**Canons of Environmental Law: Pollution of Churches and the Regulation of the Medieval ‘Environment’**

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*The canon law rules addressing ‘Church Pollution’ provide a long-standing example of social regulation. A survey of historical material, and secondary sources, identifies a sophisticated set of precepts that developed over centuries. This development included application to one of the most important events in Medieval England: the murder of Thomas Becket. Perhaps more importantly, the regime was widely used and so of great significance to the ordinary citizens of the Middle Ages. Though largely historic, more recent examples of employment can also be found. When viewed through a contemporary lens, there are some connections that can be made with modern concepts of ‘pollution’ and contemporary environmental law and policy, such as that relating the Contaminated Land. Whilst the relationships should not be overplayed, that analysis suggests a social and cultural heritage that has been drawn upon, whether consciously or not. When attempting to view matters from the perspective of Medieval society, so conceptualising the ‘environment’ to include consideration and protection of the spiritual environment, further associations can be found. The differences in focus for the regulatory endeavours reflect differing fears, values and priorities. They also identify how these factors influence our definition and regulation of ‘pollution’.*

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**INTRODUCTION**

On 29 December 1170, four of King Henry II’s knights confronted Thomas Becket, Archbishop of Canterbury, in Canterbury Cathedral, and murdered him.[[1]](#footnote-1) This was a bloody event,[[2]](#footnote-2) with reports that the monks ‘gathered the blood and the brains of the new martyr that had spilled’.[[3]](#footnote-3) On Sunday morning, the 28th of September 1890, ‘A.B. attended the service in the Cathedral of St. Paul’s, as one of the congregation, and during the service shot himself dead’ (the ‘St Paul’s case’).[[4]](#footnote-4) On February 4, 2010, Redland Minerals Ltd unsuccessfully challenged regulatory requirement to clean up contaminated land and pollution of the public water supply.[[5]](#footnote-5) Separated by over 800 years, these cases involved polluting events of differing kinds – the first two involving both violent act and shedding of blood so as to ‘pollute’ the Cathedrals as sacred spaces. Questions were also raised as to the appropriate legal response; in particular what was required by way of remedial action to deal with the resulting ‘pollution’.

Canon (or ecclesiastical) law rules regarding the protection of churches provide an interesting example of historic regulation – connecting history, law and religion. Associations between law and history, law and religion, and religion and the environment are well established.[[6]](#footnote-6) This paper will consider some of these, but without seeking to contribute to the debate on the normative relationship between environmental law and religion. Instead, the aim is to explore the Canon Law (and largely historical) offence of ‘Church Pollution’, and to identify associations with, and possible influences upon, contemporary notions of environmental law. This includes some of the basic principles underpinning contemporary environmental law, the regulatory structures used to protect the environment, and moral foundations for the concept of pollution. A particular aim is to highlight how construction of notions of the ‘environment’ and prioritisation of different aspects for regulation may reflect changing social concerns (or fears) and deeply held values, but the approaches and techniques directed to very different forms of ‘environmental protection’ bear some striking similarities.

The first part of the article comprises an exploration of the Canon Law provisions relating to Church Pollution. The second part provides some comparative analysis with contemporary environmental regulation (using regulation of ‘Contaminated Land’ for illustration). As much as similarity, however, the focus is on fundamental societal differences. The context for this historical offence - the centrality of religion to medieval life – identifies the changing social concerns and structures within which ‘environmental law’ might be conceived, developed, and within which it operates. The article concludes by identifying how those societal changes illustrate differing fears, and the shifting values and priorities that are the concern of contemporary environmental law.

**I CANON LAW REGULATION OF THE POLLUTION OF CHURCHES**

**Outline of ‘Church Pollution’**

Becket’s murder is recognised as one of the key events in Medieval England.[[7]](#footnote-7) What is perhaps less well known is the impact of that event on the Cathedral itself, and the community using it, as a result of the ‘pollution. In addition to the political and personal consequences for the parties to this act,[[8]](#footnote-8) no services were held at the Cathedral for almost one year, with sacraments suspended in the meantime, because of the tainting by pollution of blood.[[9]](#footnote-9) This prevented a funeral Mass or other public service at the Cathedral for Becket himself.[[10]](#footnote-10) In the case of suicide at St. Paul’s,[[11]](#footnote-11) the question raised was what should be done by way of proper restoration in order to remedy the damage caused by the pollution.

Although very different in many respects, the Becket murder and St. Paul’s case provide illustrations of the system long established under Canon Law by which church property, as a sacred space, has been the subject of special concern regarding, and protection from, ‘pollution’. Though now rarely used,[[12]](#footnote-12) in the Middle Ages the Church Pollution regime was engaged quite commonly. It also comprised a sophisticated regulatory scheme, directed to the control of a highly valued aspect of the medieval environment.

Given the extensive timescale, and the variation of practices resulting from development and application across different communities, precise definitions are impossible. We can, however, establish some basic elements identifiable in the Canon Law regime: that church property was thought to merit a level of legal protection beyond ordinary land and chattels,[[13]](#footnote-13) with church buildings and immediate surroundings enjoying a special status in law;[[14]](#footnote-14) and that the protection of that special property from different forms of offence was of great importance.[[15]](#footnote-15) That importance was not limited to the property or fabric of the church buildings, nor to effects in the immediate area. The concern was with impacts on the broader spiritual[[16]](#footnote-16) environment, at least in part. The types of offences that might amount to sacrilege of such sacred property included brawling and fornicating.[[17]](#footnote-17) The offence of Pollution, however, had more significant implications than those arising from general disturbances in churches and churchyards. It seems that the violent shedding of blood and acts related to that have been a particular concern.

**The extent of Polluting Activities and Responses**

According to both Biblical tradition and Canon Law, bloodshed polluted the sacredness of churches and churchyards.[[18]](#footnote-18) Historically, the church followed Leviticus 14 and 15 that forbid the bleeding or bloodstained from entering the Temple,[[19]](#footnote-19) and the 12th century *Decretum* of Gratian (and later provisions) required the expeditious restoration of any church defiled by blood:

‘For the churches once dedicated to God should not be consecrated again, unless destroyed by fire, or by bloodshed; by any source of pollution whatsoever, because just as a child, once baptised by any priest in the name of the Father, the Son, and the Holy Spirit, should not be baptised again: thus the place of God is not to be consecrated again, unless for those reasons named above; thus they will uphold the faith of the holy trinity for those things they have consecrated.’[[20]](#footnote-20)

These principles are only one example of a more general societal concern regarding the pollution of sacred spaces, and more generally, through defilement, often connected with blood. Historical records suggest that such polluting events were far more common,[[21]](#footnote-21) or far more commonly addressed, in medieval times than more recently. The nature of many acts of pollution meant that there could be overlapping jurisdictions relating to secular crime and ecclesiastical offence, but the common law was prepared to grant jurisdiction to the church in limited classes of such cases with special characteristics.[[22]](#footnote-22) This specific form of regulation around the pollution of churches can be found across many centuries. As well as cases within the English jurisdiction, there are reports of Church Pollution and restorative actions taken in France,[[23]](#footnote-23) the Isle of Man,[[24]](#footnote-24) and the United States,[[25]](#footnote-25) for example. Although data in ecclesiastical records and elsewhere are limited and fragmented, examination of some historical record series suggests that Church Pollution issues arose regularly. Undertaking a survey of one record series[[26]](#footnote-26) shows that over a period from 1400 to 1452, there are reports of around 30 cases within a fairly narrow geographical area (covering Devon and East Cornwall),[[27]](#footnote-27) for example. This includes four separate occasions in a single location (Exeter Cathedral), as well as a range of others. That same series reports cases dating between 1296[[28]](#footnote-28) and 1511.[[29]](#footnote-29) These cases report ‘Commissions of Inquiry’ investigating allegations to determine whether there was in fact pollution through bloodshed,[[30]](#footnote-30) ‘inhibiting’ (suspending) divine service if there was,[[31]](#footnote-31) and deciding whether activities such as burial might be resumed (having being inhibited as a result of the pollution).[[32]](#footnote-32) A number include declarations that there had not been such pollution.[[33]](#footnote-33) Court hearings were held to consider whether pollution had occurred, the effect upon the church property (and broader impacts), the appropriate response, and the guilt and punishment of individual polluters.

On the other hand, reports from a case in 1793 include a statement that pollution of churches is ‘such a rare occurrence’, in the Isle of Man that the case was the only instance on the island.[[34]](#footnote-34) It appears that the scale of these pollution concerns have reduced significantly in later periods. Courts held for the purpose of pronouncing a Sentence of Reconciliation have probably been rarely held in England since the Reformation.[[35]](#footnote-35)

**Nature of Pollution**

The Becket murder is a relatively early example of Church Pollution and very high profile one. Another significant (and politically charged) polluting event was the murder of John Comyn by Robert the Bruce at the High Altar of the church of the Greyfriars at Dumfries, in 1306, resulting in the desertion of the church by the friars because of the pollution.[[36]](#footnote-36) These illustrations may be rather misleading as examples, however, as they involve serious crimes aside from the Canon Law issues. More typical polluting acts often involved lower level violence, or even what might be viewed as horseplay. One example of much less acute behaviour considered polluting involves priests quarreling after one had ‘tripped’ saying the verses of the day and the other had laughed (the ‘Quarreling Priests’ case).[[37]](#footnote-37) The first then threw a psalter at the other and broke the skin of his head so that a slight amount of blood appeared. The priests reported this to the Lord Archbishop of York, who decided that the church required ‘reconciliation’ as a result of the violent act. At times, it seems that even events such as the presence of ‘foul beasts’, or use of church property for storage of building materials, may have been considered polluting[[38]](#footnote-38) in some sense. Those were ‘lesser forms’, however, to be ‘distinguished from pollution by blood-shedding’.[[39]](#footnote-39)

Both the ‘Quarrelling Priests’ and the Becket murder combined violent act/intent and physical contamination through spilling blood, though to very different degrees. By the 13th century, it was suggested that intentional violence was the polluting act (whether with or without the shedding of blood), and not blood flowing in any ‘natural’ way[[40]](#footnote-40) (by a natural nosebleed, for example). Focus on violent acts, in relation to both sacred space and personnel, perhaps reflects important messages regarding the authority and ‘natural order’ of the Church. ‘Unnatural’ disruption could be seen as a challenge to these.

