

CONFRONTING CLIMATE CHANGE

Mainstreaming Climate Change in Legal Education

Climate change is a cross-sectoral, global phenomenon. For educators, it is a topic that crosses a range of academic disciplines, and spans highly technical, complex scientific considerations as well as wider ethical and equitable concerns. In 2022, the University of Waikato introduced the Bachelor of Climate Change degree (BCC). This specialist programme gives students cross disciplinary expertise, including in legal aspects of climate change. Consequently, the law curriculum was refreshed to support BCC students as well as students enrolling in established law programmes. This chapter will discuss this curriculum refresh and share some of the learnings from Te Piringa's experiences.

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Introduction

Climate change describes a long-term warming of the planet, above pre-industrial levels, as a consequence of anthropogenic greenhouse gas (GHG) emissions, emanating from a variety of sources (IPCC 2018: 4). Failing to restrict global warming to below 1.5 degrees above pre-industrial levels will have significant consequences and will be experienced globally, crossing international jurisdictional boundaries (IPCC 2018: 4-5). Nationally and internationally, there is increasing political awareness of the risks of climate change and a desire for action (IPSOS 2022). While climate change is measured in scientific terms, and while hopes are often pinned on technological innovation, the role of law in helping—or hindering—humans to find solutions is of increasing interest (Thew et al. 2021). In New Zealand, a range of legal means to respond to climate change have been identified; an overview of these has been given by Winkelmann, Glazebrook, and France in their paper ‘Climate Change and the Law’ (2019). Their honours noted that litigation is increasingly being used as a pathway to climate action, touching legal areas that include international law, customary international law, human rights law, and private law, including tort law (2019: 80, 101). This is significant because an increase in climate change litigation may mean legal practitioners, rather than policy-makers, are leading legal responses to climate change. Whilst policy development through case law has its drawbacks, not all of these legal developments are the result of litigation: the Chancery Lane Project (Chancery Lane nd.) is a professional initiative which supports lawyers to integrate climate change considerations into contracts. ‘Climate conscious lawyering’ is an area of increasing professional focus, with Continuing Professional Development courses exploring the impacts of climate change on legal practice (Every-Palmer 2023). Consequently, there is an apparent need for legal education in New Zealand to take account of climate change more holistically, and for climate change content to not just be covered in specialist climate law papers and environmental and resource management law courses, but to instead become an embedded consideration within New Zealand legal education more generally.

In response, New Zealand law schools are considering how climate change is best addressed through the law curriculum. This article will discuss recent developments at Te Piringa—Faculty of Law at the University of Waikato, where, in 2022–2023, the law curriculum was reviewed with the intention of embedding climate change across all law papers. The article begins with an overview of climate change education, and, in particular, climate change legal education, before discussing climate change curriculum renewal at Te Piringa.

Climate Change Education

Although many Universities are already taking steps to embed climate change in their curricula, Climate Change Education (CCE) involves a holistic mainstreaming of CCE (Thew et al. 2021). ‘Climate Change Education’ is a broad term that has been defined in multiple ways, but the concept is ‘ultimately concerned with ensuring that learners across all disciplines are aware of, and able to respond to, the risk, uncertainty and rapid environmental and social changes that a changing climate brings’ (Thew et al. 2021: 2).¹ Additionally, CCE involves ‘the nurturing of leaders and changemakers’ (Thew et al. 2021: 2),² so prioritises the teaching of analytical and practical skills as well as substantive climate knowledge. CCE includes consideration of how climate change is already affecting—and will increasingly impact—industries and communities, both locally and internationally (Thew et al. 2021). To respond to these impacts, mainstreaming CCE involves a collective effort across all academic disciplines to ensure that ‘actions to address the complex and dynamic challenges we face are informed by the rich, diverse expertise on offer across the higher education sector in its entirety’ (Thew et al. 2021).

There appears to be a consensus in the literature in this area that a climate change education should develop learners’ understanding about the causes of climate change, its consequences globally and locally across a range of timescales, the different stakeholders involved, the interlinkages with other sustainability challenges, the variety of solutions available, and the implications of choosing between these solutions for social and environmental justice.³ Whilst a deep scientific understanding of the climate system may not be necessary or appropriate for all students, climate change programmes should provide a basic understanding of why the climate is changing, of the severity of the risk it poses, and of the need for an urgent worldwide coordinated response (Thew et al. 2021: 3–4).

