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Avigail: Hi, I'm Avigail Oren.

Lizzy: And I'm Lizzy Ghedi-Ehrlich.

Avigail: And we're your hosts for Scholars Strategy Network's No Jargon. Every other week, we discuss an American policy problem with one of the nation's top researchers without jargon.

Lizzy: And now the flowers are out, the buds are blooming, the birds are chirping. It is spring very much in probably most of the places where our listeners hail from. And it's Earth Day o'clock, essentially. I feel like this is the time every year when people start getting outside more, getting in their gardens, and we start getting those messages about, hey, look at the world, look at the outside.

Avigail: Yeah, absolutely. You know, I'm in Pittsburgh and it is gorgeous here this week, like absolutely stunning. And I've been introducing my 1.5-year-old to gardening, which mostly looks like him moving dirt from one container to another.

Lizzy: I honestly think there's a lot of gardeners who would say that that's the name of the game. That's what it is.

It's funny how this time of year, this process of renewal, for me at least, erases what is otherwise kind of a low simmering anxiety about the environment. It feels like we're all like, oh, oh, look, like it still showed up on time, you know?

And then you get right back to being like, oh, this is much hotter and more humid than I remember as a child. You know, we're seeing all those changes again. So it's a nice pause, but it's easy to forget the complexity of everything else that's happening all the time and the role that government and policy plays in it and where we're shaping this natural world.

Avigail: You know, that's such a good point. I think you're absolutely right that there is something about like the exhale or like the relief you feel in the spring that does take some of that existential dread about climate change off of your shoulders.

But certainly the current presidential administration is doing their best to remind us that environmental policy is under attack.

And that was why for this episode, I was really happy to speak to Alejandro Camacho, a professor of law at the University of California, Los Angeles School of Law. He serves on the board of directors at the Center for Progressive Reform as well.

And his new book co-authored with Brigham Daniels is *Lessons for a Warming Planet: A Vital History of US Environmental Law*, which was released on April 22nd to coincide with Earth Day. Here's our conversation. Welcome to No Jargon, Professor Camacho.

Alejandro: Thank you for having me.

Avigail: I want to start by asking you about something that happened in February, which was that the Environmental Protection Agency, most people know as the EPA, rescinded the 2009 greenhouse gas endangerment finding, which allowed the EPA to regulate greenhouse gas emissions. Under the Clean Air Act. Can you explain this rollback and its significance?

Alejandro: So under the Clean Air Act, the Environmental Protection Agency, the main federal agency that implements the Clean Air Act, has the authority to add, uh, or to regulate a variety of different sorts of air pollutants. And under a variety of different provisions, EPA has done so.

In order to do this, EPA has to make a determination for particular kinds of very common pollutants called criteria pollutants, as well as other kinds of air pollutants, that that pollutant will endanger public health and safety.

EPA, following a landmark US Supreme Court case, *Massachusetts v. EPA*, made the scientific determination that greenhouse gases, namely carbon dioxide, but as well as methane and other sorts of greenhouse gas pollutants, would endanger public health and safety.

And as a result of that determination, it led to a cascading effect of a variety of different sorts of ways for EPA to regulate different sources of the greenhouse gases, starting with mobile sources—cars and automobiles and other forms of vehicles—and then cascading to stationary sources, and particularly new stationary sources. When we say stationary sources, we mean obviously factories, power plants, etc.

And so the endangerment finding in many ways was the factual determination that these different pollutants were causing harm to human health and the environment. And so the latest determination decades later by the Trump administration to sort of reverse the endangerment finding is a very significant attempt to defy basic science, as well as to roll back regulatory action under the Clean Air Act to actually address climate change.

Avigail: And this is just one of the most visible environmental policy rollbacks of the second Trump administration, but it's far from the only one. Why is this rollback trend concerning?

Alejandro: There are a variety of ways that different governments—from the local, state, federal, and international—to address climate change. But in the United States, the primary statutory regime available for addressing climate change is the Federal Clean Air Act.

And so that rollback under the endangerment finding, as well as all the other attempts to basically defy science and defy the variety of different actions not only done by prior administrations, Democratic or otherwise, but also the Trump administration's actions in the first

term—this is essentially a deregulatory action that tries to set back 20 years of climate action by the federal government.

