well as product and producer of European integration. Moreover, it serves not only as a regulatory tool but also as a medium for shaping social realities amid ongoing crises such as climate change, digitalisation, and globalisation. However, the increasing emotional fragmentation among citizens, and growing polarisation and, in EU case, euro-skepticism in politics pose challenges to effective governance and democratic engagement. These challenges only magnify when coupled with transformation processes. On the other hand, law may provide a particularly suitable means of coping with these challenges. Accordingly, this chapter aims to explore how law can function as a narrative in political discourses supporting these transformations.

Drawing on theories from neo-institutionalism and narrative studies, the chapter develops an analytical framework to investigate how law is utilised in political narratives during transformative processes. This framework is applied to two significant cases of climate change litigation within the EU multi-level system: the 'People's Climate Case' and the case of the 'KlimaSeniorinnen'. These cases illustrate how legal narratives can frame complex climate issues while seeking legitimacy for policy solutions.

The analysis highlights that political narratives surrounding legal frameworks play a critical role in legitimising policy decisions and addressing pressing societal concerns. The findings also point to the need for further research regarding more policy fields, particularly concerning democratic

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legitimacy and public understanding of complex issues like climate change and digitalisation. Ultimately, this study underscores the importance of examining the discursive potential of law as narrative for maintaining democracy amidst transformative pressures faced by contemporary societies.

1. Introduction: Law as Narrative and Transformation Processes

European integration entails a process that in many ways is at once both law made and a maker of law. It is based on law in resting on treaties and their revisions, while law also provides a key tool of European integration for securing the common good and rights. European regulations were called into question, for example concerning the Schengen regime and regulations on controls at inner-European borders, or on account of offenses against the rule of law in EU Member States.[1] Still, European law has shown a resilient authority and integrative power in withstanding several major crises in the past fifteen years. At the same time, its vulnerability is growing in the face of increasingly emotionally charged politics and dissatisfaction of citizens with government.[2] This is reflected in the case of the EU in the emergence of "constraining dissensus" – as opposed to the long, more or less applicable "permissive consensus" among the general populace vis-à-vis European integration – or even "disintegration".[3] Moreover, multifaceted changes in the world are increasing pressure on democratic politics in general as well as on specific policy areas to adapt and regulate. Several areas stand out as key drivers of transformation processes such as economic structural changes as part of globalisation or various technological advancements, with rapid digitalisation representing but one, albeit major area as a product and producer of social complexity. Another challenge of particular

1 S. von Steinsdorff, 'Vom "rule of law revival" zum "rule of law backsliding": Ein Erklärungsversuch' (2024) *Zeitschrift für Politikwissenschaft*, 57.

2 L. Azoulai, 'Europe is trembling. Looking for a safe place in EU law' (2020) *Common Market Law Review*, 1675, 1677; V. A. Schmidt, 'Rethinking EU Governance: From "Old" to "New" Approaches to Who Steers Integration' in R. Coman, A. Crespy and V. A. Schmidt (eds), *Governance and Politics in the Post-Crisis European Union* (Cambridge University Press, 2020), 94, 110.

3 L. Hooghe, and G. Marks, 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus' (2009) *British Journal of Political Science*, 1; E. Jones, 'Towards a theory of disintegration' (2018) *Journal of European Public Policy*, 440; Z. Lefkofridi and P. C. Schmitter. 'Transcending or Descending? European Integration in Times of Crisis' (2015) *European Political Science Review*, 3.

note pertains to climate change, which not only transcends boundaries posing numerous governance challenges, but also reinforces existing and raises new conflict lines between and within societies.[4]

Transformation processes like globalisation, digitalisation and climate change – and the questions of whether at all and, if so, how they are addressed, managed or coped with – comprise a veritable fault line for effective and democratic governance, both between the current and the future democratic society. Still, despite and even because of these fundamental challenges, we identify the *law* as a crucial *medium* of politics for shaping the social reality of modern societies.

Law is born out of processes of political contestation, and thus as product it may be construed as "congealed politics"[5]. At the same time, it also formalises and stabilises expectations of politics.[6] Law is the decisive instrument for shaping and controlling democracy in a multi-level system organised under the rule of law.[7] The regulatory function of law is characterised by rationalism. Despite the deep anchoring of this rationalism in modern political institutions[8], it increasingly diverges from the paradigm of (post-)modern society,[9] in which the relationship between emotions and politics, argumentative discourse and emotional rhetoric is being renegotiated. The rationalist character of law offers a contrast to the uncertainty and questioning of democratic institutions and authorities in transformation processes. The role of law in the process of transformation in the climate crisis is for example already studied from the perspective of law development[10] and with regard to its potential as a tool to enable transformation (*transformative law*).[11] However, the role of law in political discourse around the democratic governance of transformation processes presents a

4 A. Nassehi, *Muster: Theorie der digitalen Gesellschaft* (C.H. Beck, 2019), 321–323; S. Brechin, and S. Lee (eds), *Routledge Handbook of Climate Change and Society* (Routledge, 2025).

5 D. Grimm, 'Recht und Politik' (1969) *Juristische Schulung*, 501, 502.

6 E. R. Lautsch, *Integration durch Recht* (Mohr Siebeck, 2023), 175.

7 H. L. A. Hart, 'Positivism and the Separation of Law and Morals' (1958) *Harvard Law Review*, 593, 600; M. van Hoecke and M. Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law' (1998) *International and Comparative Law Quarterly*, 495, 515.

8 A. Grimmel, *Europäische Integration im Kontext des Rechts* (Springer, 2013), 46–80.

9 A. Grimmel, see n. 8, 81–82.

10 J. McDonald and P. C. McCormack, 'Rethinking the role of law in adapting to climate change' (2021) *WIREs Climate Change*, 1, https://doi.org/10.1002/wcc.726.

