

Environmental Limits and the Law

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Abstract:

Many of our environmental problems are caused by the 'tyranny of small decisions': the cumulative impact of individual decisions to consume natural resources or engage in polluting activities. Our system of environmental law often ignores these small decisions or authorises them on a case-by-case basis without regard to the larger picture. Too often, the law fails to acknowledge environmental limits and restrain cumulative human impacts on the natural environment.

This paper presents the optimistic view that this position is changing and will increasingly be replaced by effective recognition of environmental limits in the law. Drawing on a study of Australian fisheries, water and pollution law (including the law concerning greenhouse gas emissions), the paper argues that, despite some setbacks, there is a trend over several decades towards the use of statutory 'environmental caps' to limit cumulative impacts of human activity on the natural environment.

Given increasing pressures from human activity on the natural environment, it is likely that this trend will continue. Environmental laws will increasingly be assessed by asking two questions: do they provide for collective limits on pollution or the use of natural resources; and if so, how will those limits be set and enforced? Drawing on examples from Australia and overseas, the paper identifies some of the legislative design options that are available to address these questions and considers some of their legal and policy consequences.

Keywords: environmental law, fisheries, greenhouse gas emissions, pollution, water resources.

BIOGRAPHY

Michael has worked in environmental law and policy for almost two decades. He was Principal Solicitor of the Environmental Defender's Office (WA) between 1996 and 2002. Since that time he has worked in the Department of the Premier and Cabinet (WA), Department of Climate Change (Cth), Department of the Environment (Cth) and as a parliamentary researcher for the Greens (WA). In 2013-2014 he was engaged by the University of Western Australia on the project 'A Regulatory Framework for Groundwater Management in a Drying South West'. He is currently a PhD candidate in the Faculty of Law at the University of Western Australia.