

Columbia University School of Professional Studies
M.S. in Sustainability Management

K4510 Environmental Justice: Law, Policy & Communities

3 Credits

Instructor: Marianne Engelman Lado
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Office Hours: My regular office hours would take place one hour before or after class but I am also more than happy to arrange an appointment at a different time if these hours do not work for a student.

Response Policy: The best way to reach me or to arrange an appointment is to email me at the address above. You can expect a response within 24 hours.

Course Overview

In the Forward to “Confronting Environmental Racism: Voices from the Grassroots,” edited by Robert D. Bullard (Boston: South End Press, 1993), the Rev. Benjamin F. Chavis, Jr. wrote:

Millions of African Americans, Latinos, Asians, Pacific Islanders, and Native Americans are trapped in polluted environments because of their race and color. Inhabitants of these communities are exposed to greater health and environmental risks than is the general population. Clearly, all Americans do not have the same opportunities to breathe clean air, drink clean water, enjoy clean parks and playgrounds, or work in a clean, safe environment.

Bullard, at 3. This course will examine the Environmental Justice Movement, its origins, tenets, challenges, and strategies, focusing specifically on issues of environmental health addressed by the Movement, including disproportionate exposure to toxics, special problems related to the impact of industrial agriculture, and human health problems associated with pesticide use. The Environmental Justice Movement emerged in the late 1980s, as communities of color organized to oppose the disproportionate siting of toxic sources in their neighborhoods. The Movement offered a critique and alternative approaches to the “greens.” At the same time, the movement for racial justice outside of the environmental justice context was struggling with new challenges in and out of the courtroom. What are the core tenets of the Movement? What environmental health issues has the Environmental Justice Movement tackled and how? What legal handles are available to address environmental injustice, and what are their limitations? What approaches have environmental justice activists taken to overcome these limitations and assert their own vision for their communities? What are the roles that lawyers can play – and what is the role of law – in redressing environmental injustice and opening pathways, political space, for community participation in decisions affecting the health and future of low-income communities of color and environmentally overburdened communities, more generally? What are the roles of policy-makers and corporate entities that are daily making decisions that impact the future of communities and their environment?

“Environmental Justice: Law, Policy & Communities” will examine legal, policy, and community-based approaches to addressing the disproportionately high and adverse health and environmental effects of contamination on communities of color and low income communities in the United States, as well as efforts to give effect to the right of all people to participate in decisions affecting their health and environment. As the Black Lives Matter movement gains traction, why do so many communities of color remain saddled with toxic sites and lack of infrastructure – and what are the roles of community residents, lawyers, corporate policy-makers, and government officials in addressing issues of environmental justice?

Starting with the origins, tenets, challenges, and strategies of the environmental justice movement, the course will then turn to the environmental and civil rights laws that shape the debate. The final weeks of the course will focus on particular environmental justice issues, including disproportionate exposure to toxics, special problems related to the impact of industrial agriculture, and human health effects of pesticide use on farmworkers and their families, to examine the roles of various stakeholders and the effectiveness of various strategies.

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This course satisfies the Area 4: Public Policy curriculum area requirement.

Learning Objectives

The goal of the course is to introduce students to environmental justice, on historical, conceptual, legal and policy levels, and, at the same time, to offer a set of analytic tools that can be applied to related legal and policy issues. By the end of the course, students will be able to:

- build skills to assess issues from multiple perspectives: the lawyer or advocate, the community member or other stakeholder, and decision-makers in the policy arena and business.
- identify legal and policy issues
- develop vocabulary about various issues and strategies related to issues of inequality, the environment, and environmental health
- think both analytically and creatively about issues of injustice, the environment and environmental health, bringing to bear historical, legal and policy frameworks
- critically evaluate the role(s) of the law in addressing issues of inequality, the environment and environmental health and in creating opportunities for change
- critically evaluate arguments related to issues of inequality, the environment and environmental health
- evaluate particular policy issues (such as food policy, the use of pesticides, or permitting of facilities) in light of historical, conceptual, legal and policy framework
- draft legal and/or policy document (e.g., comments, testimony, petition, complaint)

