



University of
BRISTOL

LAWDM0013
Environmental Law

Law School
2016/17

Unit Coordinator:
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POSTGRADUATE UNIT GUIDE

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Unit Description

This unit examines the legal techniques available to protect the environment in the context of our rapidly developing understanding of sustainability as a global environmental issue and key concepts such as the precautionary principle. Through an examination of both regulatory and market based approaches, the effectiveness of current techniques is considered. From a consideration of these common themes the unit then explores particular environmental issues and sectors. The focus is primarily upon European Community and domestic responses, but placed in their international law context.

Teaching Staff

This unit is taught by:

Unit Co-ordinator

Dr Margherita Pieraccini (m.pieraccini@bristol.ac.uk). Consultation hours: Thursdays 13.00-15.00 (Room 6.76 – *Wills Memorial Building*)

Teaching staff:

Dr Margherita Pieraccini (m.pieraccini@bristol.ac.uk). Consultation hours: Thursdays 10-12 (Room-6.76 *Wills Memorial Building*)

Dr Janine Sargoni (Janine.sargoni@bristol.ac.uk). Consultation hours: Tuesday 10-12 (Room 6.77– *Wills Memorial Building*)

Prof Antonia Layard (Antonia.layard@bristol.ac.uk). Consultation hours: Tuesdays 12-1pm; Wednesdays 10-11am (Room 5.73 – *Wills Memorial Building*)

You are welcome to visit during consultation hours to discuss matters connected to this unit. These consultation hours will be advertised outside the offices and on Blackboard. If these times are not convenient for you, you should make contact by e-mail to arrange an appointment.

Methods of Teaching

This unit is taught by way of 20 lectures (approx.) and 10 LLM two-hour seminars and 2 assessment preparation and feedback sessions. Lectures are delivered jointly to students on the related undergraduate unit.

Time and location:

Please refer to your personal timetable (www.bristol.ac.uk/mybristol).

The contact hours for this unit will be approximately thirty hours, and will include a mixture of lectures, seminars, feedback sessions and workshops.

The format of the ten two-hour seminars will be discursive and active participation is a prerequisite. The materials and reading lists are only indicative and students are expected to develop their own research skills. ***Students are expected, in particular, to study and discuss the case-law and the reports indicated in the handout.***

The 10 x two hour seminar sessions will involve a mixture of:

- Seminar discussions
- Group work
- Students' presentations

There will be one seminar per fortnight, and the times and dates of these will be set out on your student timetable. You will be notified of any changes by email, so please make sure you use your University of Bristol e-mail account and check it regularly.

Methods of Assessment

Summative: 2 x 3000 word essays (50% each) will assess the candidate's ability to research a topic within the scope of this unit. Both assessments will assess all of the Intended Learning Outcomes for this unit in the context of topics selected by the examiners.

Formative: students should do one formative assessment (this will usually be 1 x 1500 word essay).

Requirements for passing the unit:

The overall mark for all summative work must be a pass (50 or above). Details of the marking scale and descriptors can be found on Blackboard and in your Programme Handbook

The assessments will assess all the Intended Learning Outcomes for this unit in the context of topics selected by the examiners. The unit will be assessed by means of: 2x 3,000 Summative Coursework, each contributing to 50% towards the final mark. Titles and submission date TBC.

Plagiarism and Late Submissions

Please note that students are heavily penalised for late submission and plagiarism. Details can be found on Blackboard and in your Programme Handbook. Ensure you are familiar with the current anti-plagiarism guidelines, which can be found on the Blackboard course 'Effective Legal Scholarship'. You are advised to plan your time carefully, particularly if you take other units with assessed work, to ensure you are not writing both just before the deadline.

Formative Assessment

A formative assessment is intended to aid your learning but does not count towards the overall unit mark.

The formative assessment for the unit is a 1500 assignment. The formative assessment is aimed at, among other things, assisting you in preparing for the summative assessment by providing assessment of: your ability to engage critically with existing work related to the topic; and your general writing abilities.

Full details of the formative assessment, including the list of titles that students can choose will be circulated in week 1 together with the submission deadline.

Summative Assessment

Coursework

The coursework for this unit are two summative coursework that decide the final mark for this unit. Students will choose coursework 1 from a list of 3 set questions circulated in TB1 and coursework 2 from a list of 3 set questions circulated in TB2. Each set will be distributed around the middle of the teaching block only after they have been reviewed and approved by an external examiner. Students will be notified directly once they are available.

Coursework submission

Coursework must be written and correctly referenced according to the Law School guidelines. Full details about all requirements and rules regarding assessed coursework are on Blackboard and in the Programme Handbook. The submission deadline details are listed above. Instructions for the submission of coursework are available on Blackboard.

Intended Learning Outcomes

By the end of the unit, successful students will be able to critically understand and explain:

1. key rules, principles and perspectives of environmental law
2. regulation and rights-based approaches to environmental law c) international and European legal provisions of a selected number of environmental sectors

In relation to:

1. the perspective of sustainable development, environmental principles and ethical perspectives on the environment.
2. the regulatory techniques (command and control regulation, market-based instrument, reflexive environmental regulation and smart regulation) and rights-based approaches to environmental protection (from the 'environmental' jurisprudence of the ECtHR, to the procedural rights of the Aarhus Convention and from individual human rights to rights of groups, such as indigenous peoples' rights and rights to non-human beings). Students should be able to explore the links between regulation and rights-based approaches.
3. international and European legal provisions on environmental assessment, environmental liability, nature conservation law and climate change law.

Approach to Study

Students should develop an understanding of environmental law in order that they may formulate their own opinions on legal, theoretical and practical issues in particular topics and to carry out a sustained piece of original research on a selected topic. Students should also identify legal problems raised by case law, and to evaluate and use this knowledge for practical purposes, such as advising governments and civil society organisations. Analytical skills will be developed through the study of primary sources of law and secondary sources of literature.

