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Challenging Exploratory Research, New Fields of Law, 2016-2019

FINAL REPORT (short version)

研究成果の概要

How might we train the new generation of environmental learners in Japan? Initially focused on the possibility to develop clinical legal education and related pedagogical devices at the regional level, this research project progressively evolved towards a more challenging reflection on the potential of multi- and interdisciplinary teaching and learning frameworks for environmental legal education in the context of the *Anthropocene*. Adopting a reflexive approach, this research interweaves my own biography (i.e. a recent professional move from the Law Faculty to the Graduate School of Arts and Sciences) with analysis of how non-mono-disciplinary international frameworks, cross-campus collaborative platforms and new communities of inquiry can provide a vantage point for progressively reshaping the edges of environmental legal education. It discusses more particularly the practical and theoretical conditions under which integrated syllabi and innovative case-based pedagogies contribute to the development of environmental legal studies in post-Fukushima Japan.

研究開始当初の背景

In Japan, as in most countries, Environmental Law as a discipline remains infused with certain epistemological assumptions and continues to draw on a particular worldview. Built on a number of existing legal categories, modern Environmental Law has more specifically taken shape around the pollution paradigm. Despite the breakdown of those familiar ideas that have been core to environmental lawmaking so far, this branch of Law still consists of “a reactive, ponderous and disciplinary-confined position.”<sup>1</sup> As also rightly pointed out by a few critical legal scholars, most of environmental legal production processes are based upon a distinctive thinking mode consisting in “*bracket(ing) issues that are not immediately relevant and assum(ing) a temporality that targets the present and the immediate future.*”<sup>2</sup> Although the triple disaster of March 2011 corresponds from several perspectives to a breakdown of the discipline’s familiar approaches and temporality, Environmental Law is being taught pretty much the same way in Japan’s faculties of Law and Law schools. My project addressed such “post-Fukushima Japan” hypothesis from a specific angle, by reference to another hypothesis, namely: the *Anthropocene*. As a ground-breaking narrative, the Anthropocene challenges the conception of the natural world on which Law (among other academic disciplines) has rested for two centuries : its underlying hypothesis is that, in view of such an “*increasingly inextricable interfusion of nature and human society,*”<sup>3</sup> any clear-cut divide between nature and civilisation, society and its environment, eco-systems and social systems, subject and object, is no longer viable. Environmental legal education in mono-disciplinary settings, however, does not really seek, or cannot afford, to challenge the overall assumptions of the discipline and is still far from acknowledging any “turn” implied by the Anthropocene concept. But what’s about multi- or interdisciplinary pedagogical frameworks, especially those set up as part of the internationalization of higher education in Japan? By mobilizing “*different, hitherto dormant, sides*”<sup>4</sup> of this legal subfield, international multi- and interdisciplinary frameworks (possibly combined with cross-campus teaching/learning settings) help us rethink the role of Environmental Law in a time of escalating change. By scrutinizing the implications of the “Anthropocene” scientific proposal and its competing narratives for environmental legal studies in Japanese higher education, my research project intended to fill some gaps; and, by exploring the emergence of new teaching and learning frameworks in an allegedly specific context, it also sought to open a new range of perspectives.

<sup>1</sup> A. Philippopoulos-Mihalopoulos, “Critical environmental law as method in the Anthropocene”, in A. Philippopoulos-Mihalopoulos, V. Brooks (eds), *Research Methods in Environmental Law, A Handbook*, Cheltenham : Edward Elgar, 2017, p. 131.

<sup>2</sup> *Id.*, p. 134.

<sup>3</sup> C. Hamilton, C. Bonneuil, F. Gemenne, “Thinking the Anthropocene”, in C. Hamilton, C. Bonneuil, F. Gemenne, *The Anthropocene and the Global Environmental Crisis, Rethinking Modernity in a New Epoch*, Routledge, 2015, p. 57.

<sup>4</sup> A. Philippopoulos-Mihalopoulos, “Critical environmental law as method in the Anthropocene”, *op.cit.*, p. 131.

## 研究の目的

This research sought to shed further light on two kinds of operations in particular, as they take place in multi- and interdisciplinary educational settings : the identification of “environmental issues” as cases to be addressed including from the legal perspective, and the determination of appropriate competencies or skills to deal with such cases.

