

**ENVIRONMENTAL JUSTICE:  
LEGAL THEORY AND PRACTICE**

**5TH EDITION**

by

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ENVIRONMENTAL LAW INSTITUTE

Washington, D.C.

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**Environmental Law Institute**

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## A poem about environmental injustice

*Flint matters! Flint is not like a piece of lint to be brushed off our clothing.  
It is a city where real people are horribly suffering.*

*Just an hour away from Detroit, which is my hometown.  
When I think about Flint's water, my face begins to frown.*

*How long has the water been polluted with lead?  
How many people will get sick, or end up dead?*

*It's no accident that this has happened in Flint.  
Powerful people decided how the money was spent.*

*Dr. King would say, "Environmental injustice anywhere is a threat to  
environmental justice everywhere."*

*I say, environmental racism is another form of brutality,  
In mostly black areas where there's pain and poverty.*

*To some extent, this happens in every poor urban setting.  
If it hasn't happened where you live, consider that a blessing.*

*The following truth must be understood,  
There's no contaminated water in rich neighborhoods ...*

*No children whose development has been stunted,  
Because some leaders' responsibility was punted.*

*Some see this as a political football,  
Not a national evil that should be confronted by all.*

*Some leaders are selling us out,  
So they can obtain status or clout.*

*Please be reminded of what happened in Michigan,  
Next time you get some water from your own kitchen.*

*Lord, show us how to help the folks in Flint,  
Through a visit or some water that needs to be sent.*

*Flint matters! Flint is not like a piece of lint to be brushed off our clothing.  
It is a city where real people are horribly suffering.<sup>1</sup>*

—The Rev. Joel A. Bowman Sr.  
Founder and Senior Pastor  
Temple of Faith Baptist Church  
Louisville 40215

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1. THE COURIER JOURNAL (Feb. 5, 2016), <https://www.courier-journal.com/story/opinion/2016/02/05/poem-environmental-injustice/79867852/>.

This textbook/handbook is dedicated to my parents, James Henry and Cecelia Naomi Hill, who instilled in their seven children the importance of obtaining a quality education, and to my mentor, retired D.C. Court of Appeals Judge Inez Smith Reid, who inspired me to expand my horizons as a student, lawyer, and teacher.

Barry E. Hill

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## Biography



Barry E. Hill is a recognized expert on environmental justice and sustainable development issues. Professor Hill is an Adjunct Professor of Law at Vermont Law School, where he has taught an environmental justice and sustainable development course for more than 20 years. He has been a Visiting Scholar at the Environmental Law Institute, an environmental law and policy think-tank in Washington, D.C., since he retired from federal service in March 2015. Professor Hill was Senior Counsel for Environmental Governance, Office of International and Tribal Affairs, United States Environmental Protection Agency (U.S. EPA) from 2007-2015. Previously, Professor Hill was Director of the U.S. EPA's Office of Environmental Justice from 1998-2007. Prior to that, he was the U.S. Department of the Interior's Associate Solicitor, Division of Conservation and Wildlife, and the Director, Office of Hearings and Appeals. Prior positions include: Of Counsel to the law firm of Dickstein Shapiro, LLP, where he practiced environmental law; Project Manager of the Superfund Business Unit of ICF International, an international consulting firm; Special Counsel to the Corporation Counsel (now the Attorney General) of the District of Columbia; Legal Counsel to the Inspector General of the U.S. EPA; Law Secretary to the Deputy Administrative Judge of New York City (Criminal Division), and Administrative Judge of the Supreme Court (Manhattan); Clinical Law Professor of the Prisoners' Rights Clinic of the Antioch School of Law; and an Assistant District Attorney in Brooklyn, New York.

Professor Hill has lectured in the Middle East, Africa, South and Central America, and the Caribbean on the following topics: establishing an environmental law and policy framework for national governments; environmental justice and sustainable development; capacity-building training in environmental law for judges, prosecutors, government regulators, citizens, and the bar; citizen involvement in the environmental enforcement process; and the impact of global warming on indigenous populations. In 2011, Professor Hill delivered the Distinguished Lecture for the Trinidad & Tobago Environmental Commission, and the Supreme Court of Trinidad & Tobago.

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In 2011, Professor Hill was presented the "Distinguished Alumnus Award" by Brooklyn College of the City University of New York for his "commitment to environmental justice and sustainable development, and pioneering leadership in the field of environmental law and policy in the U.S. and abroad."

In 2001, Professor Hill was presented the "Award for Distinguished Achievement in Environmental Law and Policy" by the American Bar Association for his work—teaching, research, and leadership—in the areas of environmental justice and sustainable development, and environmental law and policy.

Since 1999, Professor Hill has been a Fellow of the American Bar Association's American Bar Foundation in recognition of his professional accomplishments, distinguished service, and commitment to the study of law and legal research.

