DISSERTATION

GREEN COURTS AND GLOBAL NORMS: SPECIALIZED ENVIRONMENTAL COURTS AND THE GLOBAL GOVERNANCE OF ENVIRONMENTAL CHALLENGES

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ABSTRACT

GREEN COURTS AND GLOBAL NORMS: SPECIALIZED ENVIRONMENTAL COURTS AND THE GLOBAL GOVERNANCE OF ENVIRONMENTAL CHALLENGES

As the diversity and intensity of environmental challenges increase, so too does the demand for institutions equipped to address those issues. This dissertation examines the emergence and implications of one such institutional model: dedicated environmental courts, referred to within this dissertation as "green courts." In a foundational effort to better understand and characterize green courts, it examines why the global spread of green courts is occurring, how it is manifesting, and what the global spread of green courts may imply for the domestic development and application of international environmental law norms. To examine these questions, this dissertation employs literature and methods derived from constructivist international relations and global environmental politics, yet speaks directly to established international environmental law scholarship. Through qualitative analysis of academic literature, primary documents, original expert surveys, and semi-structured elite interviews, this dissertation develops a detailed portrait of the actors seeking to promote the spread of green courts, the potential diversity of green courts, and the nature and global extent of existing national-level green courts. Its findings indicate that diverse actors are promoting the diffusion of a norm advocating green court establishment, and that green court norm dynamics reflect broader trends of transjudicial exchange, but that relatively few green courts currently exist of the model holding the greatest capacity to implement international environmental law. Collectively, this dissertation and its insights provide a strong foundation for timely future research objectives,

including efforts to evaluate implications of green courts in light of environmental justice, to consider contributions of green courts to broader procedural and distributive environmental justice initiatives, and to evaluate how green courts affect environmental quality and outcomes.

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LIST OF ACRONYMS

ADB- Asian Development Bank
AJNE- Asian Judges Network on Environment
ASEAN- Association of Southeast Asian Nations
DUI- driving under the influence
EAB- environmental appeals boards
EC- environmental court
ECTs- environmental courts and tribunals
EJ- environmental justice
ELI- Environmental Law Institute
EPA- United States Environmental Protection Agency
ESG- Earth System Governance Project
ET- environmental tribunal
EU- European Union
GEG- global environmental governance
GEP- global environmental politics
IGO- intergovernmental organization
IEL- international environmental law
IHRL- international human rights law
IL- international law
INECE- International Network for Environmental Compliance and Enforcement
IP- intellectual property
IR- international relations
IUCN- International Union for Conservation of Nature
NGO- nongovernmental organization
NGT- National Green Tribunal (India)
NSW LEC- New South Wales Land and Environment Court (Australia)
OECD- Organisation for Economic Cooperation and Development
RO- regional organization
SMJ- subject matter jurisdiction
UK- United Kingdom of Great Britain and Northern Ireland
UNEP- United Nations Environment Programme (now UN Environment)
UN- United Nations
UNECE- United Nations Economic Commission for Europe
US- United States
USEPA- United States Environmental Protection Agency
WCEL- World Commission on Environmental Law

CHAPTER 1. INTRODUCTION

Countries around the world face multiple environmental issues that threaten their ecological, economic, and social well-being. In response, governments seek to broker meaningful solutions to these challenges. As a result, numerous pressing environmental questions are resolved by entities including state governments, regulatory bodies, and courts (Klyza and Sousa 2008). In a very real sense, "government no longer plays only a regulatory role" (Tilleman 1996, 1). Rather, "administrators, legislators, and *judges* are [being] asked to analyze and shape the scientific and technological future" (Tilleman 1996, 1).

At the same time, legislatures that historically resolved pressing environmental questions now encounter increased gridlock that threatens their ability to perform this function (Klyza and Sousa 2008). In the United States Congress, for instance, Democratic and Republican votes on environmental issues have polarized since the 1970s, when the bulk of landmark American environmental statutes were passed (see, e.g., Shipan and Lowry 2001, 246). As a result, governmental institutions that have not historically brokered major environmental policy decisions must increasingly perform this function (Klyza and Sousa 2008). The court system provides an excellent illustration of this trend. In recent years, the US judicial system has resolved critical environmental questions, performing a policymaking function with wide-ranging implications for individuals, industry, and government (e.g., *Massachusetts v. EPA*, 549 US 497 [establishing authority of the Environmental Protection Agency to regulate carbon dioxide emissions as a pollutant]).

However, judges predominantly possess generalist legal training and are tasked with addressing diverse legal questions. Given the breadth of questions that many generalist judges

must resolve, they may lack specific capacity to address the scientific uncertainty, technical complexity, and statutory specificity inherent to environmental disputes. In particular, generalist judges may struggle to effectively situate the nuances of narrow legal questions and jurisprudence within the context of broader environmental considerations. Indeed, one former federal judge cautioned that in complex scientific cases, judges may not "have the knowledge and training to assess the merits of competing scientific arguments" (Jurs 2010, 21). Furthermore, like most judges, many courts themselves are generalist, including those in the United States. As a result, their procedures, local rules, and support personnel are often calibrated to diverse questions, rather than to specific issue areas.

In response, many jurisdictions have mirrored a broader trend towards judicial specialization by establishing courts which only hear environmental questions (*see* Baum 2011). These institutions, commonly referred to as specialized environmental courts and tribunals (ECTs), are proliferating globally (Nelson 2010). Despite their rapid spread, Pring and Pring (2009b, 1) note that there is a "surprising lack of comparative analysis" regarding ECTs. Moreover, the ECT scholarship that does exist has largely been prepared by legal scholars.

This dissertation contributes to systematic, theoretically robust analysis of judicial specialization in the environmental arena. Judicial specialization can exhibit diverse institutional forms, including environmental courts, administrative and executive environmental tribunals, and other quasi-judicial bodies. However, this dissertation will largely limit its contribution to deeper analysis of environmental courts, which it refers to as "green courts" to distinguish the scope of this analysis from literature examining ECTs more broadly. In particular, its theoretical and empirical evaluations emphasize the importance of norms in shaping environmental governance institutions and outcomes, and highlight their relevance to the proliferation of green

courts. This dissertation's core motivating question reflects this focus by asking: ***what is the relationship between international norms and green courts?***

This dissertation explores how international norms and green courts interlink by examining three closely related sub-questions. First, it asks, ***"why is the spread of green courts occurring?"*** By focusing on the drivers of green court spread, this dissertation acknowledges the important role of actors and agency in shaping the diffusion of norms, as they are understood by IR scholars, and contributes relevant insight to a broad body of international relations (IR) literature examining norms.

Second, this dissertation examines the mechanisms that facilitate and shape environmental norm diffusion. It explores the following question: ***"how is the spread of green courts occurring and manifesting in practice?"*** This question links closely to existing green courts accounts, but contributes new insights regarding the diversity of green courts that have been established to date. By emphasizing the extent and implications of institutional diversity, this effort provides academic insights to existing practice-driven accounts and links closely to norm implementation literature.

Finally, a third sub-question asks: **"*what are the implications of green court spread for IEL norms?"*** This question emphasizes the normative considerations associated with green courts, and reflects an effort to more expansively consider the ramifications of their establishment. Moreover, it advances interdisciplinary integration by exploring links between green courts and norms of IEL, including environmental justice (EJ) and access to justice.

To foreground analysis of green courts and their relation to international norms, I first detail the spread of specialized environmental judiciaries and existing scholarship characterizing these developments, before introducing the term "green court" to signal the narrower scope of

analysis within this dissertation. In Chapter 2, I note existing IR scholarship characterizing the diffusion and implementation of international environmental norms, and I highlight the relevance of the literature to this analysis of green courts. Next, I couple norm diffusion scholarship with detailed qualitative analysis to identify the actors that are most actively promoting the diffusion of an institutional norm supporting green court establishment (Ch. 3). To characterize the diversity inherent among existing green courts, I next develop a typology to aid in conceptualizing green courts' capacity to implement international environmental law (IEL) principles within domestic contexts (Ch. 4). Using this theoretical foundation, I evaluate what green court models exist in practice, and I consider the capacity to implement IEL held by a subset of those existing institutions (Ch. 5). Finally, I examine the theoretical significance and practical implications of project findings, before advocating future research which provides for greater integration of green courts scholarship with EJ and access to justice literatures (Ch. 6).

In all, the central foci of this dissertation are the role of norms in shaping the spread and attributes of green courts, and the role of green courts in promoting domestic application of IEL norms and principles. Nevertheless, it is important to emphasize that this dissertation is not itself normatively motivated. In other words, it makes no presumption regarding the capacity, capability, or desirability of green courts as an institutional model, whether in isolation or in comparison to other institutions, and is not intended to advocate the establishment of green courts. Instead, the objective of this dissertation is to map a theoretically- and methodologically-explicit approach for evaluating the features commonly attributed to green courts, to consider the implications of a widely-advocated institutional model, and to demonstrate the amenability of this research approach to other questions falling at the nexus of IR, IL, and IEL.

Accordingly, although this dissertation explores novel questions regarding the establishment of dedicated environmental judiciaries, it embraces a foundation of existing research, debate, and literature. In the remainder of this chapter, I briefly outline the existing nature of specialized environmental judiciaries, both within the United States and globally. I then provide a broad outline of approaches employed by existing researchers to engage with and evaluate the institutions. Finally, I advocate and outline a new approach to green courts research that merges existing analyses with theoretical insights from IR.

1. Emergence of specialized environmental courts and tribunals

Tailoring courts to specifically address environmental issues is neither a new effort, nor a geographically limited challenge. Beginning in 1970, landmark statutory changes during the American "environmental decade" yielded calls to establish specialized environmental courts; new pollution control statutes ushered in "orders rooted in technical expertise and inquiry" and led to concerns that generalist judges might be ill-equipped to issue such orders (Leventhal 1974, 510; *see also* Whitney 1973). As described below, the United States joined many other jurisdictions in formally studying the benefits to be derived from specialized environmental courts, but ultimately elected against establishing a federal-level environmental court (US Attorney General 1973, § 9).

Nevertheless, environmental courts have emerged at multiple jurisdictional levels throughout the United States, and these institutions exhibit numerous forms. Their diversity mirrors the expansiveness of the term "environment" itself, which Merriam-Webster defines as encompassing "the aggregate of social and cultural conditions that influence the life of an individual or community" (Merriam Webster 2015). Among these diverse institutions are

multiple municipal environmental courts situated throughout the United States. These institutions largely address quality-of-life issues in the residential and urban environment. For instance, the Little Rock, Arkansas Environment Court is charged with "ensur[ing] that neighborhood conditions are improved to comply with accepted health and safety standards" (Arkansas 2018) and New York City's Environmental Control Board addresses non-criminal quality-of-life violations (New York 2018).

In contrast to the municipal level, there are relatively few American environmental judiciaries at the state or subnational level. While administrative environmental appeals bodies do exist, including the New York State Department of Conservation's Office of Hearings and Mediation Services, the US has only established two state-level green courts to date. The historical first example is Vermont's Superior Court, Environmental Division, a trial court that enjoyed statewide jurisdiction over a range of specified land use and environmental matters (Vermont 2018). The second is a court system located in Hawaii, established in 2015, and vested with "broad jurisdiction over civil and criminal cases affecting the environment" (Hawai'i State Judiciary 2018).

Finally, at the federal level, multiple administrative ECTs exist, including the US EPA's Office of Administrative Law Judges and Environmental Appeals Boards, and the US Department of Interior's Board of Land Appeals. However, despite the consideration that dedicated green courts and benches received in the 1970s, no such institutions have yet been established within the federal trial or appellate court systems.

The global ECT landscape is similarly varied, and the courts have expanded in both number and institutional diversity. Some of the earliest ECTs were established in developed countries. For instance, both Sweden and Denmark have long tasked courts or tribunals with

adjudicating land and environmental issues (*see, e.g.,* Bjällås 2010). Likewise, Australia possesses a number of longstanding environmental and resources courts. These include the New South Wales Land and Environment Court (NSW LEC), which was established in 1980 and characterizes itself as "the first specialist environmental superior court in the world" (NSWLEC "About Us" 2018). New Zealand also established a specialist environmental court in 1991. As Birdsong (2002, 18) notes, the resulting court enjoys authority over "virtually every important mechanism for environmental management…, including regional policy statements, regional and district plans...resource consents [and] water conservation orders." In sum, specialized environmental courts are well-established among developed countries.

At the same time, developing countries have also established numerous noteworthy institutions in recent years. In one often-studied example, India established a National Green Tribunal in 2010, which it vested with discretion to adjudicate "all civil cases where a substantial question relating to environment...is involved" (Ministry of Law and Justice 2010). However, other developing countries have also established institutions at the local, subnational, and national levels. For instance, Kenya has created multiple environmental tribunals (Kenya Judiciary 2018), and China, another large emerging economy, "boasts over 130 environmental courts set up between 2007 and 2013" with a mandate to adjudicate environmental disputes and preserve environmental quality (Stern, 2014: 53).

In all, the global proliferation of specialized environmental judiciaries has been rapid and substantial. A landmark 2009 report estimated the existence of approximately 350 ECTs (Pring and Pring 2009a). A 2012 report by the same authors suggested that the count had increased to more than 500 ECTs (Pring & Pring, 2012). Their most recent census, published in 2016, identified "over 1,200 ECTs in 44 countries at the national or state/provincial level, with some

20 additional countries discussing or planning ECTs" (Pring and Pring 2016, IV). Given recent establishments, including in Hawaii, there is reason to believe that the spread of ECTs will continue, both within the US and globally. Indeed, Baum, who primarily addressed domestic environmental courts, argued (2010b, 131) that, "because environmental courts combine two popular ideas, environmentalism and protection of property values, it is interesting that they have not yet diffused more widely."

2. Green courts scholarship

As the previous section illustrates, ECTs are experiencing broad, global adoption. Similarly, scholarly treatment of specialist environmental courts has expanded in a reflection of this trend. This section foregrounds the subsequent analysis by identifying three distinct scholarly approaches that have emerged to characterize ECTs and that largely track the field's development and evolution. I argue that these include (1) early, and primarily theoretical, accounts of a hypothetical US environmental court, (2) subsequent accounts of a primarily descriptive nature that characterize institutions found globally, and (3) recent efforts to more systematically and comprehensively survey specialized environmental judiciaries, and to situate them within the context of a broader judicial or political landscape.

The first scholarly efforts to examine environmental courts emerged in the early 1970s. These accounts were developed alongside landmark federal environmental statutes, as "public concern about environmental quality [was] beginning to be felt in the courtroom" (Sax, 1970: 473). As federal judges recognized that they were "stand[ing] on the threshold of a new era in the history of the long…collaboration of administrative agencies and reviewing courts" (Leventhal 1974 [internal citations omitted]), policymakers began to express concern that generalist courts

might be ill-equipped to undertake environmental policymaking and law. Accordingly, a provision in the Federal Water Pollution Control Act of 1972 ("Clean Water Act") required the executive branch to examine "the feasibility of establishing a court or court system with jurisdiction over environmental matters" (U.S. Environmental Protection Aagency 1972, § 9). The resulting report, promulgated by the US Attorney General's office in 1973, ultimately advocated against creating any such institutions[1] (US Attorney General 1973, V-2, V-3). Following its recommendations, no US federal environmental court has been established.

Nevertheless, the report ignited a scholarly debate regarding the desirability of dedicated environmental courts, and this debate continues in contemporary literature. Many early publications echoed the Attorney General's conclusions and agreed that a federal environmental court was unwarranted. Some of these researchers emphasized the inherent challenges that would face such a court, including the difficulty of precisely defining "environmental" issues (e.g., Kramon 1973, 86). Further, researchers including Kramon (1973, 86) argued that a dedicated environmental court could actually hinder environmental protection, since a less prestigious specialized court might attract less qualified judges, might issue orders less likely to be followed by parties, and "might tend to become a superagency, freely substituting its judgment for that of the administrative agencies" rather than deferring to their expertise (Smith 1974b, 636). Finally, some researchers questioned the necessity of such a court at all. They noted that many issue areas in the law encompass complex procedural and evidentiary questions, and emphasized that

[1] The Attorney General report advocated against such a court due to the uncertain nature of an environmental court's caseload and jurisdiction, its potential for redundancy, and the existence of other devices to help existing courts comprehend complex matters (Attorney General Report at VII-1, 2, 3). The study further expressed concern that such a court might freely substitute its judgment for administrative agencies on review, and it argued that 'large' environmental law questions would best be resolved by "generalist" courts, where "the varying approaches taken by lower courts," could ultimately be resolved by the Supreme Court (Attorney General Report at VII-2).

it is established and "sound practice" in those issue areas to explain complex questions "to the court in simple, direct language," (Smith 1974a, 153; 1974b, 635).

These arguments were countered by researchers who felt that a dedicated environmental court could prove beneficial. For instance, Whitney (1973) urged (1) that the jurisdiction of a specialized environmental court could be bounded by a definable "body of environmental cases," (2) that "special expertise is desirable and necessary in deciding environmental cases," and (3) that an ECT could help to mitigate excessive federal caseloads.

Finally, some scholars argued for a middle approach. These individuals did not seek a dedicated environmental court, but did advocate better-equipping federal courts to resolve complex environmental challenges. For instance, Judge Leventhal (1974, 542), who opposed a specialized court, was concerned that "the ability of federal judges without specialist training to competently probe the record on appeal from a decision by EPA or similar agency may…be very much in doubt." Accordingly, he ultimately advocated in favor of scientific experts who could "advise a court so that it could better understand the record" (1974, 550). His proposal was echoed by Smith (1974b, 640), who believed that training programs to educate both judges and attorneys on environmental issues could yield a "higher standard for the administration of justice…and [that] no complex legislative proposals will be necessary."

Together, these early scholarly efforts demonstrate the controversy that has accompanied judicial specialization proposals since the earliest efforts to establish a federal environmental court in the US. At the same time, it shows that early scholarly contributions to this debate adopted a largely domestic focus, addressed what were then primarily hypothetical institutions, and did not consider broader issues of environmental justice or equity.

While the earliest relevant articles considered the contributions that specialized environmental courts might offer if established, a second wave of scholarship emerged to characterize the courts that have been established in fact. Many of these articles are descriptive in nature and authored by former or practicing judges. For instance, Meredith Wright, former judge of Vermont's Environmental Court, related her personal experiences serving on the state-level environmental court (Wright 2010); Verena Madner, president of Austria's Environmental Senate, sought to promote better understanding of how the institution functioned (Madner 2010); and retired judge Ulf Bjällås spoke about attributes of Sweden's environmental courts (Bjällås 2010).

Together, these multiple accounts provide a broader sense of the scope of established ECTs, and do so in diverse geopolitical settings. Moreover, some exhibit a desire to provide more context regarding how ECTs function. For instance, Judge Wright (2010, 201) noted her hope "that the Vermont experience may be useful to other jurisdictions interested in specialized environmental courts." Similarly, former President Madner (2010, 23) sought "to highlight some aspects of the Austrian experience that may contribute to the debate on environmental courts in other countries and legal systems." Finally, Stein (2002, 5–6) offered a detailed descriptive account of New South Wales' Land and Environment Court, and stated his belief that "a well-qualified specialist court such as the Land and Environment Court…seems to offer the best chance of successfully administering environmental law at a judicial level," even while noting that he would not "suggest what path other jurisdictions should follow."

Elsewhere, accounts began to descriptively evaluate multiple specialized environmental courts and tribunals, in a move towards generating more outwardly-oriented scholarship. For instance, although Professor Domenico Amirante (2012, 441 et seq.) sought to evaluate the case

of India's National Green Tribunal, he did so from a "comparative perspective," and he emphasized and highlighted unique attributes of the court that he believed might be valued by others. Similarly, Tilleman (1996, 3) characterized the environmental appeals boards (EABs) found in the United States, Canada, and England. In doing so, he sought to use comparative analysis to "comprehend the fundamental principles that underlie the creation and operation of…" environmental appeals boards, though he intended for his research to have broader relevance (Tilleman 1996, 3).

In sum, many of the specialized environmental court articles authored through the early 21st century reflect descriptive research efforts. At the same time, many of these accounts acknowledged, whether implicitly or explicitly, that the specific institutions they addressed exist within a broader milieu of environmental courts. Nevertheless, the articles were focused on analyzing and detailing the attributes of individual institutions.

In recent years, however, scholarship has begun to evaluate environmental courts and tribunals more expansively, noting their global growth and exploring the relationship between the institutions and broader social and political phenomena. First, research efforts have begun to emphasize the increase in environmental courts and tribunals. In 2009, George and Catherine Pring authored a report entitled *Greening Justice* (2009a, xiii), which noted the extent and global proliferation of specialist environmental judiciaries. Their report sought to provide "an in-depth comparative analysis of the diverse range of existing ECTs to see how they can enhance access to justice…" (Pring & Pring, 2009a: 2). In 2010, the *Journal for Court Innovation* published a related special issue examining "The Role of the Environmental Judiciary"; it reviewed experiences associated with ECT establishment and sought to "identify those models that are

best suited to accomplishing true environmental justice and equity" (Riti 2010, v). Both of these compilations reflect efforts to generate scholarship with both practice and academic relevance.

Similar efforts have followed in recent years. In 2012, the *Pace Environmental Law Review* published a special issue that comprehensively examined ECTs. In the issue, editor Nicholas Robinson noted (2012, 364) "extraordinary growth of local courts charged with ensuring observance of environmental laws," and suggested that the institutions' widespread emergence signaled "world-wide customary acknowledgement that States are duty-bound to provide judicial access for environmental law matters" (2012, 365). Robinson (2012, 369) noted these trends and emphasized "an urgent need to employ comparative law techniques to exchange judicial experience" to maximize ECT effectiveness. This effort was joined by the *Journal of Environmental Law's* 2012 "Virtual Article Collection on Specialist Environmental and Planning Courts," which was produced in response to a proposed specialized environmental planning chamber in the UK (Fisher 2014), and included court-specific accounts and evaluation of broader issues including access to environmental justice (e.g., Brooke 2006, 354). Finally, in 2017, the *Environmental Law & Management* journal published proceedings from a "Symposium on Environmental Adjudication in the 21st Century," which again provided accounts of individual green courts alongside consideration of more systemic access to justice issues (e.g., Preston 2017).

As researchers more expansively characterize specialist environmental institutions, they have also begun to explicitly link their studies to research considering broader political and social questions. For instance, Pring and Pring (2009b) published a piece that highlighted the nexus between human rights and the environment. They argued (2009b, 21) that several attributes of many specialist environmental judiciaries, including enhanced citizen standing and

the presence of dedicated environmental prosecutors, could help the institutions to "play a very important role at the convergence of environmental law and human rights law." However, the piece also highlights the variation within the courts and their outcomes, and it underscores the difficulties inherent in generalizing across specialized environmental courts.

Second, researchers have identified the connection between specialist environmental courts and access to justice. Robinson (2012, 370) argued that, through more unified study and management, researchers could "further interstate cooperation in building national capacity to ensure access to justice for environmental adjudication." Elsewhere, Pring and Pring (2009b, v) highlighted the need to identify key characteristics "which make [ECTs] effective in providing citizen access to justice in environmental matters." Finally, Angstadt (2016) employed case studies of ECTs in India and New Zealand to highlight their potential to advance access to justice and indigenous interests in both developed and developing countries, and Preston (2017) undertook similar analysis of New South Wales' Land and Environment Court. These efforts demonstrate that ECT scholarship can meaningfully complement burgeoning EJ and access to justice literature.

Third, researchers have begun to examine the outcomes that ECTs generate for litigants, the environment, and the law. For example, Stern (2013) has examined China's emergent ECT network. Her findings (2013) suggest that there "is no guarantee the environmental courts will live up to their name by making pro-environmental decisions." In related work, she notes concern with how the Chinese courts frequently prosecute poor citizens (2014), and she questions whether the practice "can help to fix China's most pressing environmental problem, pollution" (2014, 69). In India, Gill (2017) provides similarly detailed analysis of how India's National Green Tribunal interprets and potentially misinterprets elements of the precautionary

principle. In short, by better understanding ECT structure and function, researchers can more meaningfully evaluate the institutions' implications.

3. Towards a new research agenda

Overall, existing scholarship examining specialist environmental judiciaries has largely been conducted from a legal theory perspective and generally pursues legal analysis of court function. This dissertation seeks to develop a more theoretically explicit and integrative account of the systemic and normative considerations that accompany environmental courts. Its approach addresses certain major constraints of existing research.

First, this research effort provides a theoretically and empirically explicit green courts account. While existing efforts have characterized ECTs in extensive detail, many of the publications have been structured to provide practice-relevant guidance, rather than to leverage or develop theoretical insight (e.g., Pring and Pring 2016, VII). Likewise, those existing accounts of environmental courts that do pursue a theoretical grounding (e.g., Warnock 2017) provide valuable context and insight, but do not generally pursue detailed empirics. Finally, descriptive accounts of environmental courts have provided exceptionally useful insight regarding individual institutions, but have generally only directed limited attention to the broader trends motivating the global emergence and spread of the institutions. This dissertation seeks to complement these divergent scholarly approaches by offering empirically and theoretically robust analysis.

Second, this dissertation provides an explicit theoretical foundation to support analysis of specialized environmental courts. Existing works do not directly consider how actors seek to influence the spread of green courts. However, IR scholars have provided a valuable foundation to support this analysis by examining how norms motivate actors, and how actors can in turn

promote the spread of norms and determine the purchase that those norms gain (e.g., Finnemore and Sikkink 1998b). By explicitly examining these questions, this dissertation will advance both green courts literature and broader global environmental politics scholarship that seeks to better understand how actors' efforts shape resulting normative and institutional structures (e.g., Okereke 2008).

Third, this dissertation explicitly links analysis of specialized environmental institutions to existing social science scholarship. Doing so contributes to broader inquiry, and in turn enables research examining specialized environmental courts to benefit from these scholarly insights. Moreover, as noted in subsequent chapters, this research approach responds to calls to make environmental politics scholarship speak more clearly to broader IR, and to seek opportunities for meaningful exchange between IR and international law (IL) scholarship (see, e.g., Green and Hale 2017; Slaughter, Tulumello, and Wood 1998). Accordingly, this dissertation will seek to make explicit such connections between green courts scholarship and broader debates in the social sciences and legal studies.

Fourth, existing scholarship acknowledges the broader implications of green courts for society and environmental protection (e.g., Pring and Pring 2016). However, existing research does not directly incorporate literature addressing these concerns, such as EJ scholarship. This dissertation examines how attributes of green courts relate to EJ, and it lays a foundation for subsequent, explicit EJ-green courts scholarship.

Finally, this dissertation distinguishes from existing research by conducting clearly-defined and narrowly-focused institutional analysis. Existing efforts to advance a coherent ECT research agenda reflect the scholarly challenges presented by the tremendous institutional diversity of specialized judicial bodies, as well as the difficulty of comprehensively studying a

broadly-defined institutional class. The foundational ECT definition advanced by Pring and Pring (2009a, 3) characterizes the institutions as "administrative bodies of government empowered to specialize in resolving environmental, natural resources, land use development, and related disputes." They further specify that the term "court" refers to "a body in the judicial branch of government," while "tribunal" denotes "all non-judicial government dispute-resolution bodies (typically in the executive or administrative branch of government)" (2009a, 3). Pring and Pring's definition of ECTs has been implicitly adopted by numerous other authors (*see, e.g.,* Abed de Zavala, et al. 2010: 2 [recognizing a "worldwide emergence of new judicial systems of environmental courts and tribunals"]; Robinson 2012: 363 [referencing the existence of "more than 350 environmental courts and tribunals…"]; Amirante 2012: 445).

While the *Greening Justice* report and its ECT definition provides an invaluable foundation for the field, this dissertation narrows its analysis from "ECTs" to the institutional subclass of environmental courts, and it signals this distinction by introducing and applying the term "green courts." Doing so focuses this dissertation in several ways. First, the existing ECT definition does not distinguish between environmental courts and environmental tribunals, thus permitting comprehensive evaluation of a broad institutional class. In some subsequent literature, however, the original scope of the ECT term has been neglected, resulting in the possibility for imprecision. For instance, Stern (2014) cites *Greening Justice* for the premise that "there were 350 environmental *courts* worldwide" (2014), even though Pring and Pring intended for the term "ECT" to encompass both courts and executive/administrative tribunals.

Additionally, some terms in the dominant ECT definition are not uniformly employed across domestic contexts. First, Pring and Pring (2011, 484) note that the term "court" should denote bodies "in the judicial branch of government." However, research suggests that this term

has been applied more flexibly in practice. For instance, Stern (2014, 72) notes that China's environmental "courts" are "not a step toward judicial empowerment…but an effort to shore up state capacity through an institution designed to coordinate and act as a backstop for government agencies." Furthermore, Pring and Pring (2009a, 3) note that the term "tribunal" is intended to denote institutions that are non-judicial in nature, and that tribunals are typically housed within the administrative or executive apparatus. Nevertheless, India's National Green *Tribunal* is a "federal judicial body" (Amirante, 2012: 461). This illustrates that, just as 'courts' are not necessarily independent by nature of their name, a 'tribunal' is similarly not always an administrative apparatus. Accordingly, while the umbrella term "ECT" is unproblematic when applied to judicial and quasi-judicial specialization broadly, and provides a valuable basis for practice-relevant insights, it must be more narrowly specified to facilitate this dissertation's analysis of an institutional subset.

Additionally, a wide range of disputes are associated with ECTs as they are broadly defined and understood. As Pring and Pring note (2011, 484 [emphasis added]), the ECT definition encompasses institutions which may resolve "environmental, natural resources, land use development, and *related* disputes." This enables broad evaluation of an emergent phenomenon, but can also encompass many institutions with potentially dissimilar mandates. For instance, the "ECT" definition is satisfied by India's National Green Tribunal, which has broad jurisdiction over all civil matters in India bearing a "substantial question relating to environment" (Ministry of Law and Justice 2010), as well as by institutions including Cleveland, Ohio's Housing Court, which hears landlord/tenant disputes, as well as "housing, building, fire, zoning, health, [and] waste collection…" matters (Cleveland 2018). Clearly, the two institutions

are very dissimilar, notwithstanding their names, their shared presence in the original *Greening Justice* listing, and their ability to meet the 2009 definition of "ECT."

Finally, by encompassing both administrative tribunals and judicial courts, the existing ECT definition includes institutions with widely varying institutional independence, a factor that has been problematized in other judicial specialization scholarship (e.g., Baum 2010b). For instance, Baum (2010b) excluded administrative adjudicatory bodies from analysis on two grounds. First, Baum (2010b, 9) noted that "subject-matter specialization is generally taken for granted in the executive branch," thus accounting for much of the specialization that administrative tribunals exhibit. He further found that the location of administrative tribunals in a government's executive branch renders them less comparable with generalist courts (Baum 2010b, 9–10). In recognition of the foregoing considerations, this dissertation seeks to constrain its scope of research.

To limit the scope of this effort, the subsequent analysis first excludes administrative adjudicatory bodies. As noted previously, administrative institutions are less comparable with specialist institutions housed in the judicial branch, since quasi-judicial administrative bodies tend to solely interpret the actions of a single administrative entity (Baum 2010b, 9–10). In the ECT context, these institutions, including the Office of Hearings and Mediation Services within New York's Department of Environmental Conservation (NYSDEC 2018), oversee the actions of particular administrative agencies and frequently lack the autonomy that judicial branch institutions enjoy. Moreover, their inward-looking mandate contrasts with the outwardly-oriented disposition that would be required for a body to directly engage, *suo moto*, with IEL norms.

Instead, this dissertation focuses solely upon courts, which it understands as (a) formal (b) government institutions granted (c) institutional autonomy from legislative and executive

branches of government. To clearly demarcate this definition and emphasize that it is narrower than some existing applications of the term "ECT," this dissertation introduces and applies the term "green court." As will be emphasized throughout this dissertation, the term is intended to emphasize the environmental focus of the institutions, and not to imply anything regarding the environmental outcomes that the courts may engender.

Additionally, this dissertation seeks to more narrowly circumscribe the range of issues that constitute an "environmental" dispute for purposes of analysis. As noted above, Pring and Pring's early research (2011, 483 [emphasis added]) encompasses broad subject matter: "environmental, natural resources, land use development, and *related* disputes." The phrase 'related disputes' in this definition is especially difficult to specify and operationalize within the scope of a dissertation. However, established courts have also variously interpreted and defined many of the other foregoing elements, including 'environment,' 'natural resources,' and 'land use.'

For example, ECTs have defined "environment [and] natural resources" issues in many diverse ways (Pring and Pring 2009a). In one case, the enabling legislation for India's National Green Tribunal, which grants discretion over "all civil cases where a substantial question relating to environment…is involved…" (Ministry of Law and Justice 2010, § 14[l]), defines "environment" to include "water, air and land and the inter-relationship, which exists among water, air and land and human beings, other living creatures, plants, micro-organism and property" (Ministry of Law and Justice 2010, § I[2][1][c]). In another case, Hawai'i defines the scope of environmental issues by specifying individual statutes that its newly-established Environmental Courts would have jurisdiction to adjudicate (Hawaii 2013, § 2). Likewise,

enabling legislation for Vermont's Supreme Court, Environmental Division detailed specific disputes that fall within the court's competence (Vermont 2018).

Concern regarding the ambiguous nature of environmental court jurisdiction is longstanding, and "the difficult question of which cases should be classified as environmental litigation" served as one of the main bases upon which the US Attorney General's Office objected (1973, III-7) to establishing an American federal environmental court. Accordingly, this dissertation focuses its analysis by excluding certain elements that would be included within a broader ECT analysis. First, the dissertation does not consider courts that focus solely on quality of life issues, such as compliance with public nuisance, health code, and animal control ordinances, without more to demonstrate that court's connection to environmental concerns. Examples of such issues may be drawn from the New York City Environmental Control Board website, which notes that common ECB violations include those for "dirty sidewalk, unleashed dog, loitering, noise, public indecency, rollerblading or motorcycling in a forbidden area, sidewalk obstruction, and rodent and pest control" (City of New York 2018).

Additionally, this dissertation does not include courts that focus on housing code issues other than zoning or land use. For instance, the city of Toledo, Ohio's Environmental Housing Court possesses the competence to hear civil disputes including "building, health, safety, and nuisance abatement codes," as well as criminal disputes including "fire prevention, dumping, [and] littering" (City of Toledo 2018a). These disputes, while exceptionally important to quality of life, and certainly capable of creating indirect environmental consequences, have too tenuous a link to broader environmental concerns to fall within the scope of this dissertation. However, housing code and development issues that do rise to the level of zoning or land use disputes are included within this dissertation. While different from pollution and natural resource

management regimes, zoning and land use approaches can "create the long term context for community development" and "provide for jobs, housing, infrastructure, recreation, and *the preservation of a sound environment*" (Nolon, Salkin, and Gitelman 2007, 1 [emphasis added]). Moreover, there is broad awareness of the implications of land use laws and policies for the natural world (e.g., Ruhl and Salzman 2007). Accordingly, zoning and land use relate closely to broader concerns emphasized throughout this dissertation.

Many of the foregoing paragraphs define the term "green courts" that will underpin this dissertation in the negative, noting those institutions that will be excluded from study in an effort to bound analysis. However, it bears mention that a broad range of judicial institutions can nevertheless satisfy the umbrella term "green court." This diversity reflects not only the range of factors that may motivate the establishment of individual green courts and the mandates that those courts may seek to satisfy, but also the tremendous range of domestic legal cultures and systems that the institutions are situated within. Accordingly, it is difficult to identify a broad set of unifying factors that are common to all institutions meeting the definition of "green court." Nevertheless, this dissertation presents multiple exemplars throughout to illustrate, and the diversity of institutions that it identifies emphasizes the range of institutional approaches that may be developed to address environmental challenges.

In sum, this dissertation's more limited scope and focus when compared to key existing ECT research efforts will be emphasized by use of the term "green court." Despite this narrower focus, the original dissertation effort will contribute insights with relevance to broader ECT literature, while also permitting focused analysis of key IR research questions.

4. Overview of substantive chapters

Motivated by the objective of contributing to existing scholarship, and guided by the research questions identified above, this dissertation seeks to undertake theoretically explicit examination of green courts. It uses insights from IR scholarship to explore the relationship between international norms and green courts, and it examines three specific questions:

(1) Why is the spread of green courts occurring?

(2) How is the spread of green courts occurring and manifesting in practice?

(3) What are the implications of green court spread for IEL norms?

In Chapter 2, I employ existing constructivist IR and green courts scholarship to develop a foundation for this research effort. I note extensive IR scholarship mapping the role and influences of "norms," understood by IR scholars to reflect "standards of appropriate behavior for actors with a given identity" (Finnemore and Sikkink 1998b, 891). In particular, international relations scholars have noted the mechanics and implications of the spread ("diffusion") and adoption ("implementation") of norms. As I demonstrate, this theoretical foundation supports meaningful green courts analysis by equipping the dissertation to situate green courts within a broader environmental norm and institutional landscape. Further, I show that theoretically explicit green court scholarship can meaningfully engage with research in three key areas: (1) broader IR discourse, (2) literature examining the diffusion, implementation, and compliance with norms of international environmental law ("IEL"), and (3) research examining judicial specialization.