11 P. F. Kjaer, 'What is transformative law?' (2022) *European Law Open*, 760.

research gap. It appears that the potential of law – not just as a regulatory tool, but as a meaningful narrative within political transformative processes – has received less attention. At the same time, uncountable research articles have tackled and underlined the significance of discourse and ideas for public problem-perception, political agenda-setting, policy-development as well as – from a perspective of European integration – regional political integration processes.[12]

In political science research, the structuring of discourse processes through narratives is recognised and methodologically processed.[13] This invites a research agenda that builds on these insights in order to broaden our understanding of the role of law in discourses through transformative processes. This also seems necessary to us in the face of an increasingly emotionally, fragmented public, which – we assume – is in danger of overlooking that dispute and the struggle for political solutions, not to mention the attainment of complex compromises, form components of a lively and healthy democracy in general, and as part of the process of European integration as well. What is more, law and narratives of law may offer in the case of the European Union – on account of several particularities as unique multilevel political system of people and Member States that is itself not a conventional state, but far more extensive in scope and trajectory than an international organisation – particularly appropriate avenues for coping with the tensions between democratic and effective governance of

12 V. Schmidt, 'EU Leaders' Ideas and Discourse in the Eurozone Crisis: A Discursive Institutionalist Analysis' in C. Carta and J.-F. Morin (eds), *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity* (Routledge, 2014); A. Crespy and V. Schmidt, 'The clash of Titans: France, Germany and the discursive double game of EMU reform' (2014) *Journal of European Public Policy*, 1085; A. Crespy and L. Schramm, 'Breaking the Budgetary Taboo: German Preference Formation in the EU's Response to the Covid-19 Crisis' (2024) *German Politics*, 46–67.

13 M. R. Somers, 'The Narrative Construction of Identity: A Relational and Network Approach' (1994) *Theory and Society*, 605, 606; M. A. Hajer, 'Argumentative Diskursanalyse: Auf der Suche nach Koalitionen, Praktiken und Bedeutungen' in A. Hirseland, R. Keller, W. Schneider and W. Viehöver (eds), *Forschungspraxis* (Verlag für Sozialwissenschaften, 2008), 271; R. Keller, *Diskursforschung: Eine Einführung für SozialwissenschaftlerInnen* (Verlag für Sozialwissenschaften 2011); W. Viehöver, 'Diskurse als Narrationen' in R. Keller, A. Hirseland, W. Schneider and W. Viehöver (eds), *Handbuch sozialwissenschaftliche Diskursanalyse* (Verlag für Sozialwissenschaften, 2011), 193, 197; F. Gadinger, S. Jarzebski and T. Yildiz, *Politische Narrative: Ein neuer Analysezugang in der Politikwissenschaft* (Verlag für Sozialwissenschaften, 2014); S. Münch, *Interpretative Policy-Analyse. Eine Einführung* (Springer, 2016).

transformation processes. This applies to current societies and Member States as well as their posterities or futures.

Against this backdrop, our contribution inquires *how is law used in political discourses around transformation processes?* To this end, we aim to provide an analytical framework, drawing on theories of neo-institutionalism, and its variants of discursive institutionalism and ideational institutionalism in particular. Furthermore, we also build on a rich spectrum of groundworks and empirical contributions from *narrative studies* in political science. The novelty here, again, lies with the focus on *law* as medium of politics in this context.

In the following section, we briefly review the state for research on political discourses, their institutional and ideational bounds and dynamics, as well as particularly relevant discursive elements on the one hand, and law in transformative processes on the other hand. On this basis, we develop a conceptual framework to analyse law as narrative. Subsequently, we undertake an illustrative application of this analytical framework on an especially suitable case of transformation processes: the management of climate action in the EU multilevel system and the field of climate change litigation. These narratives can be analysed as *ideational power* through the accompanying public relations work of the plaintiffs and their supporters and the public response to the lawsuits.[14] In addition to trial documents, press releases and statements by the lawsuit collectives and defendants represent the materials to be used. Finally, we discuss our conceptual considerations and insights from the case study as well as their limitations, and draw implications for future research, while also prompting a preliminary reflection of law as narrative in connection with its potential for democratic maintenance.

2. Ideas and Narratives in Politics and Political Discourse

Law and politics are not only complexly interwoven in terms of processes and rules. They are also embedded in spaces of meaning. Political contestation and discourse related to law thus do not only concern assessing 'facts'

14 See similar approach in S. Lenhart, A. Töller and A. Wenz-Temming, 'Die Macht der Ideen: Können Klimaklagen das Denken und Reden über Klimapolitik ändern?' (2025), unveröffentlichtes Paper für die Jahrestagung der Sektion „Policy-Analyse und Verwaltungswissenschaft" 20.-21. März 2025, TU Darmstadt.

and negotiating 'interests', but also revolve around competing, concurring and otherwise different ideas, norms and their interpretation. Such premises are hardly self-evident. They are rather grounded in theories of social construction of reality[15] in general and a variety of theoretical strands in social science research connected to various social and ideational *turns*.[16] Accordingly, framing[17] and narratives[18] have increasingly become subject of investigation since the constructivist turn in international relations that recognises the importance of culture, norms and perceptions of participating actors.[19] Framing captures the essence of a political issue to further an actor's political goals to influence opinions and political decisions of others.[20] Following authors of the Narrative Policy Framework (NPF), narratives contain a temporally structured sequence of events that are embedded in a narrative thread (*plot*), which is fed by actors (*characters*), dramatic moments (*disruption/crisis*) and an overarching sense of meaning (*morale*).[21]

15 See seminally, P. Berger and T. Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Penguin, 1966).

16 See overview, e.g. J. Checkel, J. Friedman, M. Matthijs and R. Smith, 'Roundtable on Ideational Turns in the Four Subdisciplines of Political Science' (2016) *Critical Review. Journal of Politics and Society*, 171.

17 For an overview, see D. Chong and J. N. Druckman, 'Framing Theory' (2007) *Annual Review of Political Science*, 103; Z. Oxley, 'Framing and Political Decision Making: An Overview' (2020) <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1250> accessed 17 April 2025.