Although physical contamination (such as through shedding of blood) would not always be a requirement for pollution, the presence of a material substance may have provided clear evidence of the defiling act, even if the violent intent were in fact the key element. As well as an obvious indicator of the existence of violent intent, blood may also provide evidence of the degree of violence intended (as manifested in the outcome). The visual/physical, or tangible contamination through presence of blood may also provide a more immediately compelling motivation for remedial action, than more intangible or abstract contamination.[[41]](#footnote-41)

**‘Target’ of Pollution**

Not all parts of the church were equally sensitive receptors of polluting acts. Both churchyard and church building could suffer from pollution, but the impact would differ. Decretals established that pollution of the churchyard would not itself include pollution of the church, but pollution of church would affect an adjacent churchyard as well.[[42]](#footnote-42) It also seems that the precise focus of the act could be important. An act that took place at, or closer to, the altar might not need to be so severe in order to have polluting effect, so that there was a ‘graduated sense of sacrality’, with pollution considered more or less offensive depending on the sensitivity of the specific location.[[43]](#footnote-43) Similarly, it appears that suicide in the midst of the congregation during service’ would aggravate the act of pollution.[[44]](#footnote-44)

Though the main focus for pollution concerns and protection was church property, these could also include the clergy in some senses. As the basis for pollution is a form of defilement or sacrilege, the object could include embodiment of the holy in the mode of human body, as well as sacred space. In the Becket murder, for example, the polluting acts were considered doubly sacrilegious as they consisted both bloodshed in the most holy part of the Cathedral and violence perpetrated to a holy figure.[[45]](#footnote-45)

**Pollution Impacts and Restoration**

Where pollution of a church had been established, there was a range of consequences, for a variety of people. For individual miscreants, their acts might result in prosecution and penalty under ecclesiastical law. Of wider significance, however, was the effect on the church and consequential impacts on the community, including those on the wider spiritual environment. Where acts included potentially polluting elements, there were important implications for (church) society as well as individuals. If sacred property was defiled in a way that polluted it, the consequences of the polluting activity had to be addressed. The (sacred nature of the) property required rehabilitation through a procedure including a form of restoration. Re-dedication, or re-consecration, is a repetition of the entire dedication ceremony, but ‘reconciliation’ refers essentially to a secondary ceremony including blessing with holy water (see below). The former implies that a church has completely lost its sacred character; the latter implies that although the church is defiled, it remains sacred.

As with the nature of pollution, the precise form of purifying ritual required seems to have been rather fluid over the time and localities.[[46]](#footnote-46) It seems, however, that in England the more commonly accepted method of restoration was in the lesser form of a reconciliation conducted by a bishop.[[47]](#footnote-47) A chapter in the Gregorian Decretals stated that the shedding of blood must be reconciled by the formal action of the bishop.[[48]](#footnote-48) The St. Paul’s case considered this point exactly, noting that despite suggestions that a re-consecration was necessary several precedents could be found whereby a Sentence of Reconciliation was pronounced after a homicide by violence in a cathedral or church (including the Becket murder), there being a diversity in practice since the Reformation.[[49]](#footnote-49)

The reconciliation ritual involved various rites of atonement, and restoration, with the first part a ritual cleansing.[[50]](#footnote-50) That cleansing included both physical and spiritual senses.[[51]](#footnote-51)

‘[The] defilement was traditionally considered to have ramifications that radiated beyond the local community. The parish priest could not remedy it insofar as the church required reconciliation by the bishop. And his intervention was dramatic. Circling the church three times, he cleansed the polluted spot with aspersions of holy water, mixed with salt, wine and ashes. His prayers were fraught with the language of defilement and purgation’.[[52]](#footnote-52)

The pollution was seen as something that could be scrubbed away ‘like dirt in a room’, and the ritual of reconciliation treats the church much like a person in need of scrubbing.[[53]](#footnote-53)

The requirement for reconciliation raised further issues. An effective process had to be arranged and undertaken, and the costs met of undertaking the restorative acts. Crucially, the impacts of the impairment of the property would have to be addressed in the intervening period. At the heart of the issue was the effect of the pollution on and beyond the sacred property. This rendered the space no longer effective in delivering services (literally and conceptually) as the pollution ‘suspended the efficacy of [churches] as media to the divine’.[[54]](#footnote-54) Until the sacred space was reconciled, all sacraments and burials were inhibited for fear of ‘endangering the souls of parishioners’.[[55]](#footnote-55) The implications of pollution were therefore significant in both spiritual and practical terms.

**Identification of Polluting Events**

A problem common to different forms of pollution is that of knowledge of its existence, and so the potential impacts. In the case of Church Pollution, those responsible may be the only ones with knowledge of the polluting event, and so the existence of the pollution. A tension can be identified between concerns about the implications for the individual polluter (which might include status in society, as well as financial and other penalties), and concerns about the impact of the spiritual impairment on individuals and the community more generally. Self-reporting may have been very limited, and so many cases involve witnesses to brawls or other violent acts. Of the many examples are cases involving the striking of a clerk with a stick (drawing blood) in Edenbridge Church during Sunday Mass by Robert de Steyngrave (knight) in 1329.[[56]](#footnote-56)

When notified of potential pollution, the bishop could send investigative commissions to determine whether restorative action was actually required. A number of the cases identified in the survey undertaken of a Record series (above) reflect the four different commissions issued by a particularly conscientious Bishop of Exeter.[[57]](#footnote-57) A further, perhaps more systematic, approach also existed in the form of a ‘Visitation’: the process by which the church periodically sought to enforce ecclesiastical discipline. As an aspect of Canon Law, Church Pollution was in part regulated through a kind of inspection system in this form. Bishops and their authorised staff would tour parishes to ensure that church laws were being followed, identify breaches, and take enforcement action where necessary.[[58]](#footnote-58) Allegations of immorality, and a wide variety of other matters were ‘presented’ during the Visitation, including Church Pollution. The focus of some of these regulatory activities was to investigate the existence of pollution, and arrange for remedial acts to be undertaken.

**Pollution Offence and Sanctions**

The question of individual responsibility or liability for pollution was one that frequently found its way to the Consistory Courts, together with proceedings to determine what action (such as a reconciliation) might be appropriate. Though the proceedings in earlier cases may have been less formal, in later cases at least, court sessions would examine a ‘cause’, with the accused cited to appear before the court.[[59]](#footnote-59) The procedure undertaken was a prosecution *ex officio*, and so a kind of spiritual criminal offence prosecuted in the name of the court itself, against those who had publicly violated accepted norms of Christian behaviour.[[60]](#footnote-60) The investigation of the existence of pollution, and responsibility for that, relied upon evidence given on oath – for example, the Archdeacon of Exeter and master Henry Webber ‘to enquire on oath whether, as has been reported, the chapel of All Hallows and Honyton has been polluted by bloodshed’, and ‘whether William Faryndon inflicted violence on sir John Lyghtfote chaplain; if the chapel has been polluted to inhibit divine worship there until it has been reconciled and to certify’.[[61]](#footnote-61) The accused would be required to swear innocence and to find others to swear as to his/her trustworthiness; the system of Purgation and Compurgation.[[62]](#footnote-62) A case in 1511 from the York Consistory Court Cause Papers illustrates how witness evidence was given as to the alleged violence in order to counter Purgation: ‘after mature deliberation they said that Shaw, having been violently struck, spilled blood twice from his hand to the ground [in the churchyard], but as to the finer details they could not comment.’[[63]](#footnote-63) The seriousness which (at least some) cited parties took proceedings is illustrated by the deployment of four legal representatives (Proctors) by Shaw to hear the decision of the court when himself unable to attend.[[64]](#footnote-64)

The immediate consequences for the individual polluter could include both financial sanctions and ‘moral’ censure. A significant factor could be the court fees payable.[[65]](#footnote-65) The scale of fees payable in relation to the ceremony of reconciliation reflected their value as a source of income for bishops. Records from 1495 demonstrate a fee of over 66s. for each act of reconciliation undertaken by a bishop.[[66]](#footnote-66) On pronouncing the Sentence of Reconciliation in the case of the ‘quarreling priests’ (see above), the Archbishop said that ‘… he wished to have first 8s. 4d., then afterwards 6 Marks and finally 40s. for the expenses of the reconciliation.’[[67]](#footnote-67) The importance of recovering payment for these services was not overlooked; the Bishop of Rochester in 1346 empowering any bishop to ‘…reconcile Isleham parish church polluted by bloodshed, *and to receive the ‘procurations’ due*…’ to the bishop (as he was too ill to act himself).[[68]](#footnote-68)

As well as meeting the costs of restorative action and any associated court fees, offenders faced additional sanctions, as punishment, and/or to secure compliance with court orders and demonstrate church authority. Punishments in the church courts included: coercive penalties, designed to secure compliance (such as excommunication); retributive penalties, such as fines; and purgative penalties designed to humiliate and purify of guilt (such as public penance).[[69]](#footnote-69)

Penance was usually a public, shame-based, punishment, aimed at bringing the sinful to repentance and the community to forgiveness. It typically involved public confession of sin before the congregation, often wearing particular clothing (such as a white sheet), though might vary in nature and severity to fit a particular offence.[[70]](#footnote-70) Henry II’s penance of being publicly flogged[[71]](#footnote-71) by the Monks at Becket’s tomb in Canterbury in 1174 is a particularly graphic example. Polluters of churches were often made to process before parishioners and sometimes publicly beaten, then forced to make an offering during mass.[[72]](#footnote-72) The communal nature of repentance and forgiveness, and engagement in ceremonial cleansing would have reinforced the legitimacy and authority of the Church. The enforcement against the ‘Quarreling Priests’ may also have publicly demonstrated the universal application (and so legitimacy) of church authority.