From a practical perspective, the main purpose of this project was to design and assess the possibility to develop innovative pedagogical devices prioritizing case-based teaching / learning methods and promoting problem-finding skills. My initial aim was to develop on a regional basis innovative pedagogical devices, such as a Collaborative Case Study Database and a Cross-Border Environmental Law Clinic focusing on particular areas of practice in the domain of environment and natural resources, namely: advocacy, negotiation, and transactions. The main characteristics of the Collaborative Case Study Database were conceived as follows : not limited to actual case law, its main originality consists in collecting and presenting also a wide range of data relating to “environmental & natural resources cases” broadly understood, i.e. envisioned before they go to litigation or at an early stage of any adjudication process; collaborative, this pedagogical tool would be developed with a range of educational and professional partner institutions (through existing as well as new networks) in different East Asian jurisdictions ; multipurpose, this device should support the regional development of legal education in environmental and natural resources law in a variety of ways, depending on the legal skills targeted, and mainly through educational programs or structures already put in place in Japan. The Cross-Border Environmental Law Clinic was initially conceived as a consolidated clinical network of different institutional and individual partners, using the Database and actively involved in its development at the regional level. Activities promoted through such a regional platform should address a wide range of other joint activities aiming at developing inter/multidisciplinary problem-solving skills.

This initial focus evolved into a stronger interest for emerging multi- and interdisciplinary pedagogical frameworks as they develop in Japan in relation to the internationalization of higher education. Most of my research, then, consisted in scrutinizing the potential of such international frameworks for the development of environmental legal studies and education in the broader context of the Anthropocene. Envisioning the proposed “Age of Humankind” as a thought experiment, I have been seeking to explore the potential of its competing narratives for the development of environmental legal education in Japan. Drawing on complementary fields of knowledge (mainly Critical Environmental Law, Earth System Governance, and Disaster STS)<sup>5</sup>, I examined how to : 1) develop a set of new cross-listed courses established for Japanese and “International” under- and postgraduate students enrolled in different tracks (mainly the *Environmental Sciences* and *Social Sciences and Humanities* tracks)<sup>6</sup>; 2) assess the extent to which such courses could help both to breakdown familiar approaches to so-called “environmental problems” and turn the international multi-disciplinary classroom and cross-campus collaborative settings into new communities of inquiry.

From a practical perspective, this research explored the possibility to design, set up and develop integrated teaching/learning platforms and innovative pedagogies allowing both International and Japanese students with various backgrounds to reflect on contemporary environmental issues through the lenses of the “Anthropocene” understood as a thought experiment. A number of experimental courses have been designed (see note 6) and partly assessed, for example through the UTokyo Global Faculty Development Initiative’s tools, including peer observation of teaching<sup>7</sup>. At this stage, the challenge remains how to combine such courses with the progressive development of innovative devices such as an “Interdisciplinary Environmental Clinic” and a Collaborative Case Study Database. From a more theoretical perspective, this research project has been seeking to reflect on

<sup>5</sup> See below, 研究の方法.

<sup>6</sup> These courses are listed as follows : ① “Wild Law and Earth Jurisprudence: A Critical Introduction to Environmental Governance” (Thematic course, undergraduate: 1<sup>st</sup> and 2<sup>nd</sup>-year, S. Sem. 2017 and A. Sem. 2017); ② Law and the Environment (Foundation course, undergraduate: 3<sup>rd</sup> and 4<sup>th</sup>-year / master 1<sup>st</sup>-year) : a) “Environmental Law Principles” (A. Sem. 2017); b) “Law and Ecology: New Environmental Foundations” (S. Sem. 2018); c) “Environmental Justice and New Forms of Litigation” (A. Sem. 2018); ③ “STS and Environmental Regulation in the Anthropocene” (Integrated course, undergraduate: 3<sup>rd</sup> and 4<sup>th</sup>-year / 1<sup>st</sup>-year master, A. Sem. 2017); ④ “Risk, Society and Governance” (Integrated course, undergraduate: 1<sup>st</sup> and 2<sup>nd</sup>-year, S. Sem. 2018); ⑤ “Managing Sustainability in Global Industrial Companies” (Thematic course, undergraduate: 4<sup>th</sup>-year / 1<sup>st</sup>-year master, S. Sem. 2018 and S. Sem. 2019); ⑥ “Environmental Governance and New Institutional Interfaces” (Integrated course, undergraduate: 2<sup>nd</sup>-year, A. Sem. 2018); ⑦ Development and the Environment (Integrated course, undergraduate: 3<sup>rd</sup> and 4<sup>th</sup>-year / 1<sup>st</sup>-year master): a) “Biotechnology Regulation and Sustainable Development” (A. Sem. 2018); b) “Sustainable Development and Governance of the Global Commons” (S. Sem. 2019) ; ⑧ Master courses: a) “Earth System Governance and Climate Change Law” (S. Sem. 2018); b) “Theory of Normativity - Global Environmental Governance and the Anthropocene” (A. Sem. 2018).

