

WHY WE DID THIS, WHAT'S INCLUDED, AND WHAT WE MISSED

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I INTRODUCTION

It is customary in an introduction for guest editors to explain the theme of the special issue and introduce the authors. While we intend to do both of these things, we also want to explain why we chose to undertake this project and address and acknowledge some omissions. We begin, however, with our acknowledgements and thanks.

We finalised much of this special issue while working on the lands of the people of the Yugembeh language group, also known as the Gold Coast of Australia. To that end, we acknowledge and pay our respects to the traditional custodians of these lands and to elders past and present.

We sincerely thank Rebecca Annian - Welsh, Rick Bigwood, and Iain Field for agreeing to our proposal for a special issue of the *University of Queensland Law Journal* (UQLJ). It has been a pleasure to work with the UQLJ team on this project.

We are, of course, very grateful to our contributing authors: Narelle Bedford, Wendy Bonython, Jonathan Crowe, Nicole Graham, Tony McAvoy, Lindsey Stevenson - Graf, Monica Taylor, and Margaret A Young. We also thank Ben Batros of Strategy for Humanity, for sharing his expertise and writing the Foreword. It was a delight to work with you all.

Many thanks are owed to our research assistants, Jane Andrews, Samira Aziz, and Alana Bonenfant, all of whom are students (or former students) at Bond University, and to the UQJ student editors who assisted in bringing this special issue to publication.

Finally, thank you to the scholars and practitioners from all over the world who participated in the 2021 Bond University Conference on 'Climate Change, the Law and Legal Education', and whose ideas and insights inspired this special issue.

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II WHY WE DID THIS

The planet is warming, and this simple fact will inevitably impact all lives and all societies. It will trigger both catastrophic events and changes to our everyday routines, both small and large. It will provoke a range of legal actions including further international conventions, domestic legislative reforms, regulatory enforcement actions, and climate litigation. One way or another, it will transform law and regulation.

In August 2021, the Intergovernmental Panel on Climate Change released the report *Climate Change 2021: The Physical Science Basis*.¹ The report confirms that ‘increases in well-mixed greenhouse gas (GHG) concentrations since around 1750 are unequivocally caused by human activities’² and that ‘each of the last four decades has been successively warmer than any decade that preceded it since 1850’.³ The report notes:

Human influence has likely increased the chance of compound extreme events since the 1950s. This includes increases in the frequency of concurrent heatwaves and droughts on the global scale... fire weather in some regions of all inhabited continents ... and compound flooding in some locations.⁴

In short, the report revealed that global temperatures could push to 1.5 degrees celcius above pre-industrial levels within a decade.⁵ The United Nations has described the global climate forecast as a ‘code red for humanity’.⁶

What difference can a special issue of a law journal make? In and of itself, likely very little. However, universities have a social and moral responsibility to engage with the challenges facing humanity and equip graduates with the skills to address those challenges. This special issue, in some small way, advances that goal. As legal scholars, we are duty bound to consider the implications of the

¹ IPCC, *Climate Change 2021: The Physical Science Basis* (Report, 7 August 2021) <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf>.

The IPCC was established in 1998 by the World Meteorological Organisation and the United Nations Environmental Program, and was endorsed by the General Assembly of the United Nations. The purpose of the IPCC is to provide governments with scientific information that they can use to develop climate policies. At the time of writing, the IPCC had 195 member states. For further information on the IPCC, see, eg, ‘About the IPCC’, *IPCC* (Web Page) <<https://www.ipcc.ch/about/>>.

² *Ibid*, 5.

³ *Ibid*.

⁴ *Ibid*, 11.

⁵ Michael Slezak and Penny Timms, “‘Climate Change Report From IPCC a ‘Code Red For Humanity’”, United Nations chief warns’, *ABC* (online, 9 August 2021) <<https://www.abc.net.au/news/2021-08-09/coal-climate-change-global-warming-ipcc-report-released/100355952>> ; Michael Slezak and Penny Timms, ‘The IPCC has Released the Most Comprehensive Climate Change Report Ever. Here’s What You Need to Know’, *ABC* (online, 10 August 2021) <<https://www.abc.net.au/news/2021-08-10/coal-climate-change-covered-in-ipcc-reports-keyquestions/100355954>>.

⁶ *Ibid*.

climate emergency on our respective areas of expertise and what this means for the way we deliver legal education. This special issue of the UQLJ seeks to engage with that duty and to encourage legal scholars and law schools to confront the climate emergency and embed climate law into the law curriculum. In turn, as our graduates step out into the world, this will contribute to enhanced community education and legal literacy: that is our action item.

