



Volume 96 | Issue 4

Article 7

June 1994

Environmental Injustice and Racism: Making the Connection in Classrooms and Courtrooms

Patrick C. McGinley

West Virginia University College of Law, patrick.mcginley@mail.wvu.edu

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

 Part of the [Environmental Law Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Patrick C. McGinley, *Environmental Injustice and Racism: Making the Connection in Classrooms and Courtrooms*, 96 W. Va. L. Rev. (1994).

Available at: <https://researchrepository.wvu.edu/wvlr/vol96/iss4/7>

This Essays on Environmental Justice is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

ENVIRONMENTAL INJUSTICE AND RACISM: MAKING THE CONNECTION IN CLASSROOMS AND COURTROOMS

PATRICK C. MCGINLEY*

Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

—Dr. Martin Luther King, Jr.¹

When we try to pick out anything by itself, we find it hitched to everything else in the universe.

—John Muir²

* Professor of Law, West Virginia University College of Law. A.B., Dickinson College; J.D., Duke University School of Law.

1. Letter from Birmingham jail (Apr. 16, 1963). Halfway around the globe and nearly three decades later those struggling for freedom in South Africa have noted the connection between human rights and environmental justice:

Our vision of the environment is woven into an overall framework of social, economic and racial justice. . . . Environment affords us a platform to address some of the critical issues of our time: questions of militarism and defense, religious freedom, cultural survival, energy and sustainable development, the future of our cities, transportation, housing, land ownership rights, self-determination, employment and workers rights.

Dana Alston, *Environment and Development: An Issue of Justice*, in HIDDEN FACES, ENVIRONMENT, DEVELOPMENT, JUSTICE: SOUTH AFRICA AND THE GLOBAL CONTEXT 187 (Dana Hallows ed., 1993).

2. JOHN MUIR, MY FIRST SUMMER IN THE SIERRA 211 (1911), *quoted in*, ZYGMUNT J.B. PLATER ET AL., ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY xxvii (1992). Professors Plater, Abrams, and Goldfarb's coursebook begins with the above quotation of Sierra Club founder and naturalist John Muir. "Indeed," they emphasize, "'Everything is connected to everything else' is the first law of ecology." The essays contained in

After reviewing a survey of responses returned to him by more than one hundred environmental law teachers, Professor Joseph Sax observed that:

what discourages [environmental] law teachers is . . . a sense of being drawn into a system in which enormous energy must be expended on something that is ultimately vacuous. As I read the letters, I imagined spending years learning the minutiae of an extraordinarily difficult language, only to find, at the end, that it wasn't a language of communication at all, but just empty babble³

As an environmental law teacher for the better part of two decades, I acknowledge that my level of frustration has often been high, though not quite reaching the "babble" stage. Something just wasn't connecting and I couldn't explain it. Then one frigid afternoon in mid-January I made a connection, or rather a connection was made with me.

"Are we going to discuss environmental racism in this course?" asked an African-American student the day before spring semester classes began. Familiar with the budding environmental justice literature of the late 1980s and early 90s, I'd like to report that I responded positively and with enthusiasm to the student's question.⁴ The fact was, however, that environmental racism and injustice was not on my environmental law course syllabus. To be truthful, I had not even given it a thought.

symposium as well as the other scholarship relating to environmental racism, environmental justice, and environmental equity reveal the inter-connectedness of environmental law, ecology, and human rights.

3. Joseph Sax, *Environmental Law in the Law Schools: What We Teach and How We Feel About It*, 19 E.L.R. 10,251 (1989).

4. As Professor Robert W. Collin has recently observed, the recent flurry of activity among legal scholars to examine environmental racism, environmental justice, and environmental equity was foreshadowed by two decades of study and research by social scientists. Robert W. Collin, *Review of the Legal Literature on Environmental Racism, Environmental Equity, and Environmental Justice*, 9 J. ENVTL. LAW & LITIG. (forthcoming fall 1994). Interestingly, this substantial body of research and scholarship on environmental justice, equity, and racism was largely ignored by environmental law scholars until the late 1980s. Professor Collin's review of the extant literature will prove an invaluable resource for those attempting to acquaint themselves with this body of scholarship.

