Workshop: Towards a ‘Lex Climatoria’? Law and the Climate Change Emergency

Richard Price Lecture Theatre
September 17th 2019
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It is now widely acknowledged that global heating poses an existential threat to humanity and that, as confirmed by the ongoing work of the IPCC, current global responses to it are inadequate and the window of opportunity to act decisively to address the crisis is finite. This workshop seeks to examine the contribution law and lawyers can make as a group and in concert with other disciplines, such as politics, engineering, science and business studies to promoting more realistic and efficacious climate governance. To this end the workshop will examine a number of key themes, including -

- Recent developments in climate change law, focusing on:
  - Civil suits against oil majors in the US;
  - Shareholder fraud proceedings in New York;
  - Public law climate change challenges to national greenhouse reduction targets in the UK and the Netherlands; and
  - Climate change and human rights under the ECHR.

- Questions of global equity:
  - How the Paris Agreement maps onto international human rights law;
  - Climate mitigation and energy access;
  - Climate change and shipping; and
  - Climate induced displacement and resettlement.
SCHEDULE

8:30  Registration

9:00  Introduction and Welcome
     Professor Elwen Evans QC, Head of School

9:15  Panel One
     Chair Simon Baughen, Swansea University
     David Ong, Nottingham Law School
     Navraj Singh Ghaleigh, Edinburgh Law School

11:00 Coffee

11:20 Panel two
     Chair Tabetha Kurtz-Shefford, Swansea University
     Karen Morrow, Swansea University
     Evadne Grant, University of the West of England
     Simon Baughen, Swansea University

13:00 Lunch

13:40 Panel Three
     Chair Karen Morrow, Swansea University
     Leslie-Anne Duvic-Paoli, King’s College London
     Selina O’Doherty, Swansea University

15:20 Coffee

15:40 Panel Four
     Chair Helen Quane, Swansea University
     Tara Smith, Bangor Law School
     Jonathan Walker & Tory Jenkins, Swansea University

17:00 End of proceedings
Professor David Ong, Nottingham Law School

Bio

David M. Ong is Professor of International and Environmental Law at the Nottingham Law School, Nottingham Trent University, UK where he is also Director of the Marine Ecological Resilience and Geological Resources (MERGeR) Centre, as well as being the founding Course Director of the LLM Degree in Oil, Gas & Mining (OGM) Law. His main research interests are in 1) the International Law of the Sea, particularly on offshore joint development, published in the American Journal of International Law (1999) and Netherlands Yearbook of International Law, 2000 (2001); 2) International Environmental Law published in European Journal of International Law (2001), Irish Yearbook of International Law, 2006 (2008), Yearbook of International Environmental Law, 2006 (2008), and 3) International Investment & Development Finance Law, Nordic Journal of International Law (2010 & 2016), Netherlands International Law Review (2011), International Journal of Law in Context (2015) and most recently in the Journal of International Economic Law (2017) and Tulane Journal of Environmental Law (2017), as well as many edited volumes of essays, four of which he has co-edited. Recognition of his international profile is evidenced inter alia through the recent invitation (in January, 2019) to join a newly-established International Law Association (ILA) Study Group on Asian State Practice of the Domestic Implementation of International Law as Rapporteur on the ‘Environment’. This serves to confirm David’s growing profile as one of the foremost Asian international lawyers working in the UK and Europe.
Talk Summary

Faced with the daunting challenges posed by global climate change, public international law initially reverted to its time-honoured approach to such planetary-wide environmental challenges by establishing a treaty-based regime. Currently, this treaty regime consists of an underlying Framework Convention on Climate Change (FCCC) adopted at the 1992 Earth Summit, followed by the 1997 Kyoto Protocol, and more recently, the 2015 Paris Climate Agreement.

These three treaty-based instruments combine to provide the main obligations of this global climate change regime. So far, however, the imposition of this standard international environmental law approach to this global crisis appears to have yielded little success in getting States to deter carbon emitting behaviour within their respective jurisdictions, as required by the climate change treaty regime. Technological solutions have also been proposed to address the main cause of global climate change, namely, the human-induced build-up of so-called ‘greenhouse’ gases within the earth’s atmosphere. They range from building carbon capture and storage facilities to collect greenhouse gas emissions as they are produced; to the provision of alternative, non-carbon-based renewable energy sources such as solar, wind and tide. These proposed solutions are mandated by the climate change treaty regime. However, presently deployed carbon capture technology amounts to less than 4% of what is needed by 2030 to meet the 2°C target. The potential for alternative, renewable energy technologies to fully replace our current dependency on fossil fuels by then is also debatable. Both these carbon capture and renewable energy technological solutions, as well as other even larger-scale geo-engineering proposals, are therefore not as yet viable alternatives to the ‘simple’ expedient of greenhouse gas emissions cuts for immediate attainment of the allowable 2°C temperature increase.

