

# The Exclusion of Environmental Justice and Race in Environmental Law Casebooks

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## ABSTRACT

*Environmental law responds to what many regard as the most pressing challenges of our time—climate change, rising sea levels, and toxic air pollution, to name a few. The practice of environmental law today is increasingly attentive to environmental justice, and interest in centering environmental justice in the practice of environmental law has only grown in more recent generations of environmental law students. Why have considerations of environmental justice and race nevertheless remained marginalized in the teaching of environmental law? This Article represents the first critical environmental law casebook review in three decades and is the first to center environmental justice and race. It uses an original empirical analysis of twenty-two environmental law casebooks dating back to 1978, around the time the core environmental laws shaped the field. Inspired by the recent wave of scholars in other substantive areas of law who have critically assessed casebooks in order to illuminate what is central to a given field of law and what is being excluded, this Article examines environmental law casebooks' articulation of the environmental law doctrine in order to understand how they treat issues of environmental justice and race. This Article's scholarly contributions are threefold. First, it identifies the dominant features of environmental law casebooks and assesses their treatment of environmental justice and race. Second, it critically analyzes key findings related to the constraining effect of the core environmental laws, the focus on cost-benefit analysis, and the limited treatment of both environmental justice and race. Third, this Article offers recommendations for how to update casebooks to better serve today's environmental law students and future practitioners.*

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## INTRODUCTION

Environmental justice is more prominent in the practice of environmental law today than ever before. The field of environmental law developed in tandem with the mainstream environmental movement, a historically white and middle-class movement that has espoused a narrow view of the scope of environmental issues.<sup>1</sup> As a movement and framework, environmental justice responds in part to the historical failure of the mainstream environmental movement to account for the disparate impacts of environmental harms on vulnerable communities.<sup>2</sup>

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1. See Jedediah Purdy, *The Long Environmental Justice Movement*, 44 *ECOL. L.Q.* 809, 821 (2018). See generally Dorceta E. Taylor, *American Environmentalism: The Role of Race, Class and Gender in Shaping Activism 1820-1995*, 5 *RACE, GENDER & CLASS* 16 (1997).

2. See Purdy, *supra* note 1, at 809.

Not only has the mainstream environmental movement neglected these issues, but it also has a history of marginalizing vulnerable communities and perpetuating negative social externalities in its efforts to advance environmental causes.<sup>3</sup> The Black Lives Matter movement and Standing Rock catalyzed a widespread reckoning in the environmental movement that resulted in environmental advocacy organizations placing a greater focus on racial and environmental justice.<sup>4</sup>

Issues of environmental justice<sup>5</sup> and race have always been intertwined with environmental law and the problems it seeks to address, but it is only in recent years that environmental justice and race have been explicitly named and centered in the field.<sup>6</sup> Environmental law's origins can be traced back to the 1970s and 1980s, when greater public awareness of environmental issues like biodiversity, conservation, and public lands resulted in the passage of several key pieces of federal environmental legislation, which coalesced into the modern field of U.S. environmental law.<sup>7</sup> Environmental law's very intentional and discrete formation as a field gives it an endogenous quality. As opposed to fields like property law and contract law, which have been around for centuries, environmental law was created relatively recently, at a particular time and in response to particular issues.<sup>8</sup> As a result, conceptions of the field of environmental law that were established at its founding have enjoyed particular strength and resilience in the years since. Though the legislation at the core of environmental law is more than four decades old,<sup>9</sup> environmental challenges and the environmental movement itself have undergone much change and expansion over the years.<sup>10</sup>

This Article seeks to assess what the academic doctrine of environmental law looks like today and whether it provides adequate treatment of environmental and racial justice issues, given the inherent importance of these issues as well as their growing prominence in the contemporary practice of environmental law. As today's environmental advocates and organizations increase their focus on

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3. See MARK DOWIE, CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLES xxvii (2009).

4. See Eric K. Yamamoto & Susan K. Serrano, *Foreword to the Republication of Racializing Environmental Justice*, 92 U. COLO. L. REV. 1383, 1385 (2021); Phil McKenna, *Environmental Justice Grabs a Megaphone in the Climate Movement*, INSIDE CLIMATE NEWS (Jan. 5, 2018), <https://insideclimateneews.org/news/05012018/environmental-justice-climate-activism-standing-rock-black-lives-matter>.

5. I view racial justice as an essential component of environmental justice. When environmental justice is discussed alone, it is not meant to exclude issues of race.

6. See Purdy, *supra* note 1, at 821 ("In the early 1990s, mainstream environmental institutions began to incorporate environmental justice themes.").

7. See generally Purdy, *supra* note 1.

8. See Purdy, *supra* note 1, at 812.

9. Though not solely an environmental law, the Inflation Reduction Act represents what some view as the greatest piece of legislation in support of environmental and climate causes in several decades. See, e.g., Nicholas S. Bryner, *Green Transitions in a Covid Economy*, 40 PACE ENV'T L. REV. 37, 52-53 (2022).

10. See Bryner, *supra* note 9, at 37-39. See generally Purdy, *supra* note 1.

environmental justice frameworks and disparities along racial lines,<sup>11</sup> it is important to understand how environmental law casebooks integrate these considerations into the formal articulation of the field and into the instruction that future environmental law practitioners receive. Prioritizing environmental justice in the teaching of environmental law helps ensure that the practice of environmental law—and environmental advocacy more broadly—does not continue to result in social harms and is instead both cognizant of the history of environmental advocacy and intentional about righting its wrongs. To address these inquiries, this Article conducts an original empirical analysis of environmental law casebooks—asking how they are structured, what they teach, and what they lack. This Article looks to casebooks as the formal articulation of the field and as the primary source of knowledge for future environmental law students and practitioners alike.<sup>12</sup>

This Article takes inspiration from casebook reviews in other legal fields, such as property law,<sup>13</sup> contract law<sup>14</sup>, and constitutional law.<sup>15</sup> These studies have analyzed casebooks not only because they are central to teaching future generations of practitioners, but also because they reflect how the field understands itself. In her influential article, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, K-Sue Park conducts an expansive review of property law casebooks and illustrates how “the histories of conquest and slavery explain aspects of the system—its construction of jurisdictions, property value, ground-level institutions, and organization of force, for example—that belong at the core of the curriculum and the field.”<sup>16</sup> This Article similarly seeks to understand how casebooks articulate the field of environmental law and what perspectives and issues might be left out of the narratives that the casebooks advance.

This Article also takes inspiration from legal scholarship providing a critical perspective on the treatment of race in various legal doctrines, such as the work

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11. See, e.g., Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT. RES. DEF. COUNCIL (Mar. 17, 2016), <https://www.nrdc.org/stories/environmental-justice-movement>.

12. Though law professors may supplement casebooks with additional readings on their syllabi, law casebooks typically make up the core content of a course for a given field of law. See generally K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062, 1070 (2022) (describing the central role of law casebooks as forming the “official story of the law”).

13. See *id.*

14. See, e.g., Dylan C. Penningroth, *Race in Contract Law*, 170 U. PA. L. REV. 1199 (2022).

15. See, e.g., A. Leon Higginbotham Jr., *Race, Racism and American Law*, 122 U. PA. L. REV. 1044 (1974).

16. Park, *supra* note 12, at 1062.

of Thomas Mitchell,<sup>17</sup> Maggie Blackhawk,<sup>18</sup> and Kevin R. Johnson.<sup>19</sup> These critical perspectives push back on the tendency across legal fields to see issues of race and social justice as separate from legal doctrine. For example, property law scholar Thomas Mitchell works to unveil how the doctrine of property law has deprived Black and other vulnerable communities of property and real estate wealth, highlighting implications that are not commonly discussed in the doctrine.<sup>20</sup> Additionally, in her article, *Federal Indian Law as Paradigm Within Public Law*, Professor Maggie Blackhawk critiques the public law doctrine for its exclusion of the “tragic history of colonialism and violent dispossession of Native lands, resources, culture, and even children” from the histories informing the doctrine and “our constitutional framework.”<sup>21</sup> This Article ultimately offers a similar critique of environmental law’s neglect of Black, Indigenous, and People-of-Color (BIPOC) communities.

Several scholars have critically reviewed the field of environmental law. In Marian R. Chertow’s and Daniel C. Esty’s 1997 book, *Thinking Ecologically: The Next Generation of Environmental Policy*, the authors articulate an ecological critique of environmental law, analyzing its siloed approach to environmental issues and advocating for a new generation of environmental policies that are more diverse and comprehensive than the core environmental laws.<sup>22</sup> Similarly, in Todd S. Aagaard’s review of the environmental law canon, he argues for an intersectional approach to environmental laws, which includes law and policy that overlaps with other fields of law, such as property law and federal Indian law.<sup>23</sup> Some scholars have specifically focused their critiques on how the field treats environmental justice. Luke Cole’s 1994 article, *Environmental Justice in the Classroom: Real Life Lessons for Law Students*, advocates for the incorporation of environmental justice in the teaching of environmental law and for integrating a practical component in environmental law coursework.<sup>24</sup> Cole further argues against the isolated discussion of and “checking off” of environmental justice as a topic restricted to a single day of instruction.<sup>25</sup> He argues that such treatment “creates and perpetuates the false notion that environmental justice is somehow separate from ‘real’ environmental

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17. See, e.g., Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 59 (2014); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557 (2005).

18. See, e.g., Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787 (2019).

19. See, e.g., Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525 (2000).

20. See Thomas W. Mitchell, MACARTHUR FOUNDATION (2022), <https://www.macfound.org/fellows/class-of-2020/thomas-wilson-mitchell#searchresults>.

21. See Blackhawk, *supra* note 18, at 1789.

22. See generally MARIAN R. CHERTOW & DANIEL C. ESTY, *THINKING ECOLOGICALLY: THE NEXT GENERATION OF ENVIRONMENTAL POLICY* (1997).

23. See Todd S. Aagaard, *Environmental Law Outside the Canon*, 89 IND. L.J. 1239, 1284 (2014).

24. See generally Luke W. Cole, *Environmental Justice in the Classroom: Real Life Lessons for Law Students*, 96 W. VA. L. REV. 1051 (1994).

25. See *id.*

law.”<sup>26</sup> This argument is continued, most recently, in 2022 by Cinnamon P. Carlarne’s article, *Climate Courage: Remaking Environmental Law*, where Carlarne discusses the evolution of the field of environmental law as a field “detached” from the reality of environmental justice and emphasizes the importance of centering the “youth, Indigenous peoples, and progressive political leaders” in remaking a transformative and intersectional future for the field.<sup>27</sup>

Though critical reviews of the field of environmental law have been conducted, there has been only one comprehensive environmental law casebook study to date.<sup>28</sup> In 1984, William Funk conducted a review of environmental law casebooks in order to understand their pedagogical strengths regarding the comprehensive treatment of the subject matter, the breadth and depth of the theory, and the instruction of lawyerly skills.<sup>29</sup> Funk’s review did not mention race or environmental justice.<sup>30</sup> Other pieces of scholarship include limited analyses of less than a handful of casebooks to bolster a particular point. For example, Daniel Farber has reviewed trends in the design and focus of environmental law casebooks to bolster his argument regarding the chasm between environmental law on the books and environmental law in action.<sup>31</sup>

This Article represents the first critical environmental law casebook review in three decades, and the first to center environmental justice and race. Like other fields of law, environmental law stands to benefit from critical reviews and casebook studies. As a field of law directly tied to a social movement, environmental law influences and is influenced by public engagement and activism. Public interest environmental law<sup>32</sup> is meant to center public and environmental health as well as social justice. Critical reviews of the field can serve as performance assessments—evaluating what the field looks like today and how the academic doctrine can be developed to better reflect the goals of the field and the broader environmental movement it was designed to serve. Moreover, casebooks frame the field for students and future practitioners. Understanding how casebooks’ descriptions of the field deviate from the practice of environmental law can highlight opportunities for casebook authors to update environmental law casebooks to better reflect the reality of the field and to better prepare the next generation of environmental law students for practice. Finally,

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26. *Id.* at 1054.

27. See Cinnamon P. Carlarne, *Climate Courage: Remaking Environmental Law*, 41 STAN. ENV’T L.J. 125, 125-26, 191 (2022).

28. See William Funk, *Recent Environmental Law Casebooks: Searching for a Pedagogical Principle*, 15 ENV’T L. 201, 214-15 (1984).

29. See *id.*

30. See generally Funk, *supra* note 28.

31. See Daniel A. Farber, *Taking Slippage Seriously: Noncompliance and Creative Compliance in Environmental Law*, 23 HARV. ENV’T L. REV. 297, 322 n.95 (1999) (using a casebook he coauthored as an example of how implementation does not receive adequate attention in environmental law casebooks).

32. When referring to environmental law, this Article generally refers to public interest environmental law, which the casebooks are typically oriented towards.

the findings of empirical review can serve as a primer or disorientation guide for environmental law students as they begin their study of the field.

This Article shares findings from a review of twenty-two environmental law casebooks and shows that environmental justice and race are not regularly discussed in the casebooks. Moreover, when they are discussed, they receive relatively limited treatment. Despite the addition of more contemporary topics like climate change and international environmental law to casebooks published in recent years, there has not been a comparable improvement in the inclusion of issues of environmental justice and race. The casebook review arrives at four key takeaways: (1) the core historical environmental laws have a constraining effect on the field; (2) the casebooks prejudicially focus on cost-benefit analysis as a framework; (3) environmental justice is cabined within specific parts of environmental law; and (4) the casebooks contain limited discussions of race. These takeaways reveal how casebooks' narrow account of environmental law restricts the way that environmental law is understood and taught, highlighting the need for a reconsideration of how environmental law casebooks are constructed.

This Article proceeds as follows. Part I discusses the results of the casebook review, which finds that environmental law casebooks are predominantly organized around the core environmental laws and include only limited treatment of environmental justice and race. Part II provides a critical and contextual analysis of the structure and content of environmental law casebooks. Lastly, Part III provides recommendations for how environmental law casebooks could be strengthened by integrating environmental justice and race and thus better reflecting what the practice of environmental law looks like today.

## I. ENVIRONMENTAL LAW CASEBOOK REVIEW

For this study, I reviewed twenty-two environmental law casebooks. For some casebooks, I reviewed two to three editions of the same casebook in order to track changes over time.<sup>33</sup> This study focuses exclusively on casebooks that offer a broad overview of environmental law, purposefully omitting those casebooks that deal with specific topics within environmental law, such as water or climate change.<sup>34</sup> By focusing on casebooks that provide an overview of the field, the study speaks to how the environmental law field as a whole is treated in the academy.<sup>35</sup> There are three main ways I analyzed these casebooks: through their tables of contents, indexes, and treatment of core environmental justice cases.

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33. For each casebook reviewed, I used the most recent edition available in the Yale Law Library and, when possible, also reviewed the oldest edition available in the library as well.

34. See, e.g., GREGORY WEBER, JENNIFER HARDER & BENNETT BEARDEN, *CASES AND MATERIALS ON WATER LAW* (9th ed. 2014); RICHARD HILDRETH, DAVID HODAS, NICHOLAS ROBINSON & JAMES SPETH, *CLIMATE CHANGE LAW: MITIGATION AND ADAPTATION* (1st ed. 2009).

35. This also prevents findings from being skewed by the particularities of a given subtopic of environmental law.

First, I examined the chapter headings in the extended tables of contents—which detail the subsections and excerpts included in each chapter—in order to understand how each casebook framed and prioritized different environmental law issues. I also reviewed the expanded tables of contents to see if there were any chapters or subsections devoted to environmental justice, race, or related topics. I looked for key terms such as “environmental justice,” “environmental racism,” and “human rights.” The full list of search terms is included in Table 1. The goal was to create a relatively inclusive list and to determine if the casebooks’ discussion of environmental justice and race was sufficiently substantial to be included in the detailed tables of contents.

Table 1. Terms Used in Table of Contents and Index Reviews

List of Terms
Discrimination
Disparate Impact
Environmental Justice
Equity/Equality
Human Rights
Indian/Indigenous/Native/Tribal/Tribe/Aborigines
Locally Unwanted Land Use (“LULU”)
Not in My Backyard (“NIMBY”)
Race/Minority
Social Justice/Social Impact

Second, I browsed the indexes<sup>36</sup> of casebooks that had them for the same terms listed in Table 1.<sup>37</sup> I started with a base set of terms—namely, environmental justice, equity, and race. I looked for these terms in each index and iteratively expanded the list as I learned what related terms commonly appear in casebook indexes. In addition to looking for the terms of interest that I identified, I also noted any other relevant index entries, such as “distribution of wealth” and “low-income populations,” which are not necessarily tied to environmental justice but suggest consideration of relevant themes.<sup>38</sup>

Third, I searched for mention or discussion of five key environmental justice cases that are commonly cited in environmental justice scholarship and

36. All casebooks except one have an index. The one casebook without an index, RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (3rd ed. 2015) [hereinafter REVESZ (2015)], but has an index in an earlier edition and the table of contents between editions is substantially the same. See RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (1st ed. 2008) [hereinafter REVESZ (2008)].

37. The full set of terms I looked for are: “discrimination,” “disparate impact,” “environmental justice,” “equity” or “equality,” “human rights,” “Indian,” “Indigenous,” “Locally Unwanted Land Use(s) (LULUs),” “Native,” “Not in My Backyard (NIMBY),” “Population,” “Race,” “Social Darwinism,” and “Tribe” or “Tribal.”

38. Not all authors have a hand in developing a casebook’s index, but the findings from the indexes broadly reflect the terms that were notable in the casebook’s content.



that have been included in some environmental law casebooks.<sup>39</sup> These five cases represent the lowest-hanging fruit for casebooks to include because they are commonly recognized as prominent environmental justice cases that deal with issues of equity and race. These cases are: *Bean v. Southwestern Waste Management*,<sup>40</sup> *East-Bibb Twiggs Neighborhood Association v. Macon-Bibb Planning & Zoning Commission*,<sup>41</sup> *Native Village of Kivalina v. ExxonMobil Corp.*,<sup>42</sup> *R.I.S.E., Inc. v. Kay*,<sup>43</sup> and *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*.<sup>44</sup> I marked the presence of these cases as instances of the incorporation of environmental justice content in the casebooks, while accounting for instances in which older casebooks predated these cases and excluding those older casebooks from the analysis where appropriate.

This methodology was designed to obtain a general understanding of the state and focus of environmental law casebooks today. Notably, only one of the casebooks reviewed was published after the height of the Black Lives Matter protests in the summer of 2020, which catalyzed a racial justice reckoning in the

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39. I used a literature review as well as consultations with Professor Gerald Torres and practitioners in the field to select these cases.

