Chapter 1
Overview of the Environmental Justice Movement

A. Introduction: History of the Movement

In the 1980s, communities of color alarmed conventional environmental organizations, regulators and industry stakeholders with allegations of "environmental racism." These charges reflected long-standing frustration on the part of such communities, and their view that people of color systematically receive disproportionately greater environmental risk while white communities systematically receive better environmental protection. Across the country, communities of color began to challenge the siting of hazardous waste facilities, landfills, industrial activities and other risk-producing land practices within their community. These efforts at the grassroots level soon coalesced into a national campaign referred to as the environmental justice movement. The roots of the movement lie in diverse political projects—the civil rights movement, the grassroots anti-toxics movement of the 1980s, organizing efforts of Native Americans and labor, and, to a lesser extent, the traditional environmental movement. See generally Luke Cole & Sheila Foster, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001).

"Environmental Justice" soon came to mean more than skewed distributional consequences of environmental burdens to communities of color. Becoming multi-issue and multi-racial in scope, the movement began to address disparities borne by the poor as well as people of color, acknowledging the substantial overlap between the two demographic categories. Concerns about regulatory processes surfaced as well. Often, the communities most impacted by environmentally risky activities had been excluded from important decision-making proceedings, sometimes intentionally so and sometimes because of a lack of resources, specialized knowledge, and other structural impediments. Initially, environmental justice activists used direct action such as demonstrations as the primary means to raise public awareness of the issue.

Largely in response to this early activism, several investigations and studies were undertaken which lent support to charges of environmental injustice. For example, a 1983 report by the U.S. General Accounting Office found that in the Environmental Protection Agency's (EPA's) Region IV, three of four major offsite hazardous waste facilities were located in predominantly African American communities; in 1987, a national study by the United Church of Christ Commission for Racial Justice found a positive correlation between racial minorities and proximity to commercial hazardous waste facilities and un-
controlled waste sites. Significantly, the study found that race was a more statistically significant variable than income. This early activism also culminated in an extraordinary gathering of grassroots activists at the First National People of Color Environmental Leadership Summit in Washington, D.C. on October 24-27, 1991, where the Principles of Environmental Justice, which are reprinted below, were adopted.

In 1992, a National Law Journal investigation found that EPA enforcement under various federal statutes and cleanup under the Superfund law was inequitable by race and, to a less pronounced degree, income. Other national and regional studies, including a review of the evidence by an EPA-established workgroup, began to find the same patterns of disproportionate location of industrial facilities and waste sites, exposure to contaminants, and adverse health effects in poor areas and in communities of color, further galvanizing the movement. Some criticized the methodology of the early studies, and questioned the extent of disparities and whether they might have existed at the time of the initial siting of polluting facilities, thus leading to a round of subsequent studies. The later, more sophisticated studies confirmed many findings of the earlier studies.

In response to the earlier studies and to continuing pressure from communities of color, former President Clinton in 1994 signed an Executive Order on Environmental Justice requiring all federal agencies to make environmental justice part of their mission and establishing an interagency work group. (The Order is reproduced in Chapter 10). In 1992, EPA established what ultimately came to be called the Office of Environmental Justice. EPA also convened the National Environmental Justice Advisory Council (NEJAC), a diverse federal advisory group charged with making recommendations to the EPA concerning a broad range of environmental justice matters. The EPA also began to take steps to include environmental justice organizations and community residents in a variety of agency projects, such as the EPA-sponsored “Brownfield” initiatives, which involves the re-use of idle industrial sites that are contaminated or perceived to be contaminated. These actions in the name of environmental justice marked a new course for environmental regulation, as environmental regulators did not traditionally consider demographics and social context in the course of their regulatory activities.

Also in the 1980s and 1990s, heavily impacted communities continued to organize and began undertaking legal efforts to redress the inequitable environmental burdens that were apparent across the country. As explored in detail later in this book, legal challenges have met with mixed success. Claims alleging violations of the Equal Protection Clause of the U.S. Constitution have largely failed because of the difficulty of proving intentional discrimination. Other claims, some using traditional common law theories and environmental laws, have been somewhat more successful. Community groups have also filed numerous administrative complaints with EPA against state and regional environmental agencies alleging violations of Title VI of the Civil Rights Act of 1964. Title VI, which prohibits discrimination in programs or activities that receive federal financial assistance, had historically been applied in the education and employment context but not in the environmental context.

EPA was slow to develop a framework for investigating and deciding the Title VI cases, issuing Interim Guidance in 1998 and an expanded Draft Guidance in 2000. But the Agency has been even slower in taking any specific action on the complaints. Since 1993, it has decided only one case on the merits after an investigation; some other cases were settled, but the great majority of the complaints have been rejected or dismissed.

Under the Bush Administration, EPA took a different approach to environmental justice, redefining it to mean environmental protection for everyone, and de-emphasizing
the need to focus special attention on minority and low-income populations (as described in Chapter 10). As a result, and because of the perception that the Administration generally was hostile to environmental justice claims, advocates largely shifted their attention to state and local governments to remedy environmental disparities. As this book goes to press in 2009, it remains to be seen whether the recent change in administrations portends a more robust level of attention by EPA and other federal agencies to environmental justice.

As noted, environmental disparities have been found in the siting, compliance and cleanup contexts. However, it also appears that environmental inequities can be caused in part because of the failure to consider environmental justice when regulatory standards are set and programs are designed. Accordingly, it is clear that environmental justice issues must be considered at the earliest stages of regulatory activity, not only at the permitting and enforcement stages, but particularly during the formation of policy, including the design of new programs—for example, programs tackling climate change.

