

RESEARCH ARTICLE

# ‘Climate Change isn’t Optional’: Climate Change in the Core Law Curriculum

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## Abstract

This paper makes a case for the integration of compulsory climate change topics across the core law curriculum. It argues that the most persuasive rationale for this is based in climate legal obligations and institutions, and a clear-eyed perception of climate risk, rather than the sustainability agenda. To this end, the paper outlines efforts taken to ‘mainstream’ climate change and environmental law education in a core course of the LLB degree – land law. An empirical study sought to evaluate the students’ engagement with these materials, and their broader views concerning climate change and their legal education. The paper critically evaluates the course and the results of the empirical study. It concludes that students want to be, and should be, taught climate law and the climate context of law as part of their prescribed learning throughout the core curriculum, rather than as optional or elective content.

**Keywords:** legal education; climate change law; land law; environmental law

## Introduction

Law students graduating in the coming decades will conduct their entire future practices in a web of climate law. Practitioners and academics have called for climate consciousness in the practice of law,<sup>1</sup> as a way of responding to the multiple ways in which climate change will impact on society, and consequently, legal practice. There are also national climate change acts and institutions governing climate change law and policy, of which all lawyers need to be aware. Despite this, most UK law schools do not include any climate law or consideration of climate-conscious reasoning as part of their core degree. Climate change is still perceived as a niche topic – studied by those interested in ‘green’ issues and neglected by everyone else – rather than the socially pervasive issue that it is. Regrettably, this

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<sup>1</sup>K Bouwer ‘Climate consciousness in daily legal practice’ *Journal of Environmental Law Blog*, 22 May 2015, <https://blog.oup.com/authors/kim-bouwer/> accessed 13 October 2022; B Preston ‘Climate conscious lawyering: implementing a climate conscious approach in daily legal practice’ (2021) 95 *Australian Law Journal* 51.

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means that students are leaving Law School without a proper understanding of the legal framework or social context within which they will practise.<sup>2</sup>

In this paper, we make the case that incorporating essential climate change education in the law degree is no longer simply teaching environmentalism or sustainability. Legal educators now face the responsibility of ensuring that students graduating with a law degree leave university with an adequate understanding of the social context in which they will practise.<sup>3</sup> Students need to learn to understand climate constitutional legislation and the net zero target, climate risk, and how to interpret legal rules in the context of climate change.<sup>4</sup> Accordingly, this paper argues that climate change education should be compulsory and assessable content across the core law curriculum.

This paper discusses an experiment in integrating climate change and environmental law in the core law curriculum at a Russell Group University – the University of Exeter – in the academic year 2020–21. The experiment proceeded in two stages. First, there was the design and delivery of the module which included climate change education in land law, a core course taught to all second-year LLB students. This was conducted by the first author (KB), who was then a lecturer at the Law School. For this phase of the project, she relied on the pedagogical literature pertaining to research-led teaching<sup>5</sup> and sustainability,<sup>6</sup> as well as doctrinal and theoretical work in land and planning law.<sup>7</sup> The project as a whole was influenced by her scholarly interests in domestic climate law and litigation. Secondly, student researchers conducted a peer-to-peer empirical study where they surveyed the second-year students, and discussed their response to the module in focus groups. The second to fourth authors (EJ, OL and AR) were third-year students, and are now graduates of the Law School, and conducted this part of the study. The project findings are discussed in more depth below, however, the core takeaway is that law students want their climate change education to be compulsory and cross-programmatic, incorporated naturally with the content of each module. This is consistent with, but goes beyond, the existing literature on climate change and legal education.

The paper is structured as follows. First, we make the case for ensuring that law students understand climate change and climate law. Secondly, we provide an overview of the relevant pedagogical literature, to sharpen the distinction between sustainability or environmentalism and ‘climate consciousness’ in education. Thirdly, we provide a critical overview of the land law module that forms the basis for this study, and explain how and why this came about. Fourthly, we provide an account and analysis of the empirical work in the context of student pressures and priorities. Finally, we conclude, with recommendations for next steps.

## 1. Climate consciousness and the role of lawyers in climate change

Climate change is a scientific and social phenomenon, caused (at least in part) by a high concentration of greenhouse gases in the atmosphere; this concentration has caused aggregate global temperatures to increase in a way that is already proving dangerous.<sup>8</sup> The effects of climate change are likely to be

<sup>2</sup>K Bouwer ‘Net zero rule of law: climate consciousness and legal education’ UCL Climate Change and the Rule of Law Blog, 10 March 2022, <https://www.ucl.ac.uk/law-environment/blog-climate-change-and-rule-law/net-zero-rule-law-climate-consciousness-and-legal-education> accessed 13 October 2022.

<sup>3</sup>We understand that many law students do not go on to practise law, and that many practising lawyers do not have an undergraduate law degree; for simplicity we nevertheless refer to law students as future lawyers. Of course, law students who go into other professions – as the second and third authors of this paper have done – still benefit from climate change education in their future careers.

<sup>4</sup>Bouwer, above n 2.

<sup>5</sup>In particular D Fung *A Connected Curriculum for Higher Education* (London: UCL Press, 2017).

<sup>6</sup>See discussion in Sections 1 and 2.

<sup>7</sup>See discussion and sources in Sections 1 and 3.

<sup>8</sup>IPCC ‘Summary for Policymakers’ in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2021) pp 3–32.

socially pervasive and yet societies have struggled to find common understanding about the problem, or solutions to the complex confluence of factors that cause it.<sup>9</sup> The global response to climate change is certainly sustained through multilateral negotiations.<sup>10</sup> However, the implementation of the international regime will depend on states introducing law or policy at domestic level. The appreciation of this is progressively reflected in the law and policy literature about multilevel climate governance.<sup>11</sup>

This is reflected in the introduction of national climate change legislation regulating how individual states will make their contributions to the broader global challenge.<sup>12</sup> In the UK the Climate Change Act 2008 can be said to have (at least political) constitutional status, and is entrenched in the machinery of UK government.<sup>13</sup> As McHarg notes, the Act was ‘clearly intended to have a systemic and transformative effect across the central government machine... and social organization’.<sup>14</sup> This is even more the case with the introduction of the net zero target in 2019, which will require cross-sectoral changes in British society.<sup>15</sup> Recognising these commitments as constitutional is important because of the seriousness with which the commitments should be treated by relevant actors, as well as the social or political institutions which respond to them.<sup>16</sup> This also entails that the Act contains basic norms, the protection of which is fundamental to the rule of law, as well as affecting the interpretation of other legislation.<sup>17</sup> Understanding this means understanding that the changes wrought on legal and social structures both by climate change and climate change law are significant. The need to adhere to carbon budgets, and the drive for the net zero target, will implicate all sectors of the economy for the foreseeable future.

However, to understand the implications of climate change for legal study and practice, it is not enough to just know statutory rules and targets. There is also a need to consider how law will influence, and in turn be shaped by, society’s response to climate change:

Effective lawyering [in the climate crisis] requires understanding threats from changing environmental conditions and laws, navigating complex regulatory mechanisms, developing innovative transactions ... guiding corporations in considering and disclosing climate-related measures and risks, planning land uses for resiliency and lower emissions, and other activities demanding knowledge and skills absent from most law courses.<sup>18</sup>

This means that law students need to understand the variety of ways in which climate change commitments impact on the economy and society, in order to be equipped ‘to advise clients on the full range of legal questions and disputes that climate change will raise’.<sup>19</sup>

<sup>9</sup>M Hulme *Why We Disagree About Climate Change: Understanding Controversy, Inaction and Opportunity* (Cambridge: Cambridge University Press, Reprint edition, 2009).

<sup>10</sup>For example MA Maslin ‘The road from Rio to Glasgow: a short history of the climate change negotiations’ (2020) 136 *Scottish Geographical Journal* 5.

