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"Water Quality as Property: Industrial Water Pollution and Common Law in the Nineteenth Century United States"

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This article examines how riparian law governed the disposal of industrial wastes into watercourses in the United States in the nineteenth and early twentieth century. The article investigates how the introduction of the doctrine of reasonable use and the balancing test gradually weakened the protection of customary water uses and facilitated industrial waste disposal. The article also examines the counter-reaction to weak protection of customary water uses at the turn of the twentieth century, which tightened the rules regulating industrial waste disposal. The article argues that riparian law was an ineffective governance institution because it created disincentives for the enforcement of riparian rights. The article also argues that riparian law arranged participation in collective choices over the rules of water use according to ability and willingness to pay, which largely explains the change of riparian law in the nineteenth century. However, the courts also gave weight to prevailing social values, which initially affirmed developmental uses of water but later took a more critical view of the interests of big business in water use.

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