<sup>7</sup> See <http://www.gfd.c.u-tokyo.ac.jp/index.html> ; in particular : <http://www.gfd.c.u-tokyo.ac.jp/talk/taste.html>

both how the “Anthropocene” scientific proposal and its competing narratives are progressively permeating environmental legal studies and the ongoing construction of “global environmental law” understood as a set of shared representations, common practices and new normativities.

### 研究の方法

This research considered more particularly the pedagogical relevance of three fields of inquiry, namely: Critical Environmental Law (CEL), STS and its emerging sub-field Disaster STS, as well as Earth System Governance. **Critical Environmental Law (CEL)** explores the possibility to develop critical readings of Environmental Law in/and the Anthropocene : CEL studies in general (De Lucia, Philippopoulos-Mihalopoulos), and so-called “Earth Jurisprudence” and “Wild Law” scholarship in particular (Cullinan, Burdon), question Environmental Law’s core concepts. **Science, Technology and Society (STS)**, as an interdisciplinary field of study, examines the societal role of science and technology. Complementing **Earth System Governance studies** (Biermann), STS scholarship scrutinises the relevance of institutional science-policy interfaces newly established for dealing with climate change and biodiversity loss issues, and the legitimacy of such emergent “boundary organisations” regarding the development of environmental regulatory frameworks (Beck, Guston, Orsini). Understood by their proponents as a tool of resistance against university structures operating along obsolete disciplinary divides, such critical approaches do not only spark cutting-edge research, but also stimulate innovative higher education. The main challenge was to examine how and assess the extent to which such critical approaches could allow for the deployment in the mixed classroom of alternative reasoning processes regarding contemporary “environmental issues” and also, ultimately, of some creative thinking “*that does not adhere to the rules of problem-solving but allows for an open space of theoretical and world-encompassing thinking.*”<sup>8</sup>

The first phase of the research consisted mainly in examining, from a comparative perspective, the current state of Environmental Legal Studies in Japan and a small number of other jurisdictions in Asia, Europe, North and South America (selected by considering the context, content, systems and structures of academic legal education in these different parts of the world). This phase consisted in three main steps: 1) an extensive literature review addressing both recent developments in environmental and natural resources law and policy, as well as recent developments of environmental legal studies in the jurisdictions under consideration; an additional literature review covering the emerging field of Law and the Anthropocene (with a focus on Critical Environmental Law); 2) two research trips allowing me to gather further information on the “good practices” developed so far in Environmental Legal education; 3) extensive research networking activities to start assessing the possibility to develop partnerships with a diverse range of institutional and individual stakeholders interested in the development of higher education in *Law and/in the Anthropocene*. The second phase consisted of two main steps: 1) Starting developing courses (syllabi) covering a wide range of environmental issues and related topics identified through the lenses of the “Anthropocene” and addressed from a broadened legal perspective; this has been done by drawing on existing structures (mainly international under- and graduate programs on environmental sciences involving some courses in social sciences.); 2) Developing innovative teaching methods, with a focus on (possibly co-taught) interactive lectures, embedded case studies, role-play simulations, project-based learning and problem-finding assignments. The third phase consisted mainly in starting to design educational frameworks on a collaborative basis (including frameworks involving cross-campus teaching collaborations with institutions overseas). Are also still in the process the production of teaching materials (including a textbook) and the elaboration of “standards of competence” in the environmental field of knowledge.

### 研究成果の学術的意義や社会的意義 /研究成果

This research focused on case-based education, i.e. the innovative use of both real and hypothetical cases in the classroom as well as various active learning activities (including role-play simulations). It started by addressing the use of judicial cases in non-mono-disciplinary educational settings. In so doing, it dealt with both the use of courtroom performances in new domains (mainly climate change litigation) and other alternative pseudo-legal/extra-legal performances (with a focus on projects such as the *Wild Law judgment* project). This research also envisioned the innovative use of case studies, more specifically in the framework of cross-campus co-teaching activities and in relation to trans-disciplinary sustainability studies. It allowed for the development, mainly on site, of a range of experimental courses on Environmental Legal Studies (see note 6) with complementary purposes. Built on an “outsider pedagogy,”<sup>9</sup> these courses succeeded in opening up the space of legal/judicial reasoning to

<sup>8</sup> A. Philippopoulos-Mihalopoulos, *op.cit.*, p. 133.

