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The Rhetoric of Environmental Reasoning and Responses as Applied to Fracking

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Abstract

This essay examines in detail the rhetorical means most commonly used in debates on environmental regulation. The article argues that debates on whether and how to regulate in the context of the environment often take the form of a predictable toing and froing between participants in such debates. The primary reason for this is found in the all too common reliance of participants on ready-to-hand arguments. These include: the pertinent point in time argument; the unripe point in time claim; the singular point of response argument; the sufficiency of existing structures claim; the presence of a particular risk argument; the one final measure argument; and the been here done that claim. By way of illustration, the article makes use of debates surrounding hydraulic fracturing in the UK in the form of the recently enacted Infrastructure Act 2015. The article concludes that the reliance on predictable means of rhetorical moves runs the risk of taking place at the expense of attempts to find a constructive middle-ground.

Introduction

Those who followed the debates surrounding the passing of the Infrastructure Act 2015 and its provisions on fracking would be forgiven for thinking that much of what was said and presented either for or against the Act came across as eerily familiar. Why is it that debates surrounding questions of whether new technologies ought to be subjected to regulation and, if so, what form the regulation ought to take, come across as similar to debates on whether

* Newcastle Law School. I have benefitted from useful conversations on this and related topics with Mika Martikainen and Richard Mullender.

geoengineering is worth pursuing as a response to climate change? Maybe debates on environmental regulation and law, be it in Parliament, the popular press or academic journals, involve the use of a familiar set of argumentative moves? Taking its inspiration from Albert Hirschman's *The Rhetoric of Reaction*, this essay argues that the rhetorical means by which debates on environmental regulation are advanced follow a well-trodden and, at bottom, predictable path.¹ It does so by identifying the main methods and rhetorical means and by schematically setting out the various forms of rhetorical arguments most often advanced in debates on environmental regulation.² In doing so, however, a note of caution ought to be struck, setting this essay apart from Hirschman's work. In his original work, Hirschman outlined the standard methods of rhetoric and argumentation as falling along 'progressive v reactionary' lines. It is important to bear in mind that the label of 'progressive v reactionary' is not one denoting political or party affiliations. Instead it signifies the side on which each participant finds her/himself in relation to a proposed change. Thus, the points presented below are not an attempt to single out any particular political ideology or party line. As will become clear, each rhetorical tool and argument can be (and often is) utilised by disputants of varying political inclinations.

To contextualise the schematic overview in a present context, the essay examines the way in which these rhetorical tools have been used in the context of recent debates on hydraulic fracking in the UK, specifically in the context of the passing of the Infrastructure Act 2015, which received Royal Assent on 12 February 2015. The reason for scrutinising the issue of rhetoric against a background of fracking is that, in order to comprehend the regulatory nature of environmental law, a need arises for understanding and appreciating the legislative context and history behind a given set of rules. More importantly, where scholars, legal campaigners and practitioners come to subsequently engage with the environmental rules, they often do so in order to persuade other participants in a practice that a particular understanding of the law is useful.³ Where this is the case, environmental lawyers are likely to rely on some of the rhetorical means referred to in this essay.

Finally, the emphasis on rhetorical means and methods is to be understood and contextualised within some of the work currently being pursued on the role played by

¹ Albert Hirschman, *The Rhetoric of Reason* (Harvard University Press, 1991).

² In this, a link can be forged to Llewellyn's work on legal principles and counter principles: Karl Llewellyn, 'Remarks on the Theory of Appellate Decision and the Rules or Canons about how Statutes are to be Construed' (1950) 3 Vand. L. Rev. 395.

³ Ole Pedersen, 'The Limits of Interdisciplinarity and the Practice of Environmental Law Scholarship' (2014) 26 JEL 423.

‘frames’.⁴ The focus on rhetoric, however, is arguably more specific and represents a concrete expression of the particular frames within which participants operate. Frames are thus useful for understanding the general context and background of a given subject but rhetoric is arguably more relevant for lawyers as it highlights how environmental regulation and law is ‘practised’. That is, frames can be identified as the field/discursive formation within which particular types of rhetoric have force. Here ‘practise’ means not specifically the pursuit of objectives through litigation (though that is part of it) but the application, production and development of law more generally. This also includes the use of rhetorical methods and means in the regulatory process of defining, developing, applying and enforcing norms, rules and standards as well as the subsequent analysis of these by scholars.