<sup>11</sup>MM Betsill and H Bulkeley ‘Cities and the multilevel governance of global climate change’ (2006) 12 *Global Governance* 141; J Peel et al ‘Climate change law in an era of multi-level governance’ (2012) 1 *Transnational Environmental Law* 245; J Scott ‘The multi-level governance of climate change’ in P Craig and G De Burca (eds) *The Evolution of EU Law* (Oxford: Oxford University Press, 2012).

<sup>12</sup>TL Muinzer ‘What are national “climate change acts”?’ (2021) 39 *Journal of Energy & Natural Resources Law* 419; E Scotford and S Minas ‘Probing the hidden depths of climate law: analysing national climate change legislation’ (2019) 28 *Review of European, Comparative & International Environmental Law* 67.

<sup>13</sup>A McHarg ‘Climate change constitutionalism? Lessons from the United Kingdom’ (2011) 2 *Climate Law* 469, at 476. Muinzer argues further that it is desirable that the Act be considered a constitutional statute: see TL Muinzer ‘Is the Climate Change Act 2008 a constitutional statute?’ (2018) 24 *European Public Law* 733.

<sup>14</sup>McHarg, above n 13, at 476.

<sup>15</sup>Committee on Climate Change *The Sixth Carbon Budget: The UK’s Path to Net Zero* (December 2020) chs 2–3.

<sup>16</sup>McHarg, above n 13, at 477; Muinzer, above n 13, at 752.

<sup>17</sup>Bouwer, above n 2.

<sup>18</sup>WG Lavey ‘Toolkit for integrating climate change into ten high-enrollment law school courses’ (2019) 49 *Environmental Law* 513 at 515–516.

<sup>19</sup>B Batros ‘Foreword to UQLJ special edition on climate change, the law and legal education’ (2021) 40 *University of Queensland Law Journal* iii.

It is very easy to confirm that ‘we are all climate lawyers now’,<sup>20</sup> and as a starting point this is probably correct. But the problem is that, without more, this does not mean anything. Making sense of this new order requires ‘climate consciousness’ because law or legal processes can increasingly be understood to take place ‘in the context of’ climate change.<sup>21</sup> Arguably, without more, this also does not mean anything. However, it does raise questions as to how climate change issues will or can be dealt with by the courts or practitioners in the more routine, mundane, ‘bread-and-butter’ work that practitioners handle on a daily basis. Ultimately, the answer to these questions lies in how law can or might be developed in response to the rapid social change that is coming. As Preston explains, a ‘climate conscious’ practice would include giving holistic advice that includes climate factors where relevant; secondly, identifying the correct legal rules, where he argues that the scope for interpretation in the identification and application of legal rules creates opportunities for climate consciousness by lawyers and judges in selecting the most ‘climate friendly’ principles.<sup>22</sup> It is only at the end of his paper that Preston recognises the need to teach in such a way as to make these approaches possible, both as part of legal education in law schools and as part of the continuing professional development required of qualified practitioners.<sup>23</sup>

Practitioners’ organisations have offered suggestions as to what might be demanded of lawyers in the climate context.<sup>24</sup> The American Bar Association (ABA) has for some time called for improved climate and sustainability education for lawyers, recognising that without this, lawyers cannot provide the service that clients need.<sup>25</sup> The International Bar Association (IBA) has declared a climate crisis, and recognises the need for climate consciousness to be integrated in practice. The IBA also sees the need for climate change to be taught to lawyers, recommending ongoing engagement between the profession and law schools, and establishing a framework curriculum to provide continuing professional education to its members.<sup>26</sup> Notably, neither the Bar Council nor the Law Society have historically seen education on sustainable development as important or needed for future lawyers, with legal knowledge being based on foundation courses and some transferrable skills.<sup>27</sup> This is changing. For instance, the Climate Change Resolution of the Law Society of England and Wales (which represents solicitors) commits to action on climate change,<sup>28</sup> acknowledging that the climate crisis will fundamentally alter the profession,<sup>29</sup> and resolving to support solicitors with information and guidance for a climate-conscious practice.<sup>30</sup> It undertakes to provide educational materials to its members and to ‘influence the regime governing legal training and education on issues pertaining to climate change’,<sup>31</sup> as well as urging members to engage in continuous professional education ‘on matters pertaining to climate change, in recognition of the pervasive impact of climate change on society and legal practice’.<sup>32</sup>

<sup>20</sup>K Sloan “‘You are all climate lawyers now,’ John Kerry tells ABA” *Reuters Online* 6 August 2021, <https://www.reuters.com/legal/litigation/you-are-all-climate-lawyers-now-john-kerry-tells-aba-2021-08-05/> accessed 13 October 2022.

<sup>21</sup>Bouwer, above n 1; The Law Society of England and Wales ‘Climate change resolution’ (2021), <https://www.lawsociety.org.uk/topics/climate-change/creating-a-climate-conscious-approach-to-legal-practice> accessed 13 October 2022.

<sup>22</sup>Preston, above n 1.

<sup>23</sup>*ibid.*

<sup>24</sup>IBA ‘International Bar Association Climate Crisis Statement’ (2020), <https://www.ibanet.org/LPRU/Climate-Crisis> accessed 24 October 2022. The Law Society of England and Wales ‘Climate change risks – the future of law as we know it?’ (2021), <https://www.lawsociety.org.uk/topics/research/climate-change-risks-the-future-of-law-as-we-know-it> accessed 13 October 2022.

<sup>25</sup>Discussed in Lavey, above n 18, at 517–519, 521.

<sup>26</sup>IBA, above n 24.

<sup>27</sup>CT Reid ‘Education for sustainable development and the professional curriculum’ (2016) 50 *The Law Teacher* 300.

<sup>28</sup>The Law Society of England and Wales, above n 21.

<sup>29</sup>*Ibid.*

<sup>30</sup>*Ibid.*, paras 2 and 3.

<sup>31</sup>*Ibid.*, para 2(e).

<sup>32</sup>*Ibid.*, para 3(a).

Thus, the role that lawyers will (and in some cases should) play in the climate crisis is acknowledged, as is the expectation or requirement that lawyers will enter their working lives equipped with some knowledge and understanding of the climate context. This raises the question of how climate law and climate consciousness is taught in Law Schools. There has been, since this experiment was conducted, a special issue dedicated to this topic which is referenced below. Apart from that, there has been little discussion of what is required in normative terms and – perhaps more importantly – how actually to do it.

## 2. Unravelling climate and sustainability discourses in higher education

While below we argue that a case can be made for climate change education that is ideologically neutral, the pedagogical experiment discussed in this paper was not. Accordingly, it is necessary to discuss the ethos behind the module and to show the strategic shift in our thinking from ‘green’ approaches, to climate change being a natural part of legal education. Sustainability is ‘a higher-order social goal, akin to democracy, justice, the rule of law – a long term task of comprehension and institutional change’.<sup>33</sup> Studies of sustainable development are normally associated with environmentalism, and the balance of economic, social and environmental priorities in a good society;<sup>34</sup> but the breadth and significance of the concept remains unappreciated outside of environmental disciplines.<sup>35</sup> For instance, Holder illustrates that sustainability education practice ranges across a scale of environmental education theories, which vary in the ‘extent to which they radically challenge existing styles and structures of university education, including legal education’.<sup>36</sup> True sustainability education demands new practices and transgressive thinking that challenges the comfortable categories of legal doctrine, rather than simply the transmission of information or new content;<sup>37</sup> sustainability education should develop environmental literacy and the ability to think ‘critically and systemically, rather than atomistically’.<sup>38</sup> Taking sustainability seriously in higher education is, in general, associated with social change agendas and *environmentalism*, and accordingly even less intensive approaches may be met with resistance from other faculties.<sup>39</sup>

The grey literature suggests that students want their education to better reflect the interconnectivity between the environment, society and the economy. The 2019 NSS report identified that 91% of students want more climate change and sustainability education.<sup>40</sup> They want hands-on learning in sustainability and to be supported in the development of the skills and competencies they will need in the working world;<sup>41</sup> critically, students also want their current curricula to embed sustainability and climate change issues into the content of the course.<sup>42</sup> Some universities have at least sought to lay the foundations for this integrated approach. For instance, a recent White Paper prepared for the University of Exeter requires the building of the ‘Exeter Student Sustainability Portfolio’, which will educate every student in all programmes on the topic.<sup>43</sup> Interestingly, despite having declared a climate emergency, the University’s

<sup>33</sup>S Dovers ‘Can environmental history engage with policy’ ‘Forum: can environmental history save the world?’ (2008) 5 *History Australia* 3.3, cited in N Graham ‘This is not a thing: land, sustainability and legal education’ (2014) 26 *Journal of Environmental Law* 395 at 415.