40. See *Bean v. Sw. Waste Mgmt.*, 482 F. Supp. 673, 674 (S.D. Tex. 1979). *Bean v. Southwestern Management* is regarded by some as the first lawsuit challenging environmental racism. See Robert Bullard, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States*, 119 ENV'T HEALTH PERSP. A266, A266 (2011) (book review). Plaintiffs brought suit alleging a Section 1983 claim of racial discrimination in the siting of a waste facility in a Black community in Texas. See *Bean*, 492 F. Supp. 673. The court in this case found that there was insufficient evidence to prove discriminatory intent and denied the plaintiffs' request for an injunction. See *id.* at 678. Though the waste facility was ultimately built in the neighborhood, the case sparked the use of litigation as a tool for addressing environmental harms in communities.

41. 662 F. Supp. 1465 (M.D. Ga. 1987). Similar to *Bean*, Plaintiffs in *East-Bibb* filed a Section 1983 suit seeking to enjoin the Planning Commission from allowing a landfill to be cited in the Plaintiffs' neighborhood in Georgia. See *id.* at 1466. The court did not find discriminatory intent and denied the plaintiffs' substantive due process, procedural due process, inverse condemnation, and equal protection claims. See *id.* at 1469.

42. See 663 F. Supp. 2d 863, 883 (N.D. Cal. 2009). The Plaintiffs in *Kivalina* were members of a tribe filing a common law nuisance claim for monetary damages from the energy industry for flooding in Alaska caused by climate change. See *id.* The district court dismissed it as a political issue that needs to be decided by Congress and the Executive. See *id.* The Ninth Circuit affirmed the decision, *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 854 (9th Cir. 2012), and the Supreme Court denied cert. See *Native Vill. of Kivalina v. Exxon Mobil Corp.*, 569 U.S. 1000, 1000 (2013) (denying cert).

43. See 768 F. Supp. 1144, 1145 (E.D. Va. 1991). Like *Bean* and *East-Bibb*, *R.I.S.E.* also deals with an equal protection suit in response to the siting of a landfill but this time in Richmond, Virginia. Though the court found disparate impact, it did not find discriminatory intent and thus denied Plaintiffs' claim. The Court of Appeals affirmed the lower court decision. See *R.I.S.E., Inc. v. Kay*, No. 91-2144, 1992 WL 295129, at 1 (4th Cir. 1992).

44. See *S. Camden Citizens in Action v. N.J. Dep't of Env't Prot.*, 274 F.3d 771, 774Y (3d Cir. 2001). The suit, filed by residents of the South Camden community in New Jersey, was brought under Section 1983, claiming that the siting of a cement grinding facility in their minority community was discriminatory. See Wyatt G. Sassman, *Environmental Justice as Civil Rights*, 18 RICH. J.L. & PUB. INT. 441, 454-55 (2015) (citing *S. Camden*, 274 F.3d 771, 774-76). Though they succeeded in showing disparate impact and enjoining the plant under Section 1983, the Third Circuit reversed based on the then-recent decision in *Alexander v. Sandoval*. See *id.*; see also *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

broader environmental movement. Casebooks are typically updated every few years, which makes this a pivotal moment to understand the treatment of environmental justice and race in environmental law casebooks and to identify gaps for future editions to address. The following Parts discuss the findings from this study, which are organized along the lines of three main inquiries regarding the structure of environmental law casebooks, their treatment of environmental justice, and their treatment of race.

#### A. *The Structure of Environmental Law Casebooks*

Environmental law casebooks are primarily organized around the core environmental laws passed by Congress in the 1970s and 1980s. These include: the Clean Air Act (CAA); the Clean Water Act (CWA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the National Environmental Policy Act (NEPA); the Resource Conservation and Recovery Act (RCRA), and the Endangered Species Act (ESA).<sup>45</sup> A minority of casebooks also center more peripheral environmental laws, such as the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Superfund Amendments and Reauthorization Act (SARA).<sup>46</sup>

The casebook review reveals how the decision to focus on these laws shapes the casebooks' approach to framing the field of environmental law. Nineteen of the twenty-two tables of contents reviewed are, at the highest level, organized around the environmental issues addressed by these laws—e.g., air pollution, water pollution, waste management—if not the laws themselves.<sup>47</sup> The remaining three casebooks are organized according to the tools of environmental law—e.g., statutes, regulations, the administrative state, enforcement.<sup>48</sup> The centrality of the core laws is as prominent in contemporary casebooks as in older editions. The persistence of this organizational framework is also demonstrated by how little the tables of contents of most casebooks have changed with new editions. Six of the casebook series with multiple editions included in the study were organized around the core environmental laws in the earliest and latest

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45. See Bill Sapp & Kate Grunin, *Dining on the Alphabet Soup of Environmental Law: An Overview for Non-Environmental Lawyers*, 9 GA. BAR J. 12, 13 (2004).

46. Other, less notable, environmental laws include the Pollution Prevention Act (PPA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Oil Pollution Act (OPA), and the Solid Waste Disposal Act (SWDA). See *id.*

47. See, e.g., DANIEL A. FARBER, ANN E. CARLSON & WILLIAM BOYD, *CASES AND MATERIALS ON ENVIRONMENTAL LAW* xxix (10th ed. 2019) [hereinafter FARBER ET AL. (2019)]; CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, *LEGAL PROTECTION OF THE ENVIRONMENT* xi-xix (2d ed. 2007) [hereinafter JOHNSTON ET AL. (2007)]; see Appendix A.

48. See, e.g., ZYGMUNT J. B. PLATER, ROBERT H. ABRAMS & WILLIAM GOLDFARB, *ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY* xii-xi (2d ed. 1998) [hereinafter PLATER ET AL.] (including “legal processes,” regulation, statutory design, and dispute-resolution mechanisms as topics of various Parts of the casebook); see Appendix A.

edition reviewed,<sup>49</sup> one casebook series shifted from being organized around tools to being organized according to substantive environmental law or issue between editions.

In their discussion of these core laws, casebooks commonly include extensive treatment of cost-benefit analysis (CBA) and markets-based approaches. Most casebooks include “cost-benefit analysis,” “economics,” and “markets” in their expanded table of contents.<sup>50</sup> One casebook from 2018 covers both CBA and environmental justice in its introductory section on “Theoretical Issues.”<sup>51</sup> This section has eight pages dedicated to CBA, as well as an additional four pages to risk analysis and one page to the “polluter pays” principle.<sup>52</sup> In contrast, only three pages are dedicated to environmental justice.<sup>53</sup> Moreover, almost all of the casebooks reviewed have extensive entries in the index under “cost-benefit analysis.”<sup>54</sup> As Part III explains, this is likely due to the fact that CBA and markets-based approaches form the basis on which most of the core laws are administered today.<sup>55</sup>

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49. See HOLLY D. DOREMUS, ALBERT C. LIN & RONALD H. ROSENBERG, ENVIRONMENTAL POLICY LAW: PROBLEMS, CASES, AND READINGS 519-40 (6th ed. 2012) [hereinafter DOREMUS ET AL.]; THOMAS J. SCHOENBAUM, RONALD H. ROSENBERG & HOLLY D. DOREMUS, ENVIRONMENTAL POLICY LAW: PROBLEMS, CASES, AND READINGS (4th ed. 2002) [hereinafter SCHOENBAUM ET AL.]; THOMAS J. SCHOENBAUM, ENVIRONMENTAL POLICY LAW: CASES, READINGS, AND TEXT (1st ed. 1982) [hereinafter SCHOENBAUM]; FARBER ET AL. (2019), *supra* note 47, at xxix; DANIEL A. FARBER, JODY FREEMAN & ANN E. CARLSON, CASES AND MATERIALS ON ENVIRONMENTAL LAW xv-xvi (8th ed. 2010) [hereinafter FARBER ET AL. (2010)]; ROGER W. FINDLEY & DANIEL A. FARBER, CASES AND MATERIALS ON ENVIRONMENTAL LAW xxix (3rd ed. 1991) [hereinafter FARBER ET AL. (1991)]; ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (6th ed. 2009) [hereinafter PERCIVAL ET AL. (2009)]; ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 417 (1st ed. 1992) [hereinafter PERCIVAL ET AL. (1992)]; CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT ix-x (4th ed. 2018) [hereinafter JOHNSTON ET AL. (2018)] (titled chapters after core environmental laws including NEPA, the CWA, the CAA, RCRA, and CERCLA); JOHNSTON ET AL. (2007), *supra* note 47; REVESZ (2015), *supra* note 36; REVESZ (2008), *supra* note 36; ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER, DANIEL BODANSKY & EMILY HAMMOND, ENVIRONMENTAL PROTECTION LAW AND POLICY xi-xxix (8th ed. 2019) [hereinafter GLICKSMAN ET AL. (2019)]; ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER & DANIEL BODANSKY, ENVIRONMENTAL PROTECTION LAW AND POLICY (6th ed. 2011) [hereinafter GLICKSMAN ET AL. (2011)]

50. See, e.g., ROBIN KUNDIS CRAIG, ENVIRONMENTAL LAW IN CONTEXT: CASES AND MATERIALS xi (4th ed. 2016) [hereinafter CRAIG]; GLICKSMAN ET AL. (2011), *supra* note 49, at xi-xxix; FARBER ET AL. (2010), *supra* note 49, at 110.

51. See JOHNSTON ET AL. (2018), *supra* note 49, at xi.

52. See *id.*

53. See *id.*

54. See, e.g., JOHNSTON ET AL. (2018), *supra* note 49; CRAIG ET AL., *supra* note 50; ZYGMUNT J. B. PLATER, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW AND SOCIETY (4th ed. 2010) [hereinafter PLATER (2010)].

55. Executive Order 12,291, which required a CBA analysis for all proposed rules, charged the Office of Information and Regulatory Affairs (OIRA) with the review. See Albert C. Lin, *Fig Leaves, Pipe Dreams, and Myopia: Too-Easy Solutions in Environmental Law*, 93 U. COLO. L. REV. 727, 751 (2022). In carrying out this charge, OIRA has generally leaned towards deregulation. See *id.* As Albert C. Lin describes, “OIRA’s mission is not to determine whether a rule is stringent enough; deregulatory rules and agency inaction escape OIRA review. Thus, OIRA’s skewed review process has not only weakened

### B. Treatment of Environmental Justice

Across casebooks, environmental justice is only minimally treated and is often siloed into discussions of particular topics. This Part identifies the most common topics under which environmental justice is mentioned in casebooks' extended tables of contents. Next, it discusses casebooks' treatment of environmental justice according to their indexes. Lastly, it identifies how, if at all, the core environmental justice cases are treated in the casebooks.

In total, only fifteen casebooks mention environmental justice in their extended table of contents.<sup>56</sup> The oldest casebook reviewed that explicitly names environmental justice in the table of contents or the index was published in 1994,<sup>57</sup> meaning that the five oldest casebooks do not mention environmental justice explicitly in either location. This generally follows the timeline of when “environmental justice” entered the legal lexicon.<sup>58</sup> Some tables of contents that do not mention “environmental justice” explicitly still discuss relevant themes. For example, the oldest casebook reviewed does not mention environmental justice by name but includes “Distributional Considerations” in the table of contents as part of a broader discussion of “The Limitations of Economic Analysis and the Pursuit of Social Goals Other Than Efficient Resource Allocation.”<sup>59</sup>

To illustrate how casebook authors understand the relationship between environmental justice and environmental law, this Part discusses the five topics in environmental law casebooks that most frequently include a discussion of environmental justice according to the tables of contents. Notably, some casebooks discuss environmental justice with regards to more than one topic. In the casebooks reviewed, environmental justice most frequently appears in an

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regulation but ‘largely stymied it altogether.’ Even the possibility that OIRA might oppose a rule has sometimes prompted EPA to weaken or abandon proposed rules.” *Id.*

56. See TODD AAGAARD, DAVE OWEN & JUSTIN PIDOT, *PRACTICING ENVIRONMENTAL LAW* xv (2d ed. 2021) [hereinafter AAGAARD ET AL.]; GLICKSMAN ET AL. (2019), *supra* note 49, at xii, xxiv; FARBER ET AL. (2019), *supra* note 47, at ix; JOHNSTON ET AL. (2018), *supra* note 49, at xi; CRAIG, *supra* note 50, at xi; REVESZ (2015), *supra* note 36, at xiv; DOREMUS ET AL., *supra* note 49, at 519-40; GLICKSMAN ET AL. (2011), *supra* note 49, at xi-xxix; FARBER ET AL. (2010), *supra* note 49, at xviii; PLATER (2010), *supra* note 54 at xix; PERCIVAL ET AL. (2009), *supra* note 49, at xi, xvi; REVESZ (2008), *supra* note 36, at xvi; JOHNSTON ET AL. (2007), *supra* note 47, at xi; SCHOENBAUM ET AL., *supra* note 49, at xx; MENELL & STEWART, *supra* note **Error! Bookmark not defined.**

57. See MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at 128, 133, 1231 (providing excerpts from Paul Mohai & Bunyan Bryant, *Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards*, 63 U. COLO. L. REV. 921 (1992) and Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics*, 103 YALE L.J. 1383 (1994), and including “environmental justice” under the index entry for “normative considerations”).

58. To gauge the usage of “environmental justice” in legal contexts, I searched “environmental justice” using the quote function on HeinOnline and observed the number of entries per decade. From 1980-1989 to 1990-1999, entries jumped from 200 to 5599. See “Environmental Justice,” HEINONLINE (last visited May 18, 2022), <https://perma.cc/5NEG-P3YF>.

59. STEWART & KRIER, *supra* note **Error! Bookmark not defined.**, at xvii (discussing the how costs and benefits of environmental issues and environmental law are distributed amongst different demographics).

introductory chapter. Ten of the twenty-two casebooks reviewed discuss ideas of environmental justice in the introduction or in a chapter dedicated to theories of environmental law.<sup>60</sup> Examples of the latter include “Some Perspectives on Environmental Law”<sup>61</sup> or “The Other Influences of Federal Environmental Law,”<sup>62</sup> which include broad discussions of normative frameworks and considerations in the field. The oldest casebooks that mention ideas of environmental justice in introductory chapters generally discuss them in the context of economic analysis and distributional considerations, including the siting of hazardous facilities.<sup>63</sup> Five out of the six most recent casebooks discuss environmental justice in an introductory chapter; the casebook that does not do so also provides no explicit mention of environmental justice or related topics in the table of contents or index.<sup>64</sup>

Chapters on hazardous waste and siting practices, risk assessment, air pollution, and international environmental law are the only other chapters in the casebooks reviewed that include environmental justice explicitly in the table of contents. It should be noted that these topics are also commonly mentioned in discussions of environmental justice in the introductory chapters. When environmental justice is included in chapters on hazardous waste, it is often discussed in the context of (discriminatory) siting practices.<sup>65</sup> Six of the twenty-two casebooks reviewed include siting issues as a subtopic under hazardous waste in their tables of contents.<sup>66</sup> Environmental justice is also included in chapters on risk assessment in three casebooks reviewed, two of which are different editions of the same casebook.<sup>67</sup> Additionally, two casebooks mention environmental injustices that result from tradable emission permits from the Clean Air Act.<sup>68</sup> Lastly, two editions of the same casebook discuss

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60. See AAGAARD ET AL., *supra* note 56, at 24-26, 45-59, 507-11; GLICKSMAN ET AL. (2019), *supra* note 49, at 51; FARBER ET AL. (2019), *supra* note 47, at 12-13, 15-18, 35; JOHNSTON ET AL. (2018), *supra* note 49, at 38; CRAIG, *supra* note 50, at 16; GLICKSMAN ET AL. (2011), note 49, at 53; FARBER ET AL. (2010), *supra* note 49, at 147; PERCIVAL ET AL. (2009), *supra* note 49, at 15-26; JOHNSTON ET AL. (2007), *supra* note 47, at xi; and MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at 128-32.

61. JOHNSTON, *supra* note 47.

62. CRAIG, *supra* note 50.

63. See MENELL & STEWART, *supra* note **Error! Bookmark not defined.**; STEWART & KRIER, *supra* note 59, at 168-72.

64. See LINDA A. MALONE & WILLIAM M. TABB, ENVIRONMENTAL LAW, POLICY, AND PRACTICE (3rd ed. 2020) [hereinafter MALONE & TABB]. This casebook also does not include any of the environmental justice cases included in the casebook review. See *id.*

65. See AAGAARD ET AL., *supra* note 56, at 507-11; GLICKSMAN ET AL. (2019), *supra* note 49, at xxiv; CRAIG, *supra* note 50, at 121; DOREMUS ET AL., *supra* note 49, at 519-40; GLICKSMAN ET AL. (2011), *supra* note 49, at 836-37; SCHOENBAUM ET AL., *supra* note 49, at 558-81.

66. See AAGAARD ET AL., *supra* note 56; GLICKSMAN ET AL. (2019), *supra* note 49, at xxiv; CRAIG, *supra* note 50, at 121; DOREMUS ET AL., *supra* note 49, at 519-40; GLICKSMAN ET AL. (2011), *supra* note 49, at 836-37; SCHOENBAUM ET AL., *supra* note 49.

67. See FARBER ET AL. (2019), *supra* note 47, at 100, 104, 106, 108-11, 117; REVESZ (2015), *supra* note 36, at 125; REVESZ (2008), *supra* note 36, at 126.

68. See DOREMUS ET AL., *supra* note 49, at 746-59; PLATER (2010), *supra* note 54.

environmental justice in a chapter on international environmental law, focusing on issues of climate change or human rights.<sup>69</sup>

Environmental law casebooks typically only discuss environmental justice in one of the five sections described above. However, hazardous waste, risk assessment, air pollution, and international law do not exhaust the list of substantive environmental issues that have environmental justice implications. Additionally, the fact that the most common and extensive discussions of environmental justice tend to occur in introductory sections—as opposed to being consistently integrated into the chapters on substantive environmental law throughout the casebook—may foster a conception of environmental justice as an optional or semi-relevant consideration, rather than one that is ubiquitous and highly consequential. The findings suggest that environmental justice is not comprehensively discussed in environmental law casebooks.

With regards to the index review, thirteen casebooks have an index entry for environmental justice or mention environmental justice under an index entry for a different topic.<sup>70</sup> This list includes all but one<sup>71</sup> of the fifteen casebooks that explicitly mentions environmental justice in their extended table of contents. Based on the index entries, at least five of the fourteen casebooks mention environmental justice in multiple sections throughout the casebook—although some discussions are limited.<sup>72</sup> The indexes provide more granularity to the quantity and substance of discussions of environmental justice in casebooks, which almost completely mirror the most common topics that environmental justice is tied to in the table of contents—namely, hazardous waste, risk assessment, air pollution, and international environmental law.

