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Professors Discuss Climate Change Ethics at International Gathering in Qatar



Scholar in Residence Don Brown and Center Co-Director John Dernbach speaking at Climate Conference in Qatar

Two members of the Center recently spoke at an international gathering about the ethics of reducing greenhouse gas emissions. “It is increasingly clear that the ambitiousness of the international effort to reduce greenhouse gas emissions depends on the extent to which countries perceive the final result as fair,” said **Distinguished Professor and Center Co-Director John C. Dernbach** as he spoke at “Asking

Governments Questions about Their Positions on Justice and Equity: Linking Ambition to Equity,” a side event held at the Qatar National Convention Centre in Doha, Qatar on December 5th during the annual conference of the parties to the U.N. Framework Convention on Climate Change.

The U.S. is one of the 194 parties to the UN Convention on Climate Change, which sets a goal of stabilizing atmospheric concentrations of greenhouse gases at a level that prevents dangerous human interference with the climate system.

In order to achieve the Convention’s ultimate goal of limiting climate change, the participating countries need to agree on how much each country can emit.

“A national commitment to reduce greenhouse gas emissions is implicitly a commitment to a particular atmospheric stabilization level. It is also implicitly a statement about what that country’s fair share of emissions is. Both of these have deep ethical implications because they affect the level of harm that people will experience from climate change,” said **Widener Law Scholar in Residence Donald Brown**, who specializes in ethics and climate change. Brown presented fifteen questions that should be asked of governments about the ethical basis for their position regarding greenhouse gas emissions. The questions covered subjects such as equity, duties and obligations to vulnerable nations, and historical emissions.

To see a complete list of the questions, read [Qatar: Questions That Governments Should Be Asked About Their Positions on Equity and Justice](#) on Brown’s blog, [Ethics and Climate](#).

Scholar in Residence Donald Brown focuses on ethics of climate change



"I believe that global environmental problems have to be understood as ethical problems," says Center Scholar in Residence for Sustainability Ethics and Law Don Brown. Brown previously served as Associate Professor of Environmental Ethics, Science, and Law at the Pennsylvania State University where he taught interdisciplinary courses on climate change and sustainable development and also acted as Program Director of the Collaborative Program on the Ethical Dimensions of Climate Change. He also served as director of the Pennsylvania Environmental Research Consortium, which comprises 56 Pennsylvania colleges and universities working on sustainability issues.

Observing that Widener is "gaining a reputation for having a very productive environmental law faculty," Brown says that he has been following the development of the school's Environmental Law Center over the last several years. Brown and Distinguished Professor and ELC co-director John C. Dernbach were colleagues at the Pennsylvania Department of Environmental Protection in the past and have collaborated on a number of projects.

Mr. Brown has written extensively on climate change and sustainability issues in more than 30 countries with a focus on the need to integrate environmental ethics with science, economics, and law in environmental policymaking. He is the author of *American Heat, Ethical Problems with the US Response to Global Warming* and a new book to be published in October, *Navigating the Perfect Moral Storm, Climate Ethics*. CNN and Time Magazine called ClimateEthics.org, his previous blog, as one of the best 15 websites on any environmental issue in the United States. At Widener, he will be continuing to write at EthicsandClimate.org.

Professor and Center Co-Director Jim May said, "it is a real privilege to welcome someone of Don's caliber as our Scholar in Residence. We look forward to working with him on a variety of projects."

Mr. Brown began blogging on the subject of ethics and climate change law "as a way of participating in policy discussions as they unfold in real time," and "to raise ethical questions that weren't being talked about in the United States."

"I'm hoping to help Widener expand upon what its already doing successfully, and that is become a place of excellence in sustainability and environmental law," concludes Brown, adding, "I'm obviously interested in legal issues that are emerging because of increased globalization in economics and environmental law – a place like Widener can help people in the United States understand what's going on in the larger world."