<sup>34</sup>K Bosselmann ‘From reductionist environmental law to sustainability law’ in P Burdon (ed) *Exploring Wild Law* (Wakefield Press, 2012).

<sup>35</sup>Ibid.

<sup>36</sup>J Holder ‘Identifying points of contact and engagement between legal and environmental education’ (2013) 40 *Journal of Law and Society* 541 at 542.

<sup>37</sup>Graham, above n 33.

<sup>38</sup>ibid, at 417.

<sup>39</sup>R Amos and P Carvalho ‘Locating a course on environmental justice in theories of environmental education’ (2020) 14 *Journal of Education for Sustainable Development* 140 at 148.

<sup>40</sup>NSS ‘Sustainability skills 2019–20’ (2019), <https://www.thestudentsunion.co.uk/union/sustainability/sustainability-survey/> accessed 24 October 2022 AdvanceHE and QAA ‘Education for sustainable development’ (2021), <https://www.qaa.ac.uk/quality-code/education-for-sustainable-development> accessed 13 October 2022. There is no data purely for law students.

<sup>41</sup>Consistently with Graham, above n 33.

<sup>42</sup>NSS, above n 40.

<sup>43</sup>Environment and Climate Emergency Working Group ‘White Paper’ (University of Exeter 2019) p 16.

role as an educator did not feature in the headline goals of the White Paper; it does, however, recognise that more needs to be done to incorporate climate change in the educational offer of the University.<sup>44</sup>

In general, the pedagogical literature does reflect a growing appreciation that teaching on environmental and sustainability issues needs to be incorporated in the core law curriculum, not siloed in environmental law courses.<sup>45</sup> When it comes to British law schools, this inevitably includes questions about the pressures of a dense qualifying curriculum, as law courses are already content-heavy.<sup>46</sup> Educators struggle with the tension between overloading students with compulsory taught materials that would not support the development of necessary legal skills, and introducing sustainable development literacy as optional in the degree, thereby creating the impression it is less important.<sup>47</sup> Ong, in particular, questions the possibilities and challenges of incorporating sustainability into the core curriculum, and suggests a cross-programme approach, with two to three contact hours engaging with environmental topics per core module.<sup>48</sup>

A relatively small number of students choose environmental law electives where available,<sup>49</sup> and these might include a lecture or seminar on climate change with an overview of the international regime, sometimes just focusing on emissions abatement, and taught with air pollution.<sup>50</sup> Some universities offer elective undergraduate courses on climate change law. This would cater to students who 'want to use the law to fight climate change', but not necessarily help students to understand climate conscious reasoning, or how to work with climate change issues in the context of a conventional practice.<sup>51</sup> For the second category of student – which might be all future law graduates – climate change considerations need to be integrated in the law degree. Our argument is not that this is needed to fulfil a sustainability agenda, but rather, that this is needed to ensure that students are being taught the law. To achieve this there must be a recognition that there is a 'bare minimum' for inclusion in the law curriculum, being specifically the climate change institutions and instruments, and an examination of the broader impacts of climate change on the law generally.

This presents at least two significant difficulties. First, there is a sense that teaching climate change is ideologically driven, rather than simply necessary to ensure that students are being taught the law. Secondly, so far very little has been done to conceptualise precisely how to do this. We return to the second point later. As far as 'left/green' ideologies are concerned, a recent special issue certainly takes strides forward in terms of making the case for incorporating climate change in the foundational law curriculum, but the expressed rationale is still mostly based on universities' contribution to the common good,<sup>52</sup> a pro bono ethos,<sup>53</sup> or, as before, ensuring an ecologically sustainable vision of the world.<sup>54</sup> The

<sup>44</sup>Ibid. It is unclear how much this has really influenced the teaching offer. The land law module was returned to a strictly private law module when KB left the University.

<sup>45</sup>Bosselmann, above n 34.

<sup>46</sup>C Willmore 'Editorial' (2016) 50 *The Law Teacher* 273.

<sup>47</sup>Reid, above n 27.

<sup>48</sup>DM Ong 'Prospects for integrating an environmental sustainability perspective within the university law curriculum in England' (2016) 50 *The Law Teacher* 276.

<sup>49</sup>S Vaughan et al 'Of density and decline: state of the nation reflections on the teaching of environmental law in the UK' (Social Science Research Network 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3395220](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3395220), accessed 13 October 2022.

<sup>50</sup>This is the approach taken in the most commonly recommended textbooks on environmental law: E Fisher et al *Environmental Law: Text, Cases, & Materials* (Oxford: Oxford University Press, 2013); S Bell et al *Environmental Law* (Oxford: Oxford University Press, 9<sup>th</sup> edn, 2017). However, this might be insufficient for some, and the conventional structure of environmental law teaching materials has been questioned on their failure adequately to address critical issues or incorporate climate change and sustainable development throughout: see J MacLean 'Curriculum design for the anthropocene: review of Meinhard Doelle & Chris Tollefson, *Environmental Law: Cases and Materials*, Third Edition' (2020) 16 *McGill International Journal of Sustainable Development Law & Policy* 1.

<sup>51</sup>D Ireland-Piper and N James 'The obligation of law schools to teach climate change law' (2021) 40 *University of Queensland Law Journal* 1.

<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

<sup>54</sup>Graham, above n 33.



design and thinking behind the course that is described in the second half of this paper was motivated to some extent by an interest in social justice, the public aspects of property, and questions about the interactions between disciplines. As discussed below, this was ideologically driven and it is accepted that the messaging on climate change in the materials was incoherent – covering some issues, eg climate risk in great detail, but not getting to the ‘bare minimum’ of legislated climate law or providing a baseline on climate science.

As we have said, as the next generation of lawyers will be conducting their entire future practice in a web of climate law, a case can certainly be made that there is an obligation on law schools to ensure students are properly equipped to do this.<sup>55</sup> This *need not* entail a green ideology. It is about teaching students the basics of the (at least political) constitution, the institutional framework that will shape their future practices, and the basis of obligations and fast-changing risk factors that will dominate their professional lives. All students need to know this, and so it needs to be taught as part of the Core Law Curriculum (CLC). Also, the core – along with some high-enrolment subjects<sup>56</sup> – is a good place to incorporate climate change teaching because ‘unsurprisingly, the laws that are most relevant to the environment are also those most relevant to wealth creation through the use and ownership of land and natural resources [including] property, contract, tort and administrative law’.<sup>57</sup>

So, what is the CLC, and how might climate change be integrated into it? Briefly, the core of the qualifying law degree – modules in tort, property, equity/trusts, contract, criminal law, public law and EU law – stems from a centuries’ old understanding that (most of) these topics are foundational to the English common law.<sup>58</sup> A grounding in these essential subjects has always been seen as fundamental to an understanding of the rules of English law including specialised, ‘elective’ subjects, and as the first necessary step into professional practice as a solicitor or barrister. The commitment to teaching them is entrenched. Attempts to move on from this model generally provoke a hostile reaction from the profession and from some academic lawyers.<sup>59</sup> Despite recent, fairly seismic changes in the route to qualification, the expectations in relation to the content of the qualifying law degree (QLD) has not changed that much.<sup>60</sup> There is a greater tolerance for ‘non-law’ subjects,<sup>61</sup> but there is still an expectation that the QLD would include the ‘Foundations of Legal Knowledge’ and training in legal research.<sup>62</sup>

The second question then is *how* to integrate climate change education into the curriculum. Again, the relevant literature makes reference to subject areas, and also topics that could be taught to students. For instance, where a country has climate change legislation, this and the institutions developed to enforce it should probably be taught as part of constitutional law.<sup>63</sup> The decisions handed down in strategic cases brought to challenge aspects of climate change law and policy, could be incorporated into a relevant module – in the UK, administrative law – and taught as part of that.<sup>64</sup> What perhaps needs more vision is the integration of more mundane climate change considerations – ‘the allocation of risk and cost, responsibility and authority, and how the weight of competing interests will be balanced’.<sup>65</sup> Only Lavey, in the US context, maps across the law curriculum and illustrates practically

<sup>55</sup>Bouwer, above n 2; Ireland-Piper and James, above n 51.