Students will apply the knowledge and understanding referred to above, plan and produce detailed research, using appropriate research techniques, thereby demonstrating the capacity for sustained independent thought. **All compulsory reading should be done in advance of the relevant seminar.** Students should select from the optional reading to follow up on particular issues discussed in the seminar. It is always helpful for students to do their own independent research on particular topics. Where this is done, it will be noted and rewarded in the marking of the summative coursework and end of year examination. In the course of the year, students should become comfortable in presenting this analytical work to their peers and working within groups doing specific exercises. Internet materials will be used as a key source of references and projects will be provided to enable students to hone their web research skills.

In particular, you should consider doing the following:

1. Use electronic sources

This is a dynamic field of study. Policy is changing daily in this field, leading to institutional reforms and changes in findings reached in environmental law cases. You should be accessing the cases and statutes yourself and attempting to track these changes. Also, because the material covered in this course aims to be topical, we refer you to 'essential reading' contained in journals not available in paper form in our law library. You will have access to journal articles via the University portal.

2. Use your initiative

It is important to stress that, in common with other LLM courses, the reading lists are NOT definitive. This is by design, not accident. **As postgraduate students, you are meant to develop your own research and study skills.** Indeed, you will be required to do so when writing your summative assessments and dissertations. Each week will contribute towards that learning process. It is up to you to explore the library, follow up interesting points and draw them to the attention of the group. The seminar reading will provide the basic outlines and the starting points: it is for you to define its limits. You will ALL be expected to contribute to seminar discussions and from time to time to make presentations to the group.

Core Texts and Resources

A list of reading will be provided in the unit handbook for each seminar.

Useful textbooks are below:

- Bell, McGillivray and Pedersen Environmental Law (2013 OUP),
- Lee, EU Environmental Law Governance and Decision-Making (2014 Hart),
- Sands and Peel, Principles of International Environmental Law (2012 CUP).
- Fisher, Lange and Scotford, Environmental Law: Text, Cases and Materials (2013, OUP)

Outline of Lectures

1. Introduction to environmental law (Margherita Pieraccini)
2. Key traits of environmental ethics (Margherita Pieraccini)
3. Sources and Institutions of environmental law (Margherita Pieraccini)
4. Environmental principles (Margherita Pieraccini)
5. Environmental Regulation (Margherita Pieraccini)
6. Environmental Rights (Margherita Pieraccini)
7. Essay Writing (Margherita Pieraccini)
8. Regulating pollution: Environmental Permitting (Margherita Pieraccini)
9. Regulating pollution: water (Margherita Pieraccini)
10. Regulating pollution: waste (Margherita Pieraccini)
11. Biodiversity law: definitions and values (Margherita Pieraccini)
12. Biodiversity law: protected areas on land (Margherita Pieraccini)
13. Biodiversity law: protected areas at sea (Margherita Pieraccini)
14. Environmental Liability and Sanctions (Margherita Pieraccini)
15. Planning: an Introduction (Antonia Layard & Margherita Pieraccini)
16. Environmental Impact Assessment (Antonia Layard)
17. Global environmental change: Climate change (guest lecture)
18. Global Environmental Change: New Technologies (Janine Sargoni)
19. Essay Feedback (Margherita Pieraccini)
20. NGOs perspective (guest lecture)

Outline of Seminars

1. Introduction to Environmental Law
2. Principles and Perspectives of Environmental Law
3. Environmental Regulation
4. Environmental Rights and Environmental Justice
5. Environmental Pollution
6. Biodiversity law- approaches to nature conservation
7. Biodiversity law- the role of protected areas
8. Environmental Assessment
9. Global environmental change- climate change law
10. Global environmental change- new technologies in focus

Description/Key Questions:

First, this seminar will outline the structure and content of the whole module. Then, the definitions and sources of environmental law will be introduced. Special attention will be given to understanding environmental problems and value judgments and the role environmental law plays in attempting to resolve these. Students will be encouraged to read environmental law critically, reflecting on the tools and techniques that are used as well as the value judgments embodied within legislation, litigation, policy-making and legal practices.

You will gain an understanding of:

1. The structure of this module;
2. The definitions of environmental law and environmental problems;
3. The sources of environmental law at the international, European and domestic level and their relationships;
4. Different positions that underlie environmental law and practice.

Key Questions for discussion:

1. What is environmental law?
2. Why should we protect the environment? In Ruhl's piece "The Case of the Speluncean Polluters: Six Themes of Environmental Law, Policy, and Ethics", which judge do you agree with and why?
3. What are the sources of International, European and domestic environmental law and how do they interact?

Required Reading:**Textbook**

- Bell, McGillivray and Pedersen, *Environmental Law* (2013), Chapter 1 and Ch 4.
- OR
- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials* (2013), Chapters 1, 2, 3, 4 and 5.

Other books and articles

- Gaines's 'Reimagining Environmental Law for the 21st Century' (2014) 44 *Environmental Law Reporter* 10188
- McEldowney and McEldowney. Science and Environmental Law: Collaborations Across the Double Helix. (2011) 13 *Env L Rev* 169.
- Ruhl. The Case of the Speluncean Polluters: Six Themes of Environmental Law, Policy, and Ethics. (1997) *Environmental Law* 27 (via Google scholar or Heinonline).

Law and Policy

- Treaty on the Functioning of the European Union, Art 11 and Title XX
- Art 38(1) of the Statute of the International Court of Justice (ICJ).

Further reading:

Textbooks

- Lee, *EU Environmental Law, Governance and Decision- Making* (2014) Chapters 1 and 2
- Dupuy and Vinuales, *International Environmental Law* (2015) Chapters 1 and 2

Other books and articles

- Fisher et al. (2009). Maturity and Methodology: Reflecting on How to do Environmental Law Scholarship. 21(2) *Journal of Environmental Law* 213.
- Scotford and Robinson. UK Environmental Legislation and Its Administration in 2013: Achievements, Challenges and Prospects. (2013) 25(3) *Journal of Environmental Law* 383.

