

**NYU Law School
Fall 2015**

**Environmental Law Seminar:
Environmental Values, Policy, and the Law
LAW-LW.10890.001
FH 316
T 2-3:50**

Professor: Dale Jamieson, VH 310

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Description:

Environmental law is the site of conflicting value perspectives. In addition to concerns about economic growth and quality of life for our contemporary compatriots, concerns about future generations, citizens of other countries and even non-human nature figure in our discussions and debates. This seminar will focus on the ways in which these value questions emerge in situations of conflict. We will focus on a range of domestic and international issues.

Requirements:

1. Class attendance and participation is an essential element in this course. Accordingly, all members of the seminar are required to read all the materials, attend class regularly, and contribute to class discussion. If you are unable to attend a given class, please e-mail me.
2. For many classes, students will be required to present and submit short papers (750-1000 words) on a hypothetical exercises or problem that will be the focus of that class session. Papers must be posted by 9 am, on the day before the seminar meets and normally the authors will present them and lead the discussion.
3. Everyone not writing a paper must post a suggestion for a discussion topic by 9 am on the day before the seminar meets.
4. Also required is the submission of a research paper of approximately 6,000 words on issues broadly relevant to those addressed in the course. You are required to discuss the topic with me in advance. A short draft of the paper should be submitted in the class of 10.27. The final version is due on December 21st. If you are planning to do a substantial writing credit, the paper should be about 10,000 words (for further information visit

<http://www.law.nyu.edu/academicservices/degree requirements/jdprogram/writing requirements>).

Grading:

One-third of the grade will be determined by seminar performance and two-thirds by the research paper.

Schedule (as of 10.5.2015)

9.1: Our Present Condition

Read: N. Oreskes & E. Conway, *The Collapse of Western Civilization*
Dale Jamieson & Bonnie Nadzam, *Love in the Anthropocene*.

9.8: Nature, Ethics, and Religion

Read: *Encyclical Letter Laudato Si of the Holy Father Francis on Care for our Common Home*, available
at http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (and elsewhere)

9.15: Who is Responsible for Climate Change?

Read: FCCC Avrum Hiller, "Climate Change and Individual Responsibility," *The Monist*, 94(3), July 2011; Robert Heede, "Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010," *Climatic Change* 2014 122:229-241; Douglas A. Kysar, "What Climate Change Can Do about Tort Law," 41 *Environmental Law* 1 (2011).

9.22 Climate Change Communication (Guest, Andrew Revkin, Pace University)

Read: <http://dotearth.blogs.nytimes.com/2010/06/30/what-if-the-public-had-perfect-climate-information/> (on the overall sense that the climate problem is in part a communication/propaganda problem); <http://dotearth.blogs.nytimes.com/2013/10/03/exploring-the-challenges-and-opportunities-in-the-new-communication-climate/> (on next steps in climate communication)

9.29 What To Expect From Paris

Read: Jennifer Jacquet and Dale Jamieson, "What to hope for in a climate change agreement: The soft but significant power of pledge and review," unpublished; Michael Bloomberg, "Realistic Goals for the Paris Climate Conference," *WSJ*, June 28, 2015, available at <http://www.wsj.com/articles/realistic-goals-for-the-paris-climate-conference-1435503251>; Dale Jamieson, *Reason in a Dark Time*, Ch. 3

10.6 The Philosophy of Conservation

Read: J. Vucetich and M. Nelson, "The Infirm Ethical Foundations of Conservation," in M. Bekoff, ed., *Ignoring Nature No More: The Case for Compassionate*

Conservation (University of Chicago Press, 2013); Ben A. Minteer and James P. Collins 2010. Move it or lose it? The ecological ethics of relocating species under climate change. *Ecological Applications* 20:1801–1804. <http://dx.doi.org/10.1890/10-0318.1>; Sindhu Radhakrishna & Dale Jamieson, “Liberating Primatology,” unpublished.

10.13 Elephant Conservation and the Ivory Trade (Guest, Elizabeth Bennett, Wildlife Conservation Society)

Read: Bennett, E.L. 2014. Legal ivory trade in a corrupt world and its impact on African elephant populations. *Conservation Biology*. DOI: 10.1111/cobi.12377; Russo, C. 2014. Can elephants sustain a legal ivory trade? Opinion is shifting against it. <http://news.nationalgeographic.com/news/2014/08/140829-elephants-trophy-hunting-poaching-ivory-ban-cities/>; Stiles, D. 2014. Can elephants survive a continued ivory trade ban? <http://newswatch.nationalgeographic.com/2014/09/15/opinion-can-elephants-survive-a-continued-ivory-trade-ban/>

NOTE: This has comments at the end from a range of opinion. This was then followed by a compilation of comments: Irrelevant, illogical and illegal: 24 experts respond to arguments supporting legalization of the ivory trade. <http://newswatch.nationalgeographic.com/2014/10/02/opinion-irrelevant-illogical-and-illegal-24-experts-respond-to-arguments-supporting-legalization-of-the-ivory-trade/#comment-404691>.