18 K. Freistein, F. Gadinger and S. Groth, 2024, 'Studying Narratives in International Relations' (2024) *International Studies Perspectives* <https://doi.org/10.1093/isp/ekae019> accessed 17 April 2025.

19 M. Finnemore, *National Interests in International Society* (Cornell University Press, 1996); P. Katzenstein (ed), *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996); A. Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Cornell University Press, 1995); N. Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (University of South Carolina Press, 1989).

20 Most importantly in the arena of political decisions, it makes sense to distinguish emphasis frames (highlighting features while ignoring others) and equivalence frames (presenting an issue in logically equivalent but different ways, see Z. Oxley, see n. 17.

21 M. D. Jones and M. K. McBeth, 'A Narrative Policy Framework: Clear enough to be wrong?' (2010) *Policy Studies Journal*, 329 with further references; E. A. Shanahan, M. D. Jones, M. K. MacBeth, C. M. Radaelli, 'The Narrative Policy Framework' in C. Weible and P. A. Sabatier (eds), *Theories of the Policy Process*, (Routledge, 2022), 173, 176.

Narratives help to simplify complex issues[22] and give meaning and legitimacy to political positions.[23] Political changes are categorised through narratives, which not least serve the basic social concern "to make sense of the world"[24], a need that is also starkly pronounced in particularly complex European politics.[25] The narrative turn[26] emphasises the importance of interpretive scholarship, grounded in the assumption that political actors use *the structural power of narratives to make sense of the world* in order to (de)legitimise political projects by linking the past, present and future.[27] It constitutes an approach to social inquiry rather than a theory, based on the assumption that "the environment in which agents/states take action is social as well as material."[28] This creates a significant connection between the *reasoning for* policy choices and *democratic legitimacy*.

In the European context, the reasoning can be conceived in terms of so-called "two-level games", in line with the concept first introduced by *Robert Putnam*.[29] The concept of "two-level games" is an established model in the literature to capture the significance of rational preference formation on national level for the position of a country on the international level but also the interactions between the two levels, how they – and e.g. their respective logics, constellations and constraints – interact and affect one another.[30] The European Union is a highly advanced international

22 S. Münch, see n. 13, 85.

23 F. Gadinger, S. Jarzebski and T. Yildiz, see no. 13, 10.

24 J. Kuhlmann and S. Blum, 'Narrative plots for regulatory, distributive, and redistributive policies' (2021) *European policy analysis*, 276, 278; N. Onuf, *Making Sense. Making Worlds. Constructivism in Social Theory and International Relations* (Routledge, 2012).

25 I. Manners and P. Murray, 'The End of a Noble Narrative? European Integration Narratives after the Nobel Peace Prize' (2016) 54 *Journal of Common Market Studies*, 185, 186.

26 D. Stone, 'Causal Stories and the Formation of Policy Agendas' (1989) *Political Science Quarterly*, 281; M. Patterson and K. Renwick Monroe, 'Narrative in Political Science' (1998) *Annual Review of Political Science*, 315; S. R. Shenhav, 'Political Narratives and Political Reality' (2006) *International Political Science Review*, 245.

27 K. Freistein, F. Gadinger and S. Groth, see n. 18; see also: S. Groth, 'Political Narratives/Narrations of the Political: An Introduction' (2019) *Narrative Culture*, 1; M. Kurki. 'Relational Revolution and Relationality in IR: New Conversations' (2022) *Review of International Studies*, 821.

28 J. T. Checkel, 'Review: The Constructivist Turn in International Relations Theory' (1998) *World Politics*, 324, 325.

29 R. D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games' (1988) *International Organization*, 427.

30 R. D. Putnam, see n. 29, 427.

organisation with tight legal ties between the national and European level, comprising together meanwhile a unique multilevel governance system.[31] These ties extend to the public sphere as well, though at the latest since the financial and state debt crisis as of 2010 with high politicisation.[32] European politics have become "two-level games" not only of executive-laden intergovernmental relations and rather technocratic inter-administrative coordination networks, but also with further horizontal and vertical dimensions: The state representing negotiators must consider not only their national preferences (and e.g. coalition partners, parliamentary majorities), but also the reactions emanating from other Member States (e.g. not just their elites, but also the different public discourses) as well as the impact that such a preference might have for the European community – to the extent, that the European preferences of a Member State (functioning of the Single Market and currency union) may outweigh the national preference not to grant solidary fiscal transfers (as in the case of Next Generation EU).[33] Accordingly, one finds the increasingly prominent argument positing the establishment and expansion of a "double two-level game"[34] on European level with an overlap of vertical and horizontal deliberative processes and communication. Especially in crisis situations, problem construction becomes a decisive explaining variable for potential crisis solution mechanisms.[35]

This complex and multidimensional as well as dynamic background of interactions, interlinkages and discourses in the European Union can be particularly adequately captured from discursive institutionalism perspec-

31 C. Calliess, *Die neue Europäische Union nach dem Vertrag von Lissabon. Ein Überblick über die Reformen unter Berücksichtigung ihrer Implikationen für das deutsche Recht* (Mohr Siebeck, 2010), 47–54; cf. also e.g. S. Piattoni, *The Theory of Multi-level Governance. Conceptual, Empirical and Normative Challenges* (Oxford University Press, 2010).

32 U. Beck, *Das deutsche Europa* (Suhrkamp, 2015); A. Séville, 'From "one right way" to "one ruinous way"? Discursive shifts in "There is no alternative"' (2017) *European Political Science Review*, 449; S. Fabbrini, 'Differentiation or Federalisation: Which Democracy for the Future of Europe?' (2021) *European Law Journal*, 9; K. K. Patel, *Europäische Integration: Geschichte und Gegenwart* (C.H. Beck, 2022), 100; A. von Bogdandy, *Strukturwandel des öffentlichen Rechts: Entstehung und Demokratisierung der europäischen Gesellschaft* (Suhrkamp, 2021), 49.