Unfortunately, integrating environmental justice into environmental regulation in a manner that meaningfully responds to both the distributional and process issues has proven to be exceptionally complex. Environmental regulators are concerned with the scope of their authority to consider environmental justice under environmental statutes, with the extent of any legal duty to do so under the civil rights laws, as well as with the uncertainty and complexity such an undertaking might add to their regulatory programs. The regulated community is concerned about the potential for increased delay to their projects and about compliance costs. Environmental justice advocates continue to attempt to address concerns and participate in various proceedings under severe resource constraints, and in some areas still confront considerable hostility and resistance by government officials. In addition, participation by environmental justice advocates is hampered by the tendency among other stakeholders and governmental agencies to view environmental justice as a “special interest.” Yet, environmental justice advocates stress that the relevant issues are not demands for special treatment, but are grounded upon precepts of basic fairness and equal environmental protection: that there should be a level playing field for all stakeholders and that environmental burdens and benefits should not fall in disproportionate patterns by race and income.

The thrust of this book is therefore twofold, first to examine the complexities presented by environmental inequity; and second, to explore the potential that exists within the current system to move environmental regulation forward in a responsible manner that makes good on a promise of a more just society and, ultimately, an ecologically sustainable environment.

Pathfinder on Environmental Justice Generally

B. Fairness and Justice Considered

The fundamental question that presents itself when considering environmental justice is the working definition of "fairness" and "justice." Consider the views of these prominent environmental justice scholars. In the first excerpt, Professor Robert Kuehn explains that underlying the environmental justice movement are four concepts of justice: distributive, procedural, corrective, and social justice.

Robert R. Kuehn, A Taxonomy of Environmental Justice

Efforts to understand environmental justice are [ ] complicated by the term’s international, national, and local scope; by its broad definition of the environment — where one lives, works, plays, and goes to school; and by its broad range of concerns — such as public health, natural resource conservation, and worker safety in both urban and rural environments. Disputes at the international level include allegations that governments and multinational corporations are exploiting indigenous peoples and the impoverished conditions of developing nations. At the national level, although an overwhelming number of studies show differences by race and income in exposures to environmental hazards, debate continues about the strength of that evidence and the appropriate political and legal response to such disparities. At the local level, many people of color and lower income communities believe that they have not been treated fairly regarding the distribution of the environmental benefits and burdens. . . .

Shifting Perspectives and Uses of Terms

The U.S. Environmental Protection Agency (EPA) initially used the term “environmental equity,” defined as the equitable distribution of environmental risks across population groups, to refer to the environmental justice phenomenon. Because this term
implies the redistribution of risk across racial and economic groups rather than risk reduction and avoidance, it is no longer used by EPA, though it is still used by some states.

In some instances, the phrase “environmental racism,” defined as “any policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color,” is used to explain the differential treatment of populations on environmental issues. Commentators disagree over the proper usage of this term, particularly over whether an action having an unequal distributive outcome across racial groups would in itself be a sufficient basis to label an action environmental racism or whether the action must be the result of intentional racial animus. Today, many environmental justice advocates and scholars avoid the term “environmental racism,” though the phrase continues to be employed and is useful in identifying the institutional causes of some environmental injustices. This shift is attributable to a desire to focus on solutions rather than mere identification of problems, as well as a desire to encompass class concerns and not to be limited by issues of intentional conduct.

In 1994, President Clinton issued Executive Order No. 12898 ... and adopted the phrase “environmental justice” to refer to “disproportionately high and adverse human health or environmental effects ... on minority populations and low-income populations.” The Executive Order’s use of the term “environmental justice” is significant in at least three respects. First, the Executive Order focuses not only on the disproportionate burdens addressed by the term environmental equity, but also on issues of enforcement of environmental laws and opportunities for public participation. Second, the Executive Order identifies not just minorities but also low-income populations as the groups who have been subject to, and entitled to relief from, unfair or unequal treatment. Finally, the Executive Order, and in particular the accompanying memorandum, refers to environmental justice as a goal or aspiration to be achieved, rather than as a problem or cause.

In 1998, EPA’s Office of Environmental Justice set forth the Agency’s “standard definition” of environmental justice:

The fair treatment of people of all races, cultures, incomes, and educational levels with respect to the development and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no population should be forced to shoulder a disproportionate share of exposure to the negative effects of pollution due to lack of political or economic strength.

Going beyond the issues of disproportionate exposures and participation in the development and enforcement of laws and policies, EPA further elaborated that environmental justice:

is based on the premise that: 1) it is a basic right of all Americans to live and work in “safe, healthful, productive, and aesthetically and culturally pleasing surroundings;” 2) it is not only an environmental issue but a public health issue; 3) it is forward-looking and goal-oriented; and 4) it is also inclusive since it is based on the concept of fundamental fairness, which includes the concept of economic prejudices as well as racial prejudices.

