



Essential Readings in Environmental Law
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HUMAN RIGHTS AND THE ENVIRONMENT
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OVERVIEW OF KEY SCHOLARSHIP

1. Boyle, A. and M. Anderson (eds.), *Human Rights Approaches to Environment Protection* (Oxford, Clarendon Press 1996).
2. *The Journal of Human Rights and the Environment* (2010-present). (Published by Edward Elgar Publishing, Cheltenham, UK.)
3. Humphreys, S. (ed.), *Human Rights and Climate Change* (Cambridge, CUP 2010).
4. Woods, K., *Human Rights and Environmental Sustainability* (Cheltenham, Elgar 2010).
5. Shelton, D., (ed.), *Human Rights and the Environment: Volumes I and II* (Cheltenham, Elgar 2011).
6. Anton D.K. and D. Shelton, *Environmental Protection and Human Rights* (Cambridge, CUP 2011).
7. Boyd, D.R., *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC 2012).
8. Weston, B. and D. Bollier, *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (Cambridge and New York, CUP 2013).
9. *Human Rights and the Environment: In Search of a New Relationship* (2013) 3/5 *Onati Socio-Legal Series* 796-990.
10. Turner, S., *A Substantive Environmental Right: An Examination of the Legal Obligation of Decision Makers Towards the Environment* (Routledge, London 2013).
11. Grear, A. and C. Gearty (eds.) *Choosing a Future: The Social and Legal Aspects of Climate Change* (Cheltenham, Elgar 2014).
12. Grear, A. and L. Kotze (eds.) *Research Handbook on Human Rights and the Environment* (Cheltenham, Elgar, 2015 (July)).

Background

Nothing could be more urgent than reconfiguring the contemporary relationship between human beings and ‘the environment’ of the planet that humans share with multiple species and living systems: life itself, in so many senses in which it is currently understood, is quite literally *at stake* in the material conditions of the 21st century. The relationship between ‘human rights’ and ‘the environment’ (both, of

course, constructed categories with distinctive genealogical trajectories) is key to the past, present and future mediation of the living entanglements caught up in the past and current convergences between ‘humanity’ and ‘the environment’. Law, of course, plays a complicated and far from necessarily benign role in the complexities and tensions characterizing current predicaments, and the relationship between human rights law and environmental law remains challenging and fractious. At the institutional level, the two domains—despite increasing evidence of their interconnection—still evince important discontinuities, while at the philosophical level human rights and environmental law have uneven levels of theoretical elucidation. Human rights scholarship is characterized by an intense, sustained and energetic degree of multi-faceted and multi-perspectival theoretical disputation—the traditional accounts and assumptions of human rights law and discourse are routinely interrogated by critical, subaltern scholarship. Yet, despite a growing interest in critiquing its ‘anthropocentrism’, environmental law remains largely dominated by Western cultural, legal and scientific assumptions and overwhelmingly market-orientated in its proposed solutions, while much environmental law scholarship remains predominantly technical in orientation, focusing upon—in the main—a wide range of legal, doctrinal and regulatory responses to environmental challenges.

The increasingly important and energetic discursive field represented by the term ‘human rights and the environment’ is, however, bringing fresh energies to bear: the jurisprudence of courts increasingly acknowledges, for example, the dependency of human rights realization upon a planetary system capable of sustaining life; the intimacy between human rights and local environmental conditions and the power of human rights arguments to intervene protectively in environmental dilemmas. More exciting still, perhaps, is the increasingly imaginative scholarship reaching beyond traditional disciplinary silos to offer productive and provocative explorations of the tensions, continuities, perils and promises of the interface between the two once separate legal concerns. New philosophical insights emerging from complexity theory; theories of emergence; systems theory; earth jurisprudence; commons-based rationalities; new materialist philosophy and posthuman techno-science etc. now combine with the sheer urgency of the unevenness characterizing the global predicaments facing humanity in the 21st century juridical order to produce paradigm-challenging scholarly engagements. Specific new conversations in the field are emerging, for example, to interrogate settled juridical assumptions in the face of the Anthropocene, to think through the implications of imaginative new critical environmental law theory, to engage with transdisciplinary reflection about what it even means to ‘be human’ or to ‘do humanity’ in a posthuman conjuncture and so on. In this light, the list of books below is an inadequate primer for some of the key dilemmas, insights and burgeoning achievements of a lively, expanding and ambitious intellectual field. The list below deliberately blends doctrinal scholarship, introductory texts, subject-matter overviews, senior scholarly insights and texts containing the seeds of new, imaginative inquiry intended as a broad introduction to the field. It is best understood, therefore, as being a modest stepping off point into a burgeoning and urgent scholarly discourse characterized by an expanding number of perspectives and explorations.