In Chapter 3, I build on this theoretical foundation, and explore two related questions regarding green court norm diffusion. Why are green courts spreading? And how are relevant actors promoting green court spread? After situating the chapter in existing norm diffusion

literature, I outline a research design that identifies key actors engaged in promoting the diffusion of a norm favoring the establishment of green courts; it does so through detailed qualitative review of existing documents, scholarly literature, and original expert surveys and elite interviews of key green court scholars and practitioners. Using this approach, I suggest that multiple actor classes, including intergovernmental organizations (IGOs), regional organizations (ROs), nongovernmental organizations (NGOs), domestic judges and governments, and international networks and symposia, are performing diverse functions in an effort to promote the institutions, including: advocating for their establishment, offering best practices guidance, and facilitating information exchange. Ultimately, I suggest that my project identifies several trends among actors who engage with green courts, including actions by domestic judges to serve as norm entrepreneurs, efforts by courts and judicial networks that catalyze normative exchange, and disconnects that have inhibited normative exchange between actor classes with apparently similar objectives.

In Chapter 4, I note that existing green courts differ widely in terms of their setting, institutional attributes, public support, and other factors (see generally Pring and Pring 2016). I suggest that this diversity may affect the courts' capacity to perform the environmental governance functions that motivates their establishment, including implementation of IEL norms and principles including sustainable development, access to justice, and "polluter pays." Accordingly, I review existing norm implementation literature, placing particular emphasis on works that examine the influences of structural capacity, and I use it to develop a theoretical typology that distinguishes green courts based on their (a) placement within a country's government and (b) the breadth of jurisdiction and discretion the institutions possess. After populating this typology both theoretically and with illustrative exemplars, I suggest that green

courts located at the highest level of a country's judiciary, particularly when vested with broad jurisdiction and discretion, may hold the greatest capacity to implement broad IEL norms, while other green courts' institutional models may serve to constrain their norm implementation capacity. Finally, I note that the institutional attributes highlighted by Chapter 4 are likely to interact with other factors, including individual judges' dispositions (Ch. 3) and domestic legal culture (Ch. 5).

In Chapter 5, I link theory to practice by evaluating the degree to which national-level green courts currently exist, since they were the institutional subclass identified in Chapter 4 as likely to hold the greatest capacity to advance global environmental governance. Using web research, review of an existing green court list, and direct contacts with governmental officials, I survey UN member states. Through this effort, I confirm the existence of thirty-six countries with a green court at any level, and eight which clearly possess national-level green courts. By collecting data on these courts' geographic location, structural capacity to implement IEL norms, and outward orientation toward IEL norms, I identify tremendous institutional diversity among national-level green courts and their associated governance capacity, particularly with respect to their discretion and orientation to IEL. I suggest that my findings indicate that national-level green courts hold only modest capacity to contribute to domestic IEL adoption, given the institutional attributes of existing institutions and their limited establishment to date. However, the findings also imply that individual green courts can actively influence the process. On this basis, I suggest that future research could support advocacy of desirable green court attributes by extending similar analysis to green courts at other governmental levels and by examining the degree to which green court orders are implemented.

In Chapter 6, I present a foundation for future research. After briefly summarizing each chapter, I examine the project's broader theoretical and practical significance. In theoretical terms, I argue that the dissertation: (1) highlights how judicial exchanges advance environmental policy and institutional development; (2) employs a broad, IR-based interpretation of norms to study questions traditionally analyzed by legal scholars; (3) illustrates the role of normative linkages across scales of governance; and (4) emphasizes the value of jointly studying norm diffusion and norm implementation. In practical terms, the dissertation (1) suggests that further green court establishments are likely and that future research is warranted, (2) indicates spatial disconnects between where many green courts currently exist and where they are studied, and (3) demonstrates the benefits of definitional and theoretical precision in IEL research. Finally, I advocate future research that further connects this dissertation to scholarship examining EJ, access to justice, and environmental democratization. Moreover, given the distributive justice implications of green courts and their broad institutional diversity, I advocate research exploring the environmental outcomes that green courts generate.

In all, this dissertation presents a theoretically- and methodologically-explicit examination of a nascent institutional model in environmental governance that has enjoyed broad advocacy among some legal scholars. At the same time, it offers findings with broad practical and theoretical relevance to an interdisciplinary audience of IR, legal, and environmental scholars. To ground this analysis, I next map a norm-based theoretical framework, rooted in IR scholarship, that will orient the empirical efforts of this dissertation.

CHAPTER 2. LITERATURE REVIEW

As Chapter 1 notes, specialized environmental judiciaries are emerging rapidly, and they are highly diverse and widely promoted. At the same time, there is limited systematic analysis of the institutions, their attributes, and their implications. This dissertation responds by undertaking theoretically explicit and empirically robust green courts evaluation.

This chapter provides a foundation for original green courts scholarship by highlighting its connections and relevance to existing literature. In particular, it relates this dissertation's analysis to three distinct bodies of research: (1) IR scholarship examining international norm diffusion, (2) IR and IL scholarship examining domestic implementation of international environmental law ("IEL") norms, and (3) judicial politics scholarship examining judicial specialization. It next outlines how constructivist IR theory and methods can be used to develop a focused original research effort that examines specialized environmental judiciaries while simultaneously contributing to broader environmental norm diffusion and implementation research. As each subsequent chapter evaluates relevant scholarship in detail, the intent here is not to fully evaluate each body of literature, but rather to provide an orienting framework of the contributions and connections that the literature permits.

At its core, this dissertation reflects an effort to evaluate and further refine scholarship addressing the concept of norms. While the term "norm" is elemental in both IR and IL, it is conceptualized and applied somewhat distinctly by each discipline, and this dissertation draws upon both understandings. Although theoretical constructs such as "norms" are frequently contested and redefined within individual disciplines, IR researchers, in general, interpret norms more expansively than their IL counterparts. The conception of norms, as it is understood by IR

scholars, derives from broad sociological and economic understandings (Hoffmann 2010), and the discipline's foundational formulation of norms as standards of "appropriate behavior for actors with a given identity" underscores the breadth of practices, institutions, and beliefs that may satisfy the IR definition (Finnemore and Sikkink 1998b, 891). Within this expansive conception, IR scholars who research norms frequently emphasize efforts by domestic actors to adopt international rules in their own political contexts (Cortell and Davis 2005, 451), and they note actors' attempts to facilitate the spread of policy instruments and institutions across political jurisdictions (Jörgens 2003, 9). Each of these broad foci are central to this dissertation's examination of the spread and adoption of a norm favoring the establishment of green courts.

In contrast, the discipline of IL views norms and a closely related term, "principles," far more narrowly. Norms in IL are generally understood by scholars as international regulative obligations which guide state conduct (Salcedo 1997). In other words, not only do they shape behavior, but they have the weight of legal obligations and sanctions attached to them. However, researchers within IL actively debate the hierarchical structure that orders the various international legal norms. Many scholars argue that certain legal norms, including so-called peremptory or *jus cogens* norms, have more binding effect than general norms or emergent principles of IL (see generally, Shelton 2006). As a result, the placement of legal norms within this hierarchy has implications for how forcefully they may compel state compliance or sanction derogation. Because IEL remains a nascent field of international law, the status and effect of many of its legal norms and principles remains contested, and the degree to which those norms have been embraced across domestic and international legal contexts varies widely (e.g., Viñuales and Dupuy 2015). In Chapters 4 and 5, this dissertation analyzes how domestic institutions apply legal norms. It does so by utilizing the narrower, IL conception of norms and

reflecting its emphasis upon how individual international legal norms are interpreted and implemented by domestic institutions.

In addition to the IR/IL disciplinary divide regarding how norms are conceptualized, there are also two broad ways that norms may be theoretically analyzed. First, researchers can evaluate the diffusion of norms. As noted in greater depth below, norm diffusion scholarship explores themes including the actors engaged in norm diffusion (e.g., Finnemore and Sikkink 2001), the characteristics of individual norms (e.g., Finnemore and Sikkink 1998a), and the mechanisms by which norms diffuse (e.g., Park 2005). A second body of literature examines how norms are implemented. As noted below, this literature explores how norms are fit to specific domestic contexts (e.g., Cerna 1994) and examines how various actor classes shape and promote their implementation (e.g., Fukuda-parr and Hulme 2011).

While the two foregoing debates are expansive, their insights nevertheless relate directly to this dissertation's focused evaluation of green courts. First, IR norm diffusion literature supports evaluation of whether the emergence of green courts is facilitated by an institutional norm. In particular, this dissertation considers whether certain actors believe that green courts can yield "better" environmental outcomes due to their specialization than traditional, generalist courts, and it examines whether they advocate the institutions on this basis. Second, norm implementation literature supports deeper evaluation of whether specialized environmental courts may promote domestic implementation of IEL norms and principles.

This dissertation's focused analysis also illustrates the degree to which the foregoing literatures may meaningfully enrich one another. First, by evaluating the spread of green courts alongside their potential to apply IEL norms, the dissertation notes complementary elements of norm diffusion and implementation scholarship. Moreover, by examining how green courts

simultaneously reflect norms and engage in spreading norms, the dissertation integrates understandings and insights from both IR and IL, and it emphasizes benefits that may be gained by applying IR insights to institutions and phenomena more commonly explored by researchers of IEL. The balance of this chapter foregrounds this green courts evaluation by highlighting the relevance of contributions from norm diffusion, norm implementation, and judicial specialization literature, and by outlining how constructivist IR scholarship affords an ideal foundation for an integrative research effort that incorporates theoretical insights from both IR and IL.

1. Norm diffusion

This dissertation examines why and how the spread of green courts is occurring. As noted above, this question implies the potential role of norms, and in particular emphasizes that actors may be advancing the spread of an institutional norm that promotes green courts as desirable and better-equipped to advance environmental protection than their generalist counterparts. This dissertation's exploration of whether and how such a norm exists relates closely to IR literature characterizing global norm diffusion (Graham, Shipan, and Volden 2012). At its core, IR norm-oriented literature emphasizes dynamism, evolution, and the value of examining how norms gain traction and manifest in diverse political settings.

In particular, this dissertation's attention to norm diffusion is oriented by the norm life cycle concept (Finnemore and Sikkink 1998b). The norm life cycle emphasizes that new norms emerge within a dense landscape of existing norms, and it suggests that norms move through distinct stages as they gain acceptance in various domestic contexts (Finnemore and Sikkink 1998b). The first stage in the norm life cycle is normative emergence, when advocates of norms use organizational platforms to promote their broader adoption and spread (Finnemore and

Sikkink 1998b, 898–901). The model posits that norms that have gained sufficient currency will next reach a tipping point, when their adoption "cascades" through diverse political contexts, driven by perceived legitimacy and the socialization of actors across political settings (Finnemore and Sikkink 1998b, 902–4). In the final stage, a norm is internalized and institutionalized in domestic settings, facilitated by domestic actors, professional training, socialization, and an absence of contestation regarding the norm's central elements (Finnemore and Sikkink 1998b, 904–6).

The norm life cycle concept has generated considerable interest in norm mechanics among IR scholars and social scientists (Graham, Shipan, and Volden 2012). Several of the resulting literature debates directly support this dissertation's emphasis of the diffusion of a norm favoring green court establishment. In particular, existing research evaluates how norms evolve as they emerge, how actors contribute to norm diffusion, and how norm diffusion manifests within specific issue areas, including law and the environment.

a. *Norm diffusion and evolution*

First, norm diffusion scholars have examined how norms, as understood by IR scholars, change as they spread, shaping countries' institutions and actors (e.g., Florini 1996; Nadelmann 1990). As Chapter 3 notes in greater detail, this literature reflects emphasis among constructivist IR researchers upon intersubjectivity, and it highlights the contestation and interpretation that surrounds norms and normative content (e.g., Checkel 1998, 341). By acknowledging norms' dynamic nature, scholars have noted how norms evolve through processes of acceptance and alteration, similar to the transmission of genes in nature (Florini 1996). Noting norms' dynamic nature has encouraged researchers to examine what renders some norms better-equipped to

embed within new countries and settings. For instance, Florini (1996, 387) has identified the importance of a norm's prominence and the presence of conditions favorable to its establishment. Likewise, researchers have highlighted the need for coherence between a particular international norm and a given domestic setting (Florini 1996, 386; Finnemore and Sikkink 1998b).

While the dynamics and effect of normative evolution are broadly relevant within IR, norm diffusion scholars have also explored normative evolution within environmental contexts (e.g., Wiener and Puetter 2009). As with the broader IR norm literature, these scholars have demonstrated a relationship and interaction between an environmental norm's evolution and associated domestic responses. Some researchers have noted that spreading global norms can confine the regulatory options available to states. For instance, Dimitrov (2005) used the forestry regime, where stewardship measures maintained a steady regulatory trajectory despite countries' failure to adopt a binding forestry convention, to illustrate the path-dependency-like force that norms can exert within specific regimes. Other GEP researchers have emphasized the agency that national jurisdictions can exert upon the content and success of global norms. For instance, Cass (2005) uses the case of carbon trading to show how EU states' initial opposition, and subsequent support and embrace of the practices, had global implications for the normative environment surrounding carbon trading schemes. Altogether, this literature in IR, broadly, and GEP, specifically, supports this dissertation's examination of the potential evolution of an institutional norm favoring green court establishment, and it emphasizes the rootedness of green courts within a broader milieu of domestic and international environmental law norms.

b. *Norm diffusion actors*

Second, IR scholars have evaluated how various actors contribute to norm diffusion. Increasingly, the field has emphasized that norms' collective and intersubjective character reflects the often intentional engagement by certain individuals and entities, or actors (Checkel 1998, 341). As Chapter 3 notes in much greater depth, an extensive body of literature evaluates and characterizes how diverse actor classes have contributed to norm diffusion. Diffusion scholarship examines actions taken by those acting within, across, and between governments (e.g., Graham, Shipan, and Volden 2012, 684), and it explores the contributions of diverse nongovernmental actors (e.g., Park 2005).

By researching how actors contribute to the diffusion of norms, scholars can view norms as less deterministic, and they can acknowledge that norms frequently reflect intentional efforts taken by actors (Finnemore and Sikkink 1998b, 913–14). Exploring the relationship between actors and norms is also valuable because it enables researchers to view actors as complex and dynamic entities, capable of both consuming and diffusing norms (Park 2006). Finally, research exploring the relationship between actors and norms highlights norms' social nature, and it emphasizes the importance of understanding actors' roles in spreading norms (Checkel 1999). This dissertation builds upon this focus by extending existing analyses of the contributions of various actor classes.

As Chapter 3 highlights, researchers have scrutinized the contributions of diverse actor classes, including regional actors (e.g., Balsiger and Vandeveer 2012), business and industry (Haufler 2010), IGOs and ROs (e.g., Torney 2015). Moreover, many existing studies emphasize the potential for efforts to diffuse norms that stem from interactions among differing actor classes, such as between state governments and IGOs (e.g., Gilardi 2012), ROs and local experts

(e.g., Acharya 2004), and international NGOs and state governments (e.g., Schroeder 2008). In short, existing research supports this dissertation's attention to the potential contributions of diverse actor classes, and to the possibility that those actors' efforts may complement or conflict with one another.

At the same time, the existing literature supports this dissertation's attention to several actor classes that appear likely to advance the emergence and diffusion of an institutional norm favoring specialized environmental courts' establishment. While several are detailed at greater length in Chapter 3, two in particular provide a useful illustration here. First, Haas and others (1992, 3) have highlighted the considerable norm diffusion activities of epistemic communities, which are professional networks "with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area." Epistemic communities and other expert networks possess attributes that enable them to support the diffusion of innovations like green courts, including their motivation to advance policy goals that they believe will improve societal well-being (Haas, 1992: 3). Epistemic communities support norm diffusion, including within the environmental realm, by facilitating transnational communication (Jörgens 2004), providing authoritative information in regimes addressing scientific uncertainty (e.g., Betsill and Bulkeley 2004), and supporting policy learning among domestic governments (e.g., Haas 1989)

Second, existing research highlights the contributions of judicial networks and domestic courts to legal and institutional norm diffusion, and it notes several ways that courts and their employees can facilitate normative exchange. First, courts can provide a point of access to networks of similarly-minded experts, unifying practitioner groups and facilitating interaction (Alter and Meunier-Aitsahalia 1994). For instance, van Waarden and Drahos (2002, 928) have

observed subgroups of attorneys functioning as epistemic communities as they exchange information, learn from and imitate one another, and transfer legal concepts and arguments in the context of courts. Likewise, judges themselves can network and facilitate norm diffusion, including with counterparts in other jurisdictions (e.g., Slaughter 2003). Accordingly, this dissertation's attention to the role of actors in driving the diffusion of specialized environmental courts is justified by the wide range of potential norm diffusion actors, as well as by the documented engagement of actor classes closely related to the development of judicial institutions.

c. *Norm diffusion in specific regimes*

IR scholars have also accorded considerable attention to the ways that norm diffusion manifests within specific issue areas and regimes. In particular, this dissertation's focus on the role of actors in promoting the emergence and diffusion of a norm favoring green court establishment reflects considerable research examining norm diffusion in the legal/judicial and environmental contexts.

First, many researchers have evaluated legal norm diffusion and the role that judges play in attempting to promote norm diffusion. For instance, scholars have given considerable attention to normative cascades, or the point at which an emergent norm receives widespread adoption (Finnemore and Sikkink 1998b). In relevant part, these efforts have documented normative cascades within the legal realm, and a body of literature characterizes these justice cascades. While most justice cascade studies to date have been conducted within the issue area of human rights, their findings indicate that particular legal norms can experience rapid changes in legitimacy as they gain broader adoption (e.g., Sikkink and Kim 2013). Justice cascade

researchers have used the embrace of human rights prosecutions as a case to explore how legal ideas spread and gain acceptance regionally and globally, and their conclusions indicate that the spread of specific legal norms often mirrors broader trends, such as interest in accountability (Sikkink and Kim 2013, 270–71). Additionally, other researchers have extended the justice cascade analysis to related questions, including why international human rights courts have enjoyed widespread institutional adoption (Alter 2011). The researchers suggest that developments in one court are frequently observed and implemented in sister jurisdictions (Alter 2011).

By highlighting the connection between human rights tribunals and broader norms of accountability, the justice cascade literature supports this dissertation's efforts to situate green court emergence in the broader landscape of IEL norms and principles, including access to justice and environmental justice. Moreover, by emphasizing the potential for court models to rapidly diffuse across jurisdictions, the justice cascade literature supports this dissertation's attention to mechanisms that are facilitating rapid adoption of the green court institutional model.

Additionally, this dissertation benefits from a rich literature examining judicial globalization, which provides a key foundation for this dissertation and is detailed at length in subsequent chapters. However, in broad terms, judicial globalization literature supports an emphasis on the mechanisms by which judiciaries cooperate and coordinate, the "cross-fertilization" that judges can facilitate between diverse sources of law and narrow judicial decisions, and the ways that domestic judges view themselves as participants in a global judicial effort (Slaughter 2000, 1112). Judicial globalization literature explores a range of questions with tremendous relevance to this dissertation, including how communications and information exchanges may manifest among courts (Slaughter 1994), whether domestic court judges

increasingly perceive themselves as part of a global community of courts (e.g., Slaughter 2000), and how domestic judges can serve as vehicles for promoting or incorporating international law (e.g., Burke-white and Slaughter 2006). Collectively, existing scholarly attention to judicial globalization supports this dissertation's effort to explore how judges and court employees can serve as agents of normative exchange and to better understand how domestic environmental laws and courts can interact with international institutions.

Alongside research examining the diffusion of norms within legal and judicial contexts, scholars have devoted considerable effort to exploring norm diffusion as it specifically relates to environmental issues. Here, research echoes many of the foregoing norm diffusion research themes. For instance, researchers have given considerable attention to how actors facilitate environmental norm diffusion. They echo and complement the efforts outlined above by noting broad participation in environmental norm diffusion by a range of actors. For instance, Ovodenko and Keohane (2012) show that actors including domestic governments, IOs, and private non-state actors have all contributed to the diffusion of environmental institutions, and that the mechanisms and destinations of environmental norms reflect the corresponding actors. Researchers have identified the influence of numerous actors in environmental norm diffusion, including IGOs (e.g., Haufler 2010), ROs (e.g., Torney 2015), NGOs (e.g., Schroeder 2008), and domestic actors (e.g., Hensengerth 2015).

Furthermore, researchers echo the findings of broader IR literature by recognizing the importance of interactions between actor classes in driving norm diffusion. For instance, Ovodenko and Keohane (2012, 526) posit that one set of governments can facilitate diffusion to another set of governments, if aided by multilateral institutions. Altogether, this literature directs

attention to a range of potential actors that may promote green court diffusion, and it underscores how multiple actors, motivations, or pathways can simultaneously promote green courts.

Researchers have also explored how norm diffusion shapes specific environmental regimes. For instance, many scholars have evaluated how norm diffusion influences responses to climate change. Their work has identified a diversity of state (e.g., Hensengerth 2015) and non-state actors (e.g., Betsill and Bulkeley 2006) that are engaged in diffusing climate governance norms, and it highlights a range of theoretical approaches that may be used to conceptualize the processes (e.g., Schroeder 2008). Similar efforts have been undertaken in other environmental regimes, including whaling (e.g., Epstein 2006; Sunstein 2004), forestry (e.g., Dimitrov 2005; Cashore 2002), and biodiversity (e.g., Suiseeya 2014; Epstein 2006). Since the diffusion of many of these regimes may also relate to the support of specialized environmental judiciaries, this literature is further summarized in subsequent chapters.

1. Norm implementation

Second, this dissertation relates to a rich body of literature examining how norms are implemented, and to what effect. Norm implementation literature complements many of the emphases of norm diffusion and dynamics literature outlined above. For instance, the third phase of the norm life cycle model that Finnemore and Sikkink (1998b) outline is characterized by norm internalization, or the process by which international norms are institutionalized in domestic contexts (Finnemore and Sikkink 1998b, 898). Norm internalization is often facilitated by lawyers and other domestic professionals, and it reflects broader norm dynamics (Finnemore and Sikkink 1998b).

Because norm implementation literature explores how international norms are given domestic effect and made explicit, the topic resonates among both IR and IL and builds upon both disciplines' conceptions of the term "norm." Given its mutual appeal, norm implementation studies present an avenue for unifying scholarship. Indeed, norm implementation research appears to enhance understanding of how "actors and social structures [are] mutually constituted by social practices," a research theme that Slaughter, Tulumello, and Wood identify (1998, 388) for its potential to integrate IR and IL. There is at least one instance of a research effort that explicitly seeks to address both disciplines (Wiener and Puetter 2009), and its use of constructivist IR insights to explore various norms that shape IL, including sustainable development, underscores the value of this dissertation's approach.

To date, researchers in both IR and IL have analyzed norm implementation, and this dissertation benefits from the contributions of each. Nevertheless, the IR and IL analyses have remained largely distinct. In Chapter 6, I present detailed analysis of how each discipline can benefit from this dissertation's effort, and I emphasize the disciplines' differing interpretations of norms. Here, since these differing interpretations may account for some of the disconnect between IR and IL norm implementation literature, it again merits brief mention that IR scholars generally define norms more expansively than IL researchers. Whereas IR views norms as broad standards of "appropriate behavior for actors with a given identity" (Finnemore and Sikkink 1998a, 891), IL researchers interpret norms more narrowly as "standard rules and laws" devised by the legal system to determine the appropriateness of conduct (Black 1910), and they debate a hierarchy of normative subcategories with still more precise criteria (e.g., Shelton 2006). Despite these differing interpretations, both IR and IL have generated norm implementation scholarship that supports this dissertation.

d. *IR and norm implementation*

Mirroring their attention to norm diffusion, IR scholars have evaluated the mechanisms and implications of norm implementation. First, they have considered how domestic factors shape international norm implementation. For instance, just as researchers examine how various actors promote norm diffusion, IR scholars explore how national-level institutions can capture and implement globally diffusing norms.

One robust stream of this literature examines the phenomenon of multilevel governance, a broad concept originally developed to characterize governance within the EU, but which has subsequently been employed to characterize any governance that is nested, negotiated, and contested among multiple levels or territories (Hooghe and Marks 2003). Multilevel governance may be conceived in at least two broad forms, with Type II multilevel governance denoting engagement that is "task-oriented," that emphasizes coordination across jurisdictions, and that is frequently oriented around particular policy problems (Hooghe and Marks 2003, 236–41).

Because of its attention to problem-oriented governance, the multilevel governance framework supports research that explores specific regimes and emphasizes how national-level actors interact with global institutions and norms (e.g., Pahl-Wostl 2009). As a result, it has been invoked to characterize and account for the domestic implementation of global environmental institutions and norms, including the Cities for Climate Protection Program (e.g., Betsill and Bulkeley 2004). This dissertation's approach is informed by the multilevel governance framework's emphasis of the importance of governance beyond central state authorities, and of the integrative role that multiple jurisdictions can simultaneously play in governing specific issues, regimes, and norms (Hooghe and Marks 2003).

However, research examining the role of domestic actors and institutions in norm implementation extends beyond the multilevel governance literature. Other researchers explicitly consider how domestic actors, including domestic regulatory agencies, advance international norm implementation. For instance, Maggetti and Gilardi (2014) use the case of EU member states to examine how international regulatory norms in four distinct regimes are implemented domestically. The researchers suggest that the organizational structure of domestic regulatory environments influences the degree to which they adopt and implement international norms (Maggetti and Gilardi 2014).

Similar research has been undertaken with explicit focus upon IEL norms. For example, Appelstrand (2012) uses Swedish forestry policy to examine and illustrate how domestic regulatory agencies can promote incorporation of international soft law norms. Together, the various studies support this dissertation's examination of domestic courts as pathways for incorporating IEL norms and principles. Moreover, their emphasis on the importance of context and case-specific factors highlights the value in exploring how individual courts' attributes equip them to implement norms (Chapters 4 and 5).

Just as multilevel governance and related scholarship emphasizes how domestic actors influence the implementation of international norms, researchers have evaluated the reverse: how international contexts and actors can support domestic norm implementation within domestic contexts, and how these dynamics manifest within individual environmental regimes. Like multilevel governance scholarship, much of this research emphasizes norms' iterative and contested nature, with norms both constituting and constraining domestic practices in various issue domains (e.g., Checkel 1997). Additionally, many researchers echo multilevel governance and norm life cycle research by examining how international human rights norms are given

domestic effect (e.g., Risse and Sikkink 1999; Risse et al. 1997; Risse 1999). The research offers useful insights to this dissertation by exploring how domestic elites' engagement at the international level supports norm implementation (Checkel 1997), noting that engagement by international elites can yield uneven learning and implementation across domestic contexts (Stone 2004), and signaling that various external actors can pressure domestic actors to adopt international norms (e.g., Risse 1999).

Additionally, while human rights figure prominently in norm implementation research, some research has evaluated norm implementation in the context of environmental regimes. For instance, Skjaerseth, et al. (2006) use ocean resources governance in the Northeast Atlantic to examine how the formulation of norms at the international level can either facilitate or hinder domestic implementation. They find that norms framed as hard law obligations can gain broader acceptance, but that framing ambitious objectives as soft law obligations can promote flexibility in domestic interpretation and adoption (Skjaerseth, Stokke, and Wettestad 2006). Other researchers have also explored the interaction between international norms and domestic contexts, examining regimes including ocean governance and fisheries (e.g., Dutton and Squires 2008), biodiversity (e.g., Andonova and Tuta 2014) and climate (e.g., Gehring and Oberthur 2008).

Collectively, these studies emphasize the importance of considering not only how environmental norms spread, but also a central focus of this dissertation: how domestic contexts and institutions affect the ultimate implementation of environmental norms. Moreover, the IR approach that these studies employ suggests that meaningful consideration of how individual IL norms and principles are implemented domestically also requires considering the global context that situates specific norms and actors.

e. *IL and norm implementation*

While this dissertation is grounded by IR theory, it also speaks to efforts, rooted in IL, to address the implementation of IEL norms. This presents a unique research opportunity, because while researchers have long advocated closer synergy between IR and IL scholarship (e.g., Raustiala and Slaughter 2002; A.-M. Slaughter, Tulumello, and Wood 1998) and some inroads have been made towards doing so, opportunities remain to further integrate research.

First, some existing research echoes the IR emphasis of broadly evaluating IL norm implementation. Many scholars, recognizing a close link between (domestic) internalization of global legal norms and (international) recognition of norms (e.g., Goodman and Jinks 2004), have advocated further attention to how international law norms are implemented (e.g., Redgwell 2012). Some research has pursued this objective in a broad, theoretical fashion. For instance, Krisch and Kingsbury (2006, 1) note the decline of a strict divide between domestic and international law, and emphasize the increasingly complex and interlinked nature of domestic regulation and international institutions. As Krisch and Kingsbury suggest, this decline may weaken the "ordering functions" that separate the international from the domestic and yield a more active role for domestic courts in IL (Krisch and Kingsbury 2006, 11).

Researchers examining IEL have also broadly recognized the connection between international norms and domestic judicial systems. For instance, Macrory (e.g., 2014) has examined how domestic courts shape the access to justice that a country's citizens enjoy. This broader interest in implementing access to justice dovetails closely with Robinson's assertion (2012, 364) that states increasingly view the obligation to provide access to justice within environmental disputes as a customary, normative duty under international law. As noted in subsequent chapters, these views provide motivation for countries to seek courts that can more

inclusively address environmental issues, and for courts to more expansively interpret environmental questions.

While the foregoing studies mirror many elements of IR literature, IL scholars have also undertaken norm implementation research that differs considerably from IR efforts. In many instances, scholars have explicitly considered how specific domestic courts contribute to norm implementation. For instance, many studies examine how the United States Supreme Court interprets and develops international law (e.g., Trimble 1995). Numerous efforts examine narrow questions of how domestic courts may shape IL, such as the Supreme Court's ruling in *Paquete Habana*, a key IL case (e.g., Kedian 1998; Stucky 2005). Others examine how domestic courts themselves perceive IL. For instance, writers have considered individual courts' views on international law (e.g., Benvenisti 1993; Benvenisti and Downs 2009), and many have even characterized the views of individual justices, including Supreme Court justices Blackmun (e.g., Koh 2005) and Roberts (e.g., Walton 2016). While both lines of literature employ the narrower, legal conception of norms, they reflect broad interest within legal academia in understanding links between individual courts and broad IL principles.

Additionally, as part of the effort to develop focused understanding of courts' engagement with IL, researchers have explicitly considered how IEL norms are interpreted and applied in domestic contexts. For example, Saunders (2012) examined the practices that drive domestic implementation of IEL in Canadian courts. He noted (2012, 5) the importance of judicial discretion, and observed that Canadian environmental tribunals have demonstrated a willingness to interpret environmental laws flexibly, rather than adhering strictly to more conventional legal obligations. Elsewhere, Macrory (2010) explored the mechanisms by which IEL norms are implemented in EU member states. His conclusion, that member states must

establish the necessary legal or administrative measures to support their national implementation (2010, 714), directly supports this dissertation's attention to green courts. Finally, researchers have suggested that domestic courts can play a key role in enforcing IEL (e.g., O'Connell 1995) and helping it to surmount critiques that it lacks legitimacy (e.g., Bodansky 1999). Altogether, this literature echoes suggestions by IR scholars that domestic courts may prove key to implementation of IL and IEL norms.

While this dissertation primarily draws upon insights from IR and the focused analyses of IEL scholarship, the broader IL literature also supports this dissertation in at least two ways. First, broad examinations of domestic IL implementation underscore the value of systematically evaluating IL and viewing courts as sites within an international landscape of legal norms. Second, IL scholars' more focused, legalistic analysis of how individual courts or individual norms function emphasizes the need to more fully consider the role and agency of domestic courts and judges within IL.

2. Judicial specialization

In addition to norm diffusion and implementation literatures, this dissertation benefits from a rich body of political science research examining judicial specialization. The judicial specialization literature draws upon broader judicial politics scholarship, and it examines the trend towards greater specialization within the courts (Baum 2010b, 3). Existing efforts are significant not only for exploring judicial specialization in the US, but also for characterizing it within an international context. As Wood (1997, 1761) notes, judicial specialization has gained particularly widespread acceptance within the civil law context, though many common law countries have also enthusiastically pursued the practice. As a result, many jurisdictions may

embrace judicial specialization more enthusiastically than the US, and this underscores the value in exploring green courts through a simultaneously global and local perspective. In pursuit of this effort, the judicial specialization literature supports this dissertation in several ways.

First, researchers have explored the diverse forms that judicial specialization may exhibit. For instance, researchers note that specialization frequently manifests as individual judges who concentrate on drafting opinions on behalf of their fellow justices in particular areas of law, given their unique background or expertise (e.g., Baum 2010b). Such opinion specialization is common in appellate venues, including Courts of Appeal (e.g., Curry and Miller 2015; Miller and Curry 2009) and national high courts (e.g., Damle 2005), where complex questions of law demand nuanced interpretation. At the same time, research notes that specialization can also manifest when subgroups or chambers of judges within a broader court specialize in addressing particular forms of disputes (e.g., Baum 2010b), permitting litigants to enjoy the benefits of specialization while mitigating courts' institutional overhead expenses. Finally, entire courts may be dedicated to resolving specific classes of disputes, as with the green courts that this dissertation evaluates.

Existing literature further emphasizes this diversity by noting that judicial specialization can be observed in a range of governmental sites. These include administrative appeal venues (e.g., Koch 2005), local drug and problem-solving courts (e.g., Hora and Stalcup 2008), and state and federal level bankruptcy and patent courts (e.g., Baum 1994; Miller and Curry 2009). Collectively, the literature presents a portrait of institutional diversity, even within judicial specialization, and it underscores the analytical benefit that can result from narrowly defining this dissertation's focus as outlined in Chapter 1.

Additionally, existing research evaluates how judicial specialization may affect dispute outcomes in various issue areas. Since Chapter 4 notes that many green courts are established due to a desire to improve environmental outcomes, such research is relevant to this dissertation. One area where scholars have been particularly active in studying court outcomes is in the realm of "problem solving courts," a group of institutions that includes drug courts.

For instance, Rodriguez and Webb explored recidivism among juvenile drug offenders, comparing those sentenced through specialized drug courts to a cohort sentenced by generalist courts (Rodriguez and Webb 2004). Researchers have also evaluated whether outcomes in drug courts vary based on the given drug being addressed (Listwan, Shaffer, and Hartman 2009). Their conclusion, that drug courts can effectively deal with both emergent and established illicit drugs, underscores the potential for specialized courts to be tailored to a range of societal issues. Elsewhere, scholars have examined the capacity of problem-solving courts to rehabilitate DUI offenders, and have examined the outcomes that result when mental health patients are diverted from traditional courts to a mental health treatment court (Macdonald et al. 2007).

Admittedly, the existing research characterizing problem solving courts distinguishes from this dissertation's focus in that those courts' subject matter jurisdiction is narrower. Moreover, drug court researchers can often undertake comparative empirical analyses, since many jurisdictions use both specialized courts and parallel general institutions to process drug defendants. Nevertheless, the studies highlight scholarly interest in evaluating 'efficacy' or 'effectiveness' among specialized courts (e.g. Cosden, Ellens, Schnell, & Yamini-Diouf, 2005, p. 212; Listwan et al., 2009, p. 631; Macdonald et al., 2007, p. 5 [defining and operationalizing efficacy]), and they underscore the connection between judicial specialization and a desire for improved judicial outcomes. Unlike the many foregoing drug court studies, this foundational

effort does not explicitly seek to evaluate the environmental and social outcomes that specialist environmental courts generate. Nevertheless, its efforts to develop a detailed census of existing green court models will support future comparative courts research that considers environmental court outcomes and advances this body of literature.

Additionally, judicial specialization literature has begun to explore more cosmopolitan questions. Historically, most research has been conducted within individual domestic contexts and emphasizes domestic issues and epistemologies. For instance, Al-khulaifi and Kattan (2016) examined the emergence of specialist commercial courts, but while their research acknowledged the existence of commercial courts in several jurisdictions, they limited analysis to the Qatari context. Similarly, an ad hoc committee assembled by the American Bar Association studied specialized business courts (1997), but limited its evaluation to American institutions.

Limiting the scope of analysis to a single political context is widely accepted among judicial politics scholars. In part, this approach reflects a view that variance in structural factors across political settings can frustrate meaningful comparison of courts and tribunals (e.g., Baum 2010b, 22). The resulting focused, domestic studies have yielded richly nuanced studies that address judicial specialization within individual domestic contexts, and underscore the degree to which domestic sociopolitical settings influence specialized court establishment and function. These insights are integral to this dissertation's emphasis of domestic context and actors, and they are further developed in Chapters 4 and 5.

However, the judicial specialization literature has also begun to undertake more systemic, global analysis. For instance, a 2012 study conducted by Amigo Castañeda and others (2012) critiqued specialized courts analyses that employ a purely domestic perspective, and instead advocated multi-case analysis of specialized courts across countries (2012, 1). While the authors

focused upon specialized intellectual property (IP) courts, rather than environmental courts, their claim that cross-national comparisons can aid in developing best practices insights with relevance among domestic contexts supports the global approach that guides this dissertation. Likewise, existing literature examines the role of domestic specialized courts in shaping foreign policy. For instance, Hansen, Johnson, and Unah (1995) highlight how the US Court of International Trade influences foreign trade policy through its rulings and interpretation of precedent, and Baum (2010a) explores the role of immigration courts in engagement with US immigration policies. This dissertation relates to both efforts by examining how global processes affect domestic judicial specialization.