Professor Bunyan Bryant defines environmental justice as referring “to those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing, and productive.” Some critics of environmental justice contend that these definitions of environmental justice by government agencies and environmental justice advocates are so broad and aspirational as not to state clearly the ends of environmental justice.
An alternative approach to defining environmental justice that does state its desired ends, albeit very ambitious ones, was developed by environmental justice leaders during the 1991 First People of Color Environmental Leadership Summit. Its "Principles of Environmental Justice" sets forth a 17-point paradigm [excerpted below]…

Dr. Robert Bullard has distilled the principles of environmental justice into a framework of five basic characteristics: (1) protect all persons from environmental degradation; (2) adopt a public health prevention of harm approach; (3) place the burden of proof on those who seek to pollute; (4) obviate the requirement to prove intent to discriminate; and (5) redress existing inequities by targeting action and resources. In his view, environmental justice seeks to make environmental protection more democratic and asks the fundamental ethical and political questions of "who gets what, why, and how much."…

Students and lawyers are often left without an understanding of unifying themes or common political, legal, or economic approaches to addressing allegations of injustice. The classification method set forth in this Article seeks to overcome this shortcoming and to advance the understanding of environmental justice by disassembling the term into the four traditional notions of "justice" that are implicated by allegations of environmental injustice…

Environmental Justice as Distributive Justice

… Distributive justice has been defined as "the right to equal treatment, that is, to the same distribution of goods and opportunities as anyone else has or is given." Aristotle is often credited with the first articulation of the concept and explained it as involving "the distribution of honour, wealth, and the other divisible assets of the community, which may be allotted among its members." The focus of this aspect of justice is on fairly distributed outcomes, rather than on the process for arriving at such outcomes.

In an environmental context, distributive justice involves the equitable distribution of the burdens resulting from environmentally threatening activities or of the environmental benefits of government and private-sector programs. More specifically, in an environmental justice context, distributive justice most commonly involves addressing the disproportionate public health and environmental risks borne by people of color and lower incomes.…

Distributive justice in an environmental justice context does not mean redistributing pollution or risk. Instead, environmental justice advocates argue that it means equal protection for all and the elimination of environmental hazards and the need to place hazardous activities in any community. In other words, distributive justice is achieved through a lowering of risks, not a shifting or equalizing of existing risks.

With such a strong focus on the inequitable distribution by race and income of environmental hazards, an often overlooked aspect of distributive justice is that it also involves the distribution of the benefits of environmental programs and policies, such as parks and beaches, public transportation, safe drinking water, and sewerage and drainage.…

Some of the best known local environmental justice disputes have involved dramatic evidence of distributive inequities.

In Chester Residents Concerned for Quality Living v. Seif [132 F.2d 925 (3rd Cir. 1997), vacated, 528 U.S. 974 (1998)], residents of Chester, Pennsylvania, alleged that the state's issuance of a permit for a new waste facility would create an unlawful disparate impact on African-American residents. As evidence, they noted that Chester, with a population of 42,000, 65% of which are African-American, had become the designated dumping
grounds for the rest of Delaware County, with a population of 502,000, 91% of which are white. Though one-twelfth the size of the county, Chester already has five permitted waste facilities, while the rest of Delaware County has only two. All of Delaware County's municipal waste and sewage is processed in Chester, although only 7.5% of the county's population resides in the town. Most dramatically, the permitted capacity for the waste facilities in the much smaller city of Chester [is] 1,500 times greater than the permitted capacity for the remaining facilities in Delaware County (2.1 million tons vs. 1,400 tons), and the capacity per person for the waste facilities in the 65% African-American Chester area is almost 18,000 times greater than the capacity per person for the facilities in 91% white Delaware County.

The dispute over a proposal by Shintech to build a new polyvinyl chloride (PVC) plant in the lower income, 84% African-American community of Convent, Louisiana, also raised substantial distributive justice concerns. An analysis of toxic air emissions from the 10 existing petrochemical plants in the Convent area revealed that residents were already exposed to 251,179 pounds of toxic air pollution per square mile per year, and Shintech proposed to emit an additional three million pounds of air pollution per year, over 600,000 pounds of which would be toxic. This existing cumulative impact on the 84% African-American Convent-area residents is 67 times greater than the toxic air pollution burden for the rest of St. James Parish (the third most polluted parish in the state and 43.5% African American), 93 times greater than the average toxic air pollution exposure per square mile for the heavily polluted Louisiana Mississippi River industrial corridor (36.8% African American), 129 times greater than Louisiana's average exposure per square mile (the second most polluted state in the nation and 30.8% African American), and 658 times higher than the average toxic air pollution exposure per square mile in the United States (12% African American). EPA's disparate impact analysis, using its "relative emissions burden ratio" method, found that, were Shintech permitted to operate, African Americans in St. James Parish would experience a 71% to 242% greater toxic air pollution burden than non-African Americans in the parish.

*Environmental Justice as Procedural Justice*

Claims of procedural injustice also are common in environmental justice disputes, and it is not unusual for people of color and low-income communities to complain about both the distributive and procedural aspects of an environmental policy or decision. Indeed, in many situations, a community's judgment about whether or not an outcome was distributively just will be significantly determined by the perceived fairness of the procedures leading to the outcome.

Procedural justice has been defined as "the right to treatment as an equal. That is the right, not to an equal distribution of some good or opportunity, but to equal concern and respect in the political decision about how these goods and opportunities are to be distributed." Aristotle referred to this as a status in which individuals have an "equal share in ruling and being ruled." It involves justice as a function of the manner in which a decision is made, and it requires a focus on the fairness of the decision-making process, rather than on its outcome.

The Executive Order on environmental justice has a strong focus on procedural justice, directing agencies to ensure greater public participation and access to information for minority and low-income populations. The Principles of Environmental Justice demand that public policy be based on mutual respect and justice for all peoples and free from bias or discrimination, affirm the fundamental right to self-determination, and insist on the right to participate as equal partners at every level of decision-making.
Environmental justice complaints raise both ex ante and ex post considerations of procedural fairness. Looking at the process in advance of its use (ex ante), they question whether the decision-making and public participation procedures are fair to all concerned or whether they favor one side over the other. Also, looking back (ex post), the complaints question whether the completed decision-making process did, in fact, treat all with equal concern and respect.

