

Environmental Law and Policy Annual Review (ELPAR)
Methodology for Trends in Environmental Legal Scholarship

Overview

The goal of this project is to identify the quantity of environmental law scholarship published in the United States. ELPAR searches through top law reviews and environmental law specialty journals each year to assemble a pool of articles that are candidates for inclusion in ELPAR. The resulting pool of articles, with some adjustments described below, constitutes the data set used to provide a snapshot of the quantity of environmental legal scholarship during the relevant period.

The methodology involved in constructing a data set of environmental law articles involves a number of subjective judgment calls. Accordingly, the numbers reflected in the research represent a rough estimate of the number of environmental law articles published during a given year. We discuss our general process and definitions below at a level of detail that is designed to allow for replication. While acknowledging the possibility for disagreement about the criteria selected or their application to specific articles, our goal is to provide a useful picture of the status and trends of environmental legal scholarship.

Selecting Journals to Search

The initial search for environmental law scholarship is conducted in law reviews from the top 100 law schools based on the most recent rankings by *U.S. News and World Report* and in specialty journals listed in the “Environment, Natural Resources and Land Use” subject area of the most recent rankings compiled by Washington & Lee University School of Law (“W&L”). The W&L search is limited to US-based journals. In addition, the following journals are excluded, or partially excluded, from the sample, with the reasons for exclusion in parentheses and further discussed below:

Environmental Justice (only available through a direct subscription to the journal); *Journal of International Wildlife Law and Policy* (only available through a direct subscription to the journal); *Natural Resources and Environment* (primarily written by and targeted at practitioners); *Oil, Gas, and Energy Quarterly* (focus on oil and gas taxation and accounting for practitioners); *Rocky Mountain Mineral Law Foundation Journal* (“*Foundation*”) (articles not previously published and written by academics included, but re-published articles or articles written by non-academics excluded); *Proceedings of the Rocky Mountain Mineral Law Foundation Institute* (“*Proceedings*”) (articles written by non-academics are excluded, articles written by academics are included).

Consistent with the goal of providing a picture of environmental legal scholarship, journals that focus on practice guides and other pieces written

primarily for practitioners are excluded, such as *Natural Resources and Environment* published by the American Bar Association. Similarly, the *Proceedings* contain a large number of practitioner-focused articles. Because the *Proceedings and Foundation* journals also include articles with an academic focus, articles written by academics are included but practitioner-written articles are excluded.

Furthermore, only journals that are published online with free access or are indexed in either Westlaw, Lexis, or HeinOnline are considered to have a broad enough audience to merit inclusion in the ELPAR list. Journals that are not available on any of the major electronic legal scholarship databases and do not provide free access to archived content via their journal websites are excluded because it is very difficult to access the articles and other potential readers face similar barriers.

Identifying Environmental Articles

The ELPAR Editorial Board and Staff start with a key word 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.

For purposes of tracking trends in environmental scholarship, the next step is to cull the pool generated by the initial search down to only those articles that qualify as environmental law articles. Every article generated by

our initial search is individually reviewed to determine whether the article is properly considered “environmental.” Articles without a connection to the natural environment (e.g. “work environment” or “political environment”) are removed. Beyond these easy calls, determining whether an article qualifies as an environmental article is more of an art than a science, but we have attempted 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 address subjects that influence environmental law, including administrative law topics (e.g., executive power, 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 is reviewed by two students and if conflicts or questions arise, the managing board members make the decision in consultation with the course instructors.

Classifying Environmental Articles

To allow for tracking of trends by topic area, ELPAR editors categorize each environmental article in the data set by topic area. The ten 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.¹ Many articles can feasibly fit into multiple categories, such as an article about how climate change impacts wildlife. In these cases, ELPAR editors give preference to the category that better captures the article's main theme.

As with the process for determining whether an article meets the environmental criteria, the classification process is more of an art than a science. Each article is reviewed by two students and if conflicts or questions arise, the managing board members make the decision, sometimes in consultation with the course instructors.

Removing Non-Substantive Articles

To achieve our goal of providing an estimate of the quantity of environmental legal scholarship published during the year, we include only substantive articles, which means for our purposes that they include an original thesis or analysis that appears to be intended to contribute to the legal scholarship on environmental law. We exclude, for example, most book reviews and eulogies, as well as non-substantive symposia introductions, case summaries, presentation transcripts and editors' notes. Article length is not determinative of whether an article is substantive. For example, a symposium introduction that is only ten pages but includes original analysis

¹ THE ENVIRONMENTAL LAW REPORTER, <http://www.elr.info/subject-matter-index> (last visited Apr. 12, 2014).

is considered substantive; whereas, a thirty-page symposium introduction that merely summarizes the articles that follow is considered non-substantive. Again, each article is reviewed by two students and any conflicts are resolved by the managing board in consultation with the course instructors.

Excluding Student Notes

Student scholarship is excluded if the piece is published as a note or comment by a student who is a member of the staff of the journal that published the piece. When an author's affiliation is unclear, ELPAR members review past journal mastheads and run an internet search of the author's name and the publishing law school to determine if the author was a student when the piece was accepted for publication. If an author's affiliation is still unclear or the writing was published over a year after the author graduated without indication that it was written or accepted for publication before the author graduated, the writing is treated as an article for data analysis purposes. A piece written by an author who was a student at a law school unaffiliated with the publishing journal is treated as an article, as are pieces by authors who are pursuing post-graduate degrees other than a J.D. or serving as fellows.

Ensuring Quality of Data

To ensure that the data set comprises substantive environmental articles that are not published as student notes, the final step in constructing the data set is a quality assurance procedure. A random subsample of ten percent of the articles is double checked using the above criteria. If any improperly classified articles are found, an additional ten percent are double checked to see if the error rate is over one percent. If multiple errors are found or any pattern of concern is identified about a particular reviewer or journal, all articles reviewed by the reviewer or from the journal are double checked. Additionally, every article in the data set is compared to the previous year's data to ensure that articles are not double counted. The quality assurance procedure continues until researchers are comfortable that the error rate is one percent or lower. A list of the articles and journals in the data set for each year discussed in this explanation of the ELPAR methodology is available on the Vanderbilt University Law School ELPAR web page.²

² *Environmental Law & Policy Annual Review Online Supplements*, VANDERBILT LAW SCH., <http://law.vanderbilt.edu/academics/academic-programs/environmental-law/environmental-law-policy-annual-review/online-supplements.php> (last visited June 9, 2014).