Environmental Legal Education as if Earth Really Mattered: A Brief Account from Japan

Asian Journal of Legal Education
8(1) 7–18, 2021
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DOI: 10.1177/2322005820959951
journals.sagepub.com/home/ale

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Abstract

How can environmental legal education engage with the Anthropocene? Focusing on the Japanese higher education context, this article interweaves the author's own biographical experience (i.e., a recent professional move from the Graduate School of Law to the Graduate School of Arts and Sciences) with an analysis of how international non-monodisciplinary teaching frameworks can contribute to the development of environmental legal studies beyond the School of Law and its disciplinary focus. In this regard, what is considered is the extent to which a cross-listed course, *Law and the Environment*, designed for a mixed body of Japanese and international undergraduate students enrolled in different tracks (Environmental Sciences and Humanities & Social Sciences), may help both break down familiar approaches to environmental problems and turn the classroom into a new 'community of inquiry'.

Introductory Remarks: When Environmental Law Education Ventures Beyond Monodisciplinary Teaching Frameworks

In Japan, as in most countries, environmental law education does not really seek, or cannot afford, to challenge the overall assumptions of the discipline, and education in this field is still far from acknowledging any 'turn' implied by the Anthropocene concept. But how do interdisciplinary pedagogical frameworks—especially those set up as part of the internationalization of higher education in Japan—engage with the Anthropocene? Since the early 2000s, a number of new university programmes, faculty departments and graduate schools in *Environmental Studies* have been established across Japan, often in relation to the ongoing internationalization of Japanese higher education: involving faculties from different nationalities with diverse academic backgrounds and run entirely or partly in English, these new frameworks seek to promote integrated learning and propose to study 'environmental issues' from

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multiple viewpoints, including the legal perspective.² Additionally, a number of existing programmes on *Environmental Sciences* have sought to expand their reach: not limited to the so-called hard sciences (physics, biology, chemistry, and so forth), these frameworks now often comprise a social sciences dimension, for example, through courses offered in STS,³ history of sciences, sustainability studies, environmental economics and (although to a lesser extent) environmental law and politics. Compared to monodisciplinary frameworks, how do such interdisciplinary settings envision the teaching and learning of environmental legal studies in Japan today? By mobilizing ‘different, hitherto dormant, sides’⁴ of environmental law, could they help us rethink the role of this legal subfield in a time of unfolding ecological crises?

Building on the discursive trope of the ‘Anthropocene’, as characterized later, this article interweaves the author’s own biography (i.e., a recent professional move from the Graduate School of Law to the Graduate School of Arts and Sciences) with an analysis of how international non-monodisciplinary teaching frameworks can contribute to the development of environmental legal studies in Japanese higher education. Rather limited in scope, it focuses on a course, *Law and the Environment*, which the author has been developing over the past 3 years at the Graduate School of Arts and Sciences of the University of Tokyo, Komaba campus. Delivered in English, this cross-listed course is designed for a mixed classroom composed of Japanese and international (3rd- and 4th-year) students enrolled in either the Environmental Sciences or the Humanities & Social Sciences track. Typically, this course questions the standard distinction made between the natural and the human/artificial/technological and explores how contemporary legal decision-making processes deal with the disintegration of such divides. The present article focuses the attention on the theoretical conditions under which this course may help both break down familiar legal approaches to so-called environmental problems and turn the classroom into a forum for questions that cannot yet be resolved but can at least be given a more identifiable shape.

The Anthropocene: A Turning Point for Environmental Law Education in Japan?

The ground-breaking proposition of the Anthropocene challenges the conception of nature on which law (among other academic disciplines) has rested for two centuries: that of ‘an unresponsive external backdrop to the drama of human affairs’.⁵ The underlying hypothesis of the Anthropocene is that, in view

² Established in 2001, the Graduate School of Environmental Studies of Nagoya University provides the first interdisciplinary postgraduate course for environmental studies and education in Japan ‘by integrating various disciplines fully ranging from natural sciences to engineering to arts and social sciences’. Put in place the following year, the Graduate School of Global Environmental Studies of Kyoto University seeks to pursue ‘environmental research and practical problem-solving with an interdisciplinary, holistic approach’. Similarly, the Graduate School of Global Environmental Studies, established in 2005 by Sophia University (Tokyo), has ‘designed a curriculum that offers a broad range of academic disciplines that transcend the conventional boundaries of the humanities and sciences’.

³ ‘Science, Technology and Society’ studies or ‘Science and Technology Studies’.

⁴ Andreas Philippopoulos-Mihalopoulos, *Critical Environmental Law as Method in the Anthropocene*, in RESEARCH METHODS IN ENVIRONMENTAL LAW: A HANDBOOK 131 (ANDREAS PHILIPPOPOULOS-MIHALOPOULOS AND VICTORIA BROOKS eds., 2017).

