



Essential Readings in Environmental Law
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ENVIRONMENTAL JUSTICE

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Overview of Key Scholarships

1. Bullard, R. D. (ed), *Unequal Protection: Environmental Justice and Communities of Color* (Sierra Club Press 1994)
2. Cole, L.W. and S. R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (New York University Press 2000)
3. Anton, D. K. and D. L. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2011) (Chapter 2, *The Environment as a Human Rights Issue*, and Chapter 6, *Procedural Human Rights and the Environment*)
4. Gerrard, M.B. and S. R. Foster (eds), *The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risk* (American Bar Association, Section of Environment, Energy, and Resources 2012)
5. Gonzalez C., *Environmental Justice and International Environmental Law*, in Alam, S, J. H. Bhuiyan, T.M.R. Chowdhury and E. Techera (eds), *Routledge Handbook of International Environmental Law* (Routledge 2013)
6. Ebbesson J. and Okowa P., (eds), *Environmental Law and Justice in Context*, (Cambridge University Press, 2009).
7. Lazarus, R. B., *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection* (87 Nw. U. L. Rev. 787-857, 1993)
8. Anand, R., *International Environmental Justice: A North-South Dimension* (Ashgate 2004)
9. National Academy of Public Administration, *Environmental Justice in EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency's Mission* (December 2001, available at <http://www.epa.gov/environmentaljustice/resources/reports/annual-project-reports/napa-epa-permitting.pdf>).

10. U.S. Environmental Protection Agency, Plan EJ 2014 (September 2011 available at <http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-2011-09.pdf>).

Background

Environmental justice has become a core issue for environmental programs around the world. The origins of environmental justice (also sometimes referred to as environmental racism) are well-captured in Professor **Bullard's** book. He was one of the early leaders in the environmental justice movement in the United States. Typically, environmental justice is thought of as having two elements—substantive or distributional justice which means that all persons regardless of income level or race should be equally protected from the adverse impact of pollutants and other adverse environmental impacts, and procedural justice which means that all persons should have the opportunity to participate in environmental decisions that affect them. The reading by **Luke Cole** and Professor **Foster** and the reading by Professor **Lazarus** address these issues. The reading authored by Professor **Gonzalez** adds two additional elements: corrective and social justice.

The term environmental justice arose in the United States as a result of studies looking at where hazardous waste facilities were sited in relation to communities of color and low income communities. Perhaps as a result, the ideas about how to address environmental injustices are perhaps most detailed in a Presidential Executive Order issued by President Clinton and in the U.S. Environmental Protection Agency's Plan 2014 that lays out how environmental justice considerations should be incorporated into rulemaking, permitting and enforcement. The book by Professors **Gerrard** and **Foster** discuss some of the practical steps in implementing environmental justice policies. Similarly, the readings from the National Academy of Public Administration and EPA's EJ Plan 2014 focus on how to effectively implement environmental justice programs.

As the issue of environmental justice has evolved into a worldwide concern it has taken on new dimensions. Substantive and procedural justice issues remain at the heart of the development of the concept in most countries, although the concept may be discussed more in human rights than in environmental justice terms as the readings from Professors **Anton** and **Shelton** and of Professors **Ebbesson** and **Okawa** demonstrate. Environmental justice has also taken on a north-south justice veneer in recent scholarship, looking at issues like common but differentiated responsibility and questions of resource exploitation. The readings from Professor **Gonzalez** and from Professor **Anand** address this emerging aspect of environmental justice.

1. **Robert Bullard** is a professor of sociology who is often referred to as the “father of environmental justice.” He is one of the key leaders of the environmental justice movement and one of its most prolific authors. *Unequal Protection: Environmental Justice and Communities of Color* is the first of his four books on environmental justice.

Bullard's early work included a study documenting the disproportionate impact on people of color related to waste facility siting in Houston entitled "Solid Waste Sites and the Black Houston Community." The book addresses three major issues drawing on a range of authors with direct experience with environmental justice issues. It first surveys the history of the environmental justice movement focusing on triggering incidents. It then addresses notorious incidents of what Bullard has called "environmental racism." Finally, the book looks at the networking and coalition building that created the environmental justice movement and ultimately led to the adoption of President Clinton's Executive order on Environmental Justice.