Excommunication[[73]](#footnote-73) could be imposed in two different forms.[[74]](#footnote-74) The first (‘minor’) was a form of temporary exclusion from the church, with potential suspension of other rights to take part in the religious community. The second (‘major’) was the more serious and permanent form. This isolated the excommunicate from all forms of Christian society, including conversation, and provision of food.[[75]](#footnote-75) Where the polluting act involved the laying of violent hands on a cleric or monk, an ipso facto sentence of excommunication was incurred (*si qui suadente*).[[76]](#footnote-76) Excommunication was the most serious sanction available for the Consistory Courts,[[77]](#footnote-77) combining both spiritual and practical impacts. In 1446 at Exeter Cathedral, for example, a number of offenders were pronounced excommunicate ‘bringing

that curse upon themselves, some by polluting the cemetery with bloodshed, and the rest (seeing the first go unpunished) by shedding blood again in the cemetery and the church during divine service’.[[78]](#footnote-78) Records from 1511 identify the initial excommunication, incurred by ‘sacrilege and pollution of the cathedral burying ground’, and subsequent ‘absolution and penance for the offence’.[[79]](#footnote-79) The case of Robert de Steyngrave in 1329[[80]](#footnote-80) provides an example of the different penalties and sanctions employed. Absolution from excommunication followed an undertaking to make restitution and to obtain the reconciliation of the church, if required, with a financial deposit given to his Proctor for that purpose. In addition to punishment for the commission of offences, the ecclesiastical courts often imposed sanctions including major excommunication in order to secure obedience with orders.[[81]](#footnote-81)

Punishment of the offender is one thing, but bishops were not going to forego their reconciliation fees if that could be helped. If these could not be secured from an identifiable offender, it seems that the local church (which was, essentially, the local community) could be required to make payment. An example of this can be found in a case from 1330, where Wynand le Veel confessed to an assault in the churchyard of Snodland, and had his penance set as procuring the reconciliation of the churchyard polluted by the drawing of blood (the ‘Snodland case’).[[82]](#footnote-82) Some seven months later, the parishioners of Snodland were ordered to pay the ‘procurations’ due to the bishop for the enforced reconciliation of their churchyard, le Veel having failed to appear and pronounced ‘contumacious’.[[83]](#footnote-83) The grounds for this (secondary) community responsibility for the costs of restoration may have included the benefit that would be received through the restoration of the church and reinstatement of services and/or a form of community responsibility in failing to ‘give up’ the actual offender/polluter.

**The Medieval Regulation of Church Pollution**

It seems, therefore, that a fairly sophisticated set of regulatory processes and structures existed that was concerned with the identification of Church Pollution and its remediation. The main purposes were to ensure the protection of church property for its intrinsic value and importance (or holiness), but also to guarantee that the services provided and broader spiritual environment were preserved, in both preventive and restorative senses. These systems were designed to ensure that action was undertaken, in order to maintain spiritual integrity, and so to avoid, or remedy, impairment as well as securing funds for any remediation required. This included prosecution of offenders, with a progressive set of enforcement tools to ensure compliance with the regulatory system, and church/court authority. Though founded in large part upon shame and public humiliation, the objective was to correct behavior and ‘encourage’ individuals back into the church community and so was another form of reconciliation (being medicinal rather than punitive).[[84]](#footnote-84) Once a sentence was lifted, with the offender coming back into the fold, no stigma remained.[[85]](#footnote-85)

The sanctions, in particular, provide a contrast with the system of secular law at the time. The Canon and Common Law jurisdictions overlapped in many areas, including crimes such as murder.[[86]](#footnote-86) Unlike Canon Law responses, however, punishments inflicted by the temporal authorities routinely involved a variety of brutal acts, such as different forms of corporal, and capital, penalty. Yet, as we shall see, the relative deterrence of these prospective sanctions does not always seem to match what we might expect today. This reveals the need to understand how the ‘Medieval Mind’ may have perceived and prioritised matters very differently.

**II CONNECTIONS WITH CONTEMPORARY ENVIRONMENTAL LAW**

One should always be cautious in viewing historical information through a contemporary lens; it is all too tempting to apply assumptions and to superimpose modern concepts and structures inappropriately. Nevertheless, there are certain similarities and connections between the regulation of Church Pollution and aspects of contemporary environmental law that seem apparent.

**The Moral Foundations of Pollution**

On a general level, Church Pollution illustrates the complex nature of concepts such as ‘pollution’ and ‘contamination’. Though coupled very much with physical contamination of the natural environment in modern thought, there are, of course, deeply moral foundations for the concept of ‘pollution’, deriving from earlier meanings and application.[[87]](#footnote-87) These normative values appear to have endured, despite the diminishing consideration afforded the spiritual environment, and advances in scientific understanding. The idea of pollution, and its developing refinement, may have a place in the history of morals and law.[[88]](#footnote-88) Murray identifies how:

‘the word “pollution” is an ordinary English word, common today in respect of dirt in the natural environment. It also has a religious use, which goes back to late medieval English and […] to some of the earliest human records.’[[89]](#footnote-89)

Mary Douglas explored how ‘pollution beliefs’ work in the life of society at different levels,[[90]](#footnote-90) identifying how primitive religions were inspired by fear and inextricably confused defilement with hygiene.[[91]](#footnote-91) St. Thomas Aquinas explained that ‘bloodshed’ referred to ‘voluntary injury leading to bloodshed’, which implied sin, and that it was sin in a holy place that desecrated it, not defilement by bloodshed.[[92]](#footnote-92) In those origins, however, the connection between physical contamination – whether by bodily fluids, the presence of ‘filthy creatures’, or of non-believers (alive or dead)[[93]](#footnote-93) – and defilement was very important. That link between physical substance and spiritual value was also reflected in the paradoxical effect of blood as a cleansing presence: ‘Context is everything in determining its significance and emotive power’.[[94]](#footnote-94) As Douglas recognised, it can be perceived as ‘in place, or ‘out of place’,[[95]](#footnote-95) and so as an active substance may be either a pollutant or detergent.[[96]](#footnote-96) Murray suggests that the religious notion of ‘pollution’ may, in many respects, be closer to a state of medical infection than to imply moral guilt, but that pollution and immorality are not completely unconnected. The community must protect itself from disease and moral offences, so that ‘pollution’ is a social mechanism for self-defence, there being moral offences and diseases against which a human community considers it must protect itself against (at all costs).[[97]](#footnote-97) As society has developed from the Middle Ages, the focus has become more the moral core of acts, making intention central, rather than simply the material event.[[98]](#footnote-98) In the case of pollution through violent acts, rather than suicide,[[99]](#footnote-99) the connection between pollution and morality is more clearly identified. In all cases, the perception of pollution as requiring a material response can be identified.

The ritual of reconciliation[[100]](#footnote-100) treated the church ‘much like a person in need of scrubbing’,[[101]](#footnote-101) aspersing Holy Water ‘washing away the stains of sin’ in a church.[[102]](#footnote-102) So essentially moral offences, resulting in imposition of expressions of moral repentance,[[103]](#footnote-103) were developed in the context of close associations between sin, and substances. Thiery identifies how parishioners adopted the terminology of ‘pollution’ used by the clergy to stigmatise violence on hallowed ground.[[104]](#footnote-104) One element of this appears to be concern with the location of bloodshed, as well as violence; some parishioners being at pains to testify that blood was shed some way away from the sacred space, even if the violence took place there.[[105]](#footnote-105)

In contemporary approaches to environmental protection scientific and economic justifications are at the forefront. That does not mean that a moral dimension of pollution cannot be found in contemporary environmental law, however:

 ‘The ruling proposition is that the ‘polluters pay’, and behind this proposition is the sentiment that they should pay. After all, they made the earth uninhabitable, we did not. Polluters are perfectly appropriate lightning rods for the moralistic aggression sent their way.’[[106]](#footnote-106)

Moral, scientific and economic concerns may focus on the same ‘externalities’, but the concept of pollution itself is a moral one, to some degree, or at least is socially defined.[[107]](#footnote-107) Though contemporary law may ground this through references to ‘harm’ such as the effects on human health, ecosystems, or impairment of services, on one level it can be perceived as the introduction into the environment of some substance or energy that society disapproves of.[[108]](#footnote-108) As very little in nature is absolutely pure, identifying pollution requires social judgement and so is an ethical question: whether something is ‘harmful’ is not objective, but depends upon a value judgement that society would be better off without it.[[109]](#footnote-109) As we will see, these judgements, and the values underpinning them, vary over time and across societies.

As with Murray’s analysis of religious pollution, the moral dimension of contemporary environmental law is partial and complex. Environmental law is an important expression of social value, with the adoption of laws in this field reflecting concerns for values not previously incorporated within the law.[[110]](#footnote-110) The value or caring of the human relationship with the environment, however, is only a limited part of the ‘bundle’ of values shaping and embedded in environmental legislation, together with long-standing anthropocentric and self-interested concerns.[[111]](#footnote-111) The extent to which a biocentric or ecocentric ethic informs contemporary environmental law is, therefore, limited. The connections between morality and environmental law may, in common with much regulation, also be disconnected in a broader sense, through the prevalence of ‘strict liability’. The issue of strict liability crime is one that is of general concern in the environmental field, with the courts historically considering such regulatory offences as dealing “… with acts which 'are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty'…”.[[112]](#footnote-112) Ashworth argues that utilitarian effectiveness rationales do not address the basic issue of imposing the stigma of moral blame in the absence of the need to prove moral blameworthiness.[[113]](#footnote-113) Thus contemporary environmental law and regulation of pollution may be viewed as having a strong ‘materialist’ as well as moral component. Even environmental law scholarship tends towards a more ‘concrete’ focus on how things can work than purely abstract/theoretical discussion.[[114]](#footnote-114)

**General Environmental Law Approaches and Principles**

A further, fairly obvious, connection is the notion of special protection for particular places and objects. Endowing special status on certain species and certain areas in order to provide enhanced levels of protection for these is, of course, commonplace within environmental policy and law.[[115]](#footnote-115) Another approach that has become more prominent over recent years is the identification of ‘services’ and sources of value provided by ‘natural capital’ or ecosystems to shape and justify the development of environmental policy and decision-making.[[116]](#footnote-116) The special reverence for sacred spaces may be very different in many respects to protection of designated habitats, but there is some connection at a superficial level, at least. At the most basic level, this might be seen as regulatory controls over places considered valuable to society in some way. In the case of contemporary regulation of the natural environment, this includes connection with beliefs and concerns about the current and future value of biodiversity, and in the various services provided by different ecosystems. It also reflects the belief by many in the intrinsic value of the environment, irrespective of its more immediate anthropocentric value to humans. In the case of Church Pollution, this might be seen in both the spiritual sanctity of the sacred space and intrinsic value of the broader spiritual environment, but also in the services provided to the community using that space. As explained below, religion and associated aspects of life (and death) played a central role in the medieval world very different to that today.[[117]](#footnote-117) The church space and the services provided by that were valued and protected accordingly.

Spiritual belief and the nature of human life might be considered the epitome of uncertainty. Another of the contemporary foundations for environmental law is that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation – the *‘Precautionary Principle’*.[[118]](#footnote-118) In cases of possible Church Pollution, precautionary reconciliation could be required where there was a lack of certainty (*ad cautelam*),[[119]](#footnote-119) such as a case where soldiers had occupied a church for a number of days. Further tenets of environmental law are the ‘*Polluter Pays Principle’* the concept of *‘Sustainable Development’*. These are explored below.

