A review on: “A Substantive Environmental Right.

An Examination of the Legal Obligations

of Decision-Makers towards the Environment” by Stephen Turner

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Abstract
For a couple of decades, the mutual and complicated interdependence between human rights and environment has been generating an interesting debate on an international level on how to harmonize the values and interests which the two subjects implicate. In this context the work of Stephen J. Turner, A Substantive Environmental Right, An Examination of the Legal Obligations of Decision-Makers towards the Environment, is an important contribution to this debate. Turner examines thoughtfully and conscientiously the effect that the institutionalization of a substantive human right may have on the protection of the environment. At the same time, Turner analyses how this right should be established and how it should work in practice, based on his own elaborated suggestions. Basically, the author bases his propositions, related to the development of a human right to the environment, on the creation of duties and obligations not only for state actors, but also for non-state ones regarding to the environmental protection.
In addition to realize a description and estimation of Turner’s work the idea of this paper is to respond to some of the arguments of the author with the aim to contribute to the development of the discussion about the necessity of the institutionalization of a human right to environment.

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1. ARGUMENT OF THE BOOK

A Substantive Environmental Right constitutes a deep scientific legal study; in which the author – Stephen J. Turner – examines thoughtfully and conscientiously the effect that the institutionalization of a substantive human right may have on the protection of the environment. At the same time, Turner analyses how this right should be established and how it should work in practice, based on his own elaborated suggestions.

Basically, Turner bases his propositions, related to the development of a human right to the environment, on the creation of duties and obligations not only for state actors, but also for non-state ones regarding to the environmental protection.

Therefore, this work adds new arguments to the debate on the opportunity and necessity of the institutionalization of a substantive human right to environment.

2. TREATMENT OF THE TOPIC

In his work, Turner makes a detailed legal, in which his particular approach is emphasized. Unlike other works about the same topic, it is not a lineal treatment of the subject – reviewing the existence or not of a right to the environment in different legal orders –; but he focuses on the search of arguments to develop a substantive environmental right based on the creation of duties and obligations for state and non-state actors related to the protection of the environment.

The study covers a wide range of aspects and perspectives. For example, the author considers carefully the economical differences among the States in the international society; analyses the right within the framework of different legal systems: general and regional international law, as well as manifold examples of national law; makes a distinction between procedural and substantive environmental rights; etc.

Chapter 3 is especially interesting and useful. The author compiles and comments the different arguments that can be found in the doctrine, pro and versus the institutionalization of the human right to the environment.

The most valuable and attractive aspect of this chapter is its third part, “The Design of a Substantive Environmental Right”, which also constitutes the principal author’s contribution. In this section Turner elaborates the most interesting arguments to justify the institutionalization of a substantive right to a good environment, and his own proposals about how that right should work in practice. It is worth mentioning the author’s innovative suggestion that the proposed right should be applicable not only on state actors, but also on non-state actors; and the proposal of defining the right through the establishment of definite duties and obligations related to the protection of the environment. It is also worth mentioning the mechanism proposed by the author for the internalization or compensation for environmental degradation, in front of the violation of the proposed right to the environment.
Furthermore, the description and analysis of the practical case study in Chapter 4 is very revealing and useful: the Camisea Project in Peru, where the author presents the effects that in practice the weak environmental dispositions can have within the constitutional framework of the State; and proposes the possible reforms that should be adopted in order to improve the situation.

The author evaluates as well four concrete constitutional orders (Chapter 4): South Africa, Spain, India and Peru; in order to analyze if the framework of these provisions in those countries is enough base to create clear obligations for the environmental protection in the decisoric and legislative fields. However, the country selection criterion is not completely clear, and the author simply indicates that the elected countries are representative of the different kinds of environmental protection. Obviously, this work can not cover the analysis of all the State Constitutions that are related to the environmental protection in the world, and it is neither its aim. Despite this, there are other national orders that present interesting characteristics, but are not mentioned in this book. For instance, the Colombian Constitution (1991) regulates extensively the environmental topic. Specifically, its article 79, from the Chapter related to Collective and Environmental Rights, stipulated that “all people have the right to enjoy a healthy environment. The law will guarantee the participation of the community in the decisions that can affect it”. Furthermore, in the article 88 the “popular action” (sort of class action) is established, as a legal mechanism of protection of these rights, which in fact represent diffuse interests. Additionally, the Constitutional Court of this country has been building a right to a healthy environment as a fundamental right, and has accepted to protect it by means of the mechanism aimed to demand the protection of fundamental rights and which is called “acción de tutela”.

About chapters 5 “Companies and Multinational Enterprises”, 6 “Multilateral Development Banks” and chapter 7 “The World Trade Organization”, even when the detailed reflections done in these chapters are very deep and interesting, the connection with the central thesis of the book does not appear to be so evident. Nowadays, almost every institution, company in general, every entity – public or private – is obliged to fulfill some environmental duties. If what the author wanted to do was to stress the influence of the multinationals and some international organizations on the environment – the author chooses multilateral development banks and the World Trade Organization (WTO) – maybe it would have been convenient to bring together those actors under more defined criteria, as there are other organizations that have an influence on the protection of the environment to a large extent.

