



Essential Readings in Environmental Law
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LOCAL GOVERNMENTS (CITIES) IN THE PURSUIT OF SUSTAINABILITY: GOVERNANCE PERSPECTIVES AND ENVIRONMENTAL LAW

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Overview of Key Scholarship

1. Bouteligier, S., *Cities, Networks, and Global Environmental Governance: Spaces of Innovation, Places of Leadership* (Routledge: 2012).
2. Richardson, B., (ed): *Climate Change Law: Environmental Regulation in Cities and other Localities* (Edward Elgar Publishing: 2012).
3. Betsill, M. M. and H. Bulkeley, 'Cities and the Multilevel Governance of Global Climate Change' (2006) 12(2) *Global Governance* 141-159.
4. Richardson, B., 'Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum' (2000) *Colorado Journal of International Environmental Law and Policy* 1-82
5. Verschuuren, J., 'Hydraulic Fracturing and Environmental Concerns: The Role of Local Government' (2015) *Journal of Environmental Law* 1-27
6. Aust, H. P., 'Auf dem Weg zu einem Recht der globalen Stadt? „C40“ und der „Konvent der Bürgermeister“ im globalen Klimaschutzregime', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 73 (2013) 673-704
7. Du Plessis, A., 'A Role for Local Government in Global Environmental Governance and Transnational Environmental Law from a Subsidiarity Perspective' *Comparative and International Law Journal of Southern Africa* (2015) 1-36 (in press)

8. Evans, B. *et al*, *Governing Sustainable Cities* (Earthscan: 2005)
9. Satterthwaite, D., (ed), *The Earthscan Reader in Sustainable Cities* (Earthscan: 1999)

Background

It is frequently claimed that we live in an urban age. According to UN figures, for the first time in history, more than half of the world's population is living in cities and this figure is expected to increase to two-thirds by 2030. This rapid urbanisation makes questions of good urban (local) governance and the role of local governments in the pursuit of sustainability most acute. Increasingly international organisations, for example, are contributing to efforts to define and envision a well-governed city in the 21st century. Two ideals stand out: cities must be safe and sustainable. From these broad and vague notions, concrete policy recommendations are distilled, which range from calls for more video surveillance in public spaces to the “greening” of cities by means of *inter alia* the enactment of local climate change mitigation plans. A common denominator in the call for safe and sustainable cities is the internationalisation of urban governance. How cities are to be governed by municipalities or local authorities is no longer perceived to be a purely internal matter, to be determined by the domestic law of a specific state. Instead, complex multi-level and cross-jurisdictional dynamics come into being with relevant international organisations targeting their work directly at the municipal level. City networks such as “C40” or “ICLEI” contribute to the development and sharing of best practices for sustainable urban development, for example. In the security context, similar developments are taking place via the UN-Habitat-led programme “Safer Cities” and in the “Global Network of Safer Cities”. At the same time good urban governance is highly context-dependent. This dependency relates to local and indigenous social and cultural conditions but also to the applicable (environmental) law and policy frameworks within nation states.

For decades already sustainable development has been a pronounced objective and common theme in global as well as domestic politics and environmental law. Sustainable development often also features in the wording of substantive constitutional environmental rights and in domestic planning and development laws and policies (see in general Fisher 2013: 58-59, 69).

The features, functions and objectives of sustainable cities and the role of local governments in the pursuit of sustainability have been studied from various scholarly and policy perspectives – including from the perspective of urban studies, geography, sustainability and environmental governance, environmental management, anthropology, economics, international relations and diplomacy as well as political science (see, for example, Satterthwaite (ed) 1999; Haughton and Hunter 2003; Bulkeley and Betsill 2005; Bouteligier 2012; Acuto 2013). The phrase ‘sustainable cities’ is meant to refer to cities that are environmentally, socially and financially smart and that are efficient and inclusive, with sound governance institutions, infrastructure and financing systems (see World Bank 2013: 10 and with reference to the ten Aalborg Commitments of the 4th European Conference on Sustainable Cities and Towns of 2004, Evans *et al* 2005: 6). It can be noted, however, that these notions are highly controversial in and of themselves.