1. The text edited by **A. Boyle** and **M. Anderson**, *Human Rights Approaches to Environment Protection*, is an iconic introduction to the linkages between

human rights and the environment. It represents a relatively early response to the growing convergence of interest and debate among lawyers, academics and policy-makers concerning the legal status of environmental rights in international and domestic law, as well as engaging in an analysis of arguments in favour of a human right to a satisfactory environment. Although a little dated now, some of the central themes and discussions are still entirely apt and this text was arguably the first text to offer a sustained engagement with the field.

2. *The Journal of Human Rights and the Environment* was founded in 2009 and began publishing in 2010. The journal offers an unrivalled engagement with, and coverage of, issues related to the nexus between human rights and the environment. Its contributions range from the theoretical and the critical to doctrinal and policy-based reflections on a wide range of issues. The journal is widely recognized as the leading intellectual forum for debate and engagement with the interface between human rights and the environment, and regularly publishes leading scholars in the field, including leading scholars drawn from a range of disciplines. The journal is a sister-project to the Global Network for the Study of Human Rights and the Environment—the world’s leading scholarly network in the field (www.gnhre.org).
3. Edited by the former Research Director of *The International Council on Human Rights Policy, Geneva*, **S. Humphreys**, *Human Rights and Climate Change* brings together an authoritative mix of contributors to interrogate the relationship between human rights and climate change. The book locates itself in an awareness of the rapidly developing impacts of climate change and its escalating implications for public law and policy—among which, of course, human rights forms a central concern. The book offers a thoughtful set of reflections on key questions raised by climate change policies themselves. The book’s novelty lies in its unprecedented examination of a range of theoretical and practical concerns that are now becoming increasingly pressing—and it offers a uniquely rich and intelligent engagement with its themes.
4. The book by **K. Woods**, *Human Rights and Environmental Sustainability*, examines key questions in the nexus between human rights and the environment. In particular, it examines what the language, concept and institutions of human rights contribute—or mute—in the search for environmental sustainability. The book focuses primarily upon the theoretical, philosophical and political challenges facing the emergent convergence between human rights norms and environmental sustainability. The book asks whether the concept of environmental human rights is even plausible. For this reason, it is a useful introductory text to the field—accessible, engaging and clear.
5. The two volumes titled *Human Rights and the Environment*, edited by **D. Shelton**, provide an enriching source of further reading. Between them, the volumes contain 30 carefully selected and influential articles on human rights and the environment. The articles are selected and introduced by Dinah Shelton, one of the most well respected scholars in the field in the world. The collection covers four broad themes: theoretical approaches; specific issues

and problems; vulnerable populations and international texts and jurisprudence. The collection provides a well-sourced, well-rounded introduction to important themes and concerns in the research field, and the various articles in the collection offer a range of perspectives and approaches that suggest the rich complexity of the questions at the nexus between human rights and the environment.

6. The book by **D.K. Anton** and **D. Shelton**, *Environmental Protection and Human Rights*, offers a comprehensive introduction to the relationship between environmental protection and human rights being formalized into law in many legal systems. The book is extremely clear, both in its focus and in its conceptual treatment of its subject matter. It combines information and critique in a skillfully blended account, and includes an impressively wide array of important subjects, including the struggle to subject corporations to binding standards for human rights violations and environmental degradation. Written by two outstanding scholars in the field, the book combines the best of academic and policy experience in an authoritative volume. While gaps have been identified in the book's coverage (particularly with regard to environmental racism and trade and investment treaties), the book is an outstanding engagement with the field and an indispensable resource for anyone wanting to engage with its development and complexities.
7. **D.R. Boyd's** extensive analysis of the environmental rights revolution in *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* presents a wide-ranging and fascinating account of the constitutionalisation of environmental human rights. The book is unique in its reach and coverage, drawing together an immense amount of information on constitutional environmental rights. The book focuses on the practical implications of the empirical emergence of environmental constitutional rights across the world—an analysis that covers 193 constitutions and the laws and court decisions of more than 100 nations. The analysis reveals promising and positive links between constitutional protection and stronger environmental laws and outcomes.
8. The book by **B. Weston** and **D. Bollier**, *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* presents a stimulating vision for a new human right to 'commons-based green governance'. The authors blend human rights analysis and scholarship of the commons to offer a wide-ranging critique of, and alternative to, the 'state-market duopoly' (as they see it) and to move environmental governance in complexity-sensitive, adaptive directions. Celebrating the vision for an alternative kind of law, a vernacular law of the commons, the authors suggest a new multi-level reclamation of situated, grassroots energies, constructing a legally sophisticated account of how such energies might interface with existing law and market structures. The book offers a unique blend of human rights scholarship and commons-based adaptive thinking, and is a very timely attempt to reimagine fundamental socio-legal configurations in an age of climate crisis.
9. *Human Rights and the Environment: In Search of a New Relationship* is a collection of articles based on the first Global Network for the Study of

