

Policy-oriented legal research: reflections from a sustainability legal scholar

1

PhD seminar on Sustainability Law 2023
Oslo, 16 October 2023

Eléonore Maitre-Ekern
Department of Private Law, University of Oslo
NIVA – Research institute for water and the environment



Aim of the presentation

- Why legal research?
- Legal research styles
- Why did I (choose to) engage in policy-oriented legal research?
- How to do engage with policy as a legal researcher?
- Challenges and opportunities
- An example: the SMART reform proposals

Why legal research?

- Law does not operate in a vacuum, but in a complex 'social setting'
- Law reflects social attitudes and behaviours. It also seeks to shape and control social attitudes and behaviours
- Social values and attitudes (existing and expected) keep on changing thus the law has to be dynamic and cope with the changing social ethos
- Law also has to regulate new emerging behaviours following ongoing scientific and technological developments

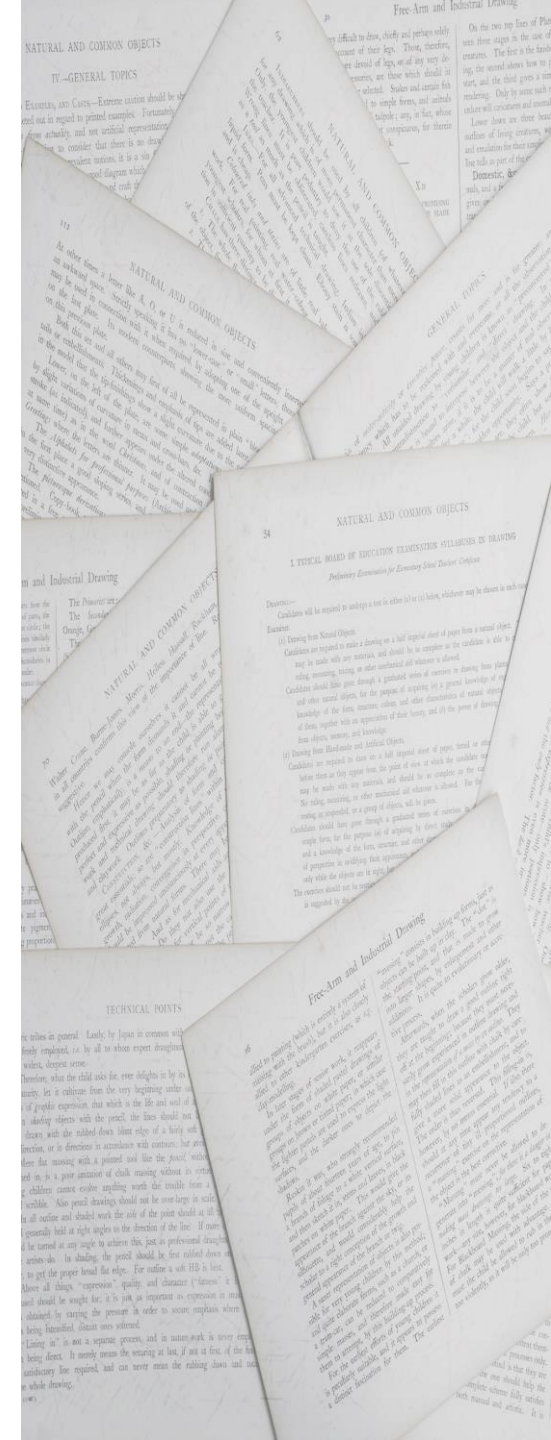
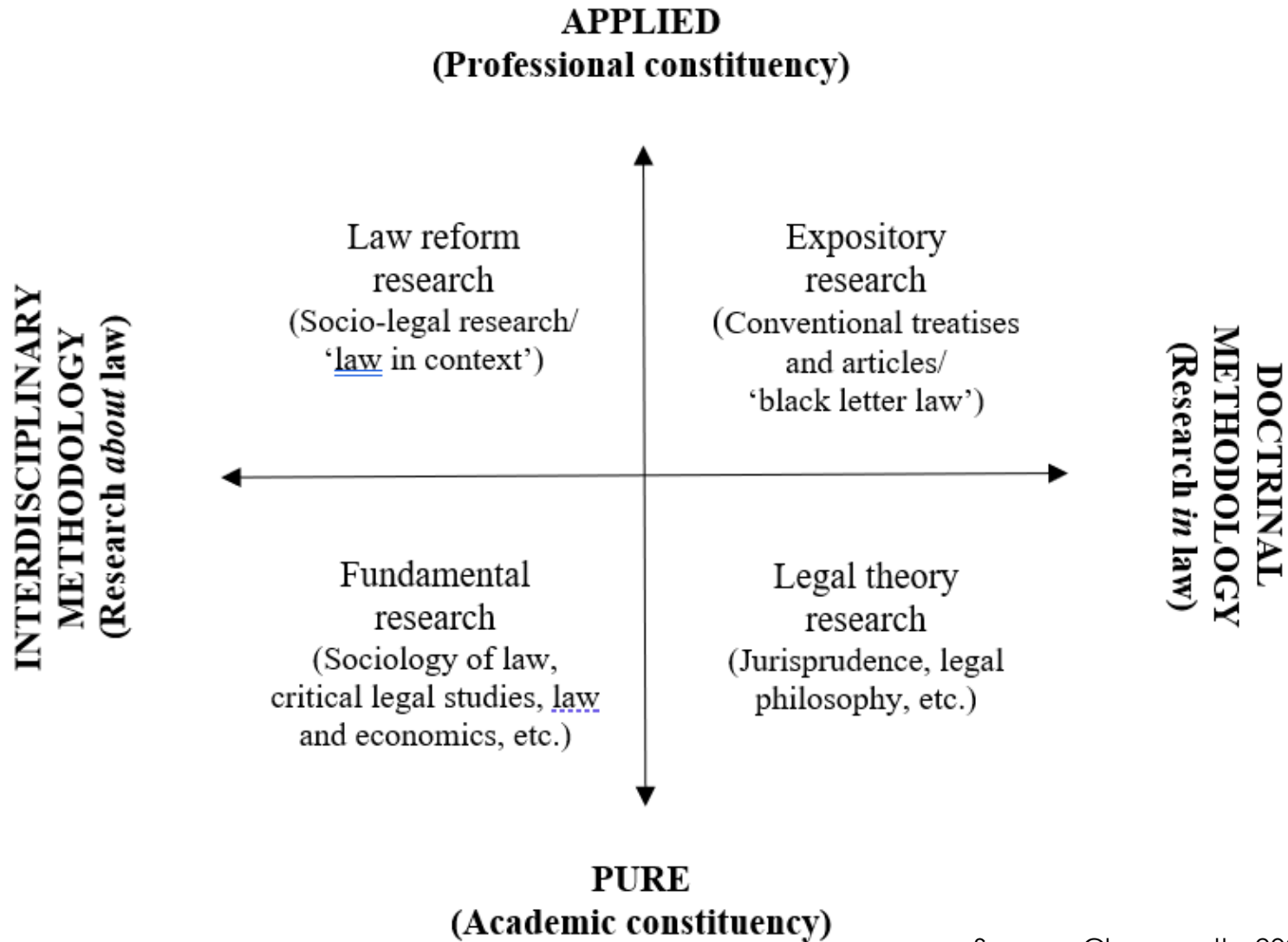