In addition to developing subject-matter expertise, it is necessary to ‘develop affective and behavioural skills that enable engagement with climate change and its impacts’ (Thew et al. 2021: 3). A consequential consideration is around ‘graduate attributes’ and how academic programmes can develop these. In particular, CCE needs to address ethical issues such as global equity and resource distribution and ‘should not be shy about teaching “emotional” responses such

1 CCE sits within a broader context of Education for Sustainable Development (ESD) which has the goal of equipping learners with transferable skills to respond to a wide variety of complex, dynamic challenges, including the Climate Crisis (Causley, Crawford & Milliner 2021; Mochizuki & Bryan 2015: 4–26).

2 Citing Strachan (2021).

3 These points are explicitly discussed in Thew et al. (2021).

as compassion.’ (Thew et al. 2021: 3) CCE should arguably incorporate ‘approaches that cultivate integrated knowledge and global citizenship, while preparing students for curious, well-informed, big-hearted lives’ (Thew et al. 2021: 4).⁴ Similarly to the approach seen in Education for Sustainable Development (ESD), CCE should build key competencies such as: systems thinking, anticipatory thinking, normative competency, strategic thinking, collaborative competency, critical thinking, self-awareness, and integrated problem-solving competency (Ojala 2016: 7). However, in addition, CCE requires stronger technical competencies, given the technical and scientific nature of climate change (Causley, Crawford & Milliner 2021).

Climate Change and Legal Education

In ‘An Urgent Call for Climate Mainstreaming: World Lawyers’ Pledge on Climate Action’ (Stucki, Futhazar & Sparks 2021), all lawyers are called ‘to consider, integrate, and apply issues of climate change and climate justice within and throughout their respective areas of activity and expertise’, with the Pledge noting explicitly that it is *not* primarily addressed to ‘environmental and climate lawyers’, but rather, it invites ‘lawyers of all kinds’ — including practitioners, judges, scholars, civil servants, law students, lawmakers, and all others working in and with the law — to ‘contribute to the monumental task of transitioning to climate-protective development.’ Notably, ‘Law Professors, Legal Educators, and Students’ are the first category of lawyers addressed in the Pledge.⁵ Mainstreaming climate change may also align with calls for a less specialised legal education, which Lord Justice Rabinder Singh has discussed in his book *The Unity of Law*. Singh LJ cautions against overspecialisation and reminds educators of the need

4 Citing UNESCO (2017).

5 *The specific pledge made by legal educators reads: ‘As legal educators, we can infuse climate change issues into the various topics we teach. We commit ourselves to make visible the relevant connections between climate change and the legal fields, norms, and doctrines that are the subjects of our courses and lectures. We will discuss substantive linkages, procedural barriers and opportunities, and systemic conflicts and synergies of climate concerns within all areas of law. Through our work as legal educators, we influence and impact the next generations of lawyers. It is therefore our particular responsibility to educate law students in a manner that prepares and enables them, in this new era of climate emergency, to effectively use the tools that the law provides. Reciprocally, as law students, we are in a position to stimulate and demand engagement with climate change issues throughout and beyond our legal education. On an institutional level, all of us will work to ensure that law school curricula are updated to include comprehensive coverage of environmental issues, in order to train and sensitise students for a future in legal practice or scholarship that is better equipped to face and tackle the climate crisis.’ (Stucki, Futhazar & Sparks 2021).*

for thinkers who can see ‘the big picture’. Although climate change is a specialism within law, it is also the wider context in which law is developing — and offers a point of unity between different legal areas, if included consistently through a law programme (Singh 2022). Margaret A Young has noted that law ‘is defined by, and operates within, a social and political context. It is one of the most rudimentary goals of legal education to show that this is so.’ (2021: 352) This is especially so for Te Piringa, a law school which has ‘law in context’ as one of its three foundational principles.⁶ Climate change is a cross-sectoral problem, touching on a variety of legal areas (Mehling et al. 2020). Interweaving climate change aspects through all legal teaching ensures that the curriculum will be relevant for addressing climate change issues, and aligns with research supporting a holistic and contextual study of law. This ensures that the core legal knowledge graduates acquire through law programmes will reflect the contemporary (and competing) legal, policy, and wider social arguments through which law is developed (Thew et al. 2021).