And so it really is an attempt to basically, at best, stick the United States federal government's head in the sand with regard to climate change. But worse, to make it more difficult for other regulatory agencies—from the local to the state—to engage in any kind of action that addresses concerns or harms that might come from climate change and to reduce greenhouse gases to prevent further climate change.

Avigail: Yeah. You, you sort of invoked a bit of a historical perspective in answering that question. I wanna ask you to go back in time with me a little bit. So for most of our listeners, environmental law probably evokes for them like major legislative acts. Like we've been talking about the Clean Air Act, but there was also the Clean Water Act and the Endangered Species Act that were all passed in the early 1970s. And I was wondering if you could explain to us why that period was, you know, so productive in terms of environmental legislation?

Alejandro: I will start from the outset saying it's not the only major moment in our time, and certainly that's part of one of the major claims from our book. But there's no doubt that that era—what we call the environmental era, which we say actually started in the '60s, but then obviously continued into the '70s—was probably the most concentrated moment for state and particularly federal environmental action, probably the largest concentration of statutory legislative approaches to dealing with the environment ever in human history.

There are a confluence of different reasons that that happened, and I think a lot of the literature that even precedes our book goes into a lot of detail about those. That includes obviously social movements, people really noticing the fact that environmental harms were being perpetuated by a variety of different incentives put out by the law as well as by economic incentives—to pollute and not to pay attention to the harms that occurred.

So there's this growing awakening, particularly in the '60s, about the harms that had occurred. There's a growing awakening both in terms of science—scientists, obviously most prominently captured by Rachel Carson in her 1962 book *Silent Spring*—which shows not only her own personal evolution that mirrored the era.

She's this scientist and naturalist who initially was warning and worried about nuclear fallout, but then later on sees there are some more mundane but insidious problems like pesticides, like DDT, and she's exposing the harms that come from these. So it starts off with the science and awareness of the harms from technology, then growing social movements where people become more aware of the problems that occur from this—linked to the peace movement and the civil rights movement.

And then it cascades into a number, unfortunately, of disasters that occurred—from the Santa Ana oil spill in 1969 to a river catching fire in Ohio, the Cuyahoga River—as well as others that combined to lead to concerns about this. But then, of course, you have to add in political opportunism: we have President Nixon and Senator Ed Muskie, prominent senator from Maine, competing to claim environmental leadership.

Because Senator Muskie had positioned himself as an environmental champion, President Nixon—an unlikely protagonist for environmentalism—created the EPA and signed landmark laws, frankly not because he cared about the environment, but because he didn't want Muskie

to outflank him before the 1972 presidential election. And then three years later, after a cascade of environmental statutes were passed, when he didn't think he was getting credit, decided to step away from it. But an unlikely legacy had been created.

I think our book tries to point out that in addition to all those different factors, there was the law in the background—what we call legal imagination—that had been percolating, people coming up with ideas of how to address these problems that were unsuccessful for decades. When you had this cocktail of science and disasters and social movements and political opportunism, that legal imagination was there to then take hold. This undercurrent of law became the primary current once the 1970s came around.

Avigail: I thought this was a really fascinating part of your book. Your book is really emphatic that to understand US environmental law, you have to look all the way back to pre-colonial North America. Can you explain why it's so important to do that, to look at this much longer historical context, and then maybe, you know, bring us up to this more recent period of historical imagination you just invoked?

Alejandro: That is in many ways the primary motivation for our book. We were surprised when we were writing this book—we started almost seven years ago, my co-author and I—by the complete absence of anything similar to what we were thinking about.

No prior book on the history of environmental law had taken a genuinely broad view—broad in two different ways, both time-wise and in terms of what counts as environmental law. Most focus only on the environmental protection laws emerging from the 1970s, or possibly the Progressive Era and Teddy Roosevelt and the public lands legacy, but they were missing decades and even centuries of legal history.

When most people think of environmental law, they think of environmental protection, but law also drives environmental exploitation. We wanted to look at both sides of the coin—the law that had harmed the environment as well as the laws that protected it—because we thought the lessons from past US history would offer real insight into today's legal challenges, namely climate change, AI, and emerging biotechnologies.

