



## Briefing 2020-2021

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The UCL Centre for Law and the Environment provides a focal point for UCL's outstanding expertise and academic strength in the field of law and the environment. The academic members of the Centre pursue a broad range of interests.

**Dr Danae Azaria** is a public international lawyer with a particular interest in international law on energy and natural resources, as well as the law of treaties, State responsibility, and international dispute settlement. She is a qualified attorney and collaborates as an academic advisor with numerous government departments (in the UK and abroad), international organisations (including the United Nations, and as a member of the Legal Advisory Task Force of the Energy Charter Secretariat), law firms and corporations.

**Tom Burke** is a visiting professor with the Centre. He is co-founder and Chair of the environmental think tank E3G, chair of the China Dialogue Trust and Patron of UKELA. He was the Executive Director of Friends of the Earth in the seventies, ran the Green Alliance in the eighties, was a Special Advisor to three Secretaries of State for the Environment in the nineties, and worked for Rio Tinto and BP over the turn of the century. He is currently focused on the relationship between environmental protection and the rule of law. Climate policy failure will undermine the rule of law everywhere, but climate policy success cannot be achieved without a firm commitment to the rule of law. This has led Tom to conclude there needs to be a more articulated conversation between the legal and environmental professions.



**Lord Carnwath** is an Honorary Professor and Distinguished Judicial Visitor in UCL Faculty of Laws and UCL Centre for Law and the Environment. Lord Carnwath retired from the UK Supreme Court in 2020. He is widely admired for his expertise and engagement in planning and environmental law, and pursues his interest in climate change and law from his position in the Centre.



**Professor Jane Holder's** research focuses on regulatory mechanisms for environmental protection, particularly environmental assessment and its use as a means to assess whether the negative environmental impacts of policies are borne disproportionately by certain sectors of the population.

**Professor Maria Lee** is co-director of the Centre. She has a long-standing interest in the ways in which law shapes environmental decision-making in the EU and the UK. Her current research

focuses on two areas: planning law (currently specifically questions of scale in planning for housing); and the ways in which environmental groups use legal expertise.

**Professor Richard Macrory QC (Hon)** is former and founding director of the Centre, and emeritus professor. His research interests include carbon capture and storage, and the enforcement of environmental law.

**Dr Gracia Marín-Durán** is an international economic lawyer, with a particular interest in the interface between international trade law and international environmental law, as well as in the EU's actions to shape the trade-environment nexus at various levels of governance.

**Killian O'Brien** is the Faculty of Laws DAAD Lecturer (Fachlektor) in Law. His main research interest is the international law of the sea. In particular, he is interested in the interface between law of the sea and both international environmental law and asylum and migration issues at sea.



**Professor Eloise Scotford** researches in the areas of comparative environmental law, climate change law and governance, air quality control, waste regulation, and the intersection between environmental problems and broader legal frameworks. She has a particular research interest in environmental legislation and environmental principles.

**Professor Philippe Sands QC** has a long-standing interest in public international law, the settlement of international disputes (including arbitration), and environmental and natural resources law.

**Professor Joanne Scott's** main areas of expertise are EU law and WTO Law. She has published extensively on law and new modes of governance, environmental law and policy and on the intersections between different sub-national, national and international legal orders. Joanne is Head of Department and Professor of European Law at the European University Institute in Florence, and has taken special leave from UCL for a period to pursue that role. She remains closely connected with the Centre.



**Professor Lisa Vanhala** is a political scientist with expertise in global environmental politics and socio-legal studies. Her current European Research Council-funded research focuses on the politics and governance of climate change-related loss and damage at the international and national level. She also studies the role of human rights principles in climate change governance and the phenomenon of climate change litigation.

**Professor Steven Vaughan** is co-director of the Centre. His research spans various fields: environmental law, lawyers' ethics and regulation, legal education, diversity, and corporate governance. In each area, he is interested in regulatory complexity and the frequent mismatch between 'law in books' and 'law in action'.



**Ned Westaway** is an honorary member of the Centre, and a barrister at Francis Taylor Building, where he specialises in environmental, planning and highways law. Ned is also the current Chair of the United Kingdom Environmental Law Association. In 2021 he has appeared in the Supreme Court (on costs in planning cases), the Court of Appeal (on rights of way) and has acted for different sides in a number of cases about major infrastructure and climate change (including *Pearce v SSBEIS* [2021] EWHC 326 (Admin) and *R (ClientEarth) v SSBEIS* [2021] EWCA Civ 43).

## News from the Centre

We are delighted that UCL Faculty of Laws has appointed **Dr Allison Lindner** to a lectureship. She will be teaching on a number of our environmental law modules, and will pursue her research in waste, fashion, the informal economy and sustainable development. She has convened and is leading a Waste Law Reading Group.