This special issue also builds on momentum from the ‘Climate Law’ degree program built at Bond University,⁷ which the Executive Dean of Law, Professor Nick James, officially launched in January 2021.⁸

III CONTENT OF THE SPECIAL ISSUE

We are delighted that Narelle Bedford, Wendy Bonython, Jonathan Crowe, Nicole Graham, Tony McAvoy, Lindsey Stevenson – Graf, Monica Taylor, and Margaret A Young chose to publish their excellent articles with us. We are pleased to open this special issue with our own article, ‘The Obligation of Law Schools to Teach Climate Change Law’. We thank Professor Jonathan Crowe for his time in independently arranging peer review of our paper. In this article, we make our case that law schools have an obligation to teach climate change law as well as considering the consequences for climate change and the law. James is a legal education scholar with extensive experience in curriculum design and Ireland – Piper is an experienced public law scholar and former legal practitioner. We drafted this article while building a climate law degree, which James led and launched in 2021. In many ways, the curriculum design and the writing of our article each informed and developed the other. Our article is also intended to represent a starting point to set the scene for the articles from our contributing authors.

Margaret A Young has taught Climate Change Law as an elective for over 10 years at the Melbourne Law School. In her article, ‘Climate Change and Law: A Global Challenge for Legal Education’, Young argues that lawyers dealing with climate change require proficiency across different areas of law, not just the law that seeks to limit greenhouse gas emissions and not just international law, either. Climate change is a global problem but solutions must not be limited to international law. Human rights lawyers are climate lawyers. Trade lawyers are climate lawyers. Environmental lawyers are climate lawyers. Tort lawyers are

⁷ ‘Specialise in Climate Law’, *Bond University* (Web Page) <https://bond.edu.au/LLB-climate-law>.

⁸ ‘Bond Launches First World-Class Climate Law Degree’, *Bond University* (Media Release, 11 December 2020) <<https://bond.edu.au/news/66951/bond-launches-world-first-climate-law-degree>>; Jordan Baker, “‘We Need People Who are Trained’”: University Offers First Climate Change Law Degree’ *Sydney Morning Herald* (online, 10 December 2020) <<https://www.smh.com.au/national/we-need-people-who-are-trained-university-offers-first-climate-change-law-degree-20201210-p56mco.html>>.

climate lawyers. Corporate lawyers are climate lawyers. Government lawyers are climate lawyers. Local government lawyers are climate lawyers. Law of the sea specialists are climate lawyers. Many different actors, at many different levels, have a role to play in addressing climate change. Young explores theories by which to inform this reality.

In their article, 'First Nations People, Climate Change and Human Rights in a Legal Education', Narelle Bedford, Tony McAvoy, and Lindsey Stevenson-Graf present a First Nations perspective on climate change, informed by human rights law and legal education. They argue that, for any response to climate change to be effective, it must be grounded in the perspectives, knowledge, and rights of First Nations peoples. The utility of human rights instruments to protect First Nation interests during the current period of climate change is explored at the international and domestic level. They conclude that structural change must begin with both the Indigenisation of legal education and the embedding of legal responses to climate change into the law curriculum, and that in doing so, a holistic approach is necessary.

The issue moves on to an article by Nicole Graham, titled 'Teaching Private Law in a Climate Crisis'. Graham's article is premised on the notion that the physical manifestation of climate change challenges the logic and the operation of private law. Specifically, she suggests the way private law is practised will necessarily change as disputes escalate over, for example, resource insecurity, the meaning of damage and harm, where land, riparian and littoral boundaries have migrated, and what this all means for title and risk, foreseeability, reasonableness and vulnerability. In her view, this presents opportunities for law reform. In turn, argues Graham, effective law reform depends on a differently-educated generation of legal thinkers and practitioners. Legal education is, therefore, central to overcoming the barriers to effective climate change adaptation.

The intersection between tort law and climate change is considered by Wendy Bonython, in her article 'Tort Law and Climate Change'. For Bonython, the primary role of tort law in climate change remains unclear but not hopeless, and certainly worthy of examination. Bonython starts her piece by acknowledging that few claims brought in tort have been successful. Notwithstanding that, Bonython engages with the question of 'what tort law can do for climate change litigation in Australia, and what climate change can do for tort law'. She ultimately argues that climate litigation in tort, even where immediately unsuccessful, can result in enough sustained pressure so as to result in change — 'such is the course of incrementalism'. Bonython makes the case that teaching students about climate change litigation — even cases that ultimately may not survive the appellate process — provides opportunities to explore relationships between law and justice outside of traditional places where that might take pace (such as in public law), and therefore, even if just for this reason, is a worthy pursuit.

In 'Climate Crisis, Legal Education and Law Student Well-Being: Pedagogical Strategies for Action', Monica Taylor examines the impact of the climate crisis on the mental health of law students. Taylor reviews the evidence on youth mental health regarding the climate crisis and applies it to what is already known about law student well-being. Drawing on theories of learning design, she then considers a range of pedagogical strategies that law schools can use to engage students who are committed to action on climate change through law. The Climate Justice Initiative at the TC Beirne School of Law is presented as one example of what is possible. Taylor emphasises the significance of a partnership approach to student engagement and argues that this may yield benefits, especially in the context of climate-change-related legal work. She concludes that, despite the negative psychological impact of the climate crisis on law students, there are practical activities that law schools can and should initiate to support student well-being.