⁵ Clive Hamilton et al., *Thinking the Anthropocene*, in THE ANTHROPOCENE AND THE GLOBAL ENVIRONMENTAL CRISIS, RETHINKING MODERNITY IN A NEW EPOCH 5 (CLIVE HAMILTON, CHRISTOPHE BONNEUIL & FRANÇOIS GEMENNE eds., 2015). See also Will Steffen et al., *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?* 36 AMBIO 614 (2007); Paul J. Crutzen and Eugene F. Stoermer, *The Anthropocene* 41 GLOBAL CHANGE NEWSLETTER 17 (2000).

of the ‘increasingly inextricable interfusion of nature and human society’,⁶ any clear-cut divide between subject and object, ecosystems and social systems, is no longer viable: it is not so much the categories themselves that are obsolete but rather the perception of humans and non-human nature as neatly bounded and distinct realms of reality. Initially delineated by various scientific disciplines (including atmospheric chemistry, climatology, oceanography, geology),⁷ the Anthropocene has been progressively sparking a wide range of interdisciplinary conversations on the state of the global environment and is now engaged with across diverse academic fields. Although to a still-limited extent, law has been taking part in this movement, with several academic works addressing the implications of the concept for either the legal discipline in general or environmental law in particular.⁸ This, in turn, raises a number of crucial challenges for academia—hence the recent call for ‘radical reorientations of curricula, practices of engagement with communities outside the academy, re-conceptualizations of what knowledge itself is, and a re-thinking of how this knowledge is being produced’ in the Anthropocene.⁹

In Japan, a few books (including several translations) and academic articles dealing with the Anthropocene have been published recently, in particular in the disciplines of philosophy, history of thought and political sciences.¹⁰ Several academic events have also taken place these past few years, which have been contributing to disseminate the Anthropocene concept in Japan.¹¹ The Japanese term 人新世 (*jinshinsei*), which is often followed by the transcription in katakana アントロポセン (*antoroposen*), corresponds to the literal translation of ‘Age of humankind’. Reflecting on the limits of such a translation, the Anthropologist Asturô Morita contends that the term lacks cultural sense in Japan, where the nature–culture dualism would hold no purchase.¹² According to him, this raises some concern in the Japanese context, whereas the ‘Anthropocene’ lenses might render invisible a variety of processes precisely because they do not fit within the dual scheme of nature and culture. As it has been observed, however, ‘perhaps

⁶ Hamilton, *Id.* at 57.

⁷ See Will Steffen et al., *The Anthropocene: Conceptual and Historical Perspectives* 369 PHILOS. TRANS. R. SOC. A 842 (2011).

⁸ See in particular Andreas Philippopoulos-Mihalopoulos, *Critical Environmental Law in the Anthropocene*, in ENVIRONMENTAL LAW AND GOVERNANCE IN THE ANTHROPOCENE 117 (LOUIS KOTZÉ ed., 2017); Eric Biber, *Law in the Anthropocene Epoch* 106 GEORGETOWN L.J. 1 (2017); Davor Vidas, *The Anthropocene and the International Law of the Sea* 369 PHILOS. TRANS. R. SOC. A 909 (2011); Timothy Stephens, *What is the Point of International Environmental Law Scholarship in the Anthropocene?* in PERSPECTIVES ON ENVIRONMENTAL LAW SCHOLARSHIP: ESSAYS ON PURPOSE, SHAPE AND DIRECTION 121 (OLE W. PEDERSEN ed., 2018).

⁹ Ivan Vargas Roncancio et al., *From the Anthropocene to Mutual Thriving : An Agenda for Higher Education in the Ecozoic* 11 SUSTAINABILITY 1, 11 (2019). See also Peter G. Brown & Jon D. Erickson, *How Higher Education Imperils the Future: An Urgent Call for Action* 2 BALANCE 42 (2016).

¹⁰ See, for example, MASATAKE SHINOHARA, Keiko NAKAMURA, *Jinshinsei no tetsugaku 人新世の哲学 (Philosophy of the Anthropocene)* (Jimibun Shoin, 2018); CHRISTOPHE BONNEUIL & JEAN-BAPTISTE FRESSOZ, *Jinshinsei to wa nanika 人新世とは何か (What is the Anthropocene?)* (Shiori Nosaka tr, 2018); *Jinshinsei 人新世 (The Anthropocene)* 45 GENDAI SHISÔ 42 (2017), a special issue comprising a number of original contributions from various disciplinary fields, as well as translations of articles by Donna Haraway (99–109) and Timothy Morton (152–167).

¹¹ Let us mention, among other events, several symposia and workshops organized in Kyoto by the Research Institute for Humanity and Nature, for example, *Humanities on the Ground: Confronting the Anthropocene in Asia*, RIHN 13th International Symposium, Kyoto, 13 December 2018, with the participation of Sheila Jasanoff and Augustin Berque, as well as symposia co-organized in Tokyo by the Research Institute for Humanity and Nature and the Integrated Human Sciences Program of the University of Tokyo, respectively on 17 November 2016 and 27 January 2018, as well as a series of lectures given by Bruno Latour at the Tokyo University of the Arts, Graduate School of Global Arts, in July 2016.

