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Book Review: Environmental Protection and Human Rights

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Donald K Anton and Dinah L Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, New York 2011) 986 pp.

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This new textbook is an eagerly awaited introduction to the field of environmental human rights by two distinguished scholars and teachers. Dinah L Shelton is the Manatt/Ahn Professor of International Law at the George Washington University Law School, who has authored numerous books and articles on human rights law and international environmental law, and currently serves as Chair of the Inter-American Commission on Human Rights of the Organization of American States. Donald K Anton is a faculty member of the Australian National University College of Law, who has taught and practiced international law and international environmental law since 1988, and has authored several volumes on these and related subjects.

Sweeping in its coverage, the book examines the emergence of international human rights law and environmental law as distinct legal domains and the growing recognition by scholars, activists, governments, and international and domestic tribunals of the linkages between environmental protection and human well-being. Although intended for use as a law school textbook and accompanied by five online problem-oriented case studies, this comprehensive volume will also serve as a valuable reference for scholars and practitioners as well as an excellent survey for newcomers to the field.

Environmental Protection and Human Rights begins with an introduction to the major environmental challenges confronting present and future generations and the approaches developed by international and domestic environmental law to address them. Chapter 2 outlines the interface between international human rights law and international environmental law and the synergies and tensions between these distinct fields. Through carefully selected article excerpts and thoughtful discussion questions, the text stimulates reflection and debate about the advantages and disadvantages of human rights-based approaches to environmental protection.

Chapters 3, 4 and 5 provide the general foundation in international human rights law essential for more detailed consideration of its application to environmental problems. Beginning with a description of the historical evolution of international human rights law, these chapters examine the core human rights treaties, their implementation by global and regional human rights bodies, and their implications for environmental protection. The authors seamlessly interweave descriptive material and critical perspectives, and pose questions designed to highlight the benefits and drawbacks of the institutions and procedures they describe.

Chapters 6 and 7 analyze the procedural and substantive human rights linked to environmental protection, including the substantive rights to life, health, water, property, privacy, family life, and home; the substantive right to a safe and healthy environment; and the procedural rights to information, participation in decision-making,

and access to justice. The strength of these chapters is their clarity, cohesiveness, and organization. The weakness is their failure to incorporate problem-solving exercises that would challenge and engage students by requiring them to apply the legal doctrines to concrete disputes. The online case studies, which I discuss below, do provide valuable practice-oriented exercises. However, they assume familiarity with materials covered in subsequent chapters and are therefore not ideal as review problems for Chapters 6 and 7.

Chapter 8 focuses on the rights of Indigenous peoples under international human rights law, including rights to ancestral lands and natural resources. It examines the conceptual foundations of Indigenous peoples' human rights claims, the international legal instruments codifying these rights, several decisions of regional human rights tribunals, and a few examples of national legislation and jurisprudence. The chapter concludes with an analysis of the impact on Indigenous peoples' access to traditional knowledge, lands and resources of the Convention on Biological Diversity and the climate regime's programme on Reducing Emissions from Deforestation in Developing Countries (REDD).

Although Chapter 8 does not explicitly reference the online case studies,¹ two of these case studies are excellent companions to this chapter. Case Study III: Climate Change and Human Rights requires students to evaluate the climate change petition filed by the Inuit peoples of the Arctic region before the Inter-American Commission on Human Rights. The case study then examines the human rights implications of climate change more broadly, including the substantive and procedural rights discussed in Chapters 6 and 7. Case Study IV: Indigenous Peoples in the Philippines requires students to apply Philippine law and international law to determine whether and how a company can acquire Indigenous knowledge, plants, and seeds in order to develop new pharmaceuticals. The case studies are well-crafted and can serve as the basis of in-class role-playing and problem-solving exercises.

Chapter 9 introduces the legal regimes that seek to protect human rights and the environment during armed conflicts, natural disasters, and industrial accidents, including the laws governing humanitarian intervention and the rights of refugees and internally displaced persons. Despite its breadth, this chapter is clear, well-organized, enlightening, and engaging. Case Study I: Transboundary Pollution appears to complement the sections of the chapter dealing with state responsibility for failure to prevent transboundary harm. In addition, this case study can be used to review the tort-based approaches to environmental protection discussed in Chapter 1 and the substantive and procedural environmental human rights discussed in Chapters 6 and 7.

Chapter 10 analyzes the role of intergovernmental financial institutions in ensuring that the projects they finance respect human rights and minimize harmful environmental impacts. This chapter offers a very thorough account of the origins and operation of the World Bank Inspection Panel, using as examples the reports from several hydroelectric projects (including the Sardar Sarovar dam and irrigation projects in India). In addition, this chapter explicitly references Case Study II: Large Dams, for a more detailed study of the environmental, developmental and human rights consequences of hydroelectric projects.

