

Comparative Environmental Law

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Structure of the Course

Environmental regulation has expanded from a domestic phenomenon to one that has both global impacts and global participants. In this course, we will determine when the international community is likely to act with respect to environmental problems, what legal processes it uses to address these problems, and how to assess the success of these regulatory interventions. National environmental policies as well as a sampling of international environmental law will be discussed. We will consider how the status quo came to be and what alternate policy options exist for handling these problems.

There will be 5 tutorials for this course, covering different topics within Comparative Environmental Law. The course will be divided in two parts:

- (1) General issues in environmental law that are not specific to one legal system or jurisdiction (*tutorial 1-3*);
- (2) A comparative discussion of environmental law within the European Union, the United States, China, India and Brazil focussing on the issue of climate change (*tutorial 4 – tutorial 5*).

Contact Information

Our tutorials will be held in my office (Worcester College, Room 5.5). When you arrive, ask to lodge to direct you there. The easiest way to reach me is via email (josephine.vanzeben@worc.ox.ac.uk).

Materials

Most materials will be provided soft copy – these are starred in the reading list. You will receive a link to a Dropbox folder to these materials. All other legal materials are available in the Bodleian Law library in the St. Cross building and/or online via the SOLO catalogue, or in your College library. If this is not the case for any of the materials, please let me know.

Preparing for tutorials & written work

Memos – The reading list for this course is shorter than for traditional legal tutorials. Because of this, I expect you to have read all the material in detail. In order to help you prepare, short memos will be expected for each tutorial on the materials for that week. These memos should (1) summarize the most important points of each reading *and* (2) set out your own reflections on what you read: e.g. do you agree with the approach taken by the author(s), how do the readings interact (if at all), how do the readings connect to 'environmental law' more generally?

The required word length for the memos is between 500-750 words.

Essays – In addition to the memos, you'll have to write two essays. As always, the most important thing when answering essay questions is to look at exactly what the question is. This sounds obvious but students regularly lose marks by writing the answer they wanted to write, regardless of the question, or by copying out their textbook notes when the question takes a different slant. Try to work out exactly what the question is getting at.

Essays aim to test whether you have thought about the law you have learned, whether you have read academic commentary on it as well as the textbook and casebook. If the question asks you for your opinion on a particular matter, just listing the relevant law is not an answer.

The required word length for essays is 1500 words.

Any written work needs to be emailed in by 5 PM, the day before the tutorial.

In case of illness or other intervening circumstances that prevent you from attending tutorial or preparing for it, please contact me as soon as possible (preferably via email).

Reading ListTutorial 1Perspectives on Environmental Regulation & The Role of Law

- (1) B. McKibben, 'Global Warming's Terrifying New Math', Rolling Stone (19 July 2012) *
- (2) Climate Skeptic Blog, <http://www.climate-skeptic.com/>
- (3) Excerpts from Richard Revesz, Environmental Law and Policy, Foundation Press (2008), Chapter 1: Perspectives on Environmental Law *
- (4) UN Program in Public Administration and Finance, The Legal and Regulatory Framework of Public Administration, ST/SG/AC.6/1995/L.4 (20 July 1995), para 1-37 *
- (5) Case study (excerpt from Richard Revesz, Environmental Law and Policy, Foundation Press (2008)) *

Tutorial work:

- Memo
- Essay

For this week's essay, answer the questions in the case study

Tutorial 2Regulatory Tools & Strategies

- (1) James Salzman, Teaching Policy Instrument Choice in Environmental Law: The Five P's, XXIII Duke Environmental Law & Policy Forum 363 (2013) *
- (2) Lawrence H. Goulder and Ian W. H. Parry, Instrument Choice in Environmental Policy (2008), p.152-174 *
- (3) Martin L. Weitzman, "Prices vs. quantities," Review of Economic Studies 41 (4): 477-491 (1974)
- (4) William D. Nordhaus, "To tax or not to tax: Alternative approaches to slowing global warming," Review of Environmental Economics and Policy 1 (1): 26-44 (2007)
- (5) Michael Greenstone, Elizabeth Kopits, and Ann Wolverton, "Estimating the Social Cost of Carbon for Use in U.S. Federal Rulemakings: A Summary and Interpretation," MIT Center for Energy and Environmental Policy Research Working Paper 2011-006 (May 2011), online at <http://web.mit.edu/ceepr/www/publications/workingpapers/2011-006.pdf> (scan)

Tutorial work:

- Memo
- Essay

The 'social cost of carbon' should include the "social cost of regulation".

What is meant by the "social cost of regulation"? Do you agree with this statement? Why (not)? Do you see potential conflicts between legal principles and economic valuations?

Tutorial 3

Relationship between International and Domestic Environmental Law

- (1) PIERRE-MARIE DUPUY & JORGE VIÑUALES, INTERNATIONAL ENVIRONMENTAL LAW (2015, CAMBRIDGE UNIVERSITY PRESS) – Chapter 3 (51–93)
- (2) MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW (7TH ED. 1997) – Chapter 4 (63-74)*
- (3) Bodansky & Brunnee, "The Role of National Courts in the Field of International Environmental Law" 7(1) REVIEW OF EUROPEAN COMMUNITY & INTERNATIONAL ENVIRONMENTAL LAW (RECIEL) (1998) 11-20*
- (4) Aarhus Convention – Preamble, Articles 1, 4 – 9 – available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

Tutorial work:

- Memo
- Essay

'The polluter-pays principle is only relevant allocating environmental responsibility within developed economies and for the allocation of environmental responsibilities between developing economies and developed economies.'