<sup>9</sup> J. Koshan *et al.*, “Rewriting Equality: The Pedagogical Use of Women’s Court of Canada Judgment”, *Canadian Legal Education Annual Review*,

different narratives: students have been developing not only a critical understanding of existing conceptual and regulatory frameworks; by learning how to “re-tell the story in a different voice,”<sup>10</sup> they also gained a better understanding of how to play both *by* and *with* the rules and engage more actively in problem-finding activities. Overall, these courses allowed students with various backgrounds to grasp the “*paradoxology of lawfulness and legal performance*”, i.e. the transformative capacity of law, legal practices, and the process of judging in the Anthropocene.<sup>11</sup> Including as regard to the innovative use of case studies (through a cross-campus collaborative teaching and learning setting<sup>12</sup>), all these courses have been designed to explore a fundamentally different approach to what is an “environmental case” and what makes it “legal.”

At this stage of experimentation, the development of particular teaching methods (such as scenario analysis and role-play simulations) have been prioritized over the actual development of clinical activities; the integration in the framework of an “interdisciplinary environmental clinic” of some of the courses which have been set up over the past two years is still in the process; as well as the institutionalization of a collaborative case study database, in partnership with several teaching and research institutions overseas.

### 主な発表論文等 Main achievements

In the past two years, I have participated into 12 international workshops, involving lawyers and non-lawyers, both in Japan and overseas and I am currently in the process of publishing a third peer-review article on this issue (see below). As a special mention, the College/Graduate School of Arts and Sciences of the University of Tokyo (Komaba) is a highly stimulating multidisciplinary environment which allowed me to progressively set up and assess new classes (see notes 6 and 7), experiment innovative teaching methodologies, and start developing research collaborations (including through partnerships with universities abroad). Moreover, as a member of the Global Faculty Development (GFD) Initiative hosted by the University of Tokyo (Komaba), I have been able to better articulate my research and teaching activities. On this basis, I intend both to : 1) investigate (through working seminars, workshops, training sessions and so forth) the possibility to continue develop innovative teaching methods and design new courses (including co-taught courses based on cross-campus collaborations with higher education institutions abroad); 2) explore further the contribution of multi- and interdisciplinary pedagogical settings to the progressive construction of *Law and the Anthropocene* as an emergent field of knowledge.

### 著書 CO-EDITED VOLUME and CHAPTERS IN BOOK

- 1 I. Giraudou, “Le droit de l’environnement appliqué aux entreprises au Japon”, in P. Bloch, N. Kanayama, I. Giraudou (eds.), *Le droit japonais des affaires*, Bruxelles, Larcier, 2019, p. 187-235.
- 2 I. Giraudou, “L’enseignement du droit par cas au Japon: une formule pédagogique du droit ‘global’?”, in M.-C. Ponthoreau (ed.), *La dénationalisation de l’enseignement du droit*, Paris, Fondation Varenne, 2016, p. 161-181.

### 雑誌論文 PEER-REVIEWED ARTICLES

- 1 I. Giraudou, “Shouldn’t We Expect More From Case-Based Learning ? The Transformative Potential of Multidisciplinary Frameworks in Sustainability Education”, with T. Lennerfors and J. Woodward, *Transformative Dialogues : Teaching and Learning eJournal*, Special Issue : “Transforming Global Partnerships”, vol. 11, Issue 3, 2018 (published online).
- 2 I. Giraudou, “Quelle formation pour quels juristes? La question des compétences visées par les nouvelles pratiques de formation juridique au Japon”, *Ebisu - Études japonaises*, n°55, 2018, p. 201-230.

### In preparation :

I. Giraudou, “How Might We Train Environmental Learners in the Anthropocene? Post-Fukushima Japan and the Engagement of Environmental Law Education Beyond Its Home Discipline”.

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Vol. 4, 2010, p. 123.

<sup>10</sup> N. Rogers, “The Playfulness of Constitutional Law”, *Southern Cross University Law Review*, Vol. 9, 2005, p. 196; see also N. Rogers, “Performance and Pedagogy in the Wild Law Judgment Project”, *Legal Education Review*, Vol. 27, Issue 1, p. 13.

<sup>11</sup> See N. Rogers, “Climate Change Litigation and the Awfulness of Lawfulness”, *Alternative Law Journal*, Vol. 38, Issue 1, 2013, p. 20-24.

<sup>12</sup> For a description of this pedagogical experiment, see I. Giraudou, T. Lennerfors, J. Woodward, “Shouldn’t We Expect More From Case-Based Learning? Environmental Law Education and the Emergence of New Communities of Inquiry”, *Transformative Dialogues : Teaching and Learning eJournal*, Special Issue : “Transforming Global Partnerships”, vol. 11, Issue 3, 2018 (published online).

