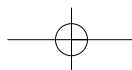
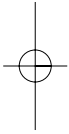


ENVIRONMENTAL LAW FOR SUSTAINABILITY: A READER

This volume of new essays presents critical new scholarship on law for sustainable development. Its contributors provide international and comparative perspectives on the current state of environmental law and its future directions. Aimed at both students and scholars in law and other social sciences, it goes beyond conventional descriptions of environmental law and policy to a theoretical and interdisciplinary analysis of the role of law in sustainable development. Starting from the premise that ecological sustainability requires environmental law systems to be sensitive to a wide array of institutional, social and economic issues and to emerging forms of environmental governance beyond conventional legal regulation, the book explores: future directions in command regulation; changing forms of public administration; risk assessment and precautionary regulation; ecological justice; public participation in environmental decision-making; indigenous peoples and the environment; industry self-regulation; economic instruments; sustainable finance; the state of international environmental law; and environmental law in developing countries.

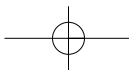


Series: Osgoode Readers
Volume 1

The Osgoode Readers offer interdisciplinary and cosmopolitan treatments of the essential elements of a variety of legal fields. Each chapter in an Osgoode Reader takes the form of a critical synthesis providing a succinct, engaging overview and analysis of contemporary issues and problems that are both shaping and being shaped by the law. The core of each Osgoode Reader consists of newly written chapters that build on each contributor's recent field-leading work, alongside chapters that are revised versions of recently published articles that have been thoroughly reworked to suit the focus and flow of the reader.

Osgoode Readers are distinguished by their attention to fresh perspectives dealing not only with traditional legal concerns but also with newer challenges posed by changes in social, ethical, economic and political environments. Osgoode Readers are organized and their analysis framed in ways that are alert to comparative-law insights and are intended to be relevant across legal jurisdictions.

Each Osgoode Reader is primarily aimed at upper-year LLB and JD, as well as graduate law, courses as either companion volumes or core prescribed readings. Most readers will also appeal to law scholars interested in keeping abreast of current developments in their own field, as well as researchers new to the field in question.



Environmental Law for Sustainability: A Reader

Edited by

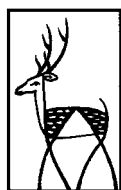
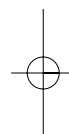
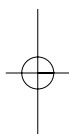
Benjamin J. Richardson

Professor at Osgoode Hall Law School of
York University in Toronto

and

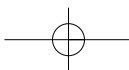
Stepan Wood

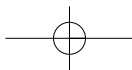
Professor at Osgoode Hall Law School of
York University in Toronto



• H A R T •
PUBLISHING

HART PUBLISHING
OXFORD AND PORTLAND, OREGON
2006





Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Web Site: www.isbs.com

© The editors and contributors severally 2006

The editors and contributors have asserted their rights under the Copyright, Designs and Patents Act 1988, to be identified as the author of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission of Hart Publishing, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Hart Publishing at the address below.

Hart Publishing, Salter's Boatyard, Folly Bridge, Abingdon Rd, Oxford, OX1 4LB
Telephone: +44 (0)1865 245533 Fax: +44 (0)1865 794882
email: mail@hartpub.co.uk
WEBSITE: <http://www.hartpub.co.uk>

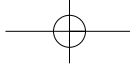
British Library Cataloguing in Publication Data
Data Available

ISBN-13: 9781841135441 (paperback)
ISBN-10: 1- 84113-544-5 (paperback)

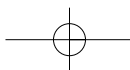
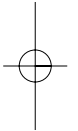
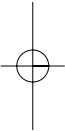
Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by
Biddles Ltd, Norfolk

ENVIRONMENTAL LAW FOR SUSTAINABILITY: A READER

<i>List of Contributors</i>	vii
1. Environmental Law for Sustainability (<i>Benjamin J. Richardson and Stepan Wood, Osgoode Hall Law School</i>)	1
Part 1: Environmental Regulation and Administration	19
2. Institutions and Policy Change for Sustainability (<i>Stephen Dovers, Australian National University, and Robin Connor, New Zealand Ministry of Fisheries</i>).....	21
3. Environmental Command Regulation (<i>Carolyn Abbot, University of Manchester</i>).....	61
4. Risk and Environmental Law: A Beginner's Guide (<i>Elizabeth Fisher, University of Oxford</i>).....	97
Part 2: Ethical and Human Rights Dimensions	127
5. Ecological Justice and Law (<i>Klaus Bosselmann, University of Auckland</i>)	129
6. Public Participation in Environmental Decision-making (<i>Benjamin J. Richardson, Osgoode Hall Law School and Jona Razzaque, University of the West of England</i>)	165
7. Indigenous Peoples, Law and the Environment (<i>Benjamin J. Richardson, Osgoode Hall Law School, and Donna Craig, Macquarie University</i>)	195
Part 3: Economic and Business Dimensions	227
8. Voluntary Environmental Codes and Sustainability (<i>Stepan Wood, Osgoode Hall Law School</i>)	229



vi	<i>Contents</i>	
9.	Economic Instruments for Sustainable Development (<i>David Driesen, Syracuse University</i>)	277
10.	Sustainable Finance: Environmental Law and Financial Institutions (<i>Benjamin J. Richardson, Osgoode Hall Law School</i>)	309
	Part 4: International and Comparative Perspectives	341
11.	International Environmental Law (<i>Jaye Ellis, McGill University and Stepan Wood, Osgoode Hall Law School</i>)	343
12.	International Trade Law and the Environment (<i>Oren Perez, Bar-Ilan Univeristy</i>)	381
13.	Environmental Law in Post-colonial Societies: Aspirations, Achievements and Limitations (<i>Benjamin J. Richardson and Ikechi Mgbeoji, Osgoode Hall Law School and Francis Botchway, University of Hull</i>)	413



LIST OF CONTRIBUTORS

Carolyn Abbot is a Lecturer in Law at the University of Manchester. Before coming to Manchester, she lectured at the Lancashire Law School. Her main research interests are environmental law and regulation, with a particular interest in the theory and practice of environmental law enforcement. She participated in a consultancy project for the European Commission that investigated criminal sanctions for environmental offences.