We wondered if the past held practical lessons for those working on legal reform today, and we did find that. One primary lesson is that the law has always been at the center—the core engine—of environmental destruction and protection throughout US history. From colonization, the law governing property, water, wildlife, and land has shaped the environment.

And in terms of breadth, environmental law is not just pollution control law or natural resources law. It's also civil rights law, property law, zoning law, corporate law, consumer protection law, and administrative law. The major moments of environmental legislation drew from these different areas of law to implement totally new ideas.

To bring it back to today, the legal change necessary for us to be thinking about is not always going to be ingrained in the Clean Air Act and whether there's an endangerment finding or not. We'll often have to draw on other areas of law, and we'll have to have a wider aperture—not just temporally, but also in terms of what laws might be available and necessary for addressing the problems at hand.

Avigail: Yeah. I, before we come back to the present, you start out the book with this quick look at early Boston. I was wondering if you could give listeners a little snapshot of that example, because It was very illustrative of what you were just talking about, the many ways in which, you know, it's not just about controlling a power plant that's spewing out particles.

Alejandro: The story of what is now a modern-day metropolitan city in Boston obviously goes back millennia, and we don't go quite that far to prehistoric times, but we do look at what Boston Harbor and the area looked like pre-European settlement.

There was a diverse number of different Indigenous communities, and they used their own norms and laws to manage the land—and that is environmental law. Then we have European settlement, which leads to a fair amount of exploitation and, of course, removal of Indigenous communities.

So in many ways, the first chapter of the book is about what we call the Allocation Era, which takes us from colonial times into the 1800s, where the primary goal of the law was law as an engine of exploitation, displacement, and destruction. Boston was a manifestation of that: Boston Harbor, initially in the colonial era, was probably the key city for commerce for the colonies.

As a result, there was displacement, exploitation, and destruction of the landscape, and law was the primary facilitator of that through property law regimes, land disposal policies, and removal policies for Native Americans. It also led to a fair amount of pollution in Boston Harbor.

As we get into the Progressive Era, coming into the 1890s, there was a backlash against the excesses of the Allocation Era. There was an awakening that government was necessary as a bulwark against unfettered commerce, and health legislation and natural resource protection laws were passed to protect fisheries and other resources important to the community.

Then we move into the modernization era, the 1920s to 1960s. In some ways Boston forgets the lessons of the Allocation Era and moves away from some of the Progressive Era's conservation laws. This is the era of the Roaring '20s, Great Depression, New Deal, World War II, and then the postwar boom, where the legal system underwrites the American dream—fossil fuel dependency, the federal interstate highway system, automobiles, and suburbs—all helped created by federal and state law.

Boston Harbor became a mess. It went under receivership to figure out how bad the water was contaminated. Then we get into the environmental era and into our current era where federal laws like the Clean Air Act, Clean Water Act, and hazardous waste laws like CERCLA—usually the Superfund law—were utilized to clean up Boston Harbor to the point that now it's incredibly clean compared to what it was several decades ago. So we see the ebb and flow of exploitation and protection, and today we're in what I would call turbulence.

Avigail: Tell us, why do you call this the contested era?

Alejandro: Yeah, and I think a lot of environmental lawyers and historians might be interested or maybe surprised to hear that we're calling that one era from 1980 to the present as a single era. But I think when you have that wider aperture—the longer time of looking at US environmental law—I think it holds together.

Since 1980, and certainly in an accelerated way today, this is an era marked by turbulence—backlash, polarization, and gridlock. You have ebbs and flows, but they're much more incremental, with bold actions in one direction immediately contested in another venue across administrations.

There certainly is evolution in environmental law, but it's not primarily through legislation, although there are some notable exceptions. It's primarily through agency interpretation and fights in courts.

So it's an era that, starting under President Reagan and through the second Trump administration, faces pressing challenges and some legal innovations. But a lot of it is through pragmatism and incremental amendments, and that has led us to gridlock. In my opinion, incrementalism has also led to a narrowness in our legal imagination—we end up fighting over small tools to try to address big problems.

