



# ENVIRONMENTAL LAW AND POLICY

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## Lecture 1. INTRODUCTION TO ENVIRONMENTAL LAW

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- Mismatched scales
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- Protected interests

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- Utilitarianism and Cost-Benefit analysis
- Environmental justice

# Why study environmental law

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# Why study Environmental law

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The SIMPLEST DEFINITION of “environmental law and policy”:

“the use of public authority to protect the natural environment and human health from the impacts of pollution and development”.

→ it's deadly boring

→ it fails to capture why environmental law matters.

# Why study Environmental law

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The challenges to environmental quality have a critical influence on where we live, our quality of life and, perhaps most important, the kind of world our children will live in.

→ **THESE THINGS REALLY MATTER.**

For instances:

- ❖ *how sea level rise will affect a coastal community*
- ❖ *what soil erosion means to a farming community*
- ❖ *what the collapse of fisheries does to a fishing community*
- ❖ *how long it will take to reverse these impacts*

# Why study Environmental law

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Before proceeding further, it is worth noting that the broad subject of environmental law is often viewed as comprising two quite distinct fields – **POLLUTION LAW** and **NATURAL RESOURCES LAW**.

- *While the former focuses on the sources of pollutants, threats to human health, and risk level, the later concentrates more on land use and ecological concerns.*
- *Despite their differences in emphasis, both fields share fundamental similarities and can usefully be viewed as protecting different aspects of the environment.*

# A short history of environmental protection

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**NATURAL RESOURCES:** the increasing growth of population resulted in the dearth of natural resources and their alternatives.

**POLLUTION:** since the explosion of industrial sectors, agriculture, services, etc.

→ Have you ever heard about the book “**SILENT SPRING**” written by Rachel Carson?

→ 10 minute video: “Pesticides – DDT – Rachel Carson – Silent spring”

<https://www.youtube.com/watch?v=lpbc-6lvMQI>

- **What is “Silent spring” book about?**
  - a. Pesticide’s long term impacts on plants, animals, including human beings.
  - b. DDT’s long term impacts on plants, animals, including human beings.
  - c. Herbicide’s positive impacts on plants, animals, including human beings.
  - d. Fungicide’s role in causing cancer in human.

# “Silent spring”

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- ❖ 4 years to complete.
- ❖ The book described how DDT entered the food chain and accumulated in the fatty tissues of animals, including human beings, and caused cancer and genetic damage.
- ❖ DDT killed not only the targeted insects but countless more, and remained toxic in the environment even after it was diluted by rainwater.
- ❖ The book's most haunting and famous chapter, "A Fable for Tomorrow," depicted a nameless American town where all life -- from fish to birds to apple blossoms to human children -- had been "silenced" by the insidious effects of DDT.

# Environmental law in Vietnam

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- Environmental protection Law of Vietnam was first put into force in 1993 (National Assembly IX, 4<sup>th</sup> meeting), along with some other related laws such as Law of Water resource, Law of Land, Law of Forestry, etc.
- 10 years later, this law revealed many drawbacks → On 29 Nov 2005 (National Assembly, 8<sup>th</sup> meeting), this law was officially amended, supplemented and approved.
- In 2014, this Law was adjusted once more and has come into force since the beginning of 2015.

# Environmental law in Vietnam

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- Along with the “Environmental protection Law”, many decree, circular, decision, standard, regulation have been issued to meet the new requirements of this law.

# Basic themes of environmental law

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1. Scientific uncertainty
2. Market failures
3. Mismatched scales
4. Cognitive biases

Most environmental problems involve complex technical and economic issues, but policy makers rarely have anything approaching perfect knowledge when asked to make specific decisions. Certainty may come too late, if ever, to design optimal legal and policy responses.

Another source of uncertainty lies in the complex interrelations among causes of environmental harms. Rather than resulting from a single, identifiable action, many environmental harms are caused by cumulative, multiple actions.



## 1. Scientific uncertainty

## Precautionary principle

- In its simplest form, the principle counsels caution in the face of significant but uncertain threats.
- In its most extreme form, the principle would forbid any activity that potentially could produce significant harms, regardless of the likelihood that these harms may occur.



## 1. Scientific uncertainty

## 2. Market Failures

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### Public goods

- Their benefits can be shared by everyone but owned by no one.
  - ❖ clean air
  - ❖ clean water
  - ❖ ecosystem services
  - ❖ etc.