**Contemporary Contaminated Land Regulation**

There are also some remarkable similarities between Church Pollution and modern environmental law regimes, in terms of regulatory design. The pollution of land as a result of our industrial past has been a focus for regulatory action for the last 25 years or so.[[120]](#footnote-120) The current regime regulating ‘Contaminated Land is found in Part IIA of the Environmental Protection Act 1990.[[121]](#footnote-121) This introduced a system of inspection, identification, and clean-up of ‘Contaminated Land’, together with a range of related provisions. As the regime is complex and sophisticated – comprising detailed statutory guidance material as well as primary and secondary legislation[[122]](#footnote-122) - any comparison with Medieval Canon Law is necessarily limited and rather superficial. In outline, it provides for: the requirements of local authorities in carrying out their inspection duties; the determination of whether land is in such condition that it triggers regulatory action (definition); clean-up requirements (remediation); the imposition and the apportionment of responsibility for clean-up (liability); and enforcement. Connections between each of those elements and the Canon Law rules regarding Church Pollution can be identified.

Local authorities are required to cause their areas to be inspected so as to identify ‘Contaminated Land’,[[123]](#footnote-123) as shown in the *Redland Minerals Ltd* case. The investigative Commissions and Visitations undertaken in implementation of Canon Law rules, have some basic analogy with these contemporary provisions, though in the form of less formal and structured requirements.

Attempts to define ‘Contaminated Land’, and so establish thresholds for contamination, or pollution, have been some of the more challenging and contentious aspects of the development of Part IIA. Under section 78A(2) this is:

‘any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that (a) significant harm is being caused or there is a significant possibility of such harm being caused; or (b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused’.

As much as the presence of contaminating material, therefore, definition is by reference to notions of ‘harm’ resulting.[[124]](#footnote-124) That definition is also through the subjective opinion of the local authority; determining whether there is officially a problem, and so whether a regulatory response is required.[[125]](#footnote-125) An important element of the approach to ‘harm’/definition is the concept of ‘contaminant linkages’ – whereby risks are assessed by references to the contaminating substance (or ‘source’), pathway, and ‘receptor’ that may be adversely affected.[[126]](#footnote-126) The Source-Pathway-Receptor concept also has implications for remediation requirements (see below). A distinctive feature of the contemporary pollution control regime is the clear inclusion of a contaminating substance. Although the Canon Law rules were concerned, in general, with polluting acts, rather than substances, factors such as the impact of substances/acts, any resulting ‘harm’, and the differing impacts according to specific location – the sensitivity of receptor - can be seen in the debates over the nature, target and impacts of Church Pollution.

Remediation standards and requirements for Contaminated Land are similarly complex and contested.[[127]](#footnote-127) The reasonableness of remediation requirements may be a ground of appeal;[[128]](#footnote-128) the *Redland Minerals* case including an appeal against the clean up requirements imposed. Where a church was found to be ‘polluted’ it required ‘reconciliation’ or other action in order to restore it, including its use for particular services. As we have seen, a number of the cases (including St. Paul’s) were concerned with the requirements for ‘remediation’ or cleansing – reconciliation or reconsecration in this context. A less obvious connection is the nature of alternative remediation approaches. One such technique for Contaminated Land may be to protect or remove the receptor, ‘by changing the land use or restricting access to land it may be possible to reduce risks to below an unacceptable level’.[[129]](#footnote-129) This might be effected by limiting the use of land to a car park, rather than playground, for example. Whilst an undesirable consequence of Church Pollution, rather than a true alternative remedial measure, there are some similarities with the ‘inhibition’ or suspension of services until a church was cleansed. In terms of addressing aspects of the ‘harm’ resulting, both might be seen to consider the elements of ‘pollutant linkages’ and the pragmatic means of addressing such situations. Certainly, this approach demonstrates common impacts on the wider community resulting from the identification of pollution.

Part IIA concentrates on those who may be responsible for cleaning up Contaminated Land. It addresses historically contaminated land, and so is not directly concerned with prevention of further pollution[[130]](#footnote-130) or the undertaking of historically polluting acts, beyond the remediation requirements accruing from these. In the first instance, those who 'caused or knowingly permitted' polluting substances to be in, on, or under land will be liable.[[131]](#footnote-131) In cases where no such persons can be 'found', instead the current owners and occupiers of the land may form the ‘liability group’.[[132]](#footnote-132) In one sense, this approach might illustrate of the ‘partial morality’ of pollution; the attempt to impose liability on grounds of responsibility where possible, but with a fall back ‘materialistic’ position of ‘innocent’ landowners bearing the costs (albeit on the basis that they benefit from any increase in value). ‘Causing’ may not require knowledge or fault, and ‘knowingly permitting’ (continued) presence does not necessarily reflect any involvement in the act responsible for that presence.[[133]](#footnote-133) The statutory guidance sets out how ‘fair’ apportionment of liability between and within liability groups can be attempted. The Statutory Guidance is clear that, where possible, the ‘*Polluter Pays’* Principle, should be applied;[[134]](#footnote-134) that those responsible for pollution meet the costs of its consequences.[[135]](#footnote-135)

With regard to enforcement, once a site is identified as ‘Contaminated Land’, there is a duty to serve a remediation notice in respect of it.[[136]](#footnote-136) The general approach is for the ‘appropriate persons’ to remediate the land, with the enforcing authority having powers to undertake works[[137]](#footnote-137) and recover the costs of these,[[138]](#footnote-138) as a secondary step. There are limitations on both the serving of remediation notices,[[139]](#footnote-139) and the costs that may be reasonably recovered where the enforcing authority takes action itself.[[140]](#footnote-140) Failure to comply with a notice may constitute a criminal offence.[[141]](#footnote-141) Though the original pollution itself may not constitute an offence (being ‘historic’ acts, or acts of others), there is a clear criminal prosecution regime for non-compliance with regulatory requirements.

In the case of Church Pollution, of course, there could be no question of the polluter (or other identified as ‘responsible’) carrying out the remediation. The nature of the remedial requirements was such that only the ‘enforcing authority’ itself could undertake the necessary actions. As we have seen, church ‘polluters’ could be prosecuted *ex officio:* an important distinction being that this offence consisted of the polluting act itself, rather than relating to remediation measures directly. With its focus on those responsible for polluting acts, the Church Pollution regime (imposing both corrective sanctions and liability for remediation costs) may be viewed as a form of ‘Polluter Pays’ liability. As the ‘Snodland’ case[[142]](#footnote-142) illustrates, a similar approach to that with Contaminated Land can be seen in the case of ‘Orphan Liabilities’, where the local community could be responsible for funding reconciliation costs, whether on the grounds of community benefit, or community responsibility for the polluter.

The range of sanctions deployed in relation to Church Pollution (considered above) included excommunication, fines and public penance. Financial penalties are the main form of enforcement under the Contaminated Land regime. There are a couple of points worth noting here, however. The first is the power to bring civil proceedings (including injunctions) to secure compliance where prosecution would provide an ineffectual remedy.[[143]](#footnote-143) The second is the maintenance of registers of remediation notices and subsequent actions, such as remediation actions and convictions for prescribed offences.[[144]](#footnote-144) The former may have similarities with ‘relaxation’ to the secular jurisdiction where church sanctions may have been unsuccessful.[[145]](#footnote-145) The latter may be seen as analogous with both the ‘shame’ based and ‘reconciliatory’ elements of the philosophy underlying those sanctions, including public confession and forgiveness. As with Church Pollution, the purpose is to *encourage* voluntary remediation, where possible, with remediation ‘statements’ or ‘declarations’, rather than ‘notices’ and enforcement.[[146]](#footnote-146)

A final element of the Contaminated Land scheme to consider is the appeals system.[[147]](#footnote-147) Though less complex, in both regulatory provisions and enforcement structure, an appeal system is evidenced in the case of Church Pollution. Concern regarding the disruption to church services, and implications of this (as well as possibly to potential costs of a reconciliation) are reflected in a case from 1348, involving a:

 ‘citation of the bishop to appear before the archbishop’s court to reply to the complaint of the parishioners of Allensmore that he has laid their burying ground under an interdict on the ground of bloodshed, which in fact did not take place there’.[[148]](#footnote-148)

The Contaminated Land regime is built upon the ‘Statutory Nuisance’ regime. Now found in Part III of the Environmental Protection Act 1990, Statutory Nuisance has its origins in the Public Health Legislation of the mid-18th century.[[149]](#footnote-149) Although Part IIA is a much more complex regime, with apportionment and allocation of liability, extensive statutory guidance and regulations, the regulatory approaches and structures of the two schemes have many similarities; the Contaminated Land regime might be more appropriately be conceived of as ‘Part IIIA’. Accordingly, the legislative pedigree has been well recognised. Though far less evident, and perhaps contentious, the reverberation of Church Pollution laws might also be identified. Thus the schemes regulating both statutory nuisances and Contaminated Land can be argued to have conceptual and structural origins in unexpected medieval sources. Whether conscious or not, there seems to be a social and cultural heritage of long-standing for environmental laws such as these.

These connections, to a greater or lesser extent, might be perceived as tenuous and/or artificial. Each requires the historical perspective through the contemporary lens and risks the (more or less knowing) selectiveness of illustration and example. The consideration of contemporary and historic regulation of pollution, however, illustrates other associations. These are based upon a more contextual view of the medieval system: considering the differences as much as the perceived similarities.

**Deeper Resonances - Historical Enquiry in Context**

Contemporary environmental law is primarily concerned with various aspects of the natural environment. ‘Environment’ is generally treated as relating to physical, non-human media (such as land and water) and wildlife.[[150]](#footnote-150) But that concern is generally balanced with consideration given to other environments – social and economic: the core concept of ‘*Sustainable Development*’ ‘synthesising social, economic and environmental concerns’.[[151]](#footnote-151) This conceptual approach both separates and connects the natural environment and other matters, but these might equally be seen as different aspects of the human environment, or different (socially constructed) environments within which humans live.[[152]](#footnote-152) As the Contaminated land example illustrates, though acknowledging earlier roots, environmental lawyers tend to focus on the 19th century and large-scale Public Health interventions as the starting point for much historical enquiry.[[153]](#footnote-153) Other investigation tends to be restricted to the development of the common law and private property rights.[[154]](#footnote-154) Attention is generally given to the initiation of a ‘coordinated’ response to environmental problems reflecting the recent ‘modern’ origins of the discipline.[[155]](#footnote-155) Naturally, that focus frames the question of what 'environmental law' is/was retrospectively, using contemporary notions of the 'environment'. The aim is to trace and analyse the sources and linear development of regulation directed to protection of the environment as presently conceived. Whether conscious or not, it seems that a significant driver is the desire to establish the development of central organising principles for the discipline, over time.