We conclude the special issue with an elegant and rational call to action by Jonathan Crowe. In his article, "It Makes No Difference What We Do": Climate Change and the Ethics of Collective Action', Crowe observes that opposition to collective action on climate change takes at least two forms. Some people deny that climate change is occurring or that it is due to human activity. Others maintain that, even if climate change is occurring, we have no duty to do anything about it because our efforts would be futile. Crowe rebuts the latter line of argument, persuasively arguing that everyone has a duty to do their share for the global common good, which includes doing one's part to combat climate change; the idea that taking action against climate change is futile should be treated with caution, because sometimes actions may seem to make no difference to climate change, when really they do; and in any event, the duty to do one's share to combat climate change still applies, even if it is ultimately futile, because not doing one's share for the common good harms oneself.

IV WHAT WE MISSED

We were unable to include in this special issue an article addressing animal law or food law. While neither form part of the core law curriculum, and we do not necessarily say they should, changes in agricultural practice and legal reform of the way humans use animals in food systems is essential to responding to the climate emergency.

There is a substantial body of ‘animal law’ academic literature critical of contemporary animal welfare laws.⁹ There is also abundant evidence that many of our current farming and animal husbandry practices are contributing to climate change.¹⁰ The clearing of forests to create space to grow crops and rear animals removes vital carbon sinks and releases gases stored in the soil and vegetation.¹¹ Factory farming requires large amounts of energy in order to function.¹² Livestock farming produces 37 per cent and 65 per cent of our global methane and nitrous oxide emissions respectively, and these gases are much more potent than carbon dioxide.¹³

Fundamental reforms to the ways in which the law regulates our relationships with animals — including efforts to formally recognise the sentience of non-human animals — are predominantly driven by concerns that our current laws are generally ineffective in protecting large numbers of farmed animals from suffering, and that the law should recognise certain fundamental rights of non-human animals.¹⁴ The recognition of animal sentience and animal rights will eventually and inevitably curtail the ability to engage in large-scale factory farming,¹⁵ which will in turn contribute to our efforts to mitigate climate change and its effects.¹⁶ At the same time, non-legal initiatives, such as raising consumer awareness of the realities of factory farming, and encouraging people to transition to plant-based diets, are likely to have similar consequences for climate change.¹⁷ Law schools have a role to play in educating law students about these issues.

⁹ See, eg, Philip Jamieson, ‘Duty and the Beast: The Movement in Reform of Animal Welfare Law’ (1991) 16(2) *University of Queensland Law Journal* 238; Steven White, ‘Legislating for Animal Welfare: Making the Interests of Animals Count’ (2003) 28(6) *Alternative Law Journal* 277; Jed Goodfellow, ‘Regulatory Capture and the Welfare of Farm Animals in Australia’ in Deborah Cao and Steven White (eds), *Animal Law and Welfare - International Perspectives* (2016, Springer).

¹⁰ Trevor J Smith, ‘Corn, Cows, and Climate Change: How Federal Agricultural Subsidies Enable Factory Farming and Exacerbate US Greenhouse Gas Emissions’ (2019) 9(1) *Washington Journal of Environmental Law & Policy* 26.

¹¹ ‘Ending Factory Farming: Environmental Damage’, *Compassion in World Farming* (Web Page, 2021) <<https://www.ciwf.org.uk/factory-farming/environmental-damage/>>.

¹² David Pimentel, *Impacts of Organic Farming on the Efficiency of Energy Use in Agriculture* (The Organic Centre, 2006).

¹³ Henning Steinfeld, Pierre J Gerber and Tom Wassenaar, *Livestock’s Long Shadow: Environmental Issues and Options* (United Nations Food and Agriculture Organization, 2006).

¹⁴ Tom Regan, *The Case for Animal Rights* (University of California Press, 1983); Tom Regan, *Defending Animal Rights* (University of Illinois Press, 2001); Cass R Sunstein and Martha C Nussbaum, *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004).

¹⁵ Jacky Turner and Joyce D’Silva, *Animals, Ethics and Trade: The Challenge of Animal Sentience* (Routledge, 2006).

¹⁶ Thomas Potthast and Simon Meisch (eds), *Climate Change and Sustainable Development; Ethical Perspectives on Land Use and Food Production* (Wageningen Academic Publishers, 2012).

¹⁷ Teea Kortetmäki and Markku Oksanen, ‘Is There a Convincing Case for Climate Veganism?’ (2020) 38 *Agriculture and Human Values* 729.

It would have been interesting and appropriate to examine these issues in more depth in this special issue. Fortunately, the conversation has only just begun.

A reader might also have expected an article focusing specifically on energy law and natural resource regulation. However, these issues are indirectly touched upon throughout the papers in this special issue, and there already exists a volume of literature on this topic. For this reason, we did not include a specific article on energy law, but refer our readers to existing scholarship on the topic.

IV CONCLUSION

Law is not and cannot be separated from the society it regulates. Correspondingly, legal education cannot ignore one of the most significant challenges to global human society. Climate change, the law and legal education are intimately and inextricably interconnected. We look forward to continuing the important conversations initiated in this special issue of the UQLJ.