### The tragedy of the commons

- Individuals' personal incentives work against the best long-term solution.
  - farmer race to pump water from a shared underground aquifer
  - farmer race to force their cows to graze in a common field
  - 3 minute video:  
<https://www.youtube.com/watch?v=MLirNeu-A8I>

## 2. Market Failures

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### Collective action - Free riders

- Collective action problem: increased transaction costs in negotiating solutions as the number of parties increases.
- Free riders: a party benefits from other's sacrifice.

### Externalities

- The costs from the damage to forests, increased respiratory ailments, and reduced pleasure in clear vistas from the pollution are very real, but they are external to the costs you currently pay to operate.

### 3. Mismatched Scales

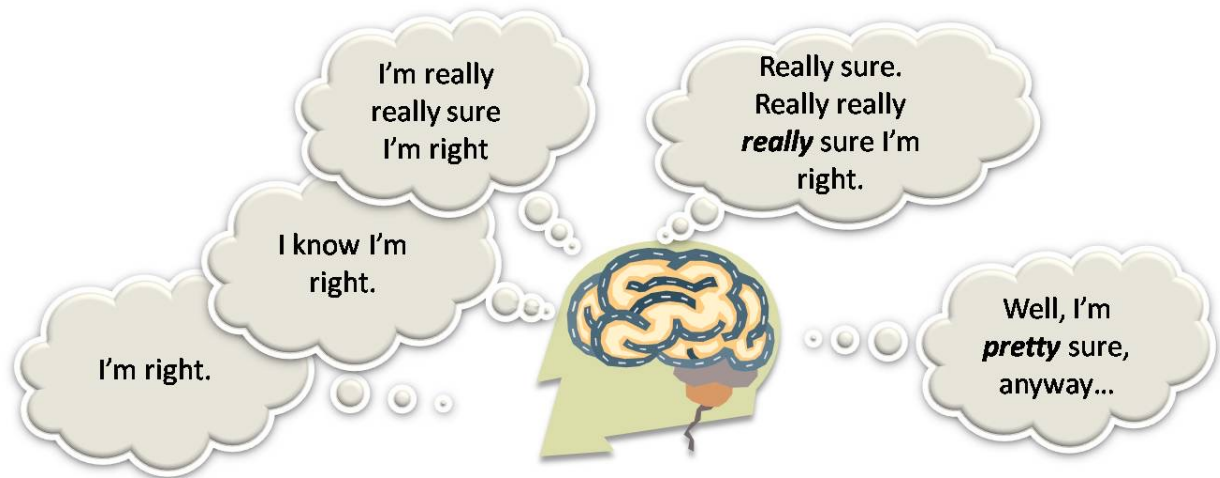
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- Natural boundaries rarely track political boundaries. Ecological concerns were far from the politicians' and surveyors' minds when these political jurisdictions were created, but the mismatch of natural and political scales poses difficult challenges for environmental management.
  - ❖ i.e, acid rain was hard to control in the 1970s and 1980s because of political jurisdiction. → The costs of reducing emissions downwind were borne by those who receive no benefit and those benefiting from reduced pollution upwind did not have to pay for it.
  - ❖ In the USA, there are 2 optional trends for each state: Race-to-the-bottom (The dynamic of local jurisdictions competing with one another by lowering environmental standards to attract industry) and Race-to-the-top (higher environmental standard).

Everyone suffers from cognitive limitations and biases that affect our views about the environment and environmental policy.

In some cases, these limitations and biases undercut efforts to reduce pollution and to protect environment.

In other cases, these limitations and biases lead us to overestimate environmental risks and to demand policy measures that may not be “rationally” justified.



## 4. Cognitive biases

# Analytical frameworks

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1. Environmental rights
2. Sustainable development
3. Utilitarianism and Cost-Benefit analysis
4. Environmental justice

Like human, the environment itself has rights to be free of pollutants.

Bio centric rights concern the rights of plants and animals other than humans.

Eco centric perspective believes that nature as a whole has a right to protection.