Seminar Two

Environmental principles and perspectives

Description/Key Questions:

This seminar will present a critical introduction to key environmental “principles” (polluter pays, precautionary, preventative and common but differentiated responsibilities principles) and two environmental perspectives (sustainable development and resilience).

You will be able:

1. To acquire critical knowledge of the main environmental “principles” and their legal interpretation;
2. To critically consider the concept of sustainable development and resilience.

Key Questions for discussion:

1. Much has been said about the precautionary principle in law and academia but we are still far from a unified definition. Discuss.
2. What are the strengths and weaknesses of the CBDR to address global environmental problems?
3. The polluter pays principle poses a series of definitional challenges (e.g. who is polluter? What is pollution? Who should pay?). Discuss these challenges by reference to different versions of the principle.
4. Should the concept of sustainable development incorporate that of resilience in order to face the complex issues associated with environmental change?

Required Reading:

Text books

- Bell, McGillivray and Pedersen, *Environmental Law* (2013), Chapter 3, pp 52-75
- OR
- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials* (2013), Chapter 11 (up to p. 439).

Other books and articles

- Bugge. The Polluter Pays Principle: Dilemmas of Justice in National and International Contexts, in Ebbesson and Okowa (eds.), *Environmental Law and Justice in Context*, (2009) 7
- Ebbesson. The rule of law in governance of complex socio-ecological changes. (2010) 20 *Global environmental change* 414.
- Feintuck. Precautionary maybe, but what's the principle? The precautionary principle, the regulation of risk and the public domain (2005) 32 *J Law & Soc* 371
- Ross. Modern interpretations of sustainable development. (2009) 36 *Journal of Law and Society* 32.
- Stone. Common but Differentiated Responsibilities in International Law. (2004) 98 *The American Journal of International Law* 276.

Case Law

- Fleshing out the precautionary principle by the Court of First Instance: *Pfizer Animal Health SA v Council of the European Union* (2003) 15 *JEL* 372
- *R v Secretary of State for Trade and Industry ex parte Duddridge* [1995] *ELR* 151

Law and Policy

- Rio Declaration on Environment and Development (1992):
<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

- World Commission on Environment and Development, Our Common Future (1987) UN Doc A42/427 (Brundtland Report) at: <http://www.un-documents.net/our-common-future.pdf>
- UNCED, Agenda 21 (1992) UN Doc a/cof151/pc/100/Add.1: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=52>
- World Summit on Sustainable Development, Johannesburg Declaration on Sustainable Development (2002) UN Doc A/CON1F99/20.
- Art 191(2) TFEU
- Communication from the Commission on the Precautionary Principle COM (2000)1, at: http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf
- UN Sustainable Development Goals, at: <https://sustainabledevelopment.un.org/?menu=1300>

Further reading:

- Bodansky et al. Oxford Handbook of International Environmental Law (2007 OUP)- Chapter by Wiener 'Precaution' and Chapter by Magraw and Hawke 'Sustainable Development'.
- Bosselmann, The principle of sustainability: transforming law and governance (2006)
- Bugge. 1987-2007 'Our common Future' revisited. In Bugge and Voigt (eds) Sustainable Development in international and national law (2008)
- De Sadeleer. Environmental Principles: from political slogans to legal rules. Part I
- De Sadeleer. The precautionary principle as a device for greater environmental protection: lessons from EC courts. (2009) 18 RECIEL 3
- Dupuy and Vinuales, International Environmental Law (2015). Ch 3.
- Fisher. Is the precautionary principle justiciable? (2001) 13 JEL 315
- Folke. Resilience: the emergence of a perspective for social-ecological systems analyses. (2006) 16 Global environmental change 253
- Garmestani et al. Can Law Foster Social-Ecological Resilience? (2013) 18(2) *Ecology and Society* 37.
- Ross. Why legislate for sustainable development? (2007) JEL 35
- Tarlock. Ideas without Institutions: the paradox of sustainable development. (2001) 9 Indiana Journal of Global Legal Studies 35.

Description/Key Questions:

This seminar considers the rationale behind environmental regulation and the types (approaches) of environmental regulation. It does so by attempting to answer four central regulatory questions:

- 1) why regulate? (tragedy of the commons and critiques)
- 2) where to regulate? (local, national, regional, international, polycentric governance?)
- 3) how to regulate? (e.g. direct regulation, market-based mechanisms)
- 4) how is environmental law enforced?

You will be able:

- To be aware of the justifications for environmental regulation;
- To be familiar with (and critical of) different regulatory approaches;
- To think about issues of multi-level governance in the environmental field;

Key Questions for discussion:

1. Is the tragedy of the commons' argument at all tenable? What type of environmental regulation does it exclude?
2. Are market based mechanisms justifiable from an ethical perspective?
3. What does really responsive regulation teaches us about enforcement?

Required Reading:Text book

- Bell, McGillivray and Pedersen, *Environmental Law*, Ch. 8 and Ch. 3 (pp. 78-81).

OR

- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials*, Ch 12, 13.

Other books and articles

- Baldwin and Black. Really Responsive Regulation. (2008) 71(1) *Modern Law Review* 59.
- Gunningham. Environment Law, Regulation and Governance: Shifting Architectures. (2009) 21 *JEL* 179.
- Gunningham. Enforcing Environmental Regulation (2011) 23 (2) *JEL* 169.
- Gunningham and Sinclair. Designing Smart Regulation (1998) at: <http://www.oecd.org/env/outreach/33947759.pdf>
- Hardin. The tragedy of the commons. (1968) 162 *Science* 1243
- Parker. 20 Years of Responsive Regulation: A Critical Appraisal. 2013 7(1) *Regulation and Governance* 2.