Of course, climate change also has a scientific context. Although legal educators are not usually best placed to offer an in-depth education in the scientific aspects, climate change is understood with reference to the science that measures it, so having a basic knowledge of the scientific aspects of the problem of climate change will assist students to better understand the role of law in helping — or hindering — us to find solutions (Thew et al. 2021). Beyond introducing the science, law programmes should also seek to develop learner understandings of how social norms and practices are driving climate change, as well as the opportunities and impacts of legal solutions supporting mitigation and adaptation, while also questioning the assumptions underpinning disciplinary practice (Thew et al. 2021). This would also align with curriculum decolonisation initiatives, while providing an opportunity to prioritise climate change learnings from the expertise of Indigenous communities and non-Western knowledge systems (Thew et al. 2021).

In addition to teaching knowledge of substantive and process aspects, there is, as noted above, a need to develop behavioural approaches that support engagement with climate change and empower learners to take action and work with others to solve problems (Thew et al. 2021: 3-4). In doing so, it is necessary to also acknowledge the strong emotional responses climate change engenders. As already discussed, climate anxiety is increasingly prevalent, especially amongst younger students, and this feeds into the mental health crisis more generally (Taylor 2021). An education that provides practical pathways for students and equips them with direct routes to engagement in climate action may be more beneficial than one that that, for example, focuses only on developing the skills needed to deliver on climate targets (Thew et al. 2021: 4).

6 For more, see University of Waikato *nd.a*.

Students frequently express interest in, and concern about, climate change issues (BBC 2021). They may bring a lot of their own ideas to their climate change learning, so embedding climate change across all papers offers an entry point for engagement with students, which may be particularly helpful for those papers whose content covers less immediately accessible aspects of law. It does, however, mean that a superficial or superfluous approach will be seen for what it is by students, so it is important that the approach taken to mainstreaming climate change is authentic and appropriate (Thew et al. 2021).

Bachelor of Climate Change

‘Developing a comprehensive, fair and effective solution to the problem of human-induced climate change is one of the most formidable challenges currently facing the international community.’ (Boston 2011: 88) Richard Lazarus’s famous categorisation of climate change as a ‘wicked problem’ because of its multi-dimensional and cross-sectoral nature emphasises the need for climate change responses, including educational, that are truly interdisciplinary, in contrast to educational approaches that silo climate change within disciplinary boundaries.⁷

In 2022, the University of Waikato introduced the Bachelor of Climate Change degree (BCC). This is a three-year degree, and is the first of its kind in the world.⁸ It takes an interdisciplinary focus and combines scientific, economic and political understandings of climate change, with a particular focus on the impacts on Māori, Pacific, and Indigenous communities.⁹ From 2023, BCC students were able to take law papers and to graduate with a law major.¹⁰ Significantly, the law paper options are not limited to specialist climate law papers; instead, students are able to select papers from across Te Piringa’s entire programme, although students are offered guidance on what paper combinations might be most beneficial for them, in light of their study and career goals.

The need to ensure that law papers would be able to contribute to the BCC programme offered an opportunity to refresh the Waikato law curriculum. Like many other law

⁷ A ‘wicked problem’ is one that ‘defies resolution because of the enormous interdependencies, uncertainty, circularities and conflict stakeholders implicated by any effort to develop a solution’. Lazarus refers to climate change as a super wicked problem (2009: 1159).

⁸ For more information, see University of Waikato nd.b.

⁹ For more information, see University of Waikato nd.b.

