

Someone asked me recently what I thought law schools should be teaching about climate change. Naturally, my first reaction is that everyone everywhere needs to put climate change at the top of their agenda. As usually happens, when I got past that gut reaction, things got more complicated.

There are many important societal issues that don't get high priority in law school, such as the availability of health care or public health law. The basic reason is that relatively few lawyers work on this topic, so learning about it isn't a priority for law students in career terms. Law schools aren't just trade schools, but a lot of what we do is driven by the desire to prepare students for practice (regardless of whether you think we do a good job at that.) Law student interests aren't entirely driven by career needs, however.

In terms of the future of climate change in law schools, we already have courses specifically about climate change law as well as other environmental courses in which climate change figures heavily. We can expect more students to take these courses as climate change becomes more and more salient to the population in general. I think we are more likely to see big growth, however, in courses that were traditionally considered non-environmental, but that are now increasingly entangled with climate change.

Energy law is a prime example. It used to be a fairly niche component of courses about regulated utilities and at some schools in courses on oil and gas law. Energy law is attracting wider student interest now because of the industry transformation due to renewable energy. Not only has the subject gotten a lot more interesting because of new legal issues relating to renewable energy, but it's been a growth area in terms of jobs. I would expect that trend in enrollments to accelerate, and we're already seeing an increased interest by law schools in hiring more energy professors as a result.

Land use law is another subject that may be transformed by climate change. On the one hand, we may see a major shift away from continued greenfield development to in-fill housing, which will create new issues and work for lawyers. The vulnerability of many urban areas to climate change may also create more work for lawyers and hence more interest from law students.

There may be other areas of law that will become more prominent due to climate change. Water law may be a much broader concern than in the past, as evidenced by the current severe droughts throughout the West. Insurance law may also attract more interest as insurance markets are disrupted by climate change.

We will also see infiltration of the climate issue into other courses. Here are some

examples:

Property law. As we begin to see programs pushing property owners away from coasts threatened by sea level rise, those efforts will be challenged as “takings” of property. We will also start seeing more cases in which substantial shifts in rivers, lakes, and the sea coast raise issues about ownership rights. Moreover, courts are going to have to figure out how existing easements and covenants apply when physical circumstances have changed beyond any earlier expectation.

Tort law. There are a slew of damage cases against oil companies for their emissions. If any of those cases succeed, they’ll definitely require coverage in torts classes. What’s more likely is that we’ll start to see a lot of litigation based on inadequate preparation for climate change, such as levees that aren’t strong enough to deal with floods.

Corporate and securities law. Pressure by investors for companies to take climate change into account will translate into litigation over corporate governance and disclosures to shareholders. ESG (Environmental, Social, and Governance) considerations are likely to weigh more heavily on corporations going forward.

International law. Climate change isn’t a major focus of international law courses today, which tend to focus more on issues of war and peace, general rules governing international obligations, and human rights. As the international legal regimes governing emissions reductions, tropical forests, and adaptation to climate change becomes more extensive and robust, the issue may force itself more toward the center of international law. If geoengineering becomes an established practice, that will surely become an important issue for international lawyers.

Clinical courses. I also expect climate change to figure more heavily in the work of law school clinics. That’s not just true of environmental law clinics, but also clinics serving disadvantaged populations, due to the disparate impact of climate change on those groups.

Some of these changes may be gradual. The continued expansion of interest in energy law seems like the most predictable trend in the short term. Like intellectual property, it may be transitioning from a niche subject to a core field that all law schools find important.

Law schools need to offer a very wide range of classes given the diverse and specialized work that lawyers do these days. One way or another, however, climate change seems likely to occupy more space in law school teaching.