One way to judge procedural justice ex ante is to determine if those to be affected by the decision agree in advance on the process for making the decision. Thus, procedural justice requires looking not just to participation in a process but to whether the process is designed in a way to lead to a fair outcome. In this respect, environmental decision-making processes have been roundly criticized by commentators who have examined issues of environmental justice and public participation. One common observation is that the predominant expertise-oriented, interest-group model of environmental decision-making favors those with resources and political power over people of color and low-income communities. Even the [civic] republican process, which outwardly seeks to advance community interests over private interests, may obscure the true private interests at issue and the continuing disparities in resources, power, and influence. In general, to achieve procedural justice, observers advocate developing more deliberative models of decision-making, providing disadvantaged groups with greater legal and technical resources, and ensuring equal access to decision-makers and the decision-making process....

A common procedural justice complaint at the national level is that people of color and lower income communities [have] little influence on the decision-making processes of legislatures and environmental agencies.... Even where citizens are able to participate, environmental decision-makers are skeptical of the validity of citizen information and are biased in favor of the scientific data submitted by regulated industries.

Underrepresentation on the technical or scientific boards and commissions that make environmental decisions and recommendations is also a problem, particularly since the actions of these boards often reflect politics and personal values....

Another procedural justice aspect is the manner in which the government collects and analyzes data on environmental exposures and public health. In one case, EPA and the National Institutes of Health announced a $15 million, 10-year epidemiological study on the health of farmers and farmworkers that would omit Hispanics from the study, even though farmworkers are largely Hispanic. The justification for the omission? The difficulty of tracking the highly mobile Hispanic population....

In addition to the procedural justice issues arising from the manner in which the state handled the permitting process, the Shintech case illustrates the ex ante obstacles that people of color and lower income communities confront. Under the state permitting process, the permit applicant has an automatic right, if requested, to an adjudicatory hearing, yet local residents have no such right....

The county's handing of a permit to build a hazardous waste incinerator near the Hispanic community of Kettleman City, California, illustrates the procedural barriers often encountered by ethnic communities. Despite the repeated, strong interest expressed by [Spanish]-speaking residents to participate in the permitting process, environmental impact documents, meeting notices, and public hearing testimony were never provided in Spanish. The court in El Pueblo Para el Aire y Agua Limpio v. County of Kings [22 Envtl. L. Reprtr. 20,357 (Cal. Super. Ct. 1991)] held that the meaningful involvement of local residents was effectively precluded by the failure to provide Spanish translations and set aside the local permit. When similar translation concerns were raised by Vietnamese-
speaking residents regarding efforts to reopen the Marine Shale hazardous waste incinerator in Amelia, Louisiana, the state responded that it would take care of the inability of the Vietnamese community to participate in the public hearing process after the permit was issued.

An unresolved aspect of procedural justice is whether a fair process can negate a claim that a disproportionate outcome is unjust. Some argue that if the decision-maker has given impartial attention to and consideration of competing claims to different benefits, an outcome would not be unjust even if the result were to subordinate one group to another.

While environmental justice requires, at a minimum, a procedurally just process, the emphasis on disparate effects, rather than discriminatory intent, in the Executive Order, Principles of Environmental Justice, and Title VI's implementing regulations indicates that a fair process alone will not negate claims of distributive injustice.

Although there has been a great deal of discussion about the need to reform existing public participation models and although many government agencies now recognize their failure to ensure meaningful participation by disadvantaged populations, EPA's refusal to require that waste facilities and permitting agencies "make all reasonable efforts to ensure equal opportunity for the public to participate in the permitting process" [in EPA's Resource Conservation and Recovery Act's public participation regulations], the antagonistic attitudes of some state officials toward allegations of environmental justice, the hostility of environmental justice critics toward government grants to community groups for environmental education and outreach efforts, and the assertions by some regulated entities that increased public participation is not appropriate do not bode well for finding consensus on the format of a fair decision-making process or for avoiding future allegations of procedural injustice.

Environmental Justice as Corrective Justice

The third aspect of justice encompassed by the term environmental justice is "corrective justice," a notion of justice that is sometimes referred to by other names and may be subsumed within claims for distributive or procedural justice.

"Corrective justice" involves fairness in the way punishments for lawbreaking are assigned and damages inflicted on individuals and communities are addressed. Corrective justice involves not only the just administration of punishment to those who break the law, but also a duty to repair the losses for which one is responsible.

Therefore, as reflected in claims made in the environmental justice context, corrective justice encompasses many aspects of wrongdoing and injury and includes the concepts of "retributive justice," "compensatory justice," "restorative justice," and "commutative justice." I adopt the term corrective justice here because environmental justice seeks more than just retribution or punishment of those who violate legal rules of conduct. Corrective justice is also preferred over the phrase compensatory justice because the latter term may imply that, provided compensation is paid, an otherwise unjust action is acceptable. It is also important to note that although some concepts of corrective justice view fault or wrongful gain as a necessary condition for liability, environmental justice principles impose responsibility for damages regardless of fault (e.g., the polluter-pays principle). Corrective justice, therefore, is not used in the narrow Aristotelian rectificatory sense but instead in a broader, applied sense that violators be caught and punished and not reap benefits for disregarding legal standards and that injuries caused by the acts of another, whether a violation of law or not, be remedied.
The theme of corrective justice ... figures prominently in the efforts of indigenous people to achieve environmental justice. Native Americans have long complained that the federal government and mining and oil companies have failed to take responsibility for and address contamination caused by their nuclear testing and resource development activities on Indian lands. In addition, hundreds of open dumps, many originally operated by the Indian Health Service, currently exist in Indian country and are in need of cleanup. The recent, expanded ability of tribes to obtain authority to implement federal environmental laws presents tribal governments with the opportunity to promote corrective justice by directly enforcing compliance with environmental statutes on tribal lands, rather than having to rely on federal agencies, yet finding the financial and technical resources to carry out that authority remains a problem.