Human Rights and the Environment Annual Symposium, held at the Onati Institute for the Sociology of Law, Spain in 2012. The collection is an unusual and invigorating set of reflections blending philosophy, doctrine, policy and praxis. A fascinating record of a sustained engagement with the theme of 'reimagining' the relationship between human rights and the environment, this rigorously peer-reviewed collection pushes the boundaries of traditional legal engagements with human rights and the environment to ask fresh questions and offer new possibilities for thinking about alternative future trajectories. It is available at: <http://opo.iisj.net/index.php/osls/issue/view/17> (date of last access, 22nd January 2015).

10. In *A Substantive Environmental Right: An Examination of the Legal Obligation of Decision Makers Towards the Environment*, **S. Turner** offers a critical reading of the inherent limitations of environmental law and governance and makes a passionate normative argument in favour of developing a global substantive environmental right. Part of the book's core contribution is the depth of its analysis of the legal obligations of decision-makers within states, companies, multi-lateral development banks and the World Trade Organisation. The other aspect of the book's core contribution is its unique advocacy of the development of a global substantive right, and the inclusion of a draft statement of the proposed right. The author seeks to develop a novel way of placing all decision-makers under a legally binding obligation to follow procedures limiting or preventing environmental degradation resulting from their decisions. In making its case the book covers a wide range of issues and considerations, and provides a genuinely useful and thought-provoking contribution to the international legal literature.
11. *Choosing a Future: The Social and Legal Aspects of Climate Change*, edited by **A. Grear** and **C. Gearty**, brings together a mix of high-powered policy actors with leading scholars to reflect on selected social and legal aspects of climate change. Its contributors include **John Knox**, UN Independent Expert on Human Rights and the Environment; **Mary Robinson**, President of the Mary Robinson Foundation: Climate Justice; **Olivier De Schutter**, UN Special Rapporteur on the Right to Food; **Connie Hedegaard**, European Commissioner for Climate Action; **Conor Gearty**, Director of the Institute of Public Affairs, LSE and **Henry Shue**, Senior Research Fellow, Merton College, Oxford. The book (also a special edition of the *Journal of Human Rights and the Environment*) addresses a range of highly salient questions: climate change as a crisis of human hierarchy; climate justice and injustice; the complicity of law; the rights of future generations; the nature of climate duties; the interplay between trade law and climate change strategies and the nature of the policy responses required to address the climate crisis. A uniquely authoritative contribution, this book offers an imaginative, well-informed and thoughtful engagement with the challenges facing law and society in an age of climate crisis.
12. Edited by **A. Grear** and **L. Kotze**, *The Research Handbook on Human Rights and the Environment*, this volume brings together leading international scholars in the field to offer an invigorating combination of critical and doctrinal scholarship seeking to illuminate some of the challenging

tensions in the legal relationships between humans and the environment, and between human rights law and environmental law. The book is split into 5 sections: epistemologies; core values and closures; constitutionalisms and regionalisms; and has a concluding section highlighting points for further consideration. The contributing authors represent a fascinating mix of traditions, ranging from theorists (including critical theorists) to leading doctrinal analysts and highly respected jurists working in this and cognate legal fields. The wide range of chapters offers an enriching and varied set of perspectives. The book is a valuable source for students and scholars of human rights law, environmental law and constitutional law, pushing the boundaries of the 'handbook' format towards a critical engagements: the result is a multi-layered journey through a fascinating and important field of enquiry.