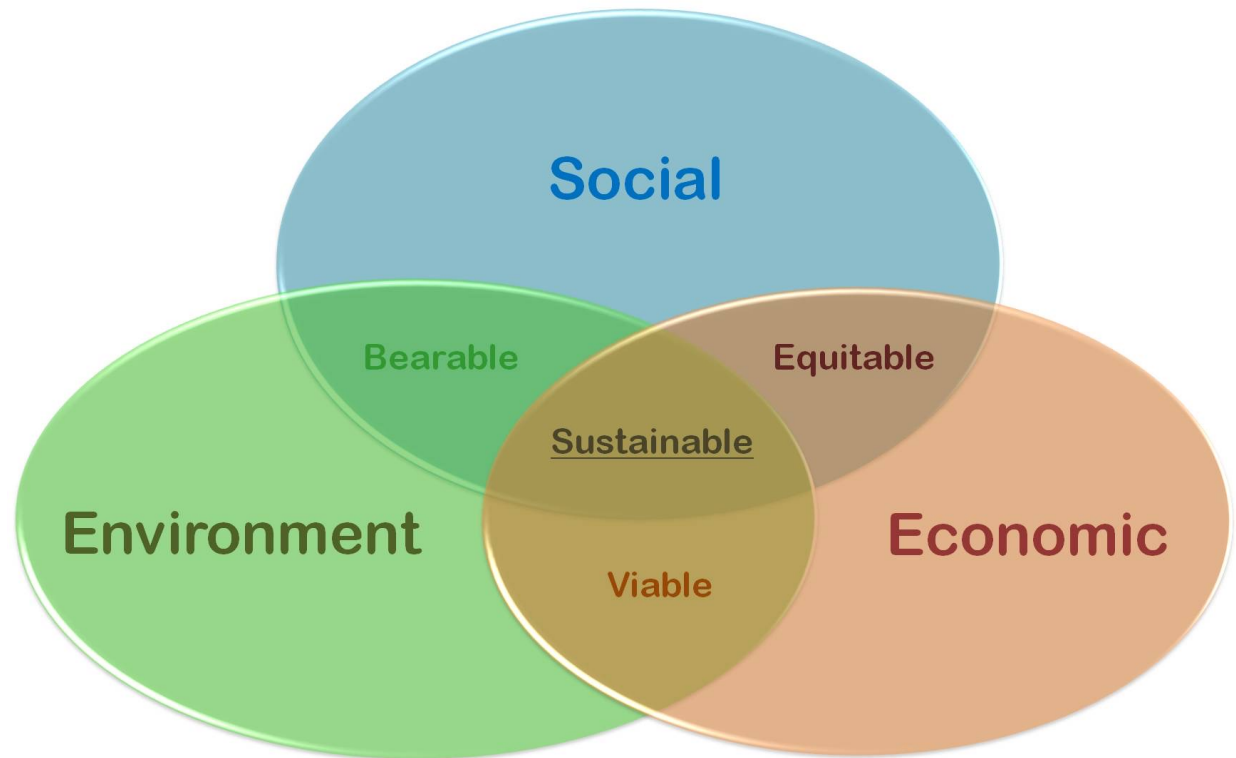
## 1. Environmental rights

SD is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

→ SD ties together two disparate fields – development and environmental protection.

→ “Growth” is not the same thing as “development”.