10.20: Rational Use in Antarctic Waters (Guest, Jennifer Jacquet, Environmental Studies)

The Convention for the Conservation of Antarctic Marine Living Resources (CAMLR Convention) is the legal doctrine presiding over the exploitation of marine life in the Southern Ocean. At recent Commission (CCAMLR) meetings, some member states have interpreted the term ‘rational use’ in the Convention text as ‘the unrestricted right to fish’ and, most recently, the term has been evoked in opposition to the establishment of marine protected areas. We will discuss tensions over interpretation of the term at CCAMLR and discuss the term’s meaning and original intent in the publicly available record of treaty negotiations. Like ‘scientific uncertainty,’ which has also been evoked in ways that reflect social values, ‘rational use’ should be seen as a value-laden term, rather than as an explicit mandate to fish.

Read: CAMLR text, available at <https://www.ccamlr.org/en/organisation/camlr-convention-text>; Jennifer Jacquet, “‘Rational use’ in Antarctic Waters,” unpublished; Dale Jamieson, “Scientific Uncertainty and the Political Process,” *The Annals of the American Academy of Political and Social Sciences* 545 (May 1996): 35-43.

View (for general background): The Last Ocean (on all the major web platforms): <http://www.thelastoceanfilm.com>

Recommended: Griffiths HJ. 2010. Antarctic Marine Biodiversity – What Do We Know About the Distribution of Life in the Southern Ocean? *PLoS One* 5: e11683; Halpern BS, Walbrige S, Selkoe KA, *et al.* 2008. A global map of human impact on marine

ecosystems. *Science* **319**: 948-52; Swartz W, Sala E, Tracey S, *et al.* 2010. The Spatial Expansion and Ecological Footprint of Fisheries (1950 to Present). *PLoS One* **5**: e15143; Ainley DG and Pauly D. 2014. Fishing down the food web of the Antarctic continental shelf and slope. *Polar Record* **50**: 92-107.

10.27 Cleaning Up the Ganges (Guest, Heidi Weiskel, Elaw)

This all-important issue has been going on for a long time. First, MC Mehta, who is an ELAW partner and Goldman prize-winner in 1996, tried:

<http://www.goldmanprize.org/recipient/mc-mehta/>

<http://www.elaw.org/sacred-ganges-carries-toxic-pollution>

More recently, our partners Rahul and Ritwick of the NGO LIFE have also tried:

<https://elawspotlight.wordpress.com/2014/05/15/victory-for-the-ganges/>

What is it about this second time around that has more promise of success, if in fact there is more promise of success? Is it the creation of the National Green Tribunal? A different sensibility among Indians about their country?

http://www.nytimes.com/2015/08/17/opinion/india-finally-faces-up-to-an-ugly-reality.html?_r=0

Or is it simply that Modi has finally made cleaning the river a priority, and so it may actually happen? This case spans a couple of decades and raises some interesting questions about the value of environmental litigation. If something takes 25 years, is it worth it? Can we protect our environment more effectively than through suing the government? What new information do we have this time around? Could the Ganges case be a model for elsewhere in the world?"

Read: Supreme Court judgment dated 29 October 2014 in the case of M.C. Mehta v. Union of India (writ petition 3727 of 1985) (Kanpur Tanneries Case) - passing the matter to the NGT; NGT order dated 30 October 2014 in the case of Krishan Kant Singh & Anr.Vs. National Ganga River Basin Authority & Ors - accepting the pass off from the SC; NGT order dated 17 November 2014 in the consolidated cases of M.C. Mehta v. Union of India and f Krishan Kant Singh & Anr.Vs. National Ganga River Basin Authority & Ors establishing a system of multi-agency committees to finally accomplish the objective of reducing industrial pollution loads to the Ganges River

11.3 Chevron, Ecuador and Legal Ethics (Guest, Charles Herrick, ABT Consulting)

Read: Selections from Barrett, *Law of the Jungle*; Posted briefs for Chevron vs Naranjo et al, US Courts of Appeals Second Circuit; and the following articles from the *Stanford Journal of Complex Litigation* 1,2 (Spring, 2013), all available at <https://journals.law.stanford.edu/stanford-journal-complex-litigation-sjcl/print/volume-1/issue-2>: P. Keefe, "Reversal of Fortune: The Lago Agrio Litigation Lessons from Chevron," T. Boutrous, "Ten Lessons from the Chevron Litigation: The Defense Perspective Lessons from Chevron," J. Kimerling, "Lessons from the Chevron Ecuador Litigation: The Proposed Intervenor's Perspective," and B. Neuborne, "A Plague on Both Their Houses: A Modest Proposal for Ending the Ecuadorean Rainforest Wars."

View (for general background): <http://www.crudethemovie.com/>

11.10 Climate Litigation (Guest, Wil Burns, Visiting Scholar, Environmental Studies)

Visit: <http://web.law.columbia.edu/climate-change/resources/us-climate-change-litigation-chart>

11.17 Transparency in Scientific Research (Guest, Michael Oppenheimer, Princeton)

Visit: <http://blog.ucsusa.org/transparency-is-great-harassment-is-worth-preventing-a-response-to-paul-thacker-and-charles-seife-845> and follow links.

11.24 The attempt to control hydrofluorocarbons (HFCs) under the Montreal Protocol
(Guest, David Kanter, Environmental Studies)

HFCs are greenhouse gases and yet a majority of countries want to control it under the international ozone agreement - to me a great example of science bumping up against the law. Plus, it looks more likely than ever that the Parties to the MP will actually agree to take on HFCs at their next annual meeting in November, so it would be good timing. Their meeting is the first week of November,

12.1 TBA