

Professor Barry E. Hill
Vermont Law School

Summer 2018 – Term Two
Monday through Thursday (1-4 PM)

SYLLABUS

Course Title: Environmental Justice

Course Description: Environmental justice activists and advocates argue that who you are and where you live should not dictate the conditions under which you live and how you will die. The environmental justice movement is aimed at avoiding, minimizing, or mitigating disproportionately high and adverse human health and environmental impacts, including social and economic impacts, on minority and/or low-income communities, and for those communities to be engaged meaningfully in the environmental regulatory agency's decision-making processes.

This course explores the complex dynamic of environmental justice concerns which involves environmental, social, economic, public health, and political problems. The course discussion regarding the concept of environmental justice involves U.S. environmental law, history, political science, and environmental policy. Detailed case studies will be used at times to generate class discussion.

This course examines this environmental and public health problem, and explores the growth of the environmental justice movement. It analyzes the complex mixture of environmental laws and civil rights legal theories adopted in environmental justice litigation. It examines, among other things, the major changes to EPA's Title VI administrative complaint, investigation, and resolution processes; and the quest by U.S. citizens for a human right to a clean and healthy environment in an international forum. It explores how environmental justice concerns are framed and addressed/resolved through acts of civil disobedience, government initiatives, litigation, and alternative dispute resolution (ADR), and /or mediation in the U.S.

Course Material: This course will be organized around a law review article entitled, "THE SEVEN DEGREES OF RELEVANCE: WHY SHOULD REAL-WORLD ENVIRONMENTAL ATTORNEYS CARE NOW ABOUT SUSTAINABLE DEVELOPMENT POLICY" by Professor J.B. Ruhl (8 Duke Env'tl. L. & Pol'y F. 273 (1998)).

The textbook that will be used is: ENVIRONMENTAL JUSTICE: LEGAL THEORY AND PRACTICE (fourth edition), (published by the Environmental Law Institute) (2018). It is available in the bookstore.

Course Requirement: **Class participation and attendance are an absolute must, and will be weighed in the final grade. Students are required to read the assigned material prior to every class and must be prepared to discuss the readings in class.**

Students are required to submit a well-researched typewritten paper approximately 7 weeks after the end of the course. The paper cannot be more than 30 pages in length. Topics for the paper must be approved in advance. A list of 40 suggested topics is provided at the end of this syllabus. You must choose one of these suggested topics for your paper.

Course Readings:

TOPIC: FIRST DEGREE: THE IDEA BECOMES WIDELY EXPRESSED THROUGH A GENERALLY ACCEPTED NORM STATEMENT

- textbook, Chapter 8, “Epilogue” (pp. 973-981)
- law review article (in Chapter 3 of textbook (pp. 315-322))
- textbook, Introduction and Chapter 1, “Defining the Problem” (pp. 15-38) (43-50)

TOPIC: SECOND DEGREE: ADVOCATING THE OPPOSITE OF THE NORM IS NO LONGER A TENABLE POLICY POSITION

- textbook, Chapter 2, “Growth of the Movement: Organizing the Grassroots” (pp. 207-229)

TOPIC: THIRD DEGREE: THE CHARGE OF ACTING CONTRARY TO THE NORM CAN NO LONGER BE LEFT UNADDRESSED

- textbook, Chapter 2, “Growth of the Movement: Organizing the Grassroots” (pp. 229-272)
- textbook, Chapter 7, “Human Right to a Clean and Healthy Environment” (pp. 932-947)

TOPIC: FOURTH DEGREE: FAILURE TO PORTRAY AN ACTION AS CONSISTENT WITH THE NORM IS SEEN AS A SIGNIFICANT DEFICIENCY

- textbook, Chapter 3, “Addressing the Problem: The Legislative Branches” (pp. 293-300) and (pp. 313-315) and (pp. 322-380)

TOPIC: FIFTH DEGREE: IMPORTANT GOVERNMENTAL AUTHORITIES ESTABLISH THE NORM AS AN EXPLICIT POLICY GOAL

- textbook, Chapter 4, “Addressing the Problem: The Executive Branches” (pp. 383-408) (pp. 413-427) and (pp. 451-464)

TOPIC: SIXTH DEGREE: ACTIONS ARE DENIED OR DELAYED NECESSARY AUTHORIZATION ON THE BASIS OF A PERCEIVED FAILURE TO FACILITATE THE NORM

- textbook, Chapter 5, “Addressing the Problem: The Judicial Branches” (pp. 489-512) (pp. 518-535) (pp. 548-550) (pp. 566-633) (pp. 641-695) and (pp. 764-780)

TOPIC: SEVENTH DEGREE: THE NORM IS FULLY TRANSFORMED INTO LAW TO APPLY - MEASURABLE, RATIONALIZED, ROUTINE STANDARDS OF ENVIRONMENTAL EVALUATION, AUTHORIZATION, AND PERFORMANCE

