

Updated August 15, 2022 – version 1.0

LAW 624S - *Climate Change Law & Policy*
Emory University School of Law
Professor Mark Nevitt

Fall 2022 | Tuesday 2:00 – 4:00 | Classroom: 5G

mark.nevitt@emory.edu | Office Hours: Room G509 - After Class (or by app't) |

Course Overview: Climate change is one of the most challenging problems facing humankind. This semester, we will confront this problem head-on from a legal and policy perspective. Smart, solution-oriented Emory University School of Law graduates will play a critical role in addressing the myriad problems caused by climate change. Because this area is a fast-moving area of the law, the syllabus will be updated, which I will do via a Google Doc – I will notify you of substantive changes to readings and assignments throughout the semester.

Learning Objectives:

- Explain the basic causes of climate change and how it impacts the U.S. and international communities, with a particular focus on the Global South and disadvantaged communities.
- Understand core climate change terms such as “climate adaptation” and “mitigation.”
- Understand the state of climate change litigation and the governing domestic climate change legal framework affecting climate change.
- Understand the main legal components of the international law frameworks (i.e. UN Framework Convention on Climate Change and the Paris Agreement).
- Explain the role of climate innovation and business in broader climate change laws and policies.
- Understand “climate change federalism” and the role of sustainability initiatives already underway at the state and local level.
- Understand climate change’s security implications, with an emphasis on disaster law and how climate change impacts the military.

Grading:

- A research paper will comprise 65% of the grade. This seminar can be used to satisfy the upper level writing requirement.
 - You have two options for the research paper. For those pursuing the upper-level writing requirement, your paper must be in accordance with Appendix A of the Student Handbook (30 pages) and **must include a draft and outline**. For those electing to not pursue the writing requirement, your research paper must be a piece of original scholarship. A draft and outline is not required, although it is encouraged.
 - You will only be graded on the final paper due at the end of the semester.
- Class participation as well as an in-class presentation (related to your research paper) will comprise 35% of the grade.
- The library provides a handy research guide for academic writing [here](#).

Oral Presentation & Paper:

- Toward the end of the semester, each student will make a presentation that will be accompanied by a short Q+A session.

- The paper/presentation should address how a particular nation, state, locality, or industry is responding to climate change.
- These presentations will begin toward the end of the semester once you have a “feel” for the applicable laws, subject matter and research on your topic.
- Your presentation is related to your paper topic. Part of the goal of the presentation is to synthesize your research to assist you prior to handing in the final paper.
- As this course addresses both the law with policy implications, please be as clear as possible about what the *law* is and what the applicable *policy* is.

Key Dates:

- Paper/Presentation Topic Selection Due: Friday, **September 30th**. An e-mail to me is fine with a short paragraph describing your paper topic and your initial research plan. For those pursuing a writing requirement, please include an outline as required by the Student Handbook.
- Paper Draft – Optional, but required for writing requirement – **Friday, November 3rd** (email to me is fine).
- **Final Paper: Friday, December 2nd, 5:00 p.m. EST.**
 - Please treat this as a judicial filing deadline, where extensions are available only in emergency and extraordinary circumstances.

Electronics & Absences:

- Laptops are permitted but must be used for class purposes only.
 - I feel strongly about this, and allow laptops but my views are mostly aligned with Prof. Cole’s views at Georgetown, [here](#).
- Please let me know if you’re going to miss a class. You are allowed to miss one class without explanation, though again, prior notice is appreciated. For any further absences (e.g. family/medical) please come talk to me. Inconsistent attendance may affect your final grade.

Course Materials: there is no required casebook. All materials are hyperlinked below, and contain a variety of law review articles, book chapters, videos, podcasts, and judicial decisions. For some materials, I will post the material to Canvas and/or e-mail this to you separately.

Our Mutual Commitments

- If you have any questions about the course material I want to be as accessible to you throughout this semester as possible to ensure you are working towards the learning objectives, understand the material, and generally are enjoying the course.
- You likely selected this class because you have an interest in the topic. Climate Change Law & Policy is a rapidly developing area of law and I will do everything within my power to keep you apprised of the latest developments and bring in relevant guest speakers.
- You will be prepared for class and be ready to engage in class discussion upon arrival.

Schedule of Classes and Readings

Readings are incorporated into the syllabus or available online. Please contact me if you are having difficulty accessing any reading.