Lastly, the case review revealed that the five seminal environmental justice cases mentioned above are not commonly included in casebooks. In fact, of the casebooks published after the five seminal cases were decided, one-third do not include any of the cases at all.<sup>73</sup> Moreover, when the five seminal cases are included, they are often presented in the form of “squib cases,” with only a few

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69. See GLICKSMAN ET AL. (2019), *supra* note 49, at 1166-70; and GLICKSMAN ET AL. (2011), *supra* note 49, at 1221-24.

70. See GLICKSMAN ET AL. (2019), *supra* note 49; FARBER ET AL. (2019), *supra* note 47, at 898; JOHNSTON ET AL. (2018), *supra* note 49, at 1068; CRAIG, *supra* note 50, at 1258; DOREMUS ET AL., *supra* note 49, at 519-40; GLICKSMAN ET AL. (2011), *supra* note 49, at 1261; FARBER ET AL. (2010), *supra* note 49, at 1041; PLATER ET AL. (2010), *supra* note 54 at REFERENCE 79; PERCIVAL ET AL. (2009), *supra* note 49, at 1294; REVESZ (2008), *supra* note 36, at 1156; JOHNSTON ET AL. (2007), *supra* note 47, at 826; SCHOENBAUM ET AL., *supra* note 49, at 1010; MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at 1231.

71. See AAGAARD ET AL., *supra* note 56, at 828.

72. See FARBER ET AL. (2019), *supra* note 47 at 898; CRAIG, *supra* note 50, at 1258; DOREMUS ET AL., *supra* note 49, at 519-40; PERCIVAL ET AL. (2009), *supra* note 49, at 1294; and REVESZ (2008), *supra* note 36, at 1156.

73. See, e.g., MALONE & TABB, *supra* note 64 (lacking citation to any of the five environmental justice cases); CRAIG, *supra* note 50 (same); see also Appendix B. Seven casebooks excluded any discussion of the five cases while fourteen casebooks had some mention of at least one of the cases. See *id.*

sentences of discussion or just a citation.<sup>74</sup> These seminal environmental justice cases are not often given full treatment with a substantive excerpt and subsequent notes and questions. Of the fourteen casebooks that include any mention of any of the five cases, only half give at least a single one of the cases full treatment.<sup>75</sup> Some recently published casebooks cite none of the five cases at all.<sup>76</sup> Of the six most recent casebooks, published from 2016 onwards, two do not include mention of any of the cases.<sup>77</sup> Another two only include one of the cases—and both treat it as a “squib” case.<sup>78</sup> The oldest casebook to include a discussion of any of the cases was published in 1992 and discusses *R.I.S.E., Inc. v. Kay*, which was decided the year prior to publication in 1991.<sup>79</sup> Only one casebook discusses four out of five of the cases—the most among any of the casebooks reviewed—and no casebook discusses all five cases.<sup>80</sup> The omission of these cases reflects the limited inclusion of an environmental justice approach to environmental law in the casebooks.

### C. Treatment of Race

Environmental law casebooks are also lacking in their discussion of race. Only six casebooks explicitly mention race or racism in their extended table of contents<sup>81</sup> and an additional two casebooks mention discrimination.<sup>82</sup> The oldest casebook to mention race or racism in its table of contents was published in 1994,<sup>83</sup> and the second oldest to do so was published in 2008.<sup>84</sup> Only eight of the casebooks reviewed include index entries for topics related to race—most

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74. See, e.g., AAGAARD ET AL., *supra* note 56, at 87 n.1 (treating *Native Village of Kivalina v. Exxon* as a squib case); REVESZ (2008), *supra* note 36, at 150 (treating *Bean v. Southwestern* as a squib case); SCHOENBAUM ET AL., *supra* note 49, at 562-64 (treating *East Bibb Twiggs Neighborhood Association v. MaconBibb, R.I.S.E. Inc. v. Kay*, and *South Camden Citizens in Action v. New Jersey Department of Environmental Protection* as squib cases); PLATER ET AL., *supra* note 48, at 53 (citing *Bean v. Southwestern* in a discussion of the Kepone Chemical disaster and environmental justice and also citing *East Bibb Twiggs Neighborhood Association v. MaconBibb*); PERCIVAL ET AL. (1992), *supra* note 49, at 417 (1st ed. 1992) (treating *R.I.S.E. Inc. v. Kay* as a squib case in a discussion questioning whether siting decisions could be challenged under Equal Protection Clause Fourteenth Amendment Grounds, and describing that *R.I.S.E.* held that they could not).

75. See, e.g., GLICKSMAN ET AL. (2019), *supra* note 49, at 818-22 (giving substantive treatment to *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*); REVESZ (2008), *supra* note 36, at 150 (giving full treatment to *East Bibb Twiggs Neighborhood Association v. MaconBibb*); see also Appendix B.

76. See, e.g., MALONE & TABB, *supra* note 64; CRAIG, *supra* note 50.

77. See MALONE & TABB, *supra* note 64; CRAIG, *supra* note 50.

78. See AAGAARD ET AL., *supra* note 56, at 87 n.1; JOHNSTON ET AL. (2018), *supra* note 49, at 86.

79. PERCIVAL ET AL. (1992), *supra* note 49, at 417.

80. See, SCHOENBAUM ET AL., *supra* note 49, at 562-64 (discussing all five cases except *Native Village of Kivalina v. Exxon*).

81. See AAGAARD ET AL., *supra* note 56, at xxii; REVESZ (2015), *supra* note 36, at xiv; DOREMUS ET AL., *supra* note 49; REVESZ (2008), *supra* note 36, at xvi; and MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at xi.

82. Both of the casebooks are different editions of the same series. See FARBER ET AL. (2019), *supra* note 47 at x; FARBER ET AL (2010), *supra* note 49, at xviii.

83. See MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at xi.

84. See REVESZ (2008), *supra* note 36, at xvi.

frequently for “environmental racism” and “minority populations”<sup>85</sup>—and the oldest discussions of race date back to 1992 and 1994.<sup>86</sup> According to their indexes, race is only discussed on one to nine pages of the casebooks.<sup>87</sup>

Notably, each casebook that includes a discussion of race also discusses environmental justice, but the opposite is not always the case.<sup>88</sup> Environmental racism is sometimes discussed as part of a broader introduction to environmental justice theories. In these contexts, it is discussed interchangeably with environmental justice, framed as a “debate,”<sup>89</sup> or acknowledged as an influential issue that is impractical to address through the law because of the barriers existing case law poses to these claims.<sup>90</sup> The impracticality narrative is often corroborated by the history of unsuccessful Equal Protection or affirmative constitutional claims in environmental law.<sup>91</sup> Such accounts can undermine the importance of not just environmental justice, but also environmental racism, in the study and practice of environmental law.<sup>92</sup> Moreover, little attention is paid to how the legal system has been crafted in a way that impedes the success of environmental justice litigation.<sup>93</sup>

In addition, index entries on environmental racism or minority populations often refer to discriminatory siting decisions for hazardous waste facilities and specifically discuss Executive Order 12,898.<sup>94</sup> Executive Order 12,898 was issued by President Bill Clinton to promote the integration of environmental justice into agency decisions.<sup>95</sup> However, even when casebooks provide excerpts from the executive order, there is not much explicit discussion of race in the limited pages allocated.<sup>96</sup> Six casebooks provide explicit and substantive

85. See, e.g., GLICKSMAN ET AL. (2011), *supra* note 49, at 1166-70.

86. See MENELL & STEWART, *supra* note **Error! Bookmark not defined.**, at 128-35 (discussing normative considerations of race and class); PERCIVAL ET AL. (1992), *supra* note 49, at 23 (discussing environmental racism); Appendix C.

87. See, e.g., GLICKSMAN ET AL. (2011), *supra* note 49, at 53, 836-43 (discussing “environmental racism” on eight pages, according to its index); PERCIVAL ET AL. (1992), *supra* note 49, at 23 (discussing “environmental racism” on one page); Appendix C.

88. See, e.g., DOREMUS ET AL., *supra* note 49, at 31, 35, 272, 309, 312, 519-20, 522, 524-25, 527-28, 531-32, 536, 538-39, 746, 748, 752 (discussing both environmental racism and environmental justice in separate sections and discussing only race and not environmental justice—according to the index—on pages 522, 528, and 538); FARBER ET AL. (2010), *supra* note 49, at 147-56 (discussing environmental justice but not race).

89. See, e.g., DOREMUS ET AL., *supra* note 49, at 519-40.

90. See, e.g., GLICKSMAN ET AL. (2011), *supra* note 49, at 53.

91. See, e.g., *id.*

92. See, e.g., *id.*; SCHOENBAUM ET AL., *supra* note 49 at 562-64 (“Even if the South Camden decision survives, environmental justice plaintiffs will continue to face significant barriers. Proving disparate impact, although easier than proving discriminatory purpose, can be challenging. Connecting a disparate impact to the actions of the permitting agency (the recipient of federal funds), rather than the applicant, adds an additional complication. Moreover, Title VI suits cannot challenge federal permitting decisions.”).

93. See, e.g., Cristina Isabel Ceballos, David Freeman Engstrom & Daniel E. Ho, *Disparate Limbo: How Administrative Law Erased Antidiscrimination*, 131 YALE L.J. 370, 379-80 n.28-30 and accompanying text (2021) (discussing lack of race-conscious practices in administrative law).

94. See, e.g., CRAIG, *supra* note 50, at 122-28.

95. See *id.* at 122.

96. See, e.g., *id.* at 122-28.



discussion of race within the context of environmental justice—specifically in the context of *South Camden Citizens*, one of the five seminal environmental justice cases included in the case review portion of this study.<sup>97</sup>

References to Native peoples are easier to discern in indexes or tables of contents than references to other minorities. This is due to Native peoples' unique status as both sovereigns and racialized minorities in the United States, which leads to greater interactions with environmental law—such as through jurisdictional issues—and increases the reasons they might be mentioned in casebooks.<sup>98</sup> However, only five of the casebooks include any reference to terms such as “Indigenous,” “Indian,” “Native,” “Aborigines,” “tribe,” or “tribal” in their index.<sup>99</sup> Only one casebook mentioned any of the five terms in its extended table of contents.<sup>100</sup> Some of the references to Native communities pertain to them as sovereigns (e.g., Indian leases,<sup>101</sup> tribal jurisdiction<sup>102</sup>, “Indian treaty rights”<sup>103</sup>) and others pertain to them as a racial group (e.g., “Indian attitude toward nature,”<sup>104</sup> “communal Indian rights,”<sup>105</sup> “tribal hunting and fishing practices”<sup>106</sup>). When these terms are referenced, it is often with minor treatment. For example, one casebook references particular tribes in an explanation of the Arctic National Wildlife Refuge drilling operation.<sup>107</sup> These findings suggest that the intersection of race and environmental law is not adequately explored in environmental law casebooks.

## II. CRITICAL ANALYSIS OF ENVIRONMENTAL LAW CASEBOOKS

The casebook review reveals several commonalities that deserve critical attention. This Part discusses four findings regarding (1) the constraining effect of the core environmental laws, which results in a sort of path dependency; (2)

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97. See, e.g., GLICKSMAN ET AL. (2019), *supra* note 49, at 818-23.

98. See generally Elizabeth Ann Kronk Warner, *Environmental Justice: A Necessary Lens to Effectively View Environmental Threats to Indigenous Survival*, 26 TRANSNAT'L L. & CONTEMP. PROBS. 343, 344-50 (2017).

99. See FREDERICK R. ANDERSON, DANIEL R. MANDELKER & DAN A. TARLOCK, ENVIRONMENTAL PROTECTION: LAW AND POLICY 43-44, 701, 355 (1st ed. 1984) [hereinafter ANDERSON ET AL.] (discussing “Indians attitude towards nature,” “Indian leases under NEPA 1969,” “Indian reservations” with regards to jurisdiction, and “Indian communal traditions” pertaining to property rights); PERCIVAL ET AL. (1992), *supra* note 49, at 1337,1339 (associated pages discussing “Gwich’in tribe” and “Inupiat/Eskimos” in relation to ANWR drilling); PLATER (2010), *supra* note 54, at REFERENCE 75 (discussing “Aborigines”); DOREMUS ET AL., *supra* note 49, at 324 (discussing “tribal hunting and fishing practices” as well as “biodiversity protection”); CRAIG, *supra* note 50, at 306-07 (discussing “Indian Treaty Rights” under NEPA and “Native Americans” generally as well as under CWA, NPDES permits, and tribal regulatory jurisdiction).

100. See SCHOENBAUM, *supra* note 49 (including “federal and Indian lands” as a topic in a section on mining in its extended table of contents).

101. See ANDERSON ET AL., *supra* note 99, at 701.

102. See *id.* at 355.

103. See CRAIG, *supra* note 50, at 306-07.

104. See ANDERSON ET AL., *supra* note 99, at 43-44.

105. See *id.* at 43-44.

106. See DOREMUS ET AL., *supra* note 49, at 324.

107. See PERCIVAL ET AL. (1992), *supra* note 49, at 24-35.

the focus on cost-benefit analysis and market-based methods; (3) the conceptual cabining of environmental justice; and (4) the limited treatment of race. This Part contextualizes these findings, assesses their impacts, and identifies shortcomings in the casebooks that should be addressed.

*A. Constraining Effect of Core Laws—Creation of a Path Dependency*

In order to understand the role of the core environmental laws in structuring environmental law casebooks, it is helpful to consider the closely intertwined histories of environmental legislation and environmental law casebooks. Environmental law was created in response to popular and political concern for environmental harms.<sup>108</sup> In response to these concerns, Congress passed seminal environmental legislation that still forms the core of the environmental law canon today.<sup>109</sup> The core environmental laws were largely passed in the 1970s and 1980s.<sup>110</sup> The first environmental law casebook was written in 1970,<sup>111</sup> shortly after the passing of the first environmental laws.<sup>112</sup> The core laws have been at the center of the field ever since, almost defining it outright.

A contemporaneous book review of the first environmental law casebook describes the environmental issues of concern at the time—which the newly passed legislation and the casebook responded to—as “poisoned air, poisoned water, poisoned tuna fish, urban sprawl, scarred landscapes, power failures, dying species foretelling our own mortality, and a sea still gong tormented but soon perhaps no longer dolphin torn.”<sup>113</sup> These issues are still the center of the field today, according to casebooks. The dearth of new environmental laws that respond to new environmental challenges as well as changing understandings of the field<sup>114</sup> can be viewed at least partly as a result of the general inactivity of Congress in the intervening decades.<sup>115</sup> Though the organizational role of the

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108. See generally Purdy, *supra* note 1, at 812.

109. See Purdy, *supra* note 1, at 812-13.

110. See Jedediah Purdy, *American Natures: The Shape of Conflict in Environmental Law*, 36 HARV. ENV'T L. REV. 169, 174 (2012). See generally DAVID M. BEARDEN ET AL., CONG. RSCH. SERV., RL30798, ENVIRONMENTAL LAWS: SUMMARIES OF MAJOR STATUTES ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY (2013).

111. See generally OSCAR S. GRAY, CASES AND MATERIALS ON ENVIRONMENTAL LAW (1970).

112. See Peter D. Junger, *Cases and Materials on Environmental Law*, by Oscar S. Gray, 22 CASE W. RESV. L. REV. 598, 598-99 (1971). Interestingly, Junger's review of Professor Gray's book provides a heavy critique of its imperfect compilation, which perhaps may have been expedited to earn the title of the first environmental law casebook. See *id.* at 599-600. It also questions the future of environmental law, wondering if it “may largely be a fad” because “what did ever happen to poverty law?” See *id.* at 604.

113. See *id.* at 598.

114. The Inflation Reduction Act (IRA), passed in August 2022, is the first hallmark federal environmental law in decades. See Nicholas S. Bryner, *Green Transitions in a Covid Economy*, 40 PACE ENV'T L. REV. 37, 52-53 (2022). Most notably, it is more intersectional in the issues it touches than the core environmental laws. See *id.* Though the IRA is likely to shape environmental law casebooks in the future, it was passed after the publication of casebooks reviewed in this study. See *id.*

115. See Steven M. Colloton et al., *Environmental Law: The Role of Congress in Environmental Law*, 6 ARIZ. J. ENV'T L. & POL'Y 554, 554 (2016). In his analysis of the core environmental law cannon, Todd Aagaard discusses the handful of environmental-related laws that passed in the early 2000s and attributes their passage to their disassociation with the core environmental laws, such as not being administered by

core laws in environmental law casebooks is seemingly intuitive, it also serves to limit the conception of environmental law offered in these casebooks, confining it to the parameters of laws passed decades ago.

William Eskridge and John Ferejohn have included the core environmental laws in their category of “superstatutes,” which they argue:

- (1) [E]mbod[y] a new principle or policy displacing common law baselines, responsive to important social or economic challenges facing the country;
- (2) [are] drafted and enacted after a process of publicized institutionalized deliberation responsive to the voices and needs of We the People; and
- (3) [are] stuck in the public culture, after a period of implementation and formal confirmation by Congress after further public discussion.<sup>116</sup>

As a result of their status as superstatutes, Eskridge and Ferejohn argue, these core statutes are not just positioned to be the focal point of environmental law, but also of the environmental movement as a whole.<sup>117</sup> Though the influential and long-term impacts of the core environmental laws are clear, it seems that the “We the People” whom Congress and the laws were responding to was the mainstream environmental movement, which largely neglected questions of environmental justice and race.<sup>118</sup> Todd S. Aagaard expands on the claims in Eskridge and Ferejohn’s article by discussing the implications of the formative role of the core environmental laws for the field.<sup>119</sup> He argues in his review of the environmental law canon that the focus on these core statutes can have a narrowing effect on the field that gives it a more homogenous image, “obscur[ing] the possibility of enacting environmental laws that do not resemble the canon.”<sup>120</sup> The core environmental laws were not only shaped by the mainstream environmental movement, but their prominence went on to create a positive feedback loop, cementing the ideologies behind them in the environmental movement, in environmental law as a field, and in how environmental law is taught.

The substance of the core environmental laws has become determinative of how topics such as environmental justice are discussed in casebooks. One casebook almost exclusively notes environmental justice in the index under relevant topics for each of the core laws, namely CAA, CWA, NEPA, and

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the EPA, having mixed motives, and narrow focuses. *See* Aagaard, *supra* note 23, at 1284. In light of *West Virginia v. EPA* and the right’s attempts to gut the EPA, operating outside of the EPA and normative environmental frameworks could be an important consideration for environmental strategies, even if only as a practical strategy given the current political climate. *See generally* Natasha Brunstein & Richard L. Revesz, *Mangling the Major Question Doctrine*, 74 ADMIN. L. REV. 317 (2022).

116. Aagaard, *supra* note 23, at 1256 (citing WILLIAM N. ESKRIDGE, JR. & JOHN FERREJOHN, A REPUBLIC OF STATUTES 256, 301 (2010)).