Notwithstanding the impossibility of getting together physically in the academic year 2020-21, the Centre has hosted some wonderful events. For our sixth **Annual Lecture** in October 2020, **Professor Joanne Scott** spoke on 'Zoonotic Disease Emergence and the EU's Global Environmental/Land Use Footprint: Limits and Possibilities'. This was a fascinating and timely analysis of the EU's efforts to mitigate complicity in activities that lead to deforestation and land use changes that can increase the risk of the emergence of zoonotic diseases. A recording of the lecture can be found [here](#).

We are very excited that **Professor Elen Stokes** from the University of Cardiff will give the **CLE 2021 Annual Lecture**, on *Ministries for the Future in Environmental Law*. Kim Stanley Robinson's science fiction novel *The Ministry for the Future* envisions a new UN agency charged with advocating for future generations. The lecture will examine recent efforts to institutionalise future-oriented practices, powers and responsibilities worldwide, before focusing on initiatives in the UK - such as the pioneering work of Wales's independent Future Generations Commissioner. This lecture will be delivered online on 26 October 2021, registration [here](#).



Virtual events for our students included a day catching up on Brexit-environment in February 2021. Several members of the Centre explored why Brexit matters for environmental lawyers, and where we are in the tortuous process of withdrawal. Our climate book club was a lovely discussion of the brilliant and unusual Jenny Offill novel, *Weather*. And some of our alumni were generous enough to join us for a careers session towards the end of the academic year.

The Centre is holding a major conference on *Climate Change and the Rule of Law* on 31 March-1 April 2022. The conference will examine the relationships between the rule of law in multiple dimensions and from multiple perspectives. Jonathan Church, Sonam Gordhan, Maria Lee, Monserrat Madariaga Gómez de Cuenca, Eloise Scoford and Steven Vaughan form the organising committee. Registration details will soon be available on our website and on twitter.



**Our students and teaching are at the heart of the Centre.** Our LLM in environmental law and policy attracted committed and talented students from all over the world in 2020-21. (Information on our LLM in Environmental Law and Policy can be found [here](#).) We also have a thriving final year undergraduate environmental law module, and offer a climate change case study to our new undergraduate students as part of their induction to the Faculty. Our extraordinary students were as engaged, collaborative and creative online as they have always been in person. They helped

to make a very strange pandemic year bearable, and we hope to be able to meet as many of them as possible in person over the next few years.

Beyond the Faculty, our LLM student, **Jeremy Ogilvie-Harris** [won](#) the UCL Global Governance Institute's Essay Prize for an essay arguing that the UK Environment Bill should require the involvement of the public in decisions about biodiversity. **Jane** contributed to development of a new UCL Introductory Programme 'object' on Sustainability including scripting and filming a video on the environmental justice movement. **Gracia's** LLM module on Law and Policy of International Trade and the Environment has been featured as one of the [case-studies](#) of UCL's response to the UN Sustainable Development Goals. **Steven** was shortlisted for the national OUP *Law Teacher of the Year Award 2020*.

## Some selected highlights from our publications.

**Ned** writes for the ENDS Report and is shortly to publish an article on the Supreme Court Friends of the Earth decision in the *Environmental Law Review*. During the pandemic, **Steven** has returned to his interests in the use of soft law as a means of regulation. He co-edited a special issue of the European *Journal of Risk Regulation* on 'COVID-19 and Soft Law' (with Mariolina Eliantonio and Emilia Korkea-Aho). This special issue includes papers from a number of EU states about how guidance documents (and similar) have been deployed as a regulatory response to the pandemic. He also spoke at the Annual Journal of Environmental Law Workshop with Ole Pedersen on this topic (COVID-19, Soft Law, and Environmental Governance).



Along with one of our former LLM students, Michai Robertson, **Lisa** published a paper based on fieldwork they both conducted in Antigua and Barbuda: with Elisa Calliari, 'The knowledge politics of climate change loss and damage across scales of governance' (2021) 30 *Environmental Politics* 141. **Eloise and Joanne** each published chapters in the second edition of the [Oxford Handbook of International Environmental Law](#) (Jacqueline Peel & Lavanya Rajamani (eds), 2nd ed, OUP 2021). **Joanne** has also co-edited two books with Claire Kilpatrick: *Contemporary Challenges to EU Legality* (OUP, 2021) and *New Approaches to Studying the European Court of Justice* (OUP, 2020).



**Gracia** contributed two chapters to Elgar's *Encyclopaedia of Environmental Law*, on 'Exhaustible Natural Resources and Article XX(g) GATT' and 'Article 37 of EU Charter of Fundamental Rights on Environmental Protection'. **Maria's** open access book (co-authored with Carolyn Abbot) *Environmental Groups and Legal Expertise: Shaping the Brexit Process* (UCL Press, 2021) was published in March. It explores the use and understanding of law and legal expertise by environmental groups, and rather than the usual focus on the court room, it scrutinises environmental

NGO advocacy during the extraordinarily dramatic Brexit process. The book can be freely downloaded [here](#).