1. Reasoning and Responses

In *The Rhetoric of Reaction* Hirschman sets out to ‘delineate formal types of argument or rhetoric’ favoured by progressive and reactionary participants in response to p-proposals for political changes as these have been utilised throughout the 19th and 20th centuries.⁵ The most often advanced rhetorical means identified by Hirschman and relied upon by so-called ‘reactionaries’ are: the perversity thesis, according to which an attempt to remedy a particular problem only serves to exacerbate it; the futility thesis, which argues that any attempt to remedy a specific problem will simply fail to make any difference; and the jeopardy thesis, which posits that any proposed change will entail too high costs and endanger past achievements.⁶ As a response to these arguments, Hirschman identifies the ‘progressive’ rejoinders which are: the synergy illusion, according to which ‘all good things go together’ and all reforms are mutually supportive; the imminent danger thesis, which urges political change in order to avoid disaster; and the having history on our side thesis, which argues that a proposed action enjoys support by powerful ‘historical forces [and] opposing them would be futile’.⁷ This overview is necessarily general in nature as it represents an examination of political reasoning throughout time. But it is possible to push Hirschman’s line of thinking

⁴ This literature includes: Chris Hilson, ‘Framing Fracking: Which Frames Are Heard in English Planning and Environmental Policy and Practice?’ (2015) JEL forthcoming, Sanja Bogojevic, *Emissions Trading Schemes* (Hart Publishing, 2013), James Salzman and Martin Doyle, ‘Turning the World upside Down: How Frames of Reference Shape Environmental Law’ (2014) 44 *Environmental Law* 1 and Nils Markusson and others, ‘In Case of Emergency Press Here’: Framing Geoengineering as a Response to Dangerous Climate Change’ (2014) 5 *WIREs Clim Change* 281.

⁵ Hirschman n 1, 6.

⁶ *ibid* 7.

⁷ *ibid* 149-163 and 167.

further in the attempt to apply it to debates on environmental regulation. In doing so, a series of additional arguments and rhetorical moves emerge.

Temporal Reasoning and Responses

The Pertinent Point in Time Argument

Commonly, and as the name suggests, the pertinent point in time argument asserts that the particular point in time, give or take, at which a claim or argument is advanced, is the optimal point in time for implementing initiatives. The pertinent point in time argument thus sounds a note of urgency and presupposes a level of attentiveness on the part of the person invoking it. A slight variation on the pertinent point in time is the stronger version found further along the sequential line of reasoning: the 'it's now or never' variation. The 'it's now or never' argument rests on the assumption that a particular point in time represents a tipping point; a point from which, if no action is taken, it will simply be too late. The 'it's now or never' argument thereby represents a stronger call for action compared to the pertinent point in time. This is because under the latter, the compelling need for action is felt less strongly than under the former. In a sense, the 'it's now or never' argument is perhaps best viewed as a rhetorical tool often deployed as a last resort; if for no other reason than where its proponent is unsuccessful in persuading opponents of the need for action, the said need and window for action will come and go. Where the 'it's now or never' moment has passed, little remains to be said for the simple reason that not only has the optimal point in time (as supported by the pertinent point in time argument) passed but so has the ultimate cut-off point as represented by the 'it's now or never' claim. Where this is the case, little justification for action can be made, seeing as the impact, if indeed the 'it's now or never' argument is correct, is now inevitable.⁸

The Unripe Point in Time Argument

The response with which the pertinent point in time claim and the 'it's now or never' argument are most commonly met is the unripe point in time argument.⁹ Whereas the pertinent point in time claim and the 'it's now or never' argument assert that the present represents varyingly an opportunity and a final point for responses, the unripe point in time

⁸ The pertinent point in time claim and the 'it's now or never' argument thereby closely resemble Hirschman's imminent danger thesis, *ibid* 153.

⁹ For a variation and application of this principle to academic practices see FM Conford, 'Microcosmographia Academica: Being a Guide for the Young Academic Politician' (1908) available at <<https://www.cs.kent.ac.uk/people/staff/iau/cornford/cornford.html>> accessed March 27 2015.

argument instead argues that taking action now is not warranted; for the right moment has not yet arrived. Instead, the unripe point in time argument lends emphasis to the claim that the costs of taking regulatory action far outweigh the gain akin to Hirschman's futility thesis. In short, the unripe point in time argument is an argument of inaction; those who advance this view seek to maintain the status quo. At the heart of the unripe point in time argument is the assumption (mistaken though it may be) that the hard won gains of past reaction will be compromised. In doing so, the unripe point in time argument, like the pertinent point in time claim and the 'it's now or never' claim, is perhaps guilty of narrowing the type of risks which are afforded attention (see below). Only, in the context of the unripe point in time argument, the emphasis is exclusively on the risk associated with taking action at the expense of other risks.