<sup>56</sup>Lavey, above n 18.

<sup>57</sup>Graham, above n 33, at 418.

<sup>58</sup>AW Alschule ‘Rediscovering Blackstone’ (1996) 145 *University of Pennsylvania Law Review* 1.

<sup>59</sup>S Vaughan ‘The lies we tell ourselves: problematising the (s)hallow foundations of the core of legal education’ a talk given at the Law School of the University of Sheffield, March 2019. Although see W Twining *Blackstone’s Tower: The English Law School* (London: Sweet & Maxwell, 1994) p 196; P Birks ‘The academic and the practitioner’ (1998) 18 *Legal Studies* 397.

<sup>60</sup>SRA and BSB ‘Joint statement on the academic stage of training’ (2021), <https://www.sra.org.uk/become-solicitor/legal-practice-course-route/qualifying-law-degree-common-professional-examination/academic-stage-joint-statement-bsb-law-society/> accessed 13 October 2022. This has moved on from previous positions, where the core was expected to take up two-thirds of the QLD.

<sup>61</sup>Ibid (2021), pp iv–v.

<sup>62</sup>Ibid, p v and Schedule Two.

<sup>63</sup>Ireland-Piper and James, above n 51.

<sup>64</sup>W Bonython ‘Tort law and climate change’ (2021) 40 *University of Queensland Law Journal* 421.

<sup>65</sup>Batros, above n 19.

how a developing body of jurisprudence can be used to develop climate consciousness in law students.<sup>66</sup> There is no other analysis that illustrates how to do this, and (as far as we are aware) no British law school that does this. But it is arguably in these aspects where students develop climate conscious reasoning, which is the most difficult from a course design perspective, and also the most needed in terms of education.

Finally, we should note two difficulties. Taking this kind of light-touch, legalistic approach can teach the constitutional framework and help lawyers in training to understand that climate change will affect their practice on a day-to-day basis. More than this is simply not achievable in what would be 21 hours (three hours across seven subjects) of teaching.<sup>67</sup> However, many of the subtle, normative aspects of climate change and environmental problems might be pushed out of the frame. This means, that irrespective of how successful law schools might be in integrating climate change in the CLC, students should still be encouraged to learn environmental and climate law, to encourage ‘critical engagement with questions of adequate ambition, justice, and society, which a “mainstreamed” approach cannot reach’.<sup>68</sup> Also, climate science and law change fast, and whatever students do learn in law school may be out of date by the time they are in practice. This confirms, as Preston says, that climate education would need to be included as part of the continuing professional development of lawyers.<sup>69</sup>

Having said that, this paper now turns to KB’s attempt to incorporate climate change and sustainability considerations into a module in the CLC, and then to the empirical assessment of this.

### 3. The course

As indicated above, this paper will outline the introduction of climate change topics into the CLC in the first full teaching year of the pandemic. KB, the first author, was the convenor of the course, and also a member of the Learning Design Group for the Exeter Law School, which sought to support the move to online/hybrid teaching for all law school staff over (northern) summer 2020, as part of a university-wide project known as ‘Enhance’. Enhance did not require or encourage sustainability other than by providing opportunities and licence to think creatively about education. There was also scope to ‘widen’ the range of student learning by introducing more research-informed teaching into the curriculum, including in core courses.

KB teaches and researches in private law and has a specialism in climate change and environmental law. At the time, her thinking had not progressed as reflected by the above two sections of this paper. Prompted by a suggestion that she include some environmental law in the land law course,<sup>70</sup> her approach was informed by the literature on the need to incorporate sustainability in education, and her research interests in the integration of climate change law and risk in law and society.<sup>71</sup> In general she has a critical view of the contingency of property rights protection as a ‘pattern of interpersonal relationships of entitlement’<sup>72</sup> and of the supposed taxonomical distinction between property/private and environmental/regulatory law.<sup>73</sup> As Graham explains:

<sup>66</sup>Lavey, above n 18.

<sup>67</sup>The time allocation suggested in Ong, above n 48.

<sup>68</sup>Bouwer, above n 2.

<sup>69</sup>Preston, above n 1. There is no longer a ‘time-based’ requirement for practitioners in England and Wales. Solicitors are required reflect on their own continuing capability to practice through a the Solicitors Regulatory Authority’s Continuing Competence framework. The Bar Standards Board prescribes self-reflective programmes to maintain barristers’ professional competence.

<sup>70</sup>We are grateful to Professor Joanne Scott for this.

<sup>71</sup>See Bouwer, above n 1.

<sup>72</sup>S Coyle and K Morrow *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Oxford: Hart Publishing, 2004) p 10.

<sup>73</sup>E Scottford and R Walsh ‘The symbiosis of property and English environmental law – property rights in a public law context’ (2013) 76 *Modern Law Review* 1010; Coyle and Morrow, above n 72, ch 4; K Bouwer and R Gimson ‘Provoking McAuslan – planning law and property rights’ in M Lee and C Abbot (eds) *Taking English Planning Law Scholarship*



Private law is a contingent feature of planetary health because its key institutions, the corporation and private property, concentrate the legal rights to capital — the goods of life — in the private sphere. Private entitlements can act as shields against collective interests. Legal education plays an important role in facilitating or redressing climate change by reproducing or questioning the knowledge and skills used by generations of legal professionals and policy-makers to legitimate and prohibit economic and social relations and practices. By moving beyond a ‘business-as-usual’ approach to teaching private law, we could enable law graduates to contribute to a just transition to an environmentally viable future.<sup>74</sup>

As such, KB sought to introduce research-informed climate or environmental law material into the land law curriculum. Influenced by the literature discussed in the previous sections, she aimed for small amounts of compulsory teaching and some voluntary exercises. This was not the only additional material – there were also research-informed sessions on land law and empire, squatters’ rights, the Grenfell Tower fire enquiry and cohabitation agreements.<sup>75</sup>

In the following paragraphs we describe the climate and environment materials that were included in the course. Upfront, we explain that the module did not meet KB’s initial ambition; the pressures and time-intensity of pandemic teaching had been unanticipated at the time the module was planned, as had the illness of two members of the teaching team, including KB, which affected delivery. Most importantly, the problem questions intended to introduce climate change reasoning were never properly formulated.<sup>76</sup> Where relevant below we explain what was delivered and what *could* have been delivered had conditions been better; the students were only asked in the survey about the teaching they did experience.