33 A. Crespy and L. Schramm, see n. 12, 50.

34 A. Crespy and V. Schmidt, see. 12, 1085; A. Crespy and L. Schramm, see n. 12, 50; C. Fontan and S. Saurugger, 'Between a Rock and a Hard Place: Preference Formation in France During the Eurozone Crisis' (2020) *Political Studies Review*, 507.

35 A. Crespy and L. Schramm, see n. 12, 50.

tive:[36] The concept conceives discourse as an *ideational process* which aims *to make sense of the world* by giving meaning to (crisis) events and successive political exchanges, decisions and activities, which moreover unfold in (often different) institutional settings and arenas. This discourse is thus embedded in *both* the national and European arena with actors participating in vertical and horizontal dimensions, trying to convince each other and gain influence in the policy process with their ideas. Complex – multidimensional, multilevel compounded and/or network-type – institutional arrangements are prone to logics of communication. While this may apply to any system and its interactions, complex ones cannot be centrally or hierarchically steered, but rely on deliberation and coordination in order to operate, for variegated (collective) actors to reach compromises and so forth.[37]

Finally, political processes are not only structured by formal institutional rules, but also essentially by discourses. Narratives that create meaning and provide legitimation play a vital role here. In addition to pursuits of persuasion and influence, there is also a fundamentally discursive importance of democratic politics, not only but perhaps especially in the EU as polycentric, multilevel system that is only partially characterised by partisan and majoritarian politics more typical of conventional political systems or states. Heads of State and Government as well as other Ministers are required to justify intergovernmental negotiations and choices for legal commitment on the supranational level, as they remain accountable – and thus must *account for* – their (in)actions to their parliaments, electorates, public in general.[38] These accounts are induced by institutional and ideational settings in a broad sense – e.g. constraints, incentives, but also norms and principles – of democracy and the rule of law in general and in the EU multilevel, law- and treaty-based integration system in particular. This invites, in short, an in-depth analysis of *law as a narrative in the political process*.

36 V. A. Schmidt, 'Discursive Institutionalism: The Explanatory Power of Ideas and Discourse' (2008) *Annual Review of Political Science*, 303; V. A. Schmidt, see n. 2.

37 V. A. Schmidt, see n. 36, 303.

38 A. Crespy and L. Schramm, see n. 12, 49.

3. Law as Narrative in Transformation Process: Towards an Analytical Framework

In addition to drawing on strands of research at the interface between law and politics, the analytical framework builds on the theory of social constructivism in general[39] and its further development in the context of the EU and international and multi-level politics.[40] Accordingly, socialisation processes, rules and sets of rules are not only *exogenous* incentive structures or limitations for decision-making and action, but are themselves formative and co-constitutive for actors and their interactions.[41] Law is thus the result of human collective action. However, these, in turn, are mediated ideationally, communicatively and interactively within the existing institutional framework. Law and law-making within and beyond the state thus create a political and social space that is to a certain extent open to interpretation.[42]

Sociological institutionalism also emphasises the importance of the institutional embedding of actors for their perceptions, attitudes and actions.[43] New information or shifts in normative understandings influence interests.[44] Furthermore, discursive institutionalism points to the explanatory

39 See, for example, P. Berger and T. Luckmann, see n. 15; A. Wendt, *Social theory of international politics* (Cambridge University Press, 2010).

40 See, for example, T. Christiansen, K. E. Jorgensen and A. Wiener, 'The Social Construction of Europe' (1999) 6 *Journal of European Public Policy*, 528; M. Finnemore and K. Sikkink, 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics' (2001) *Annual Review of Political Science,* 391; J. Checkel, 'International Institutions and Socialization in Europe: Introduction and Framework' (2005) *International Organization*, 801; S. Saurugger, 'The constructivist turn in EU public policy approaches' in H. Heinelt and S. Münch (eds), *Handbook of European Policies* (Edward Elgar, 2018), 19.

41 See also e.g. C. Hay, 'Good in a crisis: the ontological institutionalism of social constructivism' (2016) *New Political Economy*, 520.

42 D. Dreyer-Plum, 'The substance and effects of EU law and jurisprudence under a social constructivist research agenda' in L. Burazin, D. Gardasevic and A. Sardo (eds), *Law and State. Classical Paradigms and Novel Proposals*; Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook (Peter Lang Verlag, 2015), 137.

43 S. Bulmer, 'Domestic Politics and European Community Policy-Making' (1983) *Journal of Common Market Studies*, 349; J. G. March and J. P. Olsen, *Rediscovering institutions: the organizational basis of politics* (Free Press, 1989).

44 T. Risse, 'Social Constructivism and European Integration' in A. Wiener, T. Börzel and T. Risse (eds), *European Integration Theory* (Oxford University Press, 2019), 128, 131 with further references.

potential of discursive and communicative elements.[45] Ideas are the substantive content of discourses that are expressed at different levels (*policies, programmes, philosophies*) and in different categories (cognitive, normative) and have a formative power.[46] A basic assumption of discursive institutionalism as well as *ideational* institutionalism is that "ideas matter" for political processes *and* their outcomes,[47] also, as summarised by *Berman*, "by shaping actors' interests and preferences *as well as* the constraints and opportunities they face".[48]

Against this background, the concept of *ideational power* can be understood as the capacity of individual and collective actors: for example, to influence (*reasoned*) or determine (*coercive*) the normative and cognitive convictions of other actors. At the same time, this capacity is also structural – i.e. (also) included in institutional frameworks. Martin Carstensen and Vivien Schmidt further differentiate this *ideational power* into three forms: First, as "power through ideas", i.e. the ability to *persuade* other actors through ideational elements.[49] Secondly, "power over ideas", i.e. the power to present one's own perception as *having no alternative*.[50] Thirdly, "power in ideas", i.e. the *institutionalisation of* certain ideas that become dominant through structural integration.[51]

Focusing on law as narrative, we want to investigate *ideational power* in policy processes and their occurrence in political narratives including law. We link narratives of problem definition (*power through ideas*) with legislative and legal mobilisation processes that contribute to the institutionalisation of ideas (*power in ideas*). We argue that law as narrative provides a

45 V. A. Schmidt, see n. 36, 303; V. A. Schmidt, 'Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth "new institutionalism"' (2010) *European Political Science Review*, 1; V. A. Schmidt, 'Discursive Institutionalism: Scope, Dynamics, and Philosophical Underpinnings' in F. Fischer and J. Forester (eds), *The Argumentative Turn Revisited. Public Policy as Communicative Practice* (Duke University Press, 2012), 85; V. A. Schmidt, see n. 36, 94.