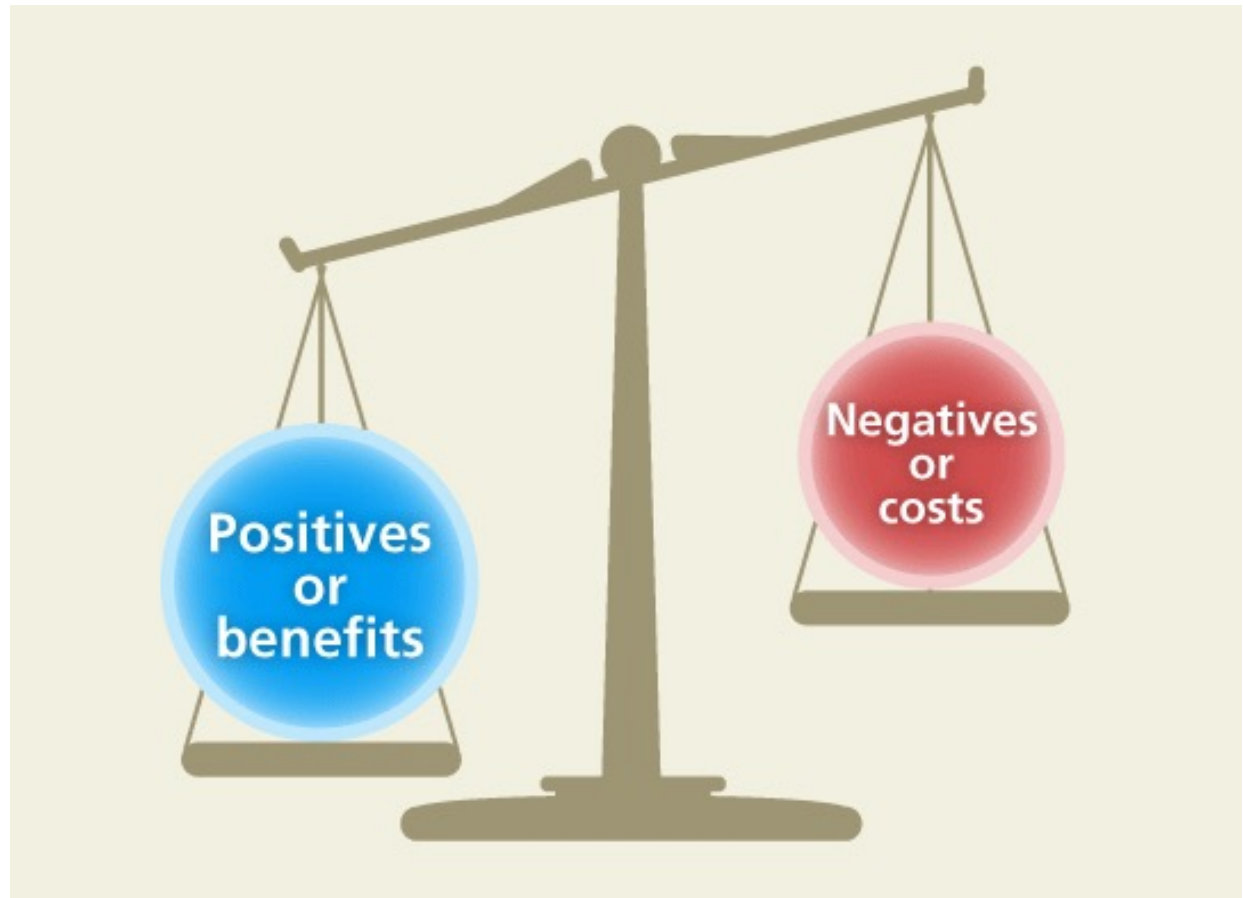
→ SD focuses both on intragenerational equity and on intergenerational equity.



## 2. Sustainable Development (SD)

The Government use market prices, surveys, and other devices to place a monetary value on the environmental benefits that the regulation hopes to achieve (avoided medical cost, lives and species saved, the aesthetics of cleaner air or preserved wetlands).