Qualitative Reasoning and Responses

The Singular Point of Response Argument

In addition to arguments advanced on temporal grounds, an often utilised rhetorical technique is the claim that an initiative must take the form of one singular response. Often this argument is advanced on the back of a related claim, pointing out that existing structures are not sufficiently fit for purpose. The singular point of response argument thereby entails a certain disregard for existing structures. Central to the singular point of response argument is an assuredness amongst its proponents that they are capable of controlling the effects and implications (intended and unintended), resulting from the changes made to existing structures, akin Hayek's 'synoptic illusion'.¹⁰ Its proponents thereby come to rely on the assertion that they are, somehow, better equipped at assessing the implications of developments and the need for a response than those coming to the problem at an earlier point in time. The singular point of response argument thus rests on the understanding that any point in time is necessarily significantly advanced in terms of progress, knowledge and rationality compared to any comparable point in the past. And when this is the case, there is, of course, nothing wrong with rejecting existing structures from past, less-enlightened positions. Existing structures are seen as inappropriately ill-suited, or in the least hopelessly incoherent, to the current predicament.

¹⁰ Friedrich Hayek, *Legislation and Liberty* (Routledge, 1982) 14-15.

The Sufficiency of Existing Structures Argument

In light of the singular point of response argument's emphasis on the need for reform the most often advanced ripost will surprise few. The reply, the sufficiency of existing structures argument, is typically that the changes proposed to the existing structures are, firstly, not necessary, and/or, secondly, too perverse. The first element is most commonly manifested where opponents of a response favour incremental as opposed to radical change. In an almost Burkean fashion, proponents of the sufficiency of existing structures argument urge 'caution in reshaping existing institutions and in pursuing innovative policies.'¹¹ In a direct response to the singular point of response argument, the sufficiency of existing structures argument will seek to point out that existing institutions have proved to be resilient and adaptive, and that the current proposal for change instead runs the risk of jeopardising the valuable advantages and experienced gained by incremental improvements, having taken place over time. Often this is followed by a claim that the changes proposed by the singular point of response argument will in fact not achieve the desired objectives. Instead, they will result in outcomes which are potentially significantly worse, resembling Hirschman's perversity thesis.¹² To paraphrase Hirschman: 'the attempt to push society in a certain direction will result in its moving all right, but in the [wrong] direction'.¹³

In addition to the emphasis on unintended consequences, the proponent of the sufficiency of existing structures claim may well focus on the inherent argument of coherence in the singular point of response argument. In doing so, the proponent will likely point out that the insistence on coherence is untenable and simply an attempt to lend credibility to and add force to the argument of a singular point of response. Not only is the drive for coherence likely to result in unintended consequences, it is also 'driven by [the] need to believe that [the singular point of response argument] is ordered, coherent and rational.'¹⁴

The Presence of a Particular Risk Argument

¹¹ *ibid* 159.

¹² A highly entertaining litany of such consequences, from both sides of the political spectrum, is found in Anthony King and Ivor Crewe, *The Blunders of Government* (Oneworld Publications, 2013).

¹³ Hirschman above n 1, 11.

¹⁴ Jack Balkin, 'Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence' (1993) 103 Yale L.J. 105, 115.

As has already been alluded to, participants in a debate often are guilty of focusing exclusively on one risk at the expense of other risks. The point of focusing specifically on this characteristic here is not to dwell on the literature highlighting the idiosyncratic and individualistic approaches to risk but merely to highlight the rhetorical effects and consequences of this tendency.¹⁵ The identification of and exclusive emphasis on a particular risk is thus a method which is simultaneously relied upon by all parties to a debate often at the same time. The response to a proponent relying on the presence of a particular risk argument is thereby often to identify another risk and place equally strong emphasis on its presence in an attempt to counter an opponent's risk reliance. The presence of a particular risk argument does not thereby follow the usual pattern of one line of reasoning being countered with an opposing response; for the response to the presence of a particular risk argument is the presence of a particular risk argument.