¹² Atsurô Morita, *Mizu to umi kara naru kikai: Kikô hendô no jidai ni okeru kosumoroji to tekunoroji 水と海からなる機械:気候変動の時代におけるコスモロジーとテクノロジー (Cosmology and Technology in the Age of Climate Change)*, in *Baioisaiensu jidai kara kangeru ningen no mirai バイオサイエンス時代から考える人間の未来* 27 (THINKING HUMANITY’S FUTURE IN THE BIOLOGICAL SCIENCES ERA) (TATSUYA HIGAKI ed., 2015).

innovative thought and responses can emerge precisely because the term appears as weird as the global situation it depicts'.¹³

Building on critical approaches to environmental law, the course *Law and the Environment* mentioned in this article seeks to refocus learners' attention on the questions of *who speaks* and *how one speaks* for pressing environmental issues in the Anthropocene.¹⁴ Students explore in particular wild law, as well as critical environmental law, and its search for an acentric approach to environmental governance.

Wild law has been proposed a few years ago as a creative outcome of Earth jurisprudence. Growing out of the writings of cultural historian Thomas Berry (1914–2009),¹⁵ Earth jurisprudence is a critical legal theory calling for a radical change in the ideological underpinnings and institutional frameworks of law; indeed, 'the reason for Earth Jurisprudence is to provide a legal response to planetary ecological crisis'.¹⁶ As further developed by the law practitioner Cormac Cullinan (South Africa) and the environmental theorist Peter Burdon (Australia),¹⁷ wild law expresses and seeks to give effect to Earth jurisprudence. It identifies the root of the unfolding ecological crises with law's reflection of a harmful anthropocentric worldview; in so doing, it conveys a critique of dominant Western legal conceptions, together with an assessment of ecological grounds for the need for a new legality, adequate to our Ecozoic age.¹⁸ Assuming that all life is interdependent and human beings are part of a wider whole,¹⁹ wild law promotes the development of a substantive new law of Earth rights (the right to exist, the right to habitat and preservation of habitat and the right to participate in the ever-renewing processes of the Earth community),²⁰ as well as the recognition of inter-species and intergenerational equity and justice. Fostering restorative justice, it also supports the development of novel lawyering practices. Wild law has been recognized at both the domestic and international levels, with community ecological governance and the Earth Charter as key examples. In the classroom, however, the question is not only to examine the extent to which Earth jurisprudence translates into existing law; the point is also to examine how wild law allows for the practical deployment of alternative reasoning processes regarding what is too often loosely referred to as 'environmental issues'.

For other legal scholars, by contrast, the debate anthropocentrism versus ecocentrism sounds outmoded. As Andreas Philippopoulos-Mihalopoulos insightfully observes, '[t]he Anthropocene has exposed the

¹³ Casper Bruun Jensen, *Thinking the Earth: New Disciplinary Alliances in the Anthropocene*, oral presentation, Osaka University, Jinka Lecture Series, Osaka, 27 October 2016.

¹⁴ See in particular Anna Grear, *Deconstructing Anthropos: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'* 26 L.&C. 225 (2015).

¹⁵ See THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* (HARMONY/BELL TOWER, 1999) and THOMAS BERRY, *EVENING THOUGHTS: REFLECTING ON EARTH AS SACRED COMMUNITY* (UNIVERSITY OF CALIFORNIA PRESS, 2006).

¹⁶ Herman F. Greene, *Cosmology and Earth Jurisprudence*, in *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* 126 (WAKEFIELD PRESS, 2011).

¹⁷ See CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JURISPRUDENCE* (Green, 2011, 1st ed. 2002); PETER BURDON, *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* (Wakefield Press, 2011). See also MICHELLE MALONEY & PETER BURDON, *WILD LAW IN PRACTICE* (Taylor and Francis, 2014); Jamie Murray, *Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 1* 35 LIVERPOOL L. REV. 215 (2014); Jamie Murray, *Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 2* 36 LIVERPOOL L. REV. 105 (2014).

¹⁸ Expression used by Thomas Berry to characterize in terms of geological change the mass extinction of plants and animals currently going on. <http://thomasberry.org/life-and-thought/about-thomas-berry/the-ecozoic-era> (accessed 15 August 2020).

¹⁹ See Peter Burdon, *The Earth Community and Ecological Jurisprudence* 3 ONATI SOCIO-LEG. SER. 815 (2013); see also JOHN ALDER AND DAVID WILKINSON, *ENVIRONMENTAL LAW AND ETHICS* 62 (Springer, 1999).

²⁰ See Thomas Berry's, *Ten Principles for Jurisprudence Revision*. <http://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/> (accessed 15 August 2020).

grand paradox of the absence of center'.²¹ Accordingly, critical environmental law (CEL) fosters a new mode of thinking allowing disciplines such as environmental law to question accepted boundaries and start experimenting with new assemblages that include different materialities. Considering that 'we are always in an assemblage with the planet', Philippopoulos-Mihalopoulos emphasizes that 'the boundary between a body and its environment can no longer be taken as a given'.²² The author makes clear, however, that 'there is no center yet there is difference'.²³ Such a positioning implies considering both and simultaneously 'the indistinguishability between bodies' (in reaction against an enduring human exceptionalism) and 'the *de facto* emergence of different bodies' (hence a needed return of *anthropos* as a new political and legal body).²⁴ Precisely, and as Philippopoulos-Mihalopoulos explains further by drawing on assemblage thinking, the responsibility regarding planetary degradation changes 'depending on where each body is situated in the assemblage'. Concurrently, a 'situated' environmental law should help humans 'assume their responsibility in relation to their position in the planetary assemblage'.²⁵

