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Gray: Cases and Material on Environmental Law

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BOOK REVIEW

CASES AND MATERIAL ON ENVIRONMENTAL LAW. By Oscar S. Gray.¹ Washington, D.C.: Bureau of National Affairs. 2d ed. 1973. Pp. 1420. \$19.50. \$22.50 with 1974 Supplement.

This is the second edition of this well accepted Environmental Law Casebook. While the format and organization have remained basically the same as in the earlier 1970 edition, the author has expanded his coverage of the National Environmental Policy Act, barely born when the first edition was published, to include not only an overview of its first three years of administration, but also a series of cases on the Environmental Impact Statement, the most significant single tool provided by the Act. New sections on Relocation Assistance and Real Property Acquisition Policies and International Agreement on Cooperation in the Field of Environmental Protection have been added, but at the expense of a section on Weather Control contained in the earlier edition. Older cases have been substantially edited or deleted to make way for the many important new cases decided by the courts in the intervening three years in this very rapidly expanding field of law.

The second edition still contains a number of the drawbacks characterizing the earlier edition. Thus, while many of the cases reprinted in their entirety in the first edition have been substantially edited, many of the new cases have apparently been reprinted from the *Environmental Reporter* in all their pristine glory, thus adding substantially to the reading chores of the user. As in the first edition, the print size of the cases places an additional burden on the reader. Moreover, the statutory material, an extremely valuable addition to the book, could profit from substantial editing to delete those sections unimportant to the task at hand.

A serious omission, although it could not have been remedied without drastically reducing the scope of applicable federal law, is the relative lack of state materials. While it may be true that federal law is where much of the action is, more recognition of the important part played by the states in the increasingly complex field of environmental protection would seem to be called for in a book of this magnitude. The book continues to be weak in its coverage of water resources problems, almost entirely omitting coverage of the problems of consumptive use of water and giving rather scant attention to the related problems of riparian rights. While these areas can of course be treated in a separate course or seminar on water rights, the considerable coverage given to them in earlier books on natural resources law,² the pedagogical predecessor of environmental law, testify to their relative importance in the field.

1. Associate Professor, University of Maryland School of Law; Acting Director, Office of Environmental Impact, U.S. Department of Transportation, Washington, D.C. 1968-1970.

2. Trelease, Bloomenthal and Geraud devote approximately one-third of their *Natural Resources* casebook to these subjects, while Martz's earlier book is almost half water law. See C. MARTZ, *CASES ON NATURAL RESOURCES* (1st ed. 1951); F. TRELEASE, H. BLOOMENTHAL & J. GERAUD, *CASES ON NATURAL RESOURCES* (1st ed. 1965).

Another omission that would appear equally serious to many environmentalists is the lack of emphasis on population problems. While these are touched on in the final chapter, many serious students of the field would place them foremost among the problems crying for solution if our environment is to be saved for future generations.³

Having cataloged these problems, however, the reviewer would hasten to state that the advantages of Professor Gray's book as a teaching tool for environmental law far outweigh its weaknesses. To begin with, its coverage of the burgeoning environmental law field is much more comprehensive than that of most of its competitors. Designed to provide material for six semester hours or eight quarter hours of course work, it can be used successfully for a wide variety of programs. For example, at the reviewer's school it is the course-book not only for a basic survey-type course offered by him, but also for a more specialized course taught by a compatriot who is a nationally recognized expert on transportation problems and finds the book to be a fine vehicle for a course of three quarter hours covering that area. It would be equally easy to use as the basic text for a course emphasizing either air or water pollution control, and it could prove equally useful as a source book for a large variety of environmental law seminars ranging from a study of common law remedies to an analysis of the activities of such diverse federal agencies as the Corps of Engineers, the Federal Power Commission, and the Department of Housing and Urban Development.

Another big plus factor for Professor Gray's book is its felicitous marriage with the research faculties of the Bureau of National Affairs and its *Environmental Reporter*. This happy relationship has made it possible not only for Professor Gray to include the most current case and statutory material in his text, but also to provide an annual supplement containing the very latest legal developments, almost to the day classes begin each fall, a service beyond the individual capabilities of any other author. Thus, the 1974 supplement of 300 pages includes forty-four of the very latest cases in addition to such recent legislation as the Energy Supply and Environmental Conservation Act of 1974.

One innovation begun in the first edition and carried forward into the second is the publication of statutes and regulations controlling the various areas of environmental law and the federal agencies that administer these areas. This statutory and regulatory material, when juxtaposed with the latest cases interpreting it, is an excellent pedagogic device. It makes it possible for the instructor in a large class to emphasize the interrelationship of statutory, administrative, and judicial material without burdening the student and the library with substantial outside assignments.

The inclusion of material on the Administrative Procedure Act and the Freedom of Information Act is another plus factor. Some basic understanding

3. Thus, Juergensmeyer and Laughran devote an entire chapter of their casebook to population control. 2 J. JUERGENSMEYER & H. LAUGHRAN, *LEGAL ASPECTS OF ENVIRONMENTAL PRESERVATION AND CONTROL* pt. III, ch. 4 (1971). Population problems were the major focus of the Second International Conference on Man and His Environment held at Banff, Alberta, Canada, in May 1974.

of federal administrative procedure is essential to a grasp of present-day environmental law. While the included material does not explore this area in depth, it does provide the basis for reviewing and relating it to the problems of environmental law. One might wish that this material, along with the material on common law remedies, had been located earlier in the book, but the instructor is of course free to cover it at an early stage if he so chooses.

The relationship between budgetary expenditures and effective environmental control is not overlooked by Professor Gray. All too frequently Americans have taken the attitude that all that is necessary is to pass a law and the conditions legislated against will correct themselves. It is refreshing to find the author in a number of areas demonstrating and illustrating a realistic approach to the relationship between expenditures on pollution control and affirmative results in pollution control programs.

One other part of the book perhaps deserves comment. That is the detailed case study of the Miami Jetport controversy. This material, while rapidly becoming dated, provides a blueprint for effective citizen action for environmental protection, as well as demonstrating the many difficulties and pitfalls along the way. While it has been suggested that this material "could more properly be included in a political science text,"⁴ in the opinion of the reviewer its value to the law student in adding a flavor of realism to the judicial and legislative material that makes up the main part of this and most other casebooks is well worth the space it requires.

In conclusion, this book fulfills a real need in the environmental law field. Its emphasis on environmental protection and the tools by which it can be accomplished is in refreshing contrast to the approach of earlier works on natural resources law, which provided little more than blueprints for environmental exploitation. Now that the flood of environmental protection legislation by the Congress is subsiding, the hard task of making the existing legislation work in an often hostile political and economic climate has just begun. Oscar Gray's *Cases and Materials on Environmental Law* can help provide the tools to the new generation of lawyers who will be undertaking that difficult and often thankless task. Perhaps the philosophy of the author, reflected in the quotation from Mr. Justice William O. Douglas with which he opens the second edition of the book, will serve as an inspiration to that new generation:⁵

Only we the people, not technology, have 'values.' Love, respect, admiration, tenderness — these must be our attitude toward this biosphere if it is not to meet the technological Armageddon.

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4. Roe, *Warning: Environmental Law May Be Hazardous to the Environment*, 46 WASH. L. REV. 859, 860 (1971).

5. N.Y. Times, July 1, 1973, §4, at 13; this quotation forms the frontispiece of the book and appears on page v.

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