

Integrating Access to Environmental Justice within the University Law Curriculum in England

by

David M Ong

**Professor of International &
Environmental Law,**

**Nottingham Law School,
Nottingham Trent University, UK.**

VERONICA/Ronnie:

How could you do this alone?

BRUNDLE, Seth:

Well, I don't work alone. There's a lot of stuff in there I don't even understand. I'm really, uh... a systems management man. I farm... bits and pieces, uh, out to guys who are much more brilliant than I am. I say... "Build me a laser this, design me a molecular analyzer that," and they do, and I just stick'em together. But, uh, none of them knows what the project really is. So...

(Extract from *The Fly* (1986), directed by David Cronenberg.

Movie transcript written by Charles Edward Pogue and David Cronenberg.

Based on the Story by George Langelaan.)

Integrating Environmental Sustainability within the University Law Curriculum in England

Building on a continuing research and teaching project (title above) examining the integration of environmental law, through its principles and techniques, within the 'core' subjects of the University law school curriculum in England, this paper will apply the hypothesis of this ongoing project to the teaching of 'public law' (or 'constitutional and administrative law').

Specifically, it will attempt to link international and European developments in the following aspects of environmental justice, namely, access to information, opportunities to participate in decision-making processes, and access to judicial and administrative remedies, with related legal developments in English public law.

Access to Environmental Justice as an Aspect of Integrating Environmental Sustainability into 'Core' University Public Law Course/Module

The purpose of this exercise is to assess whether it is possible to integrate these jurisdictionally-specific but conceptually-related developments within a narrative that provides foundational law students with:

- 1) a practical knowledge base for addressing the environmental implications of English public law developments, as well as
- 2) epistemological incentives for embarking on further, more in-depth study of the legal issues arising from the conjunction of these international, European and domestic developments in a specialist, optional 'Environmental Law' module in the final year of their respective University law degree courses.

Justice as Philosophical, Political, Economic & Legal Concept and Aim/Objective

'Justice' has become a central theme in current public intellectual discourse, recently informed by eminent contributions on what it means, ...

(Amartya Sen, *The Idea of Justice*, Allen Lane, London, 2009)

... and how to go about achieving it.

(Michael Sandel, *Justice: What's the right thing to do?*, Allen Lane, London, 2009)

Justice as Philosophical, Political, Economic & Legal Concept and Aim/Objective

While ‘(j)ustice is in the first place a desirable quality in a legal system’, its ‘usage has now gone much further and justice is used by some political philosophers for the ethical valuation of the whole state of society.’

(Samuel Brittan, ‘We do not prosper by income or happiness alone’, commenting on Sen and Rawls in the *Financial Times* (UK) newspaper, Friday, 4 September, 2009 at p.11.)

Justice as Philosophical, Political, Economic & Legal Concept and Aim/Objective

Even the 'rule of law' is not to be regarded as a legal end in itself but, *inter alia*, as the foundation of a 'fair and just society', and a guarantee of responsible government whose actions should be devoted to this end, ...

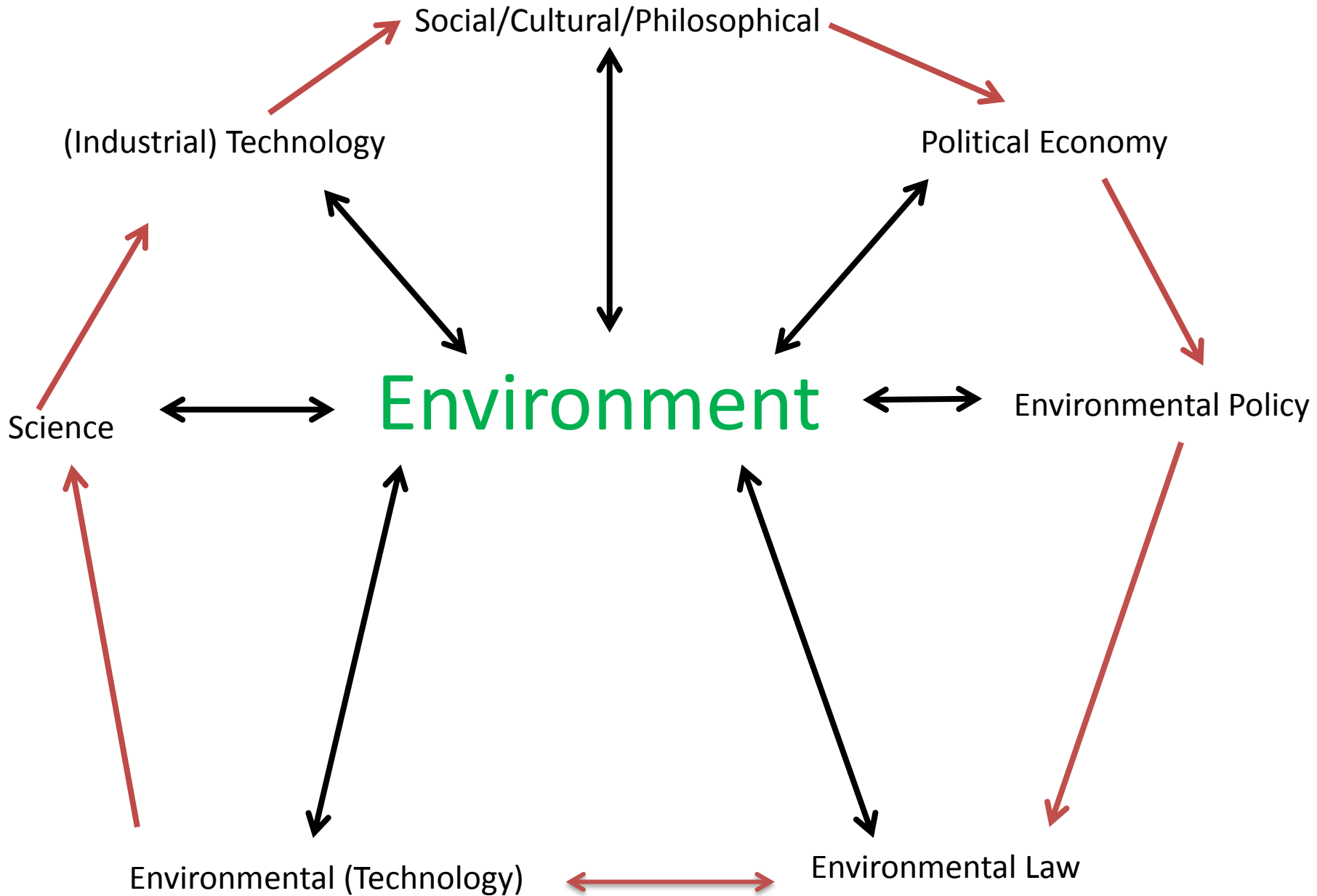
(Tom Bingham, *Rule of Law*, Allen Lane, London, 2010)