117. *See id.*

118. *See* Purdy, *supra* note 1, at 811-16.

119. *See* Aagaard, *supra* note 23, at 1256.

120. *Id.*

RCRA.<sup>121</sup> Moreover, in almost all of the casebooks, discussions of environmental justice—aside from introductions to the concept as a normative argument—deal with the substance of the core laws, such as hazardous waste and siting decisions, if not with the laws explicitly.<sup>122</sup> The gravitational pull that these laws exert on casebooks limits deviation from their substantive topics, restricting the way intersectional concepts are discussed in environmental law casebooks.

This rigid organizational framework poses challenges for integrating an intersectional subject like environmental justice. The impacts of environmental injustice and the methods used to address it exceed the contents of the core statutes. It is true that some legal strategies used in environmental justice lawsuits have had limited success. For example, constitutional suits based on the Equal Protection Clause regarding environmental injustices and environmental racism have been generally unsuccessful.<sup>123</sup> However, there are some litigation strategies that have had success in achieving environmental justice, including strategies based outside of the core laws.

In *Rise St. James, et. al. v. Louisiana Department of Environmental Quality*, the plaintiffs successfully used the Louisiana state constitution and the public trust doctrine as legal authority to vacate air permits granted for the development of a harmful chemical manufacturing plant in a 99 percent minority and 87 percent Black community, located in Louisiana's Cancer Alley.<sup>124</sup> Had the plant been built, it would have violated EPA's health-based limits for soot and ozone-forming nitrogen dioxide, which could produce breathing disorders.<sup>125</sup> Additionally, the plant would have emitted over 13.6 million tons of greenhouse gases per year, which is roughly equivalent to 3.5 coal-fired power plants.<sup>126</sup> This case represents a prime example of litigation that is both successful and centers environmental and racial justice, and it should be included in environmental law casebooks. If casebooks gravitated less towards the core environmental laws, they could have greater capacity to discuss other legal

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121. See CRAIG, *supra* note 50, at 16-17, 121-28, 306, 316, 419-20, 612, 632, 706-19, 889, 962 (discussing environmental justice in the context of the core laws in all pages cited except pages 16 and 17).

122. See, e.g., AAGAARD ET AL., *supra* note 56, at 51-53, 507-11; GLICKSMAN ET AL. (2011), *supra* note 49, at 836-37.

123. See, e.g., R.I.S.E., Inc. v. Kay, 768 F. Supp. 1144 (E.D. Va. 1991); East-Bibb Twiggs Neighborhood v. Macon-Bibb Plan. & Zoning Comm'n 662 F. Supp. 1465 (M.D. Ga. 1987); Bean v. Sw. Waste Mgmt., 482 F. Supp. 673, 674 (S.D. Tex. 1979).

124. See *Rise St. James, et. al. v. La. Dep't of Env't Quality*, Docket No. 694,029, 19th Judicial District Court Parish of East Baton Rouge (Sept. 14, 2022); Andrea Wortzel & Viktoriia De Las Casas, *State Laws Provide New Pathways for Environmental Justice Claims*, 36 NAT. RES. & ENV'T 18, 21 (2021).

125. See Alexandria Trimble, *Louisiana Court Vacates Air Permits for Formosa's Massive Petrochemical Complex in Cancer Alley*, EARTHJUSTICE (Sept. 14, 2022), <https://earthjustice.org/press/2022/louisiana-court-vacates-air-permits-for-formosas-massive-petrochemical-complex-in-cancer-alley>.

126. See *id.*

methods and solutions that would equip students with a better ability to respond to environmental harms creatively and resourcefully.

*B. Focus on Cost-Benefit Analysis*

The presence of cost-benefit analysis (CBA) dominates in tables of contents and in index entries. The extensive treatment of market-based approaches and CBA in environmental law casebooks is in one sense completely practical. Many environmental laws and policies, including the core laws, use CBA, which “is the standard practice for setting environmental . . . policy in the United States,”<sup>127</sup> and market-based approaches.<sup>128</sup> Moreover, under Executive Order 12,291, the Office of Information and Regulatory Affairs (OIRA) is required to conduct a CBA analysis for all proposed rules.<sup>129</sup> This requires EPA and other agencies dealing with environmental issues to strongly consider and adjust for the CBA assessment OIRA must conduct, which can often be at odds with substantive environmental justice goals.<sup>130</sup> Environmental laws and policies also commonly use market-based approaches, such as the pollution trading scheme under the Clean Air Act.<sup>131</sup> The focus on CBA and markets-based approaches is practical in helping students prepare for practice involving these laws, but the emphasis on these approaches typically comes at the cost of an adequate discussion of other policymaking frameworks in the casebooks reviewed, such as an environmental justice framework.

The focus on CBA could be a partial explanation for other tendencies that were observed in the casebook review. For example, the dominance of market-based approaches and CBA in environmental law and policies may provide some context for the omission of discussions of race in environmental law casebooks. Beginning with President Reagan’s Executive Order No. 12,291, CBA requirements for major regulations led to the increased use of risk assessments in environmental rules.<sup>132</sup> Risk assessment in environmental regulations has historically “obscure[d] risks on the basis of race and class” in a manner that

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127. See Michael A. Livermore, *Can Cost-Benefit Analysis of Environmental Policy Go Global?*, 19 N.Y.U. ENV’T L. J. 146, 151 (2011).

128. See Jedediah Purdy, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L.J. 857, 860 (2013).

129. See Lin, *supra* note 55, at 751. In carrying out this charge, OIRA has generally leaned towards deregulation. See *id.* As Albert C. Lin describes, “OIRA’s mission is not to determine whether a rule is stringent enough; deregulatory rules and agency inaction escape OIRA review. Thus, OIRA’s skewed review process has not only weakened regulation but ‘largely stymied it altogether.’ Even the possibility that OIRA might oppose a rule has sometimes prompted EPA to weaken or abandon proposed rules.” *Id.*

130. Carl F. Cranor, *Risk Assessment, Susceptible Subpopulations, and Environmental Justice*, in THE LAW OF ENVIRONMENTAL JUSTICE 328 (Michael Gerrard ed., 1999) (“Since a cost-benefit analysis of a toxic pollution problem typically does not support protecting all persons (because the marginal costs will be too high), cost-benefit analysis is incompatible with the goals of environmental justice.”).

131. See Richard Toshiyuki Drury et al., *Pollution Trading and Environmental Injustice: Los Angeles’ Failed Experiment in Air Quality Policy*, 9 DUKE ENV’T L. & POL’Y F. 231, 246 (1999).

132. See Brian D. Israel, *An Environmental Justice Critique of Risk Assessment*, 3 N.Y.U. ENV’T L.J. 476 n.26 (citing Executive Order No. 12,291, 46 Fed. Reg. 13,193 (1981)).

“results in less than adequate environmental and health protection for members of these groups.”<sup>133</sup> Moreover, “given that the economics profession is overwhelmingly white and the practice of cost-benefit analysis tends to be the province of wealthy elites,” CBA can be subjective despite attempts to characterize it as a neutral practice.<sup>134</sup> Furthermore, the market-based approach to environmental protection standard setting has led to the creation of tradable emission schemes, which are undermined by the ways “unrestricted trading may not be neutral in its impact,” but rather racially discriminatory.<sup>135</sup> The prominence of these normative frameworks and methodologies, which can have discriminatory impacts, does not encourage centering concerns of race in the field or in casebooks.

Critics of CBA have argued that it should not be used to put a monetary value on environmental and human health, which it has effectively failed to protect.<sup>136</sup> They also argue that CBA fails to adequately value nature and quantify the complexities and indirect impacts of environmental problems and solutions.<sup>137</sup> Furthermore, critics have argued that the goals of environmental justice, namely, “racial justice, human dignity, and equity . . . suffer in cost-benefit analysis.”<sup>138</sup> Though the goals of environmental justice and economic prosperity are not inherently in tension with one another, the way that some environmental policies have employed market-based approaches and CBA in the service of economic efficiency has in the past hurt environmental justice goals.<sup>139</sup> For example, Richard Revesz and Samantha Yi detail the inadequate distributional analysis in the CBA assessment for what they argue to be the “three most important recent environmental rules: the Cross-State Air Pollution Rule, the Mercury and Air Toxics Standards, and the Clean Power Plan.”<sup>140</sup> In particular, they highlight the inadequate consideration of the acceptability of distributional disparities and the lack of consideration paid to alternative rules in the CBA assessments of these consequential environmental rules.<sup>141</sup> Casebooks generally pay only marginal attention to critiques of CBA and market-based approaches or to proposals for alternative policymaking frameworks.<sup>142</sup> Law

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133. *Id.* at 472-73.

134. James Goodwin, *Cost-Benefit Analysis is Racist*, CTR. PROGRESSIVE REFORM (Oct. 9, 2020), <https://progressivereform.org/publications/cost-benefit-analysis-racist>.

135. See Richard J. Lazarus, “*Environmental Racism! That’s What It Is*,” 2000 U. ILL. L. REV. 255, 268 (2000).

136. See generally *id.*

137. See generally DOUGLAS A. KYSAR, REGULATING FROM NOWHERE: ENVIRONMENTAL LAW AND THE SEARCH FOR OBJECTIVITY 71-98 (2010).

138. See Lisa Heinzerling, *Climate Change, Racial Justice, and Cost-Benefit Analysis*, L. & POL. ECON. PROJECT (Sept. 28, 2021), <https://lpeproject.org/blog/climate-change-racial-justice-and-cost-benefit-analysis>.

139. See *id.*

140. See Richard L. Revesz & Samantha Yi, *Distributional Consequences and Regulatory Analysis*, 52 ENV’T L. 53, 64-68 (2022).

141. See *id.*

142. See, e.g., FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING (2005); Rhiana Gunn Wright, *Racial Justice, Neoliberalism*,

students may ultimately go on to influence and shape environmental policies and should be able to learn about a more comprehensive set of policymaking frameworks.

CBA could be designed to better account for human health and mitigate disparate impacts even though this is not how CBA is currently employed by environmental law, nor is it the way in which casebooks typically discuss CBA.<sup>143</sup> In April 2023, the Biden Administration released draft updates to Circular A-4, which is “the 2003 guidance document that instructs agencies on how to assess the impacts of proposed regulations and their alternatives.”<sup>144</sup> The draft proposes updates to the way the assessments use distributional analysis that could better account for environmental justice and disparate impact considerations.<sup>145</sup> Though the proposal is still undergoing the notice and comment process, this is the most promising step in two decades to righting some of the wrongs in the original CBA analysis required for many environmental policies.<sup>146</sup>

### C. *Cabining of Environmental Justice*

Casebooks tend to cabin environmental justice within certain contexts, if they discuss it at all, instead of recognizing the ubiquitous nature of the subject that lends itself to discussion across a wide array of subject matters in environmental law. This can be seen in both the limited nature of discussions of environmental justice and in the common practice of most substantively discussing environmental justice as a theory in an introductory chapter as opposed to integrating it throughout the casebook.<sup>147</sup> This Part examines possible reasons for this tendency and explains why a broader integration of environmental justice into the teaching of environmental law is long overdue.

The cabining of environmental justice within environmental law might be explained by the ways the two concepts have been understood as distinct in practice. Environmental law is commonly viewed as a professional effort to

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*and the Climate Crisis*, WILLIAM & FLORA HEWLETT FOUND. (Dec. 17, 2021), <https://hewlett.org/racial-justice-neoliberalism-and-the-climate-crisis> (“The [environmental justice] critique is essentially that [market] policies, by eschewing direct regulation of polluting facilities, effectively give polluters the right to choose where and when their pollution will be addressed. If it costs polluters less to ‘offset’ their emissions, rather than lower them, the most polluted communities could end up worse off or ‘last in line’ for pollution reductions. Furthermore, these policies could worsen existing disparities in pollution exposure rooted in regulatory policies – such as zoning and permitting – that create what are sometimes described as ‘pollution hotspots.’ California’s cap-and-trade policy has been a case in point: after three years of the policy, more than half of covered facilities actually increased their emissions, and most were in or near low-income communities of color.”).

143. *See supra* note 142.

144. Natasha Brunstein & Max Sarinsky, *Digging Into the Proposed Circular A-4 Update*, INSTITUTE FOR POL’Y INTEGRITY (May 1, 2023), <https://medium.com/policy-integrity-blog/digging-into-the-proposed-circular-a-4-update-a7ad1c404ad0>.

145. *See id.*

146. *See id.*

147. *See, e.g.*, JOHNSTON ET AL. (2007).

advocate for positive environmental change, relying on elite actors like lawyers, scientists, government officials, and policymakers, and working through elite institutions, like the courts and Congress.<sup>148</sup> Environmental justice, on the other hand, is often conceptualized as involving grassroots and informal advocacy, building coalitions and organizing people power, with participants and leaders being everyday people from the impacted communities.<sup>149</sup> However, the distinction between environmental law and environmental justice in terms of methods and actors has never been absolute. Environmental justice, though focused on community needs and disparities in environmental issues, has long used professional advocacy, such as lawsuits,<sup>150</sup> lobbying,<sup>151</sup> and policymaking<sup>152</sup> to advance its goals. Environmental justice and environmental law have more overlap and can more easily be integrated than common conceptions and environmental law casebooks suggest. As Jedediah Purdy argues in *The Long Environmental Justice Movement*, “[t]he standpoint of environmental justice has become integral to environmental law in the last thirty years,” and the “long environmental justice movement” has had great influence on environmental politics.<sup>153</sup>

The influential role of the core environmental laws in the casebooks also helps to explain the limited discussion of environmental justice. Eskridge and Ferejohn’s argument that the core laws helped shape the environmental movement could imply that the core laws’ exclusion of environmental justice fortified the latter’s exclusion from the mainstream environmental movement. According to Jedediah Purdy, a generalized assumption of economic prosperity at the time of the drafting of the core laws led lawmakers to omit questions of economic inequality and injustice from the text of the laws—on the false assumption “that other forces would address those questions independently.”<sup>154</sup> This omission helped prevent these considerations from entering into the

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148. See William A. Shutkin & Charles P. Lord, *Environmental Law, Environmental Justice, and Democracy*, 96 W. VA. L. REV. 1117, 1117-18 (1994); Purdy, *supra* note 1, at 814-15 (describing the “woods-and-waters version of the core problems of environmental law, in which humans, especially socially vulnerable people, were too often secondary” and environmental law’s “excessive comfort with elite and professionalized advocacy, in contrast to the popular mobilization and participation that were central to other social movements in the 1960s and 1970s”).

149. See Alice Kaswan, *Environmental Justice and Environmental Law*, 24 FORDHAM ENV’T L. REV. 149, 158, 162 (2013); see generally ROBERT D. BULLARD, CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (1st ed. 1993).

150. See, e.g., *East-Bibb Twiggs Neighborhood v. Macon-Bibb Plan. & Zoning Comm’n.*, 662 F. Supp. 1465 (M.D. Ga. 1987); *Bean v. Sw. Waste Mgmt.*, 482 F. Supp. 673 (S.D. Tex. 1979).

151. See, e.g., *Lobbying 101*, WE ACT FOR ENVTL. JUSTICE (2022), <https://www.weact.org/event/lobbying-101-training/lobbying-101>.

152. See, e.g., Exec. Order No. 12,898, 59 Fed. Reg. 7629, 7629 (Feb. 11, 1994).

153. Purdy, *supra* note 1, at 809.

154. See *id.* at 816. Purdy also argues that for the leading legislators behind the core environmental laws that shape the field, those laws were “environmental justice laws,” drafted with distributional and equity concerns front of mind. See *id.* According to Purdy, the core laws were developed in a period of economic prosperity, which led to false assumptions of economic equality and “neglected questions of justice,” assuming “that other forces would address those questions independently.” *Id.* at 816-17.



understanding of the laws amongst the public and in environmental law casebooks.<sup>155</sup>

What makes the limited integration of environmental justice into environmental law casebooks particularly troubling is that, by 1999, separate casebooks dedicated to environmental justice within the law—such as *The Law of Environmental Justice*—were already being published.<sup>156</sup> Despite the publication of multiple casebooks dedicated to the law of environmental justice over the last few decades, environmental law casebooks have generally been conservative in expanding their application of environmental justice to and beyond the substantive topics throughout their casebooks.<sup>157</sup> Though the creation of casebooks focused on environmental justice is helpful and those casebooks should serve as resources and models,<sup>158</sup> environmental law courses are more prevalent than courses focused on environmental justice in law schools. Therefore, it is important to integrate discussions of environmental justice into environmental law casebooks not only because the former is essential for a complete understanding of the latter, but also because environmental law casebooks are more commonly used across law schools.

Additionally, environmental justice is increasingly emphasized in the practice of environmental law today. Prominent environmental law nonprofit organizations are taking seriously critiques that the field does not currently practice environmental law within an environmental justice framework.<sup>159</sup> In response, the organizations have created and expanded environmental justice programs.<sup>160</sup> For example, in 2019, several of the prominent environmental law nonprofits, including Earthjustice and the Natural Resources Defense Council, came together with various environmental justice groups to launch a joint climate platform that centered issues of racial and economic equity.<sup>161</sup> Teaching students about environmental justice and race in environmental law is necessary to prepare them for the realities of modern environmental law practice.

The 2020 Black Lives Matter (BLM) protests catalyzed a marked shift towards a racial justice reckoning among environmental law organizations and

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155. *See id.*

156. MICHAEL GERRARD, *THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS* (1999); *see also* CLIFFORD VILLA ET AL., *ENVIRONMENTAL JUSTICE: LAW, POLICY, AND REGULATION* (3rd ed. 2020).

157. *See supra* Part I.B for discussion of the five most common topics that most casebooks limit their discussions of environmental justice to.

158. VILLA ET AL., *supra* note 156 (compelling environmental justice casebook, which is not just intersectional and equity-oriented in its approach, but also benefits from a diverse group of authors, which include several women and BIPOC authors as well as practitioners).

159. *See* Candice Youngblood, *Put Your Money Where Their Mouth Is: Actualizing Environmental Justice by Amplifying Community Voices*, 46 *ECOL. L.Q.* 455, 455 (2019) (defining comprehensive environmental justice work and what it means to use law and policy to advance environmental justice).

160. *See, e.g.,* Renee Skelton & Vernice Miller, *supra* note 11.

