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Trends in Environmental Law Scholarship 2008-2014

by Linda K. Breggin, Jamieson Brock, Clarke Agre, and Michael P. Vandenberg

Linda K. Breggin is a Senior Attorney with the Environmental Law Institute and an Adjunct Professor at Vanderbilt University Law School. Jamieson Brock is a recent graduate of Vanderbilt University Law School. Clarke Agre is a recent graduate of Vanderbilt University Law School. Michael P. Vandenberg is the David Daniels Allen Distinguished Professor of Law and Co-Director of the Energy, Environment, and Land Use Program at Vanderbilt University Law School.

The Environmental Law and Policy Annual Review (ELPAR) is published by the Environmental Law Institute's (ELI's) *Environmental Law Reporter* in partnership with Vanderbilt University Law School. ELPAR provides a forum for the presentation and discussion of the best ideas about environmental law and policy from the legal academic literature.

As part of the article selection process each year, Vanderbilt University Law School students assemble and review the environmental law articles published during the previous academic year. In this Comment, we draw on the results of the ELPAR article selection process to report on trends in environmental legal scholarship for academic years 2008–2014.

Specifically, this Comment reports on the number of environmental law articles published in general law reviews and environmental law journals. We find that although the precise totals varied from year to year, more than 400 environmental law articles were published each year during the 2008–2014 period. Additionally, this Comment provides data on the topics covered in the environmental law articles reviewed by the ELPAR staff. The goal is to provide an empirical snapshot of the environmental legal literature and to track trends over time.

I. Methodology

A detailed description of the methodology is posted on the Vanderbilt University Law School and Environmental Law Institute ELPAR websites.¹ In brief, the search for articles that qualify for ELPAR review is limited to articles published from August 1 of the prior year to July 31 of the current year, roughly corresponding to the academic year. The search is conducted in law reviews from the top 100

law schools as ranked by *U.S. News and World Report* in its most recent report, counting only articles from the first 100 schools ranked for data purposes (i.e., if there is a tie and over 100 schools are considered top 100, those that fall in the first 100 alphabetically are counted). Additionally, environmental law journals as listed most recently by Washington & Lee University School of Law are searched, with certain modifications.²

The ELPAR Editorial Board and Staff start with a keyword search for “environment!” in an electronic legal scholarship database.³ Articles without a connection to the natural environment (e.g., “work environment” or “political environment”) are removed, as are book reviews, eulogies, non-substantive symposia introductions, case studies, editors’ notes, and student scholarship. We recognize that all ranking systems have shortcomings and that only examining top journals imposes limitations on the value of our results. Nevertheless, this approach provides a snapshot of leading scholarship in the field.

For purposes of tracking trends in environmental scholarship, the next step is to cull the list generated from the initial search in an effort to ensure that the list contains only those articles that qualify as environmental law articles. Determining whether an article qualifies as an envi-

1. *Environmental Law Institute*, <https://www.eli.org/environmental-law-and-policy-annual-review/publications> (last visited June 10, 2015); *Environmental Law & Policy Annual Review Online Supplements*, <http://law.vanderbilt.edu/academics/academic-programs/environmental-law/environmental-law-policy-annual-review/index.php> (last visited June 10, 2015).

2. *Law Journals, Submissions, and Rankings Explained*, Washington & Lee Univ. Sch. of Law, <http://www.lawlib.wlu.edu/LJ/method/asp> (last visited Apr. 12, 2014).

3. For the purposes of this analysis, an article is “published” only if it was available on Westlaw on the date the search was conducted. In the spring semester, ELPAR members conduct a search for articles published between August 1 and December 31 of the previous year. In the fall semester, members search for articles published between January 1 and July 31 of that year. Therefore, “embargoed” journals, which are only available on Westlaw after a delay, as well as journals that are published on a date after their “publication date” as listed by Westlaw, are not included for selection by ELPAR and are not counted for trends data purposes. The exact date of access for each journal varies according to when each individual ELPAR member performed the searches on their assigned journals, but the spring searches were performed in the third week of January, 2014, and the fall searches were performed in the third week of August, 2014. Law reviews of schools added to the *U.S. News and World Report* Top 100 are searched for the entire year in the fall, and schools removed from the top 100 after the spring search are not considered for trends data.