¹⁰ The possibility of a potential future conjoint degree approach is also being currently explored.

schools around the world, Te Piringa has been considering what an effective legal climate change education requires. This involves a broader question of how to teach subject matter that can be both a topic in its own right, but also a theme or aspect in every other taught course. It is apparent that climate change is a topic that needs specific courses devoted to it—and not just legal courses—yet the vast nature of the problem means that specialist climate change law papers cannot, of themselves, do justice to the topic: there’s just too much content to cover (Mehling et al. 2020). So, specialist climate change law papers must be supported by a climate change focus across the law curriculum. This means there is an opportunity for survey courses offering breadth (such as a dedicated ‘climate change law’ course) and more specialised courses offering depth (such as specialist papers on climate finance), as well as the need to introduce a focus on climate change considerations in those papers which have not traditionally been seen as ‘climate change law-related’ topics (such as introducing climate change considerations into a course on Intellectual Property law) (Thew et al. 2021). This approach allows for the learning in one paper to reinforce learnings in other papers, and it allows the spotlighting of particular climate change concerns for different areas of law. The approach also offers a point of thematic or contextual unity across all paper offerings.

Te Piringa’s Law Programmes

At undergraduate level, Te Piringa offers the Bachelor of Laws Degree (LLB) and Bachelor of Arts with a Major in Law (BA Law). LLB students take a core curriculum of law papers in their first three years of study and then have the opportunity to study elective papers. Te Piringa has a recognised research strength in environmental and resources management law, and this is reflected in the faculty’s research-led teaching offerings.¹¹ However, as noted above, there is increasing recognition that climate change has broader significance and is not limited to environmental law (and traditionally related areas) but should instead be part of the social context in which law is studied more generally (Mehling et al. 2020).

The impetus for updating and refreshing Te Piringa’s papers was, of course, the need for paper offerings to be able to contribute to the Bachelor of Climate Change degree from 2023. The BCC Law Major is based entirely on the (updated) Bachelor of Arts with a Major in Law programme.¹² Students enrolled in a Law Major in either the BA or BCC degrees will study:

¹¹ For more on Te Piringa’s research strengths, see University of Waikato nd.c.

¹² For more on the BA in Law Programme, see University of Waikato nd.d.

Year 1: 30 points comprising:

- LEGAL103 Legal Method A (15 points)
- LEGAL104 Legal Method B (15 points)

These papers provide foundational disciplinary knowledge.

Year 2: 45 points selected from any 200 level LEGAL papers (the relevance of each of these areas to climate change is particularly noted):

- LEGAL201 Public Law—this paper provides an understanding of checks and balances in the constitutional state and the capacity of public law remedies (e.g. judicial review) to change the law (30 points)
- LEGAL203 Jurisprudence—this paper provides a philosophical grounding in Tikanga Māori and comparative legal thought to underpin Earth Jurisprudence (15 points)
- LEGAL204 Contracts—this paper provides an understanding of how contractual arrangements (e.g. procurement policies) can effect change (30 points)
- LEGAL207 Torts—this paper provides an understanding of how the law can develop novel duties of care to hold carbon emitters to account for their contributory share of cumulative emissions (30 points)

Year 3: 60 points selected from any 300 or 400 level LEGAL papers, including:

- LEGAL301 Crimes—this paper provides an understanding of how the criminal law can encourage regulatory compliance through strict liability (30 points)
- LEGAL304 Corporate Entities—this paper provides an understanding of how directors' duties can be reinterpreted to avoid environmental harm (15 points)
- LEGAL306 Dispute Resolution—this paper provides an understanding of the roles that arbitration, mediation, and negotiation play in establishing legal frameworks (e.g. Paris Agreement) and in providing compliance and dispute resolution mechanisms (15 points)
- LEGAL307 Land Law—this paper provides an understanding of the role played by legal techniques (e.g. covenants) in climate adaptation and leases in achieving energy efficient buildings (30 points)
- LEGAL407 Climate Change Law (15 points)
- LEGAL413 Ngā Tikanga Māori/Māori Customary Law (15 points)
- LEGAL414 Indigenous Peoples' Rights (15 points)
- LEGAL417 Immigration and Refugee Law (15 points)
- LEGAL428 Foreign Investment Law (15 points)
- LEGAL434 Environmental Law (15 points)
- LEGAL437 Public International Law (15 points)
- LEGAL440 Pacific Peoples and the Law (15 points)