Sustainable city and cities in sustainability research often draw on the understanding that living in urban areas causes significant environmental stress, while it also generates more sustainable lifestyles, as such areas have particular advantages pertaining to economies of scale and proximity to infrastructure and services, and the potential to become more energy efficient at a relatively low cost (see Bouteligier 2012: 4). Differences exist in the

understanding of sustainable cities and the role of local governments in the pursuit of sustainability from one world region to the next. Large parts of the available literature focus on sustainable cities in the northern hemisphere (eg publications by the European Commission: World and European Sustainable Cities 2010; Evans *et al* 2005) and do not cater for the specific urban and development challenges of the African continent, amongst others. Whereas immigration and population density are amongst the most critical urban issues in some parts of the developed world, issues such as poor planning, access to and the maintenance of basic infrastructure and amenities such as water, sanitation and electricity and ‘forms of displaced urbanisation’ plague urban areas in the developing country context (Bekker and Therborn 2012: 181).

The European Union (EU) serves as an example of a world region that in recent years developed an urban agenda that aspires to give greater responsibility to local governments and civil society. City administrations are increasingly involved in national and regional policies relating to employment, child poverty, culture, social development and security. At the same time, the European Commission is also tapping into the policy reservoir of cities in order to overcome reluctant member state behaviour. The orchestration of the “Covenant of Mayors” is one example where the Commission has helped to set up a European programme for local governments to commit to more ambitious cuts in greenhouse gas emissions than would be required under applicable domestic law (Aust 2013). However, the participation of EU cities in policy implementation faces serious challenges due to budgetary limitations that are reducing the level of public resources for city investments. A mismatch between the new responsibilities of cities and the resources made available to them is evident in various countries in Europe and arguably also other countries that are undergoing administrative decentralisation. (European Commission: World and European Sustainable Cities 2010: 17).

Broadly perceived, the challenges and features of sustainable cities and the role of local governments in the pursuit of sustainability in the Global North and South are similar yet significantly different as a result of their different poverty levels and the different state of health of the relevant populations and other livelihood dependencies. Still, the promotion of the idea of sustainable cities by state governments and international organisations remain less focused on the legal aspects. The notion of sustainable cities may have become common currency in some scientific circles, but the understanding of what it requires of local authorities and other actors to develop such cities remains contested. This uncertainty centers around the suitability (or not) of *inter alia* existing international and domestic environmental laws, policies and governance instrumentation to accommodate, ‘unlock’ and ‘regulate’ sustainable cities. Such suitability should be investigated from a legal perspective that is, at the same time, informed and critically challenged by urban studies, international relations and political science from around the world.

Existing literature suggests that more inter-disciplinary analysis is needed for a comprehensive understanding of the real role of cities in the international pursuit of sustainability from the perspective of international (environmental) law, international relations theory, sustainability studies and urban studies theory (see, for example, Evans *et al* 2005). Scholarly direction is for example needed on:

- *how* local governments can in real-terms contribute to the international pursuit of sustainability (Fünfgeld 2015);
- how to optimise the *principle of subsidiarity* with reference to the powers and functions of local governments in global and domestic environmental law and governance;
- the true meaning and demands of *environmental federalism* and international, trans-boundary and in-country *cooperative environmental governance*;
- the features and functions of ‘*sustainable*’ cities;

- the *influence of local politics* on the effectiveness of local environmental governance;
- the role of *representative and participatory democracy* and *procedural environmental rights* in the optimisation of local governance in the pursuit of sustainability;
- how best to comprehend and develop local government actors in environmental governance beyond the traditional *service delivery mandate of municipalities*;
- the potential and ability of local governments to contribute to the development of some of the *sectors regulated in terms of environmental law* eg water resource protection, waste management, biodiversity, heritage protection, disaster risk reduction, coastal protection, hazardous substances control and climate change mitigation and adaptation; and
- the use of *local government instrumentation* such as taxes, rates, building regulations, community forums and municipal bylaws in the pursuit of the generally accepted objectives and realisation of the principles of environmental law.