In addition to benefiting from multiple debates in judicial specialization, this dissertation contributes to the literature in several respects. First, as noted above, existing literature has surveyed specialization within individual courts. For instance, scholars have examined issue specialization among individual justices on the U.S. Supreme Court and U.S. Courts of Appeal, identifying potential positive and negative outcomes of the practice. For example, researchers have noted that specialization can increase efficiency, beneficially distribute labor among justices in technical areas, and enhance the credibility afforded to Court opinions (e.g., Brenner and Spaeth 1986), but might also allow judges with specialized expertise to exert more weight than their fellow judges and yield opinions that are more ideologically-driven (Miller and Curry 2009, 44). By developing nuanced understanding of green court diversity, this dissertation will provide a foundation for future research examining whether, and how, trends of specialization manifest within the environmental context.

Likewise, researchers have examined how standalone specialist courts address complex issues. For instance, researchers have long considered how specialized federal patent courts

might effectively address the unique attributes of patent litigation (e.g., Kesan and Ball 2011; Gausewitz 1972, 1087). Researchers have also examined specialized administrative courts; their studies have generated relevant observations, including the argument that, to be effective, a specialized courts' subject matter should be clearly demarcated from other issue areas (e.g., Bruff 1991, 339). Given this dissertation's attention to how environmental courts are defined, and how this may in turn affect their function and evaluation, the research presented in subsequent chapters will contribute directly to judicial specialization literature examining the influence of institutional form upon judicial outcomes.

3. Theoretical Foundation

As the preceding section details, existing literature in several disciplines provides interdisciplinary insight relevant to this dissertation and its evaluation of how green courts engage with international norms. However, this dissertation topic's interdisciplinary nature demands that research have a clear theoretical foundation, since, as Slaughter, Tulumello, and Wood (1998, 385) urge, "interdisciplinarity is not an end in itself." Rather, researchers advance the aim of integrating insights from multiple disciplines when they acknowledge and embrace the unique contributions and foundations of the respective fields (e.g., Slaughter, Tulumello, and Wood 1998). Therefore, conducting this dissertation with a firm footing in constructivist IR, and specifically global environmental governance ("GEG") scholarship, will enable the dissertation to integrate insights from the foregoing fields while also contributing meaningful theoretical development.

In particular, as noted above, processes of norm diffusion, evolution, and implementation are particularly amenable to an approach grounded in IR. While IR theory historically concerned

itself with state relations in the international system (e.g., Wendt 1992, 392), contemporary IR scholarship emphasizes the interactive nature of states, the international community, and networks of expert actors. The 'constructivist turn' in IR focused attention on how structures and agents interact, how interests and identities form, and how norms shape each (Checkel 1998, 326). By emphasizing both agents and structure, constructivist IR has helped to emphasize domestic institutions and political culture by highlighting factors that resonate beyond the systemic level (Hopf 1998, 198).

As a result, constructivist IR is ideally positioned to support this dissertation. Specifically, because this dissertation emphasizes diverse actors which operate across scales, and because it highlights the spread of norms and values, the research presented herein will be oriented by constructivist global governance scholarship. Global governance is an expansive school of IR scholarship that employs constructivist insight (see, e.g., Litfin 1999). As Rosenau (1995, 14) notes, governance scholarship "encompasses the activities of governments, but…also includes the many other channels through which 'commands' flow in the form of goals framed, directives issued, and policies pursued'" (see also Finkelstein 1995, 14).

Global governance scholarship is oriented by distinct research emphases, including: (1) a broad analytical scope spanning a range of global actors and issues, including human rights and the environment; (2) attention to how rules shape actors' engagement with world politics; (3) and a conception of world politics that is "more complex and dynamic" than traditional IR approaches might present (Hoffmann and Ba, 2005: 5-6). As Biermann (2004, 8) urges, global governance reflects certain discernible characteristics, including a networked presentation of the efforts undertaken by both public and private actors. Similarly, global governance reflects "an increasing segmentation of different layers and clusters of rule-making and rule-implementing"

(Biermann 2004, 8), and it enables scholars to observe the existence of horizonal, parallel, and complementary rulemaking processes (see also Rosenau 2007). Each of the foregoing emphases will orient the analysis of specialist judicial institutions presented in subsequent chapters.

The global governance approach also encompasses the subdiscipline of GEG that is especially relevant to green courts research. As its name implies, GEG examines the nexus of global governance and environmental issues, and it considers their intersection in the context of diverse environmental regimes (e.g., Speth and Haas 2006).

GEG research mirrors broader global governance scholarship by examining how, increasingly, agency is exercised by a diverse range of actors, and not just by national governments (Biermann and Pattberg 2012: 6). In examining the shift from exclusive state authority, GEG is theoretically pluralistic and employs multiple frameworks and approaches to generate insights with relevance to both scholars and policy practitioners (O'Neill et al. 2013, 444).

Moreover, GEG scholarship routinely examines questions involving complex systems, multiple layers of governance, and evolving forms of authority (O'Neill et al. 2013, 446). Within individual issues and specific issue regimes, GEG explores how various processes are employed in an attempt to resolve "diffuse and difficult" contemporary environmental challenges (DeSombre, 2014, p. 591). GEG scholarship provides an ideal theoretical foundation for examining green courts' emergence, diffusion, and implications, since each of the foregoing characteristics (complexity, institutional overlap, state cooperation, and the diffuse and difficult nature of issues subject to regulation) are reflected by green courts and the subject matter that they seek to address.

Furthermore, GEG provides an ideal theoretical foundation for evaluating green courts because it has frequently been employed to address closely-related issues and questions, including the role of transnational initiatives within various environmental regimes. For example, researchers note that efforts at multiple governance scales draw upon diverse individual and institutional capacities to address climate change (e.g., Bulkeley et al. 2014).

Similarly, GEG scholarship has been broadly employed to examine the contributions of actors that operate subnationally but engage with global environmental questions (Biermann and Pattberg, 2012, p. 6). While such research emphasizes the role of nonstate actors in environmental governance, it also highlights how governmental agencies, international bureaucracies, and other forms of state engagement contribute to the governance landscape (Biermann and Pattberg, 2012, p. 6). Moreover, GEG research notes that as globalization alters state relations, states continue to perform norm production functions, given their unique capacity to establish national laws and regulations that enshrine the principles of international treaties (Compagnon, Chan, and Mert, 2012, p. 252). Additionally, Compagnon, Chan, and Mert (2012) acknowledge that states can alter global norms as they implement them, in order to match domestic agendas. Compagnon, Chan, and Mert state (2012, 252) that "there are probably as many legal embodiments of the precautionary principle as independent states," thus reflecting the attention to global diversity in norm interpretation and implementation that motivates much of this dissertation.

In all, the constructivist theoretical grounding that orients GEG, coupled with its analytical focus on norms, equips GEG to analyze green court proliferation. By viewing the spread of green courts and their contributions to norm implementation as an instance of global environmental governance, this dissertation offers system-level insight into the institutions'

emergence and implications. Additionally, by proceeding in a theoretically explicit fashion, this dissertation contributes broader insights to GEG and to researchers who examine green courts.

4. Conclusion

This chapter detailed a focused green courts analytical approach that is rooted in constructivist IR and GEG, yet that speaks to broader IR, IL, and judicial specialization scholarship. As it argued, this approach enables the dissertation to benefit from-and contribute to-ongoing research examining how actors and institutions seek to shape environmental norm dynamics. In particular, this existing research has developed useful insights regarding the diffusion of institutional norms, the implementation of IEL norms, and the nature and outcomes of specialized courts. While this literature examines the spread of norms in various issue areas, its direct consideration of how actors seek to promote the spread of institutional norms has remained limited.

Nevertheless, researchers are particularly explicit in advocating further consideration of actors' roles in norm diffusion. For instance, Graham, Shipan, and Volden (2012) note that numerous diffusion studies examine the extent and spatial distribution of various governmental policies without fully considering the actors that help to engender those policies. In response, they encourage study of the roles played by "internal actors," "external actors," and "go-betweens" (Graham, Shipan, and Volden 2012, 684). In Chapter 3, I respond to this call for more explicit evaluation of norm diffusion actors in GEG by examining the actor classes that promote green court diffusion, and by characterizing the tactics that those actors employ in an effort to advance an institutional norm favoring green courts.

CHAPTER 3. ACTORS, AGENCY, AND THE DIFFUSION OF DOMESTIC "GREEN" COURTS

1. Introduction

The emergence of specialized environmental judiciaries, or "green courts," has received increasing scholarly attention. Existing research underscores the speed at which green courts are spreading, as well as their tremendous institutional diversity (*see* Chapter 1). The rapid emergence of green courts holds many potential environmental governance implications, including that the institutions may resolve domestic environmental disputes more efficiently than existing institutions, and that they may facilitate access to environmental justice (e.g., Robinson 2012). However, the emergence of green courts also raises key questions about *why* and *how* their rapid spread is occurring.

The IR literature emphasizes the importance of international norms, or "collective expectations about proper behavior for a given identity," in advancing the diffusion of institutional models and policy preferences in diverse issue areas (Jepperson, Wendt, and Katzenstein 1996, 54). International norms have proven key to driving domestic institutional establishment, policy evolution, and institutional modification to better harmonize with international practices (e.g., Checkel 1999; Cortell and Davis 1996; 2005; Risse-Kappen, Ropp, and Sikkink 1999; Finnemore 1996).

While norms can shape institutional emergence and evolution, they do not arise in a vacuum, nor do they spread of their own accord. Rather, norm diffusion reflects a purposive process, and norms require actors to facilitate their exchange (Acharya 2013). The agents who diffuse norms and advance their domestic adoption perform entrepreneurial functions, translating

norms between international and domestic arenas (Finnemore and Sikkink 1998a). Actors who promote norms frequently engage in cross-national exchange; they embrace particular norms through "persuasion/learning," seek to solve domestic problems, and work to "secure [norms'] internal and external legitimacy" (Jörgens 2004, 250). Similarly, they help to localize norms within domestic contexts by advancing "processes of institutionalization and habituation" (Capie 2010, 11, 16). In short, actors are key to both the "bottom-up" and "top-down" processes of global norm diffusion (Checkel 1999, 95). Therefore, in addition to characterizing the emergence and diversity of existing green courts, researchers should also determine who is promoting their spread, and how.

This chapter acknowledges the proliferation of specialized environmental courts and tribunals. As the previous chapter notes, existing studies have documented an increase from approximately 350 such institutions in 2009 (Pring and Pring 2009a) to more than 1,200 by 2016 (Pring and Pring 2016). Similarly, this chapter recognizes the existence of a robust IR literature detailing the global diffusion and domestic adoption of both environmental institutional and legal norms. It contributes to these efforts by evaluating the following question: *who* is promoting a norm favoring establishment of specialized environmental judiciaries? Furthermore, it explores *how* norm diffusion actors are shaping domestic legal institutions, considering the ways by which actors seek to facilitate normative exchange and dialogue.

This chapter examines these questions through detailed qualitative analyses of primary documents, secondary literature, original expert surveys, and semi-structured elite interviews. It triangulates these data to identify the actors that have proven most active in promoting an institutional norm favoring green courts, and the techniques that those actors have employed. To detail this process, the chapter first reviews the existing environmental and legal norm literature.

Next, it outlines the qualitative methods that will facilitate analysis of the actors engaged in diffusing a norm favoring green courts. It third presents the resulting findings, and then concludes by discussing their implications to our understanding of legal norm diffusion, broadly, and of green court norm diffusion, specifically.

2. Agents of Norm Diffusion

This chapter contributes to a rich literature documenting the role of various actors as agents engaged in efforts to promote norm diffusion. While existing literature has not directly evaluated the mechanisms that are facilitating diffusion of green courts, it has examined related questions. In particular, scholars have evaluated the role of agency in the diffusion of legal and environmental norms.

First, legal scholars have noted that domestic actors, including judges, increasingly view themselves as participants in a global community of legal norm exchange. Widespread attention to this exchange, and to the important role of judicial actors in advancing legal norm diffusion, has existed for at least 20 years. Slaughter (1997, 184) emphasized the importance of a dense, transgovernmental network of disaggregated legal actors-"courts, regulatory agencies, executives, and even legislatures…[who] are networking with their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order."

While Slaughter (2004a, 69) identified five distinct mechanisms by which judicial interaction occurs,[2] her work collectively emphasizes that there are expanding opportunities for domestic judges and courts to interact with one another, creating "information networks,

[2] These include "relations between national courts and the European Court of Justice (ECJ) in the European Union (EU); interactions between the European Court of Human Rights and national courts; the emergence of 'judicial comity' in transnational litigation; constitutional cross-fertilization; and face-to-face meetings among judges around the world (Slaughter 2000, 1104).

enforcement networks, and at least nascent harmonization networks." Slaughter's work (2003, 193) emphasized the key role of exchanges between domestic judges, who "face common substantive and institutional problems; …learn from one another's experience and reasoning; and…cooperate directly to resolve disputes."

Judicial networks are widespread, intergovernmental in character, and instrumental in providing opportunities for judges in diverse countries to collaborate in the development of issue-specific public policy (Stone 2008, 28). Through frequent learning, information exchange, and education, judges can promote policy convergence and compliance with international legal regimes (Slaughter 2004b). In addition to facilitating global norm exchange, judges and other domestic actors are well-equipped to support domestic implementation of global legal norms by using their unique powers and positions within domestic political systems (Slaughter 2004b, 303).

The role of judges in norm diffusion is especially well-documented within the human rights context. There, judges can draw upon sister jurisdictions' interpretations of key principles and decisions issued by regional and international tribunals (Slaughter 2004a, 79–82; 2000, 1109–12). However, researchers have also alluded to the potential for legal norm diffusion to occur in the environmental context, noting that:

> The United Nations Environment Programme (UNEP) and the INECE-itself a regulators network-organized a Global Judges Symposium in conjunction with the UN Conference on Sustainable Development in Johannesburg. The symposium brought together over one hundred of the world's most senior judges from over eighty countries to discuss improving the adoption and implementation of environment-related laws. (2004a, 66)

In sum, the influence of exchanges among domestic judges in many issue areas suggests that judicial interactions merit careful consideration as a potential mechanism to diffuse an

institutional norm favoring the establishment and operation of green courts across political jurisdictions.

Second, environmental politics scholars have evaluated how a range of actors and mechanisms have contributed to efforts to diffuse environmental norms. The resulting literature identifies various institutional and individual actor classes that, alongside judges, merit consideration as potential contributors to the promotion of the green court institutional model.

First, researchers identify an active role of intergovernmental organizations (IGOs) in diffusing environmental norms. IGOs perform numerous functions, including "provid[ing] information exchange, disseminat[ing] best or good national practices and…reward[ing] or blam[ing] national policy performance" (Tews 2005, 67). The UN has been particularly active in promoting environmental norm diffusion through its environmental organ, UN Environment (formerly the UN Environment Programme, or UNEP) (e.g., Clapp and Swanston 2009, 321). UN Environment produces influential reports and promotes the role of science in addressing environmental challenges (Epstein 2006, 40). However, the UN does not work in isolation; it is accompanied by many other international organizations, including the World Bank and OECD, that promote environmental norm diffusion and policy development (Tews, Busch, and Jörgens 2003, 573).

Second, environmental politics scholars emphasize the importance of regional organizations ("ROs") and the effectiveness of a regional approach to efforts to promote the diffusion of norms. While IGOs may advance global efforts to marshal resources and establish new environmental institutions (e.g., Conca 2012, 127), a narrower, regional scale can prove more conducive to promoting norm diffusion and "benefit from enhanced commonalities in a particular environmental challenge, greater familiarity with key actors, and the ability to tailor

mitigating action to a smaller than global constituency" (Balsiger and Vandeveer 2012, 3). ROs, including the Association of Southeast Asian Nations (ASEAN) and the Asian Development Bank (ADB), have been identified as active in promoting norm diffusion (e.g., Hensengerth 2015). Researchers have noted the ability of ROs to frame or localize norms and identify local actors who can lend their credibility to advance norm adoption (Acharya 2004, 248).

Third, nongovernmental organizations (NGOs) are widely identified as advancing environmental norm diffusion. NGOs are equipped to perform a range of functions that can advance norms, including securing funding, facilitating information exchange, fostering mutual learning, and helping to secure expertise (Schroeder 2008, 520). Functionally, NGOs can advance international agendas and construct coalitions of various actors, including states and international organizations, to collectively promote norms (Haufler 2010, 57). NGOs can also serve as sources of authority, formulating rules that states and firms can ascribe to (Bernstein and Cashore 2012, 590; Tews 2005, 78). In short, NGOs are equipped to advance efforts to promote the diffusion environmental norms in various ways, first by helping to select the norms that will be advanced, later by aiding with their spread, and ultimately by collaborating with governments to secure compliance with norms (Epstein 2006, 45).

Fourth, existing research emphasizes the importance of international symposia, as well as formal and informal international professional networks. Though often less physically institutionalized and more ephemeral than IGOs, ROs, or NGOs, international symposia and networks nevertheless receive frequent reference as key facilitators of environmental norm diffusion. As Haas (2002, 77 [emphasis added]) notes, effective environmental conferences and symposia advance environmental "agenda setting, consciousness raising, expanded participation, monitoring, knowledge generation and diffusion, target setting, *norm development and diffusion*,

and administrative reforms." Similarly, environmental expert networks can "provide…a forum for policy makers to share information, learn from experiences, and promote the spread of environmental strategies" (Busch, Jorgens, and Tews 2005, 155). These networks may be identified in diverse issue areas, including planning, local environmental regulation, and eco-labeling (Tews, Busch, and Jörgens 2003, 573). In addition to facilitating collaboration and information diffusion, networks, alongside international symposia, can also help to standardize the norms that are promoted within a given environmental issue regime (e.g., Haufler 2010).

Fifth, just as judicial globalization literature emphasizes the role of individual domestic judges, environmental norm diffusion scholarship highlights the contributions of key individuals. Key individuals can contribute the necessary agency to diffuse norms and policies at the global level (e.g., Nadelmann 1990). Likewise, individuals can operate within domestic contexts, where they can help to localize global norms and reinforce locally-held values (Acharya 2004, 248). Finally, studies emphasize how environmental norm diffusion relies upon individual determinations that conservation is a worthy political objective (e.g., Stern, Dietz, and Black 1986). Thus, the existing literature emphasizes that institutional contributions to norm diffusion are frequently complemented and facilitated by actions of key individual actors.

In sum, the existing literature indicates that environmental norm diffusion reflects the efforts of institutional and individual actor classes, including IGOs, ROs, NGOs, international networks and symposia, and key individuals. Moreover, the literature suggests that additional actor classes may contribute to environmental norm diffusion, though these are likely to vary by regime; some examples include businesses and industry professionals (e.g., Clapp and Swanston 2009), domestic governments (e.g., Delmas 2002), and consultants (e.g., Dingwerth and Pattberg 2009). The diversity of environmental norms and the range of potential actors that may be

engaged in their promotion suggests that efforts to characterize engagement with a norm favoring green courts will benefit from a flexible and expansive approach.

3. Methods and Assessment Mechanism

This chapter undertakes qualitative analysis to characterize the actors who seek to promote the spread of green courts and to identify the mechanisms that they have employed to facilitate this process. A qualitative approach is well-suited to assessing "policy transfers, norms, and the like" (Graham, Shipan, and Volden 2012, 674 [at FN2]) and has been employed elsewhere by GEP scholars to advance the study of norm diffusion (see, e.g., Paterson et al. 2013). The approach also aligns with existing transnational legal studies and analysis (Whytock et al. 2009). Much of the existing research utilizes qualitative research methods, coupled with judicial decision-making literature developed by political scientists and legal scholars, to characterize legal norm diffusion (Whytock et al. 2009, 116–17). Using a qualitative approach in a focused issue area can also generate broader GEP insights (see Steinberg 2014).

I collected the qualitative data for this chapter using a two-step process. In the first phase, I reviewed existing literature and publications for indicia of actors identified as key to green court diffusion. To do this, I first conducted an Internet search for professional reports, publications, and statements that advocated, characterized or evaluated environmental courts and tribunals. This process yielded 16 unique sources that directly reference the institutions (Appendix 1). Second, I searched online databases to compile all existing academic publications that directly reference green courts, environmental courts and tribunals, or judicial specialization for the environment. This process yielded 43 academic sources and enabled me to evaluate the existing green courts literature (Appendix 1). I read each foregoing source in its entirety and used

the coding approach detailed below to document all observed references to actors and approaches that have supported green court establishment.

In the second phase, I collected primary data by distributing an expert survey and conducting elite interviews among leading green court practitioners and scholars. The expert survey encouraged respondents to identify the actors they perceived to be responsible with promoting the diffusion of green courts (Appendix 2). I included questions that specifically solicited information about the role of many of the actor classes identified in the foregoing literature review: IGOs, ROs, expert groups, and judicial networks. However, to accommodate differences in respondents' interpretation of these terms, and to encourage insights that might extend beyond these actor classes, I also provided an open-ended prompt encouraging respondents to identify additional actors that they viewed as key to efforts to promote the diffusion of green courts. Finally, I prompted respondents to discuss their perceptions of green court efficacy, and these responses supported analysis in subsequent chapters (see Chapters 4 and 5).

Once developed, I uploaded the expert survey questions to Google Forms, a platform which enables distribution, compilation, and visualization of responses. I then developed a list of individuals who satisfied at least one of three criteria: (a) existing contributions to green courts or related scholarship, (b) documented engagement with green courts, (c) position as a green court judge. In total, I identified 70 potential respondents; for each, I sent a personalized email explaining the intent of my study, noting why I felt that individual's unique insight would be beneficial, and inviting their participation. I also sent personalized follow-up messages to all those who did not initially complete the survey, ensuring that I made at least two attempts to secure a response from each individual (outreach records on file with author).

To further expand my expert survey target audience, I distributed my survey link to the IUCN's World Commission on Environmental Law (WCEL). The WCEL represents "a network of environmental law and policy experts from all regions of the world," and is a selective organization with global membership of approximately 1,200 individuals (IUCN "About WCEL" 2018). I distributed an email accompanying my survey to the full WCEL listserv; it noted the study objective, and encouraged participation from all recipients who felt qualified to offer insights.

In all, the expert survey yielded 30 unique responses (Appendix 3). Of these responses, eighteen were individuals directly targeted in the survey distribution, while the balance responded to the WCEL solicitation. Respondents were well-distributed geographically; the greatest number resided in Asia (45%), though at least two responses were submitted by experts from each of the following regions: Western Europe, Latin America & the Caribbean, Oceania, and the United States (one response also received from Eastern Europe; see Figure 3.1). Similarly, respondents possessed diverse green courts experience. While most were practicing attorneys (43%) or legal scholars (57%), I also received responses from four judges, ten additional academics, and five employees of international, regional, or intergovernmental organizations (Figure 3.3).[3] All but 24 percent of respondents held at least six years' experience with green courts (Figure 3.2).

[3] To gain the most accurate sense of respondents' familiarity with green courts, individuals were permitted to identify multiple capacities in which they had engaged with green courts. Accordingly, the total percentage of backgrounds exceeds one hundred.

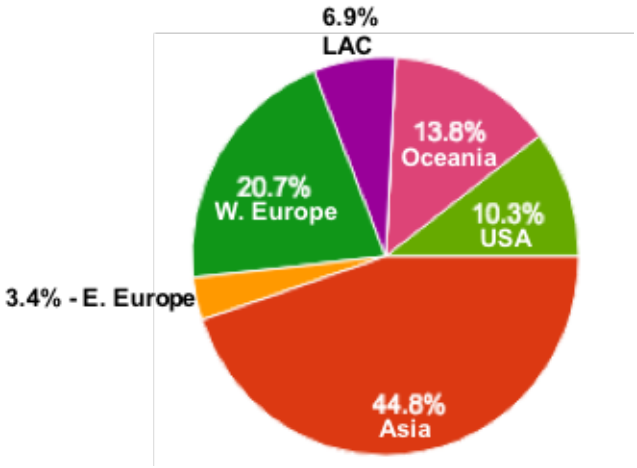

Figure 3.1. Expert survey respondents' location.

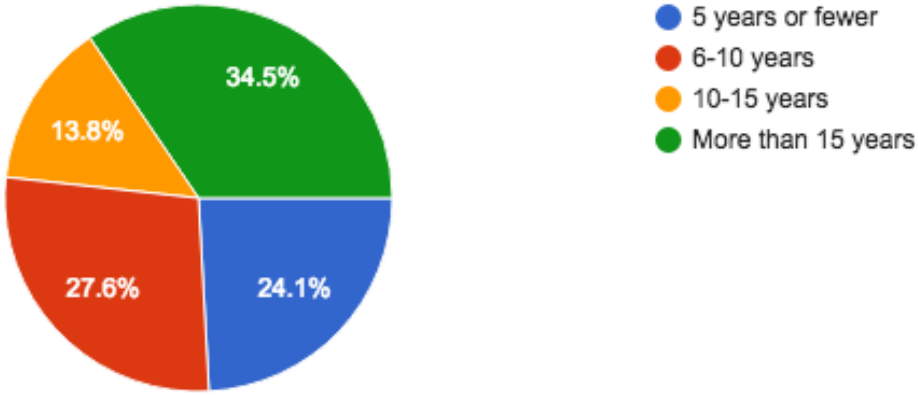

Figure 3.2. Expert survey respondents' familiarity with green courts.

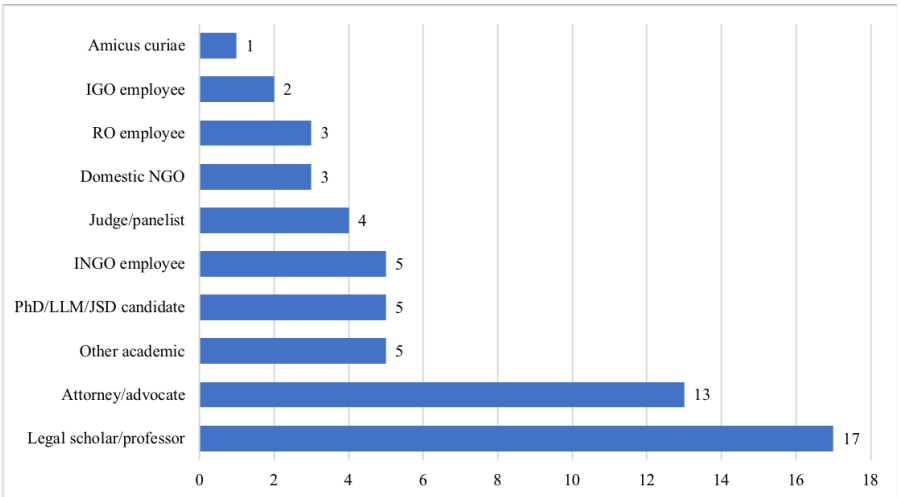

Figure 3.3. Expert survey respondents' professional background.

Finally, I complemented my document review and expert survey with a suite of eight semi-structured elite interviews (Table 3.1). The interviews solicited insight from the most qualified field experts on the topics covered by the survey. Accordingly, interview topics mirrored the expert survey's focus on identifying actors engaged in efforts to promote green court establishment, mechanisms used by actors in an effort to promote green court spread, and the potential role of green courts in implementing IEL. Each interview was conducted in semi-structured fashion via Skype or telephone; all interviews except one were recorded and subsequently transcribed, verbatim, for textual analysis. One interview was recorded using hand-written notes, which were immediately expanded and clarified. Overall, the elite interview process benefited tremendously from the caliber of interviewees (Table 3.1), as well as the detail that the interview respondents provided.

Table 3.1. Interviewees' positions and affiliations.

Name	Position(s); Affiliation(s)
Dr. Sherrie Baver	Professor of Political Science; City University of New York
Dr. Liz Fisher	Professor of Environmental Law; Oxford Law School
Dr. Gita N. Gill	Professor of Environmental Law; Northumbria Law School
Richard Macrory CBE	Barrister; Brick Court Chambers Professor *emeritus* of Environmental Law; University College London
Elizabeth M. Mrema	Director, Law Division; UN Environment
George W. "Rock" Pring	Professor *emeritus*: Denver Sturm College of Law Director; University of Denver Environmental Courts and Tribunals Study
Nicholas A. Robinson	University Professor on the Environment and Distinguished Professor of Environmental Law *emeritus*; Pace University
Hon. Meredith Wright	Distinguished Judicial Scholar; Environmental Law Institute Judge (ret); Vermont Environmental Court

To complete and document all chapter analyses, I used QSR NVivo for Mac 12, a software program that facilitates qualitative and multimethod data analysis (QSR International 2018). During coding, I sought indicia of the categories identified by the foregoing literature review, while also remaining responsive to additional trends and themes indicated by the source data (e.g., McNabb 2015; Creswell and Plano Clark 2018).

I pursued two objectives when reviewing the resulting data. First, I sought to triangulate among data sources to identify the individual and institutional actors who were most actively engaged in efforts to promote green courts. To note both general and focused trends, I documented all references to broad actor classes (e.g. IGOs, ROs, NGOs) and specific actors (e.g., United Nations, Asian Development Bank, World Wildlife Fund), and I then created a node for each.[4] I coded each text section referencing a given actor within a source document as a distinct coding instance. This permitted me to review the relative frequency of references to given actors, and it enabled me to note the relative depth of 'coverage' that each actor received within the source documents.

Second, having identified the actors engaged in green court norm diffusion, I evaluated the functions attributed to them. I did so by reviewing each coded instance identified above and assigning it two additional values: a "case" code documenting the relevant actor class, and a "theme node" documenting the mechanism which the text suggested that actor had utilized to promote or diffuse green courts. Together, these two data points permitted me to sort and rank the approaches and mechanisms by which different actors seek to contribute to norm diffusion.

[4] During the recode process, the norm diffusion activities attributed to 'courts' were reassigned to either 'judges' or 'domestic governments,' in an effort to permit clearer distinction between governmental and individual actors in the analysis of norm diffusion processes.

4. Findings

By evaluating the data collected for this chapter, I coded 552 individual references; together, these data indicate that 14 distinct actor classes are engaged in shaping the dynamics of green court diffusion (Table 3.2). In particular, I found evidence that five actor classes are particularly active in seeking to promote green court spread: domestic governments, academia, judges, ROs, and NGOs. Additionally, as Appendix 4 indicates, I found that certain individual actors within the 14 actor classes were frequently identified as playing an active, outsize role in efforts to promote green courts. For instance, 54 of the 66 references to ROs specifically referenced engagement by the Asian Development Bank, 21/31 references to IGOs emphasized contributions by UNEP/UN Environment, 27/63 NGO references highlighted the role of the IUCN, and 26/72 references to academics noted the role of George and Catherine Pring at the University of Denver's Sturm College of Law.

Table 3.2. Actor classes in green courts norm diffusion.

Actor Class	# Coded References (%)	# of Source Documents
Domestic governments	90 (16.3%)	39
Academia	72 (13.0%)	31
Judges	66 (12.0%)	31
Regional organizations	66 (12.0%)	14
NGOs	63 (11.4%)	16
Judicial networks	53 (9.6%)	20
Courts	44 (8.0%)	27
IGOs	31 (5.6%)	17
Other individuals	25 (4.5%)	13
International symposia	24 (4.3%)	19
Citizens	7 (1.4%)	6
Media	5 (0.9%)	3
Business & industry	4 (0.7%)	4
Attorneys	2 (0.4%)	2
Total	**552 (100.1%)**	**-**

Additionally, I found that 355 of the references provided insights that helped to illustrate the strategies used by the foregoing norm diffusion actors to advance green courts. In all, I noted that actors engage in nine distinct functions that can promote norm diffusion (Table 3.3).[5] Among these functions, I found most frequent reference to three: advocating green court establishment, exchanging information or facilitating dialogue, and offering recommendations or outlining benefits. However, as Table 3.3 shows, I found evidence for a wide range of additional functions including research, training, and even resisting or failing to adequately support green court establishment. Overall, my analysis of the data suggests that there is not only broad variation in the degree of activity undertaken by the thirteen actor classes, but also in the nature of techniques and activities that those actor classes employ (Table 3.4).

Table 3.3. Green court norm diffusion practices.

Norm Diffusion Mechanism	# Coded References (%)	# of Source Documents
Advocating	108 (26.0%)	32
Exchanging information or facilitating	94 (22.7%)	33
Offering recommendations or outlining benefits	65 (15.7%)	30
Researching	38 (9.2%)	24
Creating	34 (8.2%)	24
Training	23 (5.5%)	10
Entrepreneurship	21 (5.1%)	9
Resisting, not supporting, or providing insufficient support	15 (3.6%)	11
Receiving information	17 (4.1%)	7
Total	**415 (100.1%)**	**-**

Finally, the data collected for this chapter emphasizes that even the most widely referenced activities undertaken in support of green court establishment have been performed by

[5] The number of coded instances (415) exceeds the number of references (355) because some coded instances referenced more than one actor class and, thus, were coded at more than one norm diffusion actor node.

diverse actor classes, rather than being spearheaded by a single actor or actor class. For instance, the findings suggest that 11 of the 13 identified actor classes are engaged, to at least some degree, in advocating green court establishment (Table 3.4); these range from the most-frequently coded actor class, domestic governments (90 coded references total; 9 references to advocacy), to those that received infrequent reference, such as citizens (7 coded references total; 5 references to advocacy).

Similarly, although the level of identified engagement varies by actor class, the data suggests that diverse individual and institutional actors are engaged in efforts to exchange information, facilitate information exchange, and offer recommendations and outline green court benefits. For instance, even though only four coded references identify efforts by business and industry, the findings nevertheless suggest that these actors actively supported the establishment of Chilean green courts due to belief that more standardized environmental adjudication would increase stability and predictability for the business community. Likewise, although domestic governments were most frequently coded for their actions in support of "creating" green courts (30 references out of 75 total), and this would presumably occur after another actor class advocated their establishment, five instances noted domestic court engagement in offering recommendations or outlining green court benefits.

5. Discussion

As the foregoing findings illustrate, numerous actors and institutions have endeavored to advance green court diffusion, and they have employed diverse techniques to seek to advance this spread. Despite this breadth and diversity, the qualitative data collected for this chapter support several conclusions regarding green court norm diffusion trends and their implications

for IR theory. In particular, this study notes three trends and roles that have shaped the green court diffusion landscape: (1) "norm entrepreneurs," which have primarily included judicial actors; (2) "norm catalysts" that reinforce conclusions from the transjudicialism literature and have primarily included IGOs, ROs, and judicial networks; and (3) structural "normative disconnects," which have limited the diffusion of green court insights by inhibiting exchange across certain actor classes.

Table 3.4. Norm diffusion practices, by actor class.

Nodes	Academics	Judges	Domestic governments	Regional Organizations	Judicial networks	NGOs	IGOs	International symposia	Other individuals	Attorneys	Citizens	Business & industry	Total
Advocating	12	22	9	13	4	16	9	4	6	4	5	4	108
Exchanging information or facilitating	10	20	5	16	17	4	8	14	0	0	0	0	94
Offering recommendations or outlining benefits	30	10	5	9	5	1	2	1	2	0	0	0	65
Researching	24	5	4	4	0	1	0	0	0	0	0	0	38
Creating	0	1	30	2	1	0	0	0	0	0	0	0	34
Training	2	1	4	4	5	2	2	2	1	0	0	0	23
Entrepreneurship	1	11	3	0	0	0	0	1	2	3	0	0	21
Receiving information	0	5	9	0	1	0	0	0	1	1	0	0	17
Resisting, not supporting, or providing insufficient support	4	0	6	0	0	2	1	0	1	0	1	0	15
Total	83	75	75	48	33	26	22	22	13	8	6	4	415

a. *Norm entrepreneurs: extensive influence of judicial actors*

First, the findings strongly suggest that certain key actors, or 'norm entrepreneurs,' have sought to champion diffusion of an institutional norm favoring green court establishment. As Finnemore and Sikkink (1998b, 896) noted, "norms do not appear out of thin air; they are actively built by agents having strong notions about appropriate or desirable behavior in their

community." These actors seek to modify the conduct of others to align with "preferred norms" (Abbott and Snidal 2009, 425 FN 15). They do so by facing "firmly embedded alternative norms and frames" and competing "with other norms and perceptions of interest" (Finnemore and Sikkink 1998b, 897). In environmental issue domains, both individuals and institutions (e.g., international organizations and NGOs) have been characterized as norm entrepreneurs key to the spread of norms (Park 2005, 115; Grigorescu 2002). Similarly, the spread of legal institutional norms has been linked to norm entrepreneurs, who help to embed norms in domestic settings (e.g., Raustiala 1997). Entrepreneurs align norms with settled practice (e.g., Goodman and Jinks 2004), and they permit importing jurisdictions to avoid "the (often considerable) expense of creating the regulatory institutions they adopt" (Raustiala 2002, 59).

This chapter's findings highlight that both individual and institutional norm entrepreneurs have sought to advance the global spread of green courts. However, while numerous actor classes are identified for their efforts to advocate green courts and undertake "entrepreneurship," including domestic governments, regional organizations, and NGOs, judges receive the most frequent reference here (Table 3.3). The data underscores the active engagement of judges in seeking to promote the spread and structure of green courts across domestic contexts. For instance, sources note that "we could define the establishment of a Green Tribunal in India as a 'judge-driven reform'" (Amirante 2012, 456) and state that in China "there are judges…that [along with universities] were given the lead to develop the principles and the scope of the [Green] court" [6] (Amirante 2012).