Please note that readings may change to accommodate recent developments and to adjust for guest lecturers' schedules. In addition to the reading, you are highly encouraged to stay up to date on the latest climate change matters that are discussed in the news. Doing so will only assist in your participation grade. We will often begin each class with an "in the news" section on changes in climate change law and policy. For each class, I pose 2-3 questions ahead of time to help focus your readings that we will discuss in class.

Part I: Climate Change: Overview and Scientific Basis

1. August 16th – Course Overview, Introduction, and Scientific Basis

- Course Introduction and Administrative Remarks
- Watch Professor Vicki Arroyo [Ted Talk presentation](#)
- The Economist, *Why is Climate Change so Hard to Tackle?*
<https://www.economist.com/leaders/2018/12/01/why-is-climate-change-so-hard-to-tackle>
- Q1: If we have the tools to “solve” climate change, why haven’t we done so?
- Q2: Prof. Arroyo’s talk is from 2012. What progress have we made on climate change since then? In your opinion, has the climate crisis become more or worse urgent?
- Q3: Do you agree with The Economist’s assessment of climate change and its ability to tackle? Why or why not?

2. August 23rd – Science Introduction and the Law

- [Fourth National Climate Assessment – Report in Brief](#)
 - https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf
 - Read Summary Findings (11-21) and Read enough of the overview (pages 22-55) to convince your climate change skeptic uncle at Thanksgiving that climate change is real and caused by humans. ☺
- Listen: IPCC Report, Professor Katherine Mach, University of Miami ([America Adapts Podcast](#))
- Skim and Download the [Text](#) - United Nations Framework Convention on Climate Change (UNFCCC).
- Q1: What is your hometown or state doing to address climate mitigation? Adaptation? Climate response?
- Q2: Is there a state or local climate office? Are there laws addressing climate change (or its effects such as sea level rise) within your state?

Part II: Domestic Climate Change Law & Policy (Federal, State, Localities)

3. August 30th - U.S. Domestic Law & Authority to Regulate - Mitigation I

- *Massachusetts v. EPA*, 549 U.S. 497 (2007).
 - Please read the entire opinion, but focus on Justice Stevens’ majority opinion and Justice Roberts’ dissent.
- J.B. Ruhl & Robin Kundis Craig, *4°C*, 106 *Minn. L. Rev.* 191 (2021). Please read Abstract and Part I.

- Q1: How do Justice Roberts and Justice Stevens differ in their approach to standing as it relates to climate change (injury, causation, redressability)?
- Q2: As a legal matter, what opinion do you find to be more convincing? Be prepared to argue both sides of the opinion.
- Q3: What are the practical implications of *Mass v. EPA* for addressing climate change? What does it require EPA to do?

4. September 6th - U.S. Domestic Law & Authority to Regulate – Mitigation II

- Read: *West Virginia v. EPA* (2022) – Read Justice Roberts’ opinion.
- Inflation Reduction Act – Reading TBD
- Look up the Columbia University Climate Case Tracker and try to get a feel for ongoing cases.
- Q1: On what theory did West Virginia prevail over EPA?
- Q2: What is EPA’s authority to regulate GHG emissions post-*West Virginia v. EPA*?

5. September 13th – U.S Domestic Law & Authority to Regulate (NEPA + Civil Remedies)

- Inflation Reduction Act (continued).
- Recognizing the Duty of the Federal Government to Create a Green New Deal, H. Res. 109, 116th Cong. (Feb. 7, 2019), <https://www.congress.gov/bill/116th-congress/house-resolution/109/text>
- *Is Climate Change a National Emergency?* (Nevitt)
- Q1: If you could change one thing about the Inflation Reduction Act, what would it be and why?
- Q2: Should climate change be declared a national emergency? Why or why not?
- Q3: Read through the Green New Deal. How would you describe this legislative effort? What does it seek to do?

6. September 20th – Climate Change & Transportation

- Library Research Overview
- [Gabe Pacyniak, Reducing Greenhouse Gas Emissions from Transportation, November 2015](#) (Georgetown Climate Center) [Read Executive Summary, Backgrounds and Findings]
- Uber/Lyft Reading: <https://www.ecowatch.com/uber-lyft-climate-solution-2615127829.html>
- Vision Zero reading: *Climate Change and Street Design* - <https://www.curbed.com/2018/10/10/17957532/climate-change-street-design-vision-zero>
- *Skim*: Katrina Wyman & Danielle Spiegel-Feld, *The Urban Environmental Renaissance*, 108 Cal. L. Rev. 305 (2020), https://www.californialawreview.org/wp-content/uploads/2020/04/1-Wyman-Spiegel-Feld_Urban-Environmental-Renaissance.pdf
- Q1: As part of your class reading assignment, pick one of your favorite cities (anywhere in the world) and research how transportation is being changed in

response to climate change. More bike lanes? A new pedestrian plan? Vision Zero efforts?

