

Symposium on The Changing Faces of Business Law and Sustainability

February 25-26, 2022

Hosted by:

Business and Human Rights Initiative,
University of Connecticut
Center for the Business of Sustainability, Smeal College of Business,
Penn State University
College of Business at Oregon State University
American Business Law Journal



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Schedule

Day 1 - February 25, 2022

Welcome and Introductions: 11:00-11:10 am EST

Symposium co-organizers: [Stephen Park](#), [Dan Cahoy](#), [Inara Scott](#), and [David Orozco](#)

Session 1: 11:10 am-1:05 pm

Moderator: [Jeffrey Boles](#) (ABLJ Articles Editor)

11:00-11:45

- "Equitable, Sustainable, and Just: A Transition Framework"
- Author: [Elizabeth Kennedy](#)
- Discussant: [Charlotte Alexander](#)

11:50-12:25

- "Introducing sustainability into the Japanese corporate governance: the shift to the "new capitalism" or the continued gradual transformation?"
- Author: [Souichirou Kozuka](#)
- Discussant: [Alan Koh](#)

12:30-1:05

- "Should Regulators Climate Shame?"
- Author: [Sharon Yadin](#)
- Discussant: [Sarah Dadush](#)

Break: 1:05-1:35 pm

Session 2: 1:35-3:30 pm

Moderator: [Susan Park](#) (ABLJ Managing Editor)

1:35-2:10

- "Eye in the Sky: Using Space-Based Technology to Level the Reporting Playing Field for ESG Climate Change Disclosures"
- Author: [Jehan El-Jourbagy](#)
- Discussant: [Robert Bird](#)

2:15-2:50

- "Fiduciary Obligations for Sustainable Investing: Defining the Role of Pension Funds in Society"
- Author: [Dana Muir](#)
- Discussant: [Christopher Bruner](#)

2:55-3:30

- “Evolving ESG Reporting Governance, Regime Theory, and Proactive Law: Predictions and Strategies”
- Authors: [Adam Sulkowski](#) & [Ruth Jebe](#)
- Discussant: [David Hess](#)

Day 2 - February 26, 2022

Session 3: 11:00-1:35pm

Moderator: [Rob Landry](#) (ABLJ Articles Editor)

11:00-11:35

- “Derivatives and ESG”
- Author: [Colleen Baker](#)
- Discussant: [Jason Czarnecki](#)

11:40-12:15

- “Unfulfilled Promises Of The Fintech Revolution”
- Authors: [Lindsay Sain Jones](#) & [Goldburn Maynard](#)
- Discussant: [Nizan Packin](#)

12:20-12:55

- “Banking’s Climate Conundrum”
- Author: [Jeremy Kress](#)
- Discussant: [David Zaring](#)

1:00-1:35

- “From market contracts to the circular economy—law and increasingly holistic conceptualizations of production”
- Author: [Jaakko Salminen](#)
- Discussant: [Abbey Stemler](#)

Closing: 1:35-1:45 pm

Symposium co-organizers: Stephen Park, Dan Cahoy, Inara Scott, and David Orozco

Participant Bios

Authors/Presenters

Colleen M. Baker is an Assistant Professor of Legal Studies at the Price College of Business and an Affiliate Faculty, College of Law, at the University of Oklahoma. She is an expert in banking and financial institutions law and regulation with extensive knowledge of the regulation of derivatives, clearing, the Dodd-Frank Act, bankruptcy, dispute resolution, a mediator, and FINRA arbitrator. Colleen is a member of the Scientific Committee for the World Federation of Exchange's Clearing and Derivatives Conference 2022. She received a JD/MBA from the University of Virginia and PhD from the Wharton School of the University of Pennsylvania.

Jehan El-Jourbagy is an Assistant Professor of Business Law and Ethics at Georgia College. A member of the Sustainability Accounting Standards Board (SASB) Alliance and Georgia College's Sustainability Council, she shares her passion for sustainability with students during study abroad experiences, including corporate visits with sustainability leaders such as Interface, Maersk, Royal DSM, Unilever and Orsted. Her scholarly work has been published in the Berkeley Business Law Journal, Journal of Legal Studies Education and DePaul Business and Commercial Law Journal and featured in The Washington Post and Columbia Law School's Blue Sky Blog on corporations and capital markets. She is the past president of the Southeastern Academy of Legal Studies in Business and the award chair for the Academy of Legal Studies in Business' ethics section. Jehan holds her J.D., with focus on environmental and civil rights law, an A.B. in political science and an A.B.J. in public relations, all from the University of Georgia.