As both Douglas and Murray identify,[[156]](#footnote-156) communities seek to protect themselves from ‘pollution fears’: the idea of pollution in that sense being ‘a social mechanism for self–defence’.[[157]](#footnote-157) Rather than attempting linear connections, we can take an alternative approach of considering how earlier societies understood their 'environment' and how they protected what were considered the most important elements. That provides a very different perspective for considering the nature of ‘environmental protection’, and of behaviour connected to that. Although it may be impossible to discard entirely our contemporary frameworks, that viewpoint requires the researcher to set aside current understandings and notions of the ‘environment’ and ask questions about how this was understood and experienced in different times. Importantly, it also seeks to develop understanding of how the environment, and its regulation, was meaningful for the ordinary citizen: shifting from the study of environmental ‘legal history’ (as the historical development of the law),[[158]](#footnote-158) to the exploration of ‘law and history’ (‘reconstructing the social life of the law in a given period’)[[159]](#footnote-159). In turn, embracing these differences prompts reflection on societal differences more generally, and on shifting values and priorities.

**The Medieval Context**

In analysing the medieval regulation of Church Pollution, the significance of the church as an institution and Canon Law as a central feature of daily life is hard to over-state. All ‘lawful men’ were Christian,[[160]](#footnote-160) and there was only one ‘church’:[[161]](#footnote-161)

‘[C]anon law formed a crucial component of medieval life and thought. Its rules affected the lives and actions of practically everyone. Its enforcement mechanisms were increasingly able to reach into everyday affairs at all social levels.’[[162]](#footnote-162)

The church had tremendous importance as a social resource as it was the hub (as well as the heart) of many communities, being used for a variety of purposes as well as religious activities. With the exception of taverns, churches were often the sole public buildings in communities, and were often the only suitable place for secular events to be held.[[163]](#footnote-163) As such, they combined both recreational and holy spaces,[[164]](#footnote-164) being used for activities such as ‘church ales’ as well as more sacred uses.

Religion itself was a part of medieval life in a way that is difficult to comprehend today, ‘The dominance of the church within medieval European society […] an obvious truism […]’.[[165]](#footnote-165) In part, this was reflected in the coercive power of the church: failure to attend church services was itself an offence. The centrality of the (Catholic) church to life in Medieval England meant that the effect of excommunication was not simply to exclude from the church and its ‘communion’, but practically from the whole of society.[[166]](#footnote-166) Those who fraternised with excommunicates would be themselves excommunicated. Further impacts could be to deprive a pregnant woman from the services of midwives,[[167]](#footnote-167) deprive someone of their opportunities to work or to pursue a legal case,[[168]](#footnote-168) and to prevent them from making a Will, for example. In theory, it made the subject a dishonoured outcast of both temporal and spiritual world;[[169]](#footnote-169) ‘He was a man with a leprosy of the soul’.[[170]](#footnote-170)

Though such ostracism had practical consequences, there were equally significant impacts in the form of denial of spiritual benefits, as well as the humiliation of sinful behaviour. ‘In theory […] excommunication was the most serious disaster that could ever befall a man, because it cut at the roots not only of his life temporal but of life eternal’.[[171]](#footnote-171) The most significant feature of this world was perhaps the ‘Medieval Mind’s view of the temporal world. Life on earth was considered merely a preparatory step before the far more significant ‘life beyond’. Spiritual afterlife and concerns about eternal damnation were very real. In many ways, the implications of acts for a soul in the afterlife were much more of an anxiety than for those in earthly life. Though willingness to use violence and honour were vitally important to medieval people, even more so was religion as ‘the caretaker of their souls’.[[172]](#footnote-172) Church services, prayers, and other acts of religious devotion were thought to have clear and direct relationships with the course of life after death. One example of this is the belief that prayers said in church after death could shorten the time spent in purgatory, or even ‘save souls’.[[173]](#footnote-173) In the context of Church Pollution, therefore, the sanctity and holiness of the space itself was clearly a motivation for compliance with Canon Law. It seems, however, that many concerns of those involved were linked to the services provided, their relationship with the spiritual environment and, in particular, fears as to the consequences for congregants in the afterlife.[[174]](#footnote-174)

That is not to say that physical and verbal aggression involving sacred persons and spaces were entirely foreign to parish life, of course.[[175]](#footnote-175) The records show plenty of brawling and profanity in churchyards,[[176]](#footnote-176) and cases of violent behaviour in churches suggesting the perpetrators had no explicit concern for spiritual ideals or religious prohibitions.[[177]](#footnote-177) Evidence as to the elevation of spiritual as opposed to temporal consequences can be found, however, in the ‘civilising’ effect Thiery argues to have resulted from the protection of sacred spaces. Despite the horrific sanctions that could be employed in cases of violence in the secular jurisdictions (including branding of faces, amputation of limbs and death), it appears that the usually physically ‘mild’ punishments deployed by the church courts did not provide an incentive to undertake violent acts on church property (indeed, quite the opposite in many instances). There are a number of cases demonstrating a desire to fight outside church property, and the use of that as a ‘sanctuary’, relying on others’ reluctance to undertake violent acts there.[[178]](#footnote-178) Other examples can be found suggesting that force would be used with restraint, or avoided, in holy spaces, to avoid ‘crossing certain literal and figurative lines’.[[179]](#footnote-179)

So the concern about pollution and its impacts upon individuals and communities was a very real one as the church and spirituality was central to medieval life. The short and brutish nature of existence for many people, and deeply religious society, meant that their focus might be more upon their prospects in the afterlife and preparation for this than on mortal life itself. As well as helping to understand the approach to sacred spaces and impacts on these, it may explain (in part at least) why regulatory action appears far less common in more recent years. For the medieval citizen, the spiritual environment was at least as important as various elements of the natural environment. Though heavily influenced by an immensely powerful institution, the effectiveness of social regulation protecting that environment was derived in large part from the faith, fears and values of individuals, and communities. ‘Every parishioner had a responsibility to protect the sanctity of their parish church and the spiritual health of their fellow parishioners…’[[180]](#footnote-180) This shared value of the spiritual therefore underpinned tremendously strong pressures for social conformity.

**Values, Beliefs and Notions of ‘Environment’**

The other worldliness of Medieval England lies as much in changes in values as anything else. The centrality of church in social life generally, of church law and courts,[[181]](#footnote-181) and notions of earthly life as a kind of preparatory stage for divine judgment and the Hereafter, are a huge contrast with modern secular society. In terms of difference, this might be seen as at least as significant as the results of industrialisation and urbanisation. Exploration of the reasons for, or process of, those changing values, is well beyond the scope of this paper, but there are a number of matters that may be pertinent. The wealth and corruption of the church and abuses by the ecclesiastical courts exciting extreme unpopularity,[[182]](#footnote-182) the fracturing of religious views and structures embodied in the Reformation, loss of much of the Canon Law jurisdiction in competition with the Royal Courts,[[183]](#footnote-183) and State appropriation of church wealth and property, are examples of the forces both causing and resulting from the erosion of some of these foundational values. Across Europe, scientific discovery was shaping the ‘Age of Reason’. One effect of the Reformation was that there was no longer any (perceived) guarantee that prayers and rituals would bring any specific benefits.[[184]](#footnote-184) By the mid-16th century, it seems that excommunication may have been waning greatly in effectiveness: ‘the average contumacious person lived and died excommunicated’.[[185]](#footnote-185) The actual social effects of excommunication depended very much on popular opinion. In the 1620’s around 5% of the total population was excommunicated at any one time.[[186]](#footnote-186) By the late Middle Ages, excommunication had ‘degenerated from a tremendous sanction to a minor inconvenience’.[[187]](#footnote-187) This might be seen as part of a process of the shifting balance between secular and ecclesiastical jurisdictions. ‘By the seventeenth century, the underpinning harmony in moral outlooks … had been eroded by the realities of sustained conflict and a waning belief in the powers of unaided reason to uncover moral truth’.[[188]](#footnote-188) By 1830, the policing functions of the ecclesiastical courts against the laity had virtually disappeared; the criminal side of the system had virtually collapsed.[[189]](#footnote-189)

The comparison of medieval and contemporary pollution concerns identifies clear shifts in values and beliefs. Although the ‘spiritual environment’ held a central place in the medieval world, individual and community concerns and fears about this, and the implications of pollution of associated spaces, diminished greatly. Whether filling a gap, displacing religious-based moral concerns, or a combination of both, other values and structures are more prevalent today – such as those of free market economics. These individual and social values and beliefs are, of course, meaningful in a number of ways relating to the development and operation of the law;[[190]](#footnote-190) shaping both notions of ‘the environment’ and the relative importance of different aspects. A principal reason for environmental law becoming more ‘public’, rather than a means of mediating private interests, is likely to have been the receptiveness of lawmakers to increase in public concern for the state of the natural environment.[[191]](#footnote-191) Culturally defined values and preferences influence the profoundly subjective bases for approaching the central questions relevant for environmental law, such as the values to be attached to different aspects of environmental protection.[[192]](#footnote-192) These are not static and changes influence both what is regulated and how.[[193]](#footnote-193) Modern society is, of course, far less homogenous than that of the Middle Ages: ‘In addressing the issue of community, any discussion must now recognise the sheer diversity of groups and communities within society…’.[[194]](#footnote-194) The forces influencing and shaping modern environmental law are correspondingly complex. As much as a developing ‘environmental ethic’, these have included various ‘crises’, or fear-inducing events. On a general level, Rachel Carson’s publication of *Silent Spring* warning of the effects and future consequences of indiscriminate biocide use ‘created an instant political demand for government action to address these very scary threats’.[[195]](#footnote-195) In the case of Contaminated Land, the US regulatory regime (the Comprehensive Environmental Response Compensation and Liability Act 1980)[[196]](#footnote-196) was in large part a response to public outcries following the ‘Love Canal’ and other disasters. A similar disaster in Lekkekerk (in the Netherlands) together with less dramatic, but nonetheless alarming, incidents such as a gas migration explosion at Loscoe (Derbyshire) in 1986[[197]](#footnote-197) provided the impetus for the development of the Part IIA regime. Thus we see ‘pollution fears’ incorporating both moral and materialistic concerns playing out in different contexts, and (to some degree) reflecting different values, across differing ages and societies.