As it appears, the main difficulty for critical legal researchers is to aim simultaneously at 'direct and immediate furthering of solutions with regards to the urgent planetary environmental problems we are facing' and at 'creative, radical thinking that does not adhere to the rules of problem-solving but allows for an open space of theoretical and world-encompassing thinking'.²⁶ Indeed, one of the main challenges for CEL scholars is 'to be in and out at the same time'.²⁷ In the classroom, the question is no less than how to give environmental learners from various academic backgrounds the possibility to start experiencing such a challenge.

Case-based Legal Education as if Earth Really Mattered

The critical approaches exposed earlier seek 'to usher environmental law into a new space where traditional conceptualizations of disciplines, actors and jurisdictions are re-determined in the face of the collapse of such steadfast distinctions as those between human and nonhuman, body and environment, subject and object (...)'.²⁸ Understood by their proponents as a tool of resistance against sclerotic university structures operating along obsolete disciplinary divides, such critical approaches to environmental law not only must encourage cutting-edge research but should also stimulate innovative education. In this regard, what is the potential of non-monodisciplinary teaching and learning frameworks? Let us examine how critical approaches to environmental law can be deployed in such frameworks and with

²¹ Philippopoulos-Mihalopoulos, *supra* note 4, at 150, as well as Andreas Philippopoulos-Mihalopoulos, *Actors or Spectators? Vulnerability and Critical Environmental Law* 3 ONATI SOCIO-LEG. SER. 854 (2013); see also Vito De Lucia, *Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law* 8 JHRE 181 (2017).

²² Philippopoulos-Mihalopoulos, *Id.* at 141.

²³ *Id.* at 136.

²⁴ *Id.* at 137.

²⁵ *Id.* at 152.

²⁶ *Id.* at 133.

²⁷ *Id.* at 142.

²⁸ *Id.* at 131. Andreas Philippopoulos-Mihalopoulos rightly points out that the Anthropocene, far from being an isolated move, participates in recent supra-disciplinary ventures (such as the spatial turn or the corporeal turn), as well as in philosophical currents of thought (post-humanism, new ontologies, new materialism and speculative realism).

what kind of implications for the development of innovative environmental legal education—case-based education, in particular. Only the use of judicial cases²⁹ is scrutinized here.

First, the course *Law and the Environment* addresses climate change litigation as an emerging field of study. It starts by underlining the distinctive features of such a form of litigation before engaging the classroom in a series of discussions based upon the examination of a number of judicial cases. These cases are selected by the instructor, and occasionally chosen by the students, mainly from the two databases (US and non-US database) of climate change case law provided by the Sabin Center for Climate Change Law. The cases discussed in the classroom cover both proactive and anti-regulatory litigation, as well as both mitigation-related and adaptation-related litigation. Four types of actions are addressed : actions against governmental entities for acts or omissions relating to greenhouse gas emissions; actions against governmental entities to force procedural consideration of anthropogenic global warming and associated climate change impacts; civil lawsuits against private entities considered as directly responsible for greenhouse gas emissions; and actions against governmental entities regulating greenhouse gas emissions by those adversely affected by such regulation. Overall, these cases are representative of a variety of jurisdictions, including in Asia and the Pacific, legal traditions and discourses, and they expose students to the various forms climate change litigation can take in practice: innovative tort-based litigation, atmospheric public trust litigation, civil and constitutional rights litigation, and so forth. Due to a number of daunting obstacles, the prospects of a successful lawsuit for climate change-related damages remain mixed: typically, climate change litigation raises issues of standing, choice of law, causation, separation of powers and international comity. Despite these limitations and those intrinsic to the reactive precedent-bound nature of judge-made law, climate change litigation can be understood as offering some impetus for change. Over the semester, students reflect on such potential mainly from two perspectives.

First, students draw from Science and Technology Studies (STS) to discuss further the significance gained by climate science across the judicial process.³⁰ They start by examining the increasing role played by scientific knowledge assessments, such as those issued through the reports of the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), in both the fashioning of the problems that environmental law targets for regulation and the shaping of so-called environmental issues into a court claim; then, building on ‘co-production’³¹ as a core STS concept, students progressively come to envision climate change litigation as a creative attempt to deploy—in the distinctive space of the courtroom—environmental knowledge now understood at the interface of scientific fact-making (i.e., the ‘systemic, translocal and transhistorical way of knowing nature’) and sense-making (in reference to ‘smaller scales of social meaning’, including ‘more personal scales of meaning’).³¹

²⁹ For a pedagogical use of a different type of cases, namely, case studies, see Isabelle Giraudou et al., *Shouldn't We Expect More from Case-Based Learning? The Transformative Potential of Multidisciplinary Frameworks in Sustainability Education* 1 TRANSFORM. DIALOGUES: TEACH. LEARN. J. (2018). <http://www.kpu.ca/td/current-issue> (accessed 15 August 2020).

