

ENVIRONMENT AND LAW

DAVID WILKINSON



routledge introductions to environment series
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David Wilkinson



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Environment and Law

Environmental problems such as global warming and pollution lie at the heart of the public agenda in the twenty-first century. To be effective in tackling these, environmental law must be prepared to adopt practical strategies and techniques from the fields of economics, science, ethics and politics, to further an understanding of the proper form and content of environmental law itself.

Environment and Law initially describes and explains law and legal systems, the concept of the environment, sources of environmental law and some of the techniques used in environmental law. It then examines some of the major connections between law and the disciplines of economics, science, ethics, and politics. Some of the issues discussed are:

- how economic instruments can offer alternatives and supplements to traditional 'command and control' forms of environmental regulation;
- the role of science in the resolution of environmental law disputes;
- the response of environmental law to the rise in theories of environmental ethics;
- and the kinds of political entities that are most conducive to high standards of environmental protection.

Environment and Law is a concise introduction for students with little or no legal background to the role of law in environmental protection. It offers a greater understanding of international and national environmental law and has case studies from all over the world, including examples from UK, US and Australian law. Chapter summaries, annotated further reading, a glossary of legal terms, a list of legal cases and their abbreviations are also included.

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Routledge Introductions to Environment Series

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David Pepper

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Environment and Society
(December 2002)



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Series editor's preface

Environment and Society titles

The modern environmentalist movement grew hugely in the last third of the twentieth century. It reflected popular and academic concerns about the local and global degradation of the physical environment which was increasingly being documented by scientists (and which is the subject of the companion series to this, *Environmental Science*). However it soon became clear that reversing such degradation was not merely a technical and managerial matter: merely knowing about environmental problems did not of itself guarantee that governments, businesses or individuals would do anything about them. It is now acknowledged that a critical understanding of socio-economic, political and cultural processes and structures is central in understanding environmental problems and establishing environmentally sustainable development. Hence the maturing of environmentalism has been marked by prolific scholarship in the social sciences and humanities, exploring the complexity of society–environment relationships.

Such scholarship has been reflected in a proliferation of associated courses at undergraduate level. Many are taught within the ‘modular’ or equivalent organisational frameworks which have been widely adopted in higher education. These frameworks offer the advantages of flexible undergraduate programmes, but they also mean that knowledge may become segmented, and student learning pathways may arrange knowledge segments in a variety of sequences – often reflecting the individual requirements and backgrounds of each student rather than more traditional discipline-bound ways of arranging learning.

The volumes in this *Environment and Society* series of textbooks mirror this higher educational context, increasingly encountered in the early twenty-first century. They provide short, topic-centred texts on social science and humanities subjects relevant to contemporary society–environment relations. Their content and approach reflect the fact

that each will be read by students from various disciplinary backgrounds, taking in not only social sciences and humanities but others such as physical and natural sciences. Such a readership is not always familiar with the disciplinary background to a topic, neither are readers necessarily going on to further develop their interest in the topic. Additionally, they cannot all automatically be thought of as having reached a similar stage in their studies – they may be first-, second- or third-year students.

The authors and editors of this series are mainly established teachers in higher education. Finding that more traditional integrated environmental studies and specialised texts do not always meet their own students' requirements, they have often had to write course materials more appropriate to the needs of the flexible undergraduate programme. Many of the volumes in this series represent in modified form the fruits of such labours, which all students can now share.

Much of the integrity and distinctiveness of the *Environment and Society* titles derives from their characteristic approach. To achieve the right mix of flexibility, breadth and depth, each volume is designed to create maximum accessibility to readers from a variety of backgrounds and attainment. Each leads into its topic by giving some necessary basic grounding, and leaves it usually by pointing towards areas for further potential development and study. There is introduction to the real-world context of the text's main topic, and to the basic concepts and questions in social sciences/humanities which are most relevant. At the core of the text is some exploration of the main issues. Although limitations are imposed here by the need to retain a book length and format affordable to students, some care is taken to indicate how the themes and issues presented may become more complicated, and to refer to the cognate issues and concepts that would need to be explored to gain deeper understanding. Annotated reading lists, case studies, overview diagrams, summary charts and self-check questions and exercises are among the pedagogic devices which we try to encourage our authors to use, to maximise the 'student friendliness' of these books.

Hence we hope that these concise volumes provide sufficient depth to maintain the interest of students with relevant backgrounds. At the same time, we try to ensure that they sketch out basic concepts and map their territory in a stimulating and approachable way for students to whom the whole area is new. Hopefully, the list of *Environment and Society* titles will provide modular and other students with an unparalleled range of

perspectives on society–environment problems: one which should also be useful to students at both postgraduate and pre-higher education levels.

David Pepper

May 2000

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Author's preface

In this book I have attempted to provide a study of environment and law that is rather more systematic than those commonly to be found in other textbooks and casebooks on these subjects. Rather than discuss environmental law with the primary goal of relaying legal information to the reader, I have sought to explore the subject's structural aspects. What *is* environmental law? What *does it do*? What are its *underlying* principles, values and techniques? How does it *fit* and *relate* to the other key disciplines for environmental protection (ethics, economics, politics and science)? It is on these issues, which one might broadly term matters of 'environmental jurisprudence', that I have focused my thoughts.

Being an English author whose main knowledge lies in the English and European legal approaches to the environment might be thought of as something of a disadvantage when writing a book that seeks to cut across the boundaries of state and legal regime. Nevertheless, wherever possible I have included material from other jurisdictions, especially the United States, to show how similar or different approaches have been taken in other countries. I have also sought to avoid the use of complex legal terminology and, where this cannot be achieved, to explain legal terms as fully as possible. It is, therefore, my hope that those without any formal legal background will find the book accessible and interesting.

At times, the book may seem provocative, with the discussion ranging from the possible rights of aliens to the suggestions for the introduction of tradable birth permits. This is intentional. All who enter the wider debate concerning environmental protection will soon realise that one cannot formulate and defend solutions to environmental problems without addressing much more substantial philosophical questions: broadly, why should the environment matter, and what is the place of humans in the overall scheme of things? In attempting to answer these

questions one must meet all propositions head-on, and consider all solutions, even if today they are not always 'politically correct'.

My thanks go to my wife, Deborah, who has never flinched from engaging in environmental debates, and to the reviewers for their helpful comments, especially Donald McGillivray of Birkbeck College, London, whose tireless and exact reading of the text helped me to avoid numerous errors and include many more useful and interesting points.

Every effort has been made to contact copyright holders for their permission to reprint material in this book. The publishers would be grateful to hear from any copyright holder who is not here acknowledged and will undertake to rectify any errors or omissions in future editions of this book.

David Wilkinson

31 August 2001

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