Most terms including 'justice', such as criminal 'justice' or transitional 'justice', envisage forms/types of human 'justice', but what about justice for non-humans?

Is this notion even conceivable?

Introducing 'Environmental' Justice

- Conceptualization/Definition?
- (Brief) History
- Issues/Problems?
- Application/Implementation?



Environmental Justice : Across Disciplinary & Jurisdictional Boundaries

- **Disciplinary 'boundaries'** – Is 'environmental justice' part of environmental law? Human rights law? Public law? Tort law? Criminal law?
- Does it matter? What if we call it 'ecological' justice? Is this different from 'environmental' justice?
- **Jurisdictional 'boundaries'** – International, regional/European, & national/UK Environmental Justice?

Definitional, Constituency, & Representational Issues in Environmental Justice

- What exactly is it about the 'environment' that environmental law seeks to protect.
- Simply put: Is it the human aspects of the 'environment'? Or the natural aspects of the 'environment'? Or both?
- Definition(s) of 'pollution': mainly oriented towards risks to humans, rather than wildlife...

Definitional, Constituency, & Representational Issues in Environmental Justice

- For example, detailed noise 'pollution' standards geared towards human tolerance levels, ...

but so far no marine acoustic pollution standards established for submarine sonar, even though there is mounting evidence of links between underwater sonar use and cetacean (whales & dolphins) deaths from beach strandings.

Objective/Aim of Environmental Law/Justice

- Expanding the constituencies protected by environmental law to explicitly include the wildlife constituency in conjunction/ balance with the human constituency, which is already legally protected from environmental threats/risks.

Evolution, Acceptance & Application of Principles of Environmental Law & Justice

1992 Rio Declaration on Environment & Development

Integration of Environmental Considerations into Socio-Economic Development (Pr 4)

Precautionary Principle/Approach (Pr 15)

Polluter-pays Principle (Pr 16)

Environmental Impact Assessment (EIA)(Pr17)

Notification, Consultation, Participation, Access to Justice on Environmental Matters (Pr 10)

But, are these principles capable of protecting 'natural' as well as 'human' environmental constituencies?

From Environmental *Principles* to Environmental *Rights*?

- Given the definitional and representational problems noted above in trying to ensure legal protection for the 'natural' environment, the development of environmental 'rights' has also been mooted. Examples:
- **Art. 8 ECHR Jurisprudence:** Right to Privacy & Family life now includes right not to be subject to serious environmental interferences – does not include protection of nature conservation areas (*Kyrtatos v Greece*);

From Environmental *Principles* to Environmental *Rights*?

- **1991 Espoo Convention on Transboundary EIA & 1998 Aarhus Convention on Info, Consultatn & Access to Justice on Env Matters:** Both allow Non-Governmental Organizations (NGOs) to act on behalf of wider (natural) environmental interests;
- **Voluntary Guidelines on Biodiversity-Inclusive Environmental Impact Assessment,** adopted at the Eighth Conference of Parties (COP) to the 1992 Biodiversity Convention in Curitiba, Brazil in 2006: Innovative application of the EIA principle to account explicitly for biodiversity concerns.

Expanding/Widening/Broadening the Concept of 'Environmental' Justice?

- **Aarhus Convention, 1998, Article 2, Definitions:**
- 3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on, *inter alia*,
- (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- 5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection...

(But) Continuing Anthropocentricity of 'Environmental Justice' Rights?

- **1998 Aarhus Convention, Article 1, Objective:**

In order to contribute to the protection of the ***right of every person of present and future generations to live in an environment adequate to his or her health and well-being***, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.
(my ***emphasis/italics***)

Two Aspects of 'Core' Public Law of Significance to Environmental Sustainability

- Access to Environmental Justice (under Rio, Aarhus, EU & UK Law)

See: Case C-530/11, *EU Comm v UK*, 13 February, 2014

- Standing for Environmental NGOs in Judicial Review applications

**Case C-530/11, *European Comm v UK*,
13 February, 2014**

Para.55: ..., it is not apparent ... that (UK) national courts are obliged by a rule of law to ensure that the proceedings are not prohibitively expensive for the claimant, which alone would permit the conclusion that Directive 2003/35 has been transposed correctly.

Conclusions

- This lecture/presentation has highlighted the possibility of the concept(s) of justice being extended to the non-human sphere, through the notion of 'environmental justice'.
- What should be noted however is that while **procedural** avenues for achieving environmental justice have been established, **substantive** environmental justice for humans & wildlife may (still) prove elusive.