

Peoples and the Protection of Biological Diversity'. Wiersema persuasively demonstrates the complicated problems that arise in the 1992 Biodiversity Convention when trying to accommodate rights to indigenous peoples over biological resources, in relation to such issues as, *inter alia*: intellectual property rights, the definition of indigenous peoples and the reconciliation of the sovereignty of States and rights of indigenous peoples.

Professor Alvarez's contribution is an examination of 'The Right to Water as a Human Right'. In his work, Alvarez analyses various international instruments, such as the 1948 Universal Declaration on Human Rights and the 1966 Human Rights Covenants to reach the conclusion that, although not expressly mentioned in such instruments, the existence of a human right to water can be inferred from those and other human rights documents. Alvarez argues that, having established the existence of a human right to water, 'States have the immediate obligation to fulfil, to respect, to promote, and to protect [it] ...' (p 80).

The final chapter is a contribution by Michael Shaw on 'Women's Rights and the Global Population Crisis', focussing on the role of women in population control. Shaw argues that '[u]ntil practice matches theory, coercive steps need to be taken to give women the ultimate power within the family to decide the number of children they will have. These steps will have the added benefit of moving toward the goal of complete equality between woman and men' (p 94).

The book contains appendices relating to the *Mayagna Indian Community of Awas Tingni* case, including the petition lodged against Nicaragua and the *amici curiae* submission in the case.

In conclusion, the book under review is an interesting study of the link between human rights and environmental issues, a subject that has no doubt gained currency in recent years. Much has been written on the topic and this book contributes further to our understanding of some crucial issues in this field. The topics chosen for the book represent a good combination of relevant issues and give a comprehensive overview of some of the key questions that need addressing, among the most interesting being the questions of the very existence of specific environmental rights (procedural and substantive) and the possibility of using human rights as tools for environmental litigation. The book, however, would have benefited from a better structure, in the sense that the book could have been divided in a more coherent manner. There are in fact several, distinct clusters of topics that could have been grouped together in separate parts, such as procedural rights and environmental litigation, *sensu stricto* and *largo*. Such a structure, in the reviewer's opinion, would have made the book on the whole, clearer and more coherent. That aside, the overall impression gained, is that the book is very well researched and thought provoking.

Malgosia Fitzmaurice
Professor of Public International Law, Department of Law
Queen Mary, University of London

Chasing the Wind: Regulating Air Pollution in the Common Law State. By NOGA MORAG-LEVINE [Princeton, New Jersey, Princeton University Press, 2003, xv + 259 pp, ISBN 0 6910 9481 0, Paperback, £22.95]

The Clean Air Act 1970 (CAA) was introduced with a flourish of publicity and lauded as a revolutionary response to the problem of air pollution in the United States. Bold promises were made to the effect that the Act would guarantee the right of US citizens to clean air. In her scholarly and fascinating book, Morag-Levine mounts a strong challenge against the orthodox

view that the legislation marked a great advance in the history of pollution abatement and asserts that the Act has failed to fulfil these initial promises.

The author's central hypothesis is clearly expressed at the outset, namely, that the CAA has been undermined by its heavy reliance upon 'risk based' as opposed to 'technology based' standards. In relying upon identification of risk as a trigger for justifying regulatory intervention, the regime adopted the reactive approach of the common law whereby action cannot be taken in the absence of clearly identifiable harm. Morag-Levine argues that this is in marked contrast to the position in certain European countries where the emphasis is on the technical feasibility of reducing pollutants, irrespective of whether the specific nature and magnitude of the harm has been clearly identified. For example 'Best Available Techniques not Entailing Excessive Cost' (BATNEEC) conditions can be attached to licences without the need to show that this is necessary to prevent specific harms. The author explains that the reasons for this state of affairs stem from the deep-rooted suspicion in the United States of interventionist regulatory regimes which empower bodies to act in the absence of clearly identified threats to health and safety.

The author sets the scene in chapter 1 and advances the argument that the Act was undermined from the outset, in that it was sold to the public as offering absolute protection from harmful pollutants. This perpetuated the fiction that it is always possible to ascertain a specific emissions threshold above which levels of pollutants are harmful and below which they may be considered safe. Nevertheless, the Environmental Protection Agency (EPA) was pressurised by political and economic factors into setting emissions standards linked to thresholds of risk and was dissuaded in most instances from making use of the somewhat limited powers in the CAA to set technology based standards. Where the EPA failed clearly to identify and quantify a risk before acting, it was open to challenge on constitutional grounds. These constitutional challenges are central to Morag-Levine's thesis that the interpretation and application of the CAA has been continually hampered by the aforementioned suspicion of 'command and control' approaches and doubts as to their constitutional legitimacy. This theme is developed in chapter 2, where the author delves into US constitutional case law and examines key authorities in which an entrenched view emerged, to the effect that administrative powers had to be kept in check by imposing a heavy burden on regulators to justify any restrictions on business by demonstrating the existence of clearly identifiable and quantifiable threats to health.

