

RETHINKING JUSTICE IN ENVIRONMENTAL LAWS: A PHILOSOPHICAL ENQUIRY

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ABSTRACT

This paper critically examines the conceptual underpinnings and practical applications of justice within contemporary environmental laws. Despite significant strides in environmental legislation, persistent disparities and inequities challenge the efficacy of existing legal frameworks. Through a comprehensive analysis of literature, this study identifies key shortcomings in current approaches to justice, including the neglect of marginalized communities, the prioritization of economic interests, and procedural barriers to participation. Drawing upon theories of environmental justice and legal pluralism, it proposes a transformative framework centered on principles of distributive, procedural, and recognition justice. This framework seeks to address systemic injustices by promoting inclusivity, equity, and empowerment within environmental decision-making processes. By synthesizing insights from law, sociology, and environmental ethics, this paper offers a refined understanding of justice in environmental contexts and provides practical recommendations for policymakers, legal practitioners, and scholars. Ultimately, this research aims to catalyze dialogue and act towards a more just and sustainable environmental governance.

Keywords: Justice, environmental laws, anthropocentrism, ecocentrism, Intergenerational Equity

INTRODUCTION

The Earth's ecosystem, the intricate web of life that sustains us all, is facing unprecedented rates of degradation. Deforestation, pollution, and climate change are pushing these vital systems towards a tipping point, with far-reaching consequences for biodiversity, resource availability, and human well-being. In this context, the existing framework of environmental law appears increasingly unrealizable and inapplicable.

Justice is a fundamental principle underlying the development and implementation of laws and policies, including those related to the environment. In recent years, there has been increasing recognition of the need to ensure justice for all members of the environment, including humans and non-human entities. Current legal approaches often prioritize economic development and pollution control over ecological restoration and the intrinsic value of nature. The dominant 'polluter pays principle' (PPP), while holding polluters accountable, focuses on remediation after the fact, neglecting the long-term ecological damage inflicted. Furthermore, unequal enforcement weakens the effectiveness of environmental laws, disproportionately burdening marginalized communities with the consequences of environmental degradation.

This critical juncture demands a paradigm shift in environmental justice. Justice in this context extends beyond simply holding polluters responsible. It necessitates a holistic approach that prioritizes ecological restoration, ensures intergenerational equity, and recognizes the inherent value of ecosystems. This thesis delves into the limitations of current environmental law, explores alternative legal frameworks that promote ecological well-being, and proposes a path forward for achieving true environmental justice in the face of escalating ecosystem degradation.

ENVIRONMENTAL LAWS

The environment encompasses everything that surrounds us, the living (biotic) and non-living (abiotic) components that interact to sustain life on Earth. This intricate web includes the atmosphere, water, land, plants, animals, and humans (Miller, 2009). Also, Johnson et al. (1997) assert that the environment includes all living things in contact with one another as well as the climate, weather, and natural resources that have an impact on human survival and economic activity. However, human activity has significantly impacted this delicate balance, leading to the development of environmental law.

Environmental law is the collection of laws, regulations, agreements, and common law that govern how humans interact with their environment. This includes environmental regulations; laws governing management of natural resources, such as forests, minerals, or fisheries; and related topics such as environmental impact assessments. According to Brumby, 2013 Environmental law is a broad field of legal principles, regulations, and agreements that govern human interaction with the environment. It encompasses various aspects, including:

- **Pollution Control:** Regulating the release of harmful substances into air, water, and land.
- **Natural Resource Management:** Managing forests, fisheries, and minerals to ensure sustainability.
- **Biodiversity Protection:** Safeguarding endangered species and their habitats.
- **Waste Management:** Promoting responsible handling and disposal of waste products.

Environmental laws are put in place to mitigate the threatening environmental problems that emanate from human activities in the quest for economic growth and development. The need for environmental control arises from the fact that it brings improved health and better living conditions (Adelagan, 2004). These laws can be international treaties, national statutes, or local regulations. They establish standards for acceptable levels of pollution, prescribe practices for sustainable resource use, and mandate environmental impact assessments for certain projects.