Readings

The below texts are required readings for this course:

- Rechtschaffen, Clifford, Eileen Gauna, and Catherine A. O'Neill, Environmental Justice: Law, Policy & Regulation, 2nd ed. (Durham, NC: Carolina Academic Press, 2009);
- Konisky, David, ed., Failed Promises: Evaluating the Federal Government's Response to Environmental Justice (Cambridge, Mass.: MIT Press, 2015);
- Robert D. Bullard, Dumping in Dixie (Boulder, Colorado: Westview Press, 2000);
- Cole, Luke and Sheila Foster, From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement (New York: New York University Press, 2002); and
- Jill Lindsey Harrison, Pesticide Drift and the Pursuit of Environmental Justice, (2011).

Additional judicial opinions, as well as statutory and regulatory materials will be made available online via Courseworks.

Resources

Columbia University Library

Columbia's extensive library system ranks in the top five academic libraries in the nation, with many of its services and resources available online: <http://library.columbia.edu/>.

SCE Academic Resources

The Office of Student Life and Alumni Relations (SLAR) provides students with academic counseling and support services such as online tutoring and career coaching: <http://ce.columbia.edu/student-life-and-alumni-relations/academic-resources> .

Course Requirements (Assignments)

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Each student will be expected to submit three written products during the course of the semester.

First, each student will be responsible for helping to lead class discussion on the assigned reading once during the semester and will submit a 2-3 page discussion paper with analysis of the material at least 2 days in advance of the class.

Second, each student will be responsible for selecting an issue of environmental justice and reviewing a book or significant article on the topic. The review should be no longer than 5 pages, double-spaced. This assignment will be due mid-semester.

- Law students taking this class will be responsible for drafting a memo on the viability of instituting or defending against legal action or raising or defending a legal claim in an administrative forum on behalf of stakeholders. This memo should also be no longer than 5 pages, double-spaced, and will be due mid-semester. It will provide a starting point for the final project.

Finally, building on the topic reviewed and analyzed mid-semester, each student will also be responsible for a research paper on the topic.

- Law students taking this class will be responsible for one of the following final projects on a current issue of environmental justice: (1) draft a model complaint on behalf of stakeholders for a legal forum, raising legal claims, (2) draft a proposed policy for a corporate or government stakeholder that is responsive to environmental justice concerns, or (3) draft comments on a proposed rule published by EPA on an environmental justice issue. These comments can present an argument based in the law and/or environmental health. Each student will also be responsible for submitting a short 1-2 page reflection on the viability of pursuing legal action or the strength of the environmental justice argument, whichever is relevant. Together, the complaint or comments, and reflection, constitute a final project .

Final projects should be no more than 10 pages, double-spaced and will be due at the end of the semester.

Evaluation/Grading

Your final grade will be based on evaluations of the following:

1. class participation, including your leadership of discussion on the assigned date (10%)
2. discussion paper (15%)
3. the mid-term memo (25%)
4. the final project (50%)

Each component will be evaluated and given a letter grade, and then the components will be combined in the above proportions into a final letter grade.

Course Policies

Participation and Attendance

You are expected to do all assigned readings, attend all class sessions, and engage with others in online discussions. Your participation will require that you answer questions, defend your point of view, and challenge the point of view of others. If you need to miss a class for any reason, please discuss the absence with me in advance.

Late work

There will be no credit granted to any written assignment that is not submitted on the due date noted in the course syllabus; late assignments are permitted only with advance notice and permission from the instructor. All written assignments must use MLA Style, cite sources, and be submitted to the course website (not via email).

Course Schedule/Course Calendar

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Week 1: History & Tenets of Environmental Justice: Part I

- Commission for Racial Justice, United Church of Christ, “Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites” (1987), available at <http://www.ucc.org/about-us/archives/pdfs/toxwrace87.pdf>.
- Rechtschaffen, Chapter 1, Overview of the Environmental Justice Movement, 3-33 (reading includes Kuehn, “A Taxonomy of Environmental Justice, 30 *Env’tal Law Rep.* 10,681 (2000); Been, “What’s Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses,” 78 *Cornell Law Rev.* 1001 (1993)).