- Q2: Look at Atlanta's transportation and climate plans and be prepared to speak generally about Atlanta's approach to address climate change. Where is Atlanta falling short?

7. September 27th Climate Adaptation Law & Managed Retreat

- Read: Mark Nevitt, *How do we "Manage" Managed Retreat*, Kleinman Energy Paper.
- Read: [*Underwater: Rising Seas, Chronic Floods and the Implications for U.S. Coastal Real Estate*](#), UNION OF CONCERNED SCIENTISTS
- Read: A.R. Siders, *Managed Retreat*, One Science
- **Case Study: Norfolk, VA Pilot Project [Lecture]**
- Q1: What are the legal challenges in addressing climate adaptation? How does this differ from climate mitigation?
- Q2: How do the legal and policy challenges associated with adaptation differ from mitigation?
- Q3: What are the climate justice issues associated with climate impacts and managed retreat?

****Paper Topic/Outline Due September 30th****

Part III: International Climate Change Law

8. October 4th: International Environmental Law Part I

- Skim and Download the [Text](#) - United Nations Framework Convention on Climate Change (UNFCCC).
- Read: Paris Agreement Text
<https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>
 - Skim 1-21 and focus on the text of the agreement
- Q1: What is the UNFCCC's approach to solving climate change?
- Q2: Why hasn't the international community been able to solve the climate crisis?

9. October 11th: International Environmental Law Part II

- *The Glasgow Climate Pact, Annotated*, Wash. Post (Nov. 13, 2021),
<https://www.washingtonpost.com/climate-environment/interactive/2021/glasgow-climate-pact-full-text-cop26/>
- COP27 Egypt Readings - TBD.
- Read: Mark Nevitt, *Key Takeaways from the Glasgow Climate Pact*, Lawfare.
- Q1: How would you describe the legal framework for the Paris Climate Accord?
- Q2: What are the advantages and disadvantages of this approach?
- Q3: You are a key advisor to the United States for the upcoming Conference of Parties in Egypt later this month. What would you advise?

10. October 18th: Climate Change and the Arctic

- [Nevitt & Percival, Polar Opposites: Assessing the State of Environmental Law in the World's Polar Regions](#), 59 B.C. L. Rev. 1655 (2018). Read Arctic Section and Parts III and IV; skim Antarctica Section
- Mark Nevitt, [Just Security Post: Climate Change and Arctic Security](#)
- Jugal Patel & Henry Fountain, [As Arctic Ice Vanishes, New Shipping Routes Open](#), N.Y. Times, 3 May 2017.
- Q1: How is climate change affecting the Arctic?
- Q2: You are assigned to NATO Office of Legal Advisor and are asked to provide legal advice of the “law of the Arctic” and recommendations for NATO operations in the Arctic.

11. October 25th: Climate Change and International Peace & Security

- Sarah Light, [Valuing National Security](#), 61 UCLA L. Rev. 1772 (2014).
- David A. Titley, *A Military View on Climate Change: It's Eroding our National Security and We Should Prepare for It* (Oct. 6, 2016), <https://theconversation.com/a-military-view-on-climate-change-its-eroding-our-national-security-and-we-should-prepare-for-it-65535>.
- [Climate Change will Stir Unimaginable Refugee Crisis, Says Military 11 Dec 2016](#)
- Read 48-68, Kristen Davies, [The Warming War: How Climate Change is Creating Threats to International Peace and Security](#), 30 Geo. Env'tl. L. Rev 48 (2017).

12. November 1st: Climate Change and Corporate Sustainability Efforts

- Guest Speaker (tentative): Neal Kemkar
- Readings: TBD

Friday, November 3rd Paper Draft Due

13. November 8th

- Presentations Group #1
- Reading to be Assigned

14. November 15th

- Presentations Group #2
- [Coglianese and Nevitt Op-Ed \(Washington Post\)](#)
- Gina McCarthy – [Get Moving with Climate Action](#)
- Course Summary

Because this is a seminar class, we can't fit all the reading and material in to address climate change. Please see additional reading below – this may help with your research.