Ruth Jebe is associate professor of legal studies in business in the College of Business & Economics at Boise State University. She has published widely on regulatory and governance theory, both domestic and international, as applied to sustainability topics, in particular sustainability reporting and the use of information as a governance tool. Her research incorporates law, sociology, public policy, and international relations to examine public and private governance mechanisms to catalyze social progress initiatives.

Lindsay Sain Jones is an Assistant Professor of Legal Studies in the Terry College of Business at the University of Georgia. Her research focuses on financial regulation, ethics, and technology. Prior to joining the faculty at UGA, Jones practiced law in a transactional practice at Jones Day, where she primarily represented large financial institutions. Jones also has four years of industry experience as a financial analyst.

Elizabeth Kennedy is an Associate Professor of Law & Social Responsibility in the Sellinger School of Business at Loyola University Maryland. She received her J.D. from the University of California, Berkeley School of Law, and her B.A. in Urban Studies from Smith College. Professor Kennedy previously practiced law with the New York firm Fried, Frank, Harris, Shriver & Jacobson LLP, and served as labor and employment counsel to the late Senator Edward M. Kennedy on the Senate Health, Education, Labor & Pensions Committee. Prior to law school, Professor Kennedy worked as a union organizer for AFSCME Local 3299 and UNITE-HERE!

Souichirou Kozuka (PhD, Tokyo) is Professor of Law at Gakushuin University, Tokyo. He specializes in commercial law and corporate law. He has taught at Chiba University (Chiba), Sophia University (Tokyo) as well as at Tokyo seminar sponsored by Ritsumeikan University & ANJeL (Australian Network for Japanese Law). His recent publications in English include: "Diversity in Japanese Companies' Boardroom: Sign of Shifts in the Japanese Model or Corporate Governance Reform as a Fashion?" in 30(2) *European Business Law Review*, 223-236 (2019), "Corporate Governance Reform, Social Norms and Sustainability in Japanese Companies", in: *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Beate Sjøfjell & Christopher Bruner (eds), CUP 2020) 446-459.

Jeremy Kress is an Assistant Professor of Business Law at the University of Michigan's Ross School of Business and Co-Faculty Director of the University of Michigan's Center on Finance, Law & Policy. His research focuses on bank regulation, systemic risk, and financial stability. Previously, Kress was an attorney in the banking regulation and policy group at the Federal Reserve Board of Governors in Washington, D.C. Kress serves as a member of the Federal Reserve Bank of New York's Education and Industry Forum on Financial Services Culture and was named one of Poets & Quants' "Top 50 Undergraduate Professors of 2020."

Goldburn P. Maynard Jr. is an Assistant Professor of Business Law and Ethics at Indiana University's Kelley School of Business, where he teaches classes in business ethics. He previously served as an Associate Professor of Law (untentured) at the University of Louisville Brandeis School of Law. He is a graduate of the University of Chicago Law School, and also received an LL.M. in Taxation from Northwestern University School of Law. Professor Maynard's research focuses on issues of wealth distribution and inequality, tax policy, and America's aging population. His most recent essay, "Biden's Gambit: Advancing Racial Equity While Relying on a Race-Neutral Tax Code", was recently published by the Yale Law Journal Forum.

Dana Muir is the Robert L. Dixon Collegiate Professor of Business and Arthur F. Thurnau Professor of Business Law at the University of Michigan's Stephen M. Ross School of Business. Her research focuses on fiduciary obligation and remedies especially at the cross section of investments and retirement plan assets, advice, and engagement. Her research reaches extensively into her peer academic community (both domestically and internationally), the legal community at-large, as well as the legislative, judicial, and executive branches of the U.S. government. The U.S. Supreme Court and other federal courts have cited her research.