³⁰ For instance, some classes examine the growing role played in climate litigation by the emerging science of extreme weather event attribution (which addresses the relationship between anthropogenic emissions to the atmosphere and specific extreme weather events) and the scope of the duty of care of a range of actors; see in particular Sophie Marjanac & Lindene Patton, *Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?* 36 J. ENERGY NAT. RESOUR. LAW 265 (2018).

³¹ See SHEILA JASANOFF & MARYBETH MARTELLO, *EARTHLY POLITICS: LOCAL AND GLOBAL IN ENVIRONMENTAL GOVERNANCE* (MIT Press, 2004).

From a second perspective, students engage in a broader discussion about what Nicole Rogers, who initiated the so-called Wild Law Judgment Project,³² calls ‘paradoxology of lawfulness and legal performance’;³³ from one case to another, students reflect on this paradoxical strategy that consists of climate change litigants playing both *by* and *with* the rules, that is, relying on restrictive, human-centred terminologies, legal principles and courtroom settings to challenge the legally enshrined human/nature divide. Through the examination of both successful and unsuccessful lawsuits, students appreciate how climate change activists have been in fact ‘staging spectacles of deconstruction in courtrooms’;³⁴ precisely, they explore how a range of subversive narratives—including in children’s trust lawsuits, with the plaintiffs embodying the principle of intergenerational equity—have been developing to contest meanings and displace fundamental premises within the legal system. In so doing, they are progressively led to discuss the courtroom performances of climate change litigation as ‘a way of instigating paradigm change’.³⁵

In addition to climate change litigation, the course *Law and the Environment* addresses various judgement projects, namely, wild law judgements and other alternative pseudo-legal/extra-legal performances. Launched a few years ago through the initiative of a group of Australian legal scholars and practising lawyers, the Wild Law Judgment Project consists of contributors who select judgements and rewrite them from a wild law viewpoint or, in some instances, construct hypothetical and even futuristic judgements. It is noteworthy that the project is not limited to the sub-field of environmental law but extends potentially to all legal areas. In order ‘to fit the earth’s demands’,³⁶ the contributors to this project are invited to write their judgements ‘wildly’ by either ignoring, discarding or reshaping existing laws based upon creative suggestions for statutory reform. In so doing, they question the dominant anthropocentric principles that underpin the existing law and incorporate in their judgements some of the key principles of the emerging wild law movement, as described earlier.

Interestingly, several of these (re)written cases have been performed by their proponents through innovative frameworks such as the ongoing performative platform called the International Rights of Nature Tribunal.³⁷ In the same vein, the advocates of a new Ecocide Law—who propose to add to the list of international crimes at the International Criminal Court (ICC) the serious loss, damage or destruction of ecosystems—have been developing resources such as mock trial and sentencing documents based on the UK Mock Ecocide Trial held through their initiative in the UK Supreme Court in 2011.³⁸

By opting for an Earth-centred and/or species-oriented approach, the participants to these various projects were able to explore alternative solutions in their (re)writing and performing of cases. A number of audacious steps have been taken so far, for instance: substituting Buddhist principles for the well-established principles of negligence; applying the doctrine of nuisance to a group of green sea turtles as well as to the Great Barrier Reef; amending the International Convention for the Regulation of Whaling, 1946 in such a way that there is provision made in the text of the Convention for a Special Representative

³² See Nicole Rogers & Michelle Maloney, *The Australian Wild Law Judgment Project* 39 ALTERN. LAW J. 172 (2014).

³³ See Nicole Rogers, *Climate Change Litigation and the Awfulness of Lawfulness* 38 ALTERN. LAW J. 20, 21, 23 (2013).

³⁴ *Id.* at 24.

³⁵ *Id.* at 21.

³⁶ Brian Preston, *Writing Judgements Widly*, in *LAW AS IF EARTH REALLY MATTERED: THE WILD LAW JUDGMENT PROJECT* 24 (NICOLE ROGERS AND MICHELLE MALONEY eds., 2017).

³⁷ Presentation of this tribunal is available on the website of the Global Alliance for the Rights of Nature. <http://therightsofnature.org/rights-of-nature-tribunal/> (accessed 15 August 2020); see also Michelle Maloney, *Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal* 41 VERMONT LAW REV. 129 (2016).

³⁸ See the description of the *Eradicating Ecocide* project and related resources. <https://eradicatingecocide.com> (accessed 15 August 2020).

for Whales and the exemption for scientific whaling is removed; proposing that governments represent all living things; reinterpreting the precautionary principle in cases involving prospective coal mines and mining rights; exploring subversive and creative possibilities in native title law when dealing with a proposed nuclear waste dump contested by the traditional owners; reconfiguring intellectual property rights when dealing with biological data; or revisiting the intersection of environmental activism and criminal law.³⁹