Many of the actions attributed to specific judges align with the functions of "norm entrepreneurs" as described by IR scholars. For instance, in the UK, "there was a Lord Chief Justice who said 'I think we need an environmental court'" and subsequently championed the

[6] Author's interview with Nicholas Robinson, via phone, October 2017.

idea.[7] Other judges, including Benjamin Antonio from Brazil and green court justices in India, have actively sought to promote green court establishment and information exchange.[8] The sources also note the considerable efforts of judges, generally, stating that "independently and successively, judicial authorities in all regions have determined that without providing more specialized environmental judicial authority, environmental legislation is too randomly applied and enforced" (Abed de Zavala et al. 2010, 2).

Further, interviewees noted the entrepreneurial engagement of certain judges who attend environmental law conferences. As they stated, those judges would then "go back [home] and say:

> 'Well, you know, I'd like to do this full time.'… [becoming] the spark plug around which the ECT movement gravitates…Individual judges and justices get bitten by the bug as I mentioned…and become real Johnny Appleseeds, real proponents of it around the world.[9]

One green court judge, Brian Preston, Chief Judge of Australia's New South Wales Land and Environment Court, was repeatedly identified as emblematic of the entrepreneurial green court judge. Preston, in his capacity as jurist on the NSW LEC, has complemented his judicial opinions with numerous articles geared towards an international audience, and collectively these offer his perceptions of the benefits and challenges associated with green courts (e.g., Preston 2014; 2012a). Though I was unable to directly contact Judge Preston during the data collection process, his outreach and advocacy efforts were repeatedly identified throughout the source data. References by many, particularly judges who emphasized his writings,[10] suggested that his entrepreneurial efforts have been noted by the judicial community. For instance, the UK's Lord

[7] Author's interview with Richard Macrory, via Skype, November 2017.
[8] Author's interviews with Gita Gill, via Skype, October 2017, and George "Rock" Pring, via phone, November 2017.
[9] Author's interview with George "Rock" Pring, via phone, November 2017.
[10] Author's interview with Hon. Meredith Wright, via Skype, October 2017.

Justice Carnwath (2017) took note of Preston's writings highlighting contributions of the NSW LEC to environmental jurisprudence, and Judge Laurie Newhook of New Zealand and others (2017) referenced Preston's views regarding the incorporation of Rio Principle 10 and the Sustainable Development Goals into domestic jurisprudence. Pring echoed this assessment, noting that Preston serves as a "model as well as a mentor" to fellow judges throughout the world.[11] In sum, this chapter's findings suggest that individual judges do not simply promulgate information regarding green court establishment and best practices; rather, the information that they offer is noted and consulted by other judges and green courts researchers.

These findings indicate that judges are not only performing their official adjudicative functions, but that they are also advocating institutions and exchanging best practices recommendations with judges in sister jurisdictions in ways intended to motivate action by other actors. Judges and other key individuals outline the benefits associated with green court establishment, frame those benefits in terms relevant to judges and domestic governments in other legal contexts, and seek to identify the benefits of assigning environmental disputes to dedicated courts. In short, within the green courts normative space, judges and other key individuals appear to be "creat[ing] alternative perceptions of both appropriateness and interest" and thus performing the functions associated with norm entrepreneurs (Finnemore and Sikkink 1998b, 897). Moreover, these efforts appear to hold the potential to shape green court diffusion. While norm diffusion scholars have historically noted that "lawyers, profession[als], [and] bureaucra[ts]" contribute to norm internalization, this study suggests that lawyers and judges may also seek to contribute directly to norm diffusion (Finnemore and Sikkink 1998b, 898 [Table 1]).

[11] Author's interview with George "Rock" Pring, via phone, November 2017.

b. *Norm catalysts: importance of IGOs, ROs, networks, and transjudicialism*

Second, the findings indicate that institutional actors have sought to promote rapid green court diffusion. In particular, the findings reference active involvement by international and transnational actor classes, including ROs, NGOs, IGOs and judicial networks (Table 3.2). Moreover, the findings show that many of these actor classes have primarily sought to engage through mechanisms reflecting green court promotion: advocating green courts, exchanging information or facilitating information exchange, and offering recommendations or outlining benefits (Table 3.3). In short, institutional actors, alongside individuals, have performed entrepreneurial functions in an effort to promote green courts.

This finding echoes existing norm diffusion research. For instance, Finnemore and Sikkink (1998b, 899–900) note that "[i]nternational organizations…though not tailored to norm promotion, may have the advantages of resources and leverage over weak or developing states they seek to convert to their normative convictions." Similarly, as noted above, ROs can promote norm diffusion by aligning norms with "local values and identit[ies]" (Acharya 2004, 263) and establishing common codes to guide judicial conduct across domestic contexts (e.g., Terhechte 2009).

However, in addition to this entrepreneurial role, institutional actors appear to perform a particularly valuable function: seeking to catalyze exchanges among domestic judges and governments. The data suggests that institutional actors have fostered a community of environmental court judges and promoted their increased engagement. By catalyzing judicial dialogue, institutional actors appear to contribute to broader trends of 'judicial globalization' identified by IR and IL scholars. As Slaughter (e.g., 1994; 1997; 2003) notes, judicial

globalization reflects networking in various formal and informal settings, and can support exchanges among national legal systems.

As early as the mid-1990s, Slaughter emphasized the role of transnational legal exchanges and the importance of "disaggregated" exchanges among judges (Slaughter 1995, 517). Since then, multiple scholars have noted the importance of transnational professional networks, both within and beyond the courts (e.g., Seabrooke and Henriksen 2017). They have identified networks in issue areas including the environment (Raustiala 2002), emphasized their key contributions to international governance (Maggetti and Gilardi 2014), and even directly urged that "Collaboration between national courts and international organizations…is essential if global governance is to flourish" (Benvenisti and Downs 2009, 69).

Data collected for this chapter suggests that ROs, NGOs, judicial networks and IGOs have intentionally sought to catalyze exchanges among judges regarding green courts. First, ROs, particularly including the Asian Development Bank (ADB), have shown clear interest in facilitating dialogue. As the ADB itself notes, its efforts to strengthen domestic institutional capacity in response to environmental challenges have "recognized the judiciary's unique role in environmental protection" (Mulqueeny and Cordon 2013, v). In response, it has undertaken numerous efforts, such as preparing "green bench books and environmental law curriculum" and establishing the Asian Judges Network on the Environment (AJNE) (Ahsan 2015). The ADB has also supported several South Asian Judicial Roundtables on Environmental Justice; these bring together judicial and environmental experts from throughout South Asia with the aim of "sharing of information…and best practices in environmental adjudication" (Bhutan 2013). Through these efforts, Pring and Pring (2016, 7) note that, "ADB has been a leader in…bringing judges, government officials and advocates together to explore the viability of ECTs."

The efforts of ROs are accompanied by the efforts of IGOs, including UN Environment, to facilitate networking. Like ADB, UN Environment has promoted direct judicial exchanges. For instance, it hosted a widely-documented 2002 Global Judges Symposium on Sustainable Development and the Role of Law as part of the broader Johannesburg Earth Summit (Abed de Zavala et al. 2010). UN Environment has also developed a Global Judges Programme to support "more effective application and enforcement of domestic environmental law" (Kurukulasuriya and Powell 2010, 272). UN Environment's participation has not been neutral with respect to green courts. Rather, as professor of environmental law Gita Gill notes, the "UN is very promotional in these concepts."[12] Indeed, Elizabeth Mrema, the director of UN Environment's Legal Unit, notes the body's practice of providing diverse services to countries including Bhutan that are considering green courts.[13] Among other practices, UN Environment has sought to directly facilitate judicial exchange:

> First, if we receive a request, one [approach] is to engage them in terms of providing advisory services. In terms of talking to them, we'll ask a national team of 3-4 experts on the subject, including a judge or magistrate, to explain to them the experiences of other countries, share with them the materials we have for the purpose…And in fact, also have a bigger group consultative process or do a training for them, to be able to talk about all the environmental issues in [general], particularly what is the role of the courts in dealing with environmental cases.[14]

Finally, the data make numerous references to NGOs, and particularly the IUCN, as facilitators of transnational dialogue among green courts. For instance, the IUCN organized a 2004 conference at Pace Law School and has since aggressively promoted judicial exchange through its World Commission of Environmental Law chaired by Brazil's Justice Antonio

[12] Author's interview with Gita N. Gill, via Skype, October 2017.
[13] Author's interview with Elizabeth Mrema, via Skype, November 2017.
[14] Author's interview with Elizabeth Mrema, via Skype, November 2017.

Herman Benjamin. [15] Similarly, the IUCN is currently working to establish a Global Judicial Institute on the Environment, which will facilitate communication among judges and experts from throughout the world and offer trainings to advance the environmental rule of law. [16]

The foregoing underscores that ROs, IGOs, and NGOs have all conducted outreach to promote green court establishment. Furthermore, they suggest that these efforts have gained the notice of judges and other actors, shaping their engagement with green courts. Interview and expert survey respondents underscored the influence of networked exchanges on judges, domestic governments, and other key actors. As one analysis noted, "the evident progeny of these many regional judicial consultations, symposia and seminars, in which UNEP, IUCN, and [the Environmental Law Institute] have been the major players, is the rapid emergence of more than 350 environmental courts and tribunals" (Abed de Zavala et al. 2010, 5).

In addition to providing evidence of institutional actors' efforts to contribute to green court promotion, individuals contacted for this chapter also indicated that both formal and informal judicial networks have sought to catalyze exchanges regarding green courts. For instance, Professor Gill noted that she and fellow speakers attended a "conference which was organized by the New Zealand green court…and we were very aware…that gradually this idea should go from one place to another place."[17] Likewise, Director Mrema noted that facilitated judicial exchanges have enabled judges to "discuss whether their cases will have been different if in the context of a different environment in a specific country."[18] Various individuals highlighted the Asian Judge's Network for the Environment and its contributions to promoting green courts

[15] Author's interview with Hon. Meredith Wright, via Skype, October 2017, and Nicholas A. Robinson, via phone, October 2017.
[16] Expert survey response of Respondent 1, via Web, January 2017; and author's interviews with Richard Macrory, via Skype, November 2017; Nicholas A Robinson, via phone, October 2017; and Gita N. Gill, via Skype, October 2017.
[17] Author's interview with Gita N. Gill, via Skype, October 2017.
[18] Author's interview with Elizabeth Mrema, via Skype, November 2017.

within the region, [19] and a former Swedish Environmental Court judge emphasized the role of the European Forum of Judges for the Environment in organizing events to facilitate judicial exchange.[20] Finally, Judge Meredith Wright noted that judicial exchanges can serve to expand worldviews, since judges' positions in domestic legal systems may often render them unaware of different approaches or responses to common legal issues.[21]

In all, this chapter's findings strongly suggest that institutional actors, including ROs, IGOs, and NGOs, have actively and intentionally sought to promote green court norm diffusion. Additionally, judicial networks and exchanges, whether facilitated formally by institutional actors' efforts or supported independently by courts and judges, actively seek to promote green court information exchange. In doing so, their actions appear to reflect the functions commonly attributed to norm entrepreneurs. Additionally, the findings suggest that institutional actors have indirectly supported green court establishment by catalyzing norm entrepreneurship among judges and other key individuals.

c. *Normative disconnects: limits to normative exchange*

As noted above, individual entrepreneurs and institutional actors have sought to catalyze the spread of green courts. However, the data also highlights a potential constraint on green courts norm diffusion: barriers between actor classes which inhibit some efforts to meaningfully exchange information. This type of mismatch or disconnect appears to work against diffusion of green courts and associated best practices recommendations, especially between "academia" and "judges."

[19] Expert survey responses of Respondents 22, 27, and 29, via Web, January 2017.
[20] Expert survey response of Respondent 30, via Web, March 2017.
[21] Author's interview with Hon. Meredith Wright, via Skype, October 2017.

This observation, supported by depth interview and expert survey responses, is noteworthy, because both "academia" and "judges" are two of the most frequently identified norm diffusion actor classes (Table 3.1). The active engagement of academia and judges with green courts norm diffusion is further underscored by the frequency with which another category of norm diffusion actor was referenced: "domestic governments." This term was frequently applied in cases where textual references noted efforts by domestic courts, but did so generally, rather than by referencing a specific judge or individual. Furthermore, the coded data indicate that not only do academics and judges share status as actively engaged in promoting green court norm diffusion, but they also undertake similar efforts, including advocating, exchanging information or facilitating, offering recommendations or outlining benefits, and researching.

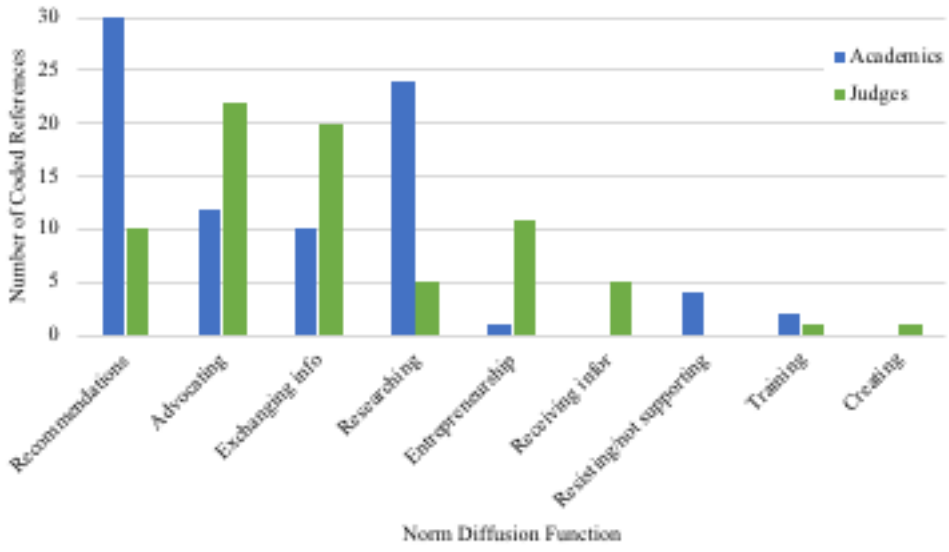

Figure 3.4. Norm diffusion functions (academics and judges).

Moreover, academics and judges appear to pursue similar approaches to promote green court spread by offering recommendations and outlining benefits. The green courts literature includes academic publications that identify green court benefits, for instance noting that "the

adjudication of environmental issues seems to be particularly well-suited to a specialist court model" (Hamman, Walterst, and Maquire 2016, 60), "environmental courts and tribunals facilitate speedier environmental adjudications and foster consistent rulings" (Robinson 2012, 379), and "specialized ECTs provide one vehicle for fairly and transparently balancing the conflicts between the human rights of environment and development" (Pring and Pring 2009b, 307). The literature also includes examples of judges identifying green court benefits (e.g., Preston 2012b, 424; Potter 1995, 317).

Similarly, expert survey responses identified academics' and judges' active role in advocating green courts. For instance, respondents noted the contributions of academics generally, [22] academics within Russia[23] and China[24] specifically, and noted that "experts from among the…academic community uphold the need to establish a green [court] at conferences and in scientific publications" (*sic*).[25] At the same time, expert survey responses noted the importance of judges, for instance highlighting advocacy by "[j]udges who are either trained on adjudicating environmental laws or those who are passionate about environmental issues…,"[26] "[j]udges of the green benches serving on the benches of various High Courts across Pakistan,"[27] and identifying green judges as a central reason for green court establishment.[28]

The foregoing suggests that many judges and academics share a common objective of facilitating green court diffusion. Indeed, one interview respondent identified instances of "close collaboration," where "the judges and the academics have worked together,"[29] and a panelist at the ASEAN Chief Judges' Roundtable on Environment urged judges to "work with the academic

[22] Expert survey response of Respondent 2, via Web, January 2017.
[23] Expert survey response of Respondent 5, via Web, January 2017.
[24] Expert survey response of Respondent 19, via Web, January 2017.
[25] Expert survey response of Respondent 5, via Web, January 2017.
[26] Expert survey response of Respondent 8, via Web, January 2017.
[27] Expert survey response of Respondent 17, via Web, January 2017.
[28] Expert survey response of Respondent 22, via Web, January 2017.
[29] Author's interview with Gita N. Gill, via Skype, October 2017.

and scientific community to tap scientists and researchers as experts in legal proceedings" (Mulqueeny and Cordon 2013, 12). Likewise, some indicia exists of judges acknowledging efforts by academics, and vice versa. For example, one professor noted that "you might look at what [judge Laurie Newhook has] done…he's been very active…and so has [judge] Brian Preston and a great many others,"[30] while a judge noted in interview that "I'm sure you've seen the [academic] Prings' publications."[31]

However, deeper analysis suggests that exchanges between actor classes, and particularly between academics and judges, have thus far remained relatively inchoate and constrained, even when their objectives are largely complementary. In interviews, two respondents made off-record comments that judges are frequently uninterested in the green courts insights and recommendations developed by legal scholars and published in the academic literature. These assessments were echoed by on-the-record comments two additional leading academics, including Robinson, who noted that:

> Judges are interested in talking more to judges than in talking to others. Unless the academics bring comparative law experience of other judges into the equation, just because they know environmental law isn't particularly going to be useful to the judges. So I think the scholarship is a reflection of what has already happened as the courts get going, and it's a reporting back to the academic world and the scholarly world, generally, about the new developments. And it's reactive, and it has not had a significant impact.[32]

Likewise, Pring stated:

> Well, the literature is important….But there's nothing that beats a judge learning from another judge. It even beats having a really top-notch environmental lawyer…come. I mean, here's another judge, wearing his black robes, or her black robes, and saying you know, "You can do this. I do this every day. And it makes a difference."[33]

[30] Author's interview with Nicholas Robinson, via phone, October 2017.
[31] Author's interview with Meredith Wright, via Skype, October 2017.
[32] Author's interview with Nicholas Robinson, via phone, October 2017.
[33] Author's interview with George "Rock" Pring, via phone, November 2017.

These responses indicate that green court development does not only reflect affirmative support from diverse actors. Instead, the evolution also reflects observations and reports that are not intended to influence, efforts to influence green court adoption that do not appear to resonate with intended audiences, and efforts by actor classes that appear to parallel one another. Moreover, the responses suggest that even among actor classes with seemingly similar objectives and motivations, preferred engagement mechanisms may differ. For instance, some academics have generated publications that appear to critique and theoretically evaluate green courts (e.g., Warnock 2017), others descriptively characterize the institutions (Macrory 2013), and still others actively advocate their establishment (e.g., Pring and Pring 2009b).

Collectively, the varied engagement with green courts that this dissertation identifies appears to reinforce Acharya's suggestion (2004, 242) that "studies of norm dynamics should account for a range of responses to new norms," including those that fall between outright acceptance or rejection. Furthermore, the responses suggest that future research could beneficially consider how communication is facilitated and hindered among disciplines in academia, as well as between academia and other actor classes. Doing so would advance contemporary efforts to identify synergies and opportunity for exchange between related fields, including IR and IL (Slaughter, Tulumello, and Wood 1998), political science and legal studies (Cross 1997), and science and environmental law (Moore et al. 2018).

6. Conclusion

This chapter represents an initial effort to formally identify the actors that have sought to promote rapid and widespread green court diffusion. After reviewing existing actor-focused norm diffusion literature in the environmental and legal fields, it used a qualitative research

approach, which employed primary and secondary documents alongside original expert surveys and interviews, to identify the actor classes most engaged in seeking to promote green court spread.

Ultimately, this chapter finds that diverse individual and institutional actors are engaged in seeking to promote green courts, spreading best-practices recommendations, and offering assistance to practitioners and decisionmakers. The results strongly suggest, first, that judges draw upon their shared experiences, despite distinct domestic contexts, to offer best practices recommendations to one another. This norm entrepreneurship echoes broader trends towards judicial globalization and transjudicialism. Second, the results note that ROs, IGOs, NGOs, and judicial networks have actively sought to facilitate or catalyze exchanges among judges. Together, the chapter analyses indicate that the present diffusion of green courts reflects both the advocacy and constraints exerted by diverse actors.

While this chapter and its findings provide a detailed portrait of green court norm diffusion, it also offers a foundation for additional research. First, this chapter has noted the important role of judicial networks in facilitating dialogue and exchange. However, without firsthand analysis, it is difficult to identify the mechanisms that most effectively facilitate norm diffusion within these networks.

Second, this chapter's broad qualitative research effort offers a detailed account of the actors seeking to support diffusion of a norm promoting green court establishment, as well as the techniques that they may employ in an effort to do so. While these insights provide a valuable foundation for future analysis of diffusion of a norm favoring green court establishment, it is not possible to demonstrate causality using these broad observations alone. The dissertation findings can identify actors and approaches that seek to advance green court establishment, but they are

insufficient to demonstrate that those actors and approaches specifically led to establishment of a green court that would not otherwise have occurred, or that certain advocacy efforts directly linked to institutional outcomes.

Likewise, third, though the data generated by this chapter can identify the classes of actors that are actively engaged in seeking to promote a norm favoring green court establishment, they are unable to elucidate the motivations that led actors to pursue those efforts. Actors' motivations may differ both across actor classes and within them, and these differing motivations may shape the ways that actors choose to promote green courts and the attributes that they choose to promote. For example, many of the actors discussed in the literature and this dissertation promote green courts because of a view that green courts can enhance environmental outcomes; however, business and industry actors may do so based on a perception that the institutions will yield more consistent, predictable rulings. To generate insights relevant to each of the foregoing limitations, future studies could employ participant observation of judicial symposia and conferences. Doing so would permit detailed process tracing and social network analysis of green court advocacy, adoption, and implementation (see, e.g., Bennett and Elman 2007).

Third, this chapter's analyses suggest that many judges can be unreceptive to the recommendations of academics who seek to advance institutional development and practice-based innovations among green courts. This finding speaks directly to ongoing debates regarding the conduct of "pracademic" scholarship and of whether, and how, scholars can offer practical utility in their work (e.g., Lepgold 1998; Walt 2005; Paris 2011). For instance, some researchers have considered whether academics most fruitfully contribute to environmental policy through research, advocacy, or a combination (e.g., Frieden and Lake 2005; Steelman 2010). Moreover,

because this chapter's data emphasize the importance of networks and settings where judges, attorneys, and academics all participate, scholars might more consciously consider how to most effectively leverage their unique training and communicate research findings. Similarly, as the coding effort suggests engagement by both domestic judges, specifically, and domestic governments, more broadly, future research could explore how insights can be meaningfully transmitted to diverse governmental practitioners.

In sum, this chapter has advanced a detailed account of the actors who seek to diffuse an institutional norm favoring green court establishment and the techniques employed in doing so. However, having identified the actors engaged in attempts to diffuse the green courts norm, this chapter also raises a key question: to what degree are green courts themselves equipped to serve as sites for the implementation of global environmental norms? This question will be evaluated in subsequent chapters.

CHAPTER 4. GREEN COURT DIVERSITY IN THEORY: A TYPOLOGICAL APPROACH FOR EVALUATING DOMESTIC ENVIRONMENTAL COURT NORM IMPLEMENTATION CAPACITY

1. Introduction

As Chapter 3 demonstrates, diverse actors are promoting the diffusion of a norm favoring green court establishment. While many share common beliefs regarding the collective potential of green courts, the individual courts that result may exhibit tremendous diversity due to institutional attributes and diverse domestic legal cultures. These drivers of green court diversity, when coupled with the unique domestic processes that shape establishment of individual green courts (*see* Pring and Pring 2016), suggest that resulting institutions will likely differ greatly in form. In short, the rapid growth of specialized environmental judiciaries is likely mirrored by proliferation in the institutional attributes and characteristics of green courts (Pring and Pring 2016, 12).

Despite this diversity, environmental judiciaries have been advocated as ideally-equipped to perform diverse functional tasks. Those advocating green courts have urged that they may ease pressure on domestic dockets (e.g., Macrory 2013), increase the competence of those hearing environmental disputes (Lin et al. 2009a, vii), and facilitate domestic implementation of IEL principles (e.g., Gill 2017). However, assuming that green courts are diverse in practice, it is unlikely that all institutions would be equally equipped to perform these or other functions.

As accounts emerge suggesting that more than one thousand environmental courts and tribunals may exist (see Pring and Pring 2016), scholars have begun to consider the implications of evaluating and grouping the institutions in undifferentiated fashion. For instance, some researchers have begun to identify attributes that they associate with desirable environmental

courts and tribunals (Preston 2014; Pring and Pring 2016). Likewise, others have identified perceived constraints of certain institutional models (e.g., Stern 2013; Stern 2014; Sahu 2010). Finally, although environmental courts and tribunals are generally presented in at least somewhat undifferentiated fashion, some recent efforts have narrowed the definition of environmental courts and tribunals in recognition of their considerable diversity (e.g., Pring and Pring 2009a Appendix I [including municipal environmental courts]; 2016 [excluding municipal environmental courts]).

Moreover, some accounts have begun to more comprehensively characterize green courts. In particular, George and Catherine Pring's censuses have twice (2009a; 2016) explicitly aimed to catalog all environmental courts and tribunals. Their most recent (2016) effort provides a particularly valuable model to this dissertation in several respects. First, like this dissertation, a report appendix seeks to identify environmental courts found globally (2016 [Appendix A]).

Second, Pring and Pring develop an analytical schema that enables them to distinguish among existing environmental court models. They (2016, 20–21) present "4 distinct [Environmental Court] models and a 5th alternative approach, based on their [judicial] decision-making independence," and argue that environmental courts can be characterized as "operationally independent," "decisionally independent," or as possessing a "mix of law-trained and science-trained judges," "general court 'designated' judges," or "environmental law-trained judges." Using this foundation, Pring and Pring (2016, 20) evaluate the benefits and drawbacks of individual ECT models and present exemplar institutions to illustrate their categories. To date, at least one judge (Lavrysen 2017) has used this work (2016, 20) as a basis for evaluating the desirability of various green court models.

While Pring and Pring's analytical schema provides a valuable contribution to the literature and is ideally-suited to its stated objective of offering practitioners best-practices guidance, at least two of its attributes render it less appropriate for this dissertation's objectives. First, although the authors present exemplar institutions for each model of environmental court (EC), they do not claim to comprehensively identify all courts that fit each EC model. Second, while the report identifies multiple EC categories, these categories are not necessarily mutually exclusive. For instance, ECs deemed decisionally-independent could also have judges trained in environmental law, thus suggesting that some institutions could be placed in multiple categories. Accordingly, the typology developed in this chapter complements the existing Pring and Pring effort by developing and demonstrating an alternative mechanism for distinguishing among discrete green court models.

Altogether, the increased recognition by IEL researchers and practitioners of the need to acknowledge diversity among environmental courts and tribunals echoes efforts by IR scholars to emphasize and characterize the implications of institutional diversity. As Bulmer and Padgett (2005, 105) note, "institutions matter, shaping actor preferences and structuring both the processes of policy making and substantive policy." Since norms interact with institutional structures, "transfer processes and outcomes will thus be shaped by the institutional settings in which they take place" (Bulmer and Padgett 2005, 105).

This chapter acknowledges the potentially important role that specialized environmental courts and tribunals can play in advancing procedural and substantive IEL in domestic contexts. It further notes the importance of institutional structure in determining the capacity to perform this role. Accordingly, this chapter supports more nuanced consideration of green courts' institutional capacity by theoretically evaluating two questions: (1) *What factors influence a*

court's capacity to implement and advance IEL? and (2) *What models of specialist environmental courts and tribunals are best-equipped to perform these functions?*

This chapter proceeds in five parts. It first characterizes how access to justice and implementation of IEL have motivated green court establishment. Next, it evaluates existing literature detailing the role of institutions and structural factors in shaping norm implementation. Third, it develops a typology to highlight how structural and domestic factors may shape the capacity of individual environmental courts and tribunals to implement IEL norms. Fourth, it uses this typology to identify the types of specialist environmental institutions that, in theory, are best-equipped to advance IEL norms, and provides illustrative examples. Finally, it briefly acknowledges the existence of factors beyond those in this typology, including domestic legal culture and individual judges' dispositions, that are also likely to shape the effectiveness of individual environmental courts, and that merit future research.

2. Green courts, access to justice, and IEL norms

As noted in Chapter 3, diverse actors have undertaken efforts to promote a norm favoring green court establishment, and they have done so for various reasons. Among these, and of particular relevance for this chapter, is the belief that green courts can advance access to justice and implementation of IEL norms. First, the institutions are widely identified as vehicles for advancing access to environmental justice (e.g., Robinson 2012). As Lin et al. state (2009b vii), "the benefits of specialized environmental courts include:…furthering the use of innovative practices and procedures…to broaden access to justice." Access to justice, which encompasses the procedural right of citizens to "resort to administrative and judicial procedures in order to prevent pollution, secure its abatement, or obtain compensation" alongside distributive

objectives, is an important element of IL (Birnie, Boyle, and Redgwell 2009, 304). While efforts to expand domestic access to justice have been widespread in international human rights law, researchers have noted that "there is still some way to go before the more established [domestic] judicial bodies will feel comfortable dealing with environmental questions and providing leadership on enforcement matters" (Peel 2015, 77).

Accordingly, environmental policymakers at multiple levels have sought to enhance domestic access to justice, and to use this access, in turn, to secure environmental protection and redress (Birnie et al. 2009, 288–91). The 1992 Rio Declaration underscored the need for states to provide "effective access to judicial and administrative proceedings, including redress and remedy" (UN-Rio Declaration 1992 § 10). Subsequent regional efforts, including the UNECE's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention"), have further developed an access to justice focus. The Aarhus Convention clarifies that signatory parties must afford "members of the public concerned [in environmental matters]…access to a review procedure before a court of law and/or another independent and impartial body established by law," while also requiring that such institutions "be fair, equitable, timely, and not prohibitively expensive," and instructing signatory parties to "consider the establishment of appropriate assistance mechanisms to remove or reduce the financial and other barriers to access to justice" (United Nations 2014 §§ 9[2, 4, 5]).

Many international legal experts and policymakers have suggested that domestic environmental courts may hold the capacity to improve access to justice. For example, Robinson argues that "by establishing such courts independently and repeatedly, nations are acknowledging that they have a duty to provide access to justice for environmental decision-

making" (Robinson 2012, 364; United Nations 1992 § 10). Similarly, Gill (Gill 2017) underscores the strong links between procedural EJ, including access to justice, and environmental court establishment, and the Asian Development Bank has explicitly argued that "the benefits of specialized environmental courts include:…furthering the use of innovative practices and procedures, such as public interest litigation, to broaden *access to justice* (Lin et al. 2009, VII). Finally, some domestic judges have themselves echoed this assessment, committing at the 2013 Second South Asian Judicial Roundtable on Environmental Justice to increase focus on environmental issues and access by "strengthen[ing] specialized environmental tribunals" and "establish[ing] green benches in courts where they do not exist" (Bhutan 2013, 2 [iii]). In short, many commentators and practitioners believe that environmental courts reflect the "potential benefits of…assertiveness" among national courts more broadly, which "extend[s] to helping to address the democratic deficit via increasing citizen participation in decision-making and transparency" (Benvenisti and Downs 2009, 69).

In addition to facilitating access to environmental justice, many advocates argue that green courts may hold the capacity to internalize key substantive principles and norms of IEL. For example, researchers have noted that India's National Green Tribunal regularly incorporates IEL principles, including "polluter pays," "sustainable development," and "precaution," into its rulings (Gill 2017, 120–47). Domestic green court judges have also acknowledged their own efforts to reference these principles. In an interview, Judge Meredith Wright, who served on Vermont's Environment Court, noted her frequent efforts to incorporate the principle of sustainable development in rulings to demonstrate that state-level actors can also undertake meaningful environmental and sustainable development law.[34] Similarly, in a speech, Chief Judge Brian Preston (2017) of New South Wales' Land and Environment Court emphasized the

[34] Author's interview with Hon. Meredith Wright, via Skype, December 2017.

"judicial development of the precautionary principle" (1). In sum, there is a widespread sense among commentators and practitioners that green courts may hold the capacity to advance substantive IEL principles.

Even though green courts have been widely advocated to advance procedural and substantive EJ, it is unlikely that all such institutions across all domestic settings will uniformly do so. To echo a key tenet from the policy diffusion literature, "context matters" (Gilardi 2012, 88). As one expert survey respondent notes, "many judges from green courts have been using international environmental law in absence of domestic law in order to check…environmental harm," though the expert cautioned that a court's ability to perform this function depends on its domestic setting.[35] Another respondent echoed this assessment by noting that, "much depends on the local legal and constitutional context."[36] It is unlikely, for example, that the "Memphis and Shelby County Environmental Court" in Tennessee, USA, would seek to acknowledge, interpret, or implement IEL in exactly the same fashion as India's aforementioned National Green Tribunal. Rather, it is likely that the institutional attributes and settings of individual green courts will bear heavily upon their capacity to perform these functions.

3. Green courts and norm implementation

This chapter and its consideration of how green courts institutionalize IEL principles aligns with broader IR discussions examining how domestic institutions advance the implementation of international norms, as the term is understood by IR scholars. Slaughter (2001, 347) notes that so-called transgovernmental regulatory networks "enhance[e] the ability of States to work together to address common problems" and "function particularly well in a

[35] Expert survey response from Respondent 8, via web, 2017.
[36] Expert survey response from Respondent 21, via web, 2017.

rapidly changing information environment." Elsewhere, constructivist scholars emphasize the iterative relationship between domestic structures and interests, on one hand, and global norms, on the other (Risse and Sikkink 1999).

To date, scholarly attention to the role of domestic institutions in implementing international norms has been particularly acute in the international human rights law (IHRL) domain (e.g., Simmons 2009; Risse and Sikkink 1999; Lupu 2013). As Risse and Sikkink (1999, 10) argue, "the process of human rights change almost always begins with some instrumentally or strategically motivated adaptation by national governments to growing domestic and transnational pressures."

Many existing IHRL studies emphasize the important implementation functions performed by subunits of domestic governments, particularly those that act in concert with similar institutions in sister jurisdictions. As Burke-White and Slaughter note:

> National governments, by operating through government networks, can bring [coercive and persuasive powers] to bear on behalf of international legal obligations. They can coerce, cajole, fine, order, regulate, legislate, horse-trade, bully, or use whatever other methods that produce results within their political system…Yet, having decided, for whatever reasons, to adopt a particular code of best practices, to coordinate policy in a particular way, to accept the decision of a supranational tribunal, or even simply to join what seems to be an emerging international consensus on a particular issue, they can implement that decision within the limits of their own domestic power. (Burke-white and Slaughter 2006, 336–37)

Within this milieu of transnational judicial exchange, IHRL scholars have identified a prominent role for domestic courts in internalizing IL. Tzanakopoulos and Tams (2013, 9) note that, "In engaging with international legal rules, domestic courts can and do contribute to their further domestication. That in turn would seem to promote the implementation of international law in substance, lending the powerful state enforcement mechanisms to traditionally weakly enforced international legal regulation."

Echoing interest among IHRL scholars, researchers in environmental governance and law have also examined how international principles and norms secure domestic implementation (e.g., Victor, Raustiala, and Skolnikoff 1998). As Betsill, Bulkeley, and others (2006) have urged, a decline in international environmental treaty activity suggests that "'international' environmental activity" will be increasingly conducted "at the national and subnational level" and "not necessarily based on an international agreement" (Clapp and Swanston 2009, 323). Additionally, states can adopt environmental norms established in a transboundary context "even in the absence of an international legal or institutional mechanism codifying it" (Clapp and Swanston 2009, 323). Accordingly, scholars including Clapp and Swanston (2009, 323) have advocated "deeper understanding of…the ways in which…new norms are interpreted into policy in different jurisdictions around the world."

Broad recognition that domestic courts can play a central role in implementing international norms begs a more focused question: how do structural and institutional factors of individual domestic courts affect their capacity to implement international norms? After all, as Tzanakopoulos and Tams (2013) note, international legal norms are not uniformly implemented in all jurisdictions, resulting in "the poor quality of international legal argument in some domestic proceedings" (2013, 9). Moreover, researchers have noted that efforts to translate international rules and obligations into domestic policies are mediated by domestic conditions that "organiz[e…] decision-making authority" and will likely vary across country contexts and by issue area (Cortell and Davis 2000, 454).

Despite recognition of the important influences that court capacity can exert on IEL implementation, "there is very little discussion in the political science, policy studies, and international relations literatures regarding the different qualities and capacities of the diverse

actors in the global agora" (Stone 2008, 34). However, this chapter seeks to identify some of the most impactful court attributes. In doing so, it takes note of existing research and insight which suggests three broad classes of factors as especially likely to influence the capacity of a given environmental court to implement IEL norms: its jurisdiction, its discretion, and its position within a domestic legal context.

a. *Jurisdiction*

First, jurisdiction is understood, most fundamentally, as "the power of a court to adjudicate cases and issue orders" ("Wex Legal Dictionary / Legal Information Institute" 2015). Whether and how a court exerts jurisdiction over a given dispute reflects several discrete components, including a court's ability to "exercise authority over all persons and things within its territory" (personal jurisdiction), its power to "decide a case or issue a decree" (subject-matter jurisdiction), and the scope of "geographic area within which political or judicial authority may be exercised" (territorial jurisdiction) (Garner 2009, 929). Jurisdiction directly affects a domestic court's capacity to implement IEL. As "domestic litigation…becomes part of the international toolkit…[t]here may…*be jurisdictional obstacles to litigation by state claimants*" (Abbott and Snidal 2009, 432 [emphasis added]). Moreover, existing research in other issue areas emphasizes the influence that domestic court jurisdiction exerts upon a court's application of IL. For instance, Sandholtz (2015) illustrates how jurisdictional provisions can implicitly encourage constitutional courts to look outward towards IHRL norms in their adjudication.