In the face of these setbacks to the traditional, institutionalized approach favoured by international lawyers, alternative legal responses have broadened the scope for this new norm against carbon-based emissions.
In the continuing fight against runaway global climate change, there are at least two pathways that are being explored in this context. Attention is moving first to the self-regulatory efforts of the international investment finance and asset management industry, which is now addressing itself directly to the threat of negative climate change.

Second, domestic legal action by individual activists and civil society organizations across several jurisdictions is being undertaken directly against the petroleum industry, as well as the investment finance and asset management industries, to induce business/corporate (re-)consideration of climate change issues. These individual legal actions are designed to ensure that a diverse set of major corporate players in the international petroleum, investment finance and asset management industries, are more cognizant about their climate change-risk exposure. Specifically, these domestic legal actions are aimed at ensuring first, the inculcation of climate change-risk within their governance structures, and second, facilitation of greater transparency on climate change-risk, through improved disclosure requirements. These public and private domestic legal actions represent effective complements to the international climate change regime, which currently depends mainly on States to regulate and implement. Taken together, these self-regulatory and legally inducing actions arguably represent alternative responses to advance the new normative framework against human-induced carbon emission activities.
Navraj Singh Ghaleigh, Edinburgh Law School

Bio

Navraj Singh Ghaleigh is a Senior Lecturer in Climate Law at Edinburgh Law School and Director of the LLM Programme in Law and Chinese. He is also a Member of the Climate Strategies board.

He has written extensively on the International climate regime, EU law and policy, climate litigation and the relationship between climate law and microeconomics.

He is currently focusing on climate law in East Asia.

Navraj has been the Associate Editor of the Climate Law journal, and consulted for public bodies including the European Commission and OECD, as well as major energy corporations and international law firms.

Talk Summary

Climate law, both as a scholarly activity, and a practical discipline, remains marginal to climate action, given the character of the problem as presented in IPCC SR15. The literature and practice of climate litigation are a case in point, having focused on a narrow sample of major emitters, or minor emitters and avoiding the more challenging major emitters. The quantitative case is that without a major shift in direction, climate law will continue to be peripheral to timely climate solutions. However, much as the current decade has witnessed remarkable rise in the fortunes of renewables electricity generation and decline in those of coal, this paper is cautiously optimistic that law in the 2020s can move towards the centre of climate action. Four ‘spaces’ and ‘places’ of climate law are addressed: (1) increased legal traction in the top ten global emitters; (2) a powerful emerging approach to strategic litigation especially its funding; (3) changing mindsets in the finance sector and improved conditions for strategic litigation; (4) the necessity for the integration of labour law and ‘just transitions’.
Bio
Karen Morrow has been Professor of Environmental Law at Swansea University since 2007. Her research interests focus on theoretical and practical aspects of public participation in environmental law and policy and on gender and the environment. She has published extensively in these areas. She is on the editorial boards of the Journal of Human Rights and the Environment, the Environmental Law Review and the University of Western Australia Law Review. She is a series editor for Critical Reflections on Human Rights and the Environment (Edward Elgar) and a member of the International Advisory Board for Gender and Environment book series (Routledge).

Talk Summary
With pervasive and high profile discussion of the adequacy (or, as is increasingly acknowledged, otherwise) of temperature reduction targets contained in the Article 2 of the Paris Agreement dominating academic and media commentary, the fact that this provision also explicitly reframes climate change as a sustainability issue and the implications of so doing have been overlooked. The UNFCCC originally characterised climate change as centred on scientific/technical and environmental issues and lying well within the province of traditional state craft.