In the course *Law and the Environment*, the collection of wild law judgements, as well as the resources developed by the Eradicating Ecocide project and those shared on the International Rights of Nature Tribunal platform, are used in the classroom as teaching tools. Following a series of short interactive lectures explaining about critical approaches to environmental law and the current development of alternative judgement projects, teamwork-based weekly assignments consist of reading beforehand one wild law or ecocide law judgement, in addition to a selection of complementary sources (either an academic article, a set of official documents issued by international organizations, NGO reports or a documentary), presenting orally about the case and conducting a classroom discussion on the issue at stake. During the last part of the semester, teams of students reflect on a given environmental issue (among, for example, those mapped by the Atlas of Environmental Justice⁴⁰ or those listed by End Ecocide on Earth), discuss how to address its legal aspects based on a preliminary list of questions provided by the instructor, write their 'judicial decision' from the wild law/ecocide law perspective and may perform it in the classroom. The last two sessions of the semester are devoted to a collective semi-guided discussion on the limitations of Japanese environmental law in the face of the Fukushima nuclear disaster and its environmental impact and the possibility to address the issue from a CEL perspective, more specifically in the framework of a People's Tribunal.

By building on an 'outsider pedagogy',⁴¹ the course *Law and the Environment* seeks to open up the space of judicial reasoning to different narratives. In effect, it allows students to progressively familiarize themselves with the possibility of reading a judicial decision from at least two perspectives: as it has been adopted in a given jurisdiction, based upon existing environmental laws; and as it can be deconstructed, reinterpreted and rewritten from a critical perspective, significantly the wild law perspective, which itself can draw on fragmented pieces of domestic legislation and emerging regulatory instruments.⁴² In so doing, students explore both 'how the inadequate law leads to non-earth-centered

³⁹ Rogers and Maloney, *supra* note 36, see: Bee C. Goh & Tom Round, *Wild Negligence: Donoghue v. Stevenson*, 91–106; Brian Preston, *Green Sea Turtles by the Representative, Meryl Streef v. The State of Queensland and the Commonwealth of Australia*, 31–38; Hope Johnson et al., *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 257–275; Tom Round, *Attorney General (Cth); Ex Rel McKinlay v. The Commonwealth*, 71–90; Julia Dehm, *Quantifying the Environmental Impact of Coal Mines: Lessons from the Wandoan Case, Xstrata Coal Queensland Pty Ltd v. Friends of the Earth Brisbane Co-Op*, 143–160; Aidan Ricketts, *Exploring Fundamental Legal Change Through Adjacent Possibilities: The Newcrest Mining Case*, 178–192; Stephen Summerhayes, *Reimagining Aboriginal Land Rights: Crown, Country and Custodians. Maho v. Queensland (No 2)*, 219–236; Greta Bird & Jo Bird, *Nuclear Waste Dump: Sovereignty and the Muckaty Mob*, 237–254; Robert Cunningham, *Information Environmentalism and Biological Data. A Thought Experiment*, 355–372; Susan Bird, *Magee v. Wallace*, 324–338; Matthew Rimmer, *Stand with Jono. Culture-Jamming, Civil Disobedience and Corporate Regulation in an Age of Climate Change*, 293–323.

⁴⁰ See Environmental Justice Organisations, Liabilities and Trade (EJOLT), *Mapping Environmental Justice*. <http://www.ejolt.org/maps/> (accessed 15 August 2020); see also Atlas of Environmental Justice (EJAtlas). <https://ejatlas.org> (accessed 15 August 2020).

⁴¹ Jennifer Koshan, *Rewriting Equality: The Pedagogical Use of Women's Court of Canada Judgment 4* CANADIAN LEGAL EDUC. ANN. REV. 123 (2010); see also Jennifer Koshan, *Impact of the Feminist Judgment Writing Projects: The Case of the Women's Court of Canada 8* ONATI SOCIO-LEG. SER. 1325 (2018).

⁴² See Lynda Warren et al., *Wild Law: Is There Any Evidence of Earth Jurisprudence in Existing Law and Practice?* (UK Environmental Law Association and The Gaia Foundation, 2009). <https://www.ukela.org/content/page/6171/Wild%20Law%20>

outcomes⁴³ and how a reversal in perspective, as implied by wild law/ecocide law, helps address issues concerning a variety of communities and life forms. By the end of the semester, students are expected to appreciate the meaningfulness and didactic significance of alternative pseudo-legal performances (judgement rewriting exercises) and extra-legal performances (moots, mock trials and People's Tribunals) dealing with contemporary environmental issues.

Case-making in the Anthropocene: A Distinctive Skill

What knowledge and competencies does the course *Law and the Environment* target in particular? Ultimately, would this case-based course taught in a non-monodisciplinary framework suggest a different understanding of *what makes an environmental case*?

Too often, the study of environmental law takes its object as self-evident, almost a given. Here, on the contrary, students are encouraged to consider the extent to which science and technology go into the making of such objects and shape the possibilities for institutional and regulatory responses. In so doing, they progressively acquire a better understanding of the role played by science and technology in fashioning the problems that environmental law targets for regulation.⁴⁴ Dealing with contexts in which 'facts are uncertain, values in dispute, stakes high, and decisions urgent',⁴⁵ the course *Law and the Environment* addresses contemporary environmental problems in terms of complex science-related law and policy issues. In so doing, it prompts students to reflect on so-called environmental issues as objects of regulation located at the interface of the two social worlds of politics and science.

