

**Professor Barry E. Hill
Vermont Law School**

**Summer 2019 – 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.

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, EPA's Title VI administrative complaint, investigation, and resolution processes; and the quest by U.S. citizens for a human right to a safe, clean and healthy environment in an international forum.

This course examines the idea of an environmental rights amendment in the bill of rights sections of state constitutions and the U.S. constitution as a way to ensure a safe, clean and healthy environment for all Americans.

Course Materials: 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.

The following article entitled, "Time for a New Age of Enlightenment for U.S. Environmental Law and Policy: Where Do We Go From Here?" by

Professor Hill (Environmental Law Reporter)(April 2019) is available on the TWEN site for this class.

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 38 suggested topics is provided at the end of this syllabus. You must choose one of these suggested topics for your paper.

Course Readings:

TOPIC: IS AN ENVIRONMENTAL RIGHTS AMENDMENT THE ANSWER?

- ELR article (TWEN site)

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, 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)
- textbook, Chapter 6, “Addressing the Problem: The Private Bar and Corporate America” (pp. 820-836)

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) and (pp. 641-677)

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

- textbook, Chapter 5, “Addressing the Problem: The Judicial Branches” (pp. 677-695) (pp. 764-785)

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 Need for Setting New Standards for Fish Consumption–Environmental Justice and the Price for Protective Standards in Indian Country
 7. Public Participation and Environmental Justice–Leveling the Playing Field
 8. Public Participation and Environmental Justice–Influencing the Government’s (or Industry’s) Decision-making Processes
 9. Devolution of Environmental Justice–Will Decentralizing Government Decision-making to the Local Level Exacerbate or Alleviate Environmental Justice Concerns?
 10. Unequal Enforcement of Protective Environmental Laws–How Does It Happen and How to Fix It?
 11. International Environmental Justice–The Environmental Justice Implications of Climate Change and Potential Solutions for the Poor and Extremely Poor in Bangladesh (or the Caribbean or Miami or some other place on the planet)
 12. International Environmental Justice–Transitioning to Sustainable Economies for the Colonias Along the U.S./Mexico Border
 13. International Environmental Justice–Environmental Justice Critique of U.S. Free Trade Agreements
 14. Environmental Justice Implications of Brownfields Redevelopment in the U.S.
 15. 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)
 16. International Environmental Justice–The Transport of E-Waste (or Hazardous Waste) From the U.S. (or the E.U.) to China (or Africa)
 17. 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

18. Environmental Justice and the Assessment and Management of Risk in Louisiana (or New Jersey or another U.S. state)
19. 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)
20. Environmental Justice Legal Theories and Tactics—The Comparative Merit of Legislation, Litigation, ADR, and Collaborative Problem—Solving
21. Environmental Justice and the Procedural Requirements of NEPA (and/or little NEPAs such as CEQA) – A Panacea?
22. Environmental Justice and Disclosure Laws—EPCRA (or Proposition 65) as an Aid to Addressing Environmental Justice Concerns
23. The Potential Implications of California’s Environmental Justice Act and the South Air Coast Management District’s Environmental Justice Plan
24. Environmental Justice and Farmworkers – Disproportionate Exposure to Environmental Harms and Risks
25. Environmental Justice and Mining Activities in West Virginia
26. Environmental Justice and the Data Wars – An Insurmountable (or Surmountable) Evidentiary Burden for Communities
27. Environmental Justice and CAFOs – The Impact on Rural (or Native American) Communities
28. Environmental Injustice – The Unequal Distribution of Beach Access, Open Spaces, and Wilderness Areas
29. Environmental Justice and Transportation – Building Highways and the Adverse Impacts to Urban Communities
30. Environmental Justice and Transportation – Building Highways and the Adverse Impacts to Sacred Sites in Indian Country
31. Nuclear Waste Facilities (or Hazardous Waste Facilities) in Indian Country – Self-Determination or Economic Exploitation
32. 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

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