161. *See* Siham Zniber, *Environmental Justice and National Environmental Groups Advance a Historic Joint Climate Platform*, *EARTHJUSTICE* (July 18, 2019), <https://earthjustice.org/news/press/2019/environmental-justice-and-national-environmental-groups-advance-a-historic-joint-climate-platform>.

in the broader environmental movement. For example, following the BLM protests, hiring managers at the Sierra Club began to integrate readings on environmental justice and community lawyering into their hiring processes, indicating greater attention to environmental justice values and interest in hiring attorneys who prioritize these values.<sup>162</sup> This kind of initiative is a long overdue change from the Sierra Club's complicated history and white-supremacist origins.<sup>163</sup> The Biden Administration's environmental initiatives have been similarly responsive to demands for greater consideration of issues of environmental justice. Under President Biden, EPA's strategic plan for 2022-2026 states that the agency intends to prioritize environmental justice in its work.<sup>164</sup> One of EPA's seven goals in the strategic plan is to "Take Decisive Action to Advance Environmental Justice and Civil Rights," which includes as subgoals to "Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels," "Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities," and "Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns."<sup>165</sup> Moreover, prominent environmental funders, who have played a formative role in creating and directing the priorities of the field, and environmental law organizations, have increasingly allocated funding to justice- and equity-oriented initiatives.<sup>166</sup> In order to prepare students to practice in the field of environmental law and to understand how environmental law looks in practice today, casebooks need to expand their integration of environmental justice discussions and issues.<sup>167</sup>

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162. The Sierra Club has assigned readings, such as Candice Youngblood's article, *supra* note 160, on how to actualize environmental justice through community lawyering during its hiring process for new lawyers. See Interview with Candice Youngblood, Skadden Fellow, Earthjustice (Aug. 13, 2022) (on file with author).

163. See generally Daryl Fears & Steven Mufson, *Liberal, Progressive—and Racist? The Sierra Club Faces its White-Supremacist History*, WASH. POST (July 22, 2020, 9:07 AM), <https://www.washingtonpost.com/climate-environment/2020/07/22/liberal-progressive-racist-sierra-club-faces-its-white-supremacist-history/>; see, e.g., Bill Corcoran, *The Sierra Club's Shadowy History with the Navajo Generating Station*, SIERRA CLUB (Oct. 12, 2017), <https://www.sierraclub.org/sierra/sierra-club-s-shadowy-history-navajo-generating-station>.

164. See FY 2022-2026 EPA STRATEGIC PLAN 5,7-8, 26 EPA (Mar. 28, 2022), <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>.

165. See *id.* at 9.

166. See Nancy Lindborg, *An Update on Our Justice and Equity Journey*, DAVID & LUCILE PACKARD FOUND. (May 25, 2021) <https://www.packard.org/insights/perspectives/an-update-on-our-justice-and-equity-journey> (discussing the Packard Foundation's new procedural and strategic initiatives to integrate justice and equity into their work and their new justice- and equity-focused investments); Larry Kramer, *New Steps to Address Systemic Racism*, WILLIAM & FLORA HEWLETT FOUND. (July 16, 2020), <https://hewlett.org/new-steps-to-address-systemic-racism> (discussing the Hewlett Foundation's new grantmaking commitment to racial justice, totaling \$150 million over ten years).

167. Some casebooks have already begun to heed this call. Robert L. Glicksman, William W. Buzbee, Daniel R. Mandelker, Emily Hammond and Alejandro Camacho have included a chapter, primarily authored by Emily Hammond, dedicated to environmental justice in the online supplement to their casebook as of February 2023 and will include the chapter in subsequent editions of the printed casebook. See ROBERT L. GLICKSMAN ET AL., ENVIRONMENTAL PROTECTION: LAW AND POLICY (9th ed. 2023).

*D. Limited Discussion of Race*

The limited discussion of race in environmental law casebooks is congruent with the historical neglect of issues of race in the environmental movement generally.<sup>168</sup> However, racial discrepancies in the distribution of environmental harms, such as siting decisions and air pollution, as well as in the distribution of the benefits of environmental solutions, are well-documented today.<sup>169</sup> Casebooks risk disserving students by not comprehensively discussing—or even acknowledging—the racial dynamics of environmental law. As mentioned above, when environmental racism *is* discussed in casebooks, it is sometimes framed as a “debate,”<sup>170</sup> which could be interpreted as questioning the existence and legitimacy of the phenomenon.

At base, casebooks should accept that environmental racism exists. Several casebooks cite or discuss secondary sources questioning the empirical bases of environmental racism claims.<sup>171</sup> However, in the decades since these secondary sources were published, a significant quantity of scholarship, particularly scholarship outside legal academia, has been published evidencing the existence of environmental racism.<sup>172</sup> This scholarship aligns with earlier work by scholars like Robert Bullard, who has documented environmental racism since the 1980s.<sup>173</sup> Casebooks should shift towards centering these works, which reflect the broad acceptance of the existence of environmental racism today and validate the lived experiences of communities of color who disproportionately suffer from environmental harms.<sup>174</sup>

As racial minorities and political sovereigns disproportionately harmed by environmental issues and policies, Native peoples face unique challenges that

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Though this approach still siloes environmental justice, it is by far the most expansive treatment of environmental justice when compared to the casebooks reviewed for this study. *See id.*

168. *See generally* JEDEDIAH PURDY, THIS LAND IS OUR LAND: THE STRUGGLE FOR A NEW COMMONWEALTH 108 (2021); Robert D. Bullard, *Race and Environmental Justice in the United States*, 18 YALE J. INT’L L. 319 (1993); Dorceta Taylor, *The Environmental Justice Movement*, 18 E.P.A. J. 23 (1992).

169. *See, e.g.*, Abdulrahman Jbaily et al., *Air Pollution Exposure Disparities Across U.S. Population and Income Groups*, 601 NATURE 228 (2022); Gerald Torres, *Introduction: Understanding Environmental Racism*, 63 U. COLO. L. REV. 839 (1992).

170. *See, e.g.*, DOREMUS ET AL., *supra* note 49, at 519–40.

171. *See, e.g.*, REVESZ (2015), *supra* note 36, at 139 (citing Vicki Been, *What’s Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Use*, 78 CORNELL L. REV. 1001 (1993)); MENELL & STEWART, *supra* note 60 (citing Been, *supra* note 57).

172. *See, e.g.*, Jbaily et al., *supra* note 170; Michael Mascarenhas et al., *Toxic Waste and Race in Twenty-First Century America*, 12 ENV’T & SOC’Y: ADVANCES RSCH. 108 (2021); Laura Pulido et al., *Environmental Deregulation, Spectacular Racism, and White Nationalism in the Trump Era*, 109 ANNALS AM. ASS’N GEOGRAPHERS 520 (2019).

173. *See, e.g.*, Robert Bullard & Beverly H. Wright, *Environmentalism and the Politics of Equity: Emergent Trends in the Black Community*, 12 MID-AM. REV. SOCIO. 21 (1987).

174. For an extended discussion of rebuttals to and the harms of sources questioning the empirical validity of environmental racism, particularly with regards to the role of markets, *see* DORCETA TAYLOR, TOXIC COMMUNITIES, ENVIRONMENTAL RACISM, INDUSTRIAL POLLUTION, AND RESIDENTIAL MOBILITY (2014).

require substantive treatment in environmental law casebooks.<sup>175</sup> Native peoples have an especially fraught history of suffering harm as a result of environmental solutions, laws, and policies, and their histories have been implicated in many environmental issues, such as land conservation and hunting and fishing rights.<sup>176</sup> However, as discussed in Part I.C, casebooks rarely consider the interactions between environmental law and Native peoples.<sup>177</sup> Without greater attention to the ways environmental issues and the use of environmental law and policy have harmed Native communities and other racial minorities, casebooks risk devaluing this history and creating a greater possibility that future practitioners repeat these wrongs out of ignorance, if not intent.

### III. INTEGRATING ENVIRONMENTAL JUSTICE AND RACE IN THE FUTURE OF ENVIRONMENTAL LAW

There is much work to be done to update environmental law casebooks and to help them reflect the role that environmental justice and race play in environmental law today. This Part provides an overview of four recommendations: (1) teach environmental justice and environmental law as overlapping concepts; (2) highlighting the racial dynamics of environmental law; (3) use an intersectional approach to environmental law instead of organizing casebooks primarily around the core environmental laws; and (4) diversify citations and references. These recommendations build off of existing critiques of environmental law and demands that the field become more equity-oriented and intersectional.<sup>178</sup> Some of these critiques are decades-old, a fact that underlines their omission from environmental casebooks in the years since.<sup>179</sup> The recommendations in this Part are meant to serve as a starting point, as there are countless ways that casebooks could be updated to center environmental justice and race in order to reflect the reality of the field in practice today.

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175. Kronk Warner, *supra* note 98, at 344-50.

176. See generally MARK DAVID SPENCE, *DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF THE NATIONAL PARKS* (Oxford U. Press 1999).

177. Only five casebooks include entries in their indexes for “Indigenous,” “Native,” “Indian,” “tribe,” “tribes,” or “aborigines.” See *supra* note 99 and accompanying text.

178. See, e.g., Kaswan, *supra* note 149, at 162; Robert D. Bullard, *Environmental Racism and Invisible Communities*, 96 W. VA. L. REV. 1037 (1994); Torres, *supra* note 169.

179. See, e.g., Bullard, *supra* note 178; Shutkin & Lord, *supra* note 106, at 1132 (“Realizing that the traditional model of environmental law has failed in large part because it has ignored the distributional effects of environmental regulation, relied too much on the power of science to cure environmental ills, and discounted the influence of power on environmental decision-making, we should make community involvement a central feature of every environmental law. Simply put, we should make our regime of environmental laws robustly democratic.”); Richard Lazarus, *Environmental Justice and the Teaching of Environmental Law*, 96 W. VA. L. REV. 1025 (1994); Torres, *supra* note 170.

A. *Teaching Environmental Justice as an Integral Part of Environmental Law*

The operating principles of environmental justice, such as mitigating disproportionate burdens on vulnerable communities and ensuring equity, naturally touch on issues throughout environmental law. Instead of only discussing environmental justice in an introduction to theoretical frameworks or in a handful of substantive environmental topics, casebooks should integrate environmental justice considerations throughout the text. The goal is not to attach an environmental justice label to every environmental law or case, but rather to discuss the environmental justice implications consistently when they apply. In doing so, casebooks, which sit at the foundation of the field, would better reflect increasingly prominent considerations in the modern practice of environmental law, mitigate the risk that environmental injustices will be repeated, and help reverse the erasure of environmental justice from the field.

The casebooks examined in this Article discuss environmental justice in the context of a limited number of issues, such as siting of facilities, the impacts of air pollution permit trading schemes, international climate change and human rights, and risk assessments. Casebooks should begin by updating and diversifying their treatment of these more commonly discussed issues. For example, in discussing the siting of facilities and hazardous waste, the most cited examples of landfills and PCB dumpsites can be supplemented by discussion of concentrated animal feeding operations (CAFOs). CAFOs are a prominent part of animal agriculture and pollute the air and water of local communities, which are commonly low-income and nonwhite.<sup>180</sup>

Furthermore, casebooks should consider the environmental justice implications of a greater number of substantive topics, beyond just the handful that have been more readily legible to casebook authors. Discussions of other topics, such as energy law and water law, should also include discussions of environmental justice considerations. For example, in discussing energy law—specifically renewable energy policies—casebooks should discuss the disparate impacts of renewable energy markets on different populations around the world. Biofuels production and mandates could serve as one case study, as it has negative environmental externalities such as deforestation, indirect greenhouse gas emissions,<sup>181</sup> and habitat loss<sup>182</sup> as well as negative social impacts such as food insecurity and land grabbing.<sup>183</sup>

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180. See Purdy, *supra* note 1, at 854-58.

181. See Stephanie Searle, *Will Someone Please Tell Me if Biofuels Are Good or Bad for the Environment?* INT'L COUNCIL CLEAN TRANSP. (Dec. 13, 2019), <https://theicct.org/blog/staff/will-someone-please-tell-me-if-biofuels-are-good-or-bad-environment>.

182. See Pieter M. F. Elshout et al., *Global Relative Species Loss Due to First-Generation Biofuel Production for the Transport Sector*, 11 GCB BIOENERGY 763, 770 (2019) (finding that in order to protect global biodiversity, policymakers should transition from promoting food-based biofuels to other renewable energy options, such as non-food-based biofuels).

183. See HIGH LEVEL PANEL OF EXPERTS ON FOOD SECURITY AND NUTRITION OF THE COMM. ON WORLD FOOD SEC., *BIOFUELS AND FOOD SECURITY* 15, 43 (2013), <http://www.fao.org/3/a-i2952e.pdf>.

One of the most common ways casebooks have expanded their contents in recent editions is the addition of a section or chapter on international environmental law.<sup>184</sup> These sections could also include discussions of international agreements and policies on biofuels, critically examining the international impacts of apparently domestic policies. For example, the European Union's Renewable Energy Directive (RED) works to create demand for biofuels, which induces diversion of farmland in the Global South for biofuel production, resulting in the negative environmental and social consequences mentioned above.<sup>185</sup> In 2018, the European Union updated its Renewable Energy Directive (RED II) to phase out palm oil from its renewable energy program in response to advocacy efforts, which spreads awareness of the status of palm oil as a socially, economically, and environmentally harmful biofuel for production communities in the Global South.<sup>186</sup> With attention to environmental justice themes of equity and disparate impacts, a comprehensive analysis of biofuels policy on a domestic and international level illustrates for students the unintentional—and sometimes intentional—prioritization of environmental goals over the welfare of vulnerable communities. Providing this context for students is useful not only to assist in problem identification, but also in policy reform development.

In addition, casebooks should include more cases centering environmental justice. Some will argue that the lack of success of environmental justice litigation detracts from its value as a source of instruction for students of environmental law. This is likely part of the reasoning behind the exclusion of environmental justice cases and issues from some of the casebooks reviewed in this study. However, there are more factors that weigh in favor of the inclusion of environmental justice in casebooks, factors such as the increasing success of litigation with environmental justice benefits,<sup>187</sup> the increase in number of

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184. Compare DOREMUS ET AL., *supra* note 65, at 907-58 (including a chapter on international environmental law), with SCHOENBAUM ET AL., *supra* note 49 (lacking a chapter on international environmental law). The oldest four casebooks do not include a chapter or section on international environmental law, globalization, or related themes. STEWART & KRIER, *supra* note **Error! Bookmark not defined.**; SCHOENBAUM, *supra* note 49; ANDERSON ET AL. *supra* note 99; FARBER ET AL. (1991), *supra* note 49.

185. See *High Risk Biofuels in the New RED II*, TRANSPORT & ENV'T (Jan. 10, 2019), <https://www.transportenvironment.org/events/high-risk-biofuels-new-red-ii>.

186. See THE TREND WORSENS: MORE PALM OIL FOR ENERGY, LESS FOR FOOD, TRANSPORT & ENV'T 1 (June 2019), <https://www.transportenvironment.org/sites/te/files/publications/final%20palm%20briefing%202019.pdf>; *High Risk Biofuels in the New RED II*, *supra* note 186.T

187. See Adrian Martinez, *You've Got Mail — and Clean Air*, EARTHJUSTICE (Dec. 20, 2022), <https://earthjustice.org/blog/2022-february/postal-service-electric-trucks> (describing the United States Postal Service and Biden Administration's commitment to predominantly purchasing an electric fleet of mail trucks in response to public pressure, including litigation Earthjustice and other environmental groups brought on behalf of an environmental justice organization against the USPS for its plans to purchase low fuel efficiency vehicles); *Environmental Groups Take Postal Service to Court for Scheme to Buy Massively Polluting Mail Trucks*, EARTHJUSTICE (April 28, 2022), <https://earthjustice.org/news/press/2022/environmental-groups-take-postal-service-to-court-for-scheme-to-buy-massively-polluting-mail-trucks>.

environmental justice laws and policies,<sup>188</sup> and the urgent need for environmental justice remedies. Furthermore, the lessons learned from failed litigation efforts would certainly be pedagogically beneficial to students.

Unsuccessful litigation can highlight opportunities for executive and legislative action to remedy those limitations. For example, after the 9-0 Supreme Court ruling in *Hall v. United States* left family farmers in bankruptcy proceedings vulnerable to the IRS,<sup>189</sup> advocacy groups used the decision as evidence that existing remedies under the bankruptcy code excluded family farms, and they were ultimately able to persuade Congress to pass legislation to secure protections for family farms in the bankruptcy code.<sup>190</sup> Additionally, the Justice 40 Initiative serves as an example of an executive effort to address equity gaps in existing legislation by ordering that “40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution.”<sup>191</sup> These indirect impacts evidence the benefits of teaching cases that may not have initially been successful in achieving environmental justice.

If casebooks do not comprehensively integrate an environmental justice lens, they risk enabling and repeating the historic wrongs of the environmental field, including environmental law. Case studies exist all around the world of environmental advocates prioritizing environmental goals over the well-being of local communities, particularly BIPOC, low-resourced, and vulnerable communities. Traditional conservation efforts to protect land and resources are classic examples of the shortcomings of environmental advocacy that is blind to environmental and racial justice considerations. In *Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples*, Mark Dowie describes dozens of such case studies wherein environmental organizations and advocates directly and indirectly harmed local communities—particularly in the Global South—to advance conservation goals.<sup>192</sup> For example, “nature reserves” created by environmental organizations and donor funding have pushed Native peoples off of their lands, preventing them from

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188. See, e.g., Press Release, *Governor Murphy Signs Historic Environmental Justice Legislation*, OFFICE OF N.J. GOVERNOR PHIL MURPHY (Sept. 18, 2020), <https://www.nj.gov/governor/news/news/562020/20200918a.shtml>.

189. See *Senators Look to Reverse SCOTUS Ruling on Family Farmer Bankruptcies*, OFF. SEN. CHUCK GRASSLEY (Sept. 14, 2012), <https://www.grassley.senate.gov/news/news-releases/senators-look-reverse-scotus-ruling-family-farmer-bankruptcies>.

190. See Schuyler Pals, *Chapter 12 Bankruptcy, Sec. 1232 v Sec 553: Setoff as an Effective Veto?*, 47 J. CORP. L. 507, 516 (2022) (“In 2017, Congress passed the Family Farmer Bankruptcy Clarification Act of 2017, to overrule the holding in *Hall v. United States*. The act made it explicit that all taxes arising from the sale of assets held by the reorganized entity were to be treated as unsecured claims subject to discharge.”).

191. *Justice 40*, WHITE HOUSE (2022), <https://www.whitehouse.gov/environmentaljustice/justice40>.