Within the context of specialist environmental courts, researchers have evaluated how jurisdiction may affect environmental outcomes. In general, they have concluded that broader jurisdiction enhances an environmental court's efficacy. For instance, Hamman, Walterst, and

Maguire (2016, 60) underscore the importance of broad subject matter jurisdiction, noting that "legal systems with a distinct separation between criminal and civil jurisdictions can provide a roadblock to the effective administration and understanding of environmental issues." Likewise, Preston (2014, 14 [citations omitted]) advocates broad jurisdiction, noting the case of Kenya, where commentators have found that "the regulation of the environment cannot be dissected into small compartments." Pring and Pring (2009c, 311) similarly urge policymakers that "the jurisdiction of [an] ECT should be as comprehensive as possible." Elsewhere, they note that UNEP organs and environmental court judges themselves have advocated for expansive environmental court jurisdiction, and they support an holistic approach that also encompasses "the built environment, indigenous peoples rights, development planning issues and land tenure" (Pring and Pring 2016, 48).

Respondents to this dissertation's expert surveys and interviews further echo the view that broadening jurisdiction enhances a court's capacity to implement IEL norms. When asked whether panelists on the UK's environment tribunal view themselves as participants in a global community of IEL, the barrister and UK environmental court expert Richard Macrory stated, "I would say not yet. And one of the reasons…first of all, the actual jurisdiction that they deal with, this environmental tribunal, is still quite narrow."[37] Similarly, when prompted to consider whether specialist environmental courts can effectively implement IEL, a professor of environmental law responded, "National courts probably not so," noting that "[L]ack of jurisdiction would be a key thing."[38] An environmental attorney echoed this sentiment, noting that "Any Green Courts [sic] should be well defined, and both civil and criminal adjudication

[37] Author's interview with Professor Richard Macrory, CBE, via Skype, November 2017.
[38] Expert survey response of Respondent 2, via web, 2017.

powers should be under green courts."[39] In sum, there is support for a proposition that, all else equal, broader jurisdiction will better equip dedicated environmental courts with the capacity to advance IEL objectives, principles, and norms.

b. *Discretion*

In addition to jurisdiction, a second broad factor likely to affect a specialized environmental court's capacity to implement the norms and principles of IEL within domestic settings is the discretion, or flexibility, that a court and its panelists enjoy. Legal discretion is "the power to act within general guidelines, rules, or laws, but without either specific rules to follow or the need to completely explain or justify each decision or action"; vesting judges with discretion empowers them to "exercise…judgment based on what is fair under the circumstances and guided by the rules and principles of law" ("Wex Legal Dictionary / Legal Information Institute" 2015; Garner 2009, 534; Oran 2000, 150). While some argue that judicial discretion should be standardized across domestic issue areas (e.g., Newton et al. 2010, 73), a key challenge facing domestic environmental law is a "lack of flexibility in court rules and procedures that make it impossible to respond to international environmental laws and standards…" (Pring and Pring 2016). While discretion represents a legal term of art in some contexts, as noted above, its usage in this dissertation is intended to encompass both formal discretion and broader considerations of flexibility that collectively enable judges to look outwardly to IEL norms and principles.

Given the unique nature of environmental disputes, many environmental court and tribunal experts identify discretion as a key court attribute. For instance, Pring and Pring's first widely cited environmental court report (2009a, 92, 111) advocated court designs that afforded

[39] Expert survey response of Respondent 20, via web, 2017.

flexibility, simplicity, and discretion to judges. Others have noted that broad discretion also enables environmental court judges to consider questions of standing in a fashion tailored to the unique attributes of environmental disputes (see Hamman, Walterst, and Maguire 2016, 71). As Preston (2014, 16) notes, "an ECT is likely to be more successful in circumstances where one of its key characteristics is the authority to impose a variety of civil, administrative and criminal penalties…that are sufficiently high to act as an effective deterrent."

Respondents to interviews and expert surveys also identified discretion as an attribute of effective specialized environmental courts. For example, an American environmental law professor identified "creativity in designing remedies"[40] as a particular element that specialist environmental courts can possess in comparison to generalist courts, and a UK environmental professor emphasized the benefit of green courts' problem-solving orientation.[41] Another environmental law faculty member echoed these views, urging that, in general, environmental courts are "more prepared to be innovative in procedure in the interests of better hearings," resulting in "fairness and efficacy."[42]

Finally, some respondents explicitly noted how discretion can influence an environmental court's capacity to implement IEL. For instance, an emeritus professor of environmental law identified a court's "willingness and *capacity* to incorporate IEL and associated principles into their judgments"[43] as a key determinant of how effectively a court can advance international principles, while a second environmental law professor underscored the importance of a court's expansive "ability to integrate law, science and economics."[44] For the foregoing reasons, this dissertation posits that, all else being equal, broader discretion will likely enhance a green court's

[40] Expert survey response of Respondent 9, via web, 2017.
[41] Expert survey response of Respondent 24, via web, 2017.
[42] Expert survey response of Respondent 21, via web, 2017.
[43] Expert survey response of Respondent 27, via web, 2017 (emphasis added).
[44] Expert survey response of Respondent 9, via web, 2017.

capacity to implement IEL. Moreover, it posits that courts that are explicitly empowered or obligated to consider IEL norms and principles will enjoy greater discretion to do so when addressing specific disputes.

c. *Position in domestic legal system*

In addition to jurisdiction and discretion, a court's position within a domestic legal system can shape its awareness or receptiveness to IEL norms and principles, and can determine the types of questions that it is empowered to address. In comparison to jurisdiction and discretion, there is less uniformity in the literature and data collected for this project regarding whether, and how, a given court's position bears upon its fitness to implement IL. Nevertheless, there are multiple reasons to expect that a court situated near the top of a country's judicial system will be more susceptible to IL and hold greater capacity to apply it within domestic contexts.

First, many legal scholars have emphasized the important role of dialogue and exchange among high-level domestic judges in fostering development of IL, generally. For instance, Waters (2005, 491) emphasizes the participation of the US Supreme Court and other courts of last resort in "an increasingly robust and complex transnational judicial dialogue." Slaughter (1997, 186) notes that "The Israeli Supreme Court and the German and Canadian constitutional courts have long researched U.S. Supreme Court precedents." Similarly, Claes and de Visser (2012, 105) detail extensive instances of direct engagement and dialogue between national-level justices, which collectively "foster trust and respect between the respective courts, offer an occasion to clarity and discuss their case law and allow for an exchange of ideas on legal issues

of common interest." As the foregoing research suggests, transnational exchanges among national-level judges are growing increasingly dense.

Second, transnational policy exchanges in environmental law have been recognized as "an essential component of regional and international orders that make practical cooperation possible, facilitate policy convergence, and build capacity in weak states" (Elliott 2012, 42). The potential capacity of environmental courts to contribute to IEL implementation has been noted at all governmental levels, from the international (e.g. Pedersen 2012) to the subnational (e.g., Stein 2002, 17–19). Indeed, "many experts believe that national and subnational ECTs using best practices can contribute strongly to the [Sustainable Development Goals'] achievement" (Pring and Pring 2016, x). UN Assistant Secretary General Ibrahim Thiaw further argues that "effective, accountable and inclusive institutions at all levels" "reinforce[…] Principle 10 of the Rio Declaration" and promote "access to effective, transparent, accountable and democratic institutions" (quoted in Pring and Pring 2016, iii).

However, the mechanisms by which domestic courts may advance these objectives vary depending upon the level at which a given court is situated within a country, and this in turn shapes the expansiveness of a court's remit and the scale of disputes that it resolves. As many expert survey respondents noted, a court's capacity to effectively embrace and apply IEL principles and norms presupposes its awareness of their existence and a facility with their application. For instance, one UK barrister and law professor suggested that a given court's capacity to implement IEL relates to its focus and asserts that, for instance, "the UK First Tier environment tribunal is not concerned with this issue."[45]

Similarly, many scholars, when discussing green court diversity, noted that most local environmental courts were of a different caliber than the higher-level institutions, especially

[45] Expert survey response of Respondent 28, via web, 2017.

those situated at the national level. For instance, Liz Fisher noted her sense that the seemingly impressive statistics of recent environmental court proliferation may largely reflect the establishment of many at "the local-relatively local-level [that] are relatively easy to set up."[46] This sentiment was complemented by Rock Pring, who noted that "to put it much more bluntly, one of the things you want to watch for is…localities that claim they're creating an…ECT" and "will do so by essentially, simply redesignating existing judges and existing courts as an EC or ET, doing it in a fashion that provides no new resources and does nothing but increase the workload of the sometimes resistant and angry judges."[47] In fact, as noted above, Pring and Pring elected to exclude municipal-level institutions from their 2016 practitioner guide, instead concentrating analysis on those "at the national or state/provincial level" (Pring and Pring 2016, iv).

Notwithstanding the foregoing, there are clear indications that green courts at subnational levels can possess the capacity to perform important environmental law interpretation and application functions, including within the narrower issue area of IEL. Indeed, Hon. Meredith Wright advocated looking beyond solely national-level institutions in analyses.[48] However, this dissertation recognizes that the level of a particular green court can condition its sensitivity to IEL norms, principles, and objectives. Accordingly, it posits that while green courts at many levels can implement IEL, all else equal, it is most likely that a national-level court would be attuned to the existence of these norms and principles and possess the capacity to advance their implementation.

As this section demonstrates, an individual environmental court or tribunal's capacity to advance domestic adoption and implementation of IEL norms and principles is likely shaped, in

[46] Author's interview with Professor Liz Fisher, via Skype, October 2017.
[47] Author's interview with Professor *emeritus* Rock Pring, via Skype, November 2017.
[48] Author's interview with Hon. Meredith Wright, via telephone, December 2017

large measure, by three structural determinants: the expansiveness of its jurisdiction, the breadth of discretion that it is granted, and the level at which a court is positioned. Together, a court's jurisdiction and discretion are likely to greatly affect its interpretation and application of IEL norms. In turn, when these two factors are combined with a court's position in a domestic judicial system, they can yield diverse institutional forms with differing capacity to perform their intended functions. Recognizing this potential diversity and its significance, I next articulate a typology to distinguish among key green court institutional forms.

4. Building a Typology of Green Courts

Typologies are "multidimensional classifications" (Bailey 1998, 3180). They are used by social scientists to develop "contingent generalizations about combinations or configurations of variables that constitute theoretical types" and to "group[…]…entities on the basis of similarity" (George and Bennett 2005, 233; Bailey 1998, 3180). Typologies help to link different variables and highlight possible outcomes, and they are "often constructed and refined through case study methods" (George and Bennett 2005, 236–37).

Although IR scholars have "a long tradition of using explanatory typologies…," researchers "have traditionally been somewhat unselfconscious" in their use of the approach, diminishing the method's effectiveness (Bennett and Elman 2007, 181). Increasingly, "there have been moves toward a more systematic approach," which recognizes the various typological forms that researchers may employ (Bennett and Elman 2007, 181) and the diverse questions that typologies can address (see, e.g., Bennett and Elman 2006).

This section (1) maps the diversity of institutional forms that green courts can exhibit, and (2) assigns exemplar institutions to specified categories within this typology. Thus, this

typology performs both "descriptive" (specifying the types that can be utilized as "descriptive characterizations") and "classificatory" (which assigns specific cases to pre-defined types) functions (see Bennett and Elman 2006, 466).

There are several benefits to using a typology to systematically group green courts. First, the typology helps to identify those green courts that would, in theory, hold the greatest capacity to implement IEL norms. The visual nature of typologies helps to illustrate the "'distance' between potential cases and facilitate research designs on the basis of [green courts'] similarity or difference" (Bennett and Elman 2006, 468). Using this typology will help to determine which green courts models are most likely to possess the capacity that would equip them to implement IEL principles (see Burger 2002, 7141–42).

Second, using an explicit approach to select cases and observations enhances the caliber of scholarship, and enables researchers to "ensure they provide data appropriate to the hypotheses being evaluated" (Mitchell and Bernauer 2004, 87). Typologies are particularly well-suited to this task, since "the location of cases in different cells [can serve as a] guide to making the most productive comparisons for testing the underlying theory" (Bennett and Elman 2006, 181).

Given the benefits of typologies and their appropriateness to the objective of identifying those green courts most attuned to IEL principles, this section generates a "3 x 3" typology that distinguishes green courts based on the three structural factors identified in the preceding section (Figure 4.1). The vertical axis of the typology distinguishes green courts by their governmental level. This reflects the preceding section's observation that the level at which a green court is situated can influence multiple functions relevant to its international environmental governance capacity, including: its outward orientation to IEL, the scale of questions it addresses and the

amenability of those questions to IEL, and the expansiveness of territorial jurisdiction that a court may enjoy. The three categories of "governmental level" in the typology reflect the three levels at which green courts are commonly discussed in the existing literature: the municipal or local level, the state or provincial (subnational) level, and the national level.

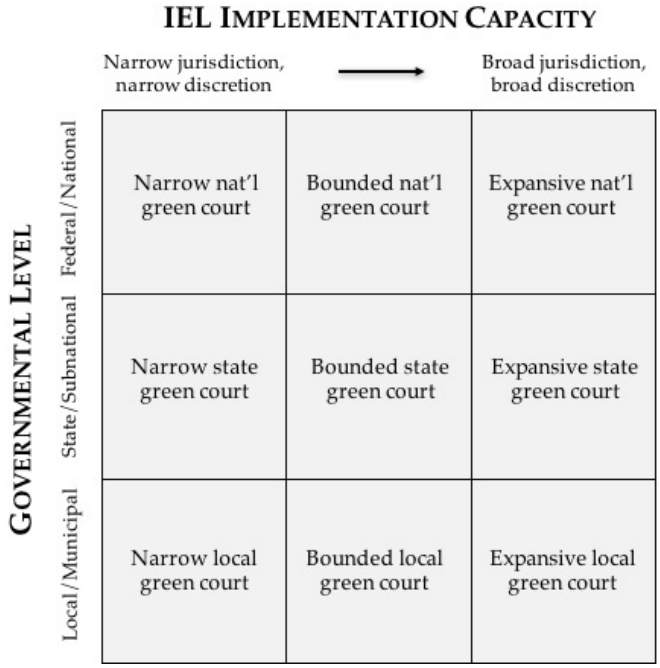

Figure 4.1. Three-tier green court typology.

While it is not possible to capture the full diversity of political and legal systems found in all 193 UN member states, distinguishing by governmental level permits analysis of institutions across both unitary and federal legal systems. Moreover, distinguishing based on governmental level, rather than court or legal system type, permits broad theoretical evaluation across civil and common law countries, among monist and dualist approaches to international law, and between the independent courts, tribunals, and administrative institutions that may be observed in individual political settings.

The horizontal axis of the typology groups green courts by their "IEL implementation capacity." For purposes of this typology, I specify "IEL implementation capacity" as encompassing (1) the expansiveness of a court's subject-matter *jurisdiction*, and (2) the breadth of *discretion* that a court possesses when resolving claims falling within that jurisdiction. By constructing an axis that reflects these two variables, I am able to evaluate and emphasize the likely importance of structural factors to green court decision-making outcomes. To permit the broad theoretical consideration intended in this chapter, each is constructed in binary, "broad" and "narrow" terms. Combining these two factors yields an axis with three possible positions that a given court may occupy: narrow IEL implementation capacity (narrow jurisdiction and narrow discretion), moderate IEL implementation capacity (one element narrow, one element broad), and broad IEL implementation capacity (broad jurisdiction and broad discretion).

These "governance function" categories provide useful insight at all three levels regarding a domestic court's capacity to effectively incorporate IEL in rulings. First, irrespective of the level of government at which a court is situated, it is possible for that court to enjoy broad or narrow jurisdiction, particularly with regard to the subject matter that it is authorized to address. Second, a court's discretion can condition judges' flexibility in resolving environmental disputes and affect their corresponding capacity to incorporate IEL. Accordingly, a court at any governmental level may be more or less equipped to implement IEL due to the breadth or narrowness of discretion enjoyed by its panelists.

Together, the three governmental levels and binary descriptions of jurisdiction and discretion facilitate theoretical distinction of the functions that varying green court models may perform. At the same time, they maintain a level of abstraction that enables the resulting conclusions to hold relevance across diverse legal and political settings. Combining these two

axes and their potential permutations yields the typology in Figure 4.1 that structures the theoretical evaluation in the balance of this chapter.

5. Theoretical Examination/Analysis

As the typology illustrates, the term "green court" reflects an umbrella term that encompasses diverse institutions whose capacity to implement IEL will vary widely. To aid in considering which typology cells are most likely to contain the green courts that are best suited to support domestic adoption of IEL, this section briefly provides three case studies to illustrate how individual green courts would be positioned within the typology, and how their IEL implementation capacity might best be evaluated. To permit the most useful illustration possible, each exemplar clearly conforms with its given typology cell and is well-documented in either existing descriptive accounts, scholarly literature, or both. Since Chapter 5 will conduct a detailed census using this typology, the objective here is to provide concrete examples to illustrate the typology, and not to comprehensively assess green court diversity. While presenting exemplars from only three of nine typology cells may divert attention from others (see, e.g., Elman 2005, 316), it aids in illustrating the range of institutions that the typology encompasses (Fig. 4.2).

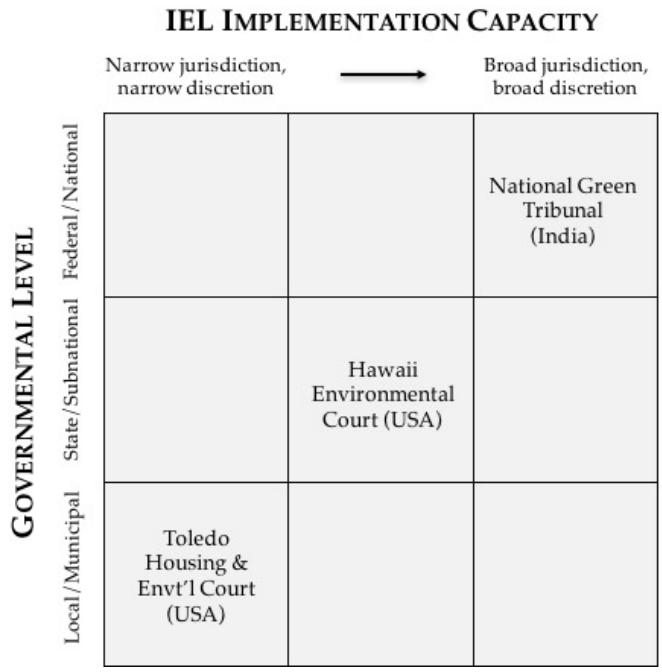

Figure 4.2. Green court typology populated with exemplar institutions.

a. *Toledo, OH Housing and Environmental Court (municipal level, narrow jurisdiction, narrow discretion)*

The Toledo, OH Housing and Environmental Court ("Toledo Court") represents the municipal-level environmental court institutional model that is present in multiple American cities.[49] The court provides a separate, specialized bench within the city's municipal court network, and seeks to "consolidate all criminal and civil housing and environmental cases into a single session of Court, to be presided over by a Judge specifically elected to that position" (City of Toledo 2018a). By centralizing these disputes, it affords a common procedure and level of expertise to a defined suite of legal questions.

[49] For other examples of similar municipal-level green courts found in the United States, observe the following institutions (each with web-based summaries): Little Rock, Arkansas Environment Courts; Cobb County, GA Magistrate Court, Environmental Division; Riverdale, GA Environmental Court; and Mobile, AL Environmental Court.

The jurisdiction of the Toledo court largely addresses housing code issues, and so the court's environmental competence is constrained to select, specified civil (filings for orders to "abate a nuisance") and criminal ("alleged violations of the Toledo Municipal Code Chapter…11") offenses (City of Toledo 2018a). While this jurisdiction encompasses issues with an indirect relation to broader environmental quality, such as "littering" and conformity with site-specific flood control requirements (City of Toledo 2018a), little of its jurisdiction directly addresses environmental regulation (American Legal Publishing Corporation 2018). Similarly, while the Toledo Court's mission "of developing innovative and effective solutions for housing court litigants" is broad (City of Toledo 2018a), judicial discretion is limited by local court rules which specify in some detail how matters should be resolved (City of Toledo 2018b§ 35).

In sum, the Toledo Housing and Environment Court represents a municipal level institution invested with narrow jurisdiction and narrow judicial discretion, and exemplifies the institutions represented in the lower third of the typology. While its judges have a clear mandate to develop innovative solutions to pressing local disputes, such as individual homeowners facing foreclosure, these objectives do not explicitly encompass an obligation to advance sustainability or pursue broader conservation objectives. Although the Toledo court may not reflect all municipal level green courts, it does illustrate how one such institution's ability to embrace and incorporate IEL norms in decision-making may be constrained by its narrow jurisdiction, limited discretion, and position at a foundational judicial level.

b. *Hawaii Environmental Court (state/subnational level, broad jurisdiction, limited discretion)*

Hawaii's environmental court system, established in 2016, reflects the state/subnational level of the typology. Created pursuant to 2014 legislation, the court seeks to "ensure the fair, consistent, and effective resolution of cases involving the environment" (Hawai'i State Judiciary 2018). The court is vested with "broad jurisdiction, covering water, forests, streams, beaches, air, and mountains, along with terrestrial and marine life" (Hawai'i State Judiciary 2018). Additionally, while Hawaiian law specifies particular statutes that the court may address, it also permits additional matters to be assigned to the court if the chief justice "determines that due to their subject matter the assignment is required to ensure the uniform application of environmental laws throughout the State…" (Hawaii 2013, § 2).

While the court's jurisdiction is broad, its discretion is more limited. The court is comprised of designated district and circuit environmental courts (Hawai'i State Judiciary 2018) and possesses seven circuit-level and fifteen district-level designated environmental judges (Recktenwald 2015). Each of these courts is bound by the same procedural rules as traditional, generalist Hawaiian state courts. As a result, the judges are, in large measure, not explicitly instructed to engage with IEL, nor are they specifically or uniquely equipped to do so by the courts' procedural remit. One limited distinction is that Hawaiian Environmental Courts possess the ability, "in [their] discretion…[to] permit other interested persons to intervene," which may provide a mechanism to expand standing in environmental matters (Hawaii 2013, § 4[b]), an element that could aid the courts' provision of access to justice.

As a state/subnational institution, the typology suggests that Hawaii's Environmental Court is better positioned than a municipal court to consider how the matters it addresses relate

to international environmental challenges. And, indeed, the Hawaii Environmental Courts have demonstrated some interest in connecting to environmental adjudication more broadly, holding events including a working group to meet with key individuals, including other environmental court judges (Environmental Court Working Group 2014, 3). While it is not possible to generalize from a single court system's unique structure and experience, the Hawaii Environmental Courts do illustrate one system where a constraint upon IEL implementation capacity (here discretion) appears to limit a state-level institution's engagement with IEL norms.

c. *India National Green Tribunal: national level, broad jurisdiction, broad discretion*

The third exemplar, India's National Green Tribunal ("NGT"), illustrates a national level green court that would occupy the third level of the typology. India's National Green Tribunal (NGT) was established in 2010 (Pring and Pring 2011, 484), and seeks to provide "stable involvement of experts in judicial cases concerning the environment" (Amirante 2012, 458). In addition to its expansive national geographic jurisdiction, the NGT enjoys broad subject matter jurisdiction. While the NGT possesses jurisdiction over specified environmental statutes, it is also more broadly granted jurisdiction over "all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved…" (Ministry of Law and Justice 2010 § III[14][1]).

The NGT also enjoys broad discretion which enables it to interpret and apply IEL when addressing environmental disputes. The court's panel consists of twenty judicial members, as well as twenty expert members, who together possess extensive scientific, environmental, or engineering experience (Ministry of Law and Justice 2010§ II[5][2]). Additionally, rather than

specifying precise evidentiary rules, the NGT Act notes explicitly that the NGT is "not...bound by the Code of Civil Procedure" or "the rules of evidence," but is instead empowered "to regulate its own procedure," "guided by the principles of natural justice" (Ministry of Law and Justice 2010§ II[19][1]).

Finally, the NGT's discretion in applying IEL distinguishes it from the foregoing two exemplars in that it is explicitly empowered to do so; when rendering "any order or decision or award, [the NGT must] apply the principles of sustainable development, the precautionary principle and the polluter pays principle" (Ministry of Law and Justice 2010§ 20). Recent decisions have referenced these principles and demonstrated the court's commitment to IEL. For instance, in *Bhungase v. Ganga Sugar & Energy Ltd. & Others*, an industrial pollution case, the court identified a need to employ a multifaceted approach in its case analysis, indicating its desire to consider the precautionary and polluter pays principles, among others (2013 at ¶ 18). Similarly, in *Goa Paryavaran Savrakshan Sangharsh Samitee v. Sesa Goa Ltd. & Ors.*, the court adopted an expansive conception of sustainable development, and explicitly recognized "the Precautionary Principle and 'Polluter Pays' Principle…as necessary components of sustainable development" (2015 at ¶ 27). While this account of the NGT is not intended to imply that all national level green courts will exhibit these characteristics, it does illustrate how broad jurisdiction and broad discretion, including an obligation to freely apply IEL principles when resolving disputes, can uniquely equip a court to implement IEL.

6. Discussion

The typology and exemplars presented above illustrate that green court capacity to perform key functions, including IEL norm implementation, is not uniform, but rather reflects

key structural factors. In particular, a court's ability to address and apply IEL is likely to reflect the level at which it is located, the jurisdiction that it possesses to hear disputes, and the discretion that it enjoys in resolving those disputes.

Moreover, as the typology and foregoing exemplars demonstrate, different combinations of attributes are likely to yield institutions with varying capacity to implement IEL. Therefore, this section briefly evaluates the IEL norm implementation potential of green courts at each specified level. It then refines the typology introduced above to capture this diversity and guide future research.

First, as discussed previously, municipal-level environmental courts are likely to hold limited capacity to implement and apply broad principles of IEL, since their territorial and subject matter jurisdiction is often far narrower than other green courts. Moreover, where judges of such courts are granted discretion, it would likely fall within the realm of very localized matters with indirect connection to global environmental concerns, such as housing and community development, given the motivations underlying establishment of many municipal courts. Therefore, as noted in previous chapters, the three potential models of municipal-level green courts which comprise the lowest level of the typology are likely to be well-equipped to advance disposition of high-volume zoning and code enforcement matters, but relatively unlikely to be substantially aware of or equipped to implement the norms of IEL (Fig. 4.3).

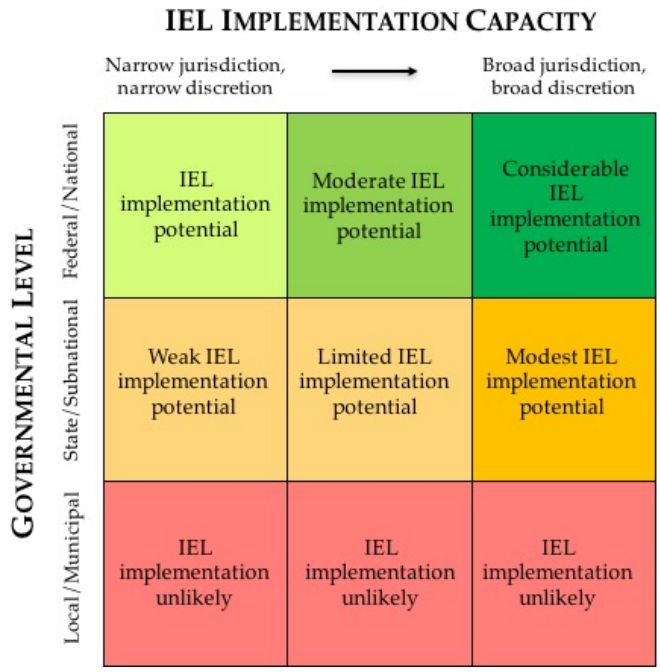

Figure 4.3. Typology assessing likely capacity of IEL norm implementation.

Second, the more expansive territorial jurisdiction and greater likelihood of addressing broader environmental challenges at the state/subnational level suggests that all three green court models are likely better suited than municipal institutions to implement IEL. As the foregoing discussion demonstrates, state-level institutions with broad jurisdiction and discretion will likely hold the greatest capacity, all else equal, to perform those functions. However, it is also possible that an institution which enjoys broad jurisdiction or discretion, while remaining constrained in the other respect, will be able to perform these functions as well; Hawaii's Environment Court illustrates this potential. Therefore, the typology suggests that the capacity of all state-level institutions to contribute to IEL implementation will be greater than municipal-level institutions, all else equal, though the capacity of each model will vary by degree (Fig. 4.3).

Third, this chapter has evaluated national-level green courts. Barring establishment of a dedicated, supranational environmental judiciary, as scholars advocate (e.g., Pedersen 2012),

national level institutions would possess the most expansive territorial jurisdiction. Moreover, their position at the national level renders them most likely to enjoy broad subject-matter jurisdiction and to look outwardly to broad global trends within their particular issue domain. Together, these attributes equip them to address multiple interrelated and complex environmental issues. As existing literature notes, national-level courts contribute increasingly to global legal adjudication (e.g., Whytock et al. 2009), and legal norms transmit readily between such institutions (Sikkink and Kim 2013). However, the degree to which a national-level court can advance IEL implementation will likely also reflect the breadth of discretion that its panelists enjoy. Therefore, while all national-level green courts may possess the capacity to advance global environmental governance, it is likely that a national-level green court with broad jurisdiction and discretion would be best-equipped to do so (Fig. 4.3).

In all, this chapter suggests that, like other environmental institutions, green court effectiveness is substantially influenced by structural factors. Specifically, it argues that factors including the level at which a court is situated, and the jurisdiction and discretion that a court enjoys, are likely to influence a given court's capacity to implement IEL. Accordingly, the foregoing typology facilitates comparative analysis of green courts and supports consideration of which institutional models, all else equal, may be best-equipped to support the implementation of IEL principles and norms.

However, before Chapter 5 examines how these elements manifest in practice, it is important to note that a court's structural factors do not exist in isolation. Indeed, this dissertation emphasizes that the efficacy of individual green courts is likely to be further conditioned by two further factors: the legal culture that a court is situated within, and the attributes of its individual judges. Due to the emphasis on green courts in this typology and the

database developed in Chapter 5, the focus and unit of analysis here is simultaneously narrower than legal culture and broader than the individual judges on green courts. However, this dissertation acknowledges the nested nature of global environmental governance; Chapter 3 signals the influence of individual judges, and the database developed in Chapter 5 characterizes certain domestic factors. Additionally, domestic legal culture and the potential influence of individual judges both merit brief mention here.

First, a given court or tribunal's capacity to embrace IEL tenets inevitably reflects the domestic context within which that court is situated. The influence of domestic context on environmental policymaking is widely identified throughout GEP. For instance, when examining bilateral EU-initiated climate negotiations, Torney emphasized that "domestic factors-both material and ideational" account for differing policy responses (Torney 2015, 106). GEP scholars have made similar observations regarding the effect of domestic context on the implementation of various international accords and regimes (e.g., Simmons 1998), including water quality (e.g., Liefferink, Wiering, and Uitenboogaart 2011) and climate policy (e.g., Hovi, Sprinz, and Underdal 2009).

Similarly, expert survey and interview respondents underscored the role of domestic context in determining the efficacy, and even the initial establishment, of environmental courts and tribunals. Liz Fisher noted that "if we recognize that what is driving forward green courts is this need for adjudicative capacity, then that's going to play out differently in different legal cultures, because what already exists in that legal culture in terms of institutions, in terms of ethos, in terms of how they think about adjudication, is going to be different."[50]

Moreover, once a given jurisdiction elects to establish a green court, the degree to which it implements IEL will also inevitably reflect a country's legal culture. Gita Gill emphasized this

[50] Author's interview with Professor Liz Fisher via Skype, October 2017.

by noting, for example, that interpretation of the precautionary principle always depends "upon the legal culture of the society. Because there is a dependence on how much scientific advancement is there at the domestic level. What are the technological involvements, innovations that can be done? What sorts of law are available? Or…policy structure?"[51] Pring further noted that the orientation of a country's legal system to international law will shape the ability of a green court within that context to implement IEL: "it's difficult for them to see how they can justify applying the polluter pays principle, or any of the other ones that we think of as great international law principles, unless there is some branch of the law of their jurisdiction, of the national law or state law, upon which they can hang that fruit from outside-graft it onto that branch."[52]

Finally, an assistant general counsel for a US environmental agency supported this view, suggesting that "the most important attribute is clear national and local legislation implementing the country's international law obligations."[53] As this respondent further noted, "courts apply international law only to the extent that the national and local law of the country directs the court to apply international law," and "This should not be expected of them unless the municipal law of the country in which they have jurisdiction directs them to apply international law."[54] Therefore, while the attributes of individual courts are powerful determinants of IEL implementation capacity, as the foregoing typology indicates, they are conditioned and mediated by attributes of the domestic legal culture within which they are situated.

In addition to domestic legal culture, research for this dissertation also underscores how individual judges' commitment, or lack thereof, to IEL will condition a court's ability to

[51] Author's interview with Professor Gita Gill via Skype, October 2017.
[52] Author's interview with Professor emeritus Rock Pring via phone, November 2017.
[53] Expert survey response of Respondent 29, via web, 2017.
[54] Expert survey response of Respondent 29, via web, 2017.

implement broad international principles. As Chapter 3 underscores, judges play a key role in exchanging information, participating in trainings, and engaging in practices that exchange information among courts and between countries (e.g., Andonova and Tuta 2014; Slaughter 2003). However, not all judges are equally invested in information exchange or environmental norm implementation. Some judges, due to personal or systemic factors, may be ill-equipped, or simply choose not to, perform these functions. For instance, Pring noted that many green court establishments in the Philippines were "really just redesignations of existing judges, existing courts," emphasizing that not all courts or panelists are equally equipped to implement IEL.

Similarly, not all judges are equally sensitive to IEL or to global environmental adjudication efforts. For instance, Pring cautioned that that the existence of information exchange among judges "is not to say that there aren't a lot of these judges who…really…do see no further than their own court, as you'd expect with any judicial system…that don't see them as part of an international or even multinational network."[55] Likewise, when I asked one interviewee whether UK environmental tribunal panelists view themselves as participants in a global community of others doing similar work, they provided a similar assessment, replying "I would say not yet…."[56] In short, the structural aspects that this chapter identifies are likely important determinants of an institution's capacity to implement IEL, all else equal. However, this section intends to underscore that, in practice, all is not equal, and that domestic legal culture and the attributes of individual judges will also affect individual courts' capacities to implement IEL.

[55] Author's interview with Professor emeritus Rock Pring via phone, November 2017.
[56] Author's interview with Professor Richard Macrory, CBE, via Skype, November 2017.

7. Conclusion

This chapter has identified and evaluated factors that shape domestic green court capacity to implement IEL norms and principles. As it demonstrates, structural characteristics of individual institutions will bear heavily upon this capacity. In particular, a court's capacity will reflect the breadth of jurisdiction it is granted to hear and resolve disputes, the expansiveness of discretion that it enjoys in responding to disputes, and the position of a court within a given domestic judicial system. The chapter further emphasizes that factors including domestic legal culture and the dispositions of individual judges will condition the capacity of an individual green court to implement IEL. Nevertheless, it is likely that, all else equal, a national-level green court invested with broad jurisdiction and broad discretion will prove best-equipped to implement IEL norms and principles when resolving individual environmental disputes.

This chapter's effort to elaborate and formally evaluate a green court typology advances a need, broadly identified within both IR and IL, to make academic research practice relevant. In a 1998 survey of interdisciplinary IR and IL scholarship, Slaughter, Tulumello, and Wood (1998, 368 [emphasis added]) challenged the field to address several questions, including: "Can we classify these diverse explorations and uses of IR theory in theoretically or *practically fruitful* ways?" The pressing nature of environmental challenges makes such a need feel particularly acute within GEP, where Biermann and Pattberg have also argued that academic researchers have an obligation to help "design…institutions that guarantee participation of civil society in global environmental governance through mechanisms that vouchsafe a balance of opinions and perspectives" (Biermann and Pattberg 2008, 288). In a recent survey of contemporary GEP practitioners, Green and Hale suggest that this view continues to be widely held. Fully 36% of their respondents indicated that their research is motivated by a desire for policy relevance or an

effort to speak to current events, and 93% of respondents believed that there should be more linkages between academic and policy communities (Green and Hale 2017, 475).

This chapter's typology advances the aim of practice-relevance by helping academics and policymakers alike to consider how institutional design attributes may shape associated environmental governance capacity. Nevertheless, a pressing need remains to evaluate, in actuality, the "performance and outcomes" of environmental courts and tribunals (Pring and Pring 2009a, 89). Accordingly, in the next chapter, I link the theoretical to the practical by examining whether ideal-type green courts exist in practice, and by considering to what degree the green court landscape, as it currently exists, possesses the capacity that would equip it to advance IEL principles and norms.