46 V. A. Schmidt, see n. 36, 303.

47 D. Béland, 'The Idea of Power and the Role of Ideas' (2010) *Political Studies Review,* 145; M. B. Carstensen and V. A. Schmidt, 'Power through, over and in ideas: conceptualizing ideational power in discursive institutionalism' (2016) 23 *Journal of European Public Policy*, 318.

48 S. Berman, 'Ideational Theorizing in Social Sciences since "Policy Paradigms, Social Learning, and the State"' (2013) *Governance*, 217, 232.

49 M. B. Carstensen and V. A. Schmidt, see n. 47, 323–326.

50 M. B. Carstensen and V. A. Schmidt, see n. 47, 326–329.

51 M. B. Carstensen and V. A. Schmidt, see n. 47, 329–332.

framework both for the structure of problems and their solution. In policy development and governance of transformation processes, by framing the issue at stake as *legal problem*, it becomes tied to the institutionalised legitimacy of the law/constitution (*power through ideas*). At the same time, there are elements of law (rule of law, human rights) that are less visible but effectively feed into the political system as values to which law in discourse of transformation processes appeals (*power through ideas*). The *ideational power through law* bears manifold significance, as an element of control, legitimation and stabilisation as well as to create meaning.[52]

In the following section, we apply our analytical framework to the field of climate change litigation. Here we want to capture which narratives unfold and are used to introduce law as *ideational power* into the climate governance process, in the cases at hand with a particular view to civil society engagement via recourse to the judicial arena.[53]

4. Climate Politics and the Use of Law within Narrative Strategies

It is the complexity of climate change, its causes and consequences that creates the potential to strengthen understanding and support for climate policy through political narratives as *power through ideas*.[54] Climate change threatens natural ecosystems and human societies while at the same time causing an unequal distribution of responsibilities and impacts.[55]

52 For *ideational power*, we refer to M. B. Carstensen and V. A. Schmidt, see n. 47, 318; V. A. Schmidt, see n. 36, 303; V. A. Schmidt, see n. 45, 1; V. A. Schmidt, see n. 45. See in more detail section 3 and 4.

53 On strategic litigation as a tool for political participation see G. Fuchs, '"Strategische Prozessführung" als Partizipationskanal' in D. Nève (ed), *Politische Partizipation jenseits der Konventionen* (Barbara Budrich, 2012), 51–74.

54 Cf. in relation to environmental policy in general, Sachverständigenrat für Umweltfragen (SRU), *Für eine entschlossene Umweltpolitik in Deutschland und Europa*. Umweltgutachten 2020 (Berlin, 2020), 10; E. Wolters, M. D. Jones and K. Duvall, 'A Narrative Policy Framework Solution to Understanding Climate Change Framing Research' in M. D. Jones, M. K. McBeth and E. A. Shanahan (eds), *Narratives and the Policy Process. Applications of the Narrative Policy Framework* (Montana State University Library, 2022), 222, 232.

55 Intergovernmental Panel on Climate Change (IPCC), 'Summary for Policymakers' in H. Lee and J. Romero (eds), *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, Geneva 2023); on the threat to democracy J.

The major challenges therefore include not only (1) limiting global warming through effective action, but also (2) distributing the burdens arising from climate change mitigation and adaptation fairly. A sustainable response appears to be possible only through democratic negotiation involving the various social and economic interests, even if the complexity of developments puts the problem-solving capacity of democratic government systems under pressure.[56] It is against the background of regularly detected deficiencies of climate mitigation measures to meet national or international climate targets, that legal complaints in the field of climate change are increasingly filed before national, international and regional courts, including courts on the European level.[57]

Complaints are held against states as well as against companies, claiming for greater efforts to address climate change or against climate-damaging business models in the past, present and future.[58] The concrete legal conflicts regularly pertain to questions of responsibility for climate change and burden-sharing of the costs for mitigation as well as climate adaptation.[59] Thus, with a legal complaint, a conflict rooted in the political sphere may be transferred (also) into a legal setting. Frequently, the addressed legal conflicts offer elements of a narrative treatment of the (climate) policy debate.[60] Correspondingly, cases of strategic climate litigation are

Schaible, *Demokratie im Feuer. Warum wir die Freiheit nur bewahren, wenn wir das Klima retten – und umgekehrt* (DVA, 2024).

56 A. E. Töller, 'Scheitert die Demokratie an der Klimapolitik? Überlegungen zur Input- und Output-Legitimation der deutschen Klimapolitik' in W. Muno, C. Wagner, T. Kestler and C. Mohamad-Klotzbach (eds), *Staat, Rechtsstaat und Demokratie* (Springer VS, 2022), 485.

57 See database of climate change litigation of the Sabin Center for Climate Change Law at Columbia Law School and the law firm Arnold & Porter <https://climatecasechart.com/> accessed 17 April 2025.

58 J. Setzer and C. Higham, 'Global Trends in Climate Litigation: 2023 Snapshot' (2023) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf.> accessed 17 April 2025.

59 A. Wenz-Temming, 'Im Namen des Klimas: Klagen für mehr Klimaschutz im demokratischen Rechtsstaat' (2024) *INDES,* 141; McDonald and McCormack point to climate litigation as one trend in the development of adaptation law: J. McDonald and P. C. McCormack, see n. 10.