- textbook, Chapter 6, “Addressing the Problem: The Private Bar and Corporate America” (pp. 809-816) (pp. 822-836) (pp. 862-864) and (pp. 901-911)

LIST OF SUGGESTED TOPICS FOR RESEARCH PAPERS

1. Local Land Use Planning and Environmental Justice—Reform of the Zoning Process Needed
2. The “Chicken or Egg” Problem—Why Should It Matter Which Came First, the Pollution—Generating Facility or the Impacted Community?
3. Marketable Rights to Pollute and the Creation of “Hotspots”
4. Reconciling the Tension Between Economic Development and Environmental Justice
5. Environmental Justice and the Permitting Process—EPA (or a state regulatory agency) Using Its Discretionary Authority to Impose Additional Permit Conditions on Polluters

6. The Environmental Justice Implications of the Trump Administration's Energy Policy
7. The Reform of New Source Review by the Trump Administration Under the Clean Air Act and Environmental Justice Implications
8. The Need for Setting New Standards for Fish Consumption—Environmental Justice and the Price for Protective Standards in Indian Country
9. Public Participation and Environmental Justice—Leveling the Playing Field
10. Public Participation and Environmental Justice—Influencing the Government's (or Industry's) Decision-making Processes
11. Devolution of Environmental Justice—Will Decentralizing Decision-making to the Local Level Exacerbate or Alleviate Environmental Justice Concerns?
12. Unequal Enforcement of Protective Environmental Laws—How Does It Happen and How to Fix It?
13. International Environmental Justice—The Environmental Justice Implications of Climate Change and Potential Solutions for the Poor and Extremely Poor in Bangladesh
14. International Environmental Justice—Transitioning to Sustainable Economies for the Colonias Along the U.S./Mexico Border
15. International Environmental Justice—Environmental Justice Critique of U.S. Free Trade Agreements
16. Environmental Justice Implications of Brownfield Redevelopment in the US
17. International Environmental Justice—The Link Between the Concept of Environmental Justice and a Human Right (or Constitutional Right) to a Clean and Healthy Environment in Chile (or India)
18. International Environmental Justice—The Transport of E-Waste (or Hazardous Waste) From the US (or the EU) to China (or Africa)
19. Environmental Injustice (or the Lack of Sustainable Development) in Puerto Rico (or a Country in Africa, or in Southeast Asia, or a Small Island Developing State in the Pacific Ocean, or in South America, or in the Middle East, or in Indian Country, etc.)—A Case Study
20. Environmental Justice and the Assessment and Management of Risk in Louisiana (or New Jersey or another US state)

21. Tort Law and Environmental Justice—The Potential of Toxic Tort, Trespass and Nuisance Legal Theories to Address Environmental Justice Concerns in New Jersey (or Louisiana or another state)
22. Environmental Justice Legal Theories and Tactics—The Comparative Merit of Legislation, Litigation, ADR, and Collaborative Problem—Solving
23. Environmental Justice and the Procedural Requirements of NEPA (and/or little NEPAs such as CEQA)—A Panacea?
24. Environmental Justice and Disclosure Laws—EPCRA (or Proposition 65) as an Aid to Addressing Environmental Justice Concerns
25. The Potential Implications of California’s Environmental Justice Act and the South Air Coast Management District’s Environmental Justice Plan
26. Environmental Justice and Farmworkers—Disproportionate Exposure to Environmental Harms and Risks
27. Environmental Justice and Mining Activities in West Virginia
28. Environmental Justice and the Data Wars—An Insurmountable (or Surmountable) Evidentiary Burden for Communities
29. Environmental Justice and CAFOs—The Impact on Rural (or Native American) Communities
30. Environmental Injustice—The Unequal Distribution of Beach Access, Open Spaces, and Wilderness Areas
31. Environmental Justice and Transportation—Building Highways and the Adverse Impacts to Urban Communities
32. Environmental Justice and Transportation—Building Highways and the Adverse Impacts to Sacred Sites in Indian Country
33. Nuclear Waste Facilities (or Hazardous Waste Facilities) in Indian Country—Self-Determination or Economic Exploitation
34. The Essential Role of National (or State or Local) Government in Protecting Human Health and the Environment and Achieving Sustainable Development for Communities—A Case Study

35. Environmental Justice and Education–The Siting of Elementary Schools on Former Landfills and EPA’s Initiative to Address This National Issue
36. Environmental Justice and Healthcare–The Lack of Access to Adequate Healthcare and Impacted Communities in Louisiana (or New Jersey or another state)
37. Environmental Justice and High Blood-Lead Levels in Children–Analysis of EPA’s (or a state’s) Initiatives to Address This National Issue
38. Cross Border Collaboration and Conflict Between the US and Mexico on Enforcement: The Internationalization of Domestic Environmental Law and Its Sustainable Development Consequences
39. The Conflict Between the US Constitution and State Constitutions Regarding the Human Right to a Clean and Healthy Environment
40. The Trump Administration and the Issue of Environmental Justice – Some Predictions