In Chapter 3 the author steps further back in time and examines the role of the common law of nuisance as it evolved from *Aldred's case* ((1611) 77 ER 816), which was widely interpreted as affording absolute protection to the undisturbed enjoyment of property. Clearly such absolute protection was no longer feasible as industrialisation led to increased land use conflict. However, Morag-Levine argues that the common law maintained the illusion of offering absolute protection by altering thresholds of actionable harm and imposing rigorous causality tests. Thus, as industrialisation increased, nuisances which would previously have been actionable were dismissed as 'trifling inconveniences'. There is certainly nothing novel about this assertion (see J.P.S. McLaren, 'Nuisance Law and the Industrial Revolution: Some Lessons from Social History' (1983) 3 *Oxford Journal of Legal Studies* 155) However, the key insight offered by Morag-Levine concerns the differing ways in which the English and US legislatures reacted to the manner in which the common law sought to deal with the pollution problem. In England it was recognised that the narrow way in which harm was defined by the common law and the heavy evidential burdens placed upon plaintiffs rendered it ineffective against pollution. The Alkali Acts introduced in the 1860s, which spawned the modern era of environmental regulation in the UK, were introduced with the purpose of overcoming these problems; at least in their narrow field of application. To this end, the Best Practical Means (BPM) concept provided an innovative means of facilitating reductions in emissions in the

absence of specific links with health problems but without imposing crippling costs on industry. In marked contrast, in the US these very limitations were found to be virtues and the common law's reliance upon the harm principle was absorbed into the aforementioned constitutional principles limiting regulatory intervention in the absence of clear dangers to health. The reasons for this are explored in chapter 4 where the author's expertise in political science is much in evidence. Here she explains how 'command and control' regimes with a European flavour came to be associated with 'police states' and despotism and had to be strictly controlled by constitutional safeguards manifested in common law limitations in order to defend the rights of the individual against insidious encroachments by administrative powers.

In the latter chapters of the book, the author considers the history of the US regulatory response to the problem of smoke and 'odours' in the light of the above themes. It is noteworthy that the latter category originally encompassed elements capable of causing harm far more serious than mere offence to sensitive nostrils. Categorising certain agents in this manner had the effect of trivialising them as aesthetic harms and thus difficult to regulate through regimes influenced by common law notions of actionable harm.

The great strength of this book is its reliance upon historical and political sources in addition to legal ones; this provides insights and nuggets of historical detail which could not be gained through a strictly legal analysis of the materials. Thus, it comes as no surprise that the author is a Professor of Political Science and the fresh perspective which she brings reminds one of the limitations of scholarship which is unduly tram-lined within the confines of the legal discipline. The wider sources which she brings to bear on the issue provide a rich historical background in which one can clearly see the manner in which the attitudes and beliefs of certain epochs influence law and policy. For example, as regards some of the more outlandish attitudes displayed by industrial interests in years past, one is struck by: the industrialist who described smoke as 'beautiful' and the 'incense of industry' (p 110); a widely held belief that toxic emissions were a good thing in that they served to disinfect polluted communities and kill diseases (pp 50–1); and a serious attempt to mask malodorous emissions with pine scented essential oils (p 130)!

The conclusions are forcefully argued and the complex themes are skilfully woven together in a text which is concise yet surprisingly rich in detail. Morag-Levine's central hypothesis forms the backbone of the book and she is consistent throughout. Perhaps a clearer impression of where the debate currently stands and possible future directions in US law and policy would have been useful; nevertheless, this is a minor point and does not detract in any way from the value of the book. Overall there can be no clearer exposition of the manner in which domestic legal traditions combined with social, economic, political and historic factors serve to mould regulatory responses to pollution.

Mark Wilde
Brunel University

Casebook on EU Environmental Law. By LUDWIG KRÄMER [Oxford, Hart Publishing, 2002, 484 pp, ISBN 1 8411 3172 5, Paperback, £37]

Casebooks have performed a valuable function of bringing together a disparate range of materials, normally only available in hard copy. They have been especially useful as teaching tools—rather than having many students chasing very few copies of each case, a law teacher could recommend a casebook and proceed with their classes on the basis that all students had at least the opportunity to access the relevant materials.

Law teachers can now, though, do a very similar process with a web page of hyperlinks. International, EC and national case law (together with legislation and policy documents) is widely available through either open-access sites or databases to which most universities and