60 A. Graser, 'Strategic Litigation: Ein Verstehensversuch' in A. Graser and C. Helmrich (eds), *Strategic Litigation. Begriff und Praxis* (Nomos, 2019), 37.

regularly accompanied by a "political impact objective"[61] to influence public discourse on climate politics beyond the specific legal dispute and its legal consequences.[62] This can be interpreted as the use of *ideational power*. Winning an argument in court and the corresponding explanatory court ruling may lead to the institutionalisation of new arguments in the sense of *power in ideas*. In addition, we regard the political impact objective as focusing on *power through ideas* for the purpose of political narratives.[63] Therefore, climate change litigation represents a fruitful field of climate politics, to investigate political narratives revolving around the legitimising source of *law as a narrative element*.

For this purpose, two significant proceedings of climate change litigation in the European multi-level system are examined more closely in this section. These include the so-called *People's Climate Case*, brought before the Court of Justice of the EU (CJEU) in 2018 and finally dismissed in 2021, and the complaint of the so-called "KlimaSeniorinnen" from Switzerland, which was successful before the European Court of Human Rights in 2024. While the first case was filed before the CJEU against the climate policy of the EU, the second case addressed national climate policies and thus touches upon the complex dynamics of multilevel litigation.

Starting with the *People's Climate Case* of 2018, this case was filed before the European General Court by 36 individuals stemming from ten families from different countries of Europe, Kenya, and Fiji. In addition, the Sámi national youth organisation Sáminuorra from Sweden appeared as formal plaintiff.[64] The plaintiffs claimed that the European Union's climate mitigation measures and reduction targets for the period until 2030 were inadequate and violated legal obligations from international law, especially

61 A. Wenz-Temming and A. Töller, *Climate, courts and conflict resolution – climate change litigation as a strategic tool for political contestation?* (ECPR General Conference Dublin 2024).

62 U. Müller, 'Begriffe, Ansprüche und deren Wirklichkeiten. Ein Systematisierungsvorschlag für sogenannte strategische Prozessführung, cause lawyering und andere Formen intentional gesellschaftsgestaltender Rechtspraxen' (2019) *Zeitschrift für Rechtssoziologie*, 33, 49.

63 For the discussion on the legitimacy of strategic litigation as potentially questioning the separation of powers see L. Hahn and M. von Fromberg, 'Klagekollektive als "Watchdogs"' (2021) *Zeitschrift für Politikwissenschaft*, 217.

64 Rechtsanwälte Günther, 'Application before the General Court of the EU of May 23, 2018' (*Climate Case Chart*, 23 May 2018) <https://climatecasechart.com/non-us-case/armando-ferrao-carvalho-and-others-v-the-european-parliament-and-the-council/> accessed 17 April 2025.

from the Paris Agreement and its climate mitigation goals, as well as fundamental rights of the plaintiffs referring to the Charter of Fundamental Rights of the EU (EU Charter), setting the scene in a legal context.[65]

Instead of a 40 percent reduction target of emissions compared to 1990 levels, plaintiffs demanded 50 to 60 percent.[66] The complaint was supported by environmental non-governmental organisations, especially the German organisations Protect-the-Planet, Germanwatch and Climate Action Network Europe as well as by *Roda Verheyen,*[67] a "cause lawyer"[68] specialised in climate litigation. This "litigation collective"[69] clarified their problem definition and policy solution in their complaint as well as in the accompanying public relations work.

The plaintiffs saw themselves as already suffering from the consequences of anthropogenic climate change with special concern because of their professional activities in agriculture and tourism. The inadequate reduction of climate-damaging emissions by the EU is said to contribute to these effects. With the references to insights from climate science and "evidence [...] drawn from official documents, and scientific and economic studies, mostly from the universally accepted Intergovernmental Panel on Climate Change, IPCC"[70], we find the use of *cognitive arguments*, which gives the background for the central legal as well as narrative plot.

The plaintiffs as *victims* of climate change and inadequate EU climate policy must go to court to request effective protection of their fundamental rights.

> "The complaint addressed to the European General Court asserts that the EU's existing 2030 climate target to reduce domestic greenhouse gas emissions by at least 40% by 2030, as compared to 1990 levels, is inadequate with respect to the real need to prevent dangerous climate

65 G. Winter, 'Armando Carvalho and Others v. EU: Invoking Human Rights and the Paris Agreement for Better Climate Protection Legislation' (2020) *Transnational Environmental Law*, 137 <https://www.gerd-winter.jura.uni-bremen.de/invokinghumanrights.pdf> accessed 24 April 2025.

66 Rechtsanwälte Günther, see n. 64.

67 G. Winter, see n. 65.

68 A. Sarat and S. Scheingold, 'What Cause Lawyers Do For, and To, Social Movements: An Introduction' in A. Sarat and S. Scheingold (eds), *Cause lawyers and social movements* (Stanford University Press, 2006), 1.

69 In original "Klagekollektiv", L. Hahn, 'Strategische Prozessführung' (2019) *Zeitschrift für Rechtssoziologie*, 26.

70 Rechtsanwälte Günther, see n. 64.

change and not enough to protect their fundamental rights of life, health, occupation and property."[71]

In addition, the complaint referred to fundamental rights "to equal treatment of young people and people living in developing countries (Article 20), and to the welfare of children (Article 24 (1))" laid down in the EU Charta.[72]

By locating the problem (consequences of climate change) and the proposed policy solution (i.e. raising the reduction targets as the policy solution) into the legal sphere (as the *setting*), these were linked to the authority of the law (*law as narrative*) materialised in international climate agreements, fundamental and human rights and the rule of law. In addition, the *power through ideas* is further promoted through the *normative argument* and interpretation of the "EU as a place of values and rights" that the complaint wants to strengthen.[73] What is more, the legal proceeding is not interpreted as circumventing European democratic institutions (whose decisions could also be influenced by voting for political parties with preferences for strong climate policies), but the court system is displayed as a safeguard of democracy (functioning as a *hero*): "In European politics, there is a concrete urgency to take a step back and consider the principles of democracy. The EU must now listen to its citizens who are impacted by climate change and implement the necessary measures to protect them."[74]

However, the case was decided as being inadmissible not only by the European General Court in May 2019. After an appeal of the plaintiffs, the European Court of Justice reached the same conclusion in March 2021. The *individual concern* was deemed as not being fulfilled, since the plaintiffs were not more affected than other people – which is a necessary condition for successful litigation within the European judicial system.[75]

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71 CAN, 'The People's Climate Case' (*Climate Action Network Europe*, 24 May 2018) <https://caneurope.org/the-people-s-climate-case/> accessed 17 April 2025.