Having taught and practiced environmental law in the heart of Appalachia for almost two decades, I felt compelled to set my sights on more modest goals.

First, I wanted to nurture a handful of home-grown advocates whom, after acquiring a basic knowledge of environmental law, might choose to give counsel to those who otherwise would go unrepresented. It seems that there is never a shortage of bright young lawyers eager to toil for the big law firms and their well-heeled clients. In contrast, there are never enough lawyers to insure justice for many other West Virginians—those who, like their grandparents and great-grandparents, have labored at low or modest wages assisting the great oil, gas, and coal giants in ripping, cutting, and pumping the State's enormous natural resource wealth from what once had been their own land.⁵

Second, for the majority of my students, a number of whom become sometime or full-time advocates for the rippers, cutters, and pumpers, I have tried to reinforce the notion that there is much more to being a lawyer than financial security. Environmental law, even as conceived in the 1970s and 80s, provided an excellent vehicle for making this important point.

To accomplish these goals, I assiduously attempted every year to lay out for my students the basic structure of several environmental regulatory statutes, along with a pinch of NEPA and the snail darter. I generally added to the mix a sprinkle of citizen suits and a dash of

5. Of course, if one is making connections, one must also note that these early pioneer refugees from European oppression seized this land from indigenous inhabitants. This connection, in turn, leads to other connections between human rights, the environment, and the exploitation of natural resources. For example, in conducting a statement in his 1962 trial, Nelson Mandela observed:

Many years ago, when I was a boy brought up in my village in the Transkei, I listened to the elders of the tribe telling stories about the good old days, before the arrival of the white man. Then our people lived peacefully, under the democratic rule of their kings and amapakati [those of highest rank next to the king], and moved freely and confidently up and down the country without let or hindrance. Then the country was ours, in our own name and right. We occupied the land, the forests, the rivers; we extracted the mineral wealth beneath the soil and all the riches of this beautiful country.

From extracts of the court record of the trial of Nelson Rolihlahla Mandela held in the Old Synagogue court, Pretoria, South Africa (October 15-November 7, 1962), *quoted in*, NELSON MANDELA, *THE STRUGGLE IS MY LIFE* 149 (1990).

tort and injunction law. A garnish of ecologist's writings flavored the pot. At opportune moments, I attempted to add to this goulash-like blend a variety of stories/cases of past and present exploitation of the land and people in Appalachia and elsewhere.⁶ These injected case stories were offered to encourage students to confront reality—in each—lawyers were involved.

Sometimes we talk about the late nineteenth century lawyers who wrote "broad-form" deeds for slick-talking corporate land agents. Deeds in hand, these men traversed the remote, densely forested mountains and hollows of the Appalachian plateau. Cajoling signatures or a mark on those fine-printed documents to witness the culmination of "deals" struck with rough-hewn and often illiterate mountain people who then inhabited that rugged wilderness.⁷ Those lawyers' well-drafted handiwork successfully and permanently transferred ownership of Appalachia's vast reserves of coal, oil, gas, and timber from common

6. Books like JOHN FETTERMAN, *STINKING CREEK* (1967); HARRY CAUDILL, *NIGHT COMES TO THE CUMBERLAND* (1963); *FIGHTING BACK IN APPALACHIA: TRADITIONS OF RESISTANCE AND CHANGE* (Stephen L. Fisher ed., 1993); and GERALD STERN, *THE BUFFALO CREEK DISASTER* (1977), discuss elements of the environmental injustices visited upon the inhabitants of the Appalachian plateau. I found that environmental law students, when exposed to such sources, are able to make connections that enhance their singular exposure to environmental law at our university. For example, one student wrote of Caudill's book in a recent exam:

Caudill's book demonstrates the relationship between exploitation of natural resources and exploitation of human resources. The big coal and timber companies stripped more than coal and timber from the land; they stripped the people of their dignity and left in its place polluted water and ravaged eroded mountains. This legacy of exploitation survives today in many areas of appalachia where welfare and disability checks outnumber pay checks.