Professor May joins Faculty of National Judicial College



Professor and Center Co-Director Jim May was recently inducted as a Member of Faculty to the National Judicial College. Drawing on his background in law, litigation and engineering, May's first assignment was to teach 60 judges from five states about water quality in general, and legal, policy and engineering aspects of hydraulic fracturing in particular at the National Judicial College's "Fracking and

Water: A Workshop for Judges" held Nov. 8 & 9 in Pittsburgh. May called it "an illuminating and exhilarating experience." The workshop focused on fracking and water resources for judges in the Marcellus Shale region, which includes portions of Pennsylvania, New York, Ohio and West Virginia. May was called to teach two sessions, "Fundamentals of Water Quality Laws," and "Hydraulic Fracturing: Science, Law and Engineering." Noting that the session was highly interactive, May called the resulting discussion "very engaged," likening it to "an oral argument made to an *en banc* panel of 60 judges." Hydraulic fracturing, known as "fracking," is a controversial means of recovering natural gas embedded in deep underground geologic shale formations.

The Center has been at the forefront of legal, policy and engineering issues concerning fracking. Josh Fox, the Director of "Gasland" spoke at a Center event in 2011. And the Widener Environmental & Natural Resources Law Clinic has been working on legal issues in fracking since 2010 (see related story, page 4).

Founded in 1963, the National Judicial College is run by an 18-member Board of Trustees. Its faculty consists of judges, lawyers, and legal professionals with national and international reputations and experience. May joins two other members of the Widener University community who serve as faculty for the College, Dean Linda L. Ammons and Associate Professor Jules Epstein.

Professor Patrick Kelly publishes “Trade, Globalization and Economic Policy” in Treatise on International Law



Vice Dean, Professor of Law and Center member Patrick Kelly’s article *Trade Globalization and Economic Policy* was just published as Chapter 1 The Treatise, *International Trade Law and the WTO*, which addresses notable debates in the arena

of international trade law and globalization. Professor Kelly’s chapter considers the basic structure of the WTO, its function and decision-making protocols, and explores key economic and legal concepts underpinning the WTO. Kelly notes that “The need of the hour is to discuss tariff barriers and non-tariff barriers, because they assist in promoting economic development.” Besides these, WTO attempts to control illegal trade practices, including dumping and subsidies, which are also pertinent topics in the current climate. The book was published in February 2013. Congratulations!

Shelton Discusses Global Environmental Jurisprudence

Dinah L. Shelton, the Manatt/Ahn Professor in International Law at George Washington University Law School, spoke on



“Environmental Rights in the Jurisprudence of Human Rights Bodies” on February 6 on the Delaware Campus, also broadcast live to the Harrisburg Campus. Shelton spoke about the extend to which

courts that consider human rights claims engage environmental issues. “Human Rights Bodies can help to fill the gaps left by other legal structures,” Shelton noted.

“Professor Shelton is a professional hero of mine. I am delighted that she was able to join us,” said **Professor and Center Co-Director Jim May**.

Shelton is the former Chair of the Inter-American Commission on Human Rights, on which she still serves as a member. She has authored numerous articles and books on international law, human rights law, and international environmental law. She authored *Remedies in International Human Right Law*, which garnered the 2000 Certificate of Merit from the American Society of International Law and co-authored *Protecting Human Rights in the Americas*, which won the 1982 Inter-American Bar Association Book Prize.

Hunter Speaks on International Negotiations on Climate Change



“We don’t have a framework – an ideology – for how we’re going to come together,” said **American University Washington College of Law Professor David Hunter** as he spoke about “The Future of the International Climate Change Regime: A Tale of Two Approaches,” on Widener Law’s Harrisburg campus on February 19th as part of the ELC’s Distinguished Speaker series, also broadcast live to the Delaware campus.

Hunter’s talk focused on the two different approaches to creating an international climate change regime embodied by the 1997 Kyoto Protocol and the non-binding 2009 Copenhagen Accord. He characterized the Kyoto Protocol as a top-down approach that looked to place binding limits on emissions in industrialized nations while the Copenhagen Accord offered a bottom-up approach in which nations undertook non-binding commitments of their own choosing. Hunter observed that while there is a broad agreement on the overarching goals of an international climate change regime, “. . . how are we going to get there?”

He also touched on the idea of an “ambition gap” between what countries were willing to pledge to in the Copenhagen Accord and what the science says will be necessary to avoid “dangerous anthropogenic interference” with the planet’s climate. He concluded his talk by examining the importance of China and the United States as the countries emitting the most greenhouse gases and the political situation in the U.S.