CONCEPTUALIZATION OF JUSTICE

The concept of justice, a cornerstone of philosophy and legal systems, takes on a complex dimension when applied to the environment. Environmental laws, while striving to protect ecosystems and regulate human impact, often fall short of achieving true environmental justice.

The word Justice is derived from the Latin word “jus” meaning right or law. The Merriam-Webster dictionary defines justice as the maintenance or administration of what is just, especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments. It can also be seen as the quality of being just and fair.

Aristotle's concept of justice is grounded in his broader ethical framework, particularly in his work, *Nicomachean Ethics*. For Aristotle, justice is not merely about obeying laws or distributing goods fairly; it is about cultivating virtuous habits and promoting human flourishing within a community. Plato's concept of justice, as explored in his work, *The Republic*, involves harmony and balance within the individual and the state. He believed that justice in the individual arises when each part of the soul performs its proper function, with reason ruling over the spirited and appetitive parts. In the state, justice is achieved when each class (rulers, warriors, and producers) performs its designated role, with rulers governing wisely for the benefit of the whole society. This creates a harmonious and balanced society where everyone contributes according to their abilities and receives what they deserve. For Plato, justice is a moral concept rather than a legal one.

Justice was defined and determined by the Christian philosophers of the Middle Ages, Saint Augustine (354-430) and Saint Thomas Aquinas (1225-1274), who drew upon their ethical framework of morals under God. According to Saint Augustine, every unjust law of man that conflicts with God's everlasting law ought to be disregarded since it is unjust. God's law is intrinsically just and lasts forever. Justice is a reflection of upholding God's natural rules, according to Saint Thomas Aquinas, who also focused on natural law, arguing that morality informs justice and that people are born with moral rights.

In the contemporary age, justice essentially refers to the acceptance and application of legislatively enacted legislation. Also, judicial organs play a major role in this function in the modern environment, unlike in ancient nations. Justice, then, usually refers to the courts' acknowledgment, administration, and enforcement of the law. This is not the same as how justice was understood in ancient times when it was assigned a moralistic and religious connotation. Under the influence of the contemporary philosopher, John Rawls, the term "Justice as Fairness" has become generally accepted in practically all social science fields. It also provides an in-depth explanation of the meaning of justice. Rawls presents two principles of justice in his writings. Firstly, every individual has an equal right to the broadest possible overall system of equal basic rights that is compatible with a system of liberty that is comparable for everyone. Secondly, according to the just savings concept, social and economic disparities should be managed so that they are: (i) tied to posts and offices that are accessible to everyone under fair equality of opportunity circumstances, and (ii) to the greatest benefit of the least advantaged, under the just savings concept (Rawls, 1971).

Kant talked about how justice is like a contract, and this idea influenced Rawls. Rawls's idea of justice is not just about making sure people are okay, but also about making sure each person is treated fairly. He came up with the "Veil of Ignorance" idea to explain this. Normally, our ideas about fairness are shaped by who we are, like our race, gender, and background. But if we imagine not knowing anything about ourselves, we would want a society that's fair for everyone. Rawls thinks the most important rule is to make sure everyone has basic freedoms, like freedom of thought. He also thinks societies should make sure everyone has access to things like education and housing, which are positive rights.

JUSTICE AND THE ENVIRONMENT

Environmental Justice is defined by the United States Environmental Protection Agency (EPA) as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, concerning the development, implementation, and enforcement of environmental laws, regulations, and policies.

According to Wolch, et al (2014), environmental justice is seen as the equitable exposure to environmental good and harm. It calls for strict enforcement of principles and mandates the right to ethical, balanced, and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things. Also, it requires that humans make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make conscious decisions to reprioritize our lifestyles to ensure the health of the natural world for present and future generations.

Environmental justice focuses on the equitable distribution of environmental benefits and burdens. This raises questions about who has rights within the environment: just humans, or all living things? What are those rights? Do future generations have a right to a healthy planet?