Finally, Chapter 11 examines efforts to impose enforceable human rights obligations on corporations. The chapter provides an overview of the rise of multinational corporations, the legal regimes that govern their rights and obligations, and efforts to

1. The online case studies are available at <<http://www.cambridge.org/aus/catalogue/catalogue.asp?isbn=9780521747103&resISBN13=9780521747103&parent=10197&ss=res#resource>>.

regulate or influence their operations using international law, domestic law, voluntary initiatives, civil litigation by victims of human rights and environmental abuses, and communications with UN Special Rapporteurs.

Environmental Protection and Human Rights is an exceptionally thoughtful, clear, and comprehensive introduction to rights-based approaches to environmental protection. The authors present more material than most law professors would assign in a standard course, but this is a virtue rather than a vice because it allows legal educators to pick and choose the material they will emphasize.

However, there are some noteworthy gaps in the book's coverage. First, one significant weakness of the book is its failure to address in Chapters 6 and 7 (or in a stand-alone chapter) the relationship between environmental protection and the human rights norms prohibiting race discrimination. Throughout the world, the burdens of pollution, land degradation, and resource depletion are disproportionately borne by racial minorities and the poor.² Empirical studies in the United States have concluded that race is the single strongest predictor of exposure to environmental hazards.³ While the authors recognize elsewhere in the volume the disparate racial impact of environmental degradation,⁴ the book inexplicably neglects to discuss how anti-discrimination norms have been or could be used to promote environmental justice. Such a discussion would be extremely helpful to students, scholars and practitioners – particularly since one of the environmental human rights cases currently pending before the Inter-American Commission is an environmental racism case filed on behalf of the largely African-American community of Mossville, Louisiana in the United States.⁵

Second, the book does not discuss efforts to incorporate human rights and environmental protection into trade and investment agreements; does not analyze the treatment of human rights and environmental issues in the burgeoning trade and investment jurisprudence emanating from the World Trade Organization and arbitration tribunals; and does not examine the environmental human rights implications of the free market economic reforms imposed upon debtor nations by the International Monetary Fund. Given the impact of the global economic order on human rights and the environment, these omissions are surprising.

Third, the textbook devotes insufficient attention to the cutting edge issue of extra-territorial liability for human rights violations. Although the authors discuss the state's due diligence obligation to prevent extraterritorial environmental harm,⁶ only Case Study III: Climate Change and Human Rights discusses (albeit briefly) the extraterritorial duties imposed by human rights law, including the duties to 'refrain from interfering with the enjoyment of human rights in other countries,' to prevent such interference by private actors, and to refrain from entering into international

2. WE Rees and L Westra, 'When Consumption Does Violence: Can There be Sustainability and Environmental Justice in a Resource-limited World?' in J Agyeman, RD Bullard, and B Evans (eds), *Just Sustainabilities: Development in an Unequal World* (The MIT Press, Cambridge 2003), 100.

3. LW Cole and SR Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (New York University Press, New York 2001), 54–5.

4. DK Anton and DL Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, New York 2011), 147, 546–9.

5. Inter-American Commission on Human Rights, Report No. 43/10, Petition 242-05, Admissibility, Mossville Environmental Action Now – United States, 17 March 2010 (finding the Mossville case admissible), <<http://www.cidh.oas.org/casos/10.eng.htm>>.

6. Anton and Shelton (n 4), 80–81, 110–12, 738–43.

agreements that result in such interference.⁷ For example, might a state incur liability for failing to exercise due diligence to prevent foreseeable extraterritorial human rights violations by corporations under its jurisdiction and control or for entering into bilateral investment treaties that restrict the ability of the host state to regulate foreign investors in a manner that protects human rights?⁸ While the issue of state responsibility for extraterritorial human rights violations is highly relevant to the topic of climate change, it is also a significant cross-cutting issue that merits careful analysis in the body of the textbook.⁹

Despite these shortcomings, *Environmental Protection and Human Rights* is a remarkable book that will enable students, scholars, and practitioners to understand the theoretical underpinnings and practical application of human rights-based approaches to environmental protection. The authors infuse their textbook with a wealth of knowledge and experience in *both* environmental law and human rights law, and help satisfy the growing need for course materials on the intersection of these vitally important areas of law. As communities throughout the world clamour for environmental protection and vigorous enforcement of human rights, this volume will play an important role in helping to train the next generation of environmental human rights lawyers.

7. Ibid., Online Case Study III: Climate Change, 33, at <http://www.cambridge.org/resources/0521747104/10222_9780521747103+Casestudy+3.pdf>.

8. R McCorquodale and P Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) 70 *Modern Law Review* 617, 619–23.

9. For an overview of this important topic, see M Gibney and S Skogly (eds) *Universal Human Rights and Extraterritorial Obligations* (University of Pennsylvania Press, Philadelphia 2010).