Further readingBooks and Articles

- Black. Decentring regulation: understanding the role of regulation and self-regulation in a "post-regulatory" world (2002) 54 *Current legal problems* 103.
- Black. Constructing and contesting legitimacy and accountability in polycentric regulatory regimes (2008) 2 *Regulation and Governance* 137.
- Gunningham. Enforcement and Compliance Strategies. In Baldwin, Cave and Lodge (eds) *The Oxford Handbook of Regulation* (OUP 2010) 131.

- Macrory, R. Regulation, enforcement and governance in environmental law (2010), Part III.
- Morgan and Yeung. *An Introduction to Law and Regulation* (2007), esp. Ch 1.
- Ostrom. *Governing the commons: the evolution of institutions for collective action* (1990).
- Ostrom. The tragedy of the commons. In *The New Palgrave Dictionary of Economics* 2008 available at:
http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/5887/tragedy%20of%20the%20commons%20_%20Th...pdf?sequence=1
- Ostrom. Polycentric systems for coping with collective action and global environmental change. (2010) 20 *Global Environmental Change* 550.
- Orts. A reflexive model of environmental regulation. (1995) 5 *Business Ethics Quarterly* 779.
- Sands and Peel, *Principles of International Environmental Law* (2012), Ch 4 (from p, 122).

Seminar Four

Environmental Rights and Environmental Justice

Description/Key Questions:

This seminar examines the broad theme of environmental rights and environmental justice by considering the three pillars of the Aarhus Convention 1998 and its European implementation (Directive 2003/4/EC and Directive 2003/35/EC that implement the first two pillars of the Aarhus Convention at the Member State level and Regulation 2006 that implements the Aarhus Convention at the EU institutions level). The difficult issue of access to justice is also examined.

You will be able:

- To understand the concept of environmental justice
- To understand different rationales for/values of public participation: e.g. public participation as better decision-making (instrumental value) or public participation as a means to improve procedural legitimacy (normative value);
- To be familiar with procedural environmental rights under the Aarhus Convention and its implementation in Europe;
- To understand standing in environmental law cases.

Required Reading:

Text book

- Bell, McGillivray and Pedersen, *Environmental Law*, Ch. 10.

OR

- Fisher, Lange and Scotford, *Environmental law: Text, Cases and Materials*, Ch. 10 (part 2), Ch. 7 (parts 2, 3 and 4).

Others books and articles

- Arnstein, S. R. (1969). A ladder of citizen participation. *Journal of the American Institute of planners*. 35(4), 216-224 at: http://geography.sdsu.edu/People/Pages/jankowski/public_html/web780/Arnstein_ladder_1969.pdf
- Lee and Abbot. The usual suspects? Public participation under the Aarhus Convention. (2003) 66 *MLR* 80
- Lee. Access to Justice at EU Level in Environmental Law. (2012). Available at SSRN: <http://ssrn.com/abstract=2062252> or <http://dx.doi.org/10.2139/ssrn.2062252>
- Pedersen. Environmental Principles and Environmental Justice. (2010) 12 (1) *ELR* 26.
- Peters "Towards the Europeanization of participation? Reflecting on the functions and beneficiaries of participation in EU environmental law" (2014) at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2422378
- Steele 'Participation and deliberation in environmental law: exploring a problem solving approach' (2001) 21 *OJLS* 415.

Case Law

- Search for cases heard by Aarhus Convention Compliance Committee at: <http://www.unece.org/env/pp/cc.html>

Law and Policy

- Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)
- EC Directive on Public Access to Environmental Information 2003/4/EC

- EC Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC
- Proposal for a directive of the European Parliament and of the Council 24 October 2003 on access to justice in environmental matters (presented by the Commission) COM (2003) 624 final.
- Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies

Further reading

Books and Articles

- Nadal. Pursuing substantive environmental justice: the Aarhus Convention as a "pillar" of empowerment (2008) 10 ELR 28.
- Pedersen. Price and Participation: The UK before the Aarhus Convention's Compliance Committee. (2011) 13 EL R 115.
- Poncelet. Access to Justice in Environmental Matters-does the European Union comply with its obligations?(2012) 24 JEL 287
- Stone, Should trees have standing? (1973) at:
http://isites.harvard.edu/fs/docs/icb.topic498371.files/Stone.Trees_Standing.pdf

Description/Key Questions:

This seminar presents an overview of key pollution regimes: environmental permitting regime, waste and water. More specifically, in relation to environmental permitting it considers how industrial pollution is regulated by considering the administrative integration of pollution control regimes via the environmental permitting regime; in relation to waste it considers the challenges of defining waste, looking at how EU and domestic law construct and deal with waste. The key legal instrument at the EU level is the Waste Framework Directive, whose main provisions will be analyzed; in relation to water it EU and UK environmental law related to the protection of rivers and other inland surface waters. Also, the environmental permitting as it applies to waste and water will be considered.

You will be able to:

- Gain an understanding of key techniques for the regulation of pollution at the UK and EU level
- Assess pollution regimes drawing on theories of participation and regulation.

Key Questions for discussion:

1. To what extent does the environmental permitting regime achieve administrative integration of environmental pollution?
2. Regulating waste is difficult because the concept of waste is difficult to define. Discuss.
3. The Water Framework Directive marks an important trend towards an ecosystem-based approach for water policy and water resource management. Discuss.

Required ReadingTextbook

- Bell, McGillivray and Pedersen, *Environmental Law: Text, Cases and Materials* (2013), Ch.14, 17, 18
- OR
- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials* (2013), Part IV (pp. 539-549), Ch. 14, 16.