Much of the climate and sustainability material was prescribed taught material. The first three weeks of the course comprised a learning ‘supercycle’ where students were exposed to different theoretical and conceptual approaches to land law. This included a lecture and readings about different conceptions of what land law does and is for,<sup>77</sup> relationships between land law and empire,<sup>78</sup> and the relationship between law, regulation and the preservation and accumulation of capital.<sup>79</sup> This paved the way for critical reflections about capital accumulation and its role in climate change and environmental destruction. In the third week, students were lectured on the relationship between land law and other regulatory or ‘public’ regimes, specifically human rights and planning law.<sup>80</sup> The purpose of this was to demonstrate the ‘entanglement’ of property and planning law, and challenge the presentation of land law as rights over estates in land.<sup>81</sup>

The ‘supercycle’ completed with a consolidation exercise that required students to think about the relationship between property rights, climate change impacts, and the courts. This was research-led

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*Seriously* (UCL Press, 2022). The last cited chapter was a research collaboration which was sparked by many conversations about the nature of land law during the conduct of the course.

<sup>74</sup>N Graham ‘Teaching private law in a climate crisis’ (2021) 40 *University of Queensland Law Journal* 2.

<sup>75</sup>This sought to encourage students to conduct their own enquiries, connect across disciplines and think ‘outwards’: see Fung, above n 5.

<sup>76</sup>This is in no way a criticism of any member of the teaching team. As reflected on below, this does indicate how in the short term the capacity to develop modules like this is dependent on staffing and the expertise of ‘inhouse’ environmental lawyers.

<sup>77</sup>K Gray and SF Gray ‘The idea of property in land’ in *Land Law: Themes and Perspectives* (Oxford: Oxford University Press, 1998).

<sup>78</sup>This was strongly influenced by Brenna Bandhar’s work. The prescribed materials were B Bandhar *Colonial Lives of Property: Law, Land and Racial Regimes of Ownership* (Duke University Press, 2018) Introduction and Conclusion, and P McAuslan ‘Land law and the making of the British Empire’ in E Cooke (ed) *Modern Studies in Property Law*, vol 4 (Oxford: Hart Publishing, 2007).

<sup>79</sup>K Pistor *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton: Princeton University Press, 2019).

<sup>80</sup>They read Scotford and Walsh, above n 73, and C Willmore ‘Planning law reform and reconceptualising the regulation of land use’ in H Conway and R Hickey (eds) *Modern Studies in Property Law: Volume 9* (Oxford: Hart Publishing, 2017).

<sup>81</sup>Bouwer and Gimson, above n 73.

teaching which drew directly from KB's monograph research, and required students to read and understand the recent institutional reports on domestic climate change governance in the UK. To this end, they were provided with a (then) recent adaptation report from the Committee on Climate Change,<sup>82</sup> and a recent case concerning flooding in the UK.<sup>83</sup> Guidance questions encouraged the students to make connections between private property and the regulatory regime for water management; they were also asked to reflect on the way flooding was discussed in the case and the assumptions made about it, against the reports of risk and impact highlighted by the Committee on Climate Change. Further materials included blogs about the Climate Change Act and climate conscious lawyering.<sup>84</sup> A wrap-up podcast explained how they could have approached the questions, also giving more in-depth analysis about *King* as a climate case; it was explained that the invisibility of climate change in the decision-making ensured that climate risk was not properly brought into the frame, which occluded decision making about where the risk of climate change is being allowed to fall.<sup>85</sup> Mindful of the weight of content, students were told the climate change aspects of the consolidation exercise were 'optional', even though the exercise itself was not.

In week 10, students attended a research presentation about commons ownership. The seminar sought to provide students with an opportunity to reflect on the (eroding) protection of village greens, and the protection of natural resources. There were no compulsory readings for this session, but readings were introduced as part of the presentation in order that students could follow up if interested.<sup>86</sup> The mid-year summative assessment, due at the beginning of the Spring term, included a question seeking critical analysis as to whether private property rights provided the security necessary to ensure the sustainable use of resources. No data was kept as to the rate of engagement with the assessment question, although an impressionistic view is that a small number of stronger students did select that question. In the research seminar, students did make connections themselves with the material they had been taught earlier in the course relating to the use and ownership of shared spaces, and of course, planning law.<sup>87</sup>

There were several more places where entirely voluntary or optional content was introduced into the module. The intention was to make the information available to the students, without adding to the weight of the taught material. In week 14, in the learning cycle on leases, an entirely voluntary exercise on green leases was added. This exercise was research-informed, drawing on KB's doctoral research. The purpose of this exercise was to demonstrate technological and behavioural means towards more efficient home energy use, to highlight the power dynamics in leasehold property, and the implications this has for energy efficiency improvements. Students were provided with a short podcast, the first part of which explained the role of green leases, and optional further reading.<sup>88</sup>

<sup>82</sup>Committee on Climate Change *Progress in preparing for climate change – 2019 Progress Report to Parliament*, 10 July 2019, <https://www.theccc.org.uk/publication/progress-in-preparing-for-climate-change-2019-progress-report-to-parliament/#outline> accessed 13 October 2022.

<sup>83</sup>*King v Environment Agency* [2018] EWHC 65 (QB). This was presented as an instance of litigation in the context of climate change, see K Bouwer 'The unsexy future of climate change litigation' (2018) 30 *Journal of Environmental Law* 483.

<sup>84</sup>ClientEarth Communications 'What is the Climate Change Act?' 7 October 2016, <https://www.clientearth.org/what-is-the-climate-change-act/> accessed 13 October 2022; Bouwer, above n 1.

<sup>85</sup>Bouwer, above n 83, at 502–504.

<sup>86</sup>These included parts of E Ostrom *Governing the Commons The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 2015), J Holder and T Flessas 'Emerging commons' (2008) 17(3) *Social and Legal Studies* 299 – the seminar to some extent relied on the concepts outlined in this editorial; R Honey 'Commons Act 2006: developing common land and protecting village greens' (2007) 9 *Environmental Law Review* 132, and recent case law, eg *R (on the application of Newhaven Port and Properties Ltd) v East Sussex County Council* [2015] AC 1547.

<sup>87</sup>This was a live session and no data was kept on attendance.

<sup>88</sup>S Bright and D Weatherall 'Framing and mapping the governance barriers to energy upgrades in flats' (2017) 29 *Journal of Environmental Law* 203; S Bright et al 'Exploring the complexities of energy retrofit in mixed tenure social housing: a case study from England, UK' (2019) 12 *Energy Efficiency* 157; KB Janda et al 'The evolution of green leases: towards inter-organizational environmental governance' (2016) 44 *Building Research & Information* 660.

The podcast went on to discuss how relative contracting power can influence building retrofit, ultimately leading to energy savings or other benefits for powerful occupiers, but disincentivising energy efficiency improvements for residential landlords. The implications this has for climate change were explicitly made. In the second part of the podcast, students were encouraged to explore their own properties and analyse their lease or licence agreements, examining whether green features did or could exist, and to contemplate whether existing power relationships were likely to make change easy. To support this, KB did an analysis of her own (rented) house, discussing her single glazing and an ‘anti-green’ clause the landlady had sought to introduce.<sup>89</sup>

Finally, as mentioned above, there were places in the programme where climate-conscious reasoning would have been introduced. In week 7 of the course, a seminar question about proprietary estoppel constructed a *Cobbe v Yeoman*-type scenario,<sup>90</sup> but where the planning permission sought was for a solar farm. No further detail was given about the relationship between climate change and renewable energy, or the sometimes contentious nature of planning permission for solar energy projects.<sup>91</sup> In week 14, one of the seminar questions described a freehold covenant to maintain sea walls that protected coastal properties from flooding. No further detail was given about the relationship between climate change and coastal flooding (although students who had read the Committee on Climate Change risk report might have made this connection). This was a topic that had been identified for a climate change problem question, as it was understood that the increased cost or difficulty of maintaining a sea wall could present an opportunity for a discussion concerning the impacts that rising seas and coastal erosion might have on proprietary rights.<sup>92</sup> This was never actualised, due mostly to the difficult conditions identified above; however, when students were surveyed on this issue they were asked whether they connected this to climate risk themselves, and whether they would have followed up with further reading had it been made available to them.