Given that a) local government powers and functions differ from one country to the next; and b) the local government / city and environmental law interface is studied from the perspective of many different scientific fields in all countries of the world it is virtually impossible to list ‘the most relevant’ works on this topic. The following books and articles situated in the fields of law, governance, politics and international relations are however good examples (and useful points of departure) of some of the existing literature on the topic:

1. In *Cities, Networks, and Global Environmental Governance: Spaces of Innovation, Places of Leadership*, **S. Bouteligier** systematically explains how innovations and recent developments in global environmental governance and global dynamics have altered the role of cities in shaping the future of our planet. This research emphasises the importance and implications of social transformations in our increasingly global and urban society. Through analysis of transnational municipal networks, such as Metropolis and the C40 Cities Climate Leadership Group, Bouteligier's work systematically explains some theories of the international (municipal) network society and global cities from a global ecology perspective. This discussion feeds into a deeper understanding of the role of municipal networks and city governments in the design and implementation of international and global environmental law and governance. In this publication, Bouteligier demonstrates the ways in which cities fulfill the role of strategic sites of global environmental governance, concentrating knowledge, infrastructure, and institutions vital to the function of transnational actors and the pursuit of some of the most critical objectives of international and global environmental law.
2. *Climate Change Law: Environmental Regulation in Cities and other Localities* brings together the inputs of local government and environmental law experts from several countries of the world under **B. Richardson**'s editorship. The different chapters in this publication together examine the role of local government, especially within cities, in addressing climate change through legal, policy, planning and other tools. The book offers multi-jurisdictional perspectives, featuring international contributors who examine both theoretical and practical dimensions of how localities / municipalities are addressing climate mitigation and adaptation in Australia, Canada, China, Europe, South Africa and the United States, as well as considering the place of municipalities in global climate law agreements and transnational networks. While the publication focuses on climate change as a very specific and complex environmental law and governance sector, it offers useful insights in the role of local governments in local and global environmental governance, in general.

3. *'Cities and the Multilevel Governance of Global Climate Change'*, authored by **M. M. Betsill**, and **H. Bulkeley**, explores how the Cities for Climate Protection programme, a network that is simultaneously global and local, state and non-state, could be conceptualised as part of global environmental governance. The authors suggest in this article that traditional approaches to international relations – regime theory and transnational networks – offer limited conceptual space for analysing such networks. They argue that these approaches obscure how the governance of global climate change takes place through processes and institutions operating at and between a variety of scales and involving a range of actors with different levels and forms of authority. The research concludes that it is only by taking a multilevel perspective that we can fully capture the social, political and economic processes that shape global environmental governance and our understanding of cities as critical role players therein.
4. **B. Richardson's** *'Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum'* unravels the view that many international environmental law treaties 'display a lack of proper understanding of how law functions in a postcolonial societal context' and in relation to societies in a state of transition. The research explores the status and reform of environmental law regimes in postcolonial contexts. It focuses specifically on the role of local environmental governance and the kind of institutions that can allow for a more proactive role for rural communities in particular. The first part of the publication considers the relevance of postcolonial theory in analysing the role of environmental law in the developing Third World with Parts II to IV dealing with: the principal failings of environmental legal and administrative systems in postcolonial societies and the 'trappings of the centralisation of decision-making processes', the role of property rights and local government in resource management, as well as the global context for domestic environmental law systems. Richardson explains in a very meaningful way how global regimes can be better reconciled with national and local institutions and further convincingly argues that reconstituting local government and property rights systems may provide a more legitimate and practical basis for environmental management.
5. In the recently published *'Hydraulic Fracturing and Environmental Concerns: The Role of Local Government'* **J. Verschuuren** discusses how local governments, in three different countries, challenge higher levels of government's decision making that enables hydraulic fracturing, and explores how these higher levels of government should respond. The research finds that in those countries where at the local level, authorities have regulatory powers in the field of planning and environment, such as the USA, the UK and the Netherlands, these powers indeed can and are used to limit or completely ban high-volume hydraulic fracturing. Verschuuren shows that in these countries, however, higher levels of government are or have been putting legislation in place taking away or overruling local regulatory powers for reasons of national energy security. The research concludes that 1) setting and applying effective environmental protection standards, 2) involvement of local government, and 3) meaningful participation of local communities are key dimensions of decision-making on hydraulic fracturing. This research serves to illustrate some of the complexity with in-country promotion of the principle of subsidiarity in matters of environmental governance.
6. **H. P. Aust**, in *'Auf dem Weg zu einem Recht der globalen Stadt? „C40“ und der „Konvent der Bürgermeister“ im globalen Klimaschutzregime'* departs from the viewpoint that a) there are changing actors in international law; and b) communities have a role to play in the international law developments on climate change mitigation and adaptation. Aust questions the role of local government organisations or networks in the design and implementation of traditional and less traditional sources of climate change law from an international law perspective. He also

questions the role that local government organisations such as C40 and the formal and less formal cooperation between city governments play in the international law arena given that local (city) governments themselves are ordinarily not regarded as independent actors in international law and governance. The research questions the legal status and relevance of the actions of city networks or municipal organisations and novel developments in international law such as cross-border, transnational agreements between city governments as opposed to bilateral or multilateral agreements between state actors.