- LEGAL442 Human Rights Law (15 points)
- LEGAL457 Insurance Law (15 points)
- LEGAL459 Law of the Sea (15 points)
- LEGAL466 International Environmental Law (15 points)

In general, it has been most straightforward to introduce climate change examples into existing papers with minimal changes to course content, rather than to require significant changes to the curriculum. While at least one dedicated climate change-focused lecture in each paper can most overtly demonstrate the place of climate change within the topic areas, this could also result in a 'bolt on'-type treatment of climate change (rather than a true embedding of the topic throughout the degree programmes). It will also require colleagues to produce new lectures for established papers, which does impact their workload and their course design. An anticipated (but ultimately, in Te Piringa's case, unfounded) risk was that some colleagues might be of the view that they could not create additional climate-change-focused lectures while continuing to cover all of the core content they were already teaching. An identified pathway to mitigate this was to ensure teaching teams include colleagues with a specific interest in climate change law, as they might be more willing to take responsibility for this aspect of the course.¹³ The issue could also be mitigated where a course has to be updated for other reasons, for example where the points weighting for a course is changed and lectures must accordingly be revised.¹⁴ Of course, the overwhelming nature of climate change means that it is the context in which the law must be taught, so, in order to teach law in context, it is necessary to teach climate change as *that context*.

For these reasons, it is suggested that, in general, a more immediately achievable approach to embed climate change in established courses such as core law papers may be via examples. This approach keeps paper content focused on existing core content, while refreshing the curriculum by introducing examples with a climate change focus to teach that core content. This might be via examples of the law that have a climate change context, or via problem scenarios used in tutorials that have a climate change context. Additionally, if some collectively agreed examples are deployed across the programme generally, these examples could be revisited consistently across core papers: such as, for example, a climate protestor example being encountered in a first-year paper like LEGAL103 Legal Method and then re-encountered (albeit with a different focus) in subsequent papers in second, third and fourth years.

One of the advantages of focusing on examples as a pathway for curriculum refresh is that examples contextualise learning.

¹³ *Researchers active in the climate change space are set out at University of Waikato nd.c.*

¹⁴ *As occurred for LEGAL203 Jurisprudence in 2022.*

This aligns with the suggestion that it may be helpful to begin to think about climate change as a (dominant) context in which the law must be understood, rather than as a discrete topic or a 'theme' for a course to consider alongside other aspects of the topic.

Level 100 papers

Given that LEGAL103 and LEGAL104 are the two foundational legal studies papers that BA in Law students and BCC students majoring in Law will take, it appeared logical to focus on these papers for the curriculum review. These papers are, fundamentally, disciplinary foundations papers that teach skills more than specific content. Therefore, for these types of papers, adapting the content to allow a climate change focus should be more straightforward than for some other papers. That said, the need for a 'climate change and legal method' focus is perhaps less apparent than for a paper like LEGAL207 Torts, where there's a clearer justification for a dedicated focus on climate change in light of how the law can develop novel duties of care to hold carbon emitters to account for their contributions to cumulative emissions. Thus, it seemed that LEGAL103 and LEGAL104 would offer an opportunity to introduce climate change examples which could then be returned to in subsequent papers (such as criminal law and contract law papers), which would allow climate change to operate as a source of thematic unity throughout the degree programmes.

Level 200 papers

Whereas Te Piringa's Level 100 papers are focused on introducing the New Zealand legal system and foundational disciplinary skills, Level 200 papers offer students the chance to look more in-depth and substantively at specific legal areas. For these papers, there was an opportunity to update the curriculum to give greater prominence to climate change content in these legal areas, especially given the significant recent climate change developments in the areas these second-year papers touch on. Climate change cases in New Zealand have tended to be based on administrative/constitutional law considerations and have taken the pathway of holding governments to account for climate change commitments (particularly following the Paris Agreement commitments), although tort law examples have also recently begun to emerge (Winkelmann, Glazebrook & France 2019). At the same time, practitioners have been developing contract law clauses to bring climate change considerations into contract law, and including these in the contract law paper supports both a climate change contextual focus for Te Piringa's law degrees and ensures the professional relevance of the degree programmes.

