

Environmental Governance in the Developing World Vermont Law School Summer 2023

Professor Robert v. Percival

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Oakes Hall 208

Mondays through Thursdays from 1pm-4:30pm

July 10-13 and 17-20.

This course provides a comparative overview of how legal systems in the developing world are addressing significant environmental problems. After an introduction to the concept of global environmental law and governance, the course examines the environmental problems such countries confront and how law is being used to address them. The course explores what sometimes has been called the “North/South divide” as poorer, less developed countries often are disproportionately affected by environmental problems they have done little to cause and have less capacity to adapt to.

The course will examine the long history of efforts to redress extraordinary oil pollution in Ecuador caused by a multinational oil company. This case study will provide a vehicle for considering how environmental law has evolved in the developing world and how the imbalance of resources between rich and poor countries influences the effectiveness of legal remedies. It then will consider how air pollution kills millions in the developing world and the ineffectiveness of legal remedies to address transboundary environmental justice problems.

The second week of class will begin by focusing on the role of civil society in the developing world and the rights of future generations, focusing on the landmark *Minors Oposa* case brought by Tony Oposa in the Philippine Supreme Court. We then will examine how climate change is affecting the developing world, including the threat of rising sea levels to small island nations in the Pacific. We will explore why the nature of the climate change problem makes it so difficult politically for democratic governments in the developed world to control their emissions. Our final class session will consider efforts to hold Chinese companies accountable for the environmental harm they cause through their resource extraction efforts in developing countries. This is the mission of the Center for Transnational Environmental Accountability, for which Professor Percival serves as the chairman of the board of directors.

Six members of the class have signed up to participate in an optional, one-credit field trip. This year the Field Study will take place in the China. During the second and third weeks of August we will visit Beijing, Suzhou and Shanghai.

Learning Objectives

Students in this course should (1) learn the basics of how legal systems operate through the lens of environmental law and the role of government agencies and NGOs in addressing environmental problems in developing countries, (2) gain an understanding of comparative law and insights from application of this discipline to environmental law, and (3) acquire important

insights for how environmental law and policy can be improved by comparing lessons learned from experience with environmental law in various countries.

Course Materials & Blackboard Website

The materials this course will use are primarily excerpts from two books. The first is *Shooting Stars and Dancing Fish* by Philippine environmentalist Tony Oposa. This book provides the perspective of one of the most creative advocates for environmental protection in the developing world. He has given us permission to use a digital copy of his book. The second is *Comparative and Global Environmental Law and Policy* (2020) co-authored by Professor Percival. For those who do not wish to purchase these books the assigned readings from them will be posted online at the course Blackboard website, as will the materials in the other assigned readings. To enable you to have access to the Blackboard site, please send your name and email address to Professor Percival at: rpercival@law.umaryland.edu. We will not be using the VLS websites and all communications with Professor Percival should be directed to his Maryland email address.

Class Sessions, Class Participation and the Discussion Board

Most of the material to be covered in this course is well-suited to the lecture and discussion method of teaching. Lectures generally will not be designed to repeat the material in the assigned readings, but rather to provide additional perspectives on it. Class discussion of the material is important. Because of the cancellation of the first class due to the VLS closure, class sessions will run from 1:00pm to 4:30pm. We will take two ten-minute breaks from 2:05-2:15pm and from 3:20-3:30pm.

To provide a focal point for class discussion, the professor will frame a question for each class session that will be posted on the course website in the Discussion Board section. Students will be asked to post a response to the question on the course website by 10:30AM on the day of class. This will enable the professor to get a better idea of how you are grasping the assigned reading and it will facilitate class discussion. The responses to these questions can be consolidated into your final paper, which should be submitted electronically to the professor by 1PM on Saturday, July 22.