Jaakko Salminen (LLD, LL.M., MA) is Assistant Professor at CBS Law, Department of Management, Politics and Philosophy, Copenhagen Business School, Denmark, and Senior Research Fellow at the Faculty of Law, University of Turku, Finland. Jaakko's teaching and research focuses on the interface between law and organization, in particular the private governance and public regulation of new forms of organization, such as global value chains and the platform and circular economies, and the role of private law in enabling such organization. His work has been published, for example, in *American Journal of Comparative Law*, *Competition and Change*, *European Review of Contract*

Law, Indiana Journal of Global Legal Studies, London Review of International Law, Maastricht Journal of European and Comparative Law, and Transnational Legal Theory.

Adam J. Sulkowski is an associate professor of law and sustainability at Babson College, the #1 school for entrepreneurs according to several rankings. He has earned tenure twice (at UMass Dartmouth and again at Babson), won more than a dozen teaching and research awards, published over 50 times and was a Fulbright Scholar. He earned a BA from the College of William & Mary and an MBA and JD from Boston College. He ran a business and worked as an attorney and on behalf of environmental causes. His book, *Extreme Entrepreneurship*, was the #1 best seller on several lists.

Dr. Sharon Yadin researches and teaches administrative law and regulation. She is particularly interested in advanced regulatory tactics employed by administrative agencies, such as contractual regulation, digital regulation, and regulation by shaming. Dr. Yadin is the recipient of several academic awards, including the Gorney Award for Young Public Law Scholars. She regularly advises regulators and lawmakers, and is involved in designing regulatory policy in Israel and abroad. Her research, which includes two books and close to thirty articles, is often cited by the Israeli Supreme Court.

Discussants

Charlotte S. Alexander holds the Connie D. and Ken McDaniel WomenLead Chair as an Associate Professor of Law and Analytics at the Colleges of Business and Law at Georgia State University. She uses computational methods to study legal text, with a particular focus on understanding how courts process and resolve employment disputes and other types of civil lawsuits. She founded and directs the university's Legal Analytics Lab, which works toward a legal system that embraces data to solve intractable problems and create a more just society. Alexander has published in journals including *Science*, the *N.Y.U. Law Review*, *Texas Law Review*, the *American Business Law Journal*, and the *Harvard Civil Rights-Civil Liberties Law Review*. Her research has been funded by the National Science Foundation, U.S. Department of Labor, and private foundations. She received her J.D. from Harvard Law School.

Robert Bird is a Professor of Business Law and the Eversource Energy Chair in Business Ethics at the University of Connecticut. His research on legal strategy, compliance, employment law, and other subjects has appeared in over sixty publications, including articles in the *Journal of Law and Economics*, *American Business Law Journal*, and the *Harvard Journal of Law and Public Policy*. Robert is a past president of the Academy of Legal Studies in Business, the international academic organization for professors of business law, and former editor in chief of the *American Business Law Journal*.

Christopher Bruner is the Stembler Family Distinguished Professor in Business Law at the University of Georgia School of Law. His scholarship focuses on corporate law, corporate governance, comparative law, and sustainability, and his books include *Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power* (CUP 2013), *Re-*

Imagining Offshore Finance: Market-Dominant Small Jurisdictions in a Globalizing Financial World (OUP 2016), and The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability (co-edited with B. Sjøfjell) (CUP 2019). Bruner serves as co-editor (with M. Moore) of the Hart Publishing/Bloomsbury Professional book series Contemporary Studies in Corporate Law.

Jason J. Czarnezki is the Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law, and Associate Dean of Environmental Law Programs and Strategic Initiatives at the Elisabeth Haub School of Law at Pace University (New York). Professor Czarnezki was formerly Professor of Law in the Environmental Law Center at Vermont Law School and faculty director of the U.S.-China Partnership for Environmental Law. He has held academic appointments at Marquette University Law School, DePaul University College of Law, and Yale School of Forestry and Environmental Studies. He has been a Fulbright Scholar at Sun Yat-sen University in China, Research Associate at Oxford University's Environmental Change Institute, and named by the Swedish National Research Council the Olof Palme Visiting Professor at Stockholm University. His expertise includes natural resources law, environmental law, food policy, public procurement, and sustainable business law. Professor Czarnezki received his undergraduate and law degrees from the University of Chicago and his PhD in Environmental Law from Uppsala University in Sweden.