Other Books and Articles

- Boyle. The Water Framework Directive: why is “good” status proving such an elusive goal? (2011) WL 19.
- Kirk and Blackstock, Enhanced decision making: balancing public participation against ‘better regulation’ in British environmental permitting regimes. (2011) JEL 97.
- Howarth, Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities. (2009) JEL 391.
- Lange, The EU Directive on Industrial Emissions: Squaring the Circle of Integrated, Harmonised and Ambitious Technology Standards? (2011) 13 Env LR 199.
- Pike, ‘Waste not, want not: an (even) wider definition of waste’ (2002) 14 JEL 197.
- Scotford. The New Waste Directive-Trying to do it all...an early assessment. (2009) *Env LR* 75

Case Law

- Case C-9/00 *Palin Granit Oy v. Vehmassaion kansanterverystyon kuntayhtyman hallitus* [2002] Env LR 35

- *R (OSS Group Ltd) v. Environment Agency* [2007] EWCA Civ 611.
- Case c-1/03 *Van de Walle and ors* [2005] Env LR 24
- *R v W and ors* [2010] EWCA Crim 927.

Law and Policy

- Waste Framework Directive (2008/98/EC)
- Water Framework Directive (2000/60/EC)
- Industrial Emissions Directive (2010/75/EU)

Further reading:

- Howart. The progression towards ecological quality standards. (2006) 18 JEL 3.
- Josefsson and Baaner. The Water Framework Directive: a Directive for the twenty-first century? (2011) JEL 463. The Environmental Permitting (England and Wales) Regulations 2010, as amended.
- DEFRA (2012) Guidance on the Legal Definitions of Waste and its Application
- European Environment Bureau New Features under the Industrial Emission Directive
- Environment Agency, Environmental Permitting Guidance

Description/Key Questions:

This seminar introduces biodiversity law, by focusing on the definitions and values of biodiversity and the types of mechanisms, concepts and approaches used by law. Three main issues will be considered:

- a) whether there is a trend towards the privatization of biodiversity
- b) the 'substitution problem' (the integrity of a system vs the integrity of an individual entity, example of biodiversity offsetting in law)
- c) the concept of ecosystem services and the challenges it poses for environmental law and ethics

You will be able:

- To be familiar with key traits of biodiversity law and policy (e.g. Convention of Biological Diversity and EU Biodiversity Strategy to 2020).
- To understand the different meanings and values assigned to biodiversity and be able to critically compare them.
- To form a critical opinion in relation to the mechanisms, concepts and approaches used to protect biodiversity

Key Questions:

1. What are the values of biodiversity?
2. Provide examples of the legal privatization of biodiversity. To what extent do you agree with these approaches?
3. Payment for ecosystem services approaches and biodiversity offsetting trigger important questions of commensurability and sustainability. Discuss.

Required Reading:Text book

- Bell, McGillivray and Pedersen, *Environmental Law*, Ch. 19, pp. 717-722.

OR

- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials*, Ch 20, pp.912-934.

Other books and articles

- Bunse et al. What can deliberative approaches bring to the monetary valuation of ecosystem services? A literature review. 2014 14 *Ecosystem services* 88.
- Hrabanski. The biodiversity offsets as market-based instruments in global governance: Origins, success and controversies. (2015 in press) *Ecosystem services* at: <http://www.sciencedirect.com/science/article/pii/S2212041614001673>
- Reid. The privatization of biodiversity? possible new approaches to nature conservation law in the UK (2011) 11 *JEL* 203
- Reid. Between Priceless and Worthless: Challenges in Using Market Mechanisms for Conserving Biodiversity. 2013 2(2) *Transnational Environmental Law* 217.
- Ruhl and Salzman. The Law and Policy Beginnings of Ecosystem Services. (2007) 22(2) *Journal of Land Use* 157 at: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3032&context=faculty_scholarship

Law and Policy

Convention of Biological Diversity at: <https://www.cbd.int/>
Millennium Ecosystem Assessment Ecosystems and human well-being: Synthesis
Island Press, Washington, DC (2005) at:
<http://www.millenniumassessment.org/documents/document.356.aspx.pdf>
EU Biodiversity Strategy to 2020 at:
<http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

Further reading:

Other books and articles

- Costanza, et al. The value of the world's ecosystem services and natural capital. (1997) 387 Nature 253.
- McKenney and Kiesecker. Policy Development for Biodiversity Offsets: a review of offset frameworks (2010) 445(1) Environmental Management 165.
- Reid and Nsoh. Whose ecosystem is it anyway? Private and public rights under new approaches to biodiversity conservation. 2014 5(2) JHRE 112.
- Ruhl, Kraft, Lant. *The Law and Policy of Ecosystem Services*. (Island Press 2007)
- Salzman and Ruhl. Currencies and Commodification of Environmental Law. (2000-01) 53 Stanford Law Review 607.
- Sullivan and Hannis. Nets and frames, losses and gains: Value struggles in engagements with biodiversity offsetting policy in England. (2015 in press) Ecosystem Services at:
<http://www.sciencedirect.com/science/article/pii/S2212041615000108>

Law and Policy

- Biodiversity offsetting in England- Green Paper 2013 at:
https://consult.defra.gov.uk/biodiversity/biodiversity_offsetting/supporting_documents/20130903Biodiversity%20offsetting%20green%20paper.pdf
- UK National Ecosystem Assessment at: <http://uknea.unep-wcmc.org/>

Seminar Seven

Biodiversity law-the role of protected areas

Description/Key Questions:

This seminar considers a key tool of biodiversity law: protected areas. It considers both European and domestic efforts to set up and manage protected areas, in terrestrial and marine environments. Three themes run throughout the seminar: 1) the relationship between property rights and conservation law and 2) the dichotomy between technocracy and democracy, 3) the concept of ecologically coherent network of protected areas.

You will be able:

- To be familiar with designation and management of Sites of Special Scientific Interest (SSSIs) under the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000, Marine Conservation Zones (MCZs) under the Marine and Coastal Access Act 2009 and European sites (Special Areas of Conservation and Special Protection Areas under the Habitats and Wild Birds Directive transposed by the Habitats Regulations 2010);
- To critically assess the role property rights play in the approach taken to site protection;
- To form a critical opinion in relation to the appropriateness of technocratic decision-making for the governance of protected areas.