Student's Environmental Law Examination (copy on file with author).

7. Of these "broad form" or "long" deeds, John Fetterman wrote: Long ago the settlers in Appalachia sold their rights to the minerals. This was done through the "long deeds," wordy documents that gave up all rights at the going rate—usually fifty cents an acre. The long deeds further decreed that whoever held title could take timber, pollute or divert streams, destroy buildings, level mountains, choke valleys—in fact take any step necessary to get at the mineral wealth they had acquired. The courthouses of eastern Kentucky are full of these ancient deeds, many signed with an X, and to read them would make Jesse James blush. But the mere taking of the minerals was not a disaster, the manner in which they were being taken is the blow from which East Kentucky may never recover.

JOHN FETTERMAN, *STINKING CREEK* 26 (1967).

people into the hands of a corporate oligopoly that operated from the boardrooms of New York, Philadelphia, Richmond, and other centers of finance and industry.⁸

Sometimes we talk about the advice lawyers gave to the manufacturers of materials like asbestos⁹ or kepone¹⁰ when their clients first revealed to them the toxic nature of those chemicals and the harm they were causing. And, we seldom miss discussing what it would be like to represent Pittston Coal Company when it was sued by the next of kin of men, women, and children whose lives were snuffed out by the wall of water that roared down Buffalo Creek after the company's ill-maintained dam collapsed.¹¹

8. RONALD D. ELLER, *MINERS, MILLHANDS, AND MOUNTAINEERS: INDUSTRIALIZATION OF THE APPALACHIAN SOUTH, 1880-1930* 64 (1982). Eller recounts the role of lawyers in the transfer of the region's natural resource wealth, and in the process, makes a connection to the slave holding plantation culture of the South:

The mountains had always contained a small ruling class whose economic power and political influence were derived from long-standing ownership of large tracts of land. Having evolved over the years into a planter-lawyer-merchant class, these mountain elites had much in common with the wealthier planters of the lowland South When outside capitalists sought to acquire land in the mountains in the 1870's and 1880's, resident lawyers grew rich on corporate retainers and through ownership of valuable real estate.

Id. at 58.

9. See generally PAUL BRODEUR, *OUTRAGEOUS MISCONDUCT: THE ASBESTOS INDUSTRY ON TRIAL* (1985).

10. See, e.g., William Goldfarb, *Kepone: A Case Study*, 8 ENVTL. L. 645 (1978). The exposure and contamination of workers and the James River (Virginia) by the pesticide Kepone and the role of lawyers and the legal system in addressing the serious consequences of this contamination is explored in compelling detail in PLATER ET AL., *supra* note 2, at 40-49.

11. GERALD STERN, *THE BUFFALO CREEK DISASTER* (1976). In February 1972, a massive dam used as part of a coal company's mining operations collapsed in the middle of the night. The resulting rampaging wave of water killed at least 125 people and left thousands homeless while laying waste to the small villages located along the seventeen-mile long Buffalo Creek valley in Logan County, West Virginia. Pittston Coal Company's New York lawyers originally claimed that the disaster was caused by an "act of god." *Id.* at 11-12. Notwithstanding the coal company's disclaimer of liability, its lawyers were immediately dispatched to the area. One contemporaneous account of how Pittston's lawyers responded to the disaster reported that:

In the midst of confusion and rumor, Pittston's lawyers have made sure that Buffalo Creek residents hear about the state's courts—and how the state law protects companies against individual judgments larger than \$10,000. The idea seems to be that people in desperate need of money will despair at the thought of long court-

But environmental racism “No,” I said, “I hadn’t planned to get to it. Sorry.”

As a look of disappointment flashed across the young man’s face, I reconsidered. “Wait a second,” I said, as he turned to leave, “you could help educate me.” “We can dig into the literature and discuss it so that I can better understand and incorporate it into the course next year.” His grimace turned to a smile. “Sounds good,” he said.