#### 4. The students

The second, third and fourth authors – EJ, OL and AR – hold LLBs from the University of Exeter, and were third-year students when the land law course described above was being taught to the second-year cohort. They met KB when she contributed to the third-year elective in environmental law. EJ had already approached the environmental law teaching team and asked if he could contribute to voluntary activities related to climate change. EJ, OL and AR were employed to conduct the empirical work in order to support a peer-to-peer conversation about climate change. They co-designed and independently conducted a mixed-methods empirical study which sought to survey students’ response to the course design described above (hereinafter ‘the course’), but also more generally to explore the views and attitudes of law undergraduate students towards climate change education.<sup>93</sup> The purpose of the peer-to-peer engagement was to encourage conversations that would not be possible given the hierarchies present in staff-student relationships, due to institutional structures but also age relatability. We are indebted to Vaughan et al in many respects for this concept and design of a staff-student co-production exercise.<sup>94</sup>

<sup>89</sup>The landlady had sought to introduce a clause prohibiting drying washing in the house, which would have required use of a tumble drier in winter.

<sup>90</sup>*Cobbe v Yeoman’s Row Management Ltd* [2008] UKHL 55. The House of Lords declined to find that the claimant had a claim in proprietary estoppel when his failure to obtain planning permission entailed that the defendant did not honour an oral agreement for him to buy the land in question.

<sup>91</sup>See B Ohdedar and S McNab ‘Climate change litigation in the United Kingdom’ in W Kahl and M-P Weller (eds) *Climate Change Litigation: A Handbook* (CH Beck, 2020) pp 9–12. The cycle on proprietary estoppel was led by another member of the teaching team.

<sup>92</sup>Lavey, above n 18, at 531–536.

<sup>93</sup>The project had ethics approval from the University of Exeter College of Social Sciences and International Studies Ethic Committee, reference 202021-077.

<sup>94</sup>Vaughan et al, above n 49.

*(a) Methodology*

This mixed-methods study uses data collected from both an online survey and a focus group. In May 2021, an online survey was circulated to the students who were exposed to the course. The survey was distributed via email to all second-year law undergraduate students (approximately 400), and was open to responses for a period of one month, ending in June 2021. We applied simple sampling of a closed group of participants.<sup>95</sup> A number of reminders to complete the survey were sent throughout the period, encouraging student participation. In total, 12 responses (3%) were received. We refer to these students as respondents. As part of the survey, and in the invitation email, respondents were invited to participate in a focus group aimed at exploring their views and attitudes towards climate change education in more detail. In total, three students responded and were invited to participate in the focus group which was held online via Zoom in July 2021. The focus group lasted approximately an hour, where a moderator asked participants to expand on their views and responses to the survey through more specific and detailed questions. We refer to these students as participants. We know that both the response rate and sample size are low enough to raise concerns about the reliability of the study,<sup>96</sup> and we seek to address those below. As a general point, however, while we accept that we might want to be careful about exactly what we take from this data set, the student comments are powerful and interesting, and have been very useful in refining our thinking about the issues discussed in this paper.

The survey was designed to explore students' response to the course, and their interest in the elective third-year environmental law module. The survey predominantly consisted of closed, standardised questions,<sup>97</sup> which provided respondents with predefined responses to choose from, simplifying completion.<sup>98</sup> This facilitated students to best recall their engagement with the curriculum after their examination period, which is typically a time of mental fatigue. There was also an option to elaborate on answers, with the aim of collecting a range of quantitative and qualitative information in relation to the study.<sup>99</sup> The survey consisted of 53 questions, categorised into 10 sections. Sections 1–7 focused topics which sought to integrate climate change materials. These sections sought to identify the level of engagement and interest with the integrated materials and activities within each topic. Section 8 asked for the students' impressions and feedback on the overall integration of the climate change material. Section 9 asked whether the curriculum had influenced students' decisions in regard to their future learning and careers. Finally, section 10 invited respondents to join the focus group to further elaborate on their views.

The focus group followed closure of the survey and was conducted to gain further insight from students, using a range of open questions. The focus group questions were derived from the findings of the survey and allowed participants to share and expand on their unfiltered views on climate change education and curriculum engagement.<sup>100</sup> The online format for the focus group ensured all students living both on campus and abroad had the opportunity to participate. The focus group questions were divided into three sections: 'Introduction', 'Future Practice in Climate Change' and 'How to Teach Climate Change'. Each section focused on asking predetermined questions which students had access to prior to the focus group. This ensured that students had an opportunity to think about the topic beforehand, avoiding purely spontaneous responses. However, the conduct of the focus group allowed open discussion amongst the participants; this semi-structured approach allowed the exploration of deeper insights into the students' perspectives.<sup>101</sup> Participants did not deviate far from the topic of discussion, which allowed their answers to be reviewed in a practical manner.<sup>102</sup> This approach was effective, despite the small sample size of three participants, as the format enabled the collection of insightful qualitative data for analysis.

<sup>95</sup> Halperin and O Heath *Political Research: Methods and Practical Skills* (Oxford: Oxford University Press, 3rd edn, 2020) p 298.

<sup>96</sup> *Ibid*, p 302.

<sup>97</sup> *Ibid*, p 312.

<sup>98</sup> *Ibid*, p 293.

<sup>99</sup> *Ibid*, p 293.

<sup>100</sup> *Ibid*.

<sup>101</sup> *Ibid*, p 313.

<sup>102</sup> *Ibid*, p 293.

The sample size for both the survey and the focus groups was smaller than was expected. The low levels of engagement with both the survey and focus group can be attributed to three main reasons. First, student responses to online course evaluations are *always* relatively low.<sup>103</sup> Secondly, in this particular year engagement was even lower than usual due to the ‘screen fatigue’ phenomenon which many university students faced as a result of online learning due to the Covid-19 pandemic.<sup>104</sup> The response rate was consistent with student evaluation surveys run by other departments in the University.<sup>105</sup> Thirdly, the data was collected post-examination period, when typically student engagement declines, and this seems generally to have contributed further survey fatigue. As a result, the timing of the survey may not have been the most conducive for student responses.<sup>106</sup>

We appreciate that due to the sample size of the study, questions of reliability arise. However, the use of mixed-methods forms of evaluation allows a more informed impression of the true picture.<sup>107</sup> Our method of utilising closed and standardised questions is a driving factor in the reliability of the data collected. The standardisation of the survey and predefined responses to the questions enable a replicable method of data collection.<sup>108</sup> Furthermore, the additional insights gathered from the focus group align to, and support, the survey responses, further enhancing the quality of the data collected.<sup>109</sup> The empirical findings are also largely consistent with the literature in many respects. Consequently, despite the small sample size, the results are interesting enough to warrant publication, even if caution needs to be taken in seeing these as representative of the views shared by the wider undergraduate law population. The study is, of course, inherently replicable. As a result, it is appropriate to extract these generalised views and attitudes towards climate change education which will be explored below.

## **(b) Results**

### *(i) Importance of climate change education*

The research suggests that there is support for the importance of climate change education. Moreover, both the respondents (to the survey) and participants (in the focus group) demonstrate a clear concern about climate change and the impact on their futures. In order to ascertain the participants’ understanding of the concept of climate change, the participants were asked how they understood the term. There was agreement that climate change is an ‘umbrella term’ for a ‘large warning system’ with a ‘long-term effect on our climate that affects everyone’. The notion of ‘global warming’ was also noted by the participants as related to climate change.

Overall, 75% of survey respondents indicated a concern about climate change and the impact on their working life following the completion of their undergraduate degree. This was further supported amongst focus group participants:

I think it’s definitely going to revamp the way that we work, and not just in the legal field, but in every field, possibly.

I don’t think you have to be specialising in environmental law, I think we all will have to be aware of it.

