

4-2013

## Trends in Environmental Law Scholarship 2008-2011

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Linda K. Breggin , Jacob P. Byl , Lynsey R. Gaudio, Seamus T. Kelly & Michael P. Vandenberg, Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013), 42 ENVTL. L. REP. NEWS & ANALYSIS 10711 (2012).

ALWD 7th ed.

Linda K. Breggin , Jacob P. Byl , Lynsey R. Gaudio, Seamus T. Kelly & Michael P. Vandenberg, Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013), 42 Env'tl. L. Rep. News & Analysis 10711 (2012).

APA 7th ed.

Breggin, L. K., Byl, J. P., Gaudio, L. R., Kelly, S. T., & Vandenberg, M. P. (2012). Trends in environmental law scholarship 2008-2011 (revised april 2013). Environmental Law Reporter News & Analysis, 42(8), 10711-10712.

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Linda K. Breggin; Jacob P. Byl; Lynsey R. Gaudio; Seamus T. Kelly; Michael P. Vandenberg, "Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)," Environmental Law Reporter News & Analysis 42, no. 8 (August 2012): 10711-10712

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Linda K. Breggin et al., "Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)" (2012) 42:8 Env'tl L Rep News & Analysis 10711.

AGLC 4th ed.

Linda K. Breggin et al., 'Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)' (2012) 42(8) Environmental Law Reporter News & Analysis 10711

MLA 9th ed.

Breggin, Linda K., et al. "Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)." Environmental Law Reporter News & Analysis, vol. 42, no. 8, August 2012, pp. 10711-10712. HeinOnline.

OSCOLA 4th ed.

Linda K. Breggin , Jacob P. Byl , Lynsey R. Gaudio, Seamus T. Kelly & Michael P. Vandenberg, 'Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)' (2012) 42 Env'tl L Rep News & Analysis 10711 Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Vanderbilt University Law School

# Trends in Environmental Law Scholarship 2008-2011 (Revised April 2013)

by Linda K. Breggin, Jacob P. Byl, Lynsey R. Gaudio, 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 and Seamus T. Kelly are students at Vanderbilt University Law School. Lynsey R. Gaudio is a Research Associate at the Environmental Law Institute. 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 written in the past 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, and 2010-2011.

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 2008-2011 period.<sup>1</sup> In future issues, ELPAR will track additional data, such as author affiliations, environmental topics, and student scholarship, for the articles reviewed each year. The goal is to provide an empirical snapshot of the environmental legal literature and to track trends over time.

1. Our results are somewhat higher than the results of other similar studies. See, e.g., Dan Tarlock, *Is a Substantive, Non-Positivist United States Environmental Law Possible?*, 1 MICH. ENVTL. & ADMIN. L. 157, 168 n.39 (2012) ("The editors of the *Land Use & Environment Law Review*, which reprints the best ten to eleven articles in these two related fields . . . reported in 2010 that they started with a list of 300 plus articles."); see also Richard J. Lazarus, *Environmental Scholarship and the Harvard Difference*, 23 HARV. ENVTL. L. REV. 327 (1999).

## Methodology

A detailed description of the methodology is posted on the Vanderbilt University Law School and Environmental 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 process is described in the letter that introduces this issue

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*, ENVTL. 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).

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.

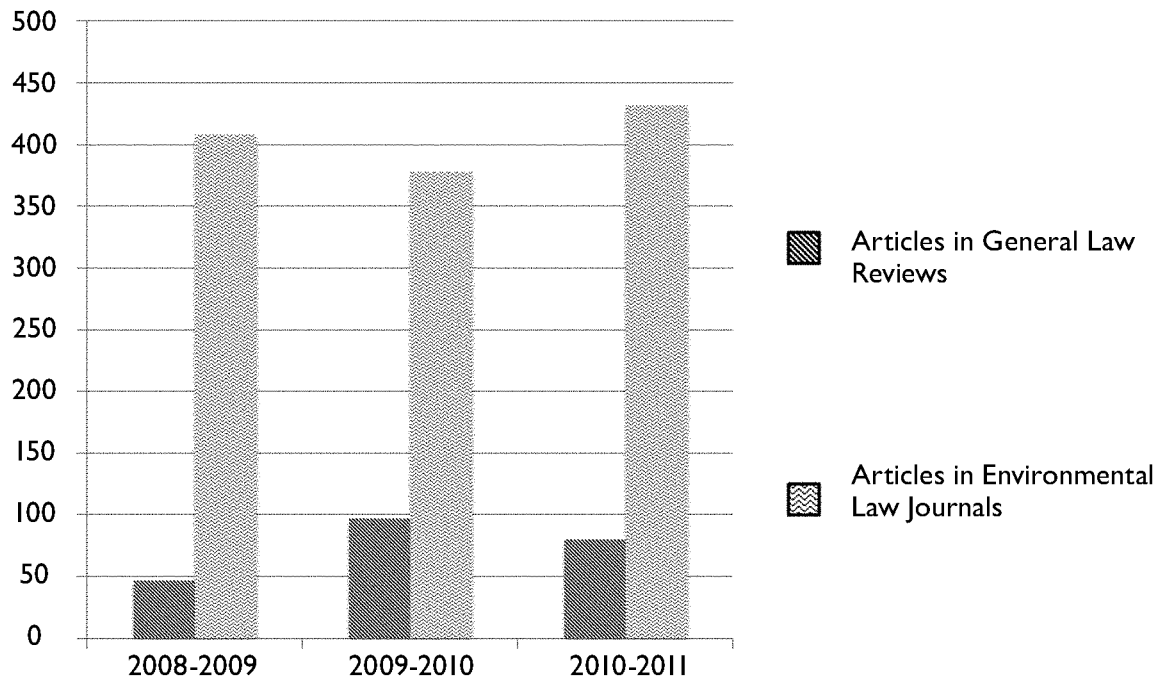
Determining whether an article qualifies as an environmental article is more of an art than a science, and our conclusions should be interpreted in that light. We have attempted, however, to use a rigorous, transparent process. Specifically, an article is considered an “environmental law article” if 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.

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 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.<sup>3</sup>

### Data Analysis on Environmental Legal Scholarship

During the 2010-2011 ELPAR review period (July 31, 2010 to August 1, 2011), 512 environmental law articles written by professors or practitioners were published in top law reviews and environmental law journals. This is an increase of 8 percent over the 475 articles in the previous ELPAR review cycle (2009-2010). In contrast, 455 articles were published in the 2008-2009 review cycle. Of the 512 total environmental law articles in 2010-2011, 432 were published in journals that focus on environmental law and 80 were published in general law reviews.

**Number of Environmental Law Articles by Year**



|                            | 2008-2009 | 2009-2010 | 2010-2011 |
|----------------------------|-----------|-----------|-----------|
| General Law Reviews        | 47        | 97        | 80        |
| Environmental Law Journals | 408       | 378       | 432       |
| Total                      | 455       | 475       | 512       |

Note: Number of environmental law articles published in legal journals during review cycle from August 1 to July 31 of the following year. The ELPAR universe consists of the general law reviews published by the top 100 law schools as ranked that year by *U.S. News & World Report* and environmental law specialty journals as categorized by Washington & Lee University School of Law. See methodology section for more details.

3. *Id.*