Environmental law has traditionally been grounded in anthropocentrism, a view that places humanity at the center, valuing the environment primarily for its utility and benefit to humans.

This perspective informs regulations focused on sustainable resource management, pollution control, and economic valuations of ecosystem services (Moore, 2015). While these regulations have played a crucial role in curbing environmental degradation, they fail to fully address the question of who has rights within the environment.

Gilfford who supports anthropocentrism believes that unlimited human progress is possible through the exploitation of nature's infinite resources. Also, Francis Bacon posits that "we must torture the nature's secret from her, this view considers man separate and superior to nature, it considers nature as an inert machine, infinitely divisible and moved by external rather internal forces. We reduce things to mere nature, because nature is the name for what we have, to some extent, conquered (Lewis 1953). Within the anthropocentric framework, environmental laws are designed to protect human well-being, including health, safety, and economic prosperity, often at the expense of non-human species and ecosystems (Gardiner, 2004). This utilitarian perspective justifies environmental policies based on cost-benefit analysis and trade-offs between human interests and ecological integrity (Sagoff, 1988).

However, **ecocentrism** challenges this anthropocentric view. Ecocentrists argue that nature has intrinsic value, existing independently of its usefulness to humans (Goodland, 1995). Devall et al. (1985) assert that non-human nature has intrinsic value apart from its contribution to human development, and man is not separate or superior from nature but takes place in nature's system, therefore man's development should be sought only insofar as it does not infringe on the integrity of natural ecosystems. Ecocentric theories, such as deep ecology and biocentrism, emphasize the interconnectedness and interdependence of all living beings and ecosystems, advocating for a holistic and inclusive approach to governance (Naess, 1973). From an ecocentric perspective, environmental laws should prioritize the protection and preservation of biodiversity, ecological integrity, and the intrinsic value of nature, regardless of their instrumental value to man.

Also, this perspective suggests that environmental laws should not just protect human well-being, but also the inherent value of ecosystems themselves. The concept of "rights of nature," gaining traction in legal movements, proposes granting legal personhood or guardianship to ecosystems themselves, allowing them to be represented in court and protected from harmful activities (Cornel Law School, 2023).

The concept of rights of nature raises intriguing questions about the specific rights the environment might possess. These rights could encompass the right to exist, thrive, and evolve naturally, free from human-caused degradation (Bingham, 2014). Granting such rights would necessitate establishing mechanisms for enforcing these rights, potentially through legal guardians or designated representatives. Some scholars propose the establishment of rights such as the right to clean air, water, and food, which are essential for human well-being (Bullard & Johnson, 2000). Additionally, the recognition of rights for non-human entities, such as the right to habitat preservation and freedom from exploitation, is gaining traction within environmental discourse (Cafaro & Primack, 2018).

By recognizing the inherent rights of nature, ecocentrism offers a broader framework for environmental justice that includes the well-being of all living things, not just humans.

DIMENSIONS TO ENVIRONMENTAL JUSTICE

- i. Distributive Justice:** Focuses on the equitable distribution of environmental benefits and burdens. It challenges the unequal distribution of environmental risks and harms, particularly in low-income and minority communities. This dimension raises questions about access to clean air, water, and land, as well as the fair distribution of environmental amenities like parks and green spaces.

- ii. **Procedural Justice:** Emphasizes the importance of meaningful public participation in environmental decision-making. This includes access to information, the right to be heard, and the ability to influence decisions that affect one's environment and well-being. It also entails transparency and accountability in environmental governance.
- iii. **Corrective Justice:** Addresses the need to hold polluters accountable for environmental damage and to compensate victims for their losses. This dimension encompasses legal mechanisms such as liability for environmental harm, remediation efforts, and compensation for communities affected by pollution.
- iv. **Restorative Justice:** Focuses on healing environmental harms and restoring damaged ecosystems. It emphasizes the importance of ecological restoration projects, as well as the role of indigenous knowledge and traditional ecological practices in environmental management.