192. See MARK DOWIE, *CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLES*, xxvii (2009).

accessing their ancestral homelands and medicinal plants, and legalizing Native peoples' murders at the hands of "eco-guards" hired by conservation agencies.<sup>193</sup>

Different versions of this phenomenon have occurred domestically using environmental laws and policies. In California, the Sacramento Sierra Club endorsed removal of an unhoused population out of a local natural area because the organization alleged the unhoused population had led to "unprecedented environmental destruction" and an increase in wildfires—despite there being many substantial factors leading to increased fires in the region, such as climate change and drier environments.<sup>194</sup> As an example within the context of land conservation initiatives, Yosemite National Park was created by a congressional act that conserved the park at the cost of the removal of the Southern Sierra Band of Miwok Indians from their lands.<sup>195</sup> The efforts to conserve Yosemite as a national park ultimately contributed to federal policies of Indian removal.<sup>196</sup> When students of environmental law learn about the establishment acts creating different national parks and the ways they advanced conservation efforts, it is important for them to simultaneously learn about the Miwok and other Native peoples who were pushed out of their homes in the name of conservation. Students should learn about how the Miwok were excluded from decision-making processes and were harmed by the laws—through the loss of their homelands, ancestral sites, access to medicinal plants, and proximity to community and family, among other impacts.<sup>197</sup>

It is also important for students to learn about the ways the federal government has in recent years acknowledged some of these environmental injustices and advanced co-management efforts to help right some of these wrongs. Examples of these efforts include the Bears Ears National Monument cooperative agreement, which authorizes tribal co-management of the monument,<sup>198</sup> along with other initiatives in the Department of Interior that work to open federal lands to tribes for use in harvesting traditional foods and medicine.<sup>199</sup> Understanding the environmental justice implications of potential

193. *See id.*

194. *See* Ayaana Williams, *Sierra Club Links Sacramento Region Wildfire Increases to Homelessness, Climate Change*, ABC 10 (April 27, 2022), <https://www.abc10.com/article/news/local/sacramento/american-river-parkway-homelessness-climate-change/103-6b337641-b7d5-42f3-8690-a5632d8220fa>.

195. *See* U.S. Statutes at Large, Vol. 13, Chap. 184, p. 325. "An Act Authorizing a Grant to the State of California of the 'Yo-Semite Valley,' and of the Land Embracing the Mariposa Big Tree Grove." [S. 203; Public Act No. 159].

196. *See* SPENCE, *supra* note 176, at 84-104; Allie Patterson, *Indian Removal from Yosemite National Park*, INTERMOUNTAIN HISTORIES (Sept. 21, 2019), <https://www.intermountainhistories.org/items/show/339>.

197. *See* Patterson, *supra* note 196.

198. *See generally* INTER-GOVERNMENTAL COOPERATIVE AGREEMENT, BUREAU LAND MGMT. (June 18, 2022), <https://www.blm.gov/sites/default/files/docs/2022-06/BearsEarsNationalMonumentInter-GovernmentalAgreement2022.pdf>.

199. *See Interior Department Issues Guidance to Strengthen Tribal Co-Stewardship of Public Lands and Waters*, DEPT. INTERIOR (Sept. 13, 2022), <https://www.doi.gov/pressreleases/interior-department->



environmental law and policy solutions to pressing issues will not only help lower the risk of similar harm occurring in the future, but also help students fully appreciate the rationales behind contemporary policy reforms.

Environmental law in practice “is [a field] in which once-unthinkable ideas have become conventional, not one time only, but repeatedly, through imagination, argument, and politics,”<sup>200</sup> and it effectively serves to not just teach, but also to inspire students. Seeking to understand the environmental justice angles of environmental problems is key to solving current and future problems without repeating the wrongs of environmentalism’s past. A more holistic, creative, and future-oriented pedagogy will equip future generations of environmental law practitioners to move beyond the core environmental laws in order to develop the creative and novel solutions necessary to address the ever-expanding list of environmental issues.

### B. *Highlighting the Racial Dynamics of Environmental Law*

Scholars and practitioners alike more commonly recognize environmental racism today than in the past.<sup>201</sup> It is well documented that the negative impacts of environmental harms have disparate impacts across racial lines.<sup>202</sup> Moreover, the use of environmental law and policy has historically deprioritized considerations of racial equity in proposing remedies to environmental issues.<sup>203</sup> The conservation movement’s role in displacing Native communities is just one clear example.<sup>204</sup> It is time that environmental law casebooks explicitly acknowledge environmental racism and not shy away from discussing racial dynamics, disparate impacts, and discrimination.

As previously discussed, Native communities have often borne the brunt of environmental harms—not just as a racial minority, but as political sovereigns. For example, treaties between tribes and the U.S. government have accounted for the importance of fish to the diets and traditions of tribes like the Umatilla, Nez Perce, Yakama, and Yurok, but inadequate regulation of waters has increased the presence of toxic pollutants in their fish.<sup>205</sup> EPA has previously

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issues-guidance-strengthen-tribal-co-stewardship-public-lands-and (discussing Department initiatives to increase tribal co-management).

200. Jedediah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 YALE L.J. 1122, 1207 (2010).

201. See, e.g., Idna G. Castellon, *Cancer Alley and the Fight Against Environmental Racism*, 32 VILL. ENV’T L.J. 15 (2021); Bullard, *supra* note 178; Torres, *supra* note 169.

202. See, e.g., Jbaily et al., *supra* note 170; LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001).

203. See, e.g., Youngblood, *supra* note 160, at 478-79 (“Despite Earthjustice’s effort to frame the dialogue around environmental justice in its brief, the Ninth Circuit’s opinion never once mentions race, class, income, or environmental justice. Nor does EPA’s proposed rulemaking acknowledge the existence of a disparate impact on [environmental justice] communities.”).

204. See generally DORCETA TAYLOR, THE RISE OF THE AMERICAN CONSERVATION MOVEMENT: POWER, PRIVILEGE, AND ENVIRONMENTAL PROTECTION (2016).

205. Catherine A. O’Neill, *Variable Justice: Environmental Standards, Contaminated Fish, and Acceptable Risk to Native Peoples*, 19 STAN. ENV’T L.J. 3, 5-7 (2000).

set, and the Ninth Circuit has upheld, a “Lower Yet Adequate” protection standard for higher-consuming Native communities regarding certain toxins found in fish.<sup>206</sup> This language suggests that despite a high level of consumption of these fish in Native communities—as opposed to white or other communities—a lower safety standard is still acceptable, effectively suggesting that Native communities should not have the same environmental protections as other groups.<sup>207</sup> Elizabeth Ann Kronk Warner explains that understanding the disproportionate impacts of environmental injustices and equity-blind environmental solutions borne by Native communities *requires* an environmental justice analysis that not only pays attention to traditional environmental justice considerations but also to considerations unique to Native communities, such as tribal sovereignty and the unique tribal connection to land and the environment.<sup>208</sup> The legal remedies that tribes enjoy are available at the pleasure of the U.S. government, which underscores the importance of highlighting the ways U.S. dominion shapes and limits tribes’ institutional means of recourse.<sup>209</sup> Even when tribes do engage in legal recourse, federal and state courts are sometimes viewed as using the vague jurisprudence in federal Indian law against the interests of the tribes.<sup>210</sup> It is instructive for students to be aware of these past efforts as they think about novel and creative forms of redress.

Centering race in environmental law casebooks should expand beyond merely acknowledging disparate racial impacts and racial discrimination to including cases and scholarship that seek to remedy environmental racism. For example, casebooks should include *Native Village of Kivalina v. ExxonMobil Corporation*, a key case at the intersection of environmental law, environmental justice, and race.<sup>211</sup> In *Kivalina*, a Native Alaskan village filed suit for damages from oil and power companies for their role in the climate change impacts affecting their village.<sup>212</sup> Plaintiffs claimed that “the greenhouse gas (GHG) emissions from the Energy Producers were contributing to climate change and therefore constituted ‘a substantial and unreasonable interference with public rights, including the right to use and enjoy public and private property in Kivalina.’”<sup>213</sup> The Ninth Circuit did not address the merits of Plaintiffs’ claim

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206. *Id.* at 56.

207. *Id.*

208. See Kronk Warner, *supra* note 98, at 344-50.

209. Situations such Standing Rock and Fracking on the Wind River evidence the difficulty tribes face in protecting their land and natural resources.

210. See Matthew L. M. Fletcher, *The Supreme Court’s Legal Culture War Against Tribal Law*, 2 INTERCULTURAL HUM. RTS. L. REV. 93, 103-04 (2007).

211. See 663 F. Supp. 2d 863, 883 (N.D. Cal. 2009), *affirmed by* Native Vill. of Kivalina v. ExxonMobil Corp. 696 F.3d 849, 854 (9th Cir. 2012). The Plaintiffs in *Kivalina* were members of a tribe filing a common law nuisance to claim monetary damages from the energy industry for flooding in Alaska caused by climate change. See *id.* The district court dismissed it as a political issue that needs to be decided by Congress and the Executive. See *id.*

212. See *id.*

213. Nicole Johnson, *Native Village of Kivalina v. ExxonMobil Corp: Say Goodbye to Federal Public Nuisance Claims for Greenhouse Gas Emissions*, 40 ECOL. L.Q. 557, 557 (2013) (quoting *Native Vill. Of Kivalina*, 696 F.3d at 853).

because it found that the Clean Air Act displaces the federal common law of public nuisance.<sup>214</sup> Nonetheless, *Kivalina* had a powerful impact for the public and the media, demonstrating that minority communities can and do use the law to fight against powerful entities bringing environmental harm to their communities.<sup>215</sup>

Given the recognition *Kivalina* has received, it seems it would be an environmental case dealing with race that is well-positioned to be discussed in casebooks. The lower court decision in *Kivalina* was published in 2009, and the earliest casebook reviewed to discuss the case was published in 2010. Seven of eleven casebooks reviewed that were published after the lower court decision came out cite the case. Every casebook that discusses the case treats it as a “squib” case, allocating a couple of sentences to a paragraph for its discussion, as opposed to treating it as a full case with a substantial excerpt and subsequent discussion of notes and questions. *Kivalina* played a formative role in the development of the environmental tort litigation taking place across the country today and is instructive for future iterations of this litigation strategy. This is, ultimately, only one case—but it is a seminal case about Native communities advocating for compensation for gross environmental harms brought onto them, interacting with key environmental issues and laws. *Kivalina* and cases like it deserve more expansive treatment.

It is also important for casebooks to discuss cases of environmental racism that may not appear to fit into the mainstream definition of what the “environment” includes but nonetheless deal directly with and impact the physical environment as well as communities’ well-being and livelihoods. For example, the United States has a long history of discrimination against Black farmers.<sup>216</sup> Evidence of this historic discrimination led to the settlement of two class action discrimination lawsuits brought by Black farmers against the U.S. Department of Agriculture (USDA), known as the *Pigford Settlements*.<sup>217</sup> The lawsuits alleged that Black farmers faced discrimination when applying for farm loans and assistance.<sup>218</sup> The first settlement was approximated to result in “\$1.06 billion in cash relief, tax payments, and debt relief,” and the second settlement

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214. See *id.*; Johnson, *supra* note 213, at 561-63. See also Gerald Torres & Nathan Bellinger, *The Public Trust: The Law’s DNA*, 4 WAKE FOREST J.L. & POL’Y 281, 300-310 (2014) (discussing the doctrine of displacement). The result of this case was to foreclose such suits under federal common law, not just for Native communities but for all plaintiffs, though it left a path open to relief under public nuisance claims in state court.

215. See Martinez, *supra* note 187 (discussing the impact publicized litigation on behalf of an environmental justice organization against the U.S. Postal Service had on influencing the Biden Administration to commit to procuring a fleet of more fuel-efficient mail trucks).

216. See generally Tadlock Cowan & Jody Feder, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers*, RS20430 CONG. RSCH. SERV. 1-2 (March 12 2013), <https://digital.library.unt.edu/ark:/67531/metadc810208>.

217. See *id.* at 2.

218. See *id.*

resulted in a \$1.25 billion settlement, although many class members still have not received payment.<sup>219</sup>

Many of the distressed farmers who were class members experienced additional challenges in competing with the growth of big agriculture and agricultural consolidation.<sup>220</sup> USDA's discrimination not only impacted the farms and livelihoods of these Black farmers, but it put their family stability and potential for generational wealth creation at risk.<sup>221</sup> The financial ruin of farms has greatly contributed to the epidemic of Black land loss across the country.<sup>222</sup> The success of small Black farmers is important for the promotion of community economic development and self-determined food economies, as well as the prevention of the detrimental environmental impacts of the industrial agricultural model, to which these farmers serve as an alternative.<sup>223</sup> Legacies of this discrimination are shared by BIPOC farmers more generally, and similar settlements have been reached by other racial groups.<sup>224</sup> Incorporating topics like farming, agriculture, and food systems into the conception of "environmental issues" provides a more complete understanding of overlapping struggles and can unveil patterns like environmental racism across specific substantive issues related to the environment.

Moreover, casebooks should more extensively discuss environmental harms disproportionately affecting racial minorities writ large. For example, "Not In My Backyard" or "NIMBY" is a phenomenon wherein 'white, more affluent, and better represented communities are more able to vocally [oppose] waste dumping in their communities, which 'insulate[s] many white communities from the localized environmental impacts of . . . waste facilities while providing them the benefits.'"<sup>225</sup> As a result, both industry and agencies are incentivized to shift their interest towards poor minority communities that are politically underrepresented and less organized to fight a siting decision.<sup>226</sup> The NIMBY phenomenon exists all across the United States and plagues many different minority and low-resourced communities.<sup>227</sup> However, only eight of the twenty-two casebooks reviewed cover NIMBY issues, according to their indexes.

219. See *id.* at Summary.

220. See Alyssa Sloan, *Pigford v. Glicksman and the Remnants of Racism*, 8 OIL & GAS, NAT. RES. & ENERGY J. 19, 44 (2022).

221. See *id.* at 48.

222. See Kristol Bradley Ginapp, *Jim USDA Crow: Symptomatic Discrimination in Agriculture*, 8 DRAKE J. AGRIC. L. 237, 243 (2003).

223. See generally, MONICA M. WHITE, *FREEDOM FARMERS: AGRICULTURAL RESISTANCE AND THE BLACK FREEDOM MOVEMENT 3-19* (2018).

224. See, e.g., *Garcia v. Vilsack*, 563 F.3d 519 (D.C. Cir. 2009); *Keepseagle v. Johanns*, 236 F.R.D. I (D.C. Dist. 2006); See also CONG. RSCH. SERV., R40988, *Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case* (2013) (discussing the settlement agreements in *Garcia v. Vilsack*, 563 F.3d 519 (D.C. Cir. 2009), and *Keepseagle v. Johanns*, 236 F.R.D. I (D.C. Dist. 2006)).

225. ROBERT BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY*, 108 (1990)

226. See *id.* at 340 n.87, 340 n.89.

227. See generally Michael B. Gerrard, *The Victims of NIMBY*, 21 FORDHAM URB. L. J. 495 (1994).

NIMBY-ism is low-hanging fruit when it comes to environmental justice topics—there is widespread awareness of the phenomenon and ample evidence of its disparate racial impact.<sup>228</sup> Casebooks should provide in-depth discussions of issues like NIMBY-ism, which not only plague minority communities, but also demonstrate the inadequacies of current law and policy in addressing environmental injustices. NIMBY-ism illustrates how privileged and powerful communities can use litigation and regulatory processes to protect their own environmental and physical health while subjecting marginalized groups to worse environmental conditions.

Racial minorities are not the only groups who suffer disproportionate environmental harms—people of low socio-economic backgrounds, immigrants, and rural communities also face greater-than-typical harms.<sup>229</sup> In integrating environmental justice considerations, environmental law casebooks should pay attention to disparate impacts on all of these communities. This Article focuses on race in particular because of the significant determinative role it plays in the distribution of environmental harms. Furthermore, environmental law scholarship and case law has historically paid less attention to race when compared to other identity factors, such as class.<sup>230</sup> It is important to name and center race in discussing environmental issues in order to do justice to the reality of the racialization of environmental issues today, which can make race a decisive factor in the allocation of environmental harms.<sup>231</sup>

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228. See, e.g., Antoinette M. Jackson, *The Race Conversation about Housing*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 413, 415-16 (2021) (describing the existence of NIMBYism and race-based NIMBYism, as evidenced by her experience as a practitioner); Belinda Creel Davis, *Examining the Role of Race, NIMBY, and Local Politics in FEMA Trailer Park Displacement*, 89 SOC. SCI. Q. 1175 (2008) (concluding that race can shape where government allocates FEMA trailer parks).

229. See, e.g., Elizabeth Lincoln, *Accountability for Pesticide Poisoning of Undocumented Farmworkers*, 24 HASTINGS ENV'T L. J. 383, 383-390 (2018) (discussing the vulnerable nature of undocumented immigrant farmworkers to suffering environmental harms from causes such as pesticide poisoning); Caroline Farrell, *A Just Transition: Lessons Learned from the Environmental Justice Movement*, 4 DUKE F. L. & SOC. CHANGE 45, 47 (2012) (“A recent study of the rural counties of California’s San Joaquin Valley finds that one-third of the Valley’s four million residents suffer from a high degree of environmental risk, such as from air and water pollution.”); Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COLO. L. REV. 311, 332-33 (2001) (“[S]cholars recognize that race, along with class, is crucial to understanding the unequal distribution of environmental burdens.”).

230. See generally TAYLOR, *supra* note 174.

231. See Bullard, *supra* note 168, at 320 (finding that “even when income is held constant, African American children are two to three times more likely than white children to suffer from lead poisoning”); Julie Sze, *Naming the Problem(s): Contextualizing “Just Environmental Research,”* SOC. SCI. RES. COUNCIL (Sept. 19 2017), <https://items.ssrc.org/just-environments/naming-the-problems-contextualizing-just-environmental-research>; Lauren Reid, *Why Race Matters When We Talk About the Environment: An Interview With Robert Bullard*, GREENPEACE (Mar. 1 2018), <https://www.greenpeace.org/usa/why-race-matters-when-we-talk-about-the-environment>.

*C. Applying an Intersectional Understanding of Environmental Law:  
Beyond the Core Environmental Laws*

The core environmental laws no longer trace the parameters of the field of environmental law as it is practiced today. Eighteen out of twenty-two casebooks reviewed are explicitly or implicitly organized in accordance with the core environmental laws (e.g., Clean Air Act or air pollution, Clean Water Act or water pollution). Though not all casebooks limit their chapters to the core laws, the gravitational pull of the core laws on the organization of the casebooks is undeniable. This is, in some sense, completely rational. For a long time, environmental law was viewed as a discrete universe with little statutory expansion, particularly at the federal level.<sup>232</sup> It is understandable that casebook authors would organize a foundational environmental law course around these laws and the dominant frameworks that underpin them, such as cost-benefit analysis. However, environmental law is no longer limited to these laws—in fact, it could be argued it never was.<sup>233</sup>

Environmental law—similar to the environmental field more broadly<sup>234</sup>—is increasingly viewed as intersectional.<sup>235</sup> Environmental law is not just about conservation, air pollution, water pollution, endangered species, and toxic waste. It also includes broader issues of public health, food systems, federal Indian law, labor, and immigration.<sup>236</sup> It is no use to continue cabining environmental law so strictly to the core laws, particularly in light of the IRA being passed as a new, intersectional environmental law. Students should learn environmental law as it is most commonly viewed and practiced today—as a field with permeable boundaries.