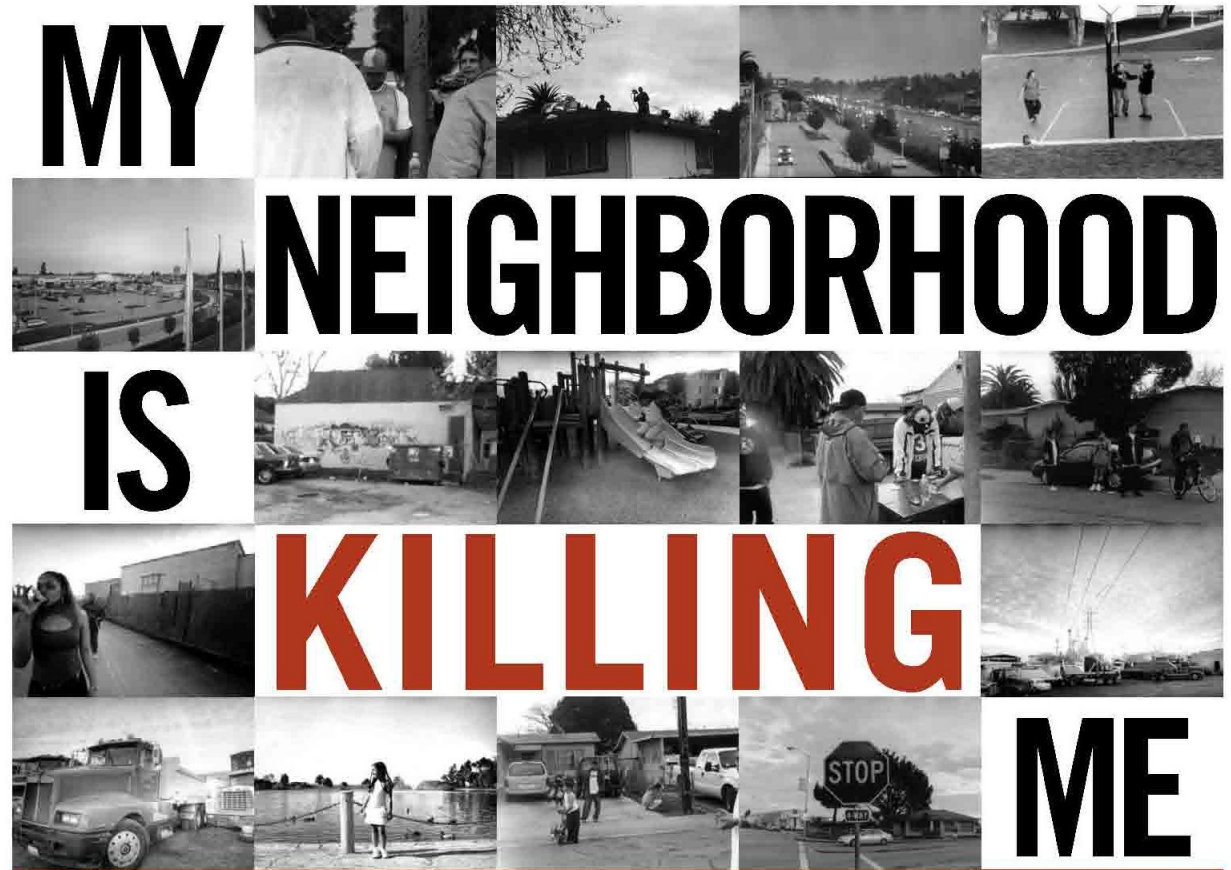
The Government then compares these benefits against the cost of the regulation (employment loss, reduced industrial production, cost of needed pollution control equipment).



### 3. Utilitarianism and Cost-Benefit Analysis

The focus is on how the burdens of environmental harms and regulations are allocated among individuals and groups within our society.

Environmental justice focuses on the distribution of environmental burdens and policies and also on the process by which environmental decisions are made.

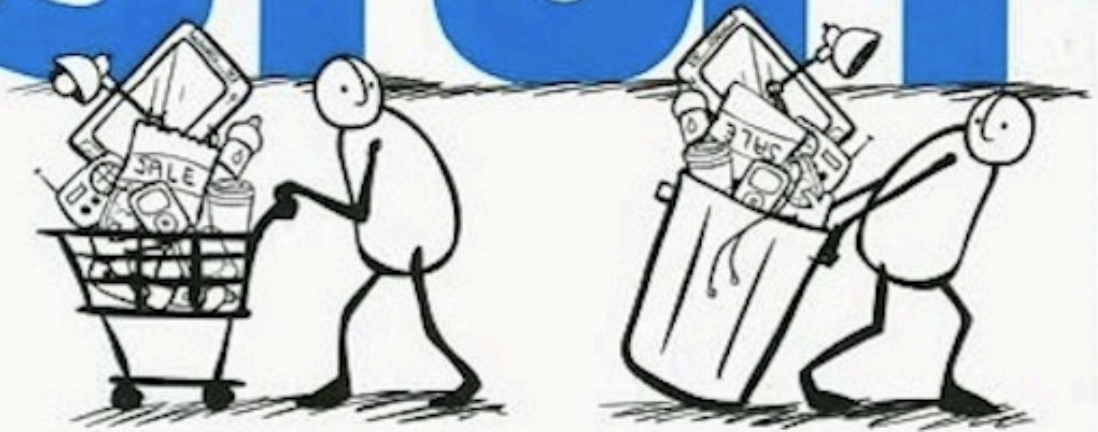


## 4. Environmental Justice

[https://www.youtube.com/watch?v=9Gorqr\\_oigqM](https://www.youtube.com/watch?v=9Gorqr_oigqM)

→ Recommend some measures to prevent the exploitation of natural resources?

# THE STORY OF STUFF



21 minute video  
STORY OF STUFF