Local efforts to achieve corrective justice are illustrated by community efforts to address contamination from lead smelters in West Dallas—"the classic example of government inaction and callous disregard for the law," [quoting Robert Bullard, Eds.] As early as 1972, Dallas officials were aware of significantly elevated lead levels in the blood of children living in a minority neighborhood near a lead smelter that had repeatedly violated the law. EPA's own study in 1981 confirmed the high lead concentrations in children living near the smelters. In spite of repeated complaints by local residents, government officials took no action; EPA even rejected a voluntary cleanup plan, preferring still further tests of local children and suggesting that spreading dirt and planting grass would be sufficient... Finally, after 30 years of operation without necessary local permits and 20 years after government officials became aware of the public health problems caused by the illegally operated smelter, authorities closed the facility and started a comprehensive cleanup program....

Environmental Justice as Social Justice

The fourth and final aspect of justice implicated by the term environmental justice is "social justice," a far-reaching, and some say nebulous, goal of the environmental justice movement....

Social justice is "that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society—one in which people's needs are more fully met." "The demands of social justice are...first, that the members of every class have enough resources and enough power to live as befits human beings, and second, that the privileged classes, whoever they are, be accountable to the wider society for the way they use their advantages."

Environmental justice has been described as a "marriage of the movement for social justice with environmentalism" integrating environmental concerns into a broader agenda that emphasizes social, racial, and economic justice. Dr. Bullard refers to this aspect of environmental justice as "social equity: ... an assessment of the role of sociological factors (race, ethnicity, class, culture, lifestyles, political power, and so forth) in environmental decision-making."

Professor Sheila Foster has argued that a narrow focus on issues of distributive justice neglects the search for social structures and agents that are causing the environmental problems. A social justice perspective presents environmental justice as part of larger problems of racial, social, and economic justice and helps illustrate the influence of politics, race, and class on an area's quality of life. This broader social perspective contrasts with traditional environmentalism and its narrower focus on wilderness preservation and the technological aspects of environmental regulation.

Environmental justice's focus on social justice reflects reality. As one community organizer explained, oppressed people do not have compartmentalized problems—they
do not separate the hazardous waste incinerator from the fact that their schools are underfunded, that they have no day care, no sidewalks or streetlights, or no jobs. The reason disadvantaged communities do not separate these problems is that their quality of life as a whole is suffering and the political, economic, and racial causes are likely interrelated....

Social justice influences can work in two ways. The same underlying racial, economic, and political factors that are responsible for the environmental threats to the community also likely play a significant role in why the area may suffer from other problems like inadequate housing, a lack of employment opportunities, poor schools, etc. In turn, the presence of undesirable land uses that threaten the health and well-being of local residents and provide few direct economic benefits negatively influences the quality of life, development potential, and attitudes of the community and may lead to further social and economic degradation.

Government officials are often hesitant to embrace the social justice aspects of environmental justice, reflecting a reluctance to take on the broader systemic causes of environmental injustice or to consider issues outside the narrow technical focus of the agency. Nonetheless, the President’s Executive Order acknowledges the significance of social justice by directing each federal agency to consider the economic and social implications of an agency’s environmental justice activities, and the memorandum accompanying the Executive Order requires analysis of the economic and social, not just environmental, effects of federal actions on minority and low-income communities....

[C]riticism of environmental justice as too myopic and a diversion of scarce resources away from other more important social and public health problems is not well-founded. Most often, environmental justice efforts do not wastefully divert a community’s attention but instead bring residents together to focus on a broad array of social justice problems.... [G]overnment officials and firms seeking community acceptance for environmentally risky projects must as a practical, if not also moral, matter consider whether social justice is served by their projects. For if the environmental and other social burdens of a proposed project are imposed on the local community while the economic and other benefits flow elsewhere, “community opposition will be fierce and the chances for success lessened.”...

* * *

The following article presents various models of fairness in one important area of environmental justice, the siting of locally unwanted land uses (LULUs).

Vicki Been, What’s Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses

The various legislative solutions to the problem of disproportionate siting reflect different conceptions about why disproportionate siting is wrong, and about what would constitute “fair” siting. The differences are not surprising. Calls for environmental justice are essentially calls for “equality” and, as Peter Westen has noted, “equality in the end is a rhetorical device that tends to persuade precisely by virtue of ‘cloak[ing] strongly divergent ideas over which people do in fact disagree.’” Advocates of environmental justice have wisely chosen to advance general concepts of equality, rather than endanger their coalition by attempting to specify the precise content of “justice,” “equity” or “fairness.”....
Fairness in the Pattern of Distribution

A broad conception of fairness in siting would require that a LULU's burdens be spread on a per capita or proportional basis over society as a whole.