Supplemental Reading for Law Students:

- Schwemm, Robert G., “Cox, Halprin, and Discriminatory Municipal Services Under the Fair Housing Act,” 41 *Indiana Law Rev.* 717 (2008) (early efforts to address environmental justice through Fair Housing Act).

Week 2: History & Tenets of Environmental Justice: Part II

- Bullard, *Dumping in Dixie*. Bullard’s book provides a backdrop for understanding the goals and strategies of the environmental justice movement, as well as for exploring the roles of lawyers and the tools that lawyers might use to address environmental inequities.

Week 3: The Evidence: Evaluating the Empirical Evidence About the Unequal Distribution of Environmental Benefits and Burdens

- Rechtschaffen, Chapter 2, 35 – 71.

Week 4: Process, Power & the Role(s) of the Lawyer

- Cole, Chapter 7, Transformative Politics, 151 – 165.
- Konisky, Chapter 6, “Public Participation and Environmental Justice: access to Federal Decision Making,” 143-171.

Supplemental Reading for Law Students:

- Cole, *Environmental Justice Litigation: Another Stone in David’s Sling*, 21 *Fordham Urban Law Journal* 523 (1994)(evaluating legal approaches, including process-based challenges).

Week 5: Legal Strategies – Litigation, Citizen Enforcement and Common Law Remedies; Constitutional Principles & Claims

- Rechtschaffen, Chapter 13, 433 – 469.
- Rechtschaffen, Chapter 14, 471 – 492.

Week 6: Legal Strategies– EJ & Title VI of the Civil Rights Act of 1964

- Rechtschaffen, Chapter 14, 492 – 517.
- Konisky, Chapter 8, “Environmental Justice in the Courts,” 205-226.

Supplemental Reading for Law Students:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d – 2000d-7.
- EPA Letter of Decision, *Select Steel*, available at http://www.epa.gov/civilrights/docs/ssdec_ir.pdf.
- Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 *Fed. Reg.* 39650 (June 27, 2000), available at http://www.epa.gov/civilrights/docs/frn_t6_pub06272000.pdf.

Week 7: Legal Strategies – EJ, the Executive Order & EJ Policies

- Executive Order 12898, available at <http://www.epa.gov/fedreg/eo/eo12898.htm>

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- Rechtaschaffen, Chapter 10, "Government Initiatives to Address Environmental Justice," 328 – 353.
- Konisky, Chapter 2-4, "The Federal Government's Response to Environmental Inequality," 29-56; Federal Environmental Justice Policy in Permitting," 57–83; "Assessing the EPA's Experience with Equity in Standard Setting," 85-116.

Week 8: Legal Strategies – EJ & Environmental Laws

- Rechtaschaffen, Chapter 8, "Permits and Public Enforcement," 249 – 284
- Rechtaschaffen, Chapter 9, "Contaminated Properties," 285 – 293

Week 9: Prep for Discussion of Issues of Environmental Justice

No Assigned Readings

Assignments Due:

- Class Presentations
- Memos Due at Beginning of Class 9

Week 10: International Law

- Rechtaschaffen, Chapter 10, 317 – 328.
- Second Amended Petition and Petitioners' Observations on the Government's Reply Concerning the United States Government's Failure to Protect the Human Rights of the Residents of Mossville, Louisiana, United States of America, Submitted to the Inter-American Commission on Human Rights (June 23, 2008), at 1-33 (remainder optional), available at http://www.ehumanrights.org/docs/Mossville_Amended_Petition_and_Observations_on_US_2008.pdf.

Week 11: EJ Issues Facing Native Americans

- Rechtaschaffen, Chapter 4, American Indians and Environmental Justice, 107-138 (reading includes Royster, Native American Law, *The Law of Env. Justice: Theories and Procedures to Address Disproportionate Risks* 199 (Gerrard & Foster, eds., 2d ed. 2008); Williams, Jr., "Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World," *92 West Virg. Law Rev.* 1133 (1994)).
- Cole, Chapter 6, In Defense of Mother Earth, 134 – 150.