Climate change and biological diversity loss, in particular, are examined through the lenses of *boundary organizations*, understood as 'forums where actors from all sides of the science/nonscience divide can interact',⁴⁶ perform *boundary work* and produce *boundary objects*. Students examine the role of science-policy institutional interfaces such as the IPCC and the IPBES in framing complex problem areas for regulation, and, on this basis, they further explore how and the extent to which the construction of *environmental cases* in the Anthropocene draws on boundary organizations' knowledge: for instance, they examine the role played by *boundary objects*, such as the IPCC's assessment reports in some climate change litigation cases, or discuss the way a platform such as the International Rights of Nature Tribunal refers to the conceptual framework of the IPBES. In so doing, students progressively come to realize the growing significance of global environmental knowledge in the shaping of environmental cases in post-normal science contexts. In addition, they discuss the various arguments developed by a wider range of stakeholders through pseudo- and extra-legal performances (as described above) regarding such science-policy interfaces' approaches and outcomes—this, in turn, allows them to reflect through the critical

Research%20Report%20published%20March%202009.pdf (accessed 15 August 2020). See also the lists of existing instruments proposed by the Global Alliance for the Rights of Nature (<http://therightsofnature.org/ron-conference-articles/> [accessed 15 August 2020]) and the Eradicating Ecocide project (<http://therightsofnature.org/ron-conference-articles/> [accessed 15 August 2020]).

⁴³ Brian Preston, *Writing Judgments Wildly*, in Rogers and Maloney, *supra* note 36, 24.

⁴⁴ See William Boyd, *Ways of Seeing in Environmental Law: How Deforestation Became an Object of Climate Governance* 37 ECOL. LAW Q. 851 (2010).

⁴⁵ Silvio O. et al., *Post-Normal Science*, in INTERNET ENCYCLOPEDIA OF ECOLOGICAL ECONOMICS 1 (International Society for Ecological Economics ed., 2003); see also Silvio O. Funtowicz & Jerome R. Ravetz, *The Emergence of Post-Normal Science in SCIENCE, POLITICS AND MORALITY. SCIENTIFIC UNCERTAINTY AND DECISION MAKING* 85 (R. VON SCHOMBERG ed., 1993).

⁴⁶ See Amandine Orsini et al., *Boundary Concepts for Boundary Work Between Science and Technology Studies and International Relations: Special Issue Introduction* 34 REV. POLICY RES. 6 (2017) 735.

perspective on the growing role played by global environmental knowledge in decision-making processes.

Focused on the linkages between law and the ecological state of the environment, this course also illustrates the progressive introduction of the ecological, material and social in conceptions of case-based legal education. Accordingly, it fosters a number of competencies and attitudes, including sustainability literacy and ecological thinking. Among the 12 ‘core principles of Anthropocene intelligence’ that Robert J. Statford has identified in relation to the progressive emergence of an ecological approach to higher education,⁴⁷ several can be considered relevant to case-based legal education in the Anthropocene, namely, the understanding that: (a) there is a global ecological crisis, and humans are unsustainably changing the planet; (b) values and facts are typically entangled, making the idea of ‘value-free’ or objective science problematic; (c) there is a need to be sceptical of one-dimensional solutions to the global ecological crisis such as the application of technology; (d) valuing traditional, non-Western and/or indigenous forms of knowledge (cultural commons) is important because of their potential to teach us how to live well on a finite planet; and (e) there is a necessary ethic of situated care, responsibility and obligation towards the planet’s interconnected ecologies.⁴⁸

Building on these core principles of ‘Anthropocene intelligence’ in the classroom can indeed help sharpen students’ skills in ‘environmental problem’ finding and related skills (problem identification, definition, construction) and thus stimulate their involvement in shared production of meaning and, possibly, environmental knowledge-making practices as well. Similarly, by integrating such principles, legal reasoning in post-normal science contexts prompts students to reflect critically on the perception of climate change litigation risk and the way liability is/could be addressed by courts and tribunals—including through pseudo-legal and extra-legal performances. Not only do students acknowledge that environmental law, ‘more than any other branch of law, (...) is directly involved in some of the fossilizing and anthropogenic processes at the core of the Anthropocene’,⁴⁹ but more importantly; they also explore how this field can engage with the Anthropocene narratives by expanding beyond its ‘epistemic closure’ and opening up to address ‘issues that were previously thought of as irrelevant’,⁵⁰ including planetary futures and other materialities (animals, plants, minerals). In so doing, students are invited to question environmental law’s main categories and experiment with new modes of reasoning.

Concluding Thoughts: From Problem-framing to Response-ability

By reflecting on how the course *Law and the Environment* has been developing in a non-monodisciplinary framework, this article sought to shed further light on one operation in particular, namely, the framing of contemporary ‘environmental issues’ as *cases* to be addressed from a broadened legal perspective by students having different backgrounds. It is of course too early to discuss the possible contribution of such a course to the development of the overall curriculum in the concerned programme, and equally

⁴⁷ Robert James Statford builds on the emerging discourse on the ecological university to propose ‘Anthropocene Intelligence as a basis for an ecological approach to higher education’; see Robert J. Statford, *Higher Education and the Anthropocene: Towards an Ecological Approach to Higher Education Policy in New Zealand*, Thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy in Education (University of Waikato, 2019) 177–178. <https://researchcommons.waikato.ac.nz/handle/10289/12369> (accessed 15 August 2020).