CHAPTER 5. GREEN COURT DIVERSITY IN PRACTICE: EVALUATING NATIONAL-LEVEL GREEN COURT EXTENT AND IEL NORM IMPLEMENTATION CAPACITY

This dissertation has noted the rapid emergence of domestic green courts and traced the development of associated scholarship (*see* Chapter 2). From this foundation, it characterized the actors who actively promote the spread of an institutional norm favoring green court establishment, and highlighted in particular the roles of key judges, judicial networks, and IGOs (*see* Chapter 3). Noting the diversity of actors who promote green courts, Chapter 4 theorized that it is unlikely that all green courts will be equally equipped to perform the functions these advocates envision, and it distinguished different green court institutional models based on their capacity to implement IEL procedural and substantive norms. Ultimately, it theorized that national-level green courts, especially those vested with broad subject-matter jurisdiction and judicial discretion, would hold the greatest capacity to promote the domestic implementation of IEL principles and norms.

This chapter reflects an initial effort to build upon the theoretical foundation presented in Chapter 4 and seeks to systematically examine national-level green court diversity. Its objective is to evaluate whether the theoretical promise of judicial specialization for the environment has been realized in practice. To do so, it first briefly reviews relevant research efforts, discussing existing surveys of (1) national-level green courts and (2) domestic green court diversity. Next, it outlines the method used to characterize green court diversity. It details a multistep sampling approach that permits a thorough census of national-level green courts and presents variables that facilitate characterization of green court institutional diversity.

Using this foundation, the balance of the chapter discusses the study's findings and their implications. It finds that few countries have established national-level specialized

environmental judiciaries, and it shows that those in existence vary widely, especially with regard to their discretion and orientation to IEL. Accordingly, this chapter suggests that the collective capacity of national-level green courts to contribute to domestic IEL implementation has likely been modest, though some individual courts are equipped to exert comparatively outsize influence. Ultimately, it concludes by advocating future research to apply this chapter's approach to broader classes of specialist courts and to examine how orders of existing green courts are implemented in practice.

1. Literature Review

As Chapter 2 notes, there is considerable existing literature which analyzes green courts and related topics. Among these, however, relatively few accounts seek to comprehensively evaluate green courts. Nevertheless, some existing publications address (a) the nature of specialized environmental courts found at the national governmental level, and (b) the diversity of domestic courts in a comparative, transnational context.

This chapter limits its analysis to national-level green courts, and few similar attempts have been made to date. However, three existing approaches are particularly relevant to this effort. First, researchers have developed descriptive accounts of individual state- or national-level green courts by proceeding from a purely qualitative legal studies perspective. These efforts often characterize the function and position of a single court or court system within a broader domestic judiciary (e.g., Davide, Jr. and Vinson 2010 [Philippines]; Preston 2012b [New South Wales, Australia]; Zhang and Zhang 2012 [China]). Others have pursued a more holistic approach, examining individual countries' systems of specialized environmental courts (e.g., Stern 2014 [discussing Chinese environmental courts]; Sharma 2008 [examining green courts in

India]). Finally, some researchers have evaluated the fitness of individual political jurisdictions for national green court establishment (Whitney 1973 [United States]; Anisimov and Ryzhenkov 2013 [Russia]).

Second, some efforts have situated domestic green courts within a more cosmopolitan legal context. For instance, researchers and policymakers have evaluated China's environmental court system in the context of Chinese and global legal developments (e.g., Stern 2014; van Rooij, Stern, and Fürst 2016), and have drawn on China's experiences establishing an environmental court to offer insights to other Asian countries (Lin et al. 2009b). Likewise, scholars have developed detailed accounts of India's green court system (e.g., Gill 2017), its relation to green court emergence more broadly (e.g., Amirante 2012), and its relevance to other court systems and legal principles, including access to justice (e.g., Sen 2016). While these accounts may contextualize individual green courts within broader developments, or may offer detailed assessments of whether individual courts reflect more systemic developments, they do not evaluate green courts comprehensively.

Alongside existing efforts to characterize national green courts, some scholars have generated accounts of court diversity across domestic political and legal systems. In particular, a body of "comparative courts" literature examines how political settings affect judicial outcomes (see, e.g., Vanberg 2015). Additionally, studies have examined how attributes of individual courts can affect decisional outcomes (e.g., Ramseyer 1994 [examining judicial independence]). The comparative legal approach has even been used to evaluate the diversity of specialized domestic courts in issue areas including labor (e.g., Vranken 1982), commerce (e.g., Al-khulaifi and Kattan 2016), business (e.g., Junge 1998), religion (e.g., Aronson 2011), and intellectual property (e.g., Maleshin 2016). However, the comparative courts approach has only been applied

to green courts in very limited instances (e.g., Anker and Nilsson 2010), and has not yet been used to explicitly link the institutions to their broader structural implications. This chapter provides such a foundation by generating detailed insight about current green court institutional designs and by evaluating the capacity of existing institutions to support IEL implementation.

2. Methods

This chapter pursues a two-step research process to generate an original account of green court existence and diversity. It first seeks to identify the existing national-level green courts, and then collects data on the identified institutions to evaluate their fitness to implement IEL.

a. Case Selection & Data Collection

This chapter's sampling approach notes the tremendous diversity inherent in the green courts found globally and the challenges that would accompany an effort to characterize all green courts across all domestic political contexts. Accordingly, it adopts a subsampling approach, and limits its objective to identifying and characterizing existing national-level green courts. This focus reflects Chapter 4's conclusion that national-level green courts are likely best-equipped, all else equal, to adopt and implement IEL norms and principles within domestic contexts. As such, national-level green courts are likely best positioned to exercise the environmental protection motivations which often justify green court establishment (*see* Chapter 4, *supra*). Moreover, a focus on national-level green courts permits initial development and application of a sampling approach that could subsequently be applied to study green courts at other governmental levels. Likewise, constraining analysis to national-level green courts, rather than surveying potential

green courts more comprehensively, permits this dissertation-scale effort to sample across all 193 current member nations of the United Nations (United Nations 2018).

This chapter's first objective is to systematically identify and document all countries that currently possess national-level green courts. At least two existing reports have attempted to generate global accounts of environmental courts and tribunals (Pring and Pring 2009a; 2016). Rather than replicating the existing approach, it is desirable here to employ multiple survey approaches, given differences in how the institutions may be defined, the rapid evolution of the green court institutional landscape, and wide disparities in information availability and governmental capacity across country contexts. Accordingly, this project used three specific approaches to determine whether a given country has any form of green court and to lay a foundation for subsequently identifying national-level institutions.

The first, list-based approach employed the existing 2016 UNEP census of green courts developed by Pring and Pring (Pring and Pring 2016 Appendix A). Specifically, I used this list to note all countries which Pring and Pring identify as having at least one environmental court or tribunal. This approach enabled me to establish the state of knowledge within green courts research; the Pring and Pring censuses are a frequent point of departure and provide oft-cited statistics that underpin environmental court and tribunal research (see Stern 2014, 55 FN 12; Robinson 2012, 368).

Second, I complemented the list approach with a web-based effort. Here, I conducted country-by-country Internet research to seek evidence documenting the existence of green courts. For each of the 193 UN member states, I conducted a suite of standardized web searches[57] to systematize the level of search effort across all countries. Where personal knowledge or other

[57] Standardized search terms or phrases included: "CountryA AND green court," "CountryA AND environment court," "CountryA AND environmental law," "CountryA AND judicial system," and "CountryA AND judiciary."

background sources provided insight regarding the potential existence of green courts, I performed additional, more tailored searches to permit the most comprehensive analysis possible. However, to bound and systematize this effort, I limited Internet search efforts to five minutes per country.

Third, I used a direct-contact approach to engage directly with domestic governmental officials, wherever possible, and to evaluate their awareness of green courts within their own countries. I used email and telephone (if no email response was received) to contact the United Nations mission and embassy to the United States of each UN member state.[58] When respondents suggested follow-up approaches, or provided contact information for legal attachés or ministry of justice employees, I pursued these contacts, as well. In all, the "contact" approach yielded 30 firm country-level responses, in addition to the numerous emails which suggested follow-up approaches, or acknowledged receipt of my inquiries (Appendix 6).

Once I completed the three foregoing survey efforts, I created a table to aggregate my findings. I then used this table as the basis for determining, for purposes of this effort, which countries would be deemed to possess at least one green court. When at least two of the three foregoing mechanisms indicated that a country possessed an environmental court or tribunal, that country was coded as a "yes"; a country was coded as a "no" if two or more mechanisms failed to detect presence of a green court. By using this scheme, I sought to include green courts that might be overlooked by one approach yet detected by another. For instance, contacts in the Brazilian government noted with relative certainty that no specialist environment courts exist within their country, even though such institutions are well-documented by the UNEP list (Pring

[58] Where such contact information could be identified, this approach was followed. Where only consular, mission, and/or embassy contacts could be identified, the approach was modified accordingly. However, in every circumstance, each country was contacted at least twice. The only exceptions to this approach were for the United States of America and the Democratic People's Republic of Korea, for which no direct contact efforts were made.

and Pring 2016) and by existing scholarship (see Bryner 2012). Similarly, by using this scheme, I sought to exclude any institution that a particular approach might either erroneously identify, identify under a more encompassing definition of environmental court, or identify before its subsequent dissolution. For instance, the UNEP report notes that, "The 5th section of the 3rd sala…of [Spain's] Supreme Court specializes in environmental cases," yet an employee of the Spanish Supreme Court clarified through my "contact" approach that environmental issues constitute only one of multiple issue areas heard by the sala (Pring and Pring 2016, 86).

In all, my survey process identified 36 countries with indicia of any form of standalone environmental court or tribunal (Table 5.1; asterisk denotes uncertainty in the case of the Spanish judiciary). With this information in hand, I next sought to determine which of these 36 countries had a dedicated green court at the national judicial level. To do so, I conducted a more detailed Web search for each of the 36 countries identified above, and then followed up with personal contact in cases where it was unclear if such an institution existed. Through this process, I identified eight countries where a national-level green court can currently be documented (Table 5.1).

Table 5.1. UN member states with green courts (asterisk denotes uncertainty).

UN member states with confirmed green court (any level); n=36	UN member states with confirmed green court (national level); n=8
Australia	Bolivia
Argentina	China
Bangladesh	India
Belgium	Kenya
Bolivia	New Zealand
Brazil	Sweden
Chile	Thailand
China	Trinidad & Tobago
Costa Rica	
Dominica	
Egypt	
El Salvador	
Finland	
Gambia	
Greece	
Guatemala	
India	
Kenya	
Malaysia	
New Zealand	
Nicaragua	
Nigeria	
Pakistan	
Papua New Guinea	
Paraguay	
Peru	
Philippines	
Seychelles	
Spain*	
Sri Lanka	
Sudan	
Sweden	
Thailand	
Trinidad & Tobago	
UK of Great Britain & Northern Ireland	
USA	

b. Variables

Once I identified the eight countries which currently possess national-level green courts of any model, I next sought to better characterize those institutions on the basis of variables relevant to their capacity to implement IEL. My objective was to link the previous chapter's theoretical conclusions to real-life institutions by evaluating and characterizing the jurisdiction and discretion that existing national-level green courts enjoy. Therefore, in addition to collecting background information about those courts, I developed a suite of questions that would lend insight into a given institution's jurisdiction and discretion. Collecting data on a court's position, jurisdiction, and discretion reflects the theoretical conclusions presented in Chapter 4 that these factors would all bear upon a court's ability to implement IEL.

First, I identified three variables to help characterize green courts' spatial and temporal distribution. These variables reflect discussion in Chapter 3 which notes that domestic adoption of international norms can follow diverse paths resulting in their top-down establishment, their mutual development, and their "spontaneous emergence" (see Jörgens 2003, 12; Young 1982). The diversity of diffusion processes can yield distinct spatial and temporal patterns of norm adoption (Acharya 2004); the receptiveness of local actors, the degree of dialogue among those actors, and the receptiveness of governmental actors to a diffusing norm will all vary by country (Jörgens 2004). To evaluate how these diffusion processes may have shaped norm adoption and to better understand whether particular countries or regions have proven more receptive to green court establishment, I noted the location of countries with national-level green courts. Additionally, I noted when those green courts were established, in an effort to detect any temporal patterns that may accompany their establishment.

Accordingly, I first noted a court's geographic placement by UN regional grouping, as defined by the United Nations Statistics Division (UN Stats). Second, I identified the "date of authorization," or the date when a green court was codified in a given country's legislation. Third, I recorded the "date of establishment," or the date at which a green court was capable of hearing a dispute. I noted both the authorization and establishment date, since not all authorized green courts have subsequently been established. For instance, Pring and Pring (Pring and Pring 2016, Appendix C) identify fifteen countries with courts that are "authorized but not established," and my census for this chapter echoes their assessment that these institutions are not currently functioning.

Second, I collected data on variables that enable characterization of individual green courts' jurisdiction. This effort reflects recognition that green courts with broad jurisdiction are perceived to hold the greatest capacity to implement IEL when resolving domestic disputes (*see* Chapter 4), and that domestic court jurisdiction influences the implementation of IL in a range of subject matter areas (e.g., Sandholtz 2015). Specifically, I first noted whether a court is empowered to adjudicate criminal cases, civil disputes, or a combination of the two, since dual civil and criminal competence would tend to imply broader jurisdiction (e.g. Listwan, Shaffer, and Hartman 2009; Baum 2010a). Second, I noted the function that a given court performs within a country's judiciary, examining whether it has jurisdiction to function as a trial court (fact-finding and initial adjudication), an appellate court (hearing appeals but subject to overrule), a combination of the two, or a court of last resort; an appellate court or court of last resort would tend to have broader jurisdiction than a green court that functions purely in a trial capacity, and thus would be likely to address disputes that reference IEL. By examining variables

relevant to jurisdiction, this chapter will be able to characterize existing courts' capacity to evaluate and implement IEL.

Third, I collected data that characterizes a given green court's discretion, enabling me to examine the capacity of existing green courts to implement IEL. This effort reflects Chapter 4's conclusion that courts with broad discretion to incorporate IEL will be more likely and better-equipped to incorporate the norms and principles that are the focus of this chapter. I first characterized each green court's composition, noting (a) the number of judges who hear a typical dispute and (b) whether a green court's bench consists of judges with formal legal training only, non-judges only, or some combination of the two. All else equal, I would expect that an institution with a large and diverse panel should be best-equipped to draw upon a range of competencies and expertise, and that this in turn should grant the court flexibility and capacity to consider and employ principles of IEL in decision-making.

Second, since a judge must first be familiar with IEL norms and principles in order to apply them in judicial opinions, I evaluated opportunities for judges to become susceptible to IEL. For purposes of this dissertation, I did so by examining whether a judge's eligibility to either (a) assume or (b) maintain a position on a green court was conditioned on training, since judicial education provides a valuable opportunity for judges to gain insight and remain current, particularly in complex subject areas (e.g., Baye and Wright 2011).

Third, I sought to characterize a judge's flexibility to interpret IEL as they see fit. All else equal, I expect that judges with greater political independence and longer judicial tenures should have more latitude to creatively incorporate IEL in rulings. One key reason for this expectation is that considerations of political expediency (e.g., a desire to issue narrow rulings or to dispose of large volumes of disputes through limited opinions) are less likely to color an independent

judge's decision-making and limit their willingness to freely craft opinions (see Gibson 1980). Accordingly, I noted (a) the nature of the nomination, appointment, and confirmation process, and (b) the length of time that a judge can serve on a given green court.

Finally, I sought to identify domestic courts with a direct mandate to apply IEL. I reviewed enabling legislation and noted any explicit or oblique references to IEL principles or obligations to incorporate such norms into decision-making. A court whose enabling legislation explicitly obligates its panelists to consider or apply IEL when issuing rulings should be particularly likely to implement IEL norms and principles. Similarly, I expect that, all else equal, a court whose panelists enjoy broad discretion over a range of subject areas relating to IEL would be more disposed to do so than a court with no such reference in their enabling legislation, because its panelists would be attuned to such issues.

After creating these variables, I next sought to collect as much relevant data as possible from individuals with personal familiarity regarding the eight identified national-level green courts. To establish contacts, I used publicly available information derived from court websites and the website of the Earth System Governance (ESG) project, a social science research network addressing global environmental change. In two cases (Kenya and Sweden), I received information directly from sitting judges; in one case (New Zealand), I received information from a court registrar; in four cases (China, India, Thailand, Trinidad & Tobago), I received information and/or documents from environmental law and policy professors within those countries; and in one case (Bolivia), I received web links from a country contact (Appendix 5). In two countries, I was unable to obtain detailed court information: Dominica experienced a major hurricane during the data collection period, and Egypt presented a language barrier that I

could not surmount, as I was unable to establish a research contact.[59] In all countries where contacts could be identified, I emailed a common list of questions regarding the foregoing variables (Appendix 6). In instances where no contact could be established, I utilized information from publicly-available web and print documents to address as many of the foregoing variables as possible. Finally, I integrated the above data to assign proposed "broad" or "narrow" jurisdiction and discretion values to each green court. These values are presented alongside the specific variables in the tables below, and are intended to aid comparison among the institutions.

3. Findings

The data collected through this project provides a snapshot of the scope of national-level green court establishment. Moreover, it enables characterization of existing courts' jurisdiction and discretion. In this section, in order to provide a foundation for subsequent evaluation of green courts' capacity to implement IEL norms and principles, I briefly present the relevant findings for each foregoing element. As noted below, these individual attributes will suggest, when viewed collectively, that national-level green courts in China and Trinidad & Tobago possess attributes that render them least-equipped to implement norms and principles of IEL, that those in Bolivia, Sweden, New Zealand, and Thailand possess attributes that afford them moderate capacity to implement IEL, and that green courts in India and Kenya hold the comparatively greatest capacity to implement IEL.

[59] I also received sufficient documentation from a court employee affiliated with Spain's Supreme Court to conclude that the institution did not merit additional scrutiny for this chapter, as its subject-matter competence was not primarily constrained to environmental issues.

a. Distribution

This study first evaluates spatial and temporal distribution of existing national-level green courts. The eight institutions now in existence exhibit broad geographic distribution (Table 5.2). Three are located within the Asia-Pacific region (China, India, Thailand), two are located in Latin American & Caribbean countries (Bolivia, Trinidad & Tobago), and two fall within the Western Europe & Others UN grouping (Sweden, New Zealand).

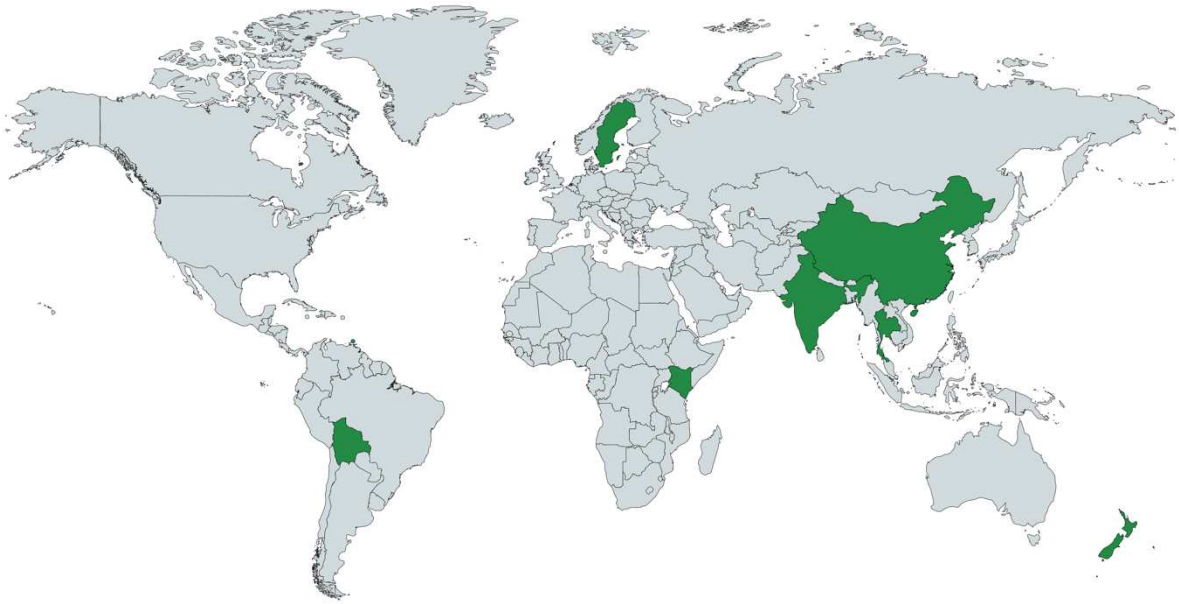

Figure 5.1. Geographic distribution of national-level green courts.

Additionally, the emergence of the eight courts reflects considerable temporal variation when evaluated on a decadal basis (Table 5.2). Between 1990 and 1999, three countries (Bolivia, New Zealand, and Sweden) authorized national-level green courts, and two (New Zealand and Sweden) actually established those courts during the period. Between 2000 and 2009, two additional countries authorized national-level green courts (Trinidad & Tobago and Thailand), while three in total established the institutions (Bolivia, Thailand, and Trinidad & Tobago).

Finally, between 2010 and the present, three further countries authorized and established (China, India, and Kenya) national-level green courts.

As Chapter 4 notes, the establishment of individual green courts reflects active engagement by a range of domestic and international actors. The location and establishment of the eight existing national-level green courts appears to mirror this by exhibiting considerable spatial and temporal diversity, and does not clearly reflect a discernible pattern.

Table 5.2. National-level green court attributes.

Country	Court Name	UN Regional Grouping	Date of authorization	Date of establishment
New Zealand	Environment Court	Western European & Others	1991	1991
Sweden	Environmental Court of Appeal (Mark- och miljööverdomstolen)	Western European & Others	1998	1999
Bolivia	National Agroambiental Court ("Tribunal Agroambiental")	Latin American & Caribbean	1999*	2000*
Trinidad & Tobago	Environmental Commission	Latin American & Caribbean	2000	2000
Thailand	Supreme Court, Green Bench	Asia-Pacific	2005	2005
India	National Green Tribunal	Asia-Pacific	2010	2011
Kenya	Land and Environment Court	Africa	2011	2012
China	Environmental Resources Tribunal	Asia-Pacific	2014*	2014*

*Asterisks denote fields where ambiguity accompanies data.

b. Jurisdiction

Each of the eight national-level green courts exhibit broad territorial jurisdiction that encompasses the entirety of their respective countries. However, the courts exhibit more

variation on other elements pertaining to their jurisdiction (Table 5.3). Four of the institutions (located in China, India, Kenya, and Trinidad & Tobago) possess exclusively civil jurisdiction, while the remaining half (located in Bolivia, New Zealand, Sweden, and Thailand) appear to possess jurisdiction over both civil and criminal disputes.

Table 5.3. National-level green court jurisdiction.

Country	Court name	Civil/Criminal Competence	Type of institution	Position within judicial system	Definition of subject matter jurisdiction	Jurisdiction
China	Environmental Resources Tribunal	Civil	Chamber within Supreme Court	Court of last resort	Somewhat broadly defined on court website	Narrow
India	National Green Tribunal	Civil	Standalone court	Appellate (subject to final appeal)	Broadly defined by statute	Broad
Kenya	Land and Environment Court	Civil	Standalone court	Appellate (subject to final appeal)	Broadly defined by statute	Broad
Trinidad & Tobago	Environmental Commission	Civil*	Standalone commission	Appellate (subject to final appeal)	Broadly defined by statute	Narrow
Bolivia	National Agroambiental Court ("Tribunal Agroambiental")	Civil & criminal	Standalone court	Court of last resort*	Broadly defined by Bolivian Constitution	Broad
New Zealand	Environment Court	Civil & criminal	Standalone court	Appellate (subject to final appeal)	Broadly defined by statute	Broad
Sweden	Environmental Court of Appeal (Mark- och miljööverdomstolen)	Civil & criminal	Standalone court	Appellate (subject to final appeal)	*	Broad*
Thailand	Supreme Court, Green Bench	Civil & criminal	Chamber within Supreme Court	Court of last resort	Issue areas defined by statute	Narrow

*Asterisks denote fields where ambiguity accompanies data.

Moreover, the position of the courts within their domestic governmental structure varies tremendously by country (Table 5.3). Two of the institutions (China's Environmental Resources

Tribunal and Thailand's Supreme Court, Environmental Law Division) are chambers within a broader Supreme Court; two (Trinidad & Tobago's Environmental Commission and India's National Green Tribunal) are institutions which interlink with the executive and judicial branches; one (Sweden's Environmental Court of Appeal) is an administrative court of appeal; and three (Bolivia's National Tribunal Agroambiental, Kenya's Land and Environment Court, and New Zealand's Environment Court) are freestanding judicial courts with environmental jurisdiction. In sum, while all national-level green courts possess broad territorial jurisdiction, there is considerable institutional variation among the courts created to exercise this jurisdiction. This structural variation suggests that existing courts require diverse levels of resources to operate, draw upon widely varied structural foundations, and interact with other judicial and quasi-judicial bodies in diverse fashion. Moreover, these findings indicate that, institutionally, green courts have been fit to diverse domestic legal contexts.

In contrast, nearly all surveyed institutions possess broad subject matter jurisdiction (SMJ; Table 5.3). In most of the green courts, this broad subject-matter remit is specified by statute. For instance, Thailand's Supreme Court, Green Bench has jurisdiction over "about 24 Acts related to Environment."[60] Similarly, New Zealand's Environment Court can hear appeals under the country's Resource Management Act and ancillary statutes that are incorporated by reference. Finally, Trinidad & Tobago's Environmental Commission may hear environmental appeals in a range of matters specified by statute (Table 5.3).

In at least three instances, a court's broad SMJ is further reinforced by expressions affirming the breadth of that court's competency. First, a judge on Kenya's Environmental and Land Court reports that the court possesses jurisdiction over "All disputes concerning the

[60] Author's personal communication with Professor Songkrant Pongboonjun, November 2017 (by email).

environment, title, use and occupation of land."[61] Second, the enabling legislation for India's National Green Tribunal prefaces its specified SMJ by noting that the Tribunal will enjoy "jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved…" (National Green Tribunal Act, 2010 at § III[14][1]). Third, Bolivia's Constitution grants the Tribunal Agroambiental jurisdiction "in addition to those [areas] indicated by law…[to r]esolve appeals and annulment in real agrarian actions, forestry, environmental, water, rights of use and use of renewable natural resources, water, forestry and biodiversity; lawsuits against acts that attempt against fauna, flora, water and the environment; and demands on practices that endanger the ecological system and the conservation of species or animals…" (Bolivia Constitution, Art. 189). In all, the foregoing demonstrates that nearly all existing national-level green courts enjoy broad SMJ over environmental matters. However, it suggests that considerable variation shapes how jurisdiction is specified and provides models for jurisdictions seeking to equip new green courts with broad jurisdictional grants.

In sum, the foregoing elements indicate that three existing national-level green courts possess jurisdiction that is best characterized as narrow, though the basis for this determination varies by case. First, China's Environmental Resources Tribunal enjoys somewhat broad subject-matter jurisdiction, yet only exercises civil jurisdiction and operates within the confines of a single chamber in the country's broader Supreme Court. Second, while Trinidad & Tobago's Environmental Commission possesses comparatively broad subject matter jurisdiction and operates as a standalone commission, the institution is also limited to the exercise of civil jurisdiction, and its rulings are subject to final appeal. Third, Thailand's Green Bench operates as a court of last resort and enjoys both civil and criminal jurisdiction, yet its subject matter

[61] Author's personal communication with Justice Samson Okong'o, via email, October 2017.

jurisdiction is constrained to issue areas defined by statute, and the bench operates as a chamber within the broader Supreme Court.

At the same time, the findings collectively suggest that five institutions may best be characterized as possessing broad jurisdiction, though, again, the individual bases for this determination vary. First, though both India and Kenya's green courts solely exercise civil jurisdiction and their opinions fall subject to appellate review, they function as standalone courts and exercise subject-matter jurisdiction that is defined exceptionally broadly by statute. Second, while New Zealand and Sweden's green courts similarly fall subject to final appeal, the two institutions operate as standalone courts and enjoy broad civil and criminal jurisdiction over environmental disputes. Finally, Bolivia's National Agro-Environmental Court appears to mirror many of the foregoing elements, yet its jurisdiction is broadly defined within Bolivia's 2009 constitution, and the institution appears to function as a court of last resort within its issue domain. Thus, a majority of existing national-level green courts enjoy broad jurisdiction, and they collectively demonstrate that diverse domestic legal cultures may equip a green court with this attribute.

c. Discretion

The eight national-level green courts surveyed vary considerably with respect to factors that may shape judges' discretion (Table 5.4). As noted in Chapter 4, the degree of discretion that judges enjoy can shape how they approach dispute resolution, which in the context of this dissertation may bear upon their obligation, capacity, or choice to incorporate IEL into rulings. A range of elements may shape a panelist's discretion, and this dissertation observes variation among many.

Table 5.4. National level green court discretion.

Country	Court Name	# panelists	Training before appointment	Training during appointment	Appointment mechanism	Term length	Discretion
Bolivia	National Agroambiental Court ("Tribunal Agroambiental")	10 (5 reg. judges, 5 alternates)	*	*	Nominated by other branches; elected by public	Single six year term	Narrow
China	Environmental Resources Tribunal	*	*	*	*	*	Narrow
India	National Green Tribunal	Max 41 (1 chairperson, 20 judicial members, 20 expert members)	*	*	Executive (with advice of judiciary)	*	Broad
Kenya	Land & Environment Court	34	Ten years' experience with the environment	Minimum two continuing judicial education sessions/year	Executive (with advice of judiciary)	"Life" appointment (max age 70)	Broad
New Zealand	Environment Court	26	No formal environmental training requirement	No formal environmental training requirement	Executive (with participation of judiciary and other stakeholders)	Judges "life" appointment (max age 70); comm's five year terms	Narrow
Sweden	Environmental Court of Appeal (Mark- och miljööverdomstolen)	33 (20 law-trained, 13 technical)	No formal environmental training requirement	Variety of relevant in-service training	Nominated by judiciary; appointed "by the Government"	"Life" appointment (max age 67)	Narrow
Thailand	Supreme Court, Green Bench	8 at a time; ~150 total	*	*	*	*	Broad
Trinidad & Tobago	Environmental Commission	6 (full-time Chairman, FT Deputy Chairman, 4 PT members)	*	*	Selected by the Executive	Minimum term three years	Narrow

*Asterisks denote fields where uncertainty accompanies data. Countries in bold are those with green court enabling legislation that directly or indirectly references IEL norms and principles.

First, the courts vary tremendously in terms of the number of panelists who are appointed to hear disputes. Institutions range from those with as few as two full-time and four part-time members (Trinidad & Tobago) to those with as many as 41 (India) or perhaps as many as 150

(Thailand; personal communication) individuals available to serve on a panel for a given dispute. Similarly, the makeup of personnel on the green courts varies considerably. In half of the institutions (Bolivia, China, Kenya, and Thailand), panels appear to be composed exclusively of judges with formal legal training. In the other four institutions (India, New Zealand, Sweden, and Trinidad & Tobago), disputes are heard by mixed benches, which consist of both law-trained judges and those with non-legal environmental training and credentials. As this chapter notes, it is likely, all else equal, that institutions with the broadest and most diverse panels, including those from both legal and non-legal backgrounds, will hold the greatest capacity to leverage their discretion to incorporate principles and norms of IEL when resolving disputes. While the capacity and disposition to establish institutions with these attributes will likely vary across country contexts, the foregoing findings indicate that varied political settings have established diverse judicial panels.

Second, though only limited data was available, it indicates that national-level green courts vary widely in terms of the training requirements that they impose upon judges who are appointed to, or serve on, panels. While only three of the eight institutions (Kenya, New Zealand, and Sweden) shared information regarding training requirements, considerable diversity is apparent. In New Zealand, Environment Court judges face no formal environmental training requirements before or during their tenure.[62] In Sweden, Environmental Court of Appeal judges have no specific environmental qualification requirements, but are expected to regularly attend environmental issues training sessions.[63] Finally, Kenya's Land & Environment Court requires judges to possess a minimum of ten years' experience with environmental issues before joining the court, and obligates them to attend a minimum of two relevant continuing judicial education

[62] Author's personal communication with Registrar Harry Johnson, via email, October 2017.
[63] Authors' personal communication with Judge Malin Wik, via email, October 2017.

sessions per year.[64] Therefore, while this chapter suggests that environmental training and continuing education requirements can help jurists to effectively and flexibly address complex subject matter, including environmental issues, this element has been implemented unevenly across existing green courts. Therefore, granting attention to this element may represent a mechanism for enhancing discretion across existing and proposed green courts.

Third, the discretion of all eight courts' panelists is checked by participation of other governmental branches and stakeholders in the judicial selection and appointment process. Judges in India, Kenya, New Zealand, Sweden, and Trinidad and Tobago are appointed by other governmental branches (namely, the executive) with input from the judiciary. Through a unique system, Bolivian judges are nominated by the executive and then elected to the bench by popular vote. In short, in each domestic political context, the selection and/or retention of panelists is accountable to the review and input of other domestic actors. Since this chapter notes that political considerations can constrain a judge's decision-making, it is likely, all else equal, that accountability to other governmental branches or to the electorate would constrain panelists' willingness to exercise discretion when interpreting disputes, and would thus render them less likely to freely incorporate IEL principles. As appointment and/or retention of panelists on all current green courts falls subject to some degree of review by other governmental branches, these findings suggest that this factor may substantially condition existing green court discretion.

A fourth factor which increases the observed diversity in discretion between courts is the considerable variation in panelists' term length. In some courts, tenure is relatively limited; panelists in Trinidad & Tobago serve for a minimum of three years, and in Bolivia for a maximum of 6. In others, a lengthier tenure may promote greater judicial independence; in three courts, judges enjoy "life" appointment until a specified maximum age (67 in Sweden; 70 in both

[64] Author's personal communication with Justice Samson Okong'o, via email, October 2017.

Kenya and New Zealand). Since judicial independence can affect judge's decision-making and voting, as noted above, these findings demonstrate that the political pressures exerted upon national green court judges vary widely by domestic setting, and thus that this factor may merit consideration among those seeking to increase green courts' judicial discretion.

Finally, the courts vary widely with respect to the presence or absence of specific directives to incorporate or apply IEL in rulings. This variation is noteworthy, because such statutory obligations provide a direct mechanism for equipping national-level green courts with the flexibility to implement IEL norms in domestic settings. First, the enabling legislation for three national-level green courts (China, New Zealand, and Sweden) makes no direct reference to IEL, suggesting that this avenue is not available in those jurisdictions.

Second, two country cases (Trinidad & Tobago & Thailand) exhibit oblique or indirect reference to IEL, which suggests that the courts are, at minimum, alerted by statute to the existence of IEL. The enabling legislation for Trinidad & Tobago's Environmental Commission references core pillars of the IEL principle of sustainable development: "The Environmental Commission shall…protect the rights of citizens while being cognizant of the need for the balancing of economic growth with environmentally sound practices" (Mission Statement). Thailand's Supreme Court, Green Bench is indirectly instructed to reference IEL. The court is tasked with interpreting at least two statutes that explicitly reference IEL; in particular, the Enhancement and Conservation of National Environmental Quality Act includes duties "to protect the natural resources and environment, to remedy the effected [*sic*] areas, and the Polluter Pays Principle," while multiple others incorporate the principle of "sustainable development" (Ruangsri 2-3).

Finally, three of the eight national level green courts are explicitly obligated to incorporate or advance IEL in their rulings. First, the enabling legislation for Bolivia's Tribunal Agroambiental notes that the court "is governed in particular by the principles of social function, integrality, immediacy, sustainability and interculturality" (Bolivia Constitution Art. 186). Second, India's National Green Tribunal Act states that "The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle" (NGT Act § 20). Third, Kenya's Environment and Land Court Act informs the Court that it shall be guided by "the principles of sustainable development, including-the principle of public participation…the principle of international co-operation in the management of environmental resources shared by two or more states; the principles of intergenerational and intragenerational equity; the polluter-pays principle; and the pre-cautionary principle" (Part IV[18][a][i, iii, iv, v, vi]). Thus, despite marked variation among courts, there is considerable evidence that at least five of eight national-level green courts have created a statutory link between their duties and IEL, which this dissertation forecasts as promoting an institution's discretionary capacity to incorporate IEL. Accordingly, existing courts demonstrate that there are multiple pathways by which domestic enabling legislation can link green courts to IEL norms and principles.

By integrating the foregoing findings, the data collected for this dissertation suggests that five of the eight surveyed courts may best be characterized as possessing narrow discretion. First, Bolivia's National Agro-Environmental Court is staffed by ten total judges who are subject to executive nomination and popular election and may only serve a single term. Second, despite the limited English information available regarding China's Environmental Resources Tribunal, existing accounts emphasize the degree to which executive influence limits the tribunal's

discretion. Third, New Zealand's Environment Court and Sweden's Environmental Court of Appeal both possess broader slates of panelists (26 and 33, respectively) and judges enjoy life appointments; nevertheless, the bodies lack formal environmental training requirements, and the executive branches exert influence during appointment. Trinidad and Tobago's Environmental Commission exhibits similar dynamics; there, 6 total individuals are selected by the executive, and each appointee enjoys limited security, with minimum 3-year appointments. In contrast, this dissertation identifies three institutions that possess broad discretion: India's National Green Tribunal and Thailand's Green Bench, where institutions with large, diverse panels of judges are explicitly granted discretion to implement IEL principles, and Kenya' Land and Environment Court, where similarly broad discretionary grants are accompanied by extensive environmental education requirements and life appointments for judicial panelists.