ronmental article is more of an art than a science, and our conclusions should be interpreted in that light. We have attempted, however, to use a rigorous, transparent process. Specifically, an article is considered an “environmental law article” if environmental law and policy are a substantial focus of the article. The article need not focus exclusively on environmental law, but environmental topics should be given more than incidental treatment and should be integral to the main thrust of the article. Many articles in the initial pool, for example, address subjects that influence environmental law, including administrative law topics (e.g., executive power and standing), or tort law topics (e.g., punitive damages). Although these articles may be considered for inclusion in ELPAR, they are not included for purposes of tracking environmental law scholarship, because the main thrust of the articles is not environmental law.

Each article in the data set is categorized by environmental topic to allow for tracking of trends by topic area. The 10 topic categories are from the *Environmental Law Reporter's* subject-matter index: air, climate change, energy, governance, land use, natural resources, toxic substances, waste, water, and wildlife.⁴ ELPAR editors assign articles into a primary topic category and, if appropriate, a secondary category.

The ELPAR Editorial Board and Staff work in consultation with the course instructors, Professor Michael P. Vandenberg and ELI Senior Attorney Linda K. Breggin, to determine whether articles should be considered environmental law articles and how to categorize the articles by environmental topic for purposes of tracking scholarship. The articles included in the total for each year are identified on lists posted on the Vanderbilt University Law School website.⁵

II. Data Analysis on Environmental Legal Scholarship

During the 2013–2014 ELPAR review period (July 31, 2013 to August 1, 2014), 444 environmental law articles written by professors or practitioners were published in

top law reviews and environmental law journals. This is an increase of over 10 percent from the 402 articles in the previous ELPAR review cycle (2012–2013). By comparison, 452 articles were published in 2011–2012, 512 articles were published in 2010–2011, 475 articles were published in 2009–2010, and 455 articles were published in 2008–2009.

Of the 444 total environmental law articles published in 2013–2014, 301 were published in journals that focus on environmental law, and 143 were published in general law reviews. The 143 environmental law articles published in general law reviews in 2013–2014 compares to 93 articles in 2012–2013, 115 articles in 2011–2012, 80 articles in 2010–2011, 97 articles in 2009–2010, and 47 articles in 2008–2009. Overall, the results this year as compared to last year indicate a decrease in the number of articles published in environmental law journals and an increase in the number of environmental articles published in general law reviews, but it is unclear if this is a long term trend or simply a matter of annual variability.

The primary topics of the 444 articles published in 2013–2014 were as follows: governance⁶ (124), energy (69), water (57), climate change (49), land use (41), wildlife (37), natural resources (20), waste (19), toxic substances (15), and air (13). When counting both primary and secondary topic categories of articles, there were 212 articles in governance, 92 in energy, 73 in climate change, 71 in water, 64 in land use, 48 in wildlife, 43 in natural resources, 26 in toxic substances, 24 in waste, and 18 in air.

The most common primary topic from 2008–2011 was climate change, but for the fourth cycle in a row, the number of climate change articles has decreased. In contrast, the number of energy articles has increased nearly every year ELPAR has been published.

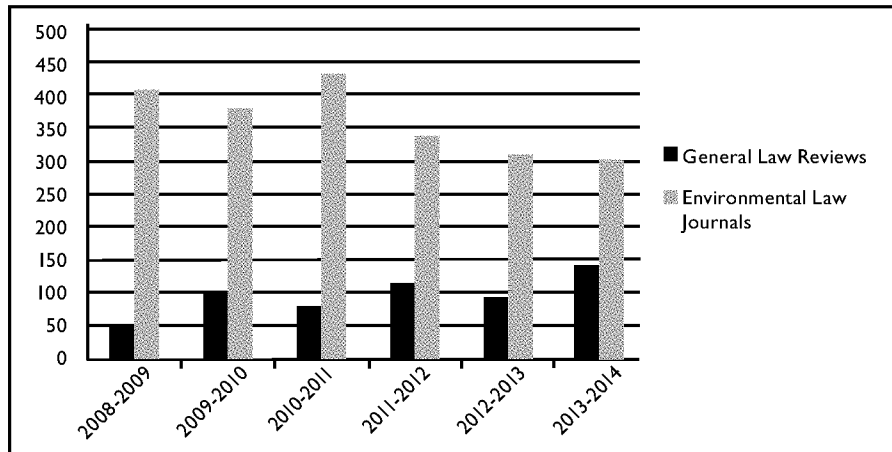
In 2013–2014, governance remained the most common topic category. Energy articles were second, followed by water and climate change. More waste articles and wildlife articles were published in 2013–2014 than in any academic year since the trends data were collected as part of ELPAR (2008–2009).