2. **Luke Cole** is widely recognized as one of the pioneers in the field of environmental justice advocacy. He co-founded the Center for Race, Poverty & the Environment, an NGO that became widely known for its environmental justice legal work. **Sheila R. Foster** is one of the most prominent environmental justice scholars in the United States. Their book, titled *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, traces the history of the environmental justice movement during its formative years through a series of case. Professor **Richard Lazarus**, Harvard law School, observed that the book "presents the history of the environmental justice movement in the best possible way: through the retelling of the individual stories of local communities that have transformed the nation's environmental laws. Both descriptive and reflective, the book is wonderfully evocative of the passions that have maintained the environmental justice movement and that underlie its enormous promise for social change."
3. Scholars have increasingly linked human rights issues such as the right to life to environmental protection recognizing that clean air, clean water and freedom from exposure to toxics are essential to maintaining a healthy and meaningful life. In addition, procedural justice issues such as the right to participate in decisions affecting environmental quality have become part of the human rights discussion. This interaction between human rights and environmental protection closely mirrors the concerns about environmental justice. **Don Anton** and **Dinah Shelton** are two of the World's leading human rights scholars. Although primarily designed as a teaching text, their book, titled *Environmental Protection and Human Rights*, is perhaps the best source for how the concepts of environmental justice and human rights have merged in the context of environmental law with Chapters 2 and 6 being particularly important in this regard.
4. *The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risk*, a book edited by **Michael Gerrard** and **Sheila Foster**, is the most comprehensive "desk book" on environmental law issues and practice in the United States. It sets out the legal theories, both successful and unsuccessful, that advocates of

environmental justice have utilized to seek redress; examines in detail *Executive Order 12,898* issued in 1994 by President Bill Clinton and still the foundation of environmental justice activities in the Federal government; surveys state environmental justice programs; reviews in-depth a range of procedural justice issues including public participation, access to information, environmental impact assessment, and access to courts; and concludes with several chapters suggesting ways that justice issues can be taken into account in a variety of activities that can have an adverse impact on the environment.

5. In the chapter titled *Environmental Justice and International Environmental Law*, in the book *Routledge Handbook of International Environmental Law*, **Carmen Gonzalez** observes that environmental justice “lies at the heart of most environmental disputes between global North and South as well as grass roots environmental struggles within nations.” She adopts a four-part definition of environmental justice that distinguishes among distributive, procedural, corrective and social justice. The first two types of environmental justice are widely understood. Corrective justice, according to Professor **Gonzalez**, “imposes an obligation to provide compensation for historic inequities, while social justice “recognizes that environmental struggles are inextricably intertwined with struggles for social and economic justice.” She concludes by asserting that if international environmental law is to advance environmental protection, as well as social and economic development, justice norms must be integrated into the corpus of international law.
6. The book *Environmental Law and Justice in Context*, by **Jonas Ebbesson** and **Phoebe Okawa** emerged from “2006 Stockholm Conference on Environmental Law and Justice.” The collection of chapters written by prominent environmental and human rights scholars addresses a range of topics at a time when environmental justice was beginning to achieve prominence at the international level. The book first looks at “The notion of justice in environmental law” with Professor **Dinah Shelton** concluding her chapter by observing “it should not be forgotten, as Thomas Franck has noted, that ‘[t]he law promotes distributive justice not merely to secure greater compliance, but primarily because most people think it is *right* to act justly.” The book then turns to discussions of procedural justice in Part II. Part III of the book looks at environmental justice in the context of state sovereignty and state borders. It then considers some of the North-South justice issues that are addressed in detail **Dr. Anand**’s book discussed below. The book concludes with discussions of justice issues in access to natural resources and in corporate and trade activities.
7. In his article titled *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection* Professor **Richard B. Laurus** focuses on the distributional

effects of environmental law noting that policymakers have not historically paid a great deal of attention to this issue. Even though the article was written more than 20 years ago, the issue remains a key part of the environmental justice issue today, in part because much of the environmental policy in the United States relies on laws that were last modified in significant ways in 1990. The article discusses the reasons that the distributional impacts of environmental laws have not resulted in a just outcome. This includes a discussion of the varied distributional implications of environmental protection laws, as well as the ways in which racial minorities could receive too few of the benefits, or too many of the burdens, associated with those laws. Professor **Lazurus** notes that the “second part of the Article accepts (without purporting to verify) the thesis that distributional inequities exist, and seeks to explain such inequities theoretically in terms of the present institutional framework for the fashioning of environmental protection policy and the probable distributional implications of that framework.” The final part of the article outlines how environmental justice issues might be better addressed. Professor **Lazurus** concludes the “Environmental justice reinforces the continuing and compelling need for measures aimed at eliminating racial discrimination and its self-perpetuating vestiges on the broadest social scale. It confirms the pervasiveness of the distributional problems that persist and their racial origins.”