Avigail: I like that analogy of small tools, but I wanna make sure that listeners entirely understand this differentiation. So for example, the Clean Air Act is a law, it was passed by Congress, but the endangerment finding is an EPA ruling. So can you just really quickly clarify the difference between a ruling and legislation and why that leads to this sort of small tool approach.

Alejandro: So statutes are passed by legislatures—at the federal level, by Congress, both chambers, and eventually the president has to sign it. The same sort of analog happens at the state level in every state.

Regulations and rulemakings are passed by agencies—administrative agencies meant to interpret the statutes. Statutes usually delegate authority to a regulatory agency like EPA or the Department of Interior to implement what the legislature passed. These regulatory interpretations generally go through notice-and-comment rulemaking, where the agency makes an initial decision and gives the public opportunities to comment.

In the contested era, because there's such a red-blue divide and real gridlock at the legislative level, that carries over into the regulatory level. When agencies make interpretations, there are fights by interested parties—from industry to environmental groups—that eventually make their way into court.

And so you end up with gridlock quite often because one administration will move forward with an interpretation, and then if there's a change in administration, the next will spend much of its time rolling those changes back—or reinstating changes that had been rolled back before.

I don't want to make it sound like I think litigation is a bad thing. Courts should have a role in checking agency authority and making sure they're doing things that are appropriate. But what happens in the contested era can be illustrated by the Endangered Species Act.

The Endangered Species Act was passed on a bipartisan basis to protect endangered species and the habitat they rely on. The idea is that species serve as indicators of ecosystem health, and those ecosystems provide enormous value for humans—from hydrological services to food and recreation. It's an incredibly ambitious and popular statute.

Early on, across Republican and Democratic administrations, there was a recognition that the Act was supposed to protect species and their habitat—and not just keep an individual species

alive in a zoo, but protect the ecosystems they are a part of. This latest Trump administration has proposed an interpretation that no prior administration has ever tried: to say the Act only protects individual species and habitat in a very narrow way, not recognizing the core strategy of protecting the environment the species rely on.

The contested era has increasingly become turbulent and gridlocked. But this takes it to a point that I don't think any court would uphold, based on the clear language of the statute. That leaves us in a circumstance where the administration is either hoping for a completely illegal interpretation or trying to waste everybody's time by coming up with spurious arguments that tie up the administrative state. It seems increasingly that their goal isn't to make government function; their goal is to demonstrate that government doesn't work.

Avigail: In the conclusion of your book, you warn that environmental policymakers need to come up with ways to adapt laws as new challenges arise. And by challenges, you're referring to climate change, and you mentioned some other things earlier. What do you mean by adapting laws?

Alejandro: Yes. I do think that existing legislation clearly plays a role in dealing with problems as they emerge, and the law has done that throughout history.

But when you look back at our history, the major ways we've been successful at dealing with emerging environmental problems is to take a wider lens and not just rely on existing legislation. With climate change, we need to look across energy law, transportation law, land use law, finance law, and even corporate law to think about how we address the current problems.

Back in 1970, when people didn't even use the term environmental law, pollution control laws didn't exist. The Clean Air Act, Clean Water Act, Superfund law, the Resource Conservation and Recovery Act, and the Endangered Species Act—these laws didn't exist. Laws were passed that had no prior template. You can go back to the Progressive Era and see the same thing.

Two major innovations of the Progressive Era were public health and safety laws like meat safety and inspections, and public lands law—the idea of setting aside places like Yellowstone or Yosemite to not be developed. Those don't sound profound now, but they were revolutionary at the time.

Today, in dealing with climate change, certainly the Clean Air Act has a role, and so do the Clean Water Act and the Endangered Species Act. But history tells us that to deal with grand challenges we need to take a bigger swing and look broader—and that's where legal imagination comes in.

Just because we come up with a great idea doesn't mean it will get passed immediately. History shows a lot of ideas that were eventually passed didn't happen for decades—the Wilderness Act in the 1960s was an idea that came up many decades earlier. So this book argues that advocates, scholars, policymakers, and lawyers should be practicing legal imagination and looking at other areas of law—not just what the Clean Air Act can do—because that's where we'll be able to address the problem.

Avigail: Yeah, I mean, I, this was one of the things I really enjoyed about the book was you talk about how the undercurrent of one generation often ebbs into the next current. On a final note,

what are the percolating legal imaginations that are an undercurrent right now that, you know, whether it's aspirational or a hope that you really think are going to be the next big wave?