A graduate of the University of Michigan and Harvard Law School, David Hunter is Professor of Law, Director of the International Legal Studies Program, and Director of the Program on International and Comparative Environmental Law at American University’s Washington College of Law. He currently serves on the Boards of Directors of the Environmental Law Alliance Worldwide-US, Earth Rights International, the Project on Government Oversight, and the Center for Progressive Reform.

Clinic Joins Appeal of Natural Gas Compressor Station Permit

The **Environmental & Natural Resources Law Clinic** has agreed to join in the representation of the Clean Air Council in an appeal of a permit issued to a natural gas processing plant in Washington County, Pennsylvania that poses potentially broad implications for regulation of natural gas development in Pennsylvania. The permitted facility is at the head of a network of multiple natural gas compressor stations gathering gas from producing wells in the Marcellus Shale. The appeal, to the Pennsylvania Environmental Hearing Board, argues that the Pennsylvania Department of Environmental Protection improperly issued the permit for the facility because DEP failed to consider and aggregate the emissions from the various compressor stations and operations sending gas to the permitted facility as is required by the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) components of the federal Clean Air Act and Pennsylvania Air Pollution Control Act.

When emissions from the permitted facility are viewed in isolation, the facility is not a “major source” for PSD and NSR purposes. However, if any of the compressor station’s emissions were to be combined with the projected emissions of the permitted facility, the emissions would make the permitted facility a major source.

The permittee, MarkWest Liberty Midstream & Resources LLC (MarkWest), has moved to limit the legal issues at hearing or in the alternative for partial summary judgment, arguing that the Clean Air Council’s appeal is flawed because the aggregation of emissions from various sources sought is allegedly based solely on a “functional relationship” between the permitted natural gas processing plant and the compressor stations that contribute gas flow to the permitted project.

The EHB’s decision on the MarkWest motion will have direct implications for the permitting of natural gas compressor facilities throughout Pennsylvania as the Marcellus Shale drilling boom continues to expand. Argument on the motion is set for April 3 in Pittsburgh. **Clinic Director and Associate Professor of Law Ken Kristl** will be making the argument on behalf of the Clean Air Council. “This is an opportunity to get clear direction on how these integrated systems of natural gas collec-

tion and compression should be treated for air permitting purposes,” Kristl said. “Summit Oil is not and should not be the last word on this subject.”

Faculty Updates

John Dernbach wrote a Talkback series for the Corporate Social Responsibility Network on accelerating progress on sustainability. In *Acting as if Tomorrow Matters: Accelerating the Transition to Sustainability*, the third book Dernbach has edited on the subject of sustainability, he brings together experts from a variety of fields to look at how the United States can hasten efforts to achieve sustainable development. The Talkback series offered an overview of the key findings presented in the book and looked at ways that the issue of sustainability can be addressed more effectively. The series can be found at <http://www.csrwire.com/blog/series/38-acting-as-if-tomorrow-matters-accelerating-the-transition-to-sustainability/posts>.

Erin Daly and Jim May published *Remedies for Achieving Constitutional Environmental Rights*, Eur. J. Env. Lia. (2013). **May** published *Civil Litigation as a Tool for Regulating Climate Change*, 46 Val. U. L. Rev. 356 (2012), and *American Electric Power v. State of Connecticut, Brief of Law Professors as Amici Curiae in Support of Respondents* (2012). **May** also spoke about *Development in Federal Courts and NEPA*, at the Pennsylvania Bar Institute’s 2013 Environmental Law Forum in Harrisburg, PA (March 2013); *Procedural Environmental Rights Worldwide* at the Annual Public Interest Law Conference, University of Oregon (March 2013); and *Implementing the Clean Water Act in the Chesapeake and Mid-Atlantic Region: Litigation in the 1990’s and 2000’s*, at the University of Maryland (February 2013). May is on sabbatical this spring.

Have news, updates or questions? Please contact:
In Harrisburg: Professor John Dernbach, 717.541.1933, jcdernbach@widener.edu
In Wilmington: Professor Jim May, 302.477.2060, jrmay@widener.edu

Credits:
Editor: Jim May
Layout: Debbie Dantine
Content: Mary Allen, Nathan Garrison, Jim May, John Dernbach, Ken Kristl