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Regulation, Enforcement and Governance in Environmental Law

Edited by Richard Macrory

Oxford and Oregon, USA: Hart Publishing, 2010, 765 pp. (incl. index),
ISBN 978-1-84946-035-4, pb £30 (US\$60).

This is an excellent and stimulating collection of works from a noted leader in environmental law. Among his many achievements, Professor Richard Macrory is Director of the Centre for Law and the Environment at University College London and an Honorary Queen's Counsel, and

in the United Kingdom he is known for his landmark 2006 Cabinet Office study, “Regulatory Justice—Making Sanctions Effective”.

Most of the material included in this collection (twenty-six chapters comprising over 700 pages) has been published before, but the key appeal and contribution of this work is that it pulls together different types of publication, all of which are important to environmental law. There are academic articles addressing national, regional, and global challenges, as well as policy briefings, public lectures given around the world, the text of the Cabinet Office report, a review of the environmental impact of constitutional reforms put in place by the Labour Government elected in 1997, a piece on possible environmental regulation in Northern Ireland (which stimulated recommendations that there be a new environmental tribunal for Northern Ireland), and the outputs of work funded by the European Commission. In all these different forms, Macrory shines as an excellent communicator with a strong command of the subject and a deep desire to convey its importance. For those of us in academic institutions, it is also a reminder of what our research “impact” could look like!

The collection is split into six parts: “Regulatory Reform”, “Institutional Reform and Change”, “The Dynamics of Environmental Law”, “The Courts and the Environment”, “Europe and the Environment”, and “Supra-National Enforcement of Environmental Law”. The structure clarifies Macrory’s key themes in relation to regulation, enforcement, and governance. The discussion of supranational enforcement and the European perspective means that this collection is likely to be of significant interest beyond the UK. Readers familiar with Macrory’s work should also find this collection of value. He provides an introduction to each part which sets out background information about when the pieces were first written and goes on to provide details of subsequent developments.

Some key features of this collection can be gleaned from the chapter “Reforming Regulatory Sanctions”, which summarizes the recommendations made in Macrory’s Cabinet Office report and notes its acceptance by the UK Government in July 2007. This piece provides the reader with a strong understanding of the need for the inquiry and the challenges encountered when conducting it. It is written in an academic manner, with discussion of relevant scholarly literature and detailed footnotes. This is in contrast to the report, which follows in a separate chapter. The report is written with the aim of persuading a government to action (which it achieved), rather than scholars to thought (which it also achieved). This is a revealing example of the quality of Macrory’s writing and the different challenges faced by communicators in environmental law.

The chapter entitled “Modernising Environmental Justice: Regulation and the Role of an Environmental Tribunal” was written in 2003 jointly with Michael Woods, and was commissioned by the UK Department of the Environment, Food and Rural Affairs. Macrory states of this work that it “deliberately avoided an overly academic approach, and was written in a style that would be accessible to Ministers and civil servants”. At the time, there were a range of different appeals systems in place to address planning and environmental issues. Macrory and Woods

recommended a single appeals body to deal with civil matters, with criminal matters remaining within the criminal courts. They considered that a new environmental court was not, however, required. Macrory provides the fascinating context that this report's proposal "did not sit well with the aspirations of those looking for a more radical institutional change" (p. 186), and that a second study was commissioned, which did end up calling for a specialist environmental court. Macrory notes that this divergence of views in fact enabled the UK government to do nothing.

Part III, "The Dynamics of Environmental Law", reviews the different themes and principles—such as European law, privatization, access to justice, criminal law, responsibility, and issue-specific legislation—which have formed part of the changing face of environmental law. The chapter "Environmental Standards, Legitimacy and Social Justice" is a revised version of a lecture given in 1998 at the University of Capetown; it discusses environmental standards and the contributions of policy, science, ethics, and anthropology. The need for a broad approach in relation to the parameters of environmental law is confirmed in the chapter "Technology and Environmental Law Enforcement", which looks widely at the impact of technology—such as satellite images—and considers privacy, data protection, and human rights.

Part IV, "The Courts and the Environment" summarizes key environmental decisions of the European Court of Justice, the House of Lords, and the (UK) Court of Appeal and High Court. Macrory notes in his introduction to this part that "it will remain the responsibility of the judiciary in the ordinary courts to grapple with the range, novelty and complexity of legal questions that are consistently raised in cases concerning the environment" (p. 440).

Rights and participation are common themes throughout Part V, "Europe and the Environment". The chapter titled "The Amsterdam Treaty: An Environmental Perspective", from 1999, focuses on the new role of sustainable development and integration into (what was then) Community environmental law. Macrory's introduction notes that these principles are now found in article 37 of the European Union Charter.

In the introduction to Part VI, "Supra-National Enforcement of Environmental Law", Macrory notes that "the Achilles heel of many international environmental treaties used to be the lack of attention given to enforcement" (p. 711), and proceeds to consider the more complex procedures in the Montreal and Kyoto Protocols. The final chapter is from 1992, entitled "The Enforcement of Community Environmental Law: Some Critical Issues". With impressive foresight, this piece concluded that strong political will was required for states "to implement Community environmental policies, and this in turn demands both the dynamic participation of citizens and amenity groups, and an active recognition by national courts and authorities of their own role in giving effect to Community obligations. Until this occurs, the gap between the law in theory and in practice can be expected to remain intact" (p. 753).

In summary, this collection is many good things: a readable and full introduction to the issues which can and should be part of the environmental law conversation; deep analysis of interest

to scholars; pieces of immediate use to practitioners and policymakers; and, from a practical perspective, it comes with a good index. I will leave the final words to Sir Robert Carnworth, who wrote the foreword: “The material in this collection will stand not only as a record of remarkable achievement, but as an inspiration for innovative thinking for the future” (p. 4).

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