**CONCLUSIONS**

‘Environmental law is controversial, and thus interesting, because it deals with questions of changing values and, therefore, differing priorities.’[[198]](#footnote-198) The value placed on these different concerns (or ‘environments’), as well as different aspects of each, and so the degree of focus and protection afforded to them, may fluctuate over time: and this may reflect public concerns or fears. Pollution of Churches and its regulation might be as distinct from modern environmental law as the medieval world is from today. But some illustrations of these deeper issues of shifting values might be found. The way in which the environment is conceived and the value ascribed to different aspects might be represented in the concern and respect for the spiritual environment. The ways in which those values were furthered, the fears addressed, and communities sought protection in a particular context, of holy spaces, were not dissimilar in many respects, to the concepts, rules and other structures developed or deployed in relation to protection of elements of the natural environment today. The shift of public concern from spiritual to other environments illustrates the impermanence of some values: not necessarily their existence, but the weight afforded to them by individuals and society at different times. Individual and societal beliefs as the basis for rule setting, and for the effectiveness of such norms is also a common feature. How the environment is perceived shapes both the conception of threats faced and ‘solutions’: scientific investigation and technical responses; economic analysis and market mechanisms; spiritual impairment and ritual cleansing. The various systems identify the problem and suggest the appropriate response.

Many may view the focus of medieval beliefs and concerns as ignorance and superstition, and celebrate contemporary focus on scientific rationality. Others might suggest that imbuing a spiritual dimension into an environmental ethos is the way to respond to environmental crises.[[199]](#footnote-199) Understanding the medieval conception of the environment and the way in which it was protected is, however, relevant to modern environmental law. Even if the illustrations drawn through the modern Contaminated Land comparator may be limited in their persuasiveness, the broader analysis reminds us that these different values and beliefs have a strong influence on behaviour. That includes how we define and regulate ‘pollution’.

1. \* I am grateful to Simon Halliday, Jenny Steele, Adam Tucker, Sarah Wilson and Abbie North for their comments on earlier drafts of this article. I am also grateful for the help of Emma Simmons at York Law School, and staff from the Borthwick Institute for Archives at the University of York, for assistance in accessing and translating the (limited) primary sources utilised for this paper.