7. In *'A Role for Local Government in Global Environmental Governance and Transnational Environmental Law from a Subsidiarity Perspective'* **A. Du Plessis** advances a conceptual view of the role of local government in global environmental governance ('GEG') and the system of transnational environmental law ('TEL'). The underlying hypothesis is that a deeper understanding of the role of local governments (global cities and smaller local authorities) is expedient as it has the potential to curb some recurring GEG failures and contribute towards improvements in the pursuit of the objectives of TEL. The Merton Rule in the United Kingdom is singled out to exemplify the potential of local government in the pursuit of shared trans- boundary and global environmental ideals. The broader effect that the Merton Rule has had and the understated emphasis on inter-actor support to be found in the literature on subsidiarity, are combined in three final observations: a) the notion of 'think global, act local' is challenged; b) the individual and joint potential and the capacity of cities and other forms of local government must be unlocked through consistent inter-actor support in the 'new' global context; and c) the role of local governments in GEG and TEL does not point in only one direction.
8. **B. Evans, et al: *Governing Sustainable Cities*** explore in empirical fashion the processes of urban governance in sustainable development. Looking at a host of core issues including institutional and social capacity, institutional design, social equity, politics, partnerships and cooperation and creative policy-making, the authors draw conclusions in relation to local governments as governing agents that are simultaneously governed by federal/national agents as well as with respect to what is required to meet the global sustainability challenge at the level of governance closest to the people.
9. *The Earthscan Reader in Sustainable Cities* edited by **D. Satterthwaite** offers a more historic global perspective on the potential for the establishment and maintenance of sustainable cities and sustainable urban development. The comprehensive analysis draws on the complex links between a myriad of social, economic and environmental factors, and the wider context of culture, politics and urban governance. This is achieved through harnessing the knowledge and experience of experts from both policy and academic fields, which themselves reflect the international focus of this publication. The range, and depth of analysis, of the debates surrounding urban sustainable development in this publication make it a comprehensive and useful introductory resource for environmental law scholars on the broader context in which local governments and cities contribute to the global pursuit of sustainability.

Further readings

- Fünfgeld, H., 'Facilitating local climate change adaptation through transnational municipal networks', *Current Opinion in Environmental Sustainability* 12 (2015) 67-73.
- Ljungkvist, K., 'The Global City: From Strategic Site to Global Actor', in S. Curtis (ed), *The Power of Cities in International Relations* (Routledge: 2014) 32-56.
- Osofsky, H. M., 'Is Climate Change "International"? Litigation's Diagonal Regulatory Role', (2009) 49 *Virginia Journal of International Law* 585.
- Du Plessis, A., (ed): *Environmental Law and Local Government in South Africa* (Juta, 2015).

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- Aust, H. P., 'Auf dem Weg zu einem Recht der globalen Stadt? „C40“ und der „Konvent der Bürgermeister“ im globalen Klimaschutzregime', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 73 (2013) 673-704.
- Aust, H. P., 'Shining Cities on the Hill? The Global City, Climate Change, and International Law', *The European Journal of International Law* 26(1) (2015) 255-278.
- Bekker, S. and T. Göran, (eds): *Power and Powerlessness: Capital Cities in Africa* (HSRC Press: 2012).
- Bouteligier, S., *Cities, Networks, and Global Environmental Governance: Spaces of Innovation, Places of Leadership* (Routledge: 2012).
- Bulkeley, H. and M. Betsill, 'Rethinking Sustainable Cities: Multilevel Governance and the 'Urban' Politics of Climate Change' *Environmental Politics* 14(1) 2005 42-63.
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- Satterthwaite, D., *The Earthscan Reader in Sustainable Cities* (Earthscan: 1999).
- UN-Habitat: *Safer Cities Programme*, available at <http://unhabitat.org/safer-cities/> (United Nations 2014).
- World Bank: *Urban Development Series Knowledge Papers – Building Sustainability in an Urbanising World: A Partnership Report* (2013).