Quantitative Reasoning and Responses

The One Final Measure Argument

In an attempt to highlight the need for addressing particular issues, quantitative arguments play an equally important role. The most common example, strongly linked to the 'it's now or never' argument, is the one final measure argument which is, in part, a slippery slope type of argument.¹⁶ The one final measure argument asserts that at this point in time too many negative consequences have accumulated and that the particular issue before us represents the one point where we have no choice but to take action and not doing so will result in irreversible consequences. Herein lies the link to the 'it's now or never' argument and its emphasis on tipping points, though the one final measure argument arguably asserts itself with a higher level of confidence as it rests on the accumulated basis that past failure to take action gives rise to a pool of accrued failures. This accumulation of failure therefore demands that action is taken. An additional force found in the one final measure argument is thus its slippery slope character which emphasises the claim that if certain activities are not

¹⁵ Dan Kahan and others, 'Culture and Identity-Protective Cognition: Explaining the White Male Effect in Risk Perception' (2007) 4 Journal of Empirical Legal Studies 465.

¹⁶ On slippery slopes see Eugene Volokh, 'The Mechanisms of the Slippery Slope' (2003) 116 Harv. L. Rev. 1027.

addressed, it will set a negative precedent for future situations. That is, from here on and onwards, things are only going to get worse if action is not taken. In this, the one final measure argument operates as a strong rallying call for its adherents insofar as it serves to garner support by claiming that this is the historical moment in time at which action and initiative is required.

Been here, done that Response

The response with which the one final measure argument is met is that there is nothing special nor spectacular about the present predicament. In other words, it has all been experienced before and the current point in time does not merit a specific initiative. Instead the ‘been here, done that’ response emphasises the claim that, notwithstanding the accumulated failures and the message of decline highlighted by the one final measure argument, things have never been better.¹⁷ Part of the optimism of the ‘been here, done that’ response compared to the one final measure argument may well be explained by differences in what each side of the argument diverts its attention towards. Akin to the presence of a particular risk argument, each side of the argument is likely guilty of focusing on specific indicators slightly different from those advanced by its opponent. Thus, the ‘been here, done that’ response will likely lend emphasis to a consequentialist line of argument and attach importance to, for example, overall levels of improvement (perhaps as measured by economic indicators) whereas the one final measure argument will typically focus on specific and concrete examples and case studies; examples in which overall background levels and improvements are notably absent. One difference between the two arguments is thus that one maintains a specific focus whereas the other often maintains a certain distance from the predicament which is seen as requiring action. The argument between the one final measure argument and the ‘been here, done that’ response thus often manifests itself in controversy over methodology. The former will typically contest the optimism of the latter by criticising the readiness with which it ignores specific predicaments and problems by way of generalised benchmarks and indicators on the assumption that these are too crude to register the real impact of any given predicament.

¹⁷ Gregg Easterbrook, *A Moment on the Earth* (Penguin, 1995) and Matt Ridley, *The Rational Optimist* (Fourth Estate, 2010).

2. The Rhetorical Reasoning and Responses to Fracking

If one applies the rhetorical tools and responses to the ongoing debates on the regulatory initiatives on fracking found in the Infrastructure Act 2015, it becomes clear just how familiar the different means of reasoning are. The main features of the Act receiving the most attention relate to the Act's changes to the Petroleum Act 1998, introducing a primary emphasis on maximising the recovery of petroleum in the UK, changes introducing the right of use of deep-level land for the purposes of drilling and the introduction of certain safeguards in the context of fracking activities.¹⁸ The safeguards make the issuance of a well consent by the Secretary of State subject to certain requirements. These relate to: the assessment of environmental impacts; integrity of the well; monitoring of methane leakage; the protection of groundwater sources; and fracking activities within (as opposed to under) 'protected areas.'

The line of argument most prominently presenting itself in the context of fracking is the singular point of response argument. This is most evidently witnessed in the debates surrounding the existing regulatory system for fracking and the regulatory competences of, in England, the Environment Agency. It is, for example, regularly asserted that the current system for regulating fracking activities through an overlapping system of planning control (through local minerals planning consent), environmental permitting (covering various aspects of the fracking operation), petroleum extraction licensing and consent mechanisms managed by the Health and Safety Executive is not sufficiently robust or coherent. Thus in its *Environmental Risks of Fracking* the House of Commons Environmental Audit Committee argue that 'changes to the regulatory system... do not however address the fundamental need for a more coherent and more joined-up regulatory system.'¹⁹ Similarly, in a recent report, the Task Force for Shale Gas recommend that 'a bespoke regulator should be created'.²⁰ The calls for a separate regulator by the Task Force highlight the point made earlier that the use of the different means of reasoning do not necessarily follow the political 'progressive v. reactionary' spectrum; for the Task Force is an industry funded body whose call for a singular regulator entity seemingly rests on an interest in a streamlined permitting process. In pursuing this argument, proponents inhibit the singular point of response argument *par excellence*. Seeing as existing regulatory structures have been drawn up with other

¹⁸ Infrastructure Act 2015 Part 6.