72 G. Winter, see n. 65.

73 Original: "Die Klage soll die EU als einen Ort stärken, an dem zentrale Werte und Rechte gelebt, gewahrt und durchgesetzt werden können." Germanwatch, 'Der People's Climate Case: Das Recht auf Klimaschutz', (*Germanwatch*, 29 November 2018) <https://www.germanwatch.org/de/16065> accessed 17 April 2025.

74 CAN, see n. 71.

75 So called Plaumann-formula, G. Winter, see n. 65; General Court of the European Union, Order of the General Court (Second Chamber) of May, 8, 2018, (*Climate Case Chart,* 8 May 2018) <https://climatecasechart.com/non-us-case/armando-ferrao-carvalho-and-others-v-the-european-parliament-and-the-council/> accessed 17

In contrast, in 2024 the European Court of Human Rights (ECtHR) found the complaint lodged by the association of "KlimaSeniorinnen" admissible. This group of Swiss senior women was founded based on activities of Greenpeace Switzerland to take legal action against Switzerland's inadequate climate policy, following the role model of the *Urgenda* case in the Netherlands.[76] Older woman were regarded as a suitable group of plaintiffs, as older women are particularly affected by heat waves caused by climate change and thus might fulfil the requirements for plaintiffs in the judicial system.[77]

Swiss courts dismissed the legal complaints filed by the "KlimaSeniorinnen", so they continued to submit their case to the European Court of Human Rights. The legal complaint contested Swiss climate policies as insufficient and thus in violation of the plaintiffs' rights to life and health (Art. 2 and 8 European Convention of Human Rights, ECHR). Furthermore, they saw their rights to a fair trial and right to an effective remedy violated by the Swiss Courts (Art. 6 and 13 ECHR; KlimaSeniorinnen 2020a). The "KlimaSeniorinnen" pointed to scientific evidence of their particular vulnerability to heat waves, which are already affecting them today (*cognitive argument*).

What is even more interesting here is the reference to a "human rights-based duty to protect the climate"[78] based on Article 2 and Article 8 European Convention on Human Rights, as well as the Swiss Federal Constitution.[79] Again, we see the location of a conflict, which is also contested in the political sphere, in the legal arena (*setting*), including problem definition

April 2025; Case C-565/19 P *Appeal – Action for annulment and for damages – Environment – 2030 climate and energy package – Fourth paragraph of Article 263 TFEU – Lack of individual concern* [2021]; Court of Justice of the European Union, 'Press release No. 51/21, Luxembourg, March 25, 2021'.

76 S. Keller and B. Bornemann, 'New Climate Activism between Politics and Law: Analyzing the Strategy of the KlimaSeniorinnen Schweiz' (2021) 9 *Politics and Governance*, 124, 126.

77 KlimaSeniorinnen Schweiz and Greenpeace, 'Medienunterlagen «Verein KlimaSeniorinnen Schweiz and Others v. Switzerland»' (*Klimaseniorinnen*, 7 March 2023) <https://www.klimaseniorinnen.ch/medien/> accessed 17 April 2025.

78 Original: "menschenrechtlich begründete Pflicht zum Klimaschutz", 'Sieg für KlimaSeniorinnen: Klimaschutz ist ein Menschenrecht' (*Klimaseniorinnen*, 9 April 2024) <https://www.klimaseniorinnen.ch/wp-content/uploads/2024/04/Gemeinsame-Medienmitteilung-der-KlimaSeniorinnen-Schweiz-und-Greenpeace-Schweiz.pdf> accessed 28 August 2025.

79 KlimaSeniorinnen Schweiz and Greenpeace, see n. 77; KlimaSeniorinnen Schweiz, 'Offener Brief an den Gesamtbundesrat und das UVEK' (*Klimaseniorinnen*, 8 Octo-

in a legal language, referring to fundamental rights in particular. Thus, in referring to the threat for human rights caused by climate change and insufficient climate policy, the authority of law as institution in court is addressed as a procedural pathway to enforce the position of the plaintiffs. Their arguments are embedded in institutional and ideational parameters, encompassing for instance charters and/or constitutions prescribing fundamental rights as well as courts for adjudication. In addition, we can find hints of narrative strategies based on the legal dispute to conduct *power through ideas*. In similar vein, *Keller* and *Bornemann* point in their study of frames used by the "KlimaSeniorinnen" to this normative dimension in the sense that the climate seniors' communication not only refers to the state's responsibility for its elderly citizens, but also to the "altruistic motives"[80] of protecting younger generations through their activities.

Although the ECtHR considered the complaints of individual women as inadmissible, it accepted the complaint lodged by the association of "KlimaSeniorinnen" with reference to the Aarhus Convention.[81] The court found that the plaintiffs' rights of private and family life were violated due to Switzerland's insufficient climate policy and denial of access to legal justice.[82] In doing so, the court acknowledged a legal, human-rights based obligation of states to implement adequate climate mitigation policy.[83] However, against the background of Switzerland's special political culture of direct democracy – which stands at odds with the principle of a constitutional court endowed with judicial review as a counterweight to

ber 2020) <https://klimaseniorinnen.ch/wp-content/uploads/2020/10/Offener-Brief_def_logos.pdf> accessed 28 August 2025.

80 S. Keller and B. Bornemann, see n. 76, 124, 130; they call it the "injustice frame" and the "grandchildren frame".

81 T. Weber, 'KlimaSeniorinnen: Changing Legal Opportunity Structures in the Face of the Climate Crisis' (2024) *Austrian Law Journal*, 101.