Discuss.

Tutorial 4The EU and the United States

There is a lot of material for this tutorial. You are not expected to study all of it in detail – much if it you may be familiar with already. Just make sure that you have enough information to understand the main difference between these legal systems and their approaches to environmental law, particularly climate change.

Structure and Institutions of the European Union

- (1) CDP Grey, The European Union Explained, (July 2, 2013) <http://www.youtube.com/watch?v=O37yJBFRfg>
- (2) European Treaties – Extracts from 'Essential EU Law in Charts' (2nd Lisbon Edition, 2010) *
- (3) European law making - Extracts from 'Essential EU Law in Charts' (2nd Lisbon Edition, 2010) *
- (4) Case 26/63, Van Gend and Loos (1963) *
- (5) Craig and de Burca, EU Law: Text, Cases and Materials (5th Ed., OUP, 2011) – Chapter 3

EU Environmental Law

- (1) European Treaty Articles:
Articles 11, 34-36, 114(3), 191-193 Treaty on the Functioning of the European Union
- (2) I von, Homeyer, 'The Evolution of EU Environmental Governance' in J. Scott (ed) *Environmental Protection: European Law and Governance* (OUP, 2009)*
- (3) Sebastian Oberthür & Claire Roche Kelly (2008) EU Leadership in International Climate Policy: Achievements and Challenges, *The International Spectator*, 43:3, 35-50*

The United States

- (1) R. Hahn, "United States Environmental Policy: Past, Present and Future" (1994) 34 *NATURAL RESOURCES JOURNAL* 305 – 348*
- NB: this article is quite old: did the predictions regarding US environmental policy come true? What do you think the new future of US environmental policy looks like? Much the same?
- (2) "How US negotiators ensured landmark Paris climate deal was

- Republican-proof" (December 13, 2015) – available at <http://www.theguardian.com/us-news/2015/dec/13/climate-change-paris-deal-cop21-obama-administration-congress-republicans-environment>
- (3) Robert J. Brulle & David N. Pellow "Environmental Justice: Human Health and Environmental Inequalities" (2006) 27 ANNUAL REVIEW OF PUBLIC HEALTH 103-124*
- (4) EPA, CLIMATE CHANGE IN THE UNITED STATES: BENEFITS OF GLOBAL ACTION – available at https://www.youtube.com/watch?v=_lz0NKA1yuo (2:37 minutes)
- (5) J. Krisch & J. Fischman, "How Congress Snuck Changes to U.S. Environmental Policy into the New Budget Bill" (December 17, 2014) SCIENTIFIC AMERICAN – available at <http://www.scientificamerican.com/article/how-congress-snuck-changes-to-u-s-environmental-policy-into-the-new-budget-bill/>

Tutorial work:

- Memo
- Essay

*Based on this week's reading, critique the main conclusions of Daniel Kelemen and David Vogel in their article "Trading Places: The Role of the United States and the European Union in International Environmental Politics" 43(4) COMPARATIVE POLITICAL STUDIES (2010) 427 – 452**

Tutorial 5

China, Brazil and India

China

- (1) Stefanie Beyer, "Environmental Law and Policy in the People's Republic of China" (2006) 5(1) CHINESE JOURNAL OF INTERNATIONAL LAW 185-211*
- (2) Guizhen He et al "Revising China's Environmental Law" (2013) SCIENCE 133*
- (3) Benjamin van Rooij, "Implementation of Chinese Environmental Law: Regular Enforcement and Political Campaigns" (2006) 37(1) DEVELOPMENT AND CHANGE 57-74*
- (4) Will China become a global environmental leader (November 25, 2015) – available at <http://www.weforum.org/agenda/2015/11/will-china-become-a-global-climate-leader>

India

- (1) Sheila Jasanoff, "India at the crossroads in global environmental policy" (1993) 3(1) GLOBAL ENVIRONMENTAL CHANGE 32-52*
- (2) A brief guide to India's gains and losses at the Paris climate talks – available at <http://qz.com/572918/a-brief-guide-to-indias-gains-and-losses-at-the-paris-climate-talks/>
- (3) Conversation with Environment Minister on Green Growth in India (January 29, 2016) (6:41 minutes) – available at <https://www.youtube.com/watch?v=T-uLWdUwNlc>

Brazil

- (1) S. Abakerli, "A critique of development and conservation policies in environmentally sensitive regions in Brazil" (2001) 32 GEOFORUM 551 – 565*
- (2) Climate Action Plan – Brazil (2015) – available at <http://newsroom.unfccc.int/unfccc-newsroom/brazil-submits-its-climate-action-plan-ahead-of-2015-paris-agreement/>
- (3) Environmental practice in Brazil, see <http://uk.practicallaw.com/2-508-8459>

Tutorial work:

- Memo

- Essay

Do the existing analyses of environmental law (as discussed in tutorials 1-3) make sense when applied to countries such as China, Brazil and India?
Why (not)?
Please give examples from the readings to support your view.