Klaus Bosselmann is an Associate Professor of Law at the University of Auckland and Director of its New Zealand Centre for Environmental Law. Previously, he was a judge and a law professor in Berlin. He is a member of the IUCN Commission on Environmental Law and the IUCN Academy of Environmental Law. His research interests include international and comparative environmental law, legal theory and environmental philosophy. He has been a consultant to the OECD, UNEP, the EU Commission and the governments of Germany and New Zealand.

Francis Botchway is a Reader in Law at the University of Hull and a Visiting Professor in Energy and Environmental Law at Leuven University. He was previously a Lecturer at Warwick Law School. He holds law degrees from Ghana, Dalhousie, Harvard and Manchester. His main interests are environmental law and international economic law. Francis has published widely in these areas and recently won the Willoughby Prize for his contribution to the IBA Journal of Energy and Natural Resources Law.

Robin Connor is a Senior Policy Analyst with the Ministry of Fisheries in Wellington, where he contributes to the development of the institutional framework for New Zealand's ground-breaking fisheries management system. Robin continues to work on independent collaborative research and publication projects in the areas of fisheries management and the institutional dimensions of sustainability and economic development.

Donna Craig is a Professor of Desert Knowledge at Charles Darwin University, working on Indigenous and arid lands research with the Desert Knowledge Co-operative Research Centre in Australia. She holds a joint appointment as Professor at the Centre for Environmental Law at Macquarie University. Donna has

also participated in the IUCN's Specialist Group in Environmental Law and Indigenous Peoples, and is a member of the IUCN Academy of Environmental Law.

Stephen Dovers is a Professor at the Centre for Resource and Environmental Studies, at the Australian National University. He undertakes research and education in the areas of policy and institutional dimensions of sustainability, science-policy linkages, decision-making in the face of uncertainty, adaptive management and environmental history.

David Driesen is the Angela R Cooney Professor at Syracuse University College of Law. He holds a JD from the Yale Law School and served as an attorney in the Natural Resources Defense Council's air and energy programme prior to entering academia. His first book, *The Economic Dynamics of Environmental Law* (MIT Press, 2003) won the Lynton Keith Caldwell award for the best book of the year in science, technology and environmental studies.

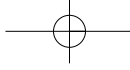
Jaye Ellis is an Assistant Professor in the Faculty of Law and School of Environment at McGill University. She teaches and conducts research in the fields of international environmental law, public international law and global environmental politics. Research projects include principles of international environmental law, high seas fisheries, environmental protection in the high seas and Antarctica, and the international climate change regime.

Elizabeth Fisher is Fellow and Lecturer in Law, Corpus Christi College and the Faculty of Law, University of Oxford. She has written widely on issues of public law, risk and the precautionary principle in numerous different jurisdictions.

Ikechi Mgbeoji is an Assistant Professor at Osgoode Hall Law School. He teaches and researches in the areas of intellectual property law, with emphasis on patents, comparative intellectual property law and the legal regulation of biotechnology; torts; use of force in international relations; and international environmental law. Prior to joining Osgoode, he taught at the University of British Columbia. He holds graduate degrees in law from Dalhousie University, Canada.

Oren Perez is an Associate Professor at the Faculty of Law, Bar-Ilan University, Israel. He wrote his doctoral dissertation at the London School of Economics and Political Science (1997–2000) and won the Marie Curie Fellowship. His main fields of interest are environmental law, international economic law and legal theory. His recent publications include *Ecological Sensitivity and Global Legal Pluralism: Rethinking the Trade and Environment Conflict* (Hart Publishing, 2004).

Jona Razzaque is a Senior Lecturer with the University of the West of England, teaching EU law and environmental law at undergraduate and postgraduate levels. She previously worked for the Foundation for International Environmental

*List of Contributors*

ix

Law and Development (FIELD). Jona has also held academic positions at the University of London's Queen Mary College and University College London. She has published widely on access to environmental justice.

Benjamin Richardson is an Associate Professor at Osgoode Hall Law School. His principal teaching and research interests are Aboriginal law, environmental law and financial regulation. Previously, he lectured at the Universities of Auckland and Manchester. Also, he was a policy advisor in an Australian government nature conservation agency and a consultant to the IUCN on projects in Kenya and Nepal.

Stepan Wood is an Associate Professor at Osgoode Hall Law School, where he coordinates the joint LLB/Master in Environmental Studies programme. His principal teaching and research interests are environmental law, corporate social responsibility and voluntary codes. He is vice-chair of the Standards Council of Canada's advisory committee on EMS standards and a frequent Canadian delegate to ISO meetings. He worked previously as a lawyer in New York and a law clerk to the Supreme Court of Canada.