For example, students could learn about the intersection of environmental law with federal Indian law. The casebooks commonly omit discussion of a prominent way in which environmental law does actually account for the rights

232. See Purdy, *supra* note 1, at 812 (“Environmental law nonetheless carries forward conceptions of “the environment” and the role of distributive considerations in managing it that formed in a particular moment, roughly the 1960s and early 1970s in the United States, when a set of problems were newly grouped together under the label “environmental”: pesticides and other toxins (but more as they affected “third parties” than in their effects on agricultural workers); nuclear fallout (but not other side effects of geopolitical conflict, such as the global proliferation of inexpensive automatic weapons); litter (but not the decrepit condition of public institutions in neglected neighborhoods); urban congestion and sprawl (but not the prevalence of asthma or diabetes in poor communities); biodiversity (but not yet the diversity of crops in agriculture and their relation to larger patterns of ecological health); and the management of public lands (but not the condition of public infrastructure). / Modern environmental law is very substantially the product of a burst of legislation and institution-building that took place between the end of the 1960s and the beginning of the 1980s.”).

233. See *supra* note 154 and accompanying text.

234. See generally LEAH THOMAS, *THE INTERSECTIONAL ENVIRONMENTALIST* (2022).

235. See generally John Lovvorn, *Climate Change Beyond Environmentalism Part I: Intersectional Threats and the Case for Collective Action*, 29 GEO. ENV'T L. REV. 1 (2016).

236. See Clifford J. Villa, *Remaking Environmental Justice*, 66 LOY. L. REV. 469, 478-79, 481, 490-91 (2020); Dean B. Suagee, *Environmental Justice and Indian Country*, 30 HUM. RTS. 16 (2003).

of Native tribes.<sup>237</sup> The cooperative federalism schemes of laws like the Clean Air Act and Clean Water Act allow not only states but also tribes to participate in delegated federalism.<sup>238</sup> This kind of delegation, added in amendments to the relevant statutes after their initial passing, “advance[s] tribal self-government and address[es] environmental justice concerns in Indian country.”<sup>239</sup> However, despite the value of this authority granted by Congress to Native tribes, environmental law casebooks typically fail to mention it in their discussions of cooperative federalism in environmental laws and regulations.<sup>240</sup> This is not just a missed opportunity to provide a more comprehensive and intersectional understanding of environmental laws and policies—it also results in inadequate coverage of major legislation that use the cooperative federalism model, such as the CAA, CWA, and CERCLA.<sup>241</sup>

Casebooks ignore an entire component of cooperative federalism when they discuss only the authority of states and not that of tribes. The omission of tribal authority in cooperative federalism schemes of environmental governance prevents discussion of one of the main ways environmental law has in fact uplifted tribal self-government. One could also view the lack of discussion of tribal authority under these statutes as part of a broader tendency in legal scholarship and curricula to omit tribal authority and courts in discussions of federalism.<sup>242</sup> Expanding the breadth and depth of discussions of the intersection between federal Indian law and environmental law would provide a more complete education of the latter. It would also help to provide students with a foundational understanding of federal Indian law so they can better navigate environmental law issues at the intersection of the two fields, of which there are many.

From an organizational standpoint, casebooks could be organized by substantive environmental topics, with a more expansive and intersectional set of chapters. In addition to discussing the core laws and the substantive

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237. Cf. CRAIG, *supra* note 50, at 306-07, 888, 998-1009 (4th ed. 2016) (including index entries for “Indian treaty rights” under the National Environmental Protection Act, “tribal regulatory jurisdiction,” and “Native Americans” as related to the Clean Water Act); ANDERSON ET AL., *supra* note 99, at 701, 355 (including index entries for “Indian leases” under “NEPA” and “Indian reservations” under “jurisdiction”).

238. See Sean J. Wright, *Good Fences Make Good Neighbors: An Environmental Justice Framework to Protect Prohibition Beyond Reservation Borders*, 79 BROOK. L. REV. 1197, 1219 (2014) (citing as examples, Comprehensive Environmental Response, Compensation, and Liability Act § 126, 42 U.S.C. § 9626 (2012); Clean Air Act § 301(d), 42 U.S.C. § 7601(d) (2012); Clean Water Act § 518, 33 U.S.C. § 1377 (2012); Water Quality Standards, 40 C.F.R. § 131.8 (2013)).

239. *Id.*

240. See, e.g., CRAIG, *supra* note 50, at 12, 581, 661, 625, 626, 706, 852-53 (omitting discussion of tribes’ roles in cooperative federalism schemes in environmental statutes and exclusively discussing the role of the federal and state governments); DOREMUS ET AL., *supra* note 43, at 74, 170-71, 677, 696, 711 (same); GLICKSMAN ET AL. (2011), *supra* note 49, at 84, 125, 958, 970 (same).

241. See Wright, *supra* note 238, at 1219.

242. See generally Frank Pommersheim, ‘Our Federalism’ in the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts’ Teaching and Scholarly Community, 71 U. COLO. L. REV. 123 (2000).

environmental topics they cover, casebooks could, for example, also include chapters on food systems and public health.<sup>243</sup> One practical concern with this approach is determining where to draw the line on which topics to include. An intersectional treatment of environmental law and policy would seek only to include, for example, immigration or labor law issues most relevant to environmental law. Recognizing that these intersecting fields are entire areas of law in and of themselves, a primer and overview of the intersection of environmental law and the other fields should be sufficient. If page restrictions preclude the intersecting fields from receiving their own chapters, a longer chapter could be included with different sections discussing multiple intersecting fields. These are just a few possibilities of how casebook authors could create a more comprehensive and intersectional understanding of environmental law.

Casebooks could also be organized by type of strategy used in the practice of environmental law. An example of this option is Plater, Abrams, and Goldfarb's *Environmental Law and Policy: Nature, Law, and Society* from 1998, which includes chapters on "The Administrative Agencies and the Regulation of the Environment," "Different Modes of Regulatory Standard-Setting," "Compliance, Enforcement, Dispute Resolution Mechanisms," "Private and Public-Societal Rights and Responsibilities," and other strategies.<sup>244</sup> Discussion of each of these strategies could draw on examples from a broad array of environmental issues, including but not limited to those covered by the core laws.

These suggestions for ways to evolve past the limitations of the core environmental laws represent a few options among many. The possibilities of new topics for integration into environmental law casebooks are endless: the intersection with immigration law through the status of climate refugees;<sup>245</sup> the intersection with labor law through the impact of inadequate environmental and labor protections on farmworkers' health;<sup>246</sup> the intersection with federal Indian law through the limitations on tribes' ability to hold polluters accountable as a result of the jurisdiction stripping imposed on tribal courts;<sup>247</sup> and the intersection with criminal justice through the poor environmental health conditions of prisoners<sup>248</sup>—to name a few.

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243. Some casebooks already discuss food systems and public health issues. *See, e.g.*, FARBER ET AL (2010), *supra* note 49, at 978 (including a chapter on the "Regulation of Toxic Substances and Genetically Modified Organisms"); ANDERSON ET AL., *supra* note 99, at 162-23 (1st ed. 1984) (discussing "Whose health constitutes 'public health?").

244. PLATER ET AL., *supra* note 39, at xii.

245. *See* Camila Bustos & Jeffrey Chase, *Tackling Climate Change Displacement at COP27*, JUST SECURITY (Nov. 14, 2022), <https://www.justsecurity.org/84092/tackling-climate-change-displacement-at-cop27>.

246. *See generally* Joan D. Flocks, *The Environmental and Social Injustice of Farmworker Pesticide Exposure*, 19 GEO. J. POVERTY L. & POL'Y 255 (2012).

247. *See generally* Helia Bidad, *The Power of Tribal Courts in Ongoing Environmental Tort Litigation*, 132 YALE L.J.F. 904 (2023).

248. *See generally* KI'AMBER THOMPSON, PRISONS, POLICING, AND POLLUTION: TOWARD AN ABOLITIONIST FRAMEWORK WITHIN ENVIRONMENTAL JUSTICE (2018); Nicole Greenfield, *The Connection Between Mass Incarceration and Environmental Justice*, NRDC (Jan. 19, 2018), <https://www.nrdc.org/onearth/connection-between-mass-incarceration-and-environmental-justice>.



#### D. Diversifying Citations and References

As casebook authors look to integrate environmental justice and race into environmental law casebooks, citing works of BIPOC as well as female and non-binary authors is particularly important. Even in the limited discussion that casebooks currently provide on environmental justice and related topics, casebooks cite relatively few BIPOC, female, and non-binary scholars.<sup>249</sup> Scholars like Gerald Torres, Dr. Dorceta Taylor, and Dr. Robert Bullard are preeminent scholars in the field.<sup>250</sup> Despite their pivotal roles in increasing conversations around environmental justice and race, they are only minimally cited in casebooks.<sup>251</sup> Casebooks cannot do justice to the history of the environmental movement that gave rise to environmental law as we know it—nor to the more equity-oriented version of environmental law practiced today—without consistently citing the works of scholars like Torres, Taylor, and Bullard. As the feminist scholar Sara Ahmed asserts, “citation is how we acknowledge our debt to those who came before,” and when we do not cite women, non-binary, and BIPOC authors, we risk replicating the erasure of minority voices in the field.<sup>252</sup> “Citation and reference practices are places where power is exercised,”<sup>253</sup> and casebook authors must exercise the great power they hold in order to include voices traditionally left out of the legal academy and the environmental field,<sup>254</sup> at the intersection of which environmental law sits.

Moreover, given that environmental law faculty are dominated by white and male scholars, casebook authors should also look to practitioners and leverage their voices and scholarship.<sup>255</sup> This recommendation not only serves to increase the diversity of citations and excerpted writings in casebooks, but also to ground casebooks in the practice of environmental law today. It requires more than just

249. See, e.g., FARBER ET AL. (2010), *supra* note 49.

250. Carmen G. Gonzalez, Shalanda H. Baker, and Michael Méndez have also written formative pieces of scholarship and yet are rarely cited in casebooks. See, e.g., Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT’L L. 151 (2015); Shalanda H. Baker, *Climate Change and International Economic Law*, 43 ECOLOGY L.Q. 53 (2016); Michael A. Méndez, *Assessing Local Climate Action Plans for Public Health Co-Benefits in Environmental Justice Communities*, 20 LOC. ENV’T 637 (2015).

251. See AAGAARD ET AL., *supra* note 56, at ET AL., 508-516 (including an excerpt of Dr. Robert Bullard’s, “Toxic Wastes and Race at Twenty: Why Race Still Matters After All of these Years”); FARBER ET AL. (2019), *supra* note 47, at ET AL., 12-18 (including an excerpt of Gerald Torres’s, “Environmental Justice: The Legal Meaning of a Social Justice Movement”); GLICKSMAN ET AL. (2011), *supra* note 49, at .837-43 (citing Dr. Robert Bullard in case notes following *South Camden Citizens*); REVESZ (2015), *supra* note 36, at 126-131 (including an excerpt of Dr. Robert Bullard’s, “Anatomy of Environmental Racism and the Environmental Justice Movement”); REVESZ (2008), *supra* note 36, at 127-131 (same); PLATERET AL., ET AL., *supra* note 48, at 53 (citing Dr. Robert Bullard).

252. SARA AHMED, *LIVING A FEMINIST LIFE* 15 (2017); see also Beverly Weber, *The Politics of Citation*, DIGIT. FEMINIST COLLECTIVE (2022), <https://digitalfeministcollective.net/index.php/2018/01/13/the-politics-of-citation>.

253. Max Liboiron & Rui Li, *Citation Politics in Tight Spaces*, CIVIC LAB’Y (Mar. 2 2022), <https://civiclaboratory.nl/2022/03/02/citational-politics-in-tight-places>.

254. See generally GREEN 2.0, <https://diversegreen.org> (last visited Dec. 13, 2022).

255. Integrating scholarship from non-legal scholars and narratives from community members can increase the diversity and strength of casebooks as well.

box-checking; the inclusion of diverse voices requires intentionality and thorough integration beyond a mere citation. Practitioners like Jeremy Orr,<sup>256</sup> Director of Litigation and Advocacy at Earthjustice, and Caroline Ferrell,<sup>257</sup> Executive Director of the Center for Race, Poverty, and the Environment, have produced invaluable scholarship informed by their practical experience on the ground. What is more, funding should exist to support the work of BIPOC, women, and non-binary practitioners in order to foster the inclusion of their perspectives in the field.<sup>258</sup> Environmental law is a field founded and developed by a dynamic movement; it must be continually updated to reflect its contemporary practice, and ensuring the inclusion of diverse voices is one positive step in this direction.

#### CONCLUSION

Environmental law casebooks have been constrained in their conceptions of the field of environmental law, but it is time the boundaries of the field were expanded to reflect not just the realities of environmental law advocacy today, but also the disparate harms of environmental challenges across the world. If casebooks do not rise to the occasion, they risk providing law students with an incomplete education of environmental law that could position them to ignore or even repeat historic inequities as they begin to employ law and policy to address environmental issues. Not updating the environmental law doctrine also risks increasing the discrepancy between the legal academy and the public, which environmental law is meant to serve.<sup>259</sup>

Though this Article focuses on casebooks as the foundation of environmental law courses, they are not the only shapers of environmental law pedagogy. Environmental law syllabi typically supplement casebooks with

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256. See Jeremy Orr, *Environmental Justice Act of 2017: A Fighting Chance for Frontline Communities*, 24 HASTINGS ENV'T L. J. 303, 303-304 (2018).

257. See Caroline Farrell, *A Just Transition: Lessons Learned from the Environmental Justice Movement*, 4 DUKE F. L. & SOCIO. CHANGE 45 (2012). Caroline Farrell's predecessor in her role as Executive Director, Luke Cole, is an exemplar of the power of a practitioner's contributions to the field of environmental law. See, e.g., Luke W. Cole, *Community-Based Administrative Advocacy under Civil Rights Law: A Potential Environmental Justice Tool for Legal Services Advocates*, 29 CLEARINGHOUSE REV. 360 (1995); Luke W. Cole, *Legal Services, Public Participation, and Environmental Justice*, 29 CLEARINGHOUSE REV. 449 (1995); Luke Cole, *The Crisis and Opportunity in Public Interest Law: A Challenge to Law Students to Be Rebellious Lawyers in the '90s*, 4 B.U. PUB. INT. L.J. 1 (1994); Luke W. Cole, *The Struggle of Kettleman City: Lessons for the Movement*, 5 MD. J. CONTEMP. LEGAL ISSUES 67 (1994).

258. Helping minority environmental law students, scholars, and practitioners publish also works to better prepare scholars for entering the legal job market, if desired, and to diversify environmental law faculty in general. Diversifying the academy, and in turn casebook authors, is one way to increase the number of perspectives represented in casebooks.

259. See K-Sue Park, *This Land is Not Our Land*, 87 U. CHI. L. REV. 1977, 2027-28 (2020) (book review) (asserting that scholars who seek to "understand[] the significance of historical erasure from the study of law" must be in dialogue with and responsive to "[t]he rising volume of the conversation about these [erased] histories outside of the legal academy" for fear of otherwise increasing "the rifts between the public and the legal academy").

outside reading. The goal of this Article is to improve casebooks as the key resource in most environmental law courses, but there is also great power in the hands of environmental law professors to shape their courses. Environmental law professors can consider the recommendations of this Article and use their syllabi to fill in the gaps left by casebooks in order to ensure that their courses reflect the important role of environmental justice and race in the field.

Luke Cole stated in 1994: “The legal academy must wake up to environmental justice issues; to do otherwise threatens to make students’ environmental legal education irrelevant to the demands they will face in the practice of environmental law.”<sup>260</sup> Though made almost three decades ago, Cole’s charge is just as pressing today. The goal of this Article is to amplify this demand so that it does not take another thirty years before that charge is met.

