

Environmental Justice

Environmental Justice

Law, Policy & Regulation

THIRD EDITION

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*For Olivia and all graduates of 2020: You will continue to inspire as
you take the lead.*

C.V.

*For the young people in New York City (and everywhere) who are speaking
out and stepping up for a just transition.*

R.B.

In memory of Derrick Bell and Federico Cheever.

N.A.

*For the residents of Allensworth, Arvin, East and West Oakland, and Richmond
who continue to further the movement.*

R.L.

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Preface

Environmental justice is one of the most significant and dynamic developments in environmental law since modern environmental legislation emerged in the 1970s. Drawing upon principles from environmental law, civil rights statutes, and broader movements for social and economic justice, the environmental justice movement has focused attention on the disparate environmental harms experienced by low-income communities and communities of color. At the same time, the critical methodologies of environmental justice have drawn attention to other groups who may similarly experience disparate impacts from environmental degradation, including women, children, seniors, immigrants, LGBTQ individuals, and persons requiring special accommodations. While the scope of environmental justice may thus have broadened over time, original concerns remain no less relevant today, particularly as stark examples of racism continue to rise and our national commitment to social welfare continues to erode. Consider the drinking water contamination in Flint, Michigan, for example, or construction of the Dakota Access Pipeline over the massive opposition and protest of indigenous peoples.

This book will provide readers with a comprehensive introduction to environmental justice. Oriented towards legal issues and law students, the book also draws from other disciplines including sociology, geography, and economics. As such, beyond law school, the book may be used in undergraduate or graduate courses. The sixteen chapters of this book provide readings for a single semester of study in environmental justice, or supplemental materials for studies in environmental law, civil rights, and related subjects. To improve readability for a broader audience, we have generally omitted footnotes and legal citations from excerpted materials.

At the same time, this book is intended as a reference guide for practitioners, government officials, and community activists. For lawyers, as promised in the subtitle of the book, we provide an enhanced selection of laws and regulations that may help address specific problems in a given context. For government officials, we provide selections of law and policy to assist their important work in protecting the public health and welfare. For community activists and advocates, we provide examples of how environmental justice concerns have been addressed in circumstances that may be different or perhaps similar to their own.

Community activists remind us that, “We speak for ourselves.” To promote the habit of listening, we have included materials and narratives collected from communities and community advocates from the Yukon Territory to Puerto Rico; from the Yakama Nation to the Navajo Nation; from Los Angeles to Chicago to New York City.

Many of these landscapes and leaders also appear directly in the photographs included, for the first time, in this third edition of the book—reinforcing the understanding that environmental justice is about real people and places.

This book is about understanding the real challenges of environmental justice across the country, but also about how to begin addressing these challenges. Thus, Chapter 3 introduces the concepts of risk assessment and risk management to encourage and empower community advocates to participate in these vital processes for characterizing threats to public health. Chapter 5 provides background on how regulatory agencies set standards for protecting public health. Chapter 6 explains how these standards may be incorporated into permits for industrial facilities and how these permits may be influenced or challenged by community advocates.

Where proper standards and permits fail to prevent disparate environmental impacts, this edition of the book provides an expanded examination of legal tools available to address cases of environmental injustice. Thus, Chapter 4 provides a broader review of constitutional law, civil rights legislation, and implementing regulations, with applications illustrated through cases including the drinking water contamination in Flint, Michigan. Chapter 7 provides a new overview of enforcement authorities available to government agencies under such federal laws as the Clean Air Act, Clean Water Act, and Toxic Substances Control Act. Chapter 8 provides a deep examination of legal authorities for cleaning up contaminated sites, with an extensive review of opportunities for community engagement in cleanup processes. Chapter 10 considers specific governmental initiatives to promote environmental justice; these include Executive Order No. 12898, directing the engagement of federal agencies, plus more recent initiatives from states including California and New York. Chapter 11 considers land-use planning as a tool for pursuing environmental justice. Chapter 12 examines mechanisms for obtaining environmental information, including new GIS tools such as EJSCREEN, as well as legal authorities for compelling environmental information and analysis, such as the National Environmental Policy Act and the Emergency Planning and Community Right-to-Know Act. Chapter 13 focuses on citizen enforcement, to include citizen suits under the various environmental statutes plus remedies that advocates may seek through the common law.