Key Questions for discussion:

1. Does the English law draw the right balance between the protection of property rights and that of wildlife habitats and species? Discuss comparing the provisions related to the SSSIs designation and management under the Wildlife and Countryside Act 1981 and those under the Countryside and Rights of Way Act 2000.
2. Is part V of the Marine and Coastal Access Act making an important difference to marine conservation law?
3. What are the benefits and challenges of adopting a network approach to protected areas?

Required Reading:

Text book

- Bell, McGillivray and Pedersen, *Environmental Law*, Ch. 19, pp. 723-752.

OR

- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials*, Ch 20, pp. 935-967.

Other books and articles

- Adams and Hutton, 'People, parks and poverty: political ecology and biodiversity conservation', 2007. 5(2) *Conservation and Society* 147.
- Lee, 'Allocation of Decision-Making Power under the Habitats Directive' (2016) 28 *JEL* 191.
- Pieraccini, 'Establishing a network of Marine Protected Areas under the Marine and Coastal Access Act 2009: are MCZs adding anything new?' (2013) 15 *ELR* 104.
- Pieraccini, 'Rethinking Participation in Environmental Decision-Making' (2015) 27 *JEL* 45
- Rodgers. *Nature Conservation Law*. (OUP 2013) Chs 3,4 and 6-8.

Law and Policy

- Wildlife and Countryside Act 1981, s 28
- Countryside and Rights of Way Act 2000, Sch. 9
- Directive 2009/147/EC on the conservation of wild birds, OJ 2009 L20/7 (Wild Birds

- Directive). This is the codified version of Directive 79/409/EEC, OJ 1979 L103/1 as amended.
- Directive 92/43/EC on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ1992 L 206/7 (the Habitats Directive)
- The Conservation of Habitats and Species Regulations 2010 (SI No. 2010/490), as amended (The Habitats Regulations 2010).
- OSPAR Recommendations 2003/3 as amended by Recommendation 2010/2
- Marine Strategy Framework Directive 2008 (preamble and Art 13(4))
- Marine and Coastal Access Act 2009, Part V.

Case Law

- *Southern Water v. Nature Conservancy Council* [1002] 3 ALLER 481 (read Lord Mustill comment p. 484)
- *Case C-44/95 R v Secretary of State for the Environment, ex parte Royal Society for the Protection of Birds* [1997] QB 206
- *Case C-371/98 R v. Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd* [2001] ECR I-9235
- *Commission of the European Communities v United Kingdom* (2005) Case C-6/04, (2006) 18 JEL pp. 135-160 (includes précis of judgment)
- *Case C-127/02 Landelijke Vereniging tot Behoud van de Waddensee, Nederlandse* [2005] ELR 14
- *R (Boggis) v Natural England* [2009] EWCA Civ 1061
- *Case C-404/09 Commission v Spain*
- EU case of C-258/11 *Sweetman v AN Bord Pleanala*.
- *Case C-301/12 Cascina Tre Pini SS v Ministero dell'Ambiente e della Tutela del Territorio e del Mare*.
- *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174.

Further reading

Books and Articles

- Jones. Marine Protected Areas in the UK: challenges in combining top-down and bottom-up approaches to governance (2012) 39 *Environmental Conservation* 248.
- Jones and Burgess. Building partnership capacity for the collaborative management of marine protected areas in the UK: a preliminary analysis. (2005) 77 *Journal of Environmental Management* 227.
- Last. Habitat Protection: has the wildlife and countryside act 1981 made a difference? (1999) 11 *JEL* 15
- Pieraccini. Property Pluralism and the partial reflexivity of environmental law. (2012) 3 *JHRE* 273
- Pieraccini, Democratic legitimacy and new commons: examples from English protected areas. *International Journal of the Commons*. 2015. Full text available at: <http://www.thecommonsjournal.org/index.php/ijc/article/view/509>
- Rodgers. Managing Natura 2000: priorities for implementing EC Wildlife in the UK. (2001) *JPEL* 265

Law and Policy

- Planning Policy Statement 9 (2005): Biodiversity and Geological Conservation
- Natural Environment and Rural Communities Act 2006.
- Convention on Biological Diversity 1992

Seminar Eight

Environmental Assessment

Description/Key Questions:

This seminar introduces the law on Environmental Assessment. It considers the process of EIA, as set out in English law (SI 2011/1824) implementing the EIA Directive 2011/92 (as amended by Directive 2014/52/EU). It reflects on what type of projects require EIA – distinguishing between screening and scoping and considering multi-stage projects (as in *Barker* and what screening might – and might not – be according to the Supreme Court in *Norfolk v Champion* (2015)). It briefly considers the relationship between pollution control and planning permission. The seminar also considers strategic environmental assessment (SEA) as implemented by the SEA Directive 2001/42/EC and, in England, the Environmental Assessment of Plans and Programmes Regulations 2004/1633. It also considers how this recently became relevant in the HS2 litigation (Buckinghamshire).

Key Questions for discussion:

1. Which environmental principles underpin the EIA legislation? Are the objectives realised in the practice of EIA?
2. What is 'screening'? Does it work?
3. What are the biggest difficulties with EIA?
4. Does SEA work? Should it have applied to the decisions on HS2?