Viewing these various elements collectively illustrates that discretion varies widely among individual national-level green courts. Additionally, it demonstrates that few existing institutions are truly free of influence from other political branches. Furthermore, viewing the discretion variables alongside the jurisdictional variables presented above suggests that the eight national-level green courts surveyed in this chapter would be roughly distributed across the three national-level cells of the typology developed in Chapter 4 (Figure 5.1).

In two countries, China and Trinidad and Tobago, green courts would be expected to have limited IEL norm implementation capacity, given their narrow jurisdiction and discretion. Four countries' green courts, which possess either broad jurisdiction and narrow discretion (Bolivia, Sweden, and New Zealand) or narrow jurisdiction but broad discretion (Thailand), would be expected to exhibit an intermediate level of capacity to implement IEL. Finally, in two countries, India and Kenya, green courts possess both broad jurisdiction and discretion and

would be expected to hold the greatest capacity to implement IEL in their rulings. While these placements are not intended to categorically identify which national-level green courts can or cannot implement IEL in their rulings, they are useful for highlighting the widely divergent capacities that may facilitate or hamper individual courts' efforts to do so. Additionally, they emphasize the aggregate outcomes that result from individual green court attributes that scholars and practitioners may choose to advocate.

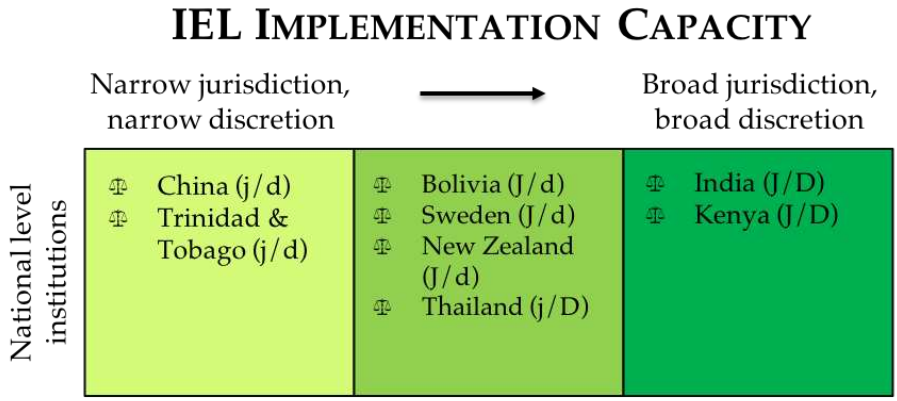

Figure 5.2. Proposed placement of existing national-level green courts within typology.

4. Discussion

This chapter's research supports several conclusions regarding the current green courts landscape. First, it indicates that national-level green courts constitute a relatively small portion of the broader emergence of specialized environmental judiciaries. This suggests that their collective capacity to implement IEL in domestic settings remains limited. Second, this chapter shows that, given the tremendous diversity among the few existing national-level green courts, only two of the eight surveyed institutions exhibit traits of jurisdiction and discretion that would tend to best equip them to identify and implement IEL norms and principles in their opinions,

though four additional courts possess attributes that appear to reflect moderate IEL implementation capacity. Collectively, this echoes the suggestion in Chapter 4 that a range of factors are likely to condition a court's sensitivity to IEL. However, it also suggests that multiple green court models may support IEL implementation, and, in turn, that multiple institutional forms may have been established in at least partial pursuit of this objective. Third, these study findings indicate that features that equip green courts to implement IEL norms may also affect their capacity to diffuse a norm favoring green courts. This suggests that future research may fruitfully examine interaction among green court norm diffusion and implementation.

a. Limited scope of national-level green courts

First, although this dissertation identifies a broad trend toward the establishment of specialized environmental judiciaries, this chapter demonstrates that national-level green courts comprise only a limited institutional subset. Indeed, this chapter's detailed survey detected the likely existence of only ten national-level green courts, and confirmed only eight.

The limited establishment of national-level green courts is relevant, since this dissertation first identified a far larger pool of countries, thirty-six, that possess green courts at any judicial level. Taken together, this indicates that over three-quarters of countries that have established a green court to date have either chosen not to develop a national-level institution or have been unable to do so. Given the diversity and influence of domestic context noted in Chapter 4, there are multiple potential explanations for this outcome. First, the greater number of lower-level green courts may simply reflect the hierarchical nature of domestic judicial systems. In most court systems, disputes instituted in lower-level trial courts only move upwards towards a single court of last resort if initial rulings are successfully appealed, and this results in successively

lower institutional demand at each level. Second, some jurisdictions may choose to establish lower-level environmental courts due to belief that specialized courts are most appropriately suited to perform trial functions. As legal scholar Richard Revesz (1990, 1166) notes, "to the extent that the argument for specialization is the technical complexity of the underlying facts, a specialized court should be given fact-finding, rather than appellate, capability."

In addition to potential structural motivations for favoring lower-level green courts, at least two possible instrumental explanations exist. First, some countries may establish lower-level specialist courts due to belief that they will prove less politically contentious than higher-level courts. One interview respondent from the UK gave voice to this consideration when he stated, "I just thought also, politically, we weren't going to get a big environmental court, you know set up. It just wasn't the right moment for it. So I thought, well let's start from bottom up."[65] Second, the tendency to establish lower-level environmental courts may reflect the discretion that some legal systems grant their Supreme Courts to designate inferior, rather than coequal, courts. For instance, Candelaria and Ballesteros (2008, 42:1) detail one case, where, "In January 2008, the Supreme Court [of the Philippines] designated 117 municipal and regional trial courts across the country as environmental courts." In other words, a single Supreme Court was able to substantially increase the global number of lower-level green courts by taking action wholly independent from other governmental branches.

Regardless of the cause for the limited observed national-level green court establishment, the ultimate environmental governance implication is that few institutions currently exist of the model deemed likely to hold the greatest capacity to advance domestic implementation of IEL norms. Moreover, while two of the eight national level green courts are situated in large, rapidly

[65] Author's interview with Professor Richard Macrory, CBE, via Skype, November 2017.

industrializing countries (China; 1.379 billion; India; 1.324 billion), many of the remaining institutions are located in countries with limited populations. Even when including China and India, only 37.4% of the current world population lives in a country with a national-level green court; excluding these two institutions, only approximately 1.9% does (World Bank 2018). For national-level green courts to more broadly apply IEL principles to domestic disputes, the institutions will likely need to diffuse to additional domestic contexts; moreover, the relatively limited extent of national-level green courts underscores the opportunity for candidate jurisdictions to draw upon insights from other green courts as well as from the broader movement towards judicial specialization.

b. Institutional diversity among national-level green courts

At the same time, this chapter emphasizes that many existing national-level green courts do have features that equip them to implement IEL. As Chapter 4 notes, the potential of green courts to implement IEL principles has generated support for green courts and is identified by various actors as a characteristic of effective institutions. However, this dissertation identifies only two national-level green courts (India's National Green Tribunal and Kenya's Land and Environment Court) that possess attributes that collectively suggest both broad jurisdiction and discretion. Moreover, the dissertation detects considerable diversity among the individual variables used to characterize jurisdiction and discretion. For example, this chapter's evaluation of green court discretion identifies at least five instances where enabling legislation explicitly references IEL principles. However, these references vary in terms of degree and the specific principles that they advocate; enabling legislation for Trinidad & Tobago's Environmental Commission and Thailand's Green Bench makes only limited or indirect reference to these

principles, while legislation establishing Kenya's Environment and Land Court and India's National Green Tribunal explicitly references IEL principles.

These findings are significant for several reasons. First, they show that even though national-level green courts are tremendously diverse in terms of their setting, structure, and objectives, a majority of those that currently exist were obligated, by their founders, to engage with IEL principles. This suggests that diverse political and legal cultures have sought to establish institutions that possess the capacity to internalize IEL principles in domestic contexts.

Second, the findings suggest that individual countries have pursued diverse approaches that bear upon their green courts' capacities to implement IEL. The findings demonstrate that individual courts may be directly obligated to implement IEL in domestic rulings, indirectly obligated to implement statutes that themselves reference IEL, or invested with a broad purpose that it is itself amenable to IEL principles. While the specific mechanisms of these approaches distinguish from one another, each can perform important signaling functions to panelists and parties and underscore the applicability of IEL to specific disputes and written opinions.

Likewise, the diverse jurisdictional approaches of national-level green courts suggest that there are multiple ways a court may receive sufficiently broad jurisdiction to meaningfully invoke IEL. As the findings note, half of existing national-level green courts enjoy civil and criminal jurisdiction, while another half only exercise civil jurisdiction. Similarly, some courts, including India's National Green Tribunal and Kenya's Land and Environment Court, enjoy an expansive subject matter remit, while others, including New Zealand's Environment Court and the Green Bench of Thailand's Supreme Court, may only adjudicate specified statutes.

Collectively, these findings suggest that variation in court jurisdiction influences a court's capacity to implement IEL in domestic rulings, and this echoes findings from other studies that

examine the relationship between domestic courts and international law. For example, as Chapter 4 noted, Sandholtz (2015) conducted a comparative study of domestic courts' interaction with IHRL. The study concluded that a domestic court's likelihood to invoke IL reflects certain institutional factors, including whether its jurisdiction explicitly directs it to address international law, whether a court "itself determines whether cases raise important questions of constitutional interpretation," and the degree to which a given court has institutionalized IL (Sandholtz 2015, 616–17). Other IL scholars have similarly observed that domestic statutes and contexts can expand (e.g., Sloss and Alstine 2015, 14; Lillich 1985, 397; Klein 1988, 342) or constrain (e.g., Bahdi 2002, 582) a court's ability to look to IHRL norms or address international human rights disputes. Therefore, this chapter's finding that jurisdiction bears heavily upon IEL implementation capacity echoes Chapter 4's theoretical conclusions, as well as findings from throughout the transjudicialism literature and across IL issue areas.

Similarly, this chapter's findings emphasize variation in the degree of discretion that existing national-level green courts enjoy. For example, the previous section observes broad variation in the number of panelists who are appointed to the courts and available to hear disputes (ranging from six in Trinidad and Tobago to approximately 150 in total in Thailand) and in the composition of those panelists (half the surveyed courts rely exclusively on law-trained judges, while the other half possess mixed benches of law- and science-trained members). As noted above, this variation in how countries equip their judges with discretion to address disputes is likely to influence court capacity to implement IEL. For instance, all else equal, Trinidad and Tobago's six panelists would be expected to possess less collective familiarity with IEL norms and principles than the expansive bench in Thailand, whose members would bring a broader range of backgrounds, trainings, and experience.

This chapter's findings, which emphasize diversity among discretionary elements that may affect a court's capacity to implement IEL, align with similar conclusions in other areas of IL. For instance, when evaluating three national-level courts' likelihood to reference IHRL, Sandholtz (2015, 617) emphasizes the significance of one court's explicit obligation, "'when interpreting the Bill of Rights…[to] consider international law,'" and its decision to employ "a law clerk specifically to research foreign and international law" (Sandholtz 2015, 617). Elsewhere, scholars of international intellectual property law have noted that willingness to incorporate IL into domestic decision-making increases when courts adopt "a more principle-based discretionary approach" (Tawfik 2007, 584).

This chapter's conclusions regarding the significance of green court discretion also echo broader scholarly findings about the domestic incorporation of IL. For example, Mendelson (1982, 83) emphasizes the importance of evaluating individual countries to see "to what extent specific legislation mandates the application of customary international law"; Damrosch (1982, 253) argues that many US judges have been reluctant to incorporate customary IL due to "judges' relative unfamiliarity with the methods for divining the existence of customary international law rules"; and Fatima (2003, 240) argues that incorporation of IL will only increase in a UK context, "once professionals and the judiciary are able and willing to recognise and diagnose cases about the application of international law in a domestic context." In sum, the importance of domestic context to IEL implementation is not isolated to IEL, but rather comports with broader links between domestic courts and IL.

Two key themes emerge from the foregoing discussion. First, diversity in national-level green court jurisdiction and discretion underscores the continued importance of domestic context on norm implementation, and it emphasizes the relevance of domestic context to broader

discussions of institutional design within IEL. In turn, these findings appear to echo broader recognition in GEP of the degree to which domestic context and actors condition the capacity to engage with and adopt international norms. For instance, Hensengerth (2015, 23) urges that evaluation of global norms must also consider how local actors introduce those norms, and Acharya (2004, 241) emphasizes the need to consider how transnational norms relate to local beliefs and practices. Similarly, Bernstein and Cashore (2012, 592) posit that an international norm's congruence with domestic factors including ideology and culture will condition the degree of success that it enjoys. The importance of domestic context to global norms is only likely to grow as environmental policymaking increasingly occurs outside of the treaty-based setting (see Betsill and Bulkeley 2006). Indeed, as Clapp and Swanston urge (2009, 329), a shift from formal policymaking architecture "will require deeper understanding of the way in which new environmental norms emerge and are diffused, as well as the ways in which these new norms are interpreted into policy in different jurisdictions." In sum, the diversity of existing national-level green courts echoes the broader importance of domestic context to legal and environmental norm adoption.

Second, despite the limited establishment of national-level green courts to date, the institutions that do exist appear to reflect broader trends towards domestic IL incorporation. As Chapter 2 notes, judicial globalization can be identified across issue areas. Therefore, the limited establishment of national-level green courts oriented towards IEL suggests that the institutions characterized in this chapter may represent the crest of a much larger normative wave that has already gained stronger footing elsewhere. Indeed, as Tawfik suggested (2007, 574–75) in an earlier IP law article, "'transjudicialism'…has to date largely been confined to constitutional and

human rights cases. However, I suggest that [it] has a broader reach that will *inevitably migrate to other areas of law*."

Efforts to incorporate IL into domestic court rulings have proven contentious; scholars have examined the implications of transjudicialism for domestic rule of law (e.g., Kumm 2003) and the desirability of tasking domestic courts with IL interpretation (e.g., Wood 2005). However, irrespective of these normative considerations, the increasing demand for domestic court engagement with IL emphasizes the importance of equipping courts to perform such functions. Though these institutional design considerations are not limited to the environmental domain, they are highly relevant within it; Biermann and other ESG scholars (2009, 32) emphasize the importance of studying the "dynamic legal systems in international and national law" and considering the "patchwork of institutions that are different in their legal character (organizations, regimes, implicit norms)." Therefore, this chapter simultaneously emphasizes the growing role of national courts in IEL, the importance of domestic courts as sites of international norm implementation, and the implications of institutional diversity.

c. Relevance of norm implementation to norm diffusion

Third, while this chapter evaluates the capacity of green courts to implement IEL, its findings offer complementary conclusions about the capacity of courts and judges to diffuse environmental norms. This chapter's finding that some national-level green courts may hold greater capacity to implement IEL suggests that certain institutions may also be better equipped to diffuse a norm favoring green courts. Many of the attributes of broad jurisdiction and discretion that may enhance a court's ability to implement IEL may also equip and empower it to advocate for the establishment of national-level green courts in other jurisdictions.

For example, India's National Green Tribunal possesses elements indicative of broad jurisdiction and discretion, including expansive subject matter jurisdiction, an obligation to incorporate IEL in its rulings, and a large bench composed of both judges and scientists (see Figure 1). As Chapter 4 describes, these features, among others, are widely cited as attributes that enable the Tribunal to advance environmental protection in the Indian context (e.g., Sen 2016; Gill 2017; Amirante 2012). However, these attributes also equip it and its panelists to actively promote green courts and green court knowledge, as several dissertation interview subjects noted. For instance, one respondent stated, "these judges at the global level are communicating, and the National Green Tribunal of India organized all international conferences in the last 3-4 years…the last 3-4 conferences which the NGT has done were all international in their scope."[66] An American scholar echoed this assessment, noting that, "the Chief Judge of the green court of India, sponsors a conference himself every year in the spring to bring in everyone...Every conceivable jurist, and even legislator is invited to a big conference in Delhi."[67] In short, many of the attributes that equip the India National Green Tribunal to implement IEL also appear to equip its panelists to support diffusion of a norm favoring the green court institutional model.

Thailand's Supreme Court, Green Bench provides a similar example. As this chapter notes, Thailand's green court demonstrates elements of broad discretion and is characterized as possessing a moderate potential to implement the norms and principles of IEL (Mulqueeny and Cordon 2013, 28). Like India's National Green Tribunal, Thailand's court is staffed by a large number of judges who are empowered to hear a range of environmental disputes. While this chapter emphasizes the capacity of the judges to implement IEL, judges on the Thai Court have

[66] Author's interview with Professor Gita N. Gill, via Skype, October 2017.
[67] Author's interview with Professor Rock Pring, via phone, November 2017.

also been documented delivering remarks to judges from other jurisdictions about their court's role and practices (Aguilar et al. 2012, 6).

Both India and Thailand's green courts provide examples that echo assessments suggesting the importance of legal culture to a court's capacity to implement IEL norms, as discussed in Chapter 4. For instance, while Gita Gill suggested that domestic contexts can shape courts' abilities to implement IEL, and noted that domestic courts can address global environmental challenges, she also emphasized that many judges and courts find it necessary to get their domestic "house in order" before looking outward to international norms.[68] Similarly, though Liz Fisher noted that the spread of green courts is global in nature, much of the impetus is driven by domestic circumstances, and so trends will "play out differently" due to divergent domestic approaches and perspectives.[69] In other words, the capacity of domestic green courts to diffuse green court norms, like their engagement with IEL implementation, is likely to reflect domestic factors and motivations.

The foregoing illustrates that green courts' norm implementation and diffusion functions have been evaluated separately, but that the implications of both are likely to intertwine. Furthermore, more formal recognition of domestic institutions' contributions to both environmental norm diffusion and implementation would align with other recent GEP research. For example, Clapp and Swanston (2009, 316–17) examined the relationship between plastic waste norms and domestic plastic bag bans, noting the diversity of resulting policy responses. They note (2009, 323) that, "new environmental norms can be adopted around the world even in the absence of an international legal or institutional mechanism codifying it," but underscore that such instances will frequently yield domestic institutional diversity.

[68] Author's interview with Professor Gita N. Gill, via Skype, October 2017.
[69] Author's interview with Liz Fisher, via Skype, October 2017.

With no international norm to harmonize domestic green court design, this chapter shows that nascent national green courts exhibit diversity in their structural attributes and obligations regarding IEL implementation. This iterative and contested process, where norms shape green courts on one hand, and green courts implement and espouse norms on the other, appears to reflect what many ESG scholars have argued: "norms are part of any governance architecture, and influence at the same time the creation and shaping of governance architectures" (Biermann et al. 2009, 72).

5. Conclusion

This chapter and its findings emphasize the diversity of national-level green courts. After characterizing existing attempts to distinguish among green court models, it undertook a detailed survey of national level judiciaries. The chapter indicates that relatively few national-level green courts currently exist and that the existing institutions are highly diverse in terms of their jurisdiction and discretion. It suggests that the resulting implication is that two countries' national level green courts (China and Trinidad & Tobago) are not broadly equipped to implement IEL, that four others' (Bolivia, Sweden, New Zealand, and Thailand) have attributes that would afford them moderate capacity to implement IEL, and that India and Kenya's green courts possess attributes that are most favorable to domestic implementation of IEL. Accordingly, the findings suggest that, as Chapter 4 theorizes, there is diversity in IEL implementation capacity, even among national-level green courts. Additionally, it suggests that the national-level green courts theorized as best-equipped to advance IEL principles and norms have proven rare to date: those with both broad jurisdiction and broad discretion.

In addition to complementing existing theoretical and descriptive accounts of national-level green courts, this project provides a foundation for at least two future research efforts. First, by identifying the green courts that appear to hold the greatest capacity to implement IEL, it supports a subsequent effort to "ground-truth" whether those courts perform this function in practice. For instance, as this chapter notes, Kenya's Land and Environment Court and India's National Green Tribunal both possess broad jurisdictional and discretionary elements, including an explicit mandate to incorporate IEL, that equips them to perform these functions. Future efforts could examine the degree to which court opinions implement these IEL norms in practice, and could characterize the approaches that different courts employ to do so. Similarly, future field research and case studies could consider the practical effect of orders, including whether orders implementing IEL principles are followed by litigants, and identifying how domestic political context and other factors affect this implementation.

Second, this chapter uses a three-part data collection approach to identify and characterize national-level green courts. While the method was developed for this chapter, it could also be applied to other institutional classes. For instance, green courts situated at the state/provincial/subnational level in federal governmental systems have been identified as bearing potential to enhance access to EJ, broadly, and IEL principles, specifically (*see* Chapter 4). Replicating this chapter's approach at the state level would constitute a considerable research effort, given the broader scope of institutions that may exist at that level. However, such a project would complement this chapter's findings and aid in generating richer understanding of the contributions and characteristics of green courts. Finally, the approach could be used to identify and characterize other models of specialized judiciaries, including agrarian or water courts. These institutions exist domestically both within the United States and elsewhere (e.g.,

Wang 2014), and they have been identified as important sites for resource allocation and rights adjudication (Inter-American Commission on Human Rights 2010).

In sum, this chapter reflects an initial effort to collect detailed information across green courts and present a replicable approach for generating context about the institutions. Its multimethod design permits IR research techniques to inform questions relevant to IL scholars (e.g., Bennett and Elman 2007, 186). Further, the chapter responds to a call within GEP to develop "problem-focused research that deals with pressing issues facing the global community" (O'Neill et al. 2013, 464), as well as a demand for interdisciplinary IR/IL scholarship that addresses the following question: "What are the specific design features that best address and respond to particular types of international problems?" (Slaughter, Tulumello, and Wood 1998). Finally, this chapter demonstrates that an interdisciplinary approach can be leveraged to offer practice-relevant insight to legal policymakers and practitioners.

CHAPTER 6. CONCLUSION

This dissertation has examined green courts, a model of specialized judiciary that exclusively resolves environmental disputes. Through related efforts, it has evaluated three broad research questions. Why is the spread of green courts occurring? How is the spread of green courts occurring and manifesting in practice? And, finally, what are the implications of this green court spread for IEL norms? Each of these efforts are described at length by the preceding chapters; this conclusion briefly synthesizes the dissertation's central findings regarding those questions, considers their overall theoretical and practical significance, and identifies three valuable avenues for extending this dissertation effort and developing related future green courts scholarship.

1. Summary of Key Efforts

Collectively, this dissertation's chapters address the foregoing questions and generate insight of relevance to both IR and IL literatures. First, the dissertation explored why the spread of green courts is occurring. After Chapter 2 demonstrated the relevance of IR norm diffusion theory to this question, Chapter 3 developed a detailed survey of the actors and mechanisms that are engaged in efforts to facilitate green court establishment. Its conclusions suggest that diverse actors are seeking to advance green court spread, and that they employ a range of approaches to do so. The research found clear support for active engagement by academia, judges, ROs, NGOs, and judicial networks, and further suggested that, most commonly, the functions attributed to those actors include efforts to advocate green courts, exchange information about green courts, and offer recommendations regarding green court development.

By linking the empirical findings from Chapter 3's coding effort to the expert survey and in-depth interview responses, this dissertation found evidence to support several conclusions regarding norm diffusion. First, the dissertation suggests that judges seek to undertake important norm entrepreneurial functions, including attempts to advocate the benefits associated with green courts and communicate with fellow jurists in other political settings. Second, the dissertation suggests that IGOs, ROs, and judicial networks have performed key services in an attempt to facilitate exchanges among domestic judges and to promote green courts outreach within the judicial community. When viewed in concert with other findings presented in Chapter 3, these trends suggest that the spread of green courts reflects diverse formal and informal efforts to promote the institutions.

Second, the dissertation examined how the spread of green courts is occurring, and considered what form the institutions are taking. After reviewing existing literature attempts to characterize green court diversity, Chapter 4 developed a typology to outline the different green court forms that may manifest. It suggested that, despite the common monikers that are frequently applied to the institutions (whether "environmental courts," "ECTs," or "green courts," as throughout this dissertation), the institutions can vary on a number of bases relevant to their institutional capacity and function. In particular, it suggested that green courts may be meaningfully distinguished by the level of government at which they are situated, the jurisdiction they enjoy, and the discretion that their jurists are granted. Chapter 5 complemented this analysis by evaluating the extent and attributes of national-level institutions that have been established to date. It found that, despite the widespread efforts to advocate green courts as documented by this dissertation, only 36 countries possess any such institution, and only eight can currently be confirmed to possess national-level green courts. Moreover, Chapter 5 found that, even among

the eight national-level green courts, there is considerable diversity in terms of variables reflecting their jurisdiction and discretion, and, in turn, their likely capacity to implement IEL.

Third, this dissertation used the foregoing empirical findings as a foundation to consider the implications of green court establishment and spread for IEL principles and norms. The detailed typology developed in Chapter 4 directly supported this effort by considering the institutional attributes that would be most likely to advance IEL norms and principles in practice. After evaluating existing literature and exemplar institutions, it suggested that national-level green courts equipped with broad jurisdiction and discretion would be best-equipped with the capacity necessary to advocate and implement norms and principles of IEL. Chapter 5 complemented this theoretical evaluation by characterizing the national-level green courts that exist in fact and their likely IEL implementation capacity. Its empirical evaluation suggests that, to date, institutions that possess broad jurisdiction and discretion are rare, and its proposed population of the green courts typology suggests that only two green courts (India's National Green Tribunal and Kenya's Land and Environment Court) appear to fulfill the criteria of both attributes.

In its subsequent consideration of these findings' implications, the dissertation suggests that green courts have not yet been widely established in forms reflecting what their advocates envision. However, as Chapter 5 suggests, the diversity of existing national-level green courts demonstrates the varied mechanisms by which countries may seek to implement IEL norms. Moreover, the dissertation's findings indicate that the diverse existing green courts reflect multiple approaches that countries have pursued to equip courts to implement IEL, and that their diversity provides multiple mechanisms through which courts can contribute to IEL norm diffusion.

2. Theoretical Significance of Research Findings

As the previous section notes, this dissertation evaluates three distinct questions regarding the role of green courts in environmental norm diffusion and implementation. However, the dissertation also contributes insights to key broader IR and IL research efforts, both by developing specific GEP and IEL sub-literatures and by contributing to broader IR and IL discourse. In particular, its analysis of green courts advances theoretical understanding and development by: (a) extending current understanding of how judicial exchanges shape contemporary environmental policy and institutional development; (b) highlighting the utility of studying 'norms' as they are broadly understood by IR scholars, rather than solely within a narrower, legal conception; (c) underscoring the importance of normative linkages across governance scales; and (d) signaling the relationship between norm diffusion and norm implementation.

a. Extending IR and IL understanding of judicial exchanges

First, this dissertation advances judicial globalization and transjudicial exchange literature that is relevant across IR and IL issue areas. As Chapter 3 highlighted, judges seek to promote the spread of green courts by performing entrepreneurial functions and institutional actors seek to catalyze judicial exchanges by organizing conferences, attending symposia, and offering best practices guidance. Chapters 4 and 5 further suggest that these exchanges can help to spread an institutional norm favoring green court establishment, and that they can promote the implementation of IEL norms and principles. Collectively, these observations of the relationship between green courts and judicial globalization are noteworthy in three ways.

First, this dissertation contributes to judicial exchange literature by demonstrating the powerful potential of domestic judges to advance IEL development. Judicial globalization scholarship, developed primarily by Anne-Marie Slaughter and other neoliberal institutionalist scholars, highlights the degree to which judicial exchanges have promoted contemporary IL development and diffusion (e.g., Slaughter 1994; 1995; 2000; 2003). As Chapters 3 and 5 note, judicial globalization scholarship has evolved from relatively generalist theoretical foundations to more recent efforts to identify and map transjudicial exchanges in specific issue areas, including IHRL (e.g., Waters 2005).

Existing IR (e.g., Slaughter 2004a, 66) and IL (e.g., Waters 2005, 500 FN 46) literature makes some reference to the potential role of judges in driving IEL development and exchange. However, this dissertation clearly indicates that domestic judges seek to promote IEL norms in their decisions and in their exchanges with colleagues in other jurisdictions. For example, Chapter 3 found that Judge Brian Preston has published and spoken widely on the domestic incorporation of IEL principles, and suggested that these outreach efforts have been noted by fellow judges in other jurisdictions. Similarly, Chapter 4 noted that Judge Meredith Wright frequently incorporated the principle of sustainable development into her domestic judicial opinions, seeking to communicate not only to litigants but also to jurists in other settings. Finally, Chapter 5 identified multiple jurisdictions, including India and Kenya, where domestic judges are statutorily obligated to incorporate IEL norms and principles into decision-making. Together, the chapters underscore a close link between the efforts of domestic green court judges and the attributes of IL.

Additionally, by highlighting how actions of domestic judges reflect efforts to engage with IEL and shape its development, this dissertation connects the judicial globalization

literature to the more focused field of GEP. As Chapters 2 and 3 note, GEP literature already acknowledges the importance of networked exchanges among various domestic actors, including municipal officials (e.g., Betsill and Bulkeley 2004; Haas 1992). Likewise, existing research lays a foundation to examine judges as GEP actors by examining related issues, including the potential importance of courts in global environmental governance (Biermann et al. 2009, 93; Biermann and Pattberg 2008, 280). Nevertheless, GEP accounts of how domestic judges contribute to governance remain limited.

This dissertation responds to the foregoing literature gap by clearly highlighting the benefit of more explicitly considering domestic courts and judges in GEP. As the introduction notes, structural factors including legislative gridlock, coupled with the heightened diversity and complexity of environmental challenges, have fostered more prominent roles for domestic judges as environmental actors. Indeed, of the 552 coded references in Chapter 3, 163 reflect either judges (66), judicial networks (53), or courts (44). Together, they indicate broad recognition of judicial contributions to efforts to promote green court establishment. Moreover, Chapter 3 identifies evidence of judges' engagement in eight of the nine norm diffusion functions that this dissertation identifies: all except for "resisting or failing to adequately support green court establishment." In sum, this dissertation strongly suggests that transjudicial exchanges are promoting or intended to promote the spread of green courts, and emphasizes the need to understand the implications of transjudicial exchanges to GEP.

By highlighting domestic judges as actively engaged in efforts to promote green courts norm diffusion, this chapter also helps to connect the transjudicial exchange literature to existing accounts of epistemic communities and norm dynamics within broader IR scholarship. It provides an incremental contribution to existing literature (e.g., Haas 1992) that emphasizes the

role of bureaucrats and professional classes in normative exchange by indicating that judges also perform relevant norm diffusion functions. As Chapter 3 notes, "lawyers, professionals, and bureaucrats" have more commonly been associated with norm internalization (Finnemore and Sikkink 1998a, 898 [Table 1]). However, this dissertation also underscores the potential role of judges and other professional classes as norm entrepreneurs. For example, Appendix 4 lists 22 individual judges, in addition to the general categories of judicial networks and judges, that respondents identified as key to green courts' spread and establishment. As Chapter 3 notes, some of these individual judges have stepped beyond their positions as domestic jurists and assumed active roles seeking to promote IEL norms and green courts. Among these, Judge Herman Antonio Benjamin of Brazil has worked actively with UNEP and IUCN to spearhead the Global Judicial Institute for the Environment, and the chapter found that a range of actors have noted these efforts. GEP scholars in particular may be interested by judges' active efforts to promote green court diffusion, given the subdiscipline's desire to better understand "the processes of change in global environmental governance and…the institutional dynamics that…[shape] the emergence, evolution, and eventual effectiveness of institutions" (Biermann and Pattberg 2008, 287).

Finally, by exploring links between institutions, actors, and the diffusion of norms as understood by IR scholars, this dissertation also supports the connection between GEP and broader IR literature (see Green and Hale 2017). As Green and Hale (2017) note, GEP currently represents a largely distinct IR subdiscipline, whose insights are only infrequently published in top IR journals or assigned in graduate IR seminars. They advocate that by attempting to better integrate insights from the GEP literature stream into the main channel of IR discourse, environmental scholars can strengthen their work's relevance within the broader discipline

(Green and Hale 2017, 476). The level of interest among core IR scholars in transjudicial exchange, and the apparent centrality of this phenomenon to the development and spread of green courts as suggested by Chapter 3, indicates that research in this issue area could foster more mutually beneficial scholarly interest and engagement. Therefore, through continued study of how judges may advance green courts and IEL norms, this research area will benefit the broader IR discipline.

b. Advancing a broad, IR normative conception in IEL research

Second, this dissertation emphasizes the benefit of exploring 'norms' in IEL as they are broadly defined by IR researchers, rather than solely as they are more narrowly understood by legal scholars. For example, as Chapter 3 illustrates, the spread of green courts itself reflects dynamics that can be most thoroughly evaluated through a broader, IR conception of norms. Overall, this dissertation demonstrates two key benefits to evaluating green courts in the broad normative context that IR theory promotes.

First, by using an IR conception of norms to examine green courts, researchers can emphasize structural and ideational factors that fall beyond the purview of most conventional legal scholarship. Lawyers and legal scholars conceive of the term "norms" more narrowly, interpreting it to denote "standard rules and laws" which are established by the legal system and used to determine the appropriateness of conduct (Black 1910). Within IL, even more precise criteria are attached to the peremptory norms *jus cogens* that shape state conduct (e.g., Viñuales and Dupuy 2015). In contrast, IR scholars tend to view norms broadly, understanding the term to reference "shared expectations about appropriate behavior held by a collectivity of actors" (Checkel 2009, 83), and they note that norms can include "standards of behavior defined in terms

of [both] rights and obligations" (Cortell and Davis 1996, 452). Viewing norms through a broader IR conception enables scholars to consider not only regulative norms which "order and constrain behavior," but also constitutive norms "which create new actors, interests, or categories of action" (Finnemore and Sikkink 1998b, 891). Approaching norms from an IR perspective enables researchers to evaluate how diverse legal and non-legal actors contribute to normative spread and to view domestic institutions as products of global norms, rather than limiting analysis to legal actors and institutions.

This dissertation indicates that an IR approach to norm-based scholarship can support richly-detailed understaniding of green court emergence. For instance, Chapter 4 demonstrates that proceeding under an IL conception of "norms" may exclude from analysis many international efforts to promote green courts, given the imprecise nature of an institutional norm favoring green courts and its lack of formal legal character. Gita Gill echoed this sentiment, noting that many lawyers would likely view current green court trends as growing "understandings" or "recognitions," rather than as "norms" within the meaning that legal scholars ascribe to the term, because the concept of legality generally attaches to legal norms.[70] However, as Chapter 3 demonstrated, evaluating norms from their IR understanding and using IR approaches enables researchers to highlight the effect and influence of international dynamics and promotional efforts undertaken by actor classes including IGOs and ROs. Even though these international dynamics are less clearly defined than more formal legal norms, insights regarding their content and how they may shape legal practice are highly relevant to lawyers. Therefore, this dissertation signals the value of constructivist IR theory in developing a richer understanding of IEL and its associated norm dynamics.

[70] Author's interview with Gita N. Gill, via Skype, October 2017.

In addition to advancing understandings within IR and IL literatures individually, this dissertation's evaluation of IEL norms through a broader IR conception illustrates the benefits of seeking to integrate the theories and approaches of IR and IL. As the introductory chapters noted, Slaughter, Tulumello, and Wood (1998, 392) have advocated using IR theory to inform IL scholarship, and have even noted how IR can explore "the relationship between international institutions and government networks," "domestic judges," and "the degree of convergence between domestic and foreign law." The utility of IR theory to green courts scholarship has even been implicitly acknowledged by IL scholars; as this dissertation notes, at least one IL scholar has made reference to the insights of IR-based epistemic communities literature in an assessment of India's National Green Tribunals (Gill 2017). This dissertation explicitly advances the integration of IR and IL by using theories and approaches grounded in IR to focus its green courts analysis. For instance, Chapter 4 drew on existing literature to specify the importance of jurisdiction and judicial discretion in shaping the capacity of courts to implement IEL norms and to develop its central typology. As this effort demonstrates, IR theory enables IL researchers to more comprehensively evaluate the spread and implications of green courts, and to situate the emergence of judicial institutions in a broader landscape of efforts to address pressing environmental challenges.

c. Underscoring normative linkages across governance scales in IEL and GEP

Third, this dissertation speaks directly to more focused IEL and GEP efforts to explore how scale influences contemporary environmental governance, and to better understand how actors engage in environmental governance across scales. In particular, this dissertation highlights the increasingly important role of green courts in a global environmental governance

milieu where local actors and institutions implement global norms. For example, while IEL norms articulated by international actors can often be broad and aspirational in nature, Chapter 4 suggests that green courts can help to develop those global norms and principles by giving them domestic effect. It showed that some national-level green courts are obligated to apply principles and IEL norms including sustainable development, polluter pays, and precaution. Similarly, it noted specific instances where India's National Green has applied these broad principles to individual disputes, and where its resolution of environmental questions has been shaped by those principles.