Sarah Dadush is a Professor of Law at Rutgers Law School. Her scholarship explores innovative legal mechanisms for improving the social and environmental performance of multinational corporations. She established and directs the Law School's Business & Human Rights Law Program and co-leads an ABA Business Law Section Working Group that has developed a comprehensive toolkit for upgrading international supply contracts to better protect workers' human rights. Before joining the Rutgers faculty, Dadush served as Legal Counsel for the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations based in Rome. Prior to that, she was a Fellow at NYU's Institute for International Law and Justice and an Associate Attorney at the global law firm, Allen & Overy. She received her J.D. and LL.M. in International and Comparative Law from Duke University School of Law in 2004.

David Hess is a Professor of Business Law and Business Ethics at the Ross School of Business at the University of Michigan. His research has analyzed the use of transparency to regulate corporate social responsibility; corruption in international business; the link between corruption and business and human rights; modern slavery in global supply chains; corporate monitors in criminal settlements; and the role of compliance programs in creating more ethical corporate cultures. He is the Law and Public Policy Section Editor for the Journal of Business Ethics.

Alan K Koh (Dr. jur., Frankfurt am Main) is Assistant Professor at Nanyang Business School, Nanyang Technological University, Singapore. His research interests include comparative corporate law and governance, Asian laws, and legal professions. He has published in journals including American Journal of Comparative Law, Vanderbilt Journal of Transnational Law, and Journal of Corporate Law Studies; his first book, Shareholder Protection in Close Corporations, is forthcoming with Cambridge University Press. He is the recipient of the Ralph J Bunche Award for Best International Paper (ALSB Conference 2021), and an elected Associate Member of the International Academy of Comparative Law (2021).

Nizan Geslevich Packin is an Associate Professor of Law at Baruch College, CUNY, and a Senior Lecturer at Haifa University Faculty of Law. She is a Yale Cyber Leadership Forum fellow, and affiliated with Indiana University Bloomington. Nizan specializes in Financial Regulation, Tech Policy, and Information Law, and serves as a Contributor to Forbes, where she publishes commentaries about FinTech-related issues. She has also published Op-Eds in outlets such as the WSJ, and American-Banker, appeared on numerous podcasts and programs, and was cited in media outlets such as the Business Insider, Yahoo-Finance, Medium, and Coindesk. Prior to entering academia, Nizan practiced law at Skadden Arps, served as a law clerk in the Israeli Supreme Court, interned at the FTC, and externed for Judge Weinstein at the USDC-EDNY. Nizan earned her doctorate in law from the University of Pennsylvania, LLM from the Columbia Law School, and LLB and BA from Haifa University.

Abbey Stemler is an Associate Professor and Weimer Faculty Fellow in the Department of Business Law and Ethics at Indiana University's Kelley School of Business. She is a leading technology law scholar and is frequently sought out for her expertise by lawmakers, intergovernmental organizations, and the media. Her research explores the interesting spaces where law has yet to catch up with technology. In particular, her aim is to expose the evolving realities of Internet-based innovations and platforms and to find ways to effectively regulate them without hindering their beneficial uses. She employs tools and insights from economics, behavioral science, regulatory theory, and rhetoric to understand how we, as a society, can better protect consumers, privacy, and democracy. Professor Stemler is also a Faculty Associate at the Berkman Klein Center for Internet & Society at Harvard University, practicing attorney, and entrepreneur.

David Zaring is Associate Professor in the Legal Studies and Business Ethics Department at the Wharton School. He writes at the intersection of financial regulation, international law, and administrative law. He has written over fifty articles on those subjects, along with a monograph on The Globalized Governance of Finance. In addition to teaching at Wharton, he has taught at the Bucerius, Cambridge, Penn, Vanderbilt, and Washington & Lee law schools.

Moderators

Jeffrey Boles, J.D., Ph.D., is an Associate Professor, Murray Shusterman Fellow, and Chair of the Risk, Actuarial Science and Legal Studies Department at the Fox School of Business at Temple University. Professor Boles teaches undergraduate and graduate courses on business law, business ethics, and corporate social responsibility and conducts legal research in a variety of criminal law areas. He currently serves as Articles Editor of the American Business Law Journal.