That was soon seen to have been erroneous, as it rapidly became apparent that the scale and magnitude of climate change required harnessing all of the human capital at our disposal to address it; formal recognition at the highest level of the need for regime reorientation has taken some time. Reframing climate change as a sustainability issue, though late to emerge, is, if fully pursued, a potential game-changer, not least in that it imports the need to address hitherto neglected social/human aspects of climate change into the regime and in so doing draws established modalities of significantly expanded stakeholder participation developed in international sustainability governance into play.
Professor Karen Morrow,
Swansea University

While the moral and practical case for an expanded stakeholder approach towards climate change has gained traction and acceptance in principle, this is not enough, and full stakeholder engagement remains elusive. Why that is the case; and how it might be remedied require urgent consideration. To that end this paper considers the evolution of the role of the gender constituency in the global climate change regime and, in discussion of the KlimaSeniorinnen case, the potential significance of gender in climate change litigation to reflect on progress (and the lack thereof) to date in bringing hitherto excluded voices to the table and in allowing them to be truly heard in influential forums.
Evadné Grant, University of the West of England

Bio
Evadné Grant teaches in the Department of Law at the University of the West of England, Bristol, UK. Her research covers a variety of issues in international human rights law, particularly related to social, economic and cultural rights and to human dignity. Her recent published work focuses more specifically on the complex relationship between human rights and the environment. She co-edits the Journal of Human Rights and the Environment (Edward Elgar) and is a series editor for Critical Reflections on Human Rights and the Environment (Edward Elgar).

Talk Summary
The threat posed by climate change to the enjoyment of a wide variety of internationally recognised human rights such as the rights to life, food, water and health is widely acknowledged. The Paris Agreement clearly identifies the link between climate change and international human rights obligations, affirming that states must take their international human rights obligations into account when implementing measures to address climate change. While rights-based arguments are increasingly deployed in climate change cases before national courts and complaints to international bodies regarding the failure of states to adequately address climate change, the scope and content of the international human rights obligations of states in the context of climate change is contentious.

This paper critically assesses the international human rights obligations of states in relation to climate change and considers the potential contribution of international human rights law to the development of a transnational climate change jurisprudence.
Bio
Professor Simon Baughen was appointed as Professor of Shipping Law in September 2013 (previously Reader at the University of Bristol Law School). Simon studied law at Oxford and practised in maritime law for several years before joining academia. His research interests lie mainly in the field of shipping law, but also include the law of trusts and the environmental law implications of the activities of multinational corporations in the developing world.

Talk Summary
Shipping and climate change.

Shipping contributes around 3% of global GHG emissions a figure that is projected to increase to 17% by 2050. International shipping, along with international aviation, fell outside the Kyoto Protocol, and also falls outside the Paris Agreement. Instead, it has been left to the International Maritime Organisation to develop a strategy for ensuring reduction in GHG emissions from this sector, culminating in a policy adopted in 2018 of aiming to reduced such emissions by 50% in 2050 over those in 2008. This paper will examine the progress made in developing this policy and will examine whether it is technically feasible to achieve more substantial decarbonisation by an earlier target date.
Bio
Dr Leslie-Anne Duvic-Paoli is a Lecturer at The Dickson Poon School of Law, King’s College London, and the Deputy Director of its Climate Law and Governance Centre. She teaches and researches in different areas of public international law, with a focus on international environmental law.

Leslie-Anne is particularly interested in understanding the nature and content of its principles: her monograph, entitled The Prevention Principle in International Environmental Law, was published by Cambridge University Press in 2018. Leslie-Anne’s research also looks at the role of global law in the energy transition to a low-carbon economy, with a particular focus on the global legal implications of energy democratisation and the importance of participatory mechanisms in the design of inclusive energy systems.

Talk Summary
The need to significantly reduce our global emissions in line with the 2015 Paris Climate Agreement requires changing existing energy systems at an unprecedented scale and speed. While the transition is a technological and economic one, it also challenges existing political and legal systems that need to be transformed or completely redesigned. These developments call for a new conceptualisation of energy law, its traditional understanding as the law governing oil and gas being inadequate to reflect the broader role played by law in the transition to a low-carbon economy.

The starting point of this presentation is that Sustainable Development Goal (SDG) 7 on ‘access to affordable, reliable, sustainable, and modern energy for all’ will play a transformational role in shaping the future directions of sustainable energy law.
In itself, the inclusion of a stand-alone goal on energy in the Sustainable Development Goals adopted in 2015 is a significant innovation given the reluctance of States to regulate energy matters at the international level. In addition, it is reflective of an on-going rapprochement between environmental and energy law which have historically operated in parallel. SDG 7 promises more synergies between the two fields (targets on renewable sources and energy efficiency contributing to the implementation of the climate objectives of the Paris Agreement) but does not necessarily solve existing tensions (in particular as energy access objectives have to be met within the parameters set by climate mitigation goals).