8. The book by **Ruchi Anand**, *International Environmental Justice: A North-South Dimension*, focuses on North-South dimensions of environmental justice in the context of three cases studies—climate change, hazardous waste, and ozone depleting chemicals. In the Forward to the book **R. K. Pachauri**, the then Chairman of the Intergovernmental Panel on Climate Change, notes that the book highlights the important “moral arguments favoring a more equitable form of justice between nations.” This issue is, of course, reflected in the idea of “common but differentiated responsibility” in the climate change debate over the past decade or more. In the book Dr. **Anand** uses the term “South” not as a geographical descriptor but instead as a term “that reflects the common experiences of people in [Asia, Africa, and Latin America] as a result of historically determined social and economic conditions resulting from their colonial and imperial past.” The book brings the lens of environmental justice that has primarily been directed to issues of fairness within a particular nation to the international context and the question of fairness among nations.
9. Coming six years after Executive Order 12898 was issued by President Clinton, *Environmental Justice in EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency’s Mission*, is an in-depth study by the National Academy of Public Administration. It provides an analysis of the status of environmental justice at EPA and, more importantly, detailed recommendations about what EPA needed to do to fully integrate environmental justice into the work of the Agency. Many of the

recommendations were eventually reflected in *U.S. EPA's Plan 2014* that, under the strong leadership of EPA Administrator **Lisa Jackson** (who had experienced environmental justice issues in growing up in New Orleans' Ward 9), finally embedded environmental justice in the core activities (rule writing, permitting and enforcement) of the Agency and provided a model for how other agencies can effectively implement environmental justice procedures.

10. The **U.S. Environmental Protection Agency's *Plan EJ 2014*** implements U.S. EPA's most fully formed conception of how environmental justice considerations should be embedded in agency activities including rulemaking, permitting and enforcement. The plan includes separate guidance documents for integrating environmental justice into rule making, permitting and enforcement.

Further recommended readings:

1. Bean, V., *What's Fairness Got to do with It? Environmental Justice and the Siting of Locally Undesirable Land Use* (78 Cornell Law Review 1001 (1993))
2. Bullard, R.D. , P. Mohai, R. Saha, and B. Wright, *Toxic Wastes and Race at Twenty: 1987-2007* (United Church of Christ 2007)
3. Le Bouthillier, Y., M.A. Cohen, J. J. Gonzalez Marquez, A. Mumma, and S. Smith (eds), *Poverty Alleviation and Environmental Law* (Edward Elgar Press 2012) (Chapter 2, D. Shelton, *Using law and equity for the poor and the environment*, Chapter 5, S. Sabzwari and D. N. Scott, *The quest for environmental justice on a Canadian Aboriginal Reserve*, Chapter 7, L. C. Paddock, *The role of public engagement in achieving environmental justice*, and Chapter 9, P. Martin, *Embedding social justice in the design of environmental regulation*)
4. Bullard, R. D., *Dumping in Dixie: Race, Class and Environmental Quality* (Westview Press 2000)
5. Bullard, R. D., *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (Sierra Club Press 2005)
6. Osofsky, H.M., *Learning from Environmental Justice: A New Model for International Environmental Rights* (24 Stanford Environmental Law Review 21, 2004)
7. President of the United States, Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, December

11, 1994. This is the Executive Order that now 20 years later remains the touch stone for agency consideration of environmental justice in the United States. It is perhaps the first major governmental directive in the World focusing on environmental justice.

8. Rechtschaffen, C., E. Gauna and C. A. O'Neill, Environmental Justice: Law, Policy and Regulation (Carolina Academic Press 2009)
9. Rhodes, E. L., Environmental Justice in America: A New Paradigm (Indiana University Press 2003)
10. Schlosberg, D., Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press 2007)
11. U.S. EPA, National Environmental Justice Advisory Council, Ensuring Risk Reductions in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts (December 2004, available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>). The National Environmental Justice Advisory Council (NEJAC) is the community stakeholder voice at EPA for environmental justice. This report focuses on the particularly difficult issue of cumulative impact from multiple risks.