There are strong and weak versions of the equal division conception of fairness. Under the strong version, fairness demands a proportional distribution of benefits.

A weaker version of the theory asserts that fairness requires a proportional distribution of burdens, even if benefits are not allocated proportionally. The United States embraces this view regarding societal burdens, such as jury duty and military service under a draft. This version of the theory assumes that an objective distinction can be drawn between burdens and the absence of benefits, and that the distinction mandates an equal division of burdens regardless of the distribution of benefits.

Several means of distribution are plausible under the proportional distribution of burden theory. One scheme would impose a physical proportional distribution: LULUs themselves would be distributed equally among neighborhoods. This distribution could be either equal ex post or equal ex ante. In an ex post scheme, the facilities and the harms that they pose would be distributed proportionately among neighborhoods. For example, if New York City requires facilities for 10,000 homeless individuals and has 100 neighborhoods, all holding some land suitable for a facility, each neighborhood would receive one facility housing 100 individuals. In an ex ante scheme, each neighborhood has an equal chance of being selected for the site through a lottery process. For example, if New York City requires a sewage sludge treatment plant, each of the 100 neighborhoods would have a 1/100 chance of being selected for the site. The ex ante physical distribution scheme is particularly well-suited to situations in which there are economies of scale in building and operating fewer but larger LULUs. Some types of hazardous waste, for example, are stored most efficiently in large, centralized facilities.

Instead of either ex ante or ex post physical equality, a distribution might seek "compensated" equality. In this distribution scheme, all individuals or communities that gain a net benefit from a particular LULU must compensate those who suffer a net loss. For example, if a sludge treatment plant imposed costs upon a neighborhood, each of the neighborhoods that benefitted from the plant, but did not suffer the detriment of close proximity, would have to pay a proportionate share of the costs.

Both the ex ante and ex post mechanisms for physically distributing LULU burdens face significant problems of definition and measurement.

First, what criteria should be used to compare the burdens of the LULUs to be distributed? Depending upon the basis of comparison, even the same type of facility may impose different types or levels of burden upon various communities. Two neighborhoods hosting identical hazardous waste treatment plants, for example, might bear different burdens if the basis of comparison is health risk, because the geology or transportation networks or composition of the workforce of one area could make one plant somewhat riskier than the other. Some criteria, such as health risk or loss in property value, are obvious grounds for comparison. But others, such as psychological harms or interference with social networks, are controversial.

When the LULUs being compared are different, such as a prison and a sludge treatment plant, comparisons will require agreement on how different criteria are to be weighted or reduced to some common metric such as dollar loss. Whether and how to translate burdens such as health risks to monetary terms is also a controversial issue.
Although environmental justice advocates have not been specific about the grounds for their assertion that compensation schemes are immoral, several arguments could be offered. One argument against compensation schemes would focus on the immorality of commodifying certain matters involving life, health and safety, or human dignity. 

An additional argument could assert that compensation schemes take unfair advantage of the existing unequal distribution of wealth. When a community suffers severe disadvantage from existing inequalities of wealth, the voluntariness of its agreement to host the LULU is questionable. 

Compensatory schemes face a variety of pragmatic hurdles. The most important hurdle is the difficulty of translating the risks of a LULU into monetary terms. As a first step, the proponents of the facility, regulators, and those affected by the facility must reach some consensus about the probability and expected consequences of the hazards posed by the facility. 

Compensation mechanisms also raise difficult questions about who should receive compensation: residents, property owners, the neighborhood itself, or some combination of the three. Residents would claim that they bear the most immediate risk and injury. Landlords, however, would assert that they absorb at least some, if not all, of the tenants' damages through lower rents. Moreover, if residents received compensation, the rights of future residents would have to be considered because they undoubtedly would bear part of the risks. For residents who benefit from the LULU (by obtaining employment at the facility, for example) difficult questions will arise about whether those benefits sufficiently offset any damages that those residents also incur. Additionally, compensation paid to the neighborhood itself would raise questions about how to define the affected neighborhood and whether to spend the money to mitigate the harms caused to individual residents. 

One could argue that a fair distribution of LULUs would require advantaged neighborhoods to bear more of the burden that LULUs impose than poor and minority neighborhoods. Such a distribution could involve either a physical siting scheme in which advantaged neighborhoods receive a disproportionately greater number of LULUs or a compensated siting scheme in which advantaged neighborhoods pay a greater share of the cost of LULUs. One rationale for such “progressive” siting would be compensatory justice: advantaged neighborhoods should bear more of the LULU burden in order to redress or remedy past discrimination against poor and minority neighborhoods. 

**Fairness As Cost-Internalization**

Many environmental justice advocates argue that fairness requires those who benefit from LULUs to bear the cost of the LULUs. Forcing the internalization of costs leads to greater fairness in two ways. First, it is fairer to hold individuals responsible for their actions than to let costs fall on innocent bystanders. Second, forcing the internalization of costs results in greater efficiency, and greater efficiency is likely to mean fewer LULUs. Purchasers of products that generate waste will reduce consumption once the prices of the products reflect the true cost of waste facilities. In turn, producers will develop more efficient means of production, given the cost of disposing the waste generated. The number of LULUs will thereby decrease to the socially optimal level—the level at which the marginal utility of the product necessitating the LULU equals its costs. 

Such a “user pays” approach is not always possible because it requires a precise matching of benefit and burden. Additionally, some LULUs, such as homeless shelters, result more directly from political decisions about how to allocate society’s resources than from personal consumption choices. In those circumstances, fairness as cost-internalization
requires that the burdens be spread throughout society, so that all are forced to confront
the costs of society's choices and to make better decisions....

