

The Role of Case Studies in Natural Resources Law
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Natural resources law and environmental law thrive on stories. Writers such as John Muir, Rachel Carson, Roderick Nash, and countless others have reached popular audiences with their accounts of remarkable places and the need to preserve them. There is a story behind the enactment of nearly every significant law governing natural resources and the environment. Judicial opinions tell stories of disputes that result in litigation between contested claims to the use of forests, lakes, grasslands, and wetlands large and small, and near and far. Natural resources law results from such stories.

Legal scholars have long depended upon such stories for multiple purposes. We use casebooks that, of course, are filled with cases that illustrate and teach the operation of the law. We supplement those casebooks with “Environmental Law Stories,” part of a series that demonstrates the power of stories in cultivating a fuller understanding of the law. We use cases in our scholarship to demonstrate the application of theoretical insights and to remind ourselves of the importance of seminal cases decided long ago (or even not so long ago). Again, more frequently than in other parts of legal scholarship, stories and case studies play a significant role in how we work as scholars and as teachers.

My book project considers how natural resources law and environmental law determine the natural environment in which we live. We are accustomed to how stories influence the development of new environmental legislation and judicial decisions, but the existing literature doesn't include as many stories of how environmental law then affects the natural environment. Moreover, the typical attention upon a specific statute overlooks the ways in which many environmental laws combine to influence the natural environment in particular places. To cite just one example, there are many excellent books and journal articles examining the management of national wildlife refuges, the cleanup of hazardous wastes, and the management of fisheries, but there is very little writing that seeks to explore how the laws governing those issues relate to one another in a place like Adak Island, the subject of the first chapter of my book. Likewise, there are many excellent scholarly and popular accounts of the environmental history of particular places, but few of those writings emphasize the ways in which environmental law determines the natural environment in those places. This omission led Aaron Sachs to assert in his recent book *The Humboldt Current: Nineteenth Century Exploration and the Roots of American Environmentalism* that recent environmental setbacks have occurred because “environmental thought has been disconnected from” travel narratives and other stories about the natural environment that the law seeks to govern.

My book seeks to reconnect how we think about the environment with what we

actually observe about that environment. It also reflects upon the role that the law – typically “natural resources law” or “environmental law,” but other laws, too – plays in that process of reconnection. The case studies in my book seek to show how the law and the natural environment are engaged in a dynamic process. Environmental law changes to accommodate new societal desires. The law promoted the draining of the Great Kankakee Marsh; now the law is trying to save what is left of the marsh and to restore some of the areas that were drained. The law designated the badlands of western North Dakota as a national park at the behest of local communities seeking economic development; now those communities are frustrated by the more stringent Clean Air Act regulations that apply to areas surrounding national parks. In these and many other instances, people constantly turn to the law to achieve a desired condition for the natural environment of a particular place.

The places that are described in the book illustrate how different environmental laws respond to different kinds of environmental problems. I selected the places with a number of criteria in mind. I sought places that illustrate different kinds of environmental problems, such as air pollution, wildlife preservation, and the removal of hazardous wastes. I sought places that illustrate a broad range of federal, state, and local laws affecting the natural environment. I sought geographic diversity within the United States, and a diversity of environmental conditions within those places. I also sought to examine places that have not gained the significant popular attention already experienced by places such as the Everglades, the Love Canal hazardous waste site near Buffalo, and the Gulf Coast after Hurricane Katrina.

Together, the six stories implicate many of the questions that environmental law is designed to address. One set of questions involves the relationship between people and the natural environment. What is the proper role of humans within the environment? How should we respond to the effects of human manipulation of the environment? Does it matter whether those effects are direct or indirect? Intentional or unintentional? How should we address the effects of natural processes that change an environment? What do we want a place to look like? Who should make that decision? What happens when we change our minds?

Another group of questions asks if we can, or should, undo what we have done. What is the appropriate cleanup? How clean is clean? What risks should be willing to assume, or should we require future generations to assume? What costs should we incur to cleanup a remote, sparsely inhabited place? Should we concentrate our money and our efforts on places that are of greater value to people living nearby, or people who visit, or the other creatures that live there?

A final set of questions imagines the absence of human actions. What would happen to these places if humans simply left them alone? What plants and wildlife “belong” in a

particular place? Is there such a thing as a “pristine” environment? For example, I was chastised by a federal official when I suggested – before my visit, and as I was just reading about the island – that Adak Island was such a place. Don’t use “the P word,” I was told. If a remote Aleutian island is not pristine, can any place qualify as pristine today?

Natural resources law and environmental law try to answer all of these questions. They do so in different ways at different times and different places. Each of my case studies provides an example of the process by which we use the law to manage the natural environment.

Yet somehow this ubiquitous use of stories and case studies in natural resources and environmental law has gone unnoticed by the scholars who have studied the role of stories in legal scholarship. For example, the book *Law’s Stories: Narrative and Rhetoric in the Law*, edited by Peter Brooks and Paul Gerwitz and published by Yale University Press in 1995, contains 21 essays examining how stories influence the creation of specific laws and how they are employed in specific judicial cases. None of those essays discuss the role of narrative in natural resources law or environmental law, focusing instead on issues of constitutional law, civil rights, and criminal law. Even so, the insights of those essays can help natural resource law scholars better understand our use of case studies. Richard Delgado reports that “[s]tories, parables, chronicles, and narratives are powerful means for destroying a mindset – the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.” Stories “can produce an experience, an insight, and one or more emotional responses”, writes Martha Minow, and they are welcome “as a healthy disruption and challenge” to legal doctrine and theories.” Dan Farber and Suzanna Sherry warn that “[e]ven if a story is true, it may be atypical of real world experiences,” and they emphasize that “[t]he point of all scholarship – including the nontraditional forms – is to increase the reader’s understanding (here, of law).” Robert Weisberg observes that “[a]s the Christian reads in the Old Testament summaries of legal doctrines the traces of an unfolding story of a coming salvation, those who affirm a nation’s secular laws may read in its texts the revelational traces of heroic actions that created the laws or a continuing plot of progress to perfect them.” Weisberg adds that legal storytellers “may become what Shelley called poets : the ‘unacknowledged legislators’ of a nation.”

There is much more in the scholarly study of legal narratives to help those of us who study natural resources and environmental law. The stories in my book are designed to help us better understand exactly how environmental law works, to show the importance of looking at particular places, and to demonstrate how legal commands actually operate. Other stories are designed to inspire or to exhort. In telling such stories, we will do well to appreciate those who have examined the rhetorical significance of stories, so that the cases we study are both faithful to the purposes for which we tell them, to the reader’s understanding of the law, and perhaps even to our role as the legislators of a nation.