In addition to, and as part of, our teaching and writing, members of the Centre have a number of **different projects and appointments**.

**Danae** is working on her European Research Council funded project on *The Silence of States in International Law*. She is exploring the effects of State silence on the sources of international law, State responsibility and international dispute settlement, including the non-appearance of States before international courts and tribunals.



**Tom** has continued to develop his thinking on the relationship between climate change and the rule of law. It was the theme of his keynote address to the UKELA Annual Conference, and the subject of a conversation between him and **Philippe** in a [public webinar](#) as part of London Climate Action Week. Tom remains concerned that the climate policy community continues to assume that the rule of law will be available underpin its solutions to climate change without being aware of the increasing threat to the rule of law from both neglect and attack.

**Philippe** was one of a group of legal experts from across the globe who have worked over the last 6 months to [draft a definition of the offence of 'ecocide'](#). The proposed law builds on the existing crime of severe environmental damage during armed conflict, but would allow the International Criminal Court ('ICC') to prosecute those very serious offences against the environment which occur during times of peace. The draft law defines ecocide as: "*unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.*" If the definition is adopted, it will become the fifth offence that the ICC can prosecute, alongside war crimes, crimes against humanity, genocide and the crime of aggression.

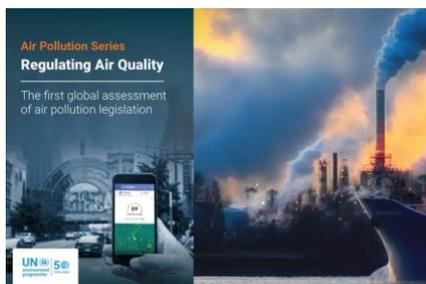


**Joanne** received British Academy funding (with Annalisa Savaresi) for FRONTLINERS, a project on human rights bodies at the frontline of climate change accountability challenge. In this context, she co-organised a workshop on climate change litigation and human rights arguments at the School of Advanced Study Sant'Anna in Pisa in May 2021, together with Annalisa Savaresi and Mariagrazia Alabrese. This brought scholars and practitioners together to take stock of developments and look to the future of human rights climate litigation. The details can be found [here](#).

**Ned** was appointed to the Chair of the UK Environmental Law Association in 2021. **Steven, Joanne, Eloise, Richard** and **Maria** are all members of the editorial committee of the *Journal of Environmental Law*.

Centre members continue to be involved in engaging in discussion and debate with academic colleagues, government, parliamentarians and NGOs about the ongoing process of shaping the future of UK environmental law in the aftermath of Brexit.

The Environment Bill continues its slow and much-interrupted journey through parliament. **Richard** has been appointed a non-executive board member of the Office for Environmental Protection, to be established under the Environment Bill. The OEP will act as an independent watchdog reporting on Government progress in meeting its 25-year Environment Plan, reviewing the implementation of environmental law, and holding government and other public bodies for failures to comply with environmental law duties. The [OEP is operating in shadow form](#), and will become fully operational after the Bill has received Royal Assent. **Eloise** and **Maria** have given presentations to a range of audiences on the Environment Bill, including All Party Parliamentary Groups, Peers for the Planet, Natural England lawyers and at a [joint public event held by the Centre and GreenerUK](#). **Eloise** give oral evidence to The Environment, Climate Change and Land Reform Committee Inquiry (Holyrood) on the Scottish UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. **Maria** published a [briefing note](#) and [blog](#) on DEFRA's draft Environmental Principles Policy Statement.



**Eloise** has also led a [major UNEP project on air quality law](#), assessing legislation on air quality in 195 countries across the world. This UNEP Report - [Regulating Air Quality: The First Global Assessment of Air Pollution Legislation](#) - was launched on the International Day of Clean Air for Blue Skies on 7 September 2021.

Members of the Centre have had multiple **speaking engagements**, virtually in this year of social distancing.

**Robert** gave the [Luther Dispute Resolution Lecture](#) for the Bucerius Institute on Climate Change and the Law, and took part in a World Conference organised by the China Supreme People's Court with UNEP. In February 2021, **Jane** gave a presentation to the OECD Environmental Policy Committee on 'Environmental Justice, Sustainability and Gender Mainstreaming', to help stimulate discussion about the committee's future policy making agenda.

In June **Richard** took part in the launch of a new study of climate change legislation, *National Climate Change Acts - The Emergence, Form and nature of National Framework Climate Legislation* (ed Thomas Muinzer, Harts Law Publishing 2021). Richard and Thomas Muinzer wrote the chapter on the UK Climate Change Act.

**Gracia** spoke about the legal challenges faced by the EU as an actor in global environmental affairs at the 2021 'EU in International Affairs' (EUIA) Conference (May 2021). **Steven** gave a talk which was live streamed to multiple offices around the world of the elite law firm Herbert Smith Freehills, titled, 'Professional responsibility and the end of days; your ethical obligations in the context of climate change'.