82 ECtHR (European Court of Human Rights), 'Violations of the European Convention for failing to implement sufficient measures to combat climate change', Press release ECHR 087 (2024), <https://hudoc.echr.coe.int/eng-press#{%22kpdate%22:[%222023-12-07T00:00:00.0Z%22,%222024-12-07T00:00:00.0Z%22]}> accessed 28 August 2025.

83 S. Arntz and J. Krommendijk, 'Historic and Unprecedented Climate Justice in Strasbourg' (*Verfassungsblog*, 9 April 2024) <https://verfassungsblog.de/historic-and-unprecedented/> accessed 17 April 2025; A. Fuchs, 'Five key points from the groundbreaking European Court of Human Rights climate judgment in Verein KlimaSeniorinnen Schweiz v Switzerland' (2024) *Environmental Law Review*, 91.

the democratic majority[84] – the implementation of the ECtHR ruling was followed by fierce political controversy. Moreover, some alleged that the ECtHR had overstepped the boundaries of the judiciary.[85] Nevertheless, these cases reveal the dynamics and political efficacy of ideational contestation in general and in a complex constellation in particular, the latter encompassing in turn the institutional parameters of a multi-level system, a simultaneity of various concurring legal orders and value sets, and a complex policy problem.

5. Conclusion and Outlook: Law as Narrative

Democratic systems have come under pressure worldwide. This applies in particular to the Member States of the European Union and the political system of the EU itself. In summary, this complex of challenges can be traced back to a range of factors and development trends. Among other things, of particular note are various transformations that are related, for example, to shifts in international relations and security issues, as witnessed not least in the Russian invasion of Ukraine, in digital technology – most recently artificial intelligence – and, as addressed in this contribution, to climatic and ecological changes. In addition to being part of, if not invoking transformation processes, they are also of an extraordinarily cross-border nature. In the democratic EU multi-level system based on the rule of law, complex approaches are needed in order to both regulate problems effectively and adequately and at the same time do justice to democratic norms and practices.

84 W. Linder and S. Mueller, *Swiss Democracy. Possible Solutions to Conflict in Multicultural Societies* (Palgrave Macmillan, 2021), 17–20; cf. also e.g. comparing different notions of sovereignty in democratic, rule-of-law systems, H. Abromeit, 'Volkssouveränität, Parlamentssouveränität, Verfassungssouveränität: Drei Realmodelle der Legitimation staatlichen Handelns' (1995) *Politische Vierteljahresschrift*, 49; and the seminal work by J. Ely. *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press, 1980); for a reconciliation of the democratic and – the even more challenging inter-/supranational – judicial review principles, see e.g. A. Føllesdal, 'Why International Human Rights Judicial Review Might Be Democratically Legitimate' (2007) *Scandinavian Studies in Law*, 371.

85 C. E. Blattner, 'Separation of Powers and KlimaSeniorinnen' in M. Bönnemann and M. A. Tigre (eds), *The Transformation of European Climate Litigation* (Verfassungsbooks, 2024), 125.

In the context of democracies in transition, democratic innovations have spread in practice and received intensive attention in political science.[86] However, little attention seems to be paid to the law and the associated processes of law-making, implementation and interpretation in the specific context of democratic change. Yet this subject remains of enormous and elementary importance in democratic constitutional systems. This is because governance in modern democratic political systems is still largely exercised through legal processes, even in the context of transformation processes. In a democratic context, *law as a narrative* also seems to have significant potential here. Indeed, there is much reason to explore *law as a narrative* in a democratic context. In our article, we developed an analytical framework to capture elements of law as narrative in transformation discourses and applied it to the example of two cases of climate change litigation filed before European courts. We were able to reveal different references to *law as narrative* to tell a convincing story of the complex climate change dynamics as well as to gain legitimacy for policy solutions. The analytical framework conceived here, moreover, may thus be appropriate for application and transfer to cases of transformation processes in other policy areas, for one, but also for further conceptualisation of law *as a narrative to democracy* in terms of democratic theory, and in particular regard to repairing and maintaining democracy.[87]

In further research, democratic and democracy-maintaining or *repairing* narratives of law in the EU multi-level system need to be explored in different policy fields: which narratives of law with democracy-promoting, maintaining and sustaining references exist, and to what extent do they play a role in the political processes examined?

Accordingly, further research could examine whether, and if so, how *narrative communication* is decisive for the *legitimacy* of policy decisions in at least two dimensions:

1) *Democratic legitimacy*: to secure justification and legitimacy for European policies – which is especially significant for contested and affective policy areas such as Digitalisation Policy and Climate Action. Both policy fields display characteristics of a crisis mode (high pressure for

86 See S. Elstub and O. Escobar (eds), *Handbook of Democratic Innovation and Governance* (Edward Elgar, 2019) for a comprehensive example.

87 See, for example, J. Sonnicksen, 'Demokratische Reparatur. Zwischen Resilienz und Vulnerabilität von Demokratien aus institutionalistischer Perspektive' (2024) *INDES,* 160.

change/action) given the technological development (Artificial Intelligence) and climate change (Climate Action). Both policy fields are connected to affective perceptions ranging from insecurities to existential fears related to the technological fast-track development and the unresolved strategy and implementation of cost-intensive climate action.

2) *To make sense of the world*: Narrative communication not only enables but requires policy actors to explain and justify the contested policy choices to shape the (normative) framework of political communities and, in the EU, European society. Artificial Intelligence and Climate Action cannot be addressed by the European Union alone, but the European community as well as Member States and their citizens can make a significant contribution to the perception and dealings with these global challenges.

The current transformation processes in the areas of climate change as well as digitalisation pose cross-border challenges that confront the territorially bound democratic political order. Accelerated social change, but also the embedding in the supranational legal system of the European Union, affect the territorially constituted democracy not only of the EU as whole but also of the Member States themselves, so that coping with complex transformation processes will be of decisive importance for the future of the democratic constitutional state. This emphasises the relevance to further study the use, potentials and risks that are associated with *law as a medium of politics* through the *narrative structure of law*.