APPLICABILITY AND CHALLENGES IN ENVIRONMENTAL LAWS

The efficacy of environmental laws in delivering justice has been a subject of debate and scrutiny. As we confront pressing environmental challenges, it's imperative to reassess the applicability and effectiveness of these laws in achieving equitable outcomes. Environmental laws are designed to regulate human activities that impact the environment, ranging from pollution control to natural resource management. However, their applicability can vary significantly across different regions and contexts due to several influencing factors:

- i. **Enforcement Capacity:** The ability of governments and regulatory bodies to enforce environmental laws is crucial for their applicability. In many developing countries, limited financial and human resources hinder effective enforcement. For instance, agencies may lack the personnel needed to monitor compliance or the technical expertise to assess environmental impacts accurately (Gunningham & Sinclair, 1999). This can lead to widespread non-compliance and environmental degradation, as seen in countries with rampant deforestation due to illegal logging (Kaimowitz, 2003).
- ii. **Political Will:** Political commitment to environmental protection varies widely and significantly influences the applicability of environmental laws. In some regions, political leaders prioritize economic growth and development over environmental conservation, weakening the implementation of environmental regulations. For example, despite robust environmental laws in Brazil, political and economic pressures have often led to the relaxation of these laws to favour agricultural expansion and mining, exacerbating deforestation in the Amazon (Bratman, 2019).
- iii. **Socio-Economic Disparities:** Socio-economic disparities can affect how environmental laws are applied and perceived. In marginalized communities, the lack of access to legal resources and political representation can impede the enforcement of environmental laws, perpetuating environmental injustices. Communities of color and low-income populations in the United States, for instance, often face higher exposure to environmental hazards due to the inequitable application of environmental regulations (Bullard, 1993).
- iv. **Intersectionality with Social Justice Concerns:** The intersectionality of environmental issues with other social justice concerns, such as race, class, and gender, requires a more nuanced understanding of the applicability of environmental laws. Environmental justice frameworks highlight how these intersecting issues influence the distribution of environmental benefits and burdens. For example, Indigenous communities frequently face disproportionate environmental impacts from industrial activities due to historical

and ongoing injustices (Whyte, 2018).

- v. **Gap between Legal Mandates and On-the-Ground Realities:** One of the primary challenges is the gap between the legal mandates of environmental laws and the realities of their implementation. Laws may be well-intentioned, but without adequate enforcement and compliance mechanisms, they often fail to produce the desired outcomes. This gap can result from insufficient funding for environmental agencies, lack of trained personnel, and political interference (Bennear & Coglianesi, 2005).
- vi. **Inadequate Enforcement Mechanisms:** Enforcement mechanisms are often inadequate, leading to non-compliance and impunity among polluters. Regulatory agencies may struggle to enforce laws effectively due to bureaucratic inefficiencies, corruption, and lack of transparency. For instance, in many countries, industrial facilities continue to violate pollution standards with little fear of repercussions due to weak regulatory oversight (Dasgupta et al., 2001).
- vii. **Complex and Transboundary Nature of Environmental Problems:** The complex and transboundary nature of many environmental problems necessitates a more holistic and collaborative approach to law enforcement and policy implementation. Environmental issues such as climate change, biodiversity loss, and water pollution often cross national borders, requiring coordinated international efforts. However, existing environmental laws are typically designed to address local or national issues, making it challenging to manage transboundary environmental impacts effectively (Young, 2002).
- viii. **Public Participation and Transparency:** Enhancing public participation and transparency in environmental decision-making processes can improve the effectiveness of environmental laws. When communities are actively involved in shaping and monitoring environmental policies, there is a greater likelihood of achieving equitable and sustainable outcomes. The Aarhus Convention, which grants the public rights to access information, participate in decision-making, and seek justice in environmental matters, exemplifies how increased transparency and participation can strengthen environmental governance (Stec & Casey-Lefkowitz, 2000).