Required Reading

Case Law

- *R v. Swale Borough Council, ex parte RSPB* [1991] 1 PLR 6
- **Berkeley v. Secretary of State for the Environment, Transport and the Regions* [2001] Env LR 16 (*Berkeley n. 1*) and *Berkeley v Secretary of State for the Environment, Transport & the Regions* (No. 3) [2002] Env LR 14 (*Berkeley no. 3*)
- *Gateshead Metropolitan Borough Council v Secretary of State for Transport Local Government and the Regions* [1995] Env. L.R. 37
- *R. (on the application of Barker) v Bromley LBC* [2007] 1 A.C. 470
- *Walton v The Scottish Ministers* [2012] UKSC 44
- **R. (on the application of Buckinghamshire CC) v Secretary of State for Transport* [2014] UKSC 3; [2014] 1 W.L.R. 324 (SC)
- * *R (Champion) v North Norfolk District Council & Anor* [2015] UKSC 52

Law and Policy

- EIA Directive 2011/92 (as amended by Directive 2014/52/EU) see <http://ec.europa.eu/environment/eia/review.htm> and for an informal consolidated version see http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf
- Town and Country Planning (EIA) Regulations S. I. 2011/1824 as amended The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 SI 2015 no. 660
- SEA Directive 2001/42/EC as implemented by the Environmental Assessment of Plans and Programmes Regulations 2004/1633
- National Planning Policy Framework (NPPF) (2013), Part 11 esp. paras 121 and 122
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- For an outline of the planning system see <https://www.gov.uk/government/topics/planning-and-building>
- For advice on planning see planningportal.gov.uk
- For infrastructure planning see <http://infrastructure.planningportal.gov.uk/>

Further Readings

Text Books

- Bell, McGillivray and Pedersen, Environmental Law, Chs. 12 and 13

OR

- Fisher, Lange and Scotford, Environmental Law: Text, Cases and Materials, Chs. 18 and 19.

Other books and articles

- Holder and Lee, Environmental Protection, Law and Policy (2007) Chap 14.
- Thornton. Strategic environmental assessment. (2014) Journal of Environmental Law 342.
- Samuels. An assessment of environmental impact assessment (EIA). (2014) Journal of Planning and Environmental Law 714
- Tetlow and Hanusch. Strategic environmental assessment: the state of the Art. (2012) Impact Assessment and Project Appraisal 15.

Description/Key Questions:

This seminar tackles the broad and complex issue of climate change mitigation. It considers how market based mechanisms have been chosen as the key regulatory means to deal with this issue and whether alternative regulatory approaches would be more satisfactory. The focus will be on the development of international climate change law, with due consideration to the recent Paris Agreement. A regional example of emission trading will be considered, i.e. the European Emission Trading System under the 2003/87/EC Directive as amended. In analysing the law we will also consider the principle of common but differentiated responsibilities, asking whether this should continue to be at the basis of international climate change law.

You will be able:

- To understand the relevance of international law, global consensus and the role of common but differentiated responsibilities in debates about climate change;
- To be aware of the market mechanisms established under the Kyoto Protocol and of emission trading in the EU.

Key Questions for discussion

1. To what extent should climate change law continue to rely on market-based governance and on the principle of common but differentiated responsibilities?
2. How does the EU ETS work and is it a success?
3. To what extent is environmental law able to address the complex challenge of climate change?

Required Reading:Text Book

- Bell, McGillivray and Pedersen. *Environmental Law*, Ch. 15 (until p. 554)

OR

- Fisher, Lange and Scotford. *Environmental Law: Text, Cases and Materials*. Ch 15, pp.636-653.

Others books and articles

- Baldwin, Regulation Lite: the Rise of Emission Trading. (2008) 2 *Regulation and Governance* 193.
- Bogojević, 'Ending the Honeymoon: deconstructing emission trading discourses' (2009) 21 *JEL* 443
- Honkonen, 'The principle of common but differentiated responsibility in post-2012 climate negotiations' (2009) 18 *RECIEL* 257
- Peel, Climate Change Law: The Emergence of a New Legal Discipline (2008) 32 *MULR* 922.
- Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations' (2016) 28 *JEL* 337.
- Townshend, et al. How National Legislation Can Help to Solve Climate Change. 2013 3 *Nature Climate Change* 430.
- Winter, 'The climate is no commodity: taking stock of emission trading system', (2010) 22 *JEL* 1

Law and Policy

- United Nations Framework Convention on Climate Change (1992)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997)
- Directive 2003/87/ EC (ET Directive) as amended

- Paris Agreement, at: http://unfccc.int/paris_agreement/items/9485.php

Case Law

Examples of climate change litigation re the EU ETS scheme

- *Poland v Commission* (T-183/07) and, for the appeal, see *Commission v Poland* (C-504/09)
- *EnBW Energie Baden Württemberg v Commission* (T-387/04).
- Case C-366/10 *The Air Transport Association of America, American Airlines, Inc, Continental Airlines, Inc, United Airlines, Inc v The Secretary of State for Energy and Climate Change* [2011] OJ C260/9.

Further reading

Books and Articles

- Biermann, 'Beyond the intergovernmental regime: recent trends in global carbon governance' (2010) 2 *Current Opinion in Environmental Sustainability* 284.
- Bodansky, 'The Copenhagen Climate Change Conference: A Post-Mortem' (2010) 104 *American Journal of International Law* 230. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1553167
- Bushey and Jinnah, 'Evolving Responsibility? The Principle of Common but Differentiated Responsibility in the UNFCCC' (2010) 6 *Berkely J. Int' L. Publicist* 1.
- Cole, 'From global to polycentric climate governance' *EUI Working Paper* RSCAS 2011/30
- Dupuy and Vinuales, *International Environmental Law* (CUP 2015), Ch 5.5
- Helm, 'Climate change-policy: why so little has been achieved?' (2008) 24 *Oxf Rev Econ Policy* 211
- Lefevere, 'A climate of Change: an analysis of progress in EU and International Climate Change Policy' in Scott (ed) *Environmental protection* (2009)
- Peeters, 'Emission trading as a new dimension to European environmental law', (2003) *ELR* 82.
- Rajamani, 'The increasing currency and relevance of rights based perspectives in the international negotiations on climate change' (2010) 22 *JEL* 39.
- Wettestad, 'Interactions between EU carbon trading and international climate regime: synergies and learning' (2009) 9 *International Environmental Agreements* 393