Rob Landry earned his J.D., magna cum laude, from the University of Alabama School of Law and his Ph.D. from Auburn University. He has published over fifty articles on bankruptcy law and policy and is a Professor of Finance in the College of Business and Industry at Jacksonville State University, where he teaches business law, real estate and economics courses. Professor Landry has extensive

experience as an attorney, having served as an Assistant U.S. Bankruptcy Administrator for over twenty years. He currently serves as an articles editor for the American Business Law Journal.

Susan Park is an associate professor of Legal Studies in Business in the College of Business & Economics at Boise State University. She currently serves as Managing Editor of the American Business Law Journal.

Paper Abstracts

Session 1

Equitable, Sustainable and Just: A Framework for Climate Transition

Elizabeth Kennedy

As the effects of climate change accelerate, so too do demands for a transition from a carbon-based economy to one that is ecologically sustainable. Green energy production alone will not, however, redress the inequitable and racialized distribution of climate hazards and occupational opportunities created by the fossil fuel industry. Just Transition is a theory of change that recognizes that those least culpable for the current climate crisis are most vulnerable to its effects. While the concept of a just transition is gaining a foothold in climate policy and academic circles, scholars have yet to fully consider the role of labor law in ensuring an equitable and just transition for frontline workers and fenceline communities.

Current approaches to sustainability often fail to acknowledge that the extraction of natural, non-renewable resources and labor by the fossil-fuel economy was abetted by consecutive and overlapping systems of colonialism, chattel slavery, and structural racism. While noting the ways in which the legal system has operated as a barrier to workplace equity and climate justice, this paper proposes an integrative framework that centers racial equity and labor rights in the quest for a sustainable and just transition. This paper explores ways that labor law might be used to facilitate a shift in power for frontline workers and fenceline communities, such as through creative enforcement of environmental and workplace laws; the application of an intersectional equity lens to green workforce development; and the creation of alternative governance frameworks for a sustainable economy.

Introducing sustainability into the Japanese corporate governance: the shift to the “new capitalism” or the continued gradual transformation?

Souichirou Kozuka

This paper will examine how Japanese corporate law and corporate governance are going to adapt to the global trend for corporate sustainability. The adaptation is already taking place. Most prominently, the Corporate Governance Code has added requirements concerning sustainability, including the disclosure pursuant to the TCFD framework applicable to companies listed in the prime market. This appears to be a quick turn from the corporate governance reform in the past two decades that emphasized departure from the stakeholder model, known as the “Japanese style management”, in the shift to the shareholder-primacy model. Still, this paper argues that the logic and approach of the reform are unchanged. Adaptation to the sustainability issue is, just as in the case of focus on the shareholder’s interests, the response to the demands of capital market and makes sense as the policy for economic growth. Furthermore, the Japanese feature of corporate governance has also been retained. The board of listed companies used to be occupied by insiders (promoted employees) and has traditionally been the executive board, rather than the monitoring board. It has changed recently, but only to some extent. With the issue of sustainability, the focus

again seems to be on the implementation of the plan made by the executive board, while monitoring by independent directors is still not common. After all, the corporate governance in Japan does change, but only gradually.

Should Regulators Climate Shame?

Sharon Yadin

The Article examines justifications and rationales for regulatory climate shaming—the publication by government regulators of information regarding corporate contribution to climate change, designed to generate public pressure on companies to comply with mandatory and voluntary climate change norms. Regulatory climate shaming is a nascent approach employed by national and subnational regulators via tools such as naming-and-shaming lists and rankings, environmental databases, climate labels, and corporate disclosure obligations. While the use of shaming tactics by regulators is a highly controversial practice, incorporating public condemnation and targeting corporate reputations, the Article’s main argument is that regulators should indeed climate shame companies, based on environmental, legal, regulatory, and business considerations. The Article focuses on manipulative business practices, such as climate denial and climate washing, employed by the fossil fuel industry (and by related industries) to obstruct climate regulation and mislead stakeholders. These tactics, used by companies in lobbying, litigation, consumer and financial representations, and vast media campaigns, pose unique challenges for climate regulation which transcend the standard noncompliance problem of regulation, and which therefore warrant a suitable and appropriate solution outside of command-and-control regulatory practices. The Article points to the benefits of regulatory climate shaming as a soft-law, reputation-targeting tool that harnesses public opinion to tackle deceptive business practices that are significantly exacerbating the climate crisis. The analysis aims not only at developing regulatory shaming theory and contributing to climate change regulation scholarship, but also to provide an appropriate basis for enacting, executing, and adjudicating regulatory climate shaming policies and disputes.