¹⁹ House of Commons Environmental Audit Committee, 'Environmental Risks of Fracking' HC (2014-2015) 856 [73].

²⁰ Task Force on Shale Gas, *Planning, Regulation and Local Engagement* (London, 2015) 15 available at <<https://www.taskforceonshalegas.uk/reports>> accessed March 27 2015.

predicaments in mind, fracking is seen as deserving its own explicit, tailor-made response, specifically designed with the issue in mind. Existing structures are seen as inappropriately ill-suited, or in the least hopelessly incoherent, to the current predicament.

Not surprisingly, the strong emphasis on the singular point of response argument in fracking debates has been met with rebuttals based on the sufficiency of existing structures claim. This is most notable in the deliberations and presentations taking place in the House of Lords. Here the Economic Affairs Committee's, *The Economic Impact on UK Energy Supply of Shale Gas and Oil*, argues that the regulatory system is 'rigorous and thorough and address[es] the environmental and health risks'.²¹ A similar line of reasoning was put forward by Lord Hollick in the parliamentary debates on the Infrastructure Bill in the context of monitoring of methane gas levels in groundwater²² and in the evidence given by the Environment Agency to the Environmental Audit Committee.²³ In fact, one detects a hint of the 'been here done that' response in the evidence submitted by the Environment Agency when it observes that its risk assessment system 'matches the current stage of development of the UK shale gas industry'.²⁴ In other words, the current level of fracking activities in the UK does not merit specific attention beyond what it already receives.

Further support for the singular point of response argument is often based on the pertinent point in time argument. This is, for example, witnessed when the Task Force argues that a post-election government ought to establish a new regulator 'as soon as possible'.²⁵ In other words, act before the costs become too high. A slight variation on this emphasis on the pertinent point in time argument is found when participants come to rely on the 'it's now or never' variation in support of an argument for restricting the exploration of shale gas entirely. One such example is found in the evidence submitted by Greenpeace to the Environmental Audit Committee, where Greenpeace argues that exploring shale gas reserves will make it impossible to meet the statutory targets of the Climate Change Act 2008.²⁶ This point was supported by the Committee itself when it called for a moratorium on shale gas extraction by recommending changes to the Bill that would have changed its emphasis from one of

²¹ House of Lords Economic Affairs Committee, 'The Economic Impact on UK Energy Supply of Shale Gas and Oil' HL (2013-2014) Paper 172 [220]-[221].

²² Hansard HL vol 757 cols 43-44 (10 November 2014).

²³ Above n 19.

²⁴ Written Evidence Submitted by the Environment Agency available on <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-risks-of-fracking/written/17156.html>> accessed 27 March 2015

²⁵ Above n 20.

²⁶ Written Evidence Submitted by Greenpeace UK available on <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-risks-of-fracking/written/17050.html>> accessed 27 March 2015.

maximisation of extraction to one of ‘ensuring that fossil fuel emissions are limited [by] the carbon budgets’.²⁷ In pursuing this argument, proponents of a moratorium edge towards utilising the one final measure argument when they argue that a moratorium is the only effective measure available in the attempt to prevent a slippery slope of climate change impacts. As one witness before the Committee argued: ‘it is counterproductive to be going looking for more fossil fuel reserves when we already know that we have to leave the majority of our existing fossil fuels underground.’²⁸

Similarly, the government's keenness to pursue fracking reveals a reliance on one of the well-rehearsed rhetorical methods discussed above. By insisting on exploring petroleum resources irrespective of any statutory obligations in the Climate Change Act, the Government commits itself, at least implicitly, to Hirschman's synergy illusion – the perhaps naive idea that everything goes together and that no conflict will arise as a result of the seemingly contradictory moves. The strongest example of this is arguably found in the evidence given by the Chancellor of the Exchequer before the Economic Affairs Committee, arguing that shale gas extractions is a ‘very good answer to those who want to see affordable energy while at the same time the UK makes a commitment to the reduction of global carbon emissions.’²⁹

Against all of these different lines of reasoning is arguably a constant manifestation of the presence of a particular risk claim. The main difference being, of course, which risk each participant affords the strongest emphasis. It is evident that the input in the debate produced by the Environmental Audit Committee focuses on the potential environmental risks thereby seeking to lend emphasis to these by relying on the rhetorical means which support this. This is of course countered by an emphasis on the potential risk of negative impacts on the UK's energy supply which a moratorium would entail as evidenced in the general theme emerging from the report by the Economic Affairs Committee and, ultimately, in the Act itself. In taking this approach, supporters of the Act inevitably come to rely on the ‘been here, done that’ response and its consequentialist emphasis on overall improvement of economic well-being in the form of energy security and the promise of lower energy prices.