Law and Policy

- Cancun Agreements at: http://unfccc.int/meetings/cop_16/items/5571.php
- Copenhagen Accord at: http://maindb.unfccc.int/library/view_pdf.pl?url=http://unfccc.int/resource/docs/2009/cop_15/eng/11a01.pdf

Description/Key Questions:

This seminar aims to explore the changing global environment by looking at two new technologies: Biotechnology and Geoengineering. There are three objectives. The first is to compare and contrast the characteristics of the technologies in order to help explain why they might be 'risky'. The second is to explore the challenges posed by 'risk' to environmental regulation. The final objective is to evaluate the EU's 'risk analysis' approach taken in the regulation of GMOs and explore the degree to which it is an appropriate basis for regulating geoengineering or whether alternative approaches are needed.

You will be able:

- To identify how questions of 'risk' are posed by some new technologies, drawing on biotechnology and geoengineering as case studies
- To summarise the challenges posed by risk to environmental regulation
- To evaluate the regulation of risk by discussing the strengths and weaknesses of different regulatory approaches and by drawing on examples of academic commentary and policy documents to support arguments.

Key Questions for discussion

1. What is risk? To what extent might biotechnology and geoengineering be considered 'risky' and why?
2. Why are risky technologies difficult to regulate?
3. What characterizes the EU's approach to risk analysis? What are the difficulties with this approach?
4. What alternative approaches have been suggested to regulate geoengineering and its research? What are their strengths and weaknesses? How do they compare with the EU's approach?
5. To what extent does the EU's institutional design help or hinder alternative approaches to risk regulation?

Required Reading:**On Biotechnology:**

- Fisher, Lange and Scotford, *Environmental Law: Text, Cases and Materials*, (2013), Ch. 22. Please focus on section 1 (pp. 1018-1023) and section 3 (pp. 1028-1045)
OR
- Holder and Lee, *Environmental Protection, Law and Policy* (2007), Chapters 2 and 5.

On Geoengineering:

- Royal Society 2011. *Geoengineering the Climate: Science, Governance and Uncertainty*. The Royal Society, London. Available: https://royalsociety.org/~media/Royal_Society_Content/policy/publications/2009/8693.pdf. Have a look through the whole thing and read chapter 4 on Governance in detail.
- Sargoni, J. (2016) The Best of Both Worlds: Maximising the Legitimacy of the EU's Regulation of Geoengineering, *Research European Journal of Risk Regulation* 87-108.
- Stilgoe, J., Watson, M., & Kuo, K. (2013). Public Engagement with Biotechnologies Offers Lessons for the Governance of Geoengineering Research and Beyond. *PLoS Biology*, 11(11), e1001707. <http://doi.org/10.1371/journal.pbio.1001707> available online in an open access journal.

On Risk and Governance:

- Bell, McGillivray and Pedersen. *Environmental Law*, pp. 50-51
- Fisher, Elizabeth, 'Risk and Environmental Law: A Beginner's Guide' in Benjamin J. Richardson and Stepan Wood (eds), *Environmental Law for Sustainability* (Hart Publishing 2006) available on googlescholar at [http://users.uoa.gr/~gdellis/IITH/7_Environmental_Law_for_Sustainability\(Benjamin%20J.%20Richardson,%20Stepan%20Wood\).pdf](http://users.uoa.gr/~gdellis/IITH/7_Environmental_Law_for_Sustainability(Benjamin%20J.%20Richardson,%20Stepan%20Wood).pdf)
- Majone, G. 'Foundations of Risk Regulation: Science, Decision-Making, Policy Learning and Institutional Reform' 1 *Eur. J. Risk Reg* 5 2010.
- Bellamy, Rob, 'A Sociotechnical Framework for Governing Climate Engineering' 2015 *Science, Technology and Human values* 1-28
- Stilgoe, J., Owen, R. and Macnaghten, P. 'Developing a Framework for Responsible Innovation' 2013 42(9) *Research Policy* 1568–1580 Available at <http://www.sciencedirect.com/science/article/pii/S0048733313000930>
doi:10.1016/j.respol.2013.05.008
- Steve Rayner et al. 'The Oxford Principles' 2013 121(3) *Climate Change* 499-512 available at <http://link.springer.com/article/10.1007%2Fs10584-012-0675-2>

Further Reading

- For up to date information and articles about geoengineering see the Climate Engineering website of the Kiel Earth Institute, available at: <http://www.climate-engineering.eu/home-35.html>
- Solar Radiation Management Governance Initiative 2011. *Solar Radiation Management: The Governance of Research*. The Royal Society, London. Available: <http://www.srmgi.org/report/>
- Alemanno, A. 'The Birth of the European Journal of Risk Regulation' 1 *Eur. J. Risk Reg.* 1 2010.
- Chalmers "Food for Thought": Reconciling European Risks and Traditional Ways of Life' (2003) 66 *MLR* 532.
- Lee, *EU Regulation of GMOs* (2008)
- Evaluation of the EU Legislative Framework in the Field of GMO Cultivation and the Placing on the Market of Non Food and Feed GMOs: Final Report, March 2011. Directorate-General for health & Consumers. Focus on the following parts:
Part 1 'Introduction' pages 1-2;
Part 2 'Purpose and focus of the evaluation' pages 3-5;
Part 10 'Final remarks and summary conclusions' pages 73-79;
Appendix B 'Institutional decision-making' pages 88-108, in particular sections concerning Box B1 on the Commission's July 2010 Package
- Corner, A. Pidgeon, N. & Parkhill, K. Perceptions of Geoengineering: Public Attitudes, Stakeholder Perspectives, and the Challenge of 'Upstream' Engagement' *WIREs Clim Change* 2012 doi: 10.1002/wcc.176