 R Scully ‘The Unmaking of a Saint: Thomas Becket and the English Reformation’ (2000) 86 The Catholic Historical Review 579, p 582. Most scholars agree that the knights initially intended no more than arrest, the murder resulting, in part, from Becket’s refusal to go quietly (N Vincent ‘The Murderers of Thomas Becket’ in N Fyde and D Reitz (eds) *Bischofsmord im Mittelalter* (Göttingen: Vandenhoeck & Ruprecht, 2003) p 211). [↑](#footnote-ref-1)
2. The full horror of the sacrilege included profaning the church, in the (sacred) Christmas season, with the blood and murder of a priest, cutting off the crown of his head (which had been dedicated to god), and scraping the brain out to scatter with blood and bones all over the panel floor (A Duggan *Thomas Becket (Reputations)* (London: Arnold, 2004) p 227). [↑](#footnote-ref-2)
3. To store them as holy relics (D Hayes ‘Body as Champion of Church Authority and Sacred Place: The Murder of Thomas Becket’ in M Meyerson, D Thiery and O Falk (eds) *A Great Effusion of Blood: Interpreting Medieval Violence* (Toronto: University of Toronto Press, 2004) p 198). [↑](#footnote-ref-3)
4. ‘The Reconciliation Sentence and Service in St. Paul’s Cathedral’, Consistory Court of London, February 7, 1891. Reported in Chancellor Tristram *The Principal Judgments Delivered in the Consistory Courts of London, Hereford Ripon and Wakefield, and in the Commissary of Canterbury 1872 to 1890* (London: Butterworths, 1893) p 164. [↑](#footnote-ref-4)
5. *R. (on the application of Redland Minerals Ltd) v Secretary of State for the Environment, Food & Rural Affairs* [2010] EWHC 913 (Admin). [↑](#footnote-ref-5)
6. See, for example, R Sandberg *Law and Religion* (Cambridge: CUP, 2011), A Musson and C Stebbings *Making Legal History: Approaches and Methodologies* (Cambridge: CUP, 2012) and A Gillespie ‘Religious Justifications For Environmental Protection’ in A Gillespie (ed) *International Environmental Law, Policy, and Ethics* (Oxford: OUP, 2000). [↑](#footnote-ref-6)
7. There is also no single event in the history of the Middle Ages with the details so well known as Becket’s murder (Vincent, p 211, above n 1). [↑](#footnote-ref-7)
8. Including excommunication for some, and public penance for King Henry II. [↑](#footnote-ref-8)
9. Hayes, p 198, above n 3. ‘The great church, one of the ancient shrines of Christendom, stood violated and defiled…It was to be almost a year before Canterbury Cathedral was declared cleansed from the sacrilege’ (W Urry *Thomas Becket: His Last Days* (Stroud: Sutton Publishing, 1999) p 155). [↑](#footnote-ref-9)
10. Duggan, p 215, above n 2. [↑](#footnote-ref-10)
11. Murray notes that suicide ‘polluted’ speech, thought, the body and place, which meant that a sacred space, such as a chapel, might need to be reconsecrated (A Murray *Suicide in the Middle Ages: Vol. II* (Oxford: OUP, 1998) p 449); the question arising in the case of an attempted suicide in 1297, for example (Murray, p 403). [↑](#footnote-ref-11)
12. As the focus of this paper is the historic regulation of Church Pollution, references will use the past tense. This is not to suggest that it has no contemporary use or relevance. An example of a recent (related) event, in the Anglican Church, is the re-dedication of a churchyard in Didcot in March 2014 following the discovery of a murder victim there. [↑](#footnote-ref-12)
13. R Helmholz *The Oxford History of the Laws of England, Vol. I, the Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: OUP, 2004) p.494 in broad terms, (including theft of church property). [↑](#footnote-ref-13)
14. Ibid, p 495. [↑](#footnote-ref-14)
15. and continues to be, of course. [↑](#footnote-ref-15)
16. The term ‘spiritual’ is generally used in this paper in the context of the intangible aspects of religious belief, specifically those relating to the Church in Medieval England. That is in no way to seek to equate spirituality with organised religion. [↑](#footnote-ref-16)
17. Helmholz, p 497, above n 13. [↑](#footnote-ref-17)
18. Blood is, of course, associated ‘impurity’ in many religions. [↑](#footnote-ref-18)
19. D Thiery *Polluting the Sacred: Violence, Faith, and the 'Civilizing' of Parishioners in Late Medieval England* (Leiden: Brill, 2009) p 48. [↑](#footnote-ref-19)
20. Translation of Gratian’s Decretum C. 3. D. LXVIII (repeated in Decreti Tertia Pars De Consecrati Dist. I C.XX), yery kindly provided by Gary Brannan of the Borthwick Institute for Archives, University of York: ‘things’ meaning ‘places’ in this context. [↑](#footnote-ref-20)
21. Perhaps a result of the more ‘multifunctional’ use of church property in the Middle Ages. [↑](#footnote-ref-21)
22. R Helmholz ‘Crime, Compurgation and the Courts of the Medieval Church’ (1983) 1 Law and History Review 1, p 7. [↑](#footnote-ref-22)
23. (Involving either violence, or burial of excommunicates) P Clarke *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford: OUP, 2007) p 222. [↑](#footnote-ref-23)
24. ‘The Old Chapels at St John’s’ in Harrison *Records of the Tynwald & St John’s Chapel in the Isle of Man, ManxSoc Vol. XIX* (available at: <http://isle-of-man.com/manxnotebook/manxsoc/msvol19/pt02.htm> [accessed 27 March 2015]. [↑](#footnote-ref-24)
25. A suicide case at Calvary Church Manhattan in 1897, reported in the New York Times 21 June 1897 (see <http://query.nytimes.com/mem/archive-free/pdf?res=F10612FF3F5811738DDDA80A94DE405B8785F0D3> [accessed 27 March 2015]). [↑](#footnote-ref-25)
26. The Canterbury & York Society Series (editions of episcopal and archiepiscopal registers). I am grateful for the assistance of Jack Wells and Anthony Lynch in undertaking this survey. [↑](#footnote-ref-26)
27. As well as cases from the 14th century. [↑](#footnote-ref-27)
28. At Carlisle Cathedral, Thompson(ed) *Register of John de Halton, Bishop of Carlisle, 1292-1324* (London: The Canterbury & York Society Series, vol. 12, 1913) p 76. [↑](#footnote-ref-28)
29. Bannister (ed) *Registrum Ricardi Mayew, episcopi Herefordensis, 1504-16* (London: The Canterbury & York Society Series, vol. 27, 1921) p 105. [↑](#footnote-ref-29)
30. At Exeter Cathedral in 1425, Dunstan (ed) *The register of Edmund Lacy, Bishop of Exeter, 1420-55, 'Registrum commune' Vol. 1* (London: The Canterbury & York Society Series, vol. 60, 1963) p 157, for example. [↑](#footnote-ref-30)
31. At Broadwood Kelly Church in 1425, Ibid, p 111, for example. [↑](#footnote-ref-31)
32. At Chulmelegh Parish Church in 1426,Ibid, p 161, for example. [↑](#footnote-ref-32)
33. At Stamford Courtenay Churchyard in 1421,Ibid, p 29, for example. [↑](#footnote-ref-33)
34. Harrison, above n 24. [↑](#footnote-ref-34)
35. Tristram, p 170, above n 4. Though several instances of suicide in churches were noted, this was considered to have been the first recorded instance since the Reformation of such an act ‘during Divine Service and in the face of the congregation’. [↑](#footnote-ref-35)
36. S Lewis ‘Dubbieside – Dun’, in *A Topographical Dictionary of Scotland* (London, 1846) pp 297-310 <http://www.british-history.ac.uk/topographical-dict/scotland/pp297-310> [accessed 27 March 2015]. [↑](#footnote-ref-36)
37. Case 1400/01 Pollution of Church. LXIV ds. Joh. Del Grene, V. of Wystowe (in J Purvis *A Mediaeval Act Book: With Some Account of Ecclesiastical Jurisdiction at York* (York: Herald Printing Works, 1943) p 51. [↑](#footnote-ref-37)
38. Sir Robert Phillimore, Sir Walter Phillimore and C Jemmett *The Ecclesiastical Law of the Church of England Vol. I* (London: Sweet & Maxwell, 2nd edn, 1895) p 1773. [↑](#footnote-ref-38)
39. Tristram, p 171, above n 4. [↑](#footnote-ref-39)
40. D Neale and B Webb *The Symbolism of Churches and Church Ornaments: A Translation of he First Book of the Rationale Divinorum Officiorum by William Durandus* (New York: Charles Scribner’s Sons 1893), pp 108-109. [↑](#footnote-ref-40)
41. Thiery, p 74, above n 19. There are also further connections between bodily fluids and pollution, discussed below. [↑](#footnote-ref-41)
42. Decretal of Boniface VIII added to the Liber Sextus (Sext.3.21.1) (see Helmholz, p 150, above n 13). [↑](#footnote-ref-42)
43. Thiery, p 58, above n 19. [↑](#footnote-ref-43)
44. Tristram, p 165, above n 3. The disruption of order no doubt being a significant factor. [↑](#footnote-ref-44)
45. Hayes, p 190, above n 3. The offence was further aggravated as it included the removal of the crown of Becket’s head (dedicated to God), during the Christmas season (Duggan, p 216, above n 2). [↑](#footnote-ref-45)
46. The Canon in Gratian’s Decretum required reconsecration (see above), but by the late 12th century, Alexander III’s decretal ‘Significasti’ (1172-73) ordered reconciliation (Clarke, p 246, above n 22). Durandus’ 13th century *Rationale* states that intentional shedding of blood warrants only reconciliation (Neale and B Webb, pp 107-108, above n 40). An 18th century source suggests that pollution may justify a full re-consecration, Pollution by Effusion of Blood being the only situation where a church once consecrated could be consecrated again (R Grey and E Gibson, *A system of English ecclesiastical law: extracted from the Codex juris ecclesiastici anglicani of the right reverend the Lord Bishop of London for use of young students in the universities, who are designed for Holy Orders* (London, 1732) p 67. [↑](#footnote-ref-46)
47. Helmholz, p 497, above n 13. [↑](#footnote-ref-47)
48. X.3.40.4 (Ibid, p 150). [↑](#footnote-ref-48)
49. Tristram, p 166, above n 3. [↑](#footnote-ref-49)
50. Thiery, p 51, above n 19. [↑](#footnote-ref-50)
51. D Thiery ‘Welcome to the Parish, Remove Your Cap and Stop Assaulting Your Neighbour’ in D Biggs, S Michalove and A Reeves (eds) *Reputation & Representation in Fifteenth Century Europe* (Leiden: Brill, 2004) p 241. [↑](#footnote-ref-51)
52. D Elliott ‘Sex in Holy Places: An Exploration of a Medieval Anxiety’ (1994) 6 Journal of Women’s History 6, p 9. [↑](#footnote-ref-52)
53. D Elliott *Fallen Bodies: Pollution, Sexuality, and Demonology in the Middle Ages* (Philadelphia: University of Pennsylvania Press 1999), p 21. [↑](#footnote-ref-53)
54. Thiery, p 48, above n 19. [↑](#footnote-ref-54)
55. Ibid, p 48. [↑](#footnote-ref-55)
56. Johnson (ed) *Diocesis Roffensis registrum Hamonis Hethe* (London: The Canterbury & York Society Series, vol. 48-49, 1948) p 242. [↑](#footnote-ref-56)
57. Thiery, p 49, above n 19. [↑](#footnote-ref-57)
58. J Brundage *Medieval Canon Law* (London: Longman, 1995) p 42. [↑](#footnote-ref-58)
59. See CP.G.104 *Cause Papers*, Borthwick Institute for Archives at the University of York. [↑](#footnote-ref-59)
60. R Helmholz *Roman Canon Law in Reformation England* (Cambridge: CUP, 1990) p 2. [↑](#footnote-ref-60)
61. Case in Chuddelegh on 23 November 1426, Dunstan, p 191, above n 30. [↑](#footnote-ref-61)
62. See Helmholz, p 1, above n 22 [↑](#footnote-ref-62)
63. See CP.G.104 *Cause Papers* Borthwick Institute for Archives at the University of York. [↑](#footnote-ref-63)
64. *Thomas Shaw* in CP.G.104 *Cause Papers,* Borthwick Institute for Archives at the University of York. [↑](#footnote-ref-64)
65. Even though *ex officio* fees were relatively low, guilty parties were called upon to pay these (B Woodcock *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford: OUP, 1952) p 70). [↑](#footnote-ref-65)
66. Helmholz, p 150, above n 13. This was around £1600 in modern terms, or one-third the annual wage of a craftsman in the building industry. [↑](#footnote-ref-66)
67. Case 1400/01 *Pollution of Church. LXIV ds. Joh. Del Grene, V. of Wystowe* (in Purvis, p 51, above n 39). [↑](#footnote-ref-67)
68. Johnson, p 795, above n 56 (emphasis added). [↑](#footnote-ref-68)
69. Brundage, p 152, above n 58. [↑](#footnote-ref-69)
70. Outhwaite *The Rise and Fall of the English Ecclesiastical Courts 1500-1860* (Cambridge: CUP, 2006), p 11. [↑](#footnote-ref-70)
71. W Urry ‘The Normans in Canterbury’ [1958] 8 Annales de Normandie 119, at 138. [↑](#footnote-ref-71)
72. Thiery, p 36, above n 19. [↑](#footnote-ref-72)
73. The sentence of excommunication having pre-Christian roots, including the use by Druids (R Hill ‘The Theory and Practice of Excommunication in Medieval England’ [1957] 42 History 1, p 2.) [↑](#footnote-ref-73)
74. The basic distinction from the 13th century onwards being between ‘minor’ and ‘major’ form (FD Logan *Excommunication and the Secular Arm in Medieval England* (Toronto: Pontifical Institute of Medieval Studies, 1968) p 14). [↑](#footnote-ref-74)
75. S Ollivant *The Court of the Official in Pre-Reformation Scotland* (Edinburgh: Stair Society, 1982), p 151. These impacts are considered further below. [↑](#footnote-ref-75)
76. Creating a special immunity from violence, and separating from the secular world. R Helmolz *The Spirit of Classical Canon Law* (Athens: University of Georgia Press, 2010), p 385. [↑](#footnote-ref-76)
77. Helmholz, p 619, above n 13. [↑](#footnote-ref-77)
78. Dunstan (ed) *The register of Edmund Lacy, Bishop of Exeter, 1420-1455: ‘Registrum commune’ Vol. 2* (London: The Canterbury & York Society Series, vol. 61, 1966) p 361. [↑](#footnote-ref-78)