Grading Policy & Paper

Rather than having to take a final examination, students will be asked to submit a short paper summarizing their reactions to the questions discussed in the course. This paper may consolidate the responses that you make to the questions on the Discussion Board for each class. Thirty percent (30%) of your grade in this course will be based on the quality of your participation during the class sessions. Seventy percent (70%) of your grade will be based on this short paper that is due on Saturday July 22.

Blackboard Course Website

All the information you need for participating in this course is on the course Blackboard website. In addition to this syllabus and course materials, the website will feature link to webpages

providing additional information about the subjects covered in this course. After you have completed the assigned reading for each class, you are asked to post a response to the question that will be posted on the Discussion Board section of this website.

COURSE OUTLINE AND LIST OF READING ASSIGNMENTS

Class #1: Tuesday July 11: Introduction to the Course, the Concept of Global Environmental Law and Problems of Environmental Governance in the Developing World.

ASSIGNMENT: (1) Read pp. 15-46 in *Shooting Stars and Dancing Fish*, (2) Read pp. 9-38 in Chapter 1 and pp. 41-44, 83-91, and 108-121 in Chapter 2 of *Comparative and Global Environmental Law and Policy*, and (3) respond to the question on the Discussion Board.

Class #2: Wednesday July 12: Case Study - Oil Pollution and the Chevron/Ecuador

Litigation ASSIGNMENT: Read (1) pp. 239-245 in Chapter 5 and pp. 362-363 in Chapter 7 of *Comparative and Global Environmental Law and Policy*, and (2) Percival, "Transnational litigation: What can we learn from Chevron-Ecuador?" in *Research Handbook of Transnational Environmental Law* 318 (Heyvaert & Duvic-Paoli, eds. Edward Elgar 2020) and (3) post a response to the Discussion Board question.

Class #3: Thursday July 13: Air Pollution Control ASSIGNMENT: (1) Read pp. 603-645 in Chapter 11 of *Comparative and Global Environmental Law and Policy*, (2) Read Percival, *Against All Odds: How America's Century-Old Quest for Clean Air May Spur a New Era of Global Environmental Cooperation* and (3) Post a response to the question on the Discussion Board.

Class #4: Monday July 17: Who Speaks for the Environment? The Role of Civil Society in Environmental Governance and Rights of Future Generations ASSIGNMENT: Read pp. 49-93 in *Shooting Stars and Dancing Fish*, (2) Read pp. 512-516 in Chapter 9 and pp. 236-239 in Chapter 5 of *Comparative and Global Environmental Law and Policy*, and (3) respond to the question on the Discussion Board.

Class #5: Tuesday July 18: Climate Change and the Developing World ASSIGNMENT: Read (1) pp. 101-114 and pp. 213-223 in *Shooting Stars and Dancing Fish*, (2) United Nations, "Navigating Human Security and Climate Mobility in the Pacific Sea of Islands," April 2022, (3) *Teitiota v. New Zealand*, (4) Robert Percival, "The Climate Crisis and Constitutional Democracies," in *Constitutional Democracies in Crisis* (M. Graber, S. Levinson & M. Tushnet, eds., Oxford Univ. Press 2018), and (5) Post a response to the question on the Discussion Board.

Class #6: Wednesday July 19: Human Rights and the Environment ASSIGNMENT: (1) Read pp. 137-142 in *Shooting Stars and Dancing Fish*, (2) Read pp. 364-396 in Chapter 7 of *Comparative and Global Environmental Law and Policy*, and (3) Post a response to the question on the Discussion Board.

Class #7: Thursday July 20: Transnational Environmental Accountability ASSIGNMENT: (1) Read Robert Percival and Jingjing Zhang, *Transnational Environmental Accountability*, 35 *Natural Resources & Environment* (Fall 2020), (2) Percival, "Liability for Environmental Harm

and Emerging Global Environmental Law,” 25 Maryland J. of International Law 37 (2010), and (3) Post a response to the question on the Discussion Board.

Saturday July 22 at 1pm: Papers, which may consolidate your Discussion Board responses, are due.