Why legal research? (cont'd)

- Thus, legal research is necessary to:
 - identify and analyse the law on a given topic or subject
 - highlight ambiguities and inbuilt weaknesses of the law
 - critically examine legal provisions, principles or doctrines and the consistency, coherence and stability of the law and its underlying policy
 - undertake social audit of law with a view to highlighting its pre-legislative 'forces' and post-legislative 'impacts'
 - make suggestions for improvements in, and development of, the law

Source: *Khushal Vibhute & Filipos Aynalem, 2009*

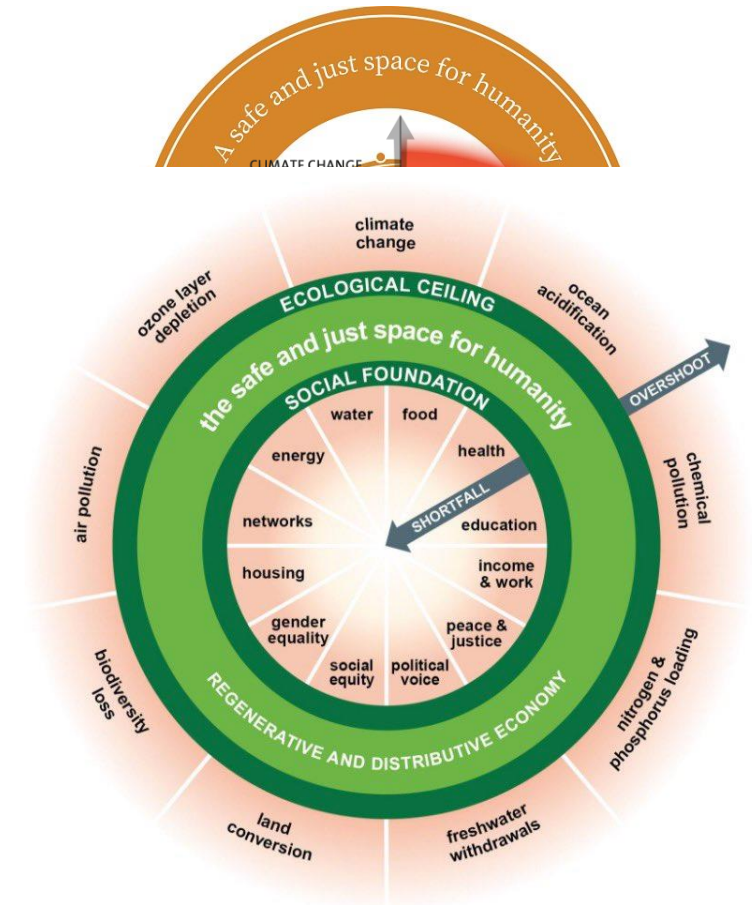
Legal research styles



Legal research in sustainability law

- Lack of policy/regulation
- Inadequacy between the (policy) objectives and the law
- Legal barriers

- Framework of research is uniquely constrained
 - ❖ Planetary boundaries
 - ❖ Social foundation



Source: [The 2023 update to the Planetary Boundaries](#). Licensed under [CC BY-NC-ND 3.0](#). Credit: "Azote for Stockholm Resilience Centre, based on analysis in Richardson et al 2023".

Extended Producer Responsibility

Tojo, Naoko

2004

[Link to publication](#)

Citation for print
Tojo, N. (2004)
Thesis (monograph)
Institute for Environmental and Energy Studies

Total number of pages
1

PLANNING THE FUNERAL AT THE BIRTH: EXTENDED PRODUCER RESPONSIBILITY IN THE EUROPEAN UNION AND THE UNITED STATES

Noah Sachs*

This Article examines how governments in the world's two largest economies are diverging in their approaches to regulating hazardous products and packaging, with major ramifications for manufacturing, waste management, and trade. The European Union is implementing product-oriented environmental regulation based on the principle of Extended Producer Responsibility ("EPR"), which assigns responsibility to manufacturers to take back their products after consumers discard them. In theory, EPR could dramatically alter production practices by internalizing externalities from products and providing incentives for environmentally friendly design. However, practical problems of implementation raise questions about the effectiveness of EPR as a policy tool.

This Article explores the European experience with EPR, the reasons for apparent resistance to EPR in the United States, and the implications of a move toward product-oriented environmental law. It critiques EPR on the grounds that the transaction costs of EPR may outweigh its environmental benefits and that practical problems of implementation may preclude the achievement of expected product design incentives. Given the substantial cost and technical hurdles to establishing the legal underpinnings of EPR programs, this Article recommends that the United States consider alternative policy instruments to address environmental externalities from products.