Week 12: EJ & Environmental Health: Toxics

- Rechtaschaffen, Chapter 6, Risk and Health, 175 – 211.
- Hearing, Subcommittee on Superfund, Toxics and Environmental Health, U.S. Senate Committee on Environment and Public Works, "Assessing the Effectiveness of U.S. Chemical Safety Laws" (February 3, 2011), available at http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=cd4fd6b9-802a-23ad-4d18-eac94d1414b3 (written statements of witnesses).
- EJ Letter to EPA (April 7, 2010), available at <http://www.louisvillecharter.org/EJLettertoEPA04.2010.shtml>
- Leadership Council, "Addressing Public Health and Chemical Exposures: An Action Agenda" (June, 2010), available at <http://www.weact.org/LinkClick.aspx?fileticket=ZTnSYZ15fGQ%3d&tabid=614> (Executive Summary).

Week 13: EJ & Environmental Health: Industrial Ag in Eastern North Carolina

- Wing, Steve, Dana Cole, Gary Grant, "Environmental Injustice in North Carolina's Hog Industry," 108 *Environmental Health Perspectives* (March, 2000), available at <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info:doi/10.1289/ehp.00108225>.
- Mirabelli, Maria C., Steve Wing, Stephen W. Marshall, Timothy C. Wikowsky, "Asthma Symptoms Among Adolescents Who Attend Public Schools That are Located Near Confined Swine Feeding Operations," 188 *Pediatrics* 66 (2006), available at <http://pediatrics.aappublications.org/content/118/1/e66.full.pdf>.
- Stith, Pat, Joby Warrick, Melanie Sill, "Boss Hog: The Power of Pork; North Carolina's Pork Revolution," Raleigh News & Observer (February 19 - 28, 1995), available at <http://www.pulitzer.org/archives/5892>.
- Pew Commission on Industrial Farm Animal Production, "Putting Meat on the Table: Industrial Farm Animal Production in America," Executive Summary, at 1-35, available at <http://www.ncifap.org/images/PCIFAPSmry.pdf>.
- *Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 100, 574 S.E. 2d 48 (2002).

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Week 14: EJ & Environmental Health: Pesticides

- *Angelita C., et al., v. California Department of Pesticide Regulation*, Preliminary Finding (April 22, 2011), available at <http://www.epa.gov/civilrights/TitleVICases/title6-c42211-preliminary-finding.pdf>.
- Jill Lindsey Harrison, "Pesticide Drift and the Pursuit of Environmental Justice," (2011), Chapters 1-3.

Supplemental Reading for Law Students:

- Proposed Agricultural Worker Protection Standard and Comments, see <http://www.epa.gov/oppfead1/safety/workers/proposed/>

Assignments Due: Final Paper

School Policies

Copyright Policy

Please note -- Due to copyright restrictions, online access to this material is limited to instructors and students currently registered for this course. Please be advised that by clicking the link to the electronic materials in this course, you have read and accept the following:

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

Academic Integrity

Columbia University expects its students to act with honesty and propriety at all times and to respect the rights of others. It is fundamental University policy that academic dishonesty in any guise or personal conduct of any sort that disrupts the life of the University or denigrates or endangers members of the University community is unacceptable and will be dealt with severely. It is essential to the academic integrity and vitality of this community that individuals do their own work and properly acknowledge the circumstances, ideas, sources, and assistance upon which that work is based. Academic honesty in class assignments and exams is expected of all students at all times.

SCE holds each member of its community responsible for understanding and abiding by the SCE Academic Integrity and Community Standards posted at <http://ce.columbia.edu/student-life-and-alumni-relations/academic-integrity-and-community-standards>. You are required to read these standards within the first few days of class. Ignorance of the School's policy concerning academic dishonesty shall not be a defense in any disciplinary proceedings.

Accessibility

Columbia is committed to providing equal access to qualified students with documented disabilities. A student's disability status and reasonable accommodations are individually determined based upon disability documentation and related information gathered through the intake process. For more information regarding this service, please visit the University's Health Services website: <http://health.columbia.edu/services/ods/support>.