The last three chapters of the book consider the special challenges for environmental justice in emerging contexts including climate change, disaster response, and food systems. As we will see, each of these contexts may affect all people on the planet, but the disparate effects on certain groups of people are important to comprehend and address. A substantially updated chapter on climate justice (Chapter 14), plus new chapters on disaster justice (Chapter 15) and food justice (Chapter 16), will provide substantive starting points for study and practice in these areas. Readers interested in deeper explorations of these and many other related subjects will benefit from pathfinders included throughout the book.

Finally, the authors of this third edition would like to express their gratitude to the many people who contributed to this book in different ways. First and foremost, we would like to thank the original authors of this book, Clifford Rechtschaffen, Eileen

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Foreword

I remember as a young boy my grandmother sharing with me the words of Ms. Ida B. Wells, who said, “The way to right wrongs, is to turn the light of truth upon them.” The “truth” is, for hundreds of years, vulnerable communities (lower-income, communities of color, and indigenous peoples) have been fighting for justice and equality in voting, housing, transportation, healthcare, and the economy. The “truth” is, for the past 40 years, environmental justice has encompassed all of these areas of inequity.

Unfortunately, fairness for environmental justice communities has often been fleeting at best and replaced with legacy pollution and sacrifice zones. Throughout history, our country’s laws, politicians and decisionmakers have seen Black and Brown communities as the dumping grounds for everything wealthier communities would never accept. In these forgotten areas, we find coal-fired power plants bellowing out mercury and arsenic at alarming rates. Antiquated incinerators releasing dioxins and hazardous ash. Petrochemical facilities in places like Cancer Alley filling the lungs of local residents with nitrogen oxides, sulfur dioxide, and carbon monoxide. In 2020, we still hear the echoes of the Flint water crisis, as millions of children are living in unhealthy housing and attending underfunded schools filled with toxic lead across our country. These impacts will follow our children for a lifetime, with generational effects on the mind, body, and spirits of those who have been exposed.

In our country, over 100,000 people die prematurely annually from air pollution, which is more than those dying from gun violence or automobile accidents. We have 25 million adults and 7 million children living with asthma in the United States. African-American and Latinx children are disproportionately rushed to emergency rooms and the ones most likely to lose their lives due to asthma complications. Recently, the Clean Air Act has been under attack, putting many more lives of color in the crosshairs of pollution. We have an additional 94 environmental rules being rolled back, dismantled and deconstructed, further weakening the environmental and public-health safety net that so many in our country depend on for a basic level of protection.

Even with these increasing challenges facing frontline communities, I continue to see new possibilities and promise. Communities and their partners are working diligently to address past problems and place a spotlight on the impacts happening in their immediate areas. They are gathering information and utilizing community-based participatory research and traditional environmental knowledge to document

the impacts they have been experiencing in their neighborhoods, barrios, and reservations. Vulnerable communities are continuing to build authentic collaborative partnerships with scientific organizations and universities to anchor their experiences and findings in irrefutable science. Frontline organizations are utilizing the power of the law to hold polluters accountable and push agencies like the EPA to fully enforce the statutes on the books. In 2020, frontline communities, scientists, lawyers, and politicians have a unique opportunity to continue building together and ensure that communities of color will never be toxic dumping grounds again, but places filled with culture, opportunity and promise.

This important book and the study of law is so incredibly critical at this time in the history of our country. At a time when science is under attack and policy is being manipulated, the law has become our greatest defense against the erosion of our civil, human and environmental rights. The law is also our greatest weapon to ensure that our most vulnerable are truly protected. We need men and women of good conscience to stand up, but they must be prepared with the tools to fight injustice of both the past and the present. I'm confident that one day—the not so distant future—we will have a society where all communities will be able to breathe clean air and drink clean water, and our children will have clean soil free from toxics to play on. In the words of Ms. Harriet Tubman, “Every great dream begins with a dreamer. Always remember, you have within you the strength, the patience, and the passion to reach for the stars to change the world.” Let the law be the North Star that guides our most vulnerable communities from surviving to thriving.

Mustafa Santiago Ali
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