Professor Hill received his B.A. degree in Political Science from Brooklyn College; M.A. degree in Political Science from Howard University; and a J.D. degree from the Cornell University Law School. In 2012, Professor Hill received an honorary Doctor of Laws degree from California's Thomas Jefferson School of Law, since he "steadfastly fought environmental injustice by taking action to decrease environmental risks and to raise awareness of these issues, and by providing communities with the appropriate tools needed to address serious environmental problems."



# Acknowledgments

I will always be thankful to the leadership of the 1954-1968 Civil Rights Movement, which was preceded by the centuries-long campaign by my African American ancestors and their allies to end slavery. They brought honor to the lives destroyed by slavery while celebrating the triumph of the human spirit. I thank them for being great role models for their enduring commitment to fight for the legal, political, and economic changes to prohibit *de jure* segregation and racial discrimination in the United States. I am beholden especially to Representative John Lewis (D-Ga.), the late civil rights icon for his 60-plus years of fearless activism, and the unquestioned “Conscience of Congress.” He introduced the Environmental Justice Act of 1992 (H.R. 2105), which was designed for the first time in this Nation’s history to address *de facto* racial discrimination in how environmental laws were enforced, and how environmental policy was developed and implemented by the U.S. Environmental Protection Agency and other departments and agencies of the federal government. Although his bill didn’t become law, Representative Lewis dutifully reintroduced his bill each year for more than a dozen years thereafter. He immediately saw the interconnection between the majestic Civil Rights Movement, the modern Environmental Movement, and the nascent Environmental Justice Movement.

I owe a tremendous debt of gratitude to the Environmental Justice Movement activists, advocates, and scholars who have inspired my keen interest and work in this area for the last 30-plus years.

I am deeply indebted to the authors and publishers who have granted me permission to reproduce the full manuscripts of their work in this textbook/handbook.

For my students—past, present, and future.

Throughout my efforts on the 5<sup>th</sup> edition, I have been inspired by the works of writers/activists such as James Baldwin; Malcolm X; Frederick Douglass; Nelson Mandela; W.E.B. Du Bois; Maya Angelou; Amiri Baraka; Octavia Butler; Ralph Ellison; Alex Haley; Langston Hughes; Zora Neale Hurston; Richard Wright; and Toni Morrison. I read excerpts of their works at various times when my research and analytical juices, energy, and spirit appeared to wane during periods of my solitary existence as an author. Indeed, they were writers/activists: I’m more of a chronicler. A chronicler is a person who writes accounts of important or historical events. I’m simply chronicling the Environmental Justice Movement from an environmental law, civil rights law, constitutional law, and a human rights law perspective. Simply stated, I am telling the ever-evolving story of how law can be used to address the environmental and public health problems of people living in sacrifice zones whose lives and legal struggles have been depicted throughout this textbook/handbook. This textbook/handbook explores the issue of environmental justice from the perspectives of social justice, geographic justice, and procedural justice.

In a 1984 interview with *The Paris Review*, the incomparable James Baldwin commented on writing what one sees as an author. He stated:

I don’t try to be prophetic, as I don’t sit down to write literature. It is simply this: a writer has to take all the risks of putting down what he sees. No one can tell him about that. No one can control that reality. It reminds me of something Pablo Picasso was supposed to have said to Gertrude Stein while he was painting her portrait. Gertrude said, ‘I don’t look like that.’ And Picasso replied, ‘You will.’ And he was right.

As a chronicler, I’ve written what I have seen: I’m not at all a prophet as I am the author of a legal, social, and political work of non-fiction.

Moreover, in a 1979 interview published in *The New York Times*, the peerless Baldwin commented on why one writes. He stated:

The bottom line is this. You write in order to change the world, knowing perfectly well that you probably can’t, but also knowing that literature is indispensable to the world. In some way, your aspirations and concern for a single man in fact do begin to change the world. The world changes according to the way people see it, and if you alter, even by a millimeter, the way a person looks or people look at reality, then you can change it.

During this period of working on the 5<sup>th</sup> edition, I was also inspired by the works of clerics/activists such as the Reverend Dr. Martin Luther King Jr.; Bishop Desmond Tutu; and Dr. Benjamin F. Reaves with his thought-provoking book, *Scalpel Moments*. These are people who wanted social, legal, spiritual, and political changes to take place in this world. As a chronicler, I sincerely hope that the worlds of victims of environmental injustice can change for the better, as well as that of the polluters whose deeds have been depicted throughout this textbook/handbook.

I want to acknowledge the contributions of countless lawyers toiling assiduously in the proverbial environmental justice vineyards. They're the ones responsible for the filing of the creative briefs, compelling motions, and effective oral arguments that have been included in this 5<sup>th</sup> edition, and which helped tremendously in making this edition to be even more of a useful handbook for law students and practitioners.

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Be Well; Be Balanced; Be Safe; and Be Happy!!!

Barry E. Hill