This dissertation's attention to the role of scale in shaping green court engagement with environmental governance aligns with existing foci in multiple environmental and legal fields throughout IEL and closely related subdisciplines. In particular, scale is of interest to: EJ scholars, who note that environmental injustice is conceived differently at varying governance levels (e.g., Sikor and Newell 2014; Brulle and Pellow 2006); sustainable development scholars, who have long emphasized the context-dependent interpretation of sustainability (Connelly 2007; Brown et al. 1987); and IEL scholars, who have considered how domestic courts can meaningfully address environmental challenges at various spatial scales (e.g., Markowitz and Gerardu 2012; Preston 2017, 10). By examining how green courts implement norms across scales, this dissertation speaks to each.

Similarly, questions of scale are directly relevant to GEP and closely related subdisciplines. For instance, Earth System Governance scholars and others have sought to better understand "how agency is reconfigured when scaling up or down, and how actors may gain or lose agency when an issue is scaled" (Biermann et al. 2009, 74). Likewise, multi-level governance scholars have directly examined the "reallocation of authority upward, downward,

and sideways from central states" (Hooghe and Marks 2003, 233) and have considered the implications of this decentralization for natural resources and environmental governance (e.g., Larson and Soto 2008; Elliott 2012; Betsill and Bulkeley 2006). This dissertation informs these scholarly efforts by illustrating how domestic courts contribute to the localization of international environmental governance. For instance, Chapter 4 directly examined how scale is likely to influence implementation of IEL norms by green courts, suggesting that national-level courts are far more likely to do so than municipal-level green courts.

This dissertation also highlights how diverse actors have sought to promote green courts at various scales. As Chapter 3 shows, green court spread may reflect engagement from actors ranging from the UN to local NGOs. As the chapter indicates, certain actor classes, including judicial networks and domestic judges, have undertaken particularly active engagement. For instance, it notes how regional judicial groups established following the 2004 Global Judges' Symposium have actively sought to facilitate exchanges between judges and countries. It notes that in some countries, including Bhutan, these exchanges have advanced consideration of green court establishment where it might not otherwise have occurred. However, the dissertation also indicates that many other actors, including businesses and citizens, have sought to advance the evolution of green courts. Altogether, this dissertation's efforts to more fully characterize norm diffusion can help green court researchers to think more consciously "about the issue of scale…and not to take for granted what theories of international relations conventionally assume to be the relevant actors of world politics" (Dingwerth and Pattberg 2006, 190).

d. *Signaling links between norm diffusion and norm implementation in GEP*

Finally, this dissertation highlights the value of studying norm diffusion and implementation interactively, particularly within GEP scholarship. As Chapter 3 notes, diverse actors have undertaken efforts aimed at influencing green court spread, while Chapters 4 and 5 emphasize that green courts, once established, can possess the capacity to implement norms that are integral to IEL. Collectively, the three substantive chapters also signal that norm diffusion and implementation processes can interactively influence one another in an emergent GEP regime.

As Chapter 3 illustrates, actors including IGOs, ROs, NGOs, domestic judges, and international networks and symposia have all sought to promote green courts. However, as the chapter also notes, much of this promotional effort appears to reflect a belief that green courts can perform useful functions. In particular, Chapter 3 demonstrated that actors, including judges and ROs, strongly believe that a particular benefit of the courts is their ability to implement IEL norms, including access to justice and precaution (see, e.g., Robinson 2012; Gill 2017). For instance, its findings suggest that the ADB's explicit advocacy of green courts links directly to its belief that courts can contribute uniquely to environmental protection. This conclusion echoes findings in other environmental issue areas that detail the diffusion and implementation of norms outside of formal treaty mechanisms (e.g., Clapp and Swanston 2009). However, Chapter 3 also found that IGOs, particularly UN Environment, have actively promoted green courts as a tool for advancing access to justice, as articulated by the Sustainable Development Goals and other international accords. This conclusion supports existing research noting how institutional actors can help to diffuse institutions that implement the norms derived from treaty-based governance (e.g., Sikor and Newell 2014).

Similarly, although Chapters 4 and 5 emphasize the need to better understand how green courts may implement IEL norms, they also highlight how established courts can serve as agents of green court promotion. For example, Chapter 4 highlights the role of India's National Green Tribunal as a site for implementing IEL principles including sustainable development, polluter pays, and precaution, but also emphasizes how it may contribute to the diffusion of norms through judicial conferences and best-practices examples. This dissertation's emphasis of green courts as both agents of norm diffusion and sites of their implementation underscores the continued importance of considering the "agent-structure debate" and its relevance to contemporary global environmental governance (e.g, Dessler 1989; Capie 2010).

3. Practical Significance of Research Findings

In addition to the foregoing theoretical contributions, this dissertation offers practical insight to those who wish to conduct policy-relevant research. Its findings indicate: (a) the likelihood of further green court establishment and the value of continued research; (b) the existence of a scalar and spatial disconnect between where green courts are studied and where they are established; and (c) the benefit of definitional and theoretical precision when conducting IEL research.

a. Emphasizing value in ongoing research

First, the dissertation supports existing analyses which suggest that green court establishments are likely to continue. Even though Chapter 5 only confirmed 36 countries with any form of standalone environmental judiciary and a mere eight national-level green courts, Chapter 3 found clear indicia that actors across diverse political contexts continue to undertake

efforts to advocate green court establishment. Likewise, this dissertation found multiple indications that additional green court establishments may follow. For instance, in response to dissertation inquiries, governmental employees in Uganda noted that their country is "still working on establishment of an Environmental Court,"[71] and existing research by Pring and Pring identifies over twenty countries currently working to establish specialized environmental judiciaries (Pring and Pring 2016 [Appendix C]). Together, these findings suggest that it is likely that additional green courts will be established, and that there is value in examining green courts and considering the implications of their institutional design attributes.

Moreover, concluding that additional green court establishments are likely echoes broader findings by environmental policy scholars. First, researchers have noted that environmental concerns are increasingly salient among citizens in both developed and developing countries. Postmaterialist societies exhibit high levels of environmental concern, and there is indication that the same may be increasingly true in Africa and throughout the developing world (Running 2012, 15; White and Hunter 2009). Moreover, improved education has corresponded with heightened demand among citizens for environmental institutions (e.g. Kahn 2002 [domestic focus]). Chapter 5's characterization of Kenya's Land and Environment Court and India's National Green Tribunal, both established within the past ten years and vested with broad jurisdiction and discretion, supports a view that developing countries also seek effective environmental institutions. In short, both the narrow dissertation findings and broader societal trends support expectations of continued green court establishment.

[71] Personal communication with Third Secretary Annet Kabuye of the Permanent Mission of Uganda to the United Nations, via email, March 21, 2017.

b. Scalar and spatial disconnects in green court scholarship and establishment

In addition to promoting better understanding of an institutional model that can be expected to proliferate, this dissertation suggests that there are scalar and spatial misfits between how green courts are currently studied and how they currently exist. In scalar terms, much scholarly green court attention has been directed at the highest level institutions. For instance, some IEL scholars and practitioners have evaluated the theoretical prospect of a world environmental court (e.g., Pedersen 2012). However, no supranational environmental court currently exists, and Chapter 4 only confirms the existence of eight national green courts among more than 1,000 municipal and subnational institutions. Altogether, this dissertation suggests that, in addition to further examining the IEL implementation potential of national-level green courts, future research should also consider the capacity, contributions, and implications of local and subnational-level green courts.

At the same time, this dissertation also suggests a spatial disconnect in the focus of contemporary green courts scholarship. As Chapter 2 identifies, much existing green court scholarship characterizes model institutions in developed countries (Anker and Nilsson 2010 [Nordic countries]; Macrory 2013 [England and Wales]; Preston 2012 [Australia]; Warnock 2017 [New Zealand]). However, this dissertation demonstrates that considerable green court advocacy, development, and interaction actually occurs within developing countries. In particular, Chapter 3 identified active efforts by IGOs, ROs, NGOs, and international networks to develop green courts throughout Southeast Asia and Africa. This conclusion is echoed by UNEP's 2016 table of "Pending or Potential ECTs"; of the twenty countries identified as actively pursuing green courts, none are located in the global North (Pring and Pring 2016, 89–90). This disconnect between scholarly praxis and structural realities may reflect the broader "dominance

of Northern science in global change research programmes" that has been identified throughout the GEP, IR, and IL literatures (e.g., Biermann 2007, 335; Tickner and Wæver 2009; Anghie et al. 2006). Given this disjunct between existing scholarly emphasis and established green courts, future research should endeavor to incorporate perspectives and approaches that reflect the institutional diversity of contemporary green courts.

c. Advocating definitional and theoretical precision in IEL research

In addition to illustrating the benefits of continued green court analysis and the need to address spatial and scalar elements of research, this dissertation highlights the benefits of clearly defining the object and methods of a legal research program. As Chapter 1 notes, the existing IEL literature has utilized various definitions and operationalizations of specialized environmental judiciaries. Some researchers have adopted a less explicit conception of the institutions (e.g., Pring and Pring 2009a) while others have advocated greater analytical precision.[72] This tension was explicitly addressed in Chapter 4, where a typology permitted distinction between green courts at various levels of domestic government and of varying institutional models. The theoretically-explicit typology speaks to broad questions of norm diffusion that are relevant to IR scholars while also generating policy-relevant accounts of existing institutions. Additionally, the methodologically-explicit surveys of green courts and norm diffusion actors in Chapters 3 and 5 demonstrate that GEP approaches can provide the more formal green courts evaluation that practitioners and academics seek (e.g., Preston 2017, 81; Pring and Pring 2016, 67).

[72] See, e.g, author's interviews with Professor Liz Fisher and Hon. Meredith Wright, via Skype, October 2017.

4. Future Research Directions

Green courts represent an emergent environmental governance institution. As this dissertation demonstrates, the courts can have clear capacity to shape IEL norm implementation, and numerous actors believe that the institutions can advance environmental conservation and social justice objectives. Nevertheless, this dissertation indicates that few green courts of the model that appear to hold the greatest capacity to implement IEL norms have actually been established to date, and suggests that the often-cited benefits of this green court model have yet to be widely realized in practice. However, the continued advocacy of green courts establishment suggests that further study is warranted. In particular, better understanding is required of how green courts may shape inclusiveness, equity, and outcomes in environmental decision-making. To advance these goals, I urge future research in three areas.

a. Green courts and EJ

First, there is a clear need to link green courts research to EJ literature. At its core, EJ examines the "equitable distribution of environmental goods and bads," a concept that addresses both procedural and distributive concerns (Schlosberg 2004, 522; Walker and Bulkeley 2006). While diverse and expansive, existing EJ literature emphasizes several common questions that are directly relevant to green court research, including: how environmental decision-making can become more equitable, how institutions can better adapt to environmental challenges, and how participation can be expanded in efforts to secure EJ (Ikeme 2003; Lister 2001, 929; Schlosberg 2013, 40). The EJ literature addresses these questions with guidance from the lenses of

procedural justice, distributive justice, and equity, each of which is directly relevant to future green courts scholarship.

First, procedural justice EJ scholarship emphasizes processes, and it researches the "access of citizens to decision-making processes that affect their environments" (Ikeme 2003, 200). By including procedural elements such as recognition (Holifield 2001, 81; Schlosberg 2004, 520), EJ scholarship relates closely to the foci of green courts research. Procedural justice research highlights a struggle for recognition (Carter 2007, 157), and has been undertaken by those researching environmental law, specifically (e.g., Angstadt 2016), and by those studying environmental institutions, broadly (*see, e.g.,* Wright 1995, 63).

By comparing the institutional attributes advocated by green court researchers to those established in fact, scholars can better clarify how green courts may contribute to procedural justice. This is a timely research question, since there is little consensus regarding which institutions are best-suited to advance procedural justice, and because such knowledge could aid in advancing access to justice for disenfranchised populations. Existing research suggests that some green courts, including those with liberal standing provisions and relaxed procedural requirements, may be well-equipped to facilitate procedural justice (e.g., Preston 2017). In contrast, other green courts may impair procedural justice, including many of China's green courts, which scholars argue can often overlook heavy polluters and instead target China's "least educated, most disadvantaged citizens" (see e.g, Stern 2013; 2014, 69). By explicitly linking green courts to EJ literature, researchers will be better equipped to understand the institutions' implications for procedural equity.

Second, in addition to procedural justice considerations, EJ scholars are deeply interested in distributive justice, which emphasizes "the distribution of environmental quality among

different communities" (Holifield 2001, 81). Distributive justice scholarship contributes to EJ's examination of how environmental "goods and bads" are apportioned by explicitly examining the equitable considerations that accompany uneven allocation. The specific legal norms and principles that can best address these "hard distributive choices" have been examined throughout the EJ field, and they have received particular attention from EJ researchers in the global South (Ikeme 2003, 199, 201).

Existing green court scholarship complements distributive EJ literature by examining how established green courts, and the rulings that they issue, may hold the capacity to substantively affect the distribution of environmental quality within their jurisdictions. For instance, researchers note that New South Wales' Land & Environment Court has incorporated distributive justice through decisions that recognize "inter- and intragenerational equity, polluter pays principle, and balancing public and private rights and responsibilities" (Preston 2012b, 435). Likewise, researchers note that India's National Green Tribunal and New Zealand's Environment Court have both barred projects due to potential environmental inequalities between populations (Angstadt 2016).

However, most existing descriptive green courts research is promotional in nature; as some scholars have problematized, it frequently highlights the instances where specialized environmental judiciaries "facilitat[e] distributive justice…" (Warnock 2017, 14), and less regularly critiques their performance in light of their potential. Despite the largely optimistic view of existing scholarship regarding the potential of green courts to enhance distributive justice, certain factors may impede this capacity, including the reality that many rulings the courts issue are procedural-rather than substantive-in nature. Additionally, once established, the capacity of individual green courts may be impeded by a lack of implementation capacity,

political capital, or popular support (Smith 1974; Pring and Pring 2016, 18–19). Research that more explicitly and critically evaluates whether green courts facilitate procedural EJ in practice will help to better evaluate these questions and link the green courts and EJ literature.

In addition to procedural and distributive justice questions, both EJ and green court scholars explore 'equity,' a broad, valence term that has a legalistic grounding and emphasizes specific IEL principles that can equalize "hard distributive choices" (Ikeme 2003, 199). Incorporating and echoing many of the procedural and distributive justice foci, domestic practitioners view environmental equity as requiring "accessibility of the environmental policymaking process to racial and minority groups, fairness in the administration of EPA programs, and equality in the distribution and effects of environmental hazards" (Collin 1994, 125 [internal citations omitted]). Internationally, those pursuing environmental equity "have largely focused on the need to equalize access to environmental goods and services," and have drawn upon broader principles of equity, including 'no envy' and 'just deserts' (Ikeme 2003, 199). Equity is a longstanding, and core, focus of EJ and environmental law advocates (Taylor 2000).

This dissertation's findings suggest that some green courts may be well-positioned to advance the development of equitable remedies. Some green courts are explicitly obligated to utilize and incorporate IEL principles in their decision-making (e.g., Gill 2017; Preston 2012b), and in many instances, the IEL norms that green courts are obligated or equipped to implement reflect key equitable precepts. For instance, EJ emphasizes "environmental protection and social justice, two of the fundamental tenets of sustainable development," (Mitchell and Dorling 2003, 909). Similarly, the EJ concern of equal burden and equal responsibility, which urges "that polluters should internalize the costs of pollution abatement" (Nash 2000, 468), aligns closely

with the IEL principle of "polluter pays" found in several green courts' enabling legislation. Given EJ scholars' attention to equity and to the specific principles used to advance equity, future green courts research that explores how institutions give effect to IEL norms will contribute to an area of broad scholarly interest.

b. Green courts and access to justice

In addition to more explicitly considering the relationship between green courts and EJ, future research should examine whether green courts advance access to justice in environmental decision-making. The term 'access to justice' denotes an effort to eliminate barriers to participation in the legal system; access to justice efforts prioritize development of legal systems that efficiently deliver "outcomes that are fair and accessible to all, irrespective of wealth and status," and access to justice constitutes a fundamental requirement of legal systems that "purport[…] to guarantee legal rights" ("Access to Justice" 2017; Cappelletti, Garth, and Trocker 1976, 672).

In practice, however, there are numerous challenges to advancing access to justice, including financial barriers, lack of adequate legal expertise, inefficiency, and insufficient public or political support (Rhode 2005; 2009; Moorhead and Pleasence 2003). Access to justice considerations are particularly salient within the environmental realm, since "the environment has no voice of its own" (Poncelet 2012, 289). By enhancing access to justice, legal institutions can indirectly enhance environmental protection by expansively providing the public with "effective judicial or administrative procedures to challenge the legality of environmental decisions" (Carnwath 2012, 559; Robinson 2014, 16).

Existing research examines the potential for green courts to enhance environmental access to justice, and it notes that some courts have adopted liberal standing procedures, provided specialized prosecutors, and explicitly addressed Rio Principle 10, which enshrines access to information, public participation and *justice* in environmental decision-making (Angstadt 2016; Kurukulasuriya and Powell 2010; Pring and Pring 2009b, 18). However, other researchers have noted that among green courts, including New South Wales' Land and Environment Court, there are "significant procedural hurdles inhibiting access to the courts in environmental cases" (Stein 2002, 10). Therefore, scholars can offer useful insights by explicitly evaluating how institutional design and specific court attributes shape access to justice.

c. Green courts and environmental outcomes

Finally, research should examine the degree to which green courts demonstrably improve environmental conditions. Even when scholars directly consider EJ and access to justice, they can neglect the tangible environmental outcomes that motivate many institutional efforts in the first place. Indeed, no existing research has yet causally examined the relationships between green courts and environmental quality within their jurisdictions. Nevertheless, there are indications that existing green courts do frequently seek to directly advance environmental quality.

For instance, in an effort to directly enhance localized air quality and reduce particulate emissions in the mountainous Rohtang Pass, India's National Green Tribunal mandated imposition of a "Green Tax Fund," vehicular quota system, and accompanying environmental monitoring requirements (*Court on its own Motion* 2014 at ¶¶ i, vii, ix). Accordingly, future research efforts could beneficially extend current understandings by examining how green court

mechanisms can serve to advance and impair environmental quality. Moreover, research should seek ways to empirically compare green court outcomes to those afforded by generalist courts.

While green courts are frequently established in the belief that they can more effectively address environmental challenges, this premise has not been systematically evaluated. Indeed, Pring and Pring acknowledge that their 2016 "best-practices" recommendations, published by UNEP, reflect belief:

> based on experience, that specialized ECTs incorporating some or all…best practices do contribute to outcomes that are better for individuals, society and an enduring world…[but] this conclusion is not based on formal research by anyone (yet) to document that ECT outcomes are inevitably better than decisions by generalist courts and tribunals over time"
>
> (Pring and Pring 2016, VIII).

Though the impressions that underpin these existing best-practices recommendations are grounded in the authors' extensive engagement with green courts and extensive field research, there is nevertheless currently no empirical basis for concluding that certain institutional models yield improved environmental outcomes. Nevertheless, as the above impressions have been published in a UNEP-sanctioned guide for policymakers, there is clearly demand for practice-relevant empirical examination of green courts' implications.

5. Conclusion

Each of the identified focal areas of future research-EJ, access to justice, and environmental quality-will benefit from the foundation that this dissertation provides. By examining the actor-driven motivations for green court establishment and the normative implications of the resulting institutions, this dissertation complements existing research and provides a course for generating more theoretically robust understanding of institutional

outcomes. It further provides a basis to develop more empirically grounded practitioner guidance and institutional design recommendations. By orienting scholarship towards a richer understanding of green court attributes and implications, this dissertation helps to promote future establishment of courts that are ideally equipped to safeguard environmental health and societal well-being. Finally, by drawing explicitly on insights from GEP and IEL literatures, this dissertation provides a preliminary illustration of benefits that can be derived from an integrative, interdisciplinary approach to examine judicial and environmental institutions.

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APPENDICES

Appendix 1. List of non-academic reports, publications, and statements (*n=16*) and scholarly articles (*n=43*) surveyed and coded for references to actors engaged in promoting green court establishment.

Non-academic reports, publications, and statements

1. Aguilar, Soledad, Qian Cheng, Eugenia Recio, and Hugh Wilkins. 22 June 2012. "UNEP World Congress Bulletin: a summary report of the World Congress on Justice, Governance and Law for Environmental Sustainability." Vol. 203 No. 1, International Institute for Sustainable Development Reporting Services: Winnipeg, available at: http://www.iisd.ca/uncsd/rio20/unepwc/.
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3. Asian Development Bank & Judiciary of Bhutan. 30-31 August 2013. *Thimphu Declaration on Enhancing Environmental Justice in South Asia*. Second South Asian Judicial Roundtable on Environmental Justice, Thimphu, Bhutan. Available on web.
4. Desai, Bharat H. *The Amritsar Dialogue Statement on Green Courts and Tribunals.* 24 November 2013. Amritsar, India.
5. The George Washington University Law School. *Program Agenda: Courts, Rule of Law and the Environment: A Side Event to the World Bank's Law, Justice, and Development Week* (11 December 2012): 1–5.
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7. Jamali, Hon. Anwar Zaheer. 2013. "Environmental Justice: Laws, Rules & Role of Green Benches in Pakistan." PowerPoint slides from 2nd Asian Judges Symposium on Environment (Manila, Philippines).
8. Lin, Tun, Canfa Wang, Yi Chen, Trisa Camacho, and Fen Lin. 2009. *Green Benches: What Can the People's Republic of China Learn from Environment Courts of Other Countries?* Asian Development Bank: Manila, Philippines.
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10. Mulqueeny, Kala, and Sherielysse Bonifacio. June 2012. "Environmental Governance and the Courts in Asia: An Asian Judges Network on the Environment." Law & Policy Reform Brief No. 1. Asian Development Bank: Manila, Philippines.
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15. United Nations Economic and Social Council. 2006. *Strengthening Basic Principles of Judicial Conduct*. ECOSOC 2006/23.
16. United Nations Environment Program. 1998. *Compendium of Judicial Decisions in Matters Related to Environment: National Decisions, Volume 1*. UNEP/UNDP/Dutch Government Joint Project on Environmental Law and Institutions in Africa. Nairobi: United Nations Environment Programme. http://www.unep.org/delc/Portals/119/publications/Judicial-Handbook-Environmenal-Law.pdf.

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3. Anisimov, Aleksey Pavlovich, and Anatoly Yakovlevich Ryzhenkov. 2013. “Environmental Courts in Russia: To Be or Not to Be?” *The International Lawyer* 1: 441–58.
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Appendix 2. List of expert survey questions.

A. Background

1. What is your name?
2. What is your current position title?
3. What is your country/region of residence (Africa, Asia, Europe [Eastern], Europe [Western], Latin America & the Caribbean, North America [not USA], Oceania, United States of America, Other)
4. How long have you been familiar with green courts (5 years or fewer, 6-10 years, 10-15 years, more than 15 years)?
5. In what professional context(s) have you engaged with green courts? Please check all that apply (Attorney/advocate, Judge/panelist, Legal scholar/professor, Other academic, PhD/LLM/JSD candidate, Domestic nongovernmental organization employee/expert, International nongovernmental organization employee/expert [e.g. WWF], Regional organization employee/expert [e.g. ADB], Intergovernmental organization employee/expert [e.g. UN], Other).

B. Drivers of green court spread

6. Green courts are being rapidly established globally. What do you believe is responsible for this?
7. What international organizations (if any) do you believe are most actively engaged in promoting the spread of green courts, and how?
8. What regional organizations (if any) do you believe are most actively engaged in promoting the spread of green courts, and how?
9. What groups of non-judge experts (if any) do you believe are most actively engaged in promoting the spread of green courts, and how?
10. What networks of judges (if any) do you believe are most actively engaged in promoting the spread of green courts, and how?
11. Please list any additional groups or actors that you believe are actively engaged in promoting the spread of green courts, but that do not fit into the above categories.

C. Green courts efficacy

12. In your opinion, what benefits can green courts provide when compared to generalist courts (courts that hear a range of claims, rather than exclusively hearing environmental claims)?
13. In your opinion, what weaknesses may green courts possess when compared to generalist courts?
14. Do you believe that green courts are effective at implementing international environmental law? Why or why not?
15. What attributes of a green court and its personnel do you believe can influence the effectiveness with which they implement international environmental law?

Appendix 3. List of Expert Survey Respondents

Lists expert survey respondents by number and self-provided position title at time of expert survey completion. In conformity with Institutional Review Board protocol, full names for respondents are not provided.

Respondent Number	Position
1	Professor of politics
2	Lecturer
3	Independent expert, environmental governance
4	Lawyer
5	Professor of civil law
6	International law PhD student
7	Senior conservation NGO employee
8	Visiting attorney (environmental rule of law)
9	Professor of law
10	Assistant professor
11	University professor
12	Associate professor
13	Research fellow
14	Lecturer & consultant
15	Lawyer/doctoral candidate in environmental rights
16	Professor
17	Lawyer
18	Professor of environmental law
19	PhD/LLM/JSD Candidate*
20	Senior environmental law NGO employee
21	Visiting professor of environmental law
22	Senior counsel for RO
23	Barrister-at-law
24	Reader in law
25	Executive director
26	Senior program officer
27	Distinguished professor
28	Professor of environmental law
29	Assistant general counsel for domestic environmental agency
30	Former head environmental court judge

Appendix 4. Coding references, by actor and class

Depicts number of coding references to both actor classes (shaded rows) and individual actors (rows without shading) and number of source documents coded at each individual actor node. Values for actor classes represent the aggregate of individual references, including general and specific nodes.

Nodes	Number of coding references	Number of items coded
Academia	**72**	**31**
Academic journals	3	1
Academics ineffectual	4	4
Bharat Desai, JNU	2	2
Ceri Warnock	1	1
Chinese law faculty	1	1
Gita Gill, UK	4	3
Jawaharlal Nehru University	1	1
Jingjing Liu	2	1
Li Xiping, Sun Yat Sen University	1	1
Malcolm Grant	1	1
Malcolm Grant, UK	4	2
Nick Robinson	4	4
Noriko Okubo, Nagoya University	1	1
Pace Law-Int'l Judicial Inst. for Envt'l Adjudication	3	3
Patrick McAuslan	1	1
George & Catherine Pring	26	19
Richard Macrory	8	5
The University of Denver	1	1
Vermont Law School	2	2
Wan Xi	1	1
Wuhan University	1	1

Nodes	Number of coding references	Number of items coded
Lawyers, generally	2	2
Business & industry	**4**	**4**
Corporate interests	4	4
Citizens	**7**	**6**
Civil society	2	2
Domestic citizens	5	5
Courts	**44**	**27**
Domestic governments	**90**	**39**
IGOs	**31**	**17**
Limited influence of IGOs	3	2
UNEP	21	12
United Nations	4	3
World Bank	3	3
International Symposia	**24**	**19**
2004 IUCN Pace University Conference	1	1
UNECE Aarhus Convention	2	2
Amritsar Dialogue on Green Courts and Tribunals	2	2
Asia Pacific Judges Symposium	1	1
Convention on Biological Diversity COP 2012	1	1
Limited influence of international symposia	1	1
South Asian Conference on Environmental Justice	1	1
UN Rio Conference	5	4
UNEP Global Judges Symposium Johannesburg	10	10
Judges	**66**	**31**

Nodes	Number of coding references	Number of items coded
Ambassador Hilario Davide, Philippines	1	1
Amedeo Postiglione	4	3
Antonio Benjamin, UNEP and Brazil	7	6
Brian Preston, Chief Judge NWS LEC	13	10
Dhananjaya Chandrachud, India	1	1
Justices, generally	11	9
Kathie Stein, US EPA EAB	2	1
Kuldeep Singh, India	1	1
Laurie Newhook, NZ	4	3
Luc Lavrysen, EUFJE	1	1
Mansoor, Lahore High Court (Pakistan)	4	4
Meredith Wright, ELI & Vermont Envtl Court	2	1
Michael Wilson, Hawaii	1	1
P.N. Bhagwati, India	1	1
Paul Stein, NSW LEC	3	2
Presbitero Velasco, Philippine Sup. Ct. Justice	1	1
Ragnhild Noer, Norway	1	1
Reynato Puno, Philippines	2	2
Tan Sri Sharif, Malaysia	1	1
Tun Arifin Bin Zakaria, Malaysia	1	1
Vera Mumfrey, ICJ	1	1
Winai Ruangsri, Thailand Supreme Court	2	2
Yahya Afridi, India	1	1

Nodes	Number of coding references	Number of items coded
Judicial Networks	**53**	**20**
ASEAN Chief Justices Network	1	1
Asian Judges Network for the Environment	10	5
Association of European Administrative Judges	1	1
EU Forum of Judges for the Environment	6	4
Global Judicial Institute for the Environment	11	7
International Network for Environmental Compliance and Enforcement	2	1
Johannesburg Global Judges Symposium	6	4
Judicial networks' influence is limited	1	1
Regional judicial networks	3	3
South Asia Judges Network on the Environment	1	1
South Asian Association of Regional Cooperation	1	1
Summits facilitated by domestic courts	7	6
UNEP Global Judges Programme	3	2
Media	**5**	**3**
NGOs	**63**	**16**
American Bar Association	1	1
Centre for Policy Research	1	1
Domestic or Local NGOs	7	3
Environmental Law Institute	5	3

Nodes	Number of coding references	Number of items coded
Environmental Monitor	1	1
Greenpeace	1	1
International Court for the Environment Coalition	4	2
International Union for the Conservation of Nature	27	6
NGOs do not diffuse norms	5	5
Sierra Club	1	1
World Resources Institute	6	3
World Wildlife Fund	4	3
Other individuals	**25**	**13**
Activists, generally	2	1
Elected officials, generally	1	1
Irum Ahsan, Asian Development Bank	2	2
Jay Pendergrass, ELI	7	4
Klaus Toepfer, UNEP	1	1
Lord Robert Carnwath, UK	1	1
Lord Woolf, Royal Commission	5	4
Scott Fulton, ELI	4	3
Taimur Khan	1	1
Wanhua Yang, UNEP	1	1
Regional Organizations	**66**	**14**
Asia-Pacific Economic Cooperation	1	1
Asian Development Bank	54	13
Association of Southeast Asian Nations	4	3
European Union	2	2

Nodes	Number of coding references	Number of items coded
North American Free Trade Agreement	1	1
Organization of American States	3	2
South Asian Association for Regional Cooperation	1	1

Appendix 5. Country-specific Contacts

The contacts listed in this table assisted with document collection or offered firsthand responses that enabled characterization of national-level green court parameters throughout this chapter. Intermediary contacts, where present, reflect individuals who provided generous assistance in establishing a primary research contact. The lack of personal contact in India reflects inability to secure a response from relevant individuals and was mitigated by reference to the extensive information available online and assistance received with other dissertation elements.

Country	Contact	Intermediary Contact	Affiliation
Bolivia	Dr. José Antonio Martinez[1]	Dr. Krister Par Andersson[2] Dr. Jean Paul Benavides[3]	1. Univ. Autónoma Gabriel René Moreno 2. CU-Boulder 3. Univ. Católica Boliviana "San Pablo"
China	Dr. Liang Dong[4]	Dr. Michele Betsill[5]	4. China Foreign Affairs Univ. 5. Colorado State Univ.
India	N/A	Dr. Shibani Ghosh[6]	6. Centre for Policy Research
Kenya	Presiding Judge Samson Okong'o[7]		7. Kenya Environment and Land Court
New Zealand	Registrar Harry Johnson[8]		8. New Zealand Environment Court
Spain	Webmaster[9]		9. Centro de Documentación Judicial, Consejo General del Poder Jud.
Sweden	Malin Wik, HSV[10]		10. Mark- och miljööverdomstolen, Svea hovrätt
Thailand	Songkrant Pongboonjun[11]	Dr. Nuthamon Kongcharoen[11] Chatree Rueangdetnarong[11] Dr. Louis Lebel[11]	11. Chiang Mai Univ.
Trinidad & Tobago	Dr. Michelle Scobie[12]		12. Univ. of the West Indies

Appendix 6. Email Questions for Respondents

The questions listed below are the common suite of questions distributed to willing contacts to gather primary information, where possible, about national-level green court location, jurisdiction, and discretion.

1) When was (COURT NAME) authorized by law?
2) By what year was the (COURT NAME) physically ready to hear disputes?
3) How many judges/experts does the (COURT NAME) have in total who can hear disputes?
4) Does the (COURT NAME) have only judges with formal legal training, or is it comprised of a "mixed bench" that also includes those with scientific/environmental expertise?
4) How many judges/experts hear a typical dispute?
5) Who nominates, appoints, or selects the judges/experts who serve on the (COURT NAME)?
6) What is the nomination/appointment process for judges/experts who serve on the (COURT NAME)?
7) Once appointed, how long can a given judge/expert serve? Is there a limit to the number of terms a judge can serve?
8) What is the jurisdiction of the (COURT NAME)?
9) Does the (COURT NAME) have competence over civil disputes, criminal disputes, or some combination of the two?
10) Is specific training required of judges and experts on the (COURT NAME) before they serve? If so, can you please characterize it?
11) Is specific training required of judges and experts on the (COURT NAME) once they are serving? If so, can you please characterize it?

Appendix 7. National-Level Green Court Enabling Legislation

Excerpts relevant enabling legislation or accounts detailing the jurisdiction of national-level green courts, and indicates source of information (presented in original language, where possible, for accuracy). Excerpts emphasize institutional subject-matter competence.

Country	Court name	Jurisdictional grant
Bolivia	National Agroambiental Court ("Tribunal Agroambiental")	Son atribuciones del Tribunal Agroambiental, además de las señaladas por la ley: 1. Resolver los recursos de casación y nulidad en las acciones reales agrarias, forestales, ambientales, de aguas, derechos de uso y aprovechamiento de los recursos naturales renovables, hídricos, forestales y de la biodiversidad; demandas sobre actos que atenten contra la fauna, la flora, el agua y el medio ambiente; y demandas sobre prácticas que pongan en peligro el sistema ecológico y la conservación de especies o animales. 2. Conocer y resolver en única instancia las demandas de nulidad y anulabilidad de títulos ejecutoriales. 3. Conocer y resolver en única instancia los procesos contencioso administrativos que resulten de los contratos, negociaciones, autorizaciones, otorgación, distribución y redistribución de derechos de aprovechamiento de los recursos naturales renovables, y de los demás actos y resoluciones administrativas. 4. Organizar los juzgados agroambientales. Bolivian Constitution (2009), Art. 189
China	Environmental Resources Tribunal	Mainly responsible for the trial of the Supreme People's Court of the first and second instance involving environmental resource dispute cases; Trial dissatisfied with the lower court review of the effectiveness of environmental supervision of resources cases. Supreme People's Court website (translated)
India	National Green Tribunal	The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in

		Schedule I. India Nat'l Green Tribunal Act, 2010, Chapter III § 14(1)
Kenya	Land and Environment Court	The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. Environment and Land Court Act, Part III § 13(1)
New Zealand	Environment Court	Appeals & applications the court can hear under the Act Under the Resource Management Act 1991, the Environment Court can determine: -Regional/district plans: appeals about the content of regional and district plans and policy statements. -Resource consents: appeals arising out of applications for resource consent (e.g. land use, subdivisions, coastal permits, water permits, discharge permits or a combination of these). -Public works/projects: designations authorising public works such as energy projects, hospitals, schools, prisons, sewerage works, refuse landfills, fire stations, major roads and bypasses. -Enforcement proceedings: enforcement proceedings (including interim Enforcement Orders) are filed to ask the court to make an Order to stop work or an activity, or require someone to do something to ensure compliance with a plan or fix effects on the environment. -Declarations: declarations are filed to determine the legal status of environmental activities and instruments. -Abatement notices: appeals against abatement notices issued by the Council requiring activities be stopped or effects on the environment be rectified. Other statutes under which the Court has jurisdiction: • Heritage New Zealand Pouhere Taonga Act • Forests Act 1949 • Local Government Act 1974 • Transit New Zealand Act 1989 • Electricity Act 1992

		• Crown Minerals Act 1991 • Biosecurity Act 1993 • Public Works Act 1981 • Land Transport Management Act 2003 NZ Environment Court website
Sweden	Environmental Court of Appeal (Mark- och miljööverdomstolen)	Land and Environmental Courts are special courts which hear cases that, for example, concern environmental and water issues, property registration and planning and building matters. Swedish Judiciary website Land and Environment Court of Appeal has jurisdiction over "all of Sweden" Malin Wik, Judge of Appeal, Sweden
Thailand	Supreme Court, Green Bench	Jurisdiction over "about 24 Acts related to Environment" Personal communication with Professor Songkrant Pongboonjun, Chiang Mai University Law School
Trinidad & Tobago	Environmental Commission	The Commission shall have jurisdiction to hear and determine— (a) appeals from decisions or actions of the Authority as specifically authorised under this Act; (b) applications for deferment of decisions made under section 25 or deferment of designations made under section 41; (c) applications by the Authority for the enforcement of any Consent Agreement or any final Administrative Order, as provided in section 67; (d) administrative civil assessments under section 66; (e) appeals from the designation of "environmentally sensitive areas or environmentally sensitive species" by the Authority pursuant to section 41; (f) appeals from a decision by the Authority under section 36 to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions; (g) appeals from any determination by the Authority to disclose information or materials claimed as a trade secret or confidential business information under section 23(3); (h) complaints brought by persons pursuant to section 69,

		otherwise known as the direct private party action provision; and (i) such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the Commission is specifically provided. Environmental Management Act (2000) § 81(5)