INTERGENERATIONAL EQUITY: A MORAL OBLIGATION TO THE FUTURE

Expanding the circle of moral consideration in environmental justice necessitates extending our focus beyond the present generation. Intergenerational equity emphasizes our moral obligation to ensure future generations inherit a healthy planet capable of sustaining life. This principle calls for environmental decision-making that prioritizes long-term ecological well-being over short-term economic gains.

Consideration of intergenerational equity challenges the anthropocentric tendency to prioritize immediate economic benefits over the long-term health of the planet. Discounting the needs of future generations leads to unsustainable practices like resource depletion and pollution for short-term economic growth. Intergenerational equity compels us to factor in the long-term consequences of our actions and adopt environmental practices that ensure a viable future for all generations to come.

The dialogue surrounding environmental justice extends beyond competing theories of rights. Ecological economics offers a valuable framework for integrating ecological values into economic decision-making. Traditional economic models often fail to capture the full value of ecosystem services, leading to environmental degradation and resource depletion (Costanza et al., 2012). Ecological economics advocates for including the intrinsic value of nature in economic calculations, taking into account the long-term consequences of environmental decisions. By

internalizing the true costs of environmental degradation, ecological economics can incentivize sustainable practices and inform policy decisions that promote environmental justice for present and future generations.

Developing sustainable economic strategies that align with environmental protection can help balance economic growth with ecological preservation. This includes supporting green jobs and industries that do not harm vulnerable communities. To achieve this integration, policymakers must prioritize investments in renewable energy, sustainable agriculture, and clean technologies. By transitioning towards a circular economy that minimizes waste and maximizes resource efficiency, we can reduce our ecological footprint while promoting economic prosperity.

THE WAY FORWARD

Moving forward, it is imperative to adopt a multifaceted approach to rethinking justice within environmental laws. This approach should incorporate principles of distributive, procedural, and participatory justice to ensure that environmental regulations not only mitigate harm but also promote fairness and equity among all stakeholders.

Firstly, integrating distributive justice principles entails considering the equitable distribution of environmental benefits and burdens across different communities, particularly those disproportionately affected by environmental degradation. This can be achieved through measures such as environmental impact assessments that assess the potential effects of proposed projects on vulnerable populations and ecosystems.

Secondly, procedural justice must be upheld by ensuring transparency, accountability, and inclusivity in the decision-making processes related to environmental policies and regulations. This involves providing meaningful opportunities for public participation, fostering dialogue between stakeholders, and incorporating diverse perspectives into policy development.

Lastly, promoting participatory justice necessitates empowering marginalized communities and indigenous groups to actively engage in environmental governance and decision-making processes. This requires recognizing and respecting their traditional knowledge, rights, and cultural practices, and fostering collaborative partnerships based on mutual respect and trust.

Furthermore, fostering interdisciplinary collaboration between legal scholars, environmental scientists, policymakers, and grassroots activists is essential for developing innovative solutions that address the complexities of environmental justice. By harnessing the collective expertise and insights of diverse stakeholders, we can advance a more holistic and inclusive approach to environmental law that prioritizes justice for both present and future generations.

CONCLUSION

In conclusion, the pursuit of justice within environmental laws requires a fundamental re-evaluation of existing frameworks to address the interconnected challenges of environmental degradation, social inequality, and systemic injustice. By integrating principles of distributive, procedural, and participatory justice into environmental governance, we can create a more equitable and sustainable future for all.

However, achieving this vision will require concerted efforts from governments, civil society, and the private sector to overcome entrenched power dynamics, institutional barriers, and resistance to change. It will also necessitate a shift in mindset from viewing environmental justice as an optional addendum to recognizing it as a foundational principle that underpins the integrity and effectiveness of environmental laws.

Ultimately, rethinking justice in environmental laws is not only a legal imperative but also a moral

imperative that demands collective action and solidarity across borders, generations, and social identities. By centering justice in our approach to environmental governance, we can build a more resilient and inclusive society where the rights of all beings, human and non-human alike, are respected and protected.

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