Alejandro: I will definitely give you some of my ideas that I've seen out there, but there probably are many more. And that's part of what I think is the hopeful message about this book as well. Although it's, it's tempered hope, obviously. There's clearly some grim challenges we have, but we're talking about things like climate change or emerging technologies or environmental justice. Those are the three major challenges. And now with the current Trump administration attacks on the law, the administrative state, the rule of law.

But I do think, you know, if I pick one of them, for example, emerging technologies, whether we're talking about AI or geoengineering or synthetic biology, sort of people manipulating things at a genetic level, there are some real potential major benefits of some of these technologies, but there are also risks. And I think it's pretty clear that the existing legal frameworks are not designed to address these because they have not, they were not anticipating such problems. Science has been slow to recognize, and law has been slow to regulate the risks.

What I see that is exciting for dealing with things like climate change and also emerging technologies is a recognition that humans have both the capacity to shape the environment— that is scary, and obviously climate change is one of the biggest ways that we see that— but we also have the ability to redress and to deal with some of these problems. And how do— how can we do this? Well, we need to recognize that ecosystems, the environment, are dynamic. And that a lot of our legal tools that we built up in the 1910s and '20s, and then later on in the 1970s, are primarily focused on, or premised on, a relatively static idea of nature. That nature is relatively stable. That the legal tools that we should use are primarily meant to keep humans from intervening in nature or to keep these natural systems the way that they used to be.

Now there's a growing understanding that that approach, particularly in the context of climate change, it doesn't make sense. And so some of the legal imagination that I— that is really exciting to me is we're seeing how people are coming up with ways on how do we make the law more adaptive to both understand that there's significant uncertainty at the beginning, but how do we come up with goals that are much more adaptive, like how do we promote ecological health? And biodiversity rather than just keeping things the way they used to be, when that's not really a viable goal? How do we create legal systems that are more— that the processes are more adaptive, that we make initial decisions that are based on the knowledge we have at first, but that we can adapt those changes later on with public participation and good science? How do we make the— how, how do we make the law more procedurally adaptive? And then, of course, how do we make our structural law— how do we make the different components, the different scales from local to state to federal, how do we make those better coordinate with each other? How do we create overlapping but efficient laws that address the problems that are ahead of us?

I think a lot of the emerging technologies are going to be helpful in that regard. We just got to get the law right to sort of minimize the risks that come from these, but also to promote the benefits.

Avigail: Yeah, absolutely. I mean, I think one of the most important things that we can do, those of us who are committed to the project of building a better world, is to think about what we want that world to look like before we take any step.

Alejandro: Yes, I completely agree. And for me, in addition to the issues that we've talked about, I think one of the biggest pressing environmental challenges that remains unresolved in this country is environmental justice. We recently see a real sort of groundswell of concern about that, which is encouraging, from things like Standing Rock, Indigenous rights, and environmental justice. But then we see sort of legal and political reversals whipsawed by the current administration that sort of tries to strip away what the, you know, a lot of sort of moves that have been about trying to address concerns regarding environmental justice.

So I do think moving forward, the racial and economic inequalities, environmental harm are clearly going to have to be part of our agenda. One of the most persistent unresolved failures of the environmental legal system.

Avigail: Yeah, absolutely. I mean, I think one theme that runs through our conversation is how the environment and public health and the economy, when it comes to justice, they're all related. Thank you, Professor Camacho, for coming on No Jargon.

Alejandro: Thank you. Thank you so much.

Avigail: And thanks for listening. For more on Professor Camacho's work, check out our show notes at scholars.org/nojargon. No Jargon is the podcast of the Scholars Strategy Network, a nationwide organization that connects journalists, policymakers, and civic leaders with America's top researchers to improve policy and strengthen democracy. The producers of our show are Wendy Chow and Dominik Doemer. Our audio engineer is Peter Linnane. If you like the show, please subscribe and rate us on Apple Podcasts or wherever you get your shows. You can give us feedback back on X, formerly known as Twitter, @NoJargonPodcast, or at our email address, nojargon@scholars.org.