This confirms that climate change education and consciousness is of critical importance, not just for law graduates, but all university graduates. Moreover, in relation to the above question, 66% of the

<sup>103</sup>DD Nulty ‘The adequacy of response rates to online and paper surveys: what can be done?’ (2008) 33 *Assessment & Evaluation in Higher Education* 301.

<sup>104</sup>V Ramachandran ‘Stanford researchers identify four causes for “Zoom fatigue” and their simple fixes’ (*Stanford News*, 23 February 2021), <https://news.stanford.edu/2021/02/23/four-causes-zoom-fatigue-solutions/> accessed 13 October 2022.

<sup>105</sup>For instance, surveys sent at College level to assess student response to the Enhance programme received similar rates of response. KB is grateful to Karen Kenny for her help and support and our discussions about this.

<sup>106</sup>A Saleh and K Bista ‘Examining factors impacting online survey response rates in educational research: perceptions of graduate students’ (2017) 13 *Journal of Multi-Disciplinary Evaluation* 63 at 71.

<sup>107</sup>Nulty, above n 103, at 312.

<sup>108</sup>Halperin and Heath, above n 95, p 293.

<sup>109</sup>As suggested by Nulty, above n 103.

respondents felt they have a role to play in climate action. The participants highlighted a particular concern for the 'next generation' and how climate change action is important in respect to this:

So important that we think about climate change and that we are aware of it as we are the next generation that has to deal with the brunt of it.  
It'll get worse with each generation.

Furthermore, one participant highlighted the importance of climate action and how change to the current framework around climate change should be achieved:

We are the next generation of policymakers, and in education we need to start emphasising the importance.

Both survey respondents and focus group participants demonstrated a clear concern about climate change and the ways in which it will affect the future, and recognised the need for climate education. Paradoxically however, whilst the results above support the imperative need for climate change education, there was very low engagement with the climate and environmental materials. Both the survey and focus group data demonstrate this, with many saying they did not engage with or complete the materials available.<sup>110</sup> There was also a low level of interest in taking the optional environmental law module. This lack of engagement seems to be attributable to two main rationales: first, students tend to focus on compulsory and traditionally assessed topics; secondly, students focus on topics and modules that are perceived to be desirable by employers.

*(ii) Lack of engagement – assessment focused*

No survey respondents engaged with any planning law or climate change-related further (ie voluntary) materials included as part of the course. Of these respondents, 83% indicated that this was because there were 'too many other tasks to complete'. The remaining minority of 17% of respondents attributed this to a lack of interest. Whilst addressing this point during the focus group, one participant provided a further rationale behind this lack of engagement:

It was not integral to my exam, and so I think I just brushed over it.

Interestingly, this is reinforced by the survey responses. Our research shows that only one respondent chose to answer the essay question related to private property rights and sustainable use of resources. The remaining respondents chose to answer doctrinally focused essay questions that were seen as being more 'traditionally compulsory'. This reflects that students are first and foremost concerned with assessments and results. The focus group participants said:

If students knew it was content we know we're going to be assessed on, we'd be silly not to engage with it. We obviously want to get good marks...  
It wasn't pushed hard enough. It needed to be compulsory, or we needed to take part in some way and here that wasn't an option.

As evidenced, it is clear that this content being perceived as optional was a recurring theme amongst students. Consequently, given that the CLC is notoriously content heavy,<sup>111</sup> and in part due to time

<sup>110</sup>This is consistent with the data on engagement available on the virtual learning environment. For instance, almost no students engaged with the green leases exercise, which was entirely voluntary and coincided with the deadline for the mid-year summative assessment.

<sup>111</sup>Stephen Vaughan has observed, and we agree, that this remains the case due to the pedagogical choices made by academics.



constraints, students tend to prioritise what they perceive to be the most important to achieve their best outcomes. One participant of the focus group highlighted the inherent flaw in offering the material as optional:

I feel like it was nice for it to be included, it seemed quite natural, nice, but it made it seem like it was optional. Which is the problem right, because climate change isn't optional.

Despite this lack of engagement, students say that there is a desire to engage with these topics. For instance, 58% of survey respondents indicated that they would like to do further reading on climate risk and adaptation had they had more time; this suggests that time constraints and perceived assessment pressures imposed on students is a limiting factor. This raises questions about the space for 'student-led' learning amidst these pressures. Had these materials been more comprehensively integrated, compulsory and assessable, the research seems to suggest that the engagement would have been far greater.

*(iii) Lack of engagement – employability focused*

The lack of interest in environmental law is explained by its perceived undesirability to employers in comparison to other modules. Our survey demonstrates this, with 42% of students responding that they would not take a course in environmental law.<sup>112</sup> The rationale behind this lack of engagement in module selection choice was explored in our focus group:

I did not pick it at all, [it] wasn't one of my backups [...] I completely scrolled over it, because there are so many competitive modules that I feel are more rigorous, that firms and, you know, chambers are looking for [...] more relevant to particularly a commercial job.

This impression was even shared by those participants who did in fact select environmental law:

I chose it because I was interested in it [...] I agree, I don't think it would have helped me get into firms or chambers.

Evidently, a lack of interest in environmental law can be attributed to a perception that it is deemed undesirable by employers. This is supported by research by Vaughan et al that suggests students tend to shy away from selecting environmental law as a result of employability and 'negative referents' around environmental law over other choices.<sup>113</sup> There is a sense that much of the CLC is prescriptive, which leaves students with limited scope for options. This results in students choosing options that they believe will best serve them for their future.<sup>114</sup> This is supported by the focus group discussion:

I think that's part of the problem, because we sort of cater to what they want...

What needs to change is the work environment [...], the firms themselves, the chambers themselves.

[Firms and chambers] are so conservative and traditional.

Accordingly, the research shows that students believe that environmental law expertise is not only undesirable, but that a bias against it is inherently embedded in the culture of recruitment for firms and chambers. However, it is questionable whether this is a valid assumption, as commercial firms do have scope for environmental practice. As Vaughan et al emphasise, the practice of environmental law is not exclusively handled by non-governmental organisations, but in many City firms

<sup>112</sup>This is roughly consistent with enrolment data for the environmental law course at this university.

<sup>113</sup>Vaughan et al, above n 49, p 7.

<sup>114</sup>*Ibid*, p 18.

today.<sup>115</sup> In fact, four out of five ‘Magic Circle’ firms directly offer legal expertise on environmental issues.<sup>116</sup> Therefore, it is important to reflect on whether this perception is in fact rooted in the firms and chambers themselves, or the extent to which environmental and social governance priorities are being routinised in the narratives offered by the recruitment teams in large law firms. The same may be said for universities. Vaughan et al also suggest that student opinions on environmental law may be shaped by the extent to which educational institutions place value on the subject.<sup>117</sup> Students may perceive the subject as undesirable by employers because it is not part of the CLC despite, as highlighted above, representative bodies of the legal profession now recognising the need for climate-conscious lawyering. Referring back to the noteworthy comment made by one focus group participant:

Which is the problem right, because climate change isn’t optional.

It is clear that more effort and thought needs to go into the integration of climate change into the CLC. All the participants and respondents felt anxious about climate change, but any expectation that some of the student body would engage with optional materials was not fulfilled. The students’ more immediate anxieties and pressures meant they did not prioritise the materials made available to them; they were also unconvinced of the importance of environmental law generally to both educational institutions and subsequent employers. The responses we have received suggest they feel a real lack of leadership – from their educational institutions and the profession they want to enter – when it comes to equipping them for the challenges they know they will face in future practice.<sup>118</sup> The attempt to be ‘kinder’ and avoid over-burdening them clearly backfired, creating the impression that this material was not necessary.<sup>119</sup> Overall, whilst there is a clear lack of engagement with environmental law as a subject due to students’ perceptions of employability prospects, our data suggests that students want to understand how they will practice in a climate changed world.