Session 2

Eye in the Sky: Using Space-Based Technology to Level the Reporting Playing Field for ESG Climate Change Disclosures

Jehan El-Jourbagy

Corporations seeking to go beyond compliance and accurately measure their environmental impacts and contributions to climate change are increasingly contracting with high tech firms to provide insight into emissions, energy efficiency and ways in which industries may reduce their carbon footprint. With the Securities and Exchange Commission (SEC) soliciting feedback on possible rules regarding Environmental, Social and Governance (ESG) reporting, particularly regarding climate change disclosures, satellite data may be a possible solution for standardized measurements. This paper begins with a brief history of ESG reporting and metrics, both in the United States and internationally, explores the precedent for satellite use and space-based technology in monitoring and regulatory compliance and extends an argument on how satellite and

space data can be instrumental in accurately reporting ESG data, particularly in assessing direct emissions attributable to corporate facilities and supply chains that are contributors to climate change.

Fiduciary Obligations for Sustainable Investing: Defining the Role of Pension Funds in Society

Dana M. Muir

This paper examines the extent to which fiduciaries of private-sector pension plans may take environmental, social, and governance (ESG) factors into account when making investment decisions. The question is important to sustainability. Limiting global warming to 1.5°C will require between \$3.5 and \$5 trillion in annual investment. US private-sector pension plans hold more than \$11 trillion and could provide significant capital for sustainable investment. This paper makes three major contributions. First, it engages in a thorough literature review and identifies the major strands of disagreement. Second, it analyzes whether the very different interpretations of fiduciary obligations (the implementing rules) on ESG investing in the US and South Africa are attributable to the underlying legal systems. Comparison of the common law and a modified Roman-Dutch law system shows that does not explain the differences in implementing rules. Third, the paper traces the source of the US and South African implementing rules. It determines that differences in the development of those rules may provide the best explanation for their approaches. Based on its findings, the paper concludes legislative change will be needed to revise the US law on fiduciary obligation and ESG investment. It offers a suggested package of reforms that could garner sufficient support for enactment.

Evolving ESG Reporting Governance, Regime Theory, and Proactive Law: Predictions and Strategies

Adam Sulkowski & Ruth Jebe

Transparency on ESG (environmental and societal impacts and governance) is an important, if imperfect, step in striving for sustainability. Because a constellation of non-profit organizations created iterations of voluntary reporting frameworks with little government involvement, ESG reporting governance is fractured, inconsistent, and institutionally dense. Reporting companies and information users have both expressed dissatisfaction. In 2020, standard setting organizations indicated their intent to cooperate to simplify and harmonize ESG reporting rules. In a different yet similar context, scholars utilize regime theory to understand institutional density and the potential for international cooperation, primarily among states. This article is the first to apply regime theory to ESG reporting governance architecture to better understand this unusual arena of rule-making. It identifies key obstacles to global consolidation of ESG reporting governance and predicts that differences between the reporting philosophies in the EU and the U.S. are among the factors that will prevent global consolidation of ESG reporting governance. This article concludes with advice for practitioners. It draws upon law and strategy literature and that of proactive law to propose approaches for reporting companies navigating the volatile, uncertain, complex, and ambiguous landscape of ESG reporting governance. First, managers and attorneys should closely cooperate to plan for contingencies, including an existential disruption of the ESG reporting landscape by technological change. Second, practitioners are advised to initiate engagement and coordinate

among stakeholders to build coalitions of consensus on what gets reported and how, to maximize the opportunities and minimize the risks inherent in transparency.