4. *Environmental Law Reporter*, <http://www.elr.info/subject-matter-index> (last visited May 6, 2015).

5. *Environmental Law & Policy Annual Review Online Supplements*, <http://law.vanderbilt.edu/academics/academic-programs/environmental-law/environmental-law-policy-annual-review/index.php> (last visited June 10, 2015).

6. The ELR subject matter index includes subtopics for each topic. Subtopics for the governance topic include: administrative law, Administrative Procedure Act, agencies, bankruptcy, civil procedure, comparative law, constitutional law, contracts, corporate law, courts, criminal law, enforcement and compliance, environmental justice, environmental law and policy, Equal Access to Justice Act, False Claims Act, Federal Advisory Committee Act, federal facilities, federal jurisdiction, Freedom of Information Act, human rights, indigenous people, indoor environments, infrastructure, institutional controls, insurance, international, liability, public health, public participation, risk assessment, stakeholder engagement, states, sustainability, tax, tort law, trade, tribes, and U.S. government. *Environmental Law Reporter*, <http://www.elr.info/subject-matter-index> (last visited May 6, 2015).

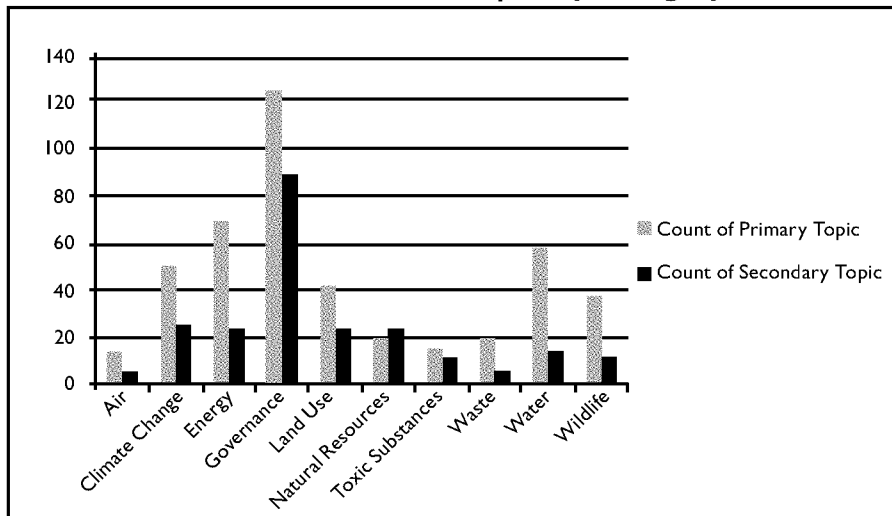
Number of Environmental Law Articles by Year



Trends in Environmental Legal Scholarship

	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
General Law Reviews	47	97	80	115	93	143
Environmental Law Journals	408	378	432	337	309	301
Total	455	475	512	452	402	444

2013-2014 Trends in Topics by Category



Number of Articles in Topic Categories by Year

Topics	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Air	5	7	10	17	17	13
Climate Change	126	151	91	71	52	49
Energy	28	44	60	52	64	69
Governance	116	87	82	125	95	124
Land Use	46	56	65	48	32	41
Natural Resources	26	22	26	27	33	20
Toxic Substances	12	20	57	22	19	15
Waste	11	14	13	13	8	19
Water	54	43	76	60	53	57
Wildlife	31	31	32	17	29	37
Total	455	475	512	452	402	444