#### *(iv) Support for curriculum inclusion*

A narrow majority of the students wanted some inclusion of climate change education in the CLC. However, there were various opinions as to how this should be achieved. Regarding the survey, 50% of respondents explicitly indicated that they would like to be taught about climate change in core modules. Moreover, an additional 17% were open to the idea of such integration. Further explicit support was offered by focus group participants:

I definitely think it should be taught in the curriculum...

I think, we’ve already said, it should be taught, I definitely think.

Conversely, whilst both a majority of survey respondents and focus group participants showed explicit support, this was not universally the case. 33% of respondents did not want to be taught about climate change in core modules. Two respondents provided a rationale, with one remarking:

Climate change and the environmental impact humans have on this world should be common sense. If we wanted to learn about this, we would take environmental law, or other modules, i.e. sustainability.

This statement is both contentious and not one shown to be shared amongst other survey respondents, but it would be remiss to discount it even though we do not agree with it. Whilst the respondent

<sup>115</sup>Ibid, p 16.

<sup>116</sup>The Legal 500 ‘The Legal 500 > United Kingdom - Solicitors > London > Real Estate > Environment’ <https://www.legal500.com/c/london/real-estate/environment/> accessed 13 October 2022.

<sup>117</sup>Vaughan et al, above n 49, p 16.

<sup>118</sup>Although see S Brookfield *Becoming a Critically Reflective Teacher* (London: Wiley, 2nd edn, 2017) chs 1 and 2.

<sup>119</sup>This is consistent with Reid, above n 27.

regards climate change as ‘common sense’, fundamentally it must be questioned how a layperson would be expected to understand the issue and its legal implications without any education. To regard the subject as common sense fails to recognise the complexities underlying both the scientific basis for, and policy response to, climate change. It also fails to take into account that, as we explain above, most lawyers graduating now will conduct their entire practice in a web of climate law. Accordingly, the view of this respondent seems to downplay the necessity for education on climate change without further elaboration and support for such a bold remark; also as suggested above, more decisive intellectual leadership from educators might challenge conceptions such as these in a principled way. Another respondent’s explanation highlights perhaps a more fundamental issue with the existing law curriculum itself:

It was interesting but there is too much content in Land to understand for me to engage with climate change material.

As previously discussed, the CLC is strenuous with an intensive workload. It may be suggested that the integration of climate change-related content may only add additional pressure on law students, making its inclusion undesirable. Whilst these two statements should not be disregarded, they serve as a good reminder that scepticism exists as to the merit of mainstreaming climate change through the CLC. This highlights the need for skill and care to be taken in the integration of the material, in order that climate change education is not seen as coming at a cost to legal learning.<sup>120</sup> The reminder that these different views exist also reinforces the need to divorce climate change education from ideological standpoints, and focus on the law, when it comes to the CLC.

In general, the interesting paradox raised by the mixed-methods research reveals the importance of careful thought in this context. As recognised by one respondent above, students can take environmental law as an optional module should they want to learn about climate change and the law. However, while the majority of students support the inclusion of climate change content in the curriculum, only 25% of respondents explicitly indicated that they would select environmental law as an optional module. While there was support for the inclusion of the climate change-related content, students wanted a different approach to the one described in this paper. The content *must* be integrated and run across the CLC. Having climate change content in only one module, but not in others, was seen as being problematic. The notion that the content was not integrated into the curriculum as a whole, in a coherent manner, is evidenced by 50% of the survey respondents questioning why it had been included. A focus group participant said:

Not only does it need to be taught, it needs to be taught differently than it is being done now. It was not integrated. The fact it was a one off was troubling.

One participant did not question why it was included, and they wanted the content to be ‘pushed’ harder, suggesting it should be compulsory. One participant offered the suggestion that it would be useful to learn about application of the law to climate change related problems. This is probably consistent with the third phase of materials in the course design described above, where delivery was affected by illness across the teaching team. Moreover, another participant simply highlighted that the topic should be included across all modules:

[Climate change education should be] put in across all modules that we studied so, at least, even if it’s a bit more brief, we can see it across all modules, and we are constantly taught about it, in all modules.

<sup>120</sup>This does also raise questions about the content and heft of the CLC, and the contingent nature of traditionally ‘compulsory’ taught material, if the choices made around this do not allow space for students to learn how to practise in the context of the significant social changes that their generation will face.

Various ideas for which the content could be integrated were posited by participants, but a unifying view was for the integrated material to be compulsory.

The empirical data supports the analysis earlier in the paper, that climate change content is needed within the law curriculum. On the whole, the results of the empirical study suggest that students have independently drawn a distinction between the study of environmental law per se, and the need to understand how they will practise in a climate changed world. The outcome seems to suggest that the integration of climate change-related content across all modules in the CLC, in such a way that it is both compulsory and assessable, is the best way to ensure that students learn what they need to know. Of course, legal educators may have the same concerns about trying to integrate new material in an already busy curriculum. These concerns could be ameliorated – as suggested in the sustainability literature and in the focus groups – by integrating small amounts of material across the CLC.

## Conclusion

Students graduating from law school now will spend their working lives needing to understand and apply legal norms in the context of a society dealing with the impacts of climate change, while transitioning to ‘net zero’ carbon economies. It is clear that law students both need and want to leave law school equipped for this world. Most lawyers will not have a practice at the forefront of climate action, for instance bringing strategic challenges against government inaction on climate change. Yet, climate change will brush up against significant aspects of practitioners’ daily work, and unless they are properly educated on the nature of the problem and how it affects this work, they risk giving poor advice and making bad law. The answer to this problem is climate consciousness, but this requires more than simply ‘awareness’ or common sense. It requires comprehensive and up-to-date knowledge of the problem, and an ability to think imaginatively about solutions.<sup>121</sup>

Overall, the analysis and empirical research detailed above shine a light on the vital importance of climate change education and the necessity for its inclusion within the CLC. Worries about climate change and the future were shared by the law students who participated in the study. However, paradoxically, there was a clear lack of engagement with the climate change materials in the course. As discussed, this was due to two main reasons: first, because of the intensive workload posed by the current law curriculum, students focused on assessable content; and, secondly, students have perceptions about environmental education being unhelpful to their employment prospects. Nevertheless, students seemed to want to be taught about climate change in their law degree. While various views as to how to accomplish this were shared, there was a unifying view that integrated climate change education should be compulsory and integrated across the CLC.

Actualising this will not be without its challenges. Most law schools lack the manpower to do so. Most academics lack knowledge of climate change impacts and legal developments, so at least in the short term they will need environmental lawyers to help them.<sup>122</sup> Environmental lawyers are thin on the ground, and where they do exist, they might not necessarily be the kind of environmental lawyer who can support the integration of climate change across the core degree. In short, there might be insufficient knowledge even in well-staffed departments to implement this kind of approach. Staffing problems aside, the problem still remains that knowledge of this nature goes out of date very quickly. This raises further questions about whether climate consciousness demands re-education of academics as much as it does legal practitioners.

To conclude: our research and data suggest that students want to be taught about climate change, but the pressures on them are such that they need this to be presented as compulsory, integrated and assessable material, or they cannot – or will not – prioritise it. This requires both a cross-programme approach and also the careful design of learning exercises so that climate change learning appears

<sup>121</sup>Bouwer, above n 2.

<sup>122</sup>Lavey, above n 18, at 585.

naturally in the material. After all, it hardly makes sense to claim this is necessary learning, if it needs to be shoehorned into the core degree. Graduating law students would also need to know the:

myriad ways in which climate issues are implicated in their daily practice, identifying risks to their clients' business and to their own practice arising from these connections. They will need to be able to interpret existing legal rules in the context of climate change. This can only be done effectively if climate change education is embedded into the material that students must (or are most likely to) learn to enter legal practice.<sup>123</sup>

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<sup>123</sup>Bouwer, above n 2.