Helpfully, these papers are all Level 200 papers and the other second-year paper, Jurisprudence, offers an opportunity to enhance second-year law learning by introducing legal philosophy considerations that underpin public and private law learnings. In 2022, the Jurisprudence paper became a

trimester (rather than a full-year) paper. A new teaching team also took responsibility for the teaching of this paper in 2022 and the paper was given more of an Environmental/Earth Jurisprudence focus, to align with their research interests. Consequently, there was less of an immediate need to give the paper a specifically climate change-focused refresh at this time, although the paper was reviewed to ensure it could coordinate with the climate change-driven changes across the rest of the law curriculum, especially since the curriculum refresh offered an opportunity to align examples and cases across the four Level 200 paper offerings, to scaffold students who would meet the same content from a different but complementary perspective across the different papers.

Level 300 papers

As with the 200 level papers, Level 300 papers offer students in-depth substantive learning in core legal areas, with criminal law, corporate law, dispute resolution, and property law being covered. These Level 300 papers are already quite content-heavy and three of these five papers are now trimester papers (rather than full-year papers), which limited the scope for introducing new content to a certain extent. We again suggested that employing climate change law examples may be more helpful and immediately attainable for paper convenors looking to update their papers for 2023-2024, rather than introducing dedicated climate change law lectures (although this is encouraged where colleagues are willing and able to do so). Where the same examples from Level 100 and Level 200 papers can be adapted for reuse in third-year papers, this may also be helpful to students. However, this may not work for every paper, and the focus must be on what is appropriate for the students' learning.

Level 400 papers

As noted above, Te Piringa offers a range of Level 400 elective offerings, many of which already touch on climate change. This meant that there was an existing suite of elective offerings that already deliver a climate change legal education at Level 400. This is not to suggest that these papers should not be reviewed (they are, of course, subject to an annual paper review, which is a consultation with paper convenors which seeks feedback and encourages reflection on what has worked well and what could be changed for future years). It is also not to suggest that other Level 400 papers could not be updated to cover climate change content. Rather, it was recognised that LLB, BA, and BCC students already had a pathway through the existing elective offerings to cover climate change content. This meant that our immediate focus could be directed to curriculum review for the Level 100–300 papers.

The one exception to this is LEGAL436 Legal Ethics. Climate change raises a number of ethical issues, which invite continuous consideration across the legal curriculum. However, the professional focus of LEGAL436 Legal Ethics offers students an opportunity to consider the professional obligations that

the climate crisis may impose. It is increasingly recognised that the legal profession has a responsibility to understand the climate implications of its work and to consider how it ought to be a part of the effort to mitigate the climate crisis.¹⁵ The Hon Justice Brian Preston SC notes in 'Climate Conscious Lawyering' (2021: 53) that:

Lawyers need to advise clients of the potential risks, liability and reputational damage arising from activity that negatively contributes to the climate crisis. Lawyers also need to advise clients of the wisdom of disclosing (and the risks, liability and reputational damage of not disclosing) the climate-related risks to the corporation's entire business operation (including supply chains) when reporting to regulators, investors, financiers and shareholders.

LEGAL436 is the one elective offering that almost all law students will take. Because of this, it was viewed in the same way as the core LLB papers: that is, as another paper through which we could ensure climate change would be embedded throughout the curriculum. By providing for climate change to be addressed through our core papers, where they will reach all students, our intention is to ensure that our students have a climate-conscious legal education.

Concluding Remarks

The introduction of the BCC degree offered a timely opportunity for Te Piringa to review its curriculum and to take a leadership role in the mainstreaming of climate change into law programmes. This mainstreaming approach aligns with the evolution of climate change from legal speciality to legal context and aligns with Te Piringa's 'Law in Context' legal education focus, but it also meant that there was a need to update the curriculum to ensure that law paper offerings genuinely provide a climate change context for legal education. By focusing the curriculum refresh on examples, continuity with existing course materials could be ensured, while greater alignment between papers in our programmes could be fostered through the use of common, climate-change-focused examples.

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¹⁵ For example: *What does the duty to uphold the rule of law mean in the context of the climate crisis? Should lawyers be able to refuse instructions on climate-related ethical grounds? Do lawyers have a duty to advise their clients in a 'climate conscious' way?*

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