79. *William Baker* Case,Bannister, p 105, above n 29. [↑](#footnote-ref-79)
80. Johnson, p 242, above n 56. [↑](#footnote-ref-80)
81. E Vodola *Excommunication in the Middle Ages* (Berkeley: University of California Press, 1986) p 36. [↑](#footnote-ref-81)
82. Johnson, p 249, above n 56. [↑](#footnote-ref-82)
83. Ibid, p 441. [↑](#footnote-ref-83)
84. Helmholz, ch. 6, above n 60. [↑](#footnote-ref-84)
85. Ibid, p 113. [↑](#footnote-ref-85)
86. Helmholz, p 2, above n 22. The worst crimes could merit ‘relaxation’ to the secular arm; whereby the civil authorities could inflict various forms of physical punishment (Brundage, p 153, above n 58). [↑](#footnote-ref-86)
87. S Coyle and K Morrow *The Philosophical Foundations of Environmental Law* (Oxford: Hart, 2004) note the earlier focus on the intrinsic moral dimension of property rights, rather than the modern dominance of instrumentalist thinking. [↑](#footnote-ref-87)
88. Murray, p 428, above n 11. [↑](#footnote-ref-88)
89. Murray, p 426, above n 11. [↑](#footnote-ref-89)
90. M Douglas *Purity and Danger* (London: Routledge Classics, 2002) p 3. ‘Pollution fears’ may represent a range of deep concerns, and differing priorities in values. For individuals, this might be seen in an elevation of the terror of eternal damnation over temporal health, whilst for powerful groups, loss of authority may be the greatest fear. [↑](#footnote-ref-90)
91. Ibid, p 1. [↑](#footnote-ref-91)
92. Ibid, p 62. [↑](#footnote-ref-92)
93. S Akbari *Idols in the East: European representations of Islam and the Orient, 1100-1450* (Ithaca: Cornell University Press, 2009) p 236. [↑](#footnote-ref-93)
94. K Hanson ‘Blood and Purity in Leviticus and Revelation’ (1993) 28 Listening: Journal of Religion and Culture 215, p 215. [↑](#footnote-ref-94)
95. Douglas, above n 90. [↑](#footnote-ref-95)
96. Hanson, p 216, above n 94. [↑](#footnote-ref-96)
97. Murray, pp 426-427, above n 11. Murray suggests that, in the context of suicide at least, intention (and so the morality of acts) was less important in medieval perceptions (p 450), the preoccupation being with the material aftermath. [↑](#footnote-ref-97)
98. Murray, p 450, above n 11. [↑](#footnote-ref-98)
99. Or ‘pollution’ through forbidden acts or events clearly lacking moral culpability, such as menstruating women entering sacred spaces. [↑](#footnote-ref-99)
100. That remained virtually unchanged until 1965 (Thiery, p 42, above n 19). [↑](#footnote-ref-100)
101. Elliott, p 21, above n 53. [↑](#footnote-ref-101)
102. Clarke, p 246, above n 23. [↑](#footnote-ref-102)
103. P Hair *Before the Bawdy Court* (London: Elek, 1972), p 20. [↑](#footnote-ref-103)
104. Thiery, p 131, above n 19. [↑](#footnote-ref-104)
105. Ibid, p 131. [↑](#footnote-ref-105)
106. W Rodgers, Jr. ‘The Seven Statutory Wonders of US Environmental Law: Origins & Morphology’, in R Percival & D Alevizatos (eds) *Law & the Environment: A Multidisciplinary Reader* (Philadelphia: Temple University Press, 1997). [↑](#footnote-ref-106)
107. J Alder and D Wilkinson *Environmental Law and Ethics* (London: Macmillan, 1999) p 9. [↑](#footnote-ref-107)
108. Ibid, p 180. [↑](#footnote-ref-108)
109. Ibid, p 9. [↑](#footnote-ref-109)
110. A Flournoy ‘In Search of an Environmental Ethic’ [2003] 28 Colum. J. Envtl. L. 63, at p 114. [↑](#footnote-ref-110)
111. Ibid, p 70. [↑](#footnote-ref-111)
112. Viscount Dilhorne in *Alphacell* v *Woodward* (HL) [1972] AC 824. [↑](#footnote-ref-112)
113. A Ashworth Conceptions of Overcriminalisation (2008) Ohio State Journal of Criminal Law 407, at p 420. [↑](#footnote-ref-113)
114. L Heinzerling ‘The Environment’ in M Tushnet and P Cane (eds) *The Oxford Handbook of Legal Studies* (Oxford: OUP, 2003) p 703. [↑](#footnote-ref-114)
115. Examples include protection of designated geographical habitats under European and International Environmental Law (See, for example, the Habitats Directive (92/43/EEC), and Ramsar Convention). [↑](#footnote-ref-115)
116. See, for example, Defra Guidance on Ecosystem Services (<https://www.gov.uk/ecosystems-services>) [Accessed 27 March 2015]. [↑](#footnote-ref-116)
117. See, for example, D Youngs *The Life Cycle in Western Europe, c.1300-c.1500* (Manchester: Manchester University Press, 2006). [↑](#footnote-ref-117)
118. N de Sadeleer *Environmental Principles – From Political Slogans to Legal Rules* (Oxford: OUP, 2002). [↑](#footnote-ref-118)
119. C Augustine *A Commentary on the New Code of Canon Law: Vol. 6 Administrative Law* (St. Louis: B. Herder Book Co. 1918), p 42. [↑](#footnote-ref-119)
120. See House of Commons Environment Committee: First Report on *Contaminated Land*: Session 1989–90, HC Paper 170–I. [↑](#footnote-ref-120)
121. Generally referred to as ‘Part 2A’ more recently. [↑](#footnote-ref-121)
122. See, for example, L Etherington ‘‘Mandatory Guidance’ for dealing with Contaminated Land: Paradox or Pragmatism?’ [2002] 23 Stat. L. Rev. 203. [↑](#footnote-ref-122)
123. Section 78B. [↑](#footnote-ref-123)
124. Under section 78A(4) ‘*“Harm”* means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.’ [↑](#footnote-ref-124)
125. E Fisher, B Lange and E Scotford *Environmental Law: Text, Cases & Materials* (Oxford: OUP, 2013), p 989. [↑](#footnote-ref-125)
126. See para. 3.8 of Department for Environment Food & Rural Affairs *Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance (*April 2012) (<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223705/pb13735cont-land-guidance.pdf>) [Accessed 30 December 2015] (‘Statutory Guidance’). [↑](#footnote-ref-126)
127. See section 78A(7) of the Environmental Protection Act 1990 and Section 6 of the Statutory Guidance. [↑](#footnote-ref-127)
128. See Regulation 7 of the Contaminated Land (England) Regulations 2006 (S.I. 2006/1380). [↑](#footnote-ref-128)
129. Para. 6.7(c) of the Statutory Guidance. [↑](#footnote-ref-129)
130. The assumption being that other regulatory controls will play this role. [↑](#footnote-ref-130)
131. Section 78F(2). [↑](#footnote-ref-131)
132. Section 78F(4) & (5). [↑](#footnote-ref-132)
133. See the *Encyclopedia of Environmental Law* (London: Sweet & Maxwell) at D602/38 & 39. [↑](#footnote-ref-133)
134. See para. 8.5 of the Statutory Guidance. [↑](#footnote-ref-134)
135. de Sadeleer, above n 118. [↑](#footnote-ref-135)
136. Section 78E. [↑](#footnote-ref-136)
137. Section 79N. [↑](#footnote-ref-137)
138. Section 78P. [↑](#footnote-ref-138)
139. Section 78H. [↑](#footnote-ref-139)
140. Section 78E(4). [↑](#footnote-ref-140)
141. Section 78M. [↑](#footnote-ref-141)
142. Above, n 82. [↑](#footnote-ref-142)
143. Section 78M(5). [↑](#footnote-ref-143)
144. Section 78R. [↑](#footnote-ref-144)
145. See above, n 86. [↑](#footnote-ref-145)
146. This includes providing incentives through the Town and Country Planning system, where appropriate. [↑](#footnote-ref-146)
147. Section 78L and the Contaminated Land (England) Regulations 2006 (S.I. 2006/1380). [↑](#footnote-ref-147)
148. Parry (ed) *Registrum Johannes de Trillek, episcopi Herefordensis, 1344-1361* (London: The Canterbury & York Society Series, vol. 8, 1912), p 124. [↑](#footnote-ref-148)
149. See, for example, J Pointing and R Malcolm ‘Statutory nuisance: the sanitary paradigm and judicial conservatism’ (2006) 18 JEL 37 (‘Sanitary Paradigm’), and R Malcolm & J Pointing, *Statutory Nuisance: Law and Practice* (2nd edn.) (Oxford: OUP, 2011). [↑](#footnote-ref-149)
150. S Bell, D McGillivray and O Pedersen *Environmental Law* (Oxford: OUP, 8th edn, 2013) p 7. In the medieval world, physical and spiritual/religious concerns would not have been distinguished. [↑](#footnote-ref-150)
151. Coyle and Morrow, p 203, above n 87. [↑](#footnote-ref-151)
152. Alder and Wilkinson, p 8, above n 107. [↑](#footnote-ref-152)
153. See, for example, Pointing and Malcolm ‘Sanitary Paradigm’, above n 149, and B Pontin ‘Environmental Law-Making Public Opinion in Victorian Britain: The Cross-Currents of Bentham's and Coleridge's Ideas’ (2014) 34 OJLS 759. Even the ‘longer view’ taken by Coyle and Morrow, above n 87, deliberates ‘on the evolution of thinking’ over ‘the last 400 years or so’ (preface). [↑](#footnote-ref-153)
154. See D Ibbetson *A Historical Introduction to the Law of Obligations* (Oxford: OUP, 1999) and J Loengard ‘The Assize of Nuisance: Origins of an Action at Common Law’ (1978) CLJ 144, for example. [↑](#footnote-ref-154)
155. See E Fisher, B Lange, E Scotford and C Carlarne ‘Maturity and Methodology: Starting a Debate about Environmental Law Scholarship’ (2009) 21 JEL 213. [↑](#footnote-ref-155)
156. See ‘The Moral Foundations of Pollution’ section, above. [↑](#footnote-ref-156)
157. Murray, p 427, above n 11. [↑](#footnote-ref-157)
158. See, for example, J Baker ‘Why the History of English Law has not been finished’ [2000] CLJ 62. [↑](#footnote-ref-158)
159. TT Arvind ‘Historical Approaches’ in S Halliday *An Introduction to the Study of Law* (London: Sweet & Maxwell, 2012). See also S Wilson *The Origins of Modern Financial Crime* (London: Routledge, 2013), for example. [↑](#footnote-ref-159)
160. S Milsom *Historical Foundations of the Common Law* (London: Butterworths, 1969) p 13. [↑](#footnote-ref-160)
161. The Reformation comprising one of the events commonly considered to mark the end of the period. [↑](#footnote-ref-161)
162. Brundage, p ix, above n 58. [↑](#footnote-ref-162)
163. Helmholz, p 495, above n 13. [↑](#footnote-ref-163)
164. Thiery, p 39, above n 19. [↑](#footnote-ref-164)
165. Brundage, p vii, above n 58. [↑](#footnote-ref-165)
166. In a unitary Christian society this amounted, at least in theory, to as near complete ostracism (Logan, p 13, above n 74). [↑](#footnote-ref-166)
167. R Marchant *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640* (Cambridge: CUP, 1969) p 221. [↑](#footnote-ref-167)
168. C Ritchie *The Ecclesiastical Courts of York* (Arbroath: Herald Press, 1956) p 76. [↑](#footnote-ref-168)
169. Thiery, p 36, above n 19. [↑](#footnote-ref-169)
170. Bracton, quoted in Sir William Holdsworth *A History of English Law vol. I* (London: Meuthen 1936-1972) p 631. [↑](#footnote-ref-170)
171. Hill, p 1, above n 73. [↑](#footnote-ref-171)
172. Thiery, above n 19. [↑](#footnote-ref-172)
173. It was not uncommon for large sums to be left in wills to pay for Masses to this effect, Youngs, p 206, above n 117. [↑](#footnote-ref-173)
174. There may, of course, be a range of other factors and motivations for regulating the church as a ‘special’ space in this way, such as reinforcing the role of the church in society. [↑](#footnote-ref-174)
175. Thiery, p 108, above n 19. [↑](#footnote-ref-175)
176. Helmholz, p 495, above n 13. [↑](#footnote-ref-176)
177. Thiery, p 129, above n 19. [↑](#footnote-ref-177)
178. Ibid, p 130, for example. [↑](#footnote-ref-178)
179. H Thomas ‘Shame, Masculinity and the Death of Thomas Becket’ (2012) 87 Speculum 1050, p 1055. [↑](#footnote-ref-179)
180. Thiery, p 56, above n 19. [↑](#footnote-ref-180)
181. The Consistory Court having very close contact with the laity with jurisdiction over areas such as Wills & Probate, testamentary matters and defamation (A Willis *Winchester Consistory Court Depositions 1561-1602* (Hambledon: AJ Willis, 1960) p 1, and Marchant, p 64, above n 167). [↑](#footnote-ref-181)
182. Holdsworth, p 588, above n 170. [↑](#footnote-ref-182)
183. Canon Law giving way to the King’s Ecclesiastical Law of the Church of England (Holdsworth, p 598, above n 170). [↑](#footnote-ref-183)
184. E Tomalin *Biodiversity and Biodivinity* (Farnham: Ashgate, 2009) p 14. [↑](#footnote-ref-184)
185. Marchant, p 221, above n 167. [↑](#footnote-ref-185)
186. Ibid, p 227. [↑](#footnote-ref-186)
187. Hill, p 11, above n 73. [↑](#footnote-ref-187)
188. Coyle and Morrow, p 12, above n 87. [↑](#footnote-ref-188)
189. Outhwaite, p 84, above n 70. Discipline of the laity being legally terminated through a series of Acts. [↑](#footnote-ref-189)
190. See Bell, McGillivray and Pedersen, pp 44-56, above n 150. [↑](#footnote-ref-190)
191. O Pedersen ‘Modest Pragmatic Lessons for a Diverse and Incoherent Environmental Law’ [2013] 33 OJLS 33 103, p 106. [↑](#footnote-ref-191)
192. Ibid, p 110. [↑](#footnote-ref-192)
193. Ibid, p 125. [↑](#footnote-ref-193)
194. J Holder and D McGillivray (eds.) *Locality and Identity: Environmental Issues in Law and Society* (Ashgate: Dartmouth, 1999) at p 10. [↑](#footnote-ref-194)
195. B Karkkainen ‘NEPA and the curious evolution of environmental impact assessment in the United States’ in J Holder and D McGillivray (eds.) *Taking Stock of Environmental Assessment: Law, Policy and Practice* (Abingdon: Routledge Cavendish, 2007) p 49. [↑](#footnote-ref-195)
196. Also known as ‘CERCLA’ or ‘Superfund’. [↑](#footnote-ref-196)
197. See, for example, S Tromans and R Turrall-Clarke *Contaminated Land: The New Regime* (2nd ed.) (London: Sweet and Maxwell, 2007) p 7. [↑](#footnote-ref-197)
198. Bell, McGillivray and Pedersen, p 50, above n 150. [↑](#footnote-ref-198)
199. R Nadeu *Rebirth of the Sacred* (Oxford: OUP, 2012) p 8. [↑](#footnote-ref-199)