The presentation interrogates a new thematic field of study in the form of a ‘global law of energy transitions’ characterised in the context of SDG 7. It starts with methodological reflections on the current state of energy and climate law, and the necessity to develop further the scholarship on the global law of energy transitions. I then offer a detailed analysis of Goal 7 in terms of its history, scope and content while reflecting on its interactions with existing political commitments and legal norms. An examination of SDG 7 highlights four directions that the global law of energy transitions needs to take in order to respond to the climate crisis. First, SDG 7 requires adapting existing international legal frameworks to the challenges of the energy transition, and hence calls for a better understanding of how different legal regimes interact in the context of the energy transition. Second, SDG 7 has the potential to encourage nexus thinking, if examining the Goal in relation to other SDGs to acknowledge the interconnected nature of sustainability issues. Third, SDG 7 has significant implications for human rights, both substantive (in the form of a right to energy) and procedural (in relation to public involvement in energy decisions). Fourth, SDG 7 provides a unifying narrative bringing together different stakeholders, which calls for the recognition of an extended global partnership best able to move us towards a low-carbon economy.
Dr Selina O’Doherty, Swansea University

**Bio**
Dr. Selina O’Doherty is currently a Lecturer in International Relations at HAPPP, Queens University, Belfast. She also holds an honorary lectureship with the department of Political and Cultural Studies at Swansea University. Selina completed her PhD in 2017 at the University of South Wales.

Her thesis “Harming by degrees: the responsibility to pre-emptively protect future victims of climate change” focused on transnational harm and intergenerational justice. Selina also holds an MScEcon in Postcolonial Politics from Aberystwyth University, and a B.A. (Hons) in International Relations from Dublin City University. She has published on environmental human rights, and climate justice. Her current research is in the area of international development, activism, and social media movements. She is a member of BISA, ISA, EISA, and the Climate Ethics Network.

**Talk Summary**
Although the international system is transnational and interdependent in both practice and politics, the state system itself, since the Montevideo Convention, is built on the notion that to be recognised under international law, there must be a defined territory. While statehood is a nuanced concept, there being failed states, fragile states, weak states, developing states, and hegemonic states, having a defined physical territory is a common factor to all. However, due to climate change and the predicted rise in sea level, several small island states are predicted to ‘sink’ entirely. In this paper I consider what becomes of these states’ sovereign authority when they no longer meet one of the basic criteria for their very existence.
Which sovereign rights and entitlements might they still possess, and which responsibilities and obligations to their citizens must they still meet? Or do they cease to exist as entities in international society, their governments and populations incorporated into other states? Assessing the basic concepts of state formation, state recognition, and sovereignty, I assess what this forthcoming phenomenon of territorial disappearances could potentially mean for statehood and citizenship - for both the individual states, and the political concept of state territories.
Dr. Tara Smith is Co-Director of the Bangor Centre for International Law and Lecturer in International Law and Human Rights at Bangor University’s School of Law. Dr. Smith explores key questions of international law and policy connecting the global challenges of climate change, armed conflict, human rights and transitional justice. Dr. Smith joined Bangor Law School from the Law Reform Commission of Ireland, where she was working on a project entitled ‘Corporate Offences and Regulatory Enforcement’, proposing reforms to Irish law arising from the legacies of the banking and economic crisis in Ireland in 2008. Prior to that, Dr. Smith was a Policy Advisor with the Irish Department of Foreign Affairs and Trade, where she worked in the Environment and Climate Change Unit of Ireland’s overseas development agency, Irish Aid. During this time Dr. Smith was a member of the Irish Delegation to the United Nations Framework Convention on Climate Change as well as a member of the EU Expert Group on Adaptation, where she contributed to the development of EU policy on climate change adaptation and loss and damage in the context of the international climate negotiations.

Dr. Smith has also previously contributed significant research to the post-conflict and transitional justice work of the International Institute for Higher Studies in Criminal Sciences (ISISC) in Siracusa, Italy. Dr. Smith began her academic career at the Irish Centre for Human Rights, in the National University of Ireland Galway where she co-ordinated and lectured on the first undergraduate human rights degree programme in Ireland.
Talk Summary

Captured in the 1948 Universal Declaration of Human Rights and given legally binding status in 1966 by the International Covenant on Economic Social and Cultural Rights, the right to enjoy the benefits of scientific progress has resided at the vanishing point of international law for decades. However, it is growing in relevance as a legal tool for those vulnerable to the negative effects of climate change.