Session 3

Derivatives and ESG

Colleen Baker

The global derivatives market is among the largest, most consequential financial markets in the world. Derivatives are financial contracts that derive their value from an underlying reference entity which can be almost anything, including interest rates, credit, equities, foreign exchange, the weather, or the price of carbon. They provide for hedging, arbitrage, and speculation, and trade on regulated exchanges and in over-the-counter markets. Derivatives should facilitate access to the capital necessary to finance the realization of the climate change objective of net zero emissions by 2050 of governments around the world and promote financial market participants' management (hedging) of related risks. In addition, financial markets are increasingly developing innovative ESG derivatives. Through an exploration of recent developments in exchange-traded and over-the-counter markets, this article examines the role of derivatives in promoting ESG objectives. This analysis includes a discussion of both the potential contributions of market infrastructures (exchanges) and of derivative instruments themselves.

Unfulfilled Promises of The Fintech Revolution

Lindsay Sain Jones & Goldburn Maynard

The so-called "fintech revolution" promised to broaden access to capital and provide fairer lending standards, better investment advice, and more secure transactions. This was especially important because reversing the racial underbanking problem and increasing access to capital continue to be identified as critical to closing the racial wealth gap and achieving racial equity. Yet, despite promises from the fintech industry, underserved populations continue to experience unequal access to wealth and financial services. This Paper evaluates claims that fintech developments can address wealth inequality. While fintech developments may have the potential to expand financial inclusion, we have yet to see these technologies employed to significantly reduce the wealth gap. Given this lack of sufficient progress and potential exploitation vis-à-vis these innovations, this Paper explores other means to address wealth inequality as well as oversight of financial technology.

Banking's Climate Conundrum

Jeremy C. Kress

Over the past decade, a consensus has emerged among international policymakers and academics that climate change could threaten the stability of banks, insurers, and the broader financial system. In response, regulators from around the world have begun implementing policies to mitigate emerging climate risks in the financial sector. The United States, however, lags significantly behind other countries in addressing such risks. This Article argues that the United

States' sluggishness in responding to climate-related financial risk is problematic because the U.S. banking system is uniquely susceptible to climate change. The U.S. financial system's vulnerability stems, in part, from a little-known statutory provision that prohibits U.S. regulators from relying on external credit ratings in their bank capital requirements. Because of this deviation from internationally-accepted capital standards, when a credit rating agency downgrades a "brown" company, U.S. banks that lend to that company need not compensate by maintaining a bigger capital cushion. Over time, this dynamic will likely incentivize "brown" companies to borrow more from U.S. banks, intensifying the U.S. banking system's exposure to climate risks. This Article contends that the United States must act quickly to overcome this unusual weakness by taking bold steps to safeguard the domestic financial system from the climate crisis.

From market contracts to the circular economy—law and increasingly holistic conceptualizations of production

Jaakko Salminen

Our paper charts a legally focused history of the evolution of production through a dual focus on new forms of production and the role that private law plays in enabling them. We move from subsistence economies, through industrialization, to global value chains and the platform and circular economies. In particular, we examine the role of private law in shaping, enabling and regulating new forms of production and the ensuing interplay between law and organization. The narrative shows that private law is an important factor in understanding the development of new forms of production, in particular the seemingly ubiquitous possibilities for avoiding responsibility for the externalities of production. Each new form of production is based on a new approach to private organization that allows it to avoid regulatory approaches devised to constrain earlier forms of production. This leads to a critique of the role of law in organizing production. In particular, it raises the question of whether the current approach to prioritizing freedom over sustainability is merited or whether the two need to be fundamentally balanced in core paradigms of private law. While society, and law with it, is moving towards increasingly holistic forms of organization, our basic legal paradigms are not fit for purpose from this perspective.

Symposium Hosts

The [Business and Human Rights Initiative at the University of Connecticut](#), a partnership founded by Dodd Human Rights Impact, the UConn School of Business, and the Human Rights Institute, seeks to develop and support multidisciplinary and engaged research, education, and public outreach at the intersection of business and human rights.

The [Center for the Business of Sustainability at the Smeal College of Business, Penn State University](#), seeks to accelerate the integration of sustainability into business through inspiring and educating future leaders, advancing and disseminating research and best practice, and engaging and equipping businesses.

The [College of Business at Oregon State University](#) offers more than 25 business and design degrees and degree options with a focus on graduates that are profession-ready.

The *American Business Law Journal*, established in 1963, is a faculty-edited, peer-reviewed, global business law journal affiliated with the Academy of Legal Studies in Business.