If one looks beyond the context of the Infrastructure Act towards debates on fracking more generally, it is equally evident how much of the debate centres around, at least, some of the rhetorical tools discussed here. This is particularly prominent in the literature produced by

²⁷ Above n 19 [27]-[28].

²⁸ Evidence given by Dr John Broderick above n 20 [25].

²⁹ House of Lords Economic Affairs Committee Revised Transcript of Evidence, Evidence Session no 1 [6].

non-governmental organisations, international organisations and in academic scholarship. In this body of work one thus finds a heavy reliance on the singular point of response argument.³⁰ Thus, a 2011 European Parliament report recommends the adoption of specific EU measures on fracking³¹ and reliance on the singular point of response argument is similarly expressed, albeit implicitly, in some of the judicial review challenges launched against the planning permissions granted to fracking operators.³² This is perhaps not surprising considering that the participation of many of these commentators rests on the commentators' expertise and knowledge of regulatory systems; the singular point of response argument thus becomes a rhetorical tool which is readily at hand for this particular group of commentators. The point made here is not to determine whether these commentators are correct or not – a need for specific regulation may well exist. As one commentator persuasively argues: many participants often 'confuse or conflate legislative coverage with legislative adequacy'.³³ The point is simply to highlight that particular rhetorical means perhaps come easier to certain participants. Elsewhere in the literature, one similarly finds a heavy reliance on a combination of the pertinent point in time argument, the one final measure argument and the imminent danger thesis. This is particularly prevalent in the part of the literature seeking to link fracking with the case law of the European Court of Human Rights on environmental rights³⁴ (though a close reading of the *Hardy and Maile v United Kingdom* suggests that any ECHR responsibility is unlikely).³⁵

Conclusion

This essay has highlighted, by way of reliance on Hirschman's taxonomy of rhetorical means, that debates on environmental regulation often end up following predictable lines of reasoning. In support of this the Infrastructure Act 2015 and its provisions on fracking was utilised. The relevance of this for environmental lawyers is to be found in the fact that the

³⁰ E.g. Joanne Hawkins, 'Fracking: Minding the Gaps' (2015) 17 ELR 8-21 forthcoming.

³¹ European Parliament, *Impacts of Shale Gas and Shale Oil Extractions on the Environment and Human Health* (2011) IP/A/ENVI/ST/2011-07.

³² [2014] EWHC 4108 (Admin), where the claimants unsuccessfully argued that the planning authority had erred in leaving matters of pollution control, air emission and well-integrity to other regulatory agencies as established by *Gateshead MBC v Sec of State for Environment* [1994] Env LR 37.

³³ Elen Stokes, 'Do we Need New Laws to Regulate Fracking?' New Humanist Blog (November 25 2013) available on < <https://newhumanist.org.uk/articles/4446/do-we-need-new-laws-to-regulate-fracking> > accessed 10 April 2015.

³⁴ Bianca Jagger Human Rights Foundation, *A Human Rights Assessment of Hydraulic Fracturing* (2014) available on < <http://gnhre.org/2015/01/31/human-rights-assessment-hydraulic-fracturing-uk-grear-grant-kerns-morrow-short/> > accessed 10 April 2015.

³⁵ *Hardy and Maile v United Kingdom* decision (Appl. no. 31965/07) ECHR 14 February 2012.

end-product of this rhetorical exercise - environmental regulation - is the environmental lawyer's main object of study. Appreciating the rhetorical methods and means of reasoning shaping the regulation is important as this may well inform its subsequent practice and application. Moreover, if one comes to understand the rhetorical means as ready-to-hand riffs that provide a handy binary opposition to an opponent in a given debate, then this gives rise to a particularly pressing problem: whether reliance on these rhetorical means comes at the expense of (or indifference towards) the space found between the oppositions; that of the all-important middle ground. If so, it seems a shame and one may well have to set sights on a less ambitious purpose as, it seems, Hirschman himself did: 'this is probably all one can ask...: not to resolve issues, but to raise the level of debate.'³⁶

³⁶ Albert Hirschman, *The Passions and the Interests* (Princeton University Press, 2013) 135.