This paper will analyse the four pillars of the right to science as enumerated in Article 15 of the International Covenant on Economic Social and Cultural Rights: (i) facilitating access to scientific progress; (ii) supporting the development of scientific progress; (iii) guaranteeing the freedom to conduct scientific research; and (iv) fostering international cooperation in the context of scientific progress.

The paper will then proceed to apply each pillar to the question of solar radiation management technologies and their utilisation in the future to rapidly cool global temperatures should traditional mitigation efforts fail to succeed.

While geoengineering may be considered to have a negative effect on the realisation of human rights, in the context of rapidly changing climatic conditions, this paper will explore the relationship from a different angle. It will ask whether human rights, in particular the right to science, can facilitate access to such technologies should the need arise. The paper will ultimately attempt to determine whether the human right to enjoy the benefits of scientific progress, in the absence of, or indeed in spite of, alternative international regulation that may be developed over the coming decades, could govern decisions regarding the use of geoengineering, specifically solar radiation management.
Bio - Dr Victoria Jenkins

Victoria Jenkins is an Associate Professor in the Hillary Rodham Clinton School of Law where she has worked since 1999. Her research interests lie in environmental law, specifically legal approaches to sustainable development and the way in which land use planning, landscape and nature conservation laws seek to protect natural resources. In particular, she has published widely on the way devolution has shaped the law in Wales with regard to sustainable land management and was awarded a Research Fellowship with the National Assembly for Wales, in 2018, to consider issues related to the sustainable management of natural resources after Brexit. Victoria is also co-convenor of the United Kingdom Environmental Law Association, Wales Working Party. This group aims to bring together academics, legal practitioners, non-governmental organisations and others with an interest in environmental protection.

Bio - Jonathan Walker

Jon Walker is the Welsh Peatland Research Coordinator. This role is funded by the Welsh Government as part of a ‘Realising the Natural Capital of Welsh Peatlands Initiative’. He works to build research capacity to address the priority evidence gaps in delivering sustainable peatland management in Wales. He came to this role via a year working on lowland peatlands with Natural Resources Wales before which he was the research manager, for 12 years, with the Moors for the Future Partnership - a large peatland restoration and conservation partnership working in the hills of the Peak District and South Pennines. He led a team of researchers to develop and deliver research projects evidencing the impacts of peatland restoration and management on, amongst other outcomes: flood risk reduction, water quality, carbon fluxes and biodiversity conservation; wildfire risk and the impact and the effectiveness of the firefighting
response; spread of pathogens; and use of multispectral imagery and drones for monitoring habitat change. Jon trained as a conservation ecologist and completed his PhD and postdoctoral research on the ecology and conservation of fruit-eating birds in the tropical lowland forests of Indonesia; further postdoctoral research into biodiversity conservation through sustainable agricultural intensification; and postgraduate studies in tropical montane cloud forest in Ecuador.

Talk Summary
Climate Change, Biodiversity and the Law: the Case of Peatlands in Wales. Ecosystems provide society with a range of benefits or services essential to support life and adapt to a changing climate and ecosystems resilience itself depends on biodiversity.

Yet, climate change presents a very significant threat to ecosystems resilience. Laws on climate change and biodiversity have emerged separately, but the need to consider these challenges in a more integrated way is an increasing concern. Addressing climate change and biodiversity (loss/conservation) are also clearly global challenges and much of the academic literature focuses on international agreement and the response from nation states. Nevertheless, sub-national and local governments can have an important role as they are well-placed to be responsive to the people and particular geographical circumstances of the area.

Peatlands are a type of wetland that act as an important carbon store. Peatlands also support a number of species that are highly specialised and occur in unique species assemblages. Peatland exists in different states from peat-forming mires to those in various states of deterioration resulting from historic activity such as, deforestation and drainage for agriculture. The peatlands of Wales illuminate some of the challenges that arise in adopting an integrated approach to priorities for climate and ecosystems resilience and the importance of sub-national responses that are responsive to the particular nature of the habitat and current threats.
On behalf of the conference team
Thank you for attending this event