#### APPENDIX A: CASEBOOKS REVIEWED AND TABLES OF CONTENTS

Casebook	High-Level Table of Contents
RICHARD B. STEWART & JAMES E. KRIER, ENVIRONMENTAL LAW AND POLICY: READINGS, MATERIALS AND NOTES (2d ed. 1978)	I. The "Problem" of Environmental Disruption: Nature and Effects II. The "Problem" of Environmental Disruption: Crimes III. An Analytic Framework for Environmental Law and Policy IV. The Pollution Problem and the Courts: Legal Rules in Private Litigation V. Pollution Control Legislation and Its Administration: The Regulatory Approach VI. Subsidies, Charges, and Other Alternatives to Regulation VII. Administrative Law Aspects of Environmental Law VIII. The National Environmental Policy Act IX. Underwriting Environmental Advocacy
THOMAS J. SCHOENBAUM, ENVIRONMENTAL POLICY LAW: CASES, READINGS, AND TEXT (1st ed. 1982)	I. Environmental Policy Perspectives II. Control of Government Decisionmaking Affecting the Government III. Public Resources Management IV. Land, Waste, and Toxic Substances V. Water Pollution VI. Air Quality and Noise Emission Control
FREDERICK R. ANDERSON, DANIEL R. MANDELKER & DAN A. TARLOCK, ENVIRONMENTAL PROTECTION: LAW AND POLICY (1st ed. 1984)	I. What is Environmentalism, and What Are Its Intellectual Origins, Foundations, and Legal Ramifications? II. An Introduction to the Administrative Law of Environmental Protection III. Protecting the Air Resource IV. Protecting the Water Resource V. Controlling Toxic and Hazardous Substances VI. The Environmental and the Common Law VII. The National Environmental Policy Act VIII. Environmental Values and Land Use
ROGER W. FINDLEY & DANIEL A. FARBER, CASES AND MATERIALS ON ENVIRONMENTAL LAW (3rd ed. 1991)	I. Environmental Problems in Perspective II. The Judicial Role III. Pollution Control IV. Risk Management and Scientific Uncertainty V. Regulation of Toxic Substances VI. Preservation of Natural Areas

260. See Cole, *supra* note 24, at 1067.

Casebook	High-Level Table of Contents
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (1st ed. 1992)	I. Environmental Values and Policies: An Introduction II. Environmental Law: A Structural Overview III. Waste Management and Pollution Prevention IV. Regulation of Toxic Substances V. The Regulatory Process VI. Air Pollution Control VII. Water Pollution Control VIII. Protection of Public Resources IX. Protection of the Global Environment X. Conclusion
PETER S. MENELL & RICHARD B. STEWART, ENVIRONMENTAL LAW AND POLICY (1st ed. 1994)	I. The "Problem" of Environmental Degradation II. An Analytic Framework for Environmental Law and Policy III. The Role of the Common Law in Addressing Environmental Degradation IV. Statutory Approaches to Air Pollution V. Statutory Approaches to Water Pollution VI. Regulation of Hazardous Waste Disposal VII. Administrative Law & Representation of Environmental Interests VIII. The National Environmental Policy Act IX. Protection of Ecosystems and Natural Resources
ZYGMUNT J. B. PLATER, ROBERT H. ABRAMS & WILLIAM GOLDFARB, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY (2d ed. 1998)	I. The Legal Process of Environmental Law II. Administrative Agencies and the Regulation of the Environment III. Different Modes of Regulatory Standard-Setting IV. Choices of Statutory Design V. Compliance, Enforcement, and Dispute Resolution Mechanisms VI. Private and Public-Societal Rights and Responsibilities VII. Globalization and Convergence
THOMAS J. SCHOENBAUM, RONALD H. ROSENBERG & HOLLY D. DOREMUS, ENVIRONMENTAL POLICY LAW: PROBLEMS, CASES, AND READINGS (4th ed. 2002)	I. Environmental Policy Perspectives II. Environmental Common Law III. The Administrative Law of the Environment IV. Who's in Charge of Environmental Decisions V. NEPA and the Power of Information VI. Public and Quasi-Public Resources VII. Toxic Substances VIII. Wastes, Recycling, and Resource Conservation IX. Superfund and Hazardous Waste Liability X. Air Pollution Control
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (2d ed. 2007)	I. Introduction II. NEPA III. The Clean Water Act IV. Clean Air Act V. Resource Conservation and Recovery Act VI. Regulatory Enforcement VII. Comprehensive Environmental Response, Compensation and Liability Act VIII. Protection of Particular Natural Resources IX. International Environmental Law
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (1st ed. 2008)	I. Perspectives on Environmental Law II. Risk Assessment, Risk Management, and Distribution of Environmental Risks III. Regulatory Tools IV. Political Context for Environmental Regulation V. Control of Air Pollution VI. Control of Water Pollution VII. Control of Hazardous Substances VIII. Disclosure of Environmental Risks IX. Management of Natural Resources X. Enforcement of Environmental Standards

Casebook	High-Level Table of Contents
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (6th ed. 2009)	I. Environmental Values and Policies: An Introduction II. Environmental Law: A Structural Overview III. Preventing Harm in the Face of Uncertainty IV. Waste Management and Pollution Prevention V. Air Pollution Control VI. Water Pollution Control VII. Land Use Regulation and Regulatory Takings VIII. Environmental Impact Assessment IX. Preservation of Biodiversity X. Environmental Enforcement XI. Protection of the Global Environment XII. Environmental Progress and Prospects
ZYGMUNT J. B. PLATER, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW AND SOCIETY (4th ed. 2010)	I. Basic Themes in Environmental Law II. The Enduring Role of the Common Law in Environmental Protection III. The Structural Elements of the Regulatory State IV. A Taxonomy of Legal Approaches to Environmental Protection V. Overarching Legal Principles
DANIEL A. FARBER, JODY FREEMAN & ANN E. CARLSON, CASES AND MATERIALS ON ENVIRONMENTAL LAW (8th ed. 2010)	I. Perspectives on Environmental Law II. Approaches to Environmental Protection III. Endangered Species IV. Environmental Protection and the Constitution V. Judicial Review and Administrative Process VI. Air Pollution VII. Water Pollution VIII. Hazardous Waste IX. Regulation of Toxic Substances and Genetically Modified Organisms
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER & DANIEL BODANSKY, ENVIRONMENTAL PROTECTION: LAW AND POLICY (6th ed. 2011)	I. Environmental Law's Foundation II. Environmental Federalism III. The Administrative Law of Environmental Protection IV. The National Environmental Policy Act V. Biodiversity Conservation VI. Protecting the Air Resource VII. Protecting the Water Resource VIII. Controlling Toxic Substances and Hazardous Wastes IX. Environmental Contamination Liability and Remediation X. Enforcement of Environmental Law XI. International Environmental Law XII. Climate Change Law and Policy Choices
HOLLY D. DOREMUS, ALBERT C. LIN & RONALD H. ROSENBERG, ENVIRONMENTAL POLICY LAW: PROBLEMS CASES, AND READINGS (6th ed. 2012)	I. Environmental Policy Perspectives II. Environmental Common Law III. The Administrative Law of the Environment IV. Environmental Federalism V. NEPA and the Power of Information VI. Public and Quasi-Public Resources VII. Toxic Substances VIII. Waste, Recycling, and Resource Conservation IX. Superfund and Hazardous Waste Liability X. Air Pollution Control XI. Water Pollution Control XII. Environmental Enforcement XIII. International Environmental Law

Casebook	High-Level Table of Contents
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (3rd ed. 2015)	I. Perspectives on Environmental Law II. Risk Assessment, Risk Management, and Distribution of Environmental Risks III. Regulatory Tools IV. Political Context for Environmental Regulation V. Control of Air Pollution VI. Control of Water Pollution VII. Control of Hazardous Substances VIII. Disclosure of Environmental Risks IX. Management of Natural Resources X. Enforcement of Environmental Standards
ROBIN KUNDIS CRAIG, ENVIRONMENTAL LAW IN CONTEXT: CASES AND MATERIALS (4th ed. 2016)	Introduction: Environmental Law and Its Contexts I. Environmental Law and the Common Law: Hazardous Waste, RCRA, and CERCLA II. Environmental Procedures & Judicial Review: NEPA & the APA III. Protecting Endangered and Threatened Species in the United States and Globally IV. The Clean Air Act, the Risks of Pollution, and the Costs and Benefits of Environmental Regulation V. The Clean Water Act and Federalism VI. Environmental Citizen Suits and the U.S. Constitution
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (4th ed. 2018)	I. Introduction II. NEPA III. The Clean Water Act IV. Clean Air Act V. Resource Conservation and Recovery Act VI. Regulatory Enforcement VII. Comprehensive Environmental Response, Compensation and Liability Act VIII. Protection of Particular Natural Resources IX. Climate Change X. Regulatory Takings
DANIEL A. FARBER, ANN E. CARLSON & WILLIAM BOYD, CASES AND MATERIALS ON ENVIRONMENTAL LAW (10th ed. 2019)	I. Introducing Environmental Law II. Approaches to Risk Regulation III. Endangered Species IV. Environmental Protection and the Constitution V. Judicial Review and Administrative Process VI. Air Pollution VII. Water Pollution VIII. Hazardous Waste IX. Regulation of Toxic Substances and Genetically Modified Organisms
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER, DANIEL BODANSKY & EMILY HAMMOND, ENVIRONMENTAL PROTECTION: LAW AND POLICY (8th ed. 2019)	I. Environmental Law's Foundation II. Environmental Federalism III. The Administrative Law of Environmental Protection IV. The National Environmental Policy Act V. Biodiversity Conservation VI. Protecting the Air Resource VII. Protecting the Water Resource VIII. Controlling Toxic Substances and Hazardous Wastes IX. Environmental Contamination Liability and Remediation X. Enforcement of Environmental Law XI. International Environmental Law XII. Climate Change Law and Policy Choices

Casebook	High-Level Table of Contents
LINDA A. MALONE & WILLIAM M. TABB, ENVIRONMENTAL LAW, POLICY, AND PRACTICE (3rd ed. 2020)	I. Perspectives on Environmental Law and Policy II. Common Law III. Constitutional Issues in Environmental Litigation IV. Endangered Species Act V. NEPA: Policy and Practice VI. Air Pollution VII. Water Pollution VIII. Resource Conservation and Recovery Act (RCRA) IX. Comprehensive Environmental Response, Compensation, and Liability Act X. Toxic Substances Control Act XI. Federal Insecticide, Fungicide & Rodenticide Act
TODD AAGAARD, DAVE OWEN & JUSTIN PIDOT, PRACTICING ENVIRONMENTAL LAW (2d ed. 2021)	I. Introduction II. Background Principles III. Air Pollution IV. Water Pollution V. Chemical Safety Regulation VI. Management of Hazardous Waste VII. Contaminated Site Cleanup VIII. Environmental Impact Analysis IX. Biodiversity Protection

## APPENDIX B: INCLUSION OF ENVIRONMENTAL JUSTICE CASES

Casebook	<i>Bean v. Sw. Waste Mgmt.</i> (1979)	<i>East-Bibb Twiggs Neighborhood v. Macon-Bibb Plan. &amp; Zoning Comm'n</i> (1987)	<i>Native Vill. of Kivalina v. ExxonMobil Corp.</i> (2009)	<i>R.I.S.E., Inc. v. Kay</i> (1991)	<i>S. Camden Citizens in Action v. N.J. Dep't of Env't Prot.</i> (2001)
RICHARD B. STEWART & JAMES E. KRIER, ENVIRONMENTAL LAW AND POLICY: READINGS, MATERIALS AND NOTES (2d ed. 1978)	N/A	N/A	N/A	N/A	N/A
THOMAS J. SCHOENBAUM, ENVIRONMENTAL POLICY LAW: CASES, READINGS, AND TEXT (1982)	No	N/A	N/A	N/A	N/A
FREDERICK R. ANDERSON, DANIEL R. MANDELKER & DAN A. TARLOCK, ENVIRONMENTAL PROTECTION: LAW AND POLICY (1st ed. 1984)	No	N/A	N/A	N/A	N/A

Casebook	<i>B v. SWM</i> (1979)	<i>E-BTN v. M-BP&amp;ZC</i> (1987)	<i>NVK v. EMC</i> (2009)	<i>RI v. K</i> (1991)	<i>SCCA v. NJ DoEP</i> (2001)
ROGER W. FINDLEY & DANIEL A. FARBER, CASES AND MATERIALS ON ENVIRONMENTAL LAW (3rd ed. 1991)	No	No	N/A	No	N/A
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (1st ed. 1992)	No	No	N/A	Yes (squib)	N/A
PETER S. MENELL & RICHARD B. STEWART, ENVIRONMENTAL LAW AND POLICY (1st ed. 1994)	No	No	N/A	No	N/A
ZYGMUNT J. B. PLATER, ROBERT H. ABRAMS & WILLIAM GOLDFARB, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY (2d ed. 1998)	Yes (citation)	Yes (citation)	N/A	No	N/A
THOMAS J. SCHOENBAUM, RONALD H. ROSENBERG & HOLLY D. DOREMUS, ENVIRONMENTAL POLICY LAW: PROBLEMS, CASES, AND READINGS (4th ed. 2002)	Yes (squib)	Yes (squib)	No	Yes (squib)	Yes (squib)
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (2d ed. 2007)	No	No	No	No	No
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (1st ed. 2008)	Yes (squib)	Yes (full case)	No	No	No
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (6 <sup>th</sup> ed. 2009).	Yes (squib)	No	No	Yes (squib)	Yes (squib)



Casebook	<i>B v. SWM</i> (1979)	<i>E-BTN v. M-BP&amp;ZC</i> (1987)	<i>NVK v. EMC</i> (2009)	<i>RI v. K</i> (1991)	<i>SCCA v. NJ DoEP</i> (2001)
ZYGMUNT J. B. PLATER, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW AND SOCIETY (4th ed. 2010)	No (though included in earlier edition)	No (though included in earlier edition)	Yes (squib)	No	Yes (squib)
DANIEL A. FARBER, JODY FREEMAN & ANN E. CARLSON, CASES AND MATERIALS ON ENVIRONMENTAL LAW (8th ed. 2010)	No	No	No	No	Yes (squib)
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER & DANIEL BODANSKY, ENVIRONMENTAL PROTECTION: LAW AND POLICY (6th ed. 2011)	No	No	Yes (squib)	No	Yes (full case)
HOLLY D. DOREMUS, ALBERT C. LIN & RONALD H. ROSENBERG, ENVIRONMENTAL POLICY LAW: PROBLEMS CASES, AND READINGS (6th ed. 2012)	No	No	Yes (squib)	No	No
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (3rd ed. 2015)	Yes (squib)	Yes (full case)	No	No	No
ROBIN KUNDIS CRAIG, ENVIRONMENTAL LAW IN CONTEXT: CASES AND MATERIALS (4th ed. 2016)	No	No	No	No	No
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (4th ed. 2018)	No	No	Yes (squib)	No	No

Casebook	<i>B v. SWM</i> (1979)	<i>E-BTN v. M-BP&amp;ZC</i> (1987)	<i>NVK v. EMC</i> (2009)	<i>RI v. K</i> (1991)	<i>SCCA v. NJ DoEP</i> (2001)
DANIEL A. FARBER, ANN E. CARLSON & WILLIAM BOYD, CASES AND MATERIALS ON ENVIRONMENTAL LAW (10th ed. 2019)	No	No	Yes (squib)	No	Yes (squib)
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER, DANIEL BODANSKY & EMILY HAMMOND, ENVIRONMENTAL PROTECTION: LAW AND POLICY (8th ed. 2019)	(Cases starting with "A" through "C" not included in table of cases)	No	Yes (squib)	No	Yes (full case)
LINDA A. MALONE & WILLIAM M. TABB, ENVIRONMENTAL LAW, POLICY, AND PRACTICE (3rd ed. 2020)	No	No	No	No	No
TODD AAGAARD, DAVE OWEN & JUSTIN PIDOT, PRACTICING ENVIRONMENTAL LAW (2d ed. 2021)	No	No	Yes (squib)	No	No

APPENDIX C: PRESENCE OF ENVIRONMENTAL JUSTICE SECTION AND KEY TERMS FOR TABLE OF CONTENTS SEARCHES

Casebook	Environmental Justice Chapter	Discrimination	Disparate Impact	Environmental Justice	Equity/Equality	Human Rights	Indian/Native/Tribe Indigenous/Aborigines	Locally Unwanted Land Use	Not In My Backyard	Race/Minority	Social Impact/ Social Justice
RICHARD B. STEWART & JAMES E. KRIER, ENVIRONMENTAL LAW AND POLICY: READINGS, MATERIALS AND NOTES (2d ed. 1978)	Yes	No	No	No	No	No	No	No	No	No	No
THOMAS J. SCHOENBAUM, ENVIRONMENTAL POLICY LAW: CASES, READINGS, AND TEXT (1982)	Yes	No	No	No	No	No	No	No	No	No	
FREDERICK R. ANDERSON, DANIEL R. MANDELKER & DAN A. TARLOCK, ENVIRONMENTAL PROTECTION: LAW AND POLICY (1st ed. 1984)	No	No	No	No	No	No	Yes	No	No	No	No

Casebook	Environmental Justice Chapter	Discrimination	Disparate Impact	Environmental Justice	Equity/Equality	Human Rights	Indian/Native/Tribe Indigenous/Aborigines	Locally Unwanted Land Use	Not In My Backyard	Race/Minority	Social Impact/ Social Justice
ROGER W. FINDLEY & DANIEL A. FARBER, CASES AND MATERIALS ON ENVIRONMENTAL LAW (3rd ed. 1991)	No	No	No	No	No	No	No	No	No	No	Yes
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (1st ed. 1992)	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
PETER S. MENELL & RICHARD B. STEWART, ENVIRONMENTAL LAW AND POLICY (1st ed. 1994)	Yes	No	No	Yes	No	No	No	No	Yes	Yes	Yes
ZYGMUNT J. B. PLATER, ROBERT H. ABRAMS & WILLIAM GOLDFARB, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY (2d ed. 1998)	No	No	No	No	No	No	No	No	No	No	No
THOMAS J. SCHOENBAUM, RONALD H. ROSENBERG & HOLLY D. DOREMUS, ENVIRONMENTAL POLICY LAW: PROBLEMS, CASES, AND READINGS (4th ed. 2002)	Yes	No	No	Yes	No	No	No	Yes	No	No	No
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (2d ed. 2007)	Yes	No	No	Yes	No	No	No	No	No	No	No
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (1st ed. 2008)	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
ROBERT V. PERCIVAL, CHRISTOPHER H. SCHROEDER, ALAN S. MILLER & JAMES P. LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (6th ed. 2009).	Yes	No	No	Yes	Yes	No	No	No	No	No	No
ZYGMUNT J. B. PLATER, ENVIRONMENTAL LAW AND POLICY: NATURE, LAW AND SOCIETY (4th ed. 2010)	Yes	No	No	Yes	Yes	No	Yes	No	Yes	No	No
DANIEL A. FARBER, JODY FREEMAN & ANN E. CARLSON, CASES AND MATERIALS ON ENVIRONMENTAL LAW (8th ed. 2010)	Yes	No	No	Yes	No	No	No	No	No	No	No
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER & DANIEL BODANSKY, ENVIRONMENTAL PROTECTION: LAW AND POLICY (6th ed. 2011)	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
HOLLY D. DOREMUS, ALBERT C. LIN & RONALD H. ROSENBERG, ENVIRONMENTAL POLICY LAW: PROBLEMS CASES, AND READINGS (6th ed. 2012)	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY (3rd ed. 2015) [NO INDEX]	Yes	N/A <sup>261</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ROBIN KUNDIS CRAIG, ENVIRONMENTAL LAW IN CONTEXT: CASES AND MATERIALS (4th ed. 2016)	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes

261. The term "N/A," or not applicable, is used to indicate the lack of an index.

Casebook	Environmental Justice Chapter	Discrimination	Disparate Impact	Environmental Justice	Equity/Equality	Human Rights	Indian/Native/Tribe Indigenous/Aborigines	Locally Unwanted Land Use	Not In My Backyard	Race/Minority	Social Impact/ Social Justice
CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT (4th ed. 2018)	Yes	No	No	Yes	No	No	No	No	No	No	No
DANIEL A. FARBER, ANN E. CARLSON & WILLIAM BOYD, CASES AND MATERIALS ON ENVIRONMENTAL LAW (10th ed. 2019)	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
ROBERT L. GLICKSMAN, DAVID L. MARKELL, WILLIAM W. BUZBEE, DANIEL R. MANDELKER, DANIEL BODANSKY & EMILY HAMMOND, ENVIRONMENTAL PROTECTION: LAW AND POLICY (6th ed. 2019)	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	No
LINDA A. MALONE & WILLIAM M. TABB, ENVIRONMENTAL LAW, POLICY, AND PRACTICE (3rd ed. 2020)	No	No	No	No	No	No	No	No	No	No	No
TODD AAGAARD, DAVE OWEN & JUSTIN PIDOT, PRACTICING ENVIRONMENTAL LAW (2d ed. 2021)	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes

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We welcome responses to this Article. If you are interested in submitting a response for our online journal, *Ecology Law Currents*, please contact [cse.elq@law.berkeley.edu](mailto:cse.elq@law.berkeley.edu). Responses to articles may be viewed at our website, <http://www.ecologylawquarterly.org>.