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## Trends in Environmental Law Scholarship 2008-2012

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Linda K. Breggin , Jacob P. Byl , Lynsey R. Gaudio, Seamus T. Kelly & Michael P. Vandenberg, 'Trends in Environmental Law Scholarship 2008-2012' (2013) 43 Env'tl L Rep News & Analysis 10643 Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

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# Trends in Environmental Law Scholarship 2008-2012

by Linda K. Breggin, Jacob P. Byl, Lynsey R. Gaudioso, Seamus T. Kelly, 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. Jacob P. Byl is a student at Vanderbilt University Law School. Lynsey R. Gaudioso is a Research Associate at the Environmental Law Institute. Seamus T. Kelly is a recent graduate of Vanderbilt University Law School. Michael P. Vandenberg is 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 Article, we draw on the results of the ELPAR article selection process to report on trends in environmental legal scholarship for academic years 2008-2009, 2009-2010, 2010-2011, and 2011-2012.

Specifically, this Article reports on the number of environmental law articles published in general law reviews and environmental law journals. We find that although the total varied somewhat from year to year, more than 450 environmental law articles were published each year during the 2008-2012 period.<sup>1</sup> This Article also includes data on the topics included in the environmental law articles reviewed by the ELPAR staff. In future issues, ELPAR will track additional data, such as author affiliations and student scholarship. 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 Environ-

mental Law Institute ELPAR websites.<sup>2</sup> In brief, the ELPAR Editorial Board and Staff start with a keyword search for "environment!" in an electronic legal scholarship database. The search 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 and environmental law journals as listed most recently by Washington & Lee University School of Law, with certain modifications. Articles without a connection to the natural environment (e.g., "work environment" or "political environment") are removed, as are book reviews and eulogies. Non-substantive symposia introductions, case studies and editors' notes also are removed. In addition, student scholarship is removed. 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.

The keyword search is the first step in the process of selecting articles for inclusion in ELPAR each year. The full article selection process is described in the letter that introduces this issue of ELPAR. 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 environmental article is more of an art than a science, and our conclusions should be interpreted in that light. We have

1. See Linda K. Breggin et al., *Trends in Environmental Law Scholarship: Academic Years 2008-2009, 2009-2010, and 2010-2011*, 42 ELR 10711 (Aug. 2012) (revised Apr. 2013) (comparing ELPAR results with other assessments of the quantity of environmental law scholarship).

2. *Environmental Law & Policy Annual Review*, Vand. L. Sch., <http://law.vanderbilt.edu/academics/academic-programs/environmental-law/environmental-law-policy-annual-review/index.aspx> (last visited Feb. 25, 2013); *Environmental Law & Policy Annual Review*, Env'tl. L. Inst., [http://www.eli.org/program\\_areas/environmental\\_law\\_policy\\_review.cfm](http://www.eli.org/program_areas/environmental_law_policy_review.cfm) (last visited Feb. 25, 2013).

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 ten topic categories from *Environmental Law Reporter's* subject-matter index are air, climate change, energy, governance, land use, natural resources, toxic substances, waste, water, and wildlife. 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 and ELI ELPAR websites.

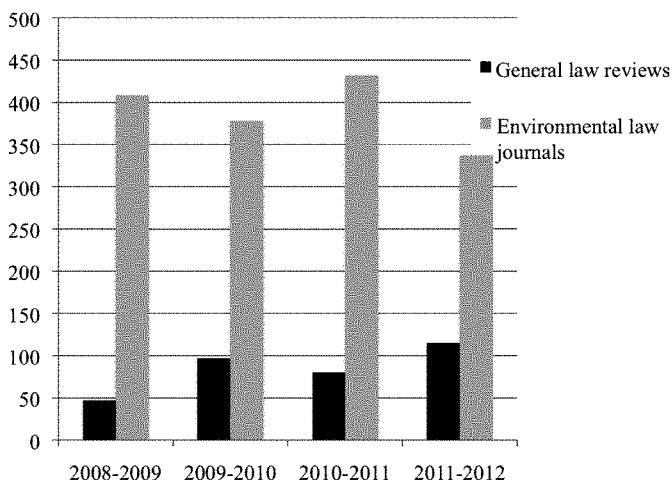
## II. Data Analysis on Environmental Legal Scholarship

During the 2011-2012 ELPAR review period (July 31, 2011 to August 1, 2012), 452 environmental law articles written by professors or practitioners were published in top law reviews and environmental law journals. This is a decrease of 12 percent from the 512 articles in the previous ELPAR review cycle (2010-2011). By comparison, 475 articles were published in the 2009-2010 review cycle and 455 articles were published in the 2008-2009 review cycle. Of the 452 total environmental law articles published in 2011-2012, 337 were published in journals that focus on environmental law and 115 were published in general law reviews. The 115 environmental law articles published in general law reviews in 2011-2012 compares to 80 articles in 2010-2011, 97 articles in 2009-2010, and 47 articles in 2008-2009.

The primary topics of the 452 articles published in 2011-2012 are as follows: governance (125), climate change (71), water (60), energy (52), land use (48), natural resources (27), toxic substances (22), air (17), wildlife (17), and waste (13). When counting either primary or secondary topic categories of articles, there are 173 articles in governance, 98 in climate change, 74 in water, 70 in energy, 59 in land use, 39 in toxic substances, 36 in natural resources, 27 in wildlife, 22 in air, and 14 in waste.

Data on trends in primary topic categories over time indicate that climate change was the most common topic during the same time period (August 1 to July 31) for 2008-2009, 2009-2010, and 2010-2011. Governance was the second most common topic area, followed by water and land use, which alternate as the third and fourth most common. In 2011-2012, governance overtook climate change as the most common topic category and energy broke into the ranks of the top four by displacing land use.

**Number of Environmental Law Articles by Year**



**Trends in Environmental Legal Scholarship**

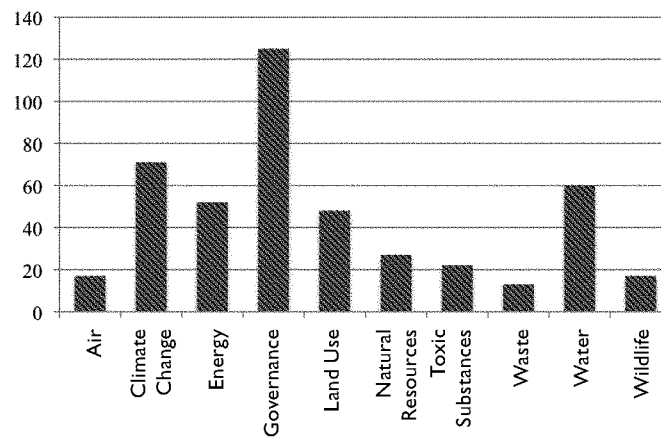
	2008-2009	2009-2010	2010-2011	2011-2012
General law reviews	47	97	80	115
Environmental law journals	408	378	432	337
Total	455	475	512	452

### Number of Articles in Topic Categories by Year

	2008-2009	2009-2010	2010-2011	2011-2012
Air	5	7	10	17
Climate Change	126	151	91	71
Energy	28	44	60	52
Governance	116	87	82	125
Land Use	46	56	65	48
Natural Resources	26	22	26	27
Toxic Substances	12	20	57	22
Waste	11	14	13	13
Water	54	43	76	60
Wildlife	31	31	32	17

Note: Articles are categorized by primary topic. Please see methodology section for more details.

### Number of Articles in Topic Categories



Note: Articles are categorized by primary topic. Please see methodology section for more details.