**その他（報告書等） NOTES AND REPORTS**

- 1 I. Giraudou, "Shouldn't We Expect More From Case-Based Learning? Environmental Law Education and the Emergence of New Communities of Inquiry", The University of Tokyo, Global Faculty Development (GFD) Initiative, Report on the second *Teaching and Learning in Law* Conference organised by the Chinese University of Hong Kong (Hong Kong, June 1-2, 2018), report dated July 19, 2018; online: <http://www.gfd.c.u-tokyo.ac.jp/news/20180719-02.html>
- 2 I. Giraudou, "Testing Active Learning Sessions in STS Education: From Interactive Lectures to Role-Play Simulations", The University of Tokyo, Global Faculty Development (GFD) Initiative, Annual Report 2017-2018, March 2018, p. 132-146; online: <http://www.gfd.c.u-tokyo.ac.jp/news/20180123-03.html>

**学会発表 COMMUNICATIONS**

1. "Climate Change Law Education in Post-Fukushima Japan and the Emergence of New Communities of Inquiry", Asian Law and Society Association (ALSA) Conference, Bond University, November 2018, Robina QLD, Australia (*single-author refereed paper, remote presentation*).
2. "Critical Environmental Law as Pedagogy: A Different Understanding of What Makes a Community of Inquiry in the Anthropocene", *Global Critical Pedagogies*, Fifth Annual ACGS Conference, October 2018, Amsterdam, The Netherlands (*single-author refereed paper, proposal accepted*).
3. "Engaging the Teaching Place with the Anthropocene : Environmental Governance and Disaster STS Education Through 'Simul-Action'", *Transnational STS*, Annual Conference of the Society for Social Studies of Science, September 2018, Sydney, Australia (*single-author refereed paper*).
4. "The Teaching and Learning of STS in an International Context", with B. Dalglish, *Transnational STS*, Annual Conference of the Society for Social Studies of Science, September 2018, Sydney, Australia (*co-authored refereed paper*).
5. "Climate Change Law Education in Post-Fukushima Japan and the Progressive Building of a Cross-Disciplinary Anthropocene Curriculum", Conference on Teaching and Learning in Law, *Directions in Legal Education*, The Chinese University of Hong Kong (CUHK), 3 June 2018, Hong Kong, China (*single-author refereed paper*).
6. "Is There Any Plan B? Environmental Ethics, Critical Environmental Law and Climate Geoengineering", Faculty Development (FD) Seminar, Uppsala University, 18 May 2018, Uppsala, Sweden.
7. "How Might We Train the 'Gaian Generation' of Environmental Learners? Critical Environmental Law As Pedagogy and the Emergent Anthropocene Curriculum", Workshop, *Searching for Critical Environmental Law : Theories, Methods, Critics*, 11 May 2018, Oxford Brookes U., Oxford, UK (*single-author refereed paper, proposal accepted*).
8. "Climate Change Litigation and Global Investments : Preliminary Reflections from Japan", International workshop, *Corporate ESG Implementation and Climate Litigation in Japan*, The United Nations University (UNU), 30 March 2018, Tokyo, Japan.
9. "Terra Incognita : When Environmental Law Education Engages Beyond Its Home Discipline", *Ecologies of Knowledge and Practice - Japanese Studies and the Environmental Humanities*, Workshop, University of Oxford, 27-28 October 2017, Oxford, UK (*remote presentation*).
10. "Engaging the Teaching Place with the Anthropocene as a Boundary Object : A Case for Environmental Law Education in Post 3.11 Japan", *Crisis, Breaks and New Dynamics in Post 3.11 Japan*, Workshop, French-Japanese Week on Disaster Risk Reduction, 5 October 2017, Tokyo, Japan.
11. "Looking Forward : A New Approach to Climate Justice for Climate Disaster Law", cycle of public lecture-conferences organised by Shonan Fujisawa Campus (SFC) Keio University on the subject "Future Vision for 2030 (Legal Approach)", 3 August 2016, Fujisawa, Japan.
12. "Cross-Border Skills Education in Environmental and Natural Resources Law as an Emerging Field of Expertise in Asian Jurisdictions", APL Seminar, IDE-JETRO, 24 May 2016, Chiba, Japan.

**その他 Other communications**

"Shouldn't We Expect More From Case-Based Learning? Environmental Law Education and the Emergence of New Communities of Inquiry", The University of Tokyo Global Faculty Development (GFD) Initiative, LOOK Program - Report Session, 19 July 2018, Tokyo, Japan.