I. INTRODUCTION

The United States and the European Union are rapidly diverging in their approaches to environmental regulation. In the United States, environmental law remains focused on mitigating externalities from production—the effluent limits, emissions controls, and technology mandates that are the backbone of a command-and-control regulatory system. In the last decade, the European Union has supplemented this traditional focus on the processes of production with policies to address externalities from prod-

*Acting in accordance with the ordinary legislative procedure (1)

the international institute for industrial environmental economics
Lund University, Sweden



iiiee

3002) 427-437

Product Approach Environmental Law perspective

life cycle thinking

Journal of
Cleaner
Production
www.cleaneerproduction.net

Management, P.O. Box 1210, 000101 Helsinki, Finland

Policy. Organization theory and the social studies of only an instrumental tool, but also as an emerging ability for them, are conceptualized. Empirical data the cycle approach influences economic agents. The over to infuse more responsibility into atomistic



popularity of LCA-based ideas remains ing as we conceptualize them in instru- e., as rational means to reach pre-set this author argues that the historical A-based ideas has shaped our goals, tions very profoundly. a life-cycle world-view is becoming, e-industrial culture in the Western to evaluate the accomplishments of only look at formal uses of the LCA tators, e.g. [1,2], even doubt that (or should) become routine prac- It is inconceivable, for example, e conducted for the two million of new products appearing for of the world [3], to say nothing ; it does not seem feasible that thus produced could be used -makers of the world.

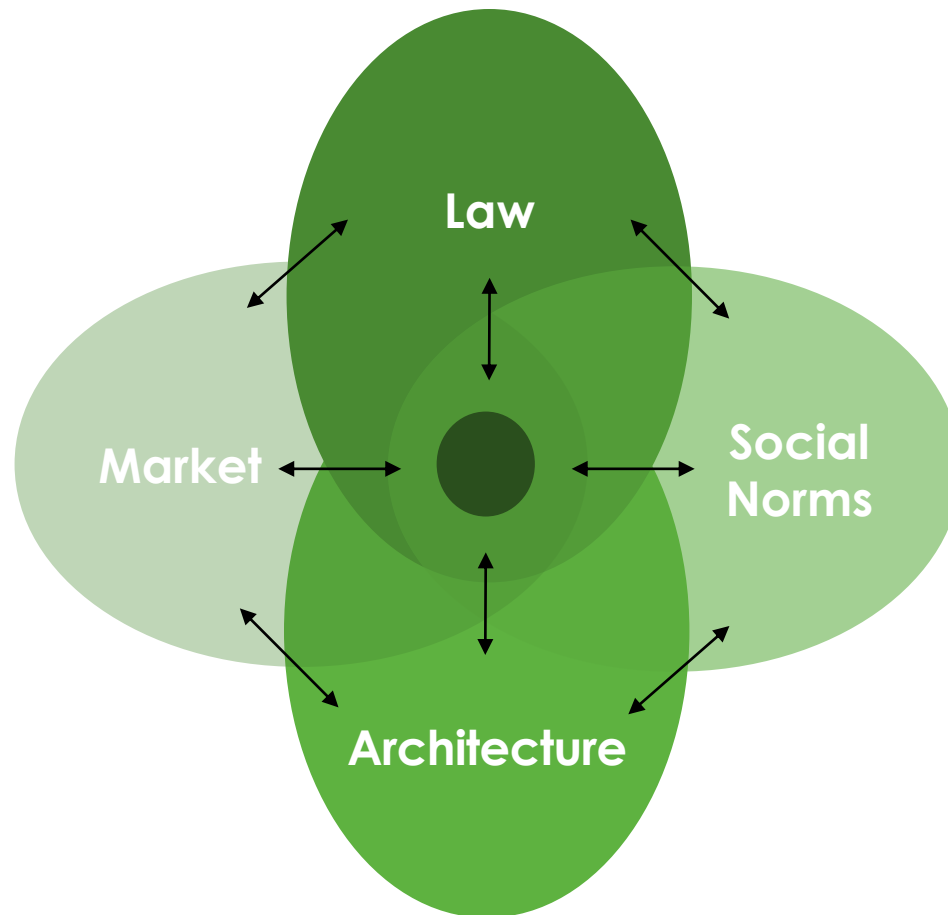
How to do engage with policy as a legal researcher?