That semester he and another student surveyed the literature, talked to me about what they had found and what they were feeling, and ultimately wrote excellent research papers.

Thus, serendipity intervened to put me on the track of what, in my view, is one of the most interesting and exciting subjects a law professor could conceivably be privileged to incorporate into teaching, scholarship, and public service.

The more I have read, discussed, and pondered the many connections of environmental racism and injustice now being woven into the fabric of law, the more I appreciate how inextricably our work as environmental law teachers, scholars, and lawyers is connected to everything else. That is, we law teachers have the privilege and opportunity to explore issues as sublime as the survival of all life on our planet and as basic as the right of an infant not to be poisoned by the paint on her crib or by the air she breathes.

Environmental racism and injustice mean many things to many different people, as evidenced by the diverse perspectives offered by the authors who have contributed to this symposium. One thing is clear. The days of teaching environmental law as just another course in the curriculum are drawing to a close.

Teaching “environmental law” can never quite be the same if one takes the time to make the connections between human rights and the destiny of the planet. Those connections have always been lurking out there just beneath the surface—waiting to be tilled by the likes of Robert Bullard, Rob Williams, Luke Cole, Vicki Been, and Richard

room battles ending up—after years of appeal—with piddling awards. They’ll be inclined to take whatever the company offers. Of course, the company hasn’t offered anything yet—but Pittston has set up three “claims offices” along Buffalo Creek

Id. at 21.

Lazarus who eagerly answered the call and provoked the fertile minds of those assembled at the 1994 annual AALS environmental law section meeting. Novel ideas, creativity, and sensitivity mark the work of scholars and lawyers like Zyg Plater, Robin Morris Collin and Bob Collin, Charlie Lord and Bill Shutkin, Dean Rivkin, Casey Jarman, Marc Poirier, and many others who are seeing and making connections. Their efforts will serve to continue to inform our work and imagination.

Law teachers and lawyers are not (as many of our authors observe) at the center of, nor the key to achieving, environmental justice. But we can play a significant role. While not diminishing the place of such distinguished environmental naturalists as Aldo Leopold, Rachel Carson, or John Muir, the environmental justice connection broadens our perspective to include Dr. Martin Luther King, Jr., who made the connection, and to those like Japhta Lekgetho, of the Soweto-based National Awareness Campaign, with whom we have become aware.¹² There is a message for environmental law teachers and lawyers in Lekgetho's observation that: "It sometimes appears as if it is easier to raise R2 million [two million rand—the currency of South Africa] to save a rhinoceros than to save a human from a life of deprivation. Surely nature conservation is also about the preservation of people?"¹³

Adding new voices and making new connections such as those offered in the pages that follow can change the "common themes of bewilderment and frustration" reported to Professor Sax and invigorate our work in the classroom and courtroom.

12. There are many voices sounding diverse perspectives which should be heard as we seek a broader understanding of environmental injustice and racism. *See generally* Collin, *supra* note 4. Outside the scope of legal scholarship there is a wealth of literature that can be explored. Just a few that I have reviewed and find relevant are CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (Robert D. Bullard ed., 1993); TERRY TEMPEST WILLIAMS, REFUGE: AN UNNATURAL HISTORY OF FAMILY AND PLACE (1991); CAROLYN MERCHANT, THE DEATH OF NATURE: WOMEN, ECOLOGY AND THE SCIENTIFIC REVOLUTION (1989); THE BATTLE FOR SARAWAK'S FORESTS (Sahabat Alam Malasia ed., 1989); RIGOBERTA MENCHU', I RIGOBERTA MENCHU': AN INDIAN WOMAN IN GUATEMALA (1983).

13. Lesley Lawson, *The Ghetto and the Greenbelt*, in GOING GREEN: PEOPLE, POLITICS AND THE ENVIRONMENT IN SOUTH AFRICA (Jacklyn Cock & Eddie Koch eds., 1991).