The practical problems of calculating the full costs of a LULU and determining who
should receive compensation also remain. The problem of ensuring that all costs are ac-
counted for is especially troubling. Compensation set at a negotiated level, for example,
would undermine the goal of full internalization unless negotiations were carefully struc-
tured to ensure that the community did not settle for insufficient compensation.... [T]he
process by which the community negotiates a compensation package may undervalue the
interests of a particular subgroup within the community. Protecting against such bar-
gaining failures would be costly and difficult....

Fairness as Process

Rather than focusing on the distribution of burdens to determine whether the sitting
process is equitable, the fairness as process theory focuses on the procedures by which the
burden is distributed. The most obvious theory of fairness as process would assert that a
distribution is fair as long as it results from a process that was agreed upon in advance by
all those potentially affected. Although there are examples of interstate siting compacts and
regional intrastate siting agreements, in which all participants voluntarily agree to a par-
ticular siting process, most LULUs are sited in communities that had no opportunity to
remove themselves from the selection process. Therefore, this Section focuses on theo-
ries of fairness as process that do not rest upon voluntary agreement for their legitimacy....

A siting decision motivated by hostility toward people of a particular race is unfair
under almost any theory of justice, and would not be considered fair under the Consti-
tution. Under the intentional discrimination theory, fairness requires that a decision to
site a LULU be made without any intent to disadvantage people of color.

The first problem with an intentional discrimination theory is the difficulty of proving
intent. Many in the environmental justice movement charge that developers and siting
Siting opponents have yet to prove that charge to the satisfaction of a court. Their efforts
have been stymied, in part, by the general difficulty of proving the intent of a legislative
or administrative body. That difficulty is compounded in the siting context because sit-
ing choices tend to involve a series of decisions by a variety of multi-member entities....

Even if discrimination is unintentional or based upon characteristics that do not trig-
ger strict scrutiny under the Equal Protection Clause, disproportionate siting arguably
would be inappropriate if it stemmed from a siting process that failed to treat people with
"equal concern and respect," instead valuing certain people less than others. Under this
theory, if a siting process is more attentive to the interests of wealthier or white neighbor-
hoods than to the interests of poor or minority neighborhoods, that process illegitimately treats
the poor and people of color as unequal....

The notion that fair siting requires treating all potential host communities as equals
is extremely difficult to implement on a practical level. The most plausible way to ensure
that decision makers accord equal concern to all communities is through an "impact state-
ment" requirement. This would require decision makers to consider all of the effects that
a siting might have on a neighborhood, including its impact on health, the environment,
and the neighborhood's quality of life. Theoretically, by forcing decision makers to examine
the possible effects of a siting, the process would ensure that the decision reflects equal
consideration for both communities. In reality, impact statements may give only the il-
lusion of neutrality in their analysis of a facility's potential effects. Further, decision-mak-
ers required to think about such effects may give only the illusion of consideration....
Like several other theories of fairness, the treatment as equals theory rests on the problematic premise that the costs and benefits that a LULU imposes upon communities are measurable, and that different costs and benefits can be reduced to a common metric. Even if that premise were true, impact statements detailing the potential effects of a siting still would not necessarily show equal concern for the interests of the poor and minorities....

* * *

Notes and Questions

1. The different models of fairness outlined by Professor Been can be summarized as follows: (1) even apportionment of LULUs among all neighborhoods; (2) compensation of communities hosting LULUs by other communities; (3) progressive siting — wealthier neighborhoods receive more LULUs; (4) cost internalization — those who benefit bear the cost; (5) the siting process involves no intentional discrimination; (6) the siting process shows “equal concern and respect” for all neighborhoods; and (7) [not included in the above excerpt] all communities receive an equal number of vetoes that can be used to exclude a LULU. What model of “fairness” do you favor?

In the following excerpt, Christopher Foreman critiques the environmental justice movement. In his remarks, does he reveal a preference for any particular conception of justice?

Christopher H. Foreman, Jr.,
The Promise and Peril of Environmental Justice
(1998)

-Reducing and avoiding threats to health is a major, but often unproductive, theme of environmental justice advocacy. When activists call attention to alleged unfair environmental burdens, surreptitious mass poisoning is a primary (if sometimes implicit) fear. After all, why care about an inequity unless it makes a difference? And isn’t the difference between life and death the biggest difference of all? Given the vehemently articulated community health anxieties evident in countless public forums, including the National Environmental Justice Advisory Council (NEJAC), one might mistakenly conclude that health is the main, or even sole, focus of environmental justice activism.

[P]olicymakers and activists alike have tended to concentrate on questions and mechanisms of community involvement, not community health. This is not surprising. One reason for this focus is that activists and policymakers alike possess a far better understanding of procedural inclusion, and of the tools that seem useful for producing it, than they do of ways to reduce risk and enhance health.... For activists, involvement offers outlets for advocacy, opportunities for dialogue and the casting of blame, and the promise of institutional accountability. Resourceful and well-timed advocacy may even lead to significant material benefits for a community. On the other hand, involvement mechanisms allow policymakers to exhibit responsiveness and deflect criticism. By comparison, channeling health anxieties effectively toward risk reductions and improved health prospects among low-income and minority persons is far more difficult.