The importance of interdisciplinarity for policy-oriented legal research

- Understanding the complexity of the world
- Achieving more robust research findings
- Contributing to changing one's discipline, but also others
- Law is not disconnected from the real world

Regulatory ecology



References:

- B. Sjøfjell & M. Taylor (2019), 'Clash of Norms: Shareholder Primacy vs. Sustainable Corporate Purpose'
- B. Sjøfjell & M. Taylor (2015) 'Planetary Boundaries and Company Law: Towards a Regulatory Ecology of Corporate Sustainability'

Challenges and opportunities

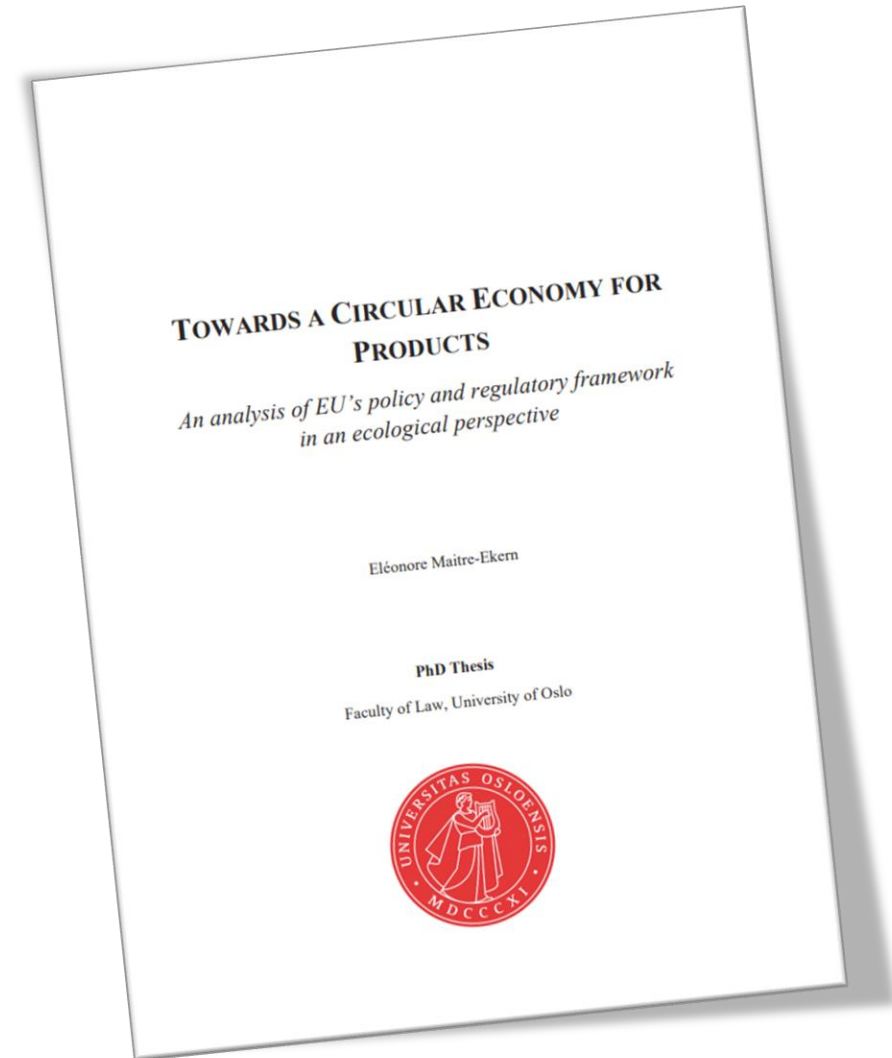
- Contributing to change – and to the transition to a more sustainable future
- Forward looking – but with a deep understanding of the past and present
- Innovative thinking - freedom
- Scholarship or activism?



Source: [David M. Lesiak](#), Unsplash

PhD thesis

- [Towards a Circular Economy for Products: A legal analysis of Europe's policy and regulatory framework from an ecological perspective \(uio.no\) \(2019\)](#)



SMART Reform Proposals

- ▶ 3 reports presented to the European Commission:
 - ▶ Securing the Future of European Business
 - ▶ Financing the Transition to Sustainability
 - ▶ Towards a Sustainable Circular Economy



Let's discuss!



And be in touch!

- 'Sustainability Law' research group:
 - jus.uio.no/sustainabilitylaw (website)
 - [Sustainability Law](#) (LinkedIn)
 - [Sustainability Law](#) (YouTube channel)
- Eléonore Maitre-Ekern:
 - eleonore.maitre-ekern@jus.uio.no (UiO – until March 2024)
 - eleonore.maitre.ekern@niva.no (NIVA)
 - [Eléonore Maitre-Ekern](#) (LinkedIn)