⁴⁸ *Id.* at 180–187.

⁴⁹ Philippopoulos-Mihalopoulos, *supra* note 4, 132.

⁵⁰ *Id.* at 135.

premature to envision it as an element of either an emerging ‘Anthropocene curriculum’⁵¹ in Japan or a new agenda for higher education in the Ecozoic.⁵²

This case-based course *Law and the Environment*, however, has started to open a distinctive space where students can question established conceptual divides and explore how social–natural relations are transforming.⁵³ Indeed, the non-monodisciplinary classroom has progressively become an arena where students—by contemplating the whole story and retelling it in a voice that more accurately reflects new understandings of interconnectedness and embeddedness—experiment with the transformative capacity of the process of judging in the Anthropocene. At this stage, the challenge of how to combine such a still-experimental, case-based course and the development of a wider range of teaching and learning methods (including role-play simulations)⁵⁴ and innovative pedagogical devices (such as, possibly, an interdisciplinary environmental clinic and a collaborative case study database), remains.⁵⁵ From a more theoretical perspective, there is also a need to consider further the contribution of interdisciplinary settings to both the ongoing reflection on what makes ‘legal’ an environmental case in the Anthropocene and the progressive construction of *Law and the Anthropocene* as an emergent field of inquiry, including in (post-Fukushima) Japan.⁵⁶ Far from being inconsequential, such continuing opening out of environmental legal studies may, ultimately, relate to what Donna Haraway, Bruno Latour and Isabelle Stengers call *response-ability*, that is, the crucial ability to not let anything go or anything pass: ‘[b]ecoming able not to let anything go or anything pass is not playing the princess and the pea; it implies rather the reverse, tolerating no mattress of abstraction allowing a comfortable escape from the messiness of a situation ...’.⁵⁷

⁵¹ An ‘Anthropocene Curriculum’ has been initiated and is being developed by the Haus der Kulturen der Welt (HKW) and the Max Planck Institute for the History of Science (Berlin, Germany). Underlining the necessity to combine ‘problem-oriented research with teaching and learning inside and outside of academia’, this initiative ‘explores pathways towards a novel transdisciplinary culture of knowledge production and education that is adequate to the predicaments of the Anthropocene’; information available at <https://anthropocene-curriculum.org> (accessed 15 August 2020); see also Christoph Rosol, *Trying to Assemble an ‘Anthropocene curriculum’*, 16 March 2014, on *Environmental Humanities*. <https://environmentalhumanities.org/2014/03/16/trying-to-assemble-an-anthropocene-curriculum/> (accessed 15 August 2020).

⁵² Coined by Thomas Berry in conversation with Brian Swimme for their book *The Universe Story*, the term ‘Ecozoic era’ describes the geologic era that Earth is entering—when humans live in a mutually enhancing relationship with Earth and the Earth community; see *The Ecozoic Times* (<https://ecozoictimes.com/what-is-the-ecozoic/what-does-ecozoic-mean/> [accessed 15 August 2020]). Ivan Vargas Roncancio proposes an ‘Ecozoic pedagogy’ defined as ‘both a practical response to biophysical realities and an ethical response to the dire present’, *supra* note 9, 3. See also RONALD BARNETT, *THE ECOLOGICAL UNIVERSITY, A FEASIBLE UTOPIA* (Routledge, 2018), in particular the chapter addressing the need for an ‘ecological curriculum’, 113–125.

⁵³ One of the rhetorical propositions made by Clive Hamilton is that ‘it’s too late to negotiate with the Earth’; Hamilton et al., *supra* note 5, 10.

⁵⁴ See Danya Rumore et al., *Role-Play Simulations for Climate Change Adaptation Education and Engagement* 30 UTAH LAW FAC. SCHOLARSH. 1 (2016); see also Joseph C. Chen et al., *Role-Play Simulations as a Transformative Methodology in Environmental Education* 13 J. TRANSFORM. EDUC. 85 (2014).

⁵⁵ See Isabelle Giraudou, *Global Legal Skills Education and the Construction of Environmental and Natural Resources Law as a New Field of Expertise in Asia*, JSPS Grant-in-Aid for Challenging Exploratory Research, New Fields of Law, 2016–2019.

⁵⁶ *Id.*

⁵⁷ Isabelle Stengers, *Accepting the reality of Gaia: A fundamental Shift*, in Clive Hamilton et al., *supra* note 5, 143. See also DONNA HARAWAY, *WHEN SPECIES MEET* (University of Minnesota Press, 2008); BRUNO LATOUR, *AN INQUIRY INTO MODES OF EXISTENCE* (Harvard University Press, 2013); ISABELLE STENGERS, *AU TEMPS DES CATASTROPHES. RÉSISTER À LA BARBARIE QUI VIENT [IN CATASTROPHIC TIMES: RESISTING THE COMING BARBARISM]* (LA DÉCOUVERTE, 2009).

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.