About the multinational enterprises duties of protection of the environment (Chapter 5), even when the carefully analysis is very attractive, only at the end of the chapter, in its conclusion, appears the evaluation of the possibility of imposing responsibilities of the human rights related to the protection of the environment for these enterprises. In a similar way, the connection with the creation of a right to the environment is given tangentially in the study of the multilateral development banks and the WTO (Chapters 6 and 7).
In short, Turner supports that it is convenient the creation of a *Human Right to a Good Environment*, which is different from the traditional human rights due to its particular characteristics, since this right should be articulated by means of a clear definition of duties and obligations for the ones who take decisions that can affect the environment.

### 3. ABOUT FORMAL ASPECTS

In general, *A Substantive Environmental Right* is a rigorous scientific work, written with a technical and precise language, but at the same time easy to follow.

In this section there will be a comment on the formal aspects of the book, which do not have an influence on the quality of its content, but on the reading. The first point is the title. In particular, at first glance the subtitle seems to be too large and not very clear, because it does not delimit the principal title, it even seems to be related to another subject, which can have a distracting or confusing effect. However, when reading the content of the book, it is clear that the subtitle refers to Turner’s approach to define the content and scope of the substantive environmental right.

Secondly, the way in which its content has been organized calls the attention. In the first place, the author analyses (Chapter 2) the status of the environmental rights, at national and international levels. However, a definite division between these levels is not given; and the author goes from the study of international law – like the international environmental law and the human right law – to the evaluation of constitutional orders, and then goes back to matters of international law, like the work of the United Nations and the International Court of Justice.

Additionally, in chapter 4, the author goes back to the internal right, in order to treat the substantive environmental right regarding the State actor. Nevertheless, the author’s idea seems to be focused on treating the right to the environment – in a more concrete way – in the constitutional rights in some States; and not in a general way, as treated in chapter 2.

On the other hand, chapter 3 includes the more attractive matters of the study, this third part is dedicated to the author’s own contribution, due to its originality and interest could have been in a separate chapter.

Finally, chapters 5, 6 and 7 – as presented in the structure of the work – do not reflect easily the relationship with the central topic of the book.

Definitely, the structure and the titles of the book do not strive for recognition compared to its interesting and wise content.

### 4. CONTINUATION OF THE DEBATE ABOUT THE RIGHT TO THE ENVIRONMENT

The contribution of the book has an enormous value. The debate about the need or no need of institutionalizing a human right to the environment is enriched, and especially because definitely, the author proposes that any person should have individually the possibility to access a court in order to demand that companies, organizations, public and private entities change
their decisions, when these damage the environment. The most commendable aspect of this work – in short – is the author’s reflection about the contribution of the human right to the protection of the environment.

In the same way and with the humble intention of contributing to the development of this interesting debate, some concrete aspects of the work are worth to answer:

Even when strengthening the duties and obligations of the different actors that interfere in the state and in the protection of the environment is desirable and positive, this fact doesn’t entail necessarily the institutionalization of a substantive environmental right. A reflection should be made about this topic: firstly, about the fact that the environment is a legal value per se and it doesn’t depend on the human being, who is – among other things – only one more component of the global ecosystem and secondly about the idea that the proclamation of a right to the environment would be the highest level of anthropocentrism, which is to a large extent the origin of the present environmental deterioration.

The possibility that any person can do something to claim the protection of the environment due to its degradation, it’s something that can be done using other mechanisms, like class action and not necessarily establishing a human right.

Actually, practical and ethical reasons allow us to conclude that it is more convenient to consider the right to the environment as an interest – more specifically as a diffused interest – rather than as a human right. This way, any person could have access to the protection of the environment without having to demonstrate the vulnerability of his particular interests. Additionally, this consideration (diffuse interest) would be more effective with an eye toward prevention – as a basic principle of the environmental protection –, than if it were a human right, which works basically when the environmental damages are already done.

On the other hand, as Turner recognizes in his study, other human rights that are already established can contribute to the environmental protection. This reflection is useful as a base to propose an alternative to the intended institutionalization of a right to the environment, based on the consideration of the environmental matter and its importance for life and for the human development in the conception and interpretation of the already existing human rights. It would be a new dimension of the human rights, which also means their reinforcement, this way we can talk about the “environmentalization” of the procedural and substantive human rights, like it was plurally mentioned by Professor Kiss.

Finally, based on the fact that generally the right to development is considered as a human right that is legally consolidated and regulated by the International Law, with base on the interpretation of the United Nations Charter, the International Pacts of Human Rights and many other resolutions and declarations, one more alternative can be proposed to the intended founding of a right to the environment, by introducing the environmental variable in the concept of the right to development, like when Professor Gómez Isa stated that the right to development should be in reality the right to a sustainable development.
Book Information

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Any responses to this review are welcomed at: ambientalia@ugr.es

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