Domestic Law

Books - Robert Henson, *The Thinking Person's Guide to Climate Change* (2d ed. 2019).

Gernot Wagner & Martin L. Weitzman, *Climate Shock: The Economic Consequences of a Hotter Planet* (2015)

William Nordhaus, *The Climate Casino: Risk, Uncertainty, and Economics for a Warming World* (2013)

Alice C. Hill & Leonardo Martinez-Diaz, *Building a Resilient Tomorrow: How to Prepare for the Coming Climate Disruption* (2020)

Articles:

[Jonathan Rosenbloom, Fifty Shades of Gray Infrastructure: Land Use and the Failure to Create Resilient Cities](#)

Vicky Arroyo et. al, *State Innovation on Climate Change: Reducing Emissions from Key Sectors While Preparing for a "New Normal,"* 10 [HARV. L. & POL'Y REV.](#) 385-393, 415-425 (2016).

David L. Markell, *Sea-Level Rise and Changing Times for Florida Local Governments*, Sabin Center for Climate Change Law (April 2016),
<https://climate.law.columbia.edu/sites/default/files/content/Markell-2016-04-Sea-level-Rise-and-Florida-Local-Government.pdf>

Reuven S. Avi-Yonah & David Uhlmann, *Combatting Climate Change: Why a Carbon Tax is a Better Response to Global Warming than Cap & Trade*, 28 *STAN. ENV'T'L. L.J.* 3 (2009). Read pages 4-8; 28-50.

William Nordhaus, *The Climate Club: How to Fix a Failing Global Effort*, Foreign Affairs (May/June 2020), <https://www.foreignaffairs.com/articles/united-states/2020-04-10/climate-club>

Michael Burger, *Summary: Combating Climate Change with Sections 115 of the Clean Air Act*, Inst. for Pub. Integrity (Oct. 2020).

State of Netherlands v. Urgenda Foundation, 132 Harv. L. Rev. 2090 (2019),
<https://harvardlawreview.org/2019/05/state-of-the-netherlands-v-urgenda-foundation>

Fossil Fuel Divestment: Bill McKibben, *The Movement to Divest from Fossil Fuel Gains Momentum*, The New Yorker (Dec. 21, 2017)

Alice Kaswan, *Seven Principles for Equitable Adaptation*, 13 Sustainable Development Law & Policy 41 (2013),
<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1527&context=sdlp>

Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, 109 Cal. L. Rev. 209 (2021),
<https://www.californialawreview.org/print/rethinking-grid-governance/>

Kirsten H. Engel & Scott R. Saleska, *Subglobal Regulation of the Global Commons: The Case of Climate Change*, 32 Ecology L.Q. 183 (2005),
https://www.jstor.org/stable/24114448?seq=1#metadata_info_tab_contents

Martin Feldstein et al. [*A Conservative Case for Climate Action*](#), N.Y. Times, Feb. 8, 2017.

International & National Security Law

[*Jean Galbraith, AJIL Unbound, Two Faces of Foreign Affairs Federalism and What They Mean for Climate Change Mitigation*](#)

Mark Nevitt, *The Commander in Chief's Authority to Combat Climate Change*, 37 Cardozo Law Review 437 (2015)

[Mark Z. Jacobson, Written Testimony to U.S. House of Representatives Committee on Energy and Commerce \(Nov. 19, 2015\).](#)

Radoslov Dimitrov, [The Paris Agreement on Climate Change, Behind Closed Doors](#)

[Urgenda Foundation Litigation](#): This is a complex opinion; read enough to understand the basic issues being challenged and the Court's decision.

[Elizabeth Kolbert, Going Negative: Can Carbon Dioxide Removal Save the World?, The New Yorker, \(Nov. 20, 2017\).](#) (You can listen to the audio or read - your choice!)

Case Law:

Juliana v. United States, 217 F. Supp. 1224 (D. Or. 2016).

Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014)

American Lung Ass'n v. EPA, 985 F.3d 914 (D.C. Cir. 2021).

Ryan Lizza, [As the World Burns](#) (The New Yorker, Oct 11, 2010).

Science: For an international perspective on climate science, see [UNIPCC – Global Warming of 1.5 degrees Celsius: Summary for Policy Makers](#)