It is not hard to understand why activists are inclined to think that what they do generally promotes healthy communities. An ability to exercise power, as when a neighborhood effectively mobilizes to block visible sources of perceived additional risk, strongly
implies a protective capacity. People commonly attribute harm to things they intensely dislike or fear, such as dumps and pollution. While both can certainly cause harm, so can many other things not nearly so fearsome. Moreover, fighting polluters clearly requires collective action or governmental intervention; rugged individualism cannot suffice.... Finally, health, wealth, and political efficacy are clearly correlated; no one would deny that wealthy persons extract better health care, healthier surroundings, and greater overall solicitude from politicians than poor persons.

For these reasons it may appear obvious that successfully exercising power over environmental questions where health concerns have been raised is in fact to protect health.... But the victory may actually be hollow or insignificant, for the connection between successful activism and the advancement of public health is much less straightforward than it might appear. In fact environmental justice advocacy and policymaking might subtly impede efforts to improve and protect health among precisely those persons or advocates and policymakers desire to help. This can occur if mechanisms of mobilization and involvement draw citizen concern and protective effort away from important sources of risk (to less important sources) and away from preventable adverse effects (to unpreventable or unsubstantiated ones). Citizen energies thus displaced may complicate the task policymakers must face in allocating scarce resources to their most productive use....

The [environmental justice] movement’s obsession with disproportionate adverse impact may obscure more important questions relating to the absolute size, scope and source of such impacts. Second, environmental justice proponents generally eschew personal behavior (and necessary changes in it) as a primary variable in the health of low-income and minority communities. Third, from among the vast array of issues raised to date under the environmental justice rubric, adherents have been incapable of fashioning a coherent agenda of substantive public health priorities. Instead the movement is drawn to an overall procedural priority of citizen involvement, an orientation that unrealistically envisions every issue as a substantive priority.

These limitations exist largely because environmental justice is not mainly a public health movement. It is instead a loose coalition of citizens and groups advocating greater grassroots democracy, usually with an eye fixed on broader social justice goals. Because its primary political aims are to bind residents together, to raise their collective profile in policy debates and decision-making, and to reallocate society’s resources, environmental justice activism can ill afford an agenda driven solely by health impacts....

Hazards perceived to be imposed on residents by firms — especially by ones viewed as community intruders — or by governmental actors suspected of being distant, unaccountable, or racist are more suitable for this purpose. Under such circumstances, anger and suspicion easily overwhelm risk and health as driving forces. Hazards linked strongly to individual behavior (such as smoking and excessive alcohol consumption) generally have far larger implications for personal and collective health but do not easily resonate politically.... [R]eminding residents that they consume too many calories, or the wrong kinds of food, is likely to appear intrusive, insensitive, or simply beside the point.

Once their underlying democratizing aims are clearly understood it is not hard to make sense of the insistent emphasis by environmental justice activists and by grassroots environmentalists generally on relatively unlikely or weakly documented—but nevertheless profoundly fear-inducing—hazards, such as dioxin and Superfund sites. This democratizing imperative accounts for the deference regularly accorded intuitive (as opposed to scientific) perceptions of risk, as illustrated by the enduring folk myth of a so-called cancer alley in Louisiana.... Anemic mobilizing capacity (that is, low usefulness for gen-
erating collective outrage) helps explain why many well-established health hazards, including tobacco use, find no place in the litany of environmental justice concerns.

The political imperatives of the movement also explain why environmental justice lacks substantive health priorities. Real priorities would mean downgrading the concerns of at least some movement constituents, creating the great likelihood of conflict... [Thus, environmental justice advocates] primarily advance general concepts of equality, not wishing to endanger their coalition by specifying the precise methods of achieving "justice," "fairness," or "equity." The egalitarian position that everyone should be heard and that no one should suffer maintains movement harmony, but at the cost of focus...

**Conceptual Drawbacks of Environmental Justice**

From a rationalizing perspective, a major problem with the environmental justice version of the democratizing critique is that, like ecopolitism more generally, it threatens to worsen the problem of environmental policy's mission priorities. As Walter Rosenbaum elaborates:

Like the man who mounted his horse and galloped off in all directions, the EPA has no constant course. With responsibility for administering nine separate statutes and parts of four others, the EPA has no clearly mandated priorities, no way of allocating scarce resources among different statutes or among programs within a single law...

Environmental justice inevitably enlarges this challenge of missing priorities, and for similar reasons. As noted earlier, the movement is a delicate coalition of local and ethnic concerns unable to narrow its grievances for fear of a similar "political bloodletting." ... Real priority-setting runs contrary to radical egalitarian value premises and no one (perhaps least of all a strong democratizer) wants to be deemed a victimizer.

Therefore movement rhetoric argues that no community should be harmed and that all community concerns and grievances deserve redress. Scholar-activist Robert Bullard proposes that "the solution to unequal protection lies in the realm of environmental justice for all Americans. No community, rich or poor, black or white, should be allowed to become a 'sacrifice zone.'" When pressed about the need for environmental risk priorities, and about how to incorporate environmental justice into priority setting, Bullard's answer is a vague plea for nondiscrimination, along with a barely more specific call for a "federal 'fair environmental protection act'" that would transform "protection from a privilege to a right."

Bullard's position is fanciful and self-contradictory, but extremely telling. He argues essentially that the way to establish environmental priorities is precisely by guaranteeing that such priorities are impossible to implement. This is symptomatic of a movement for which untrammeled citizen voice and overall social equity are cardinal values. Bullard's position also epitomizes the desire of movement intellectuals to avoid speaking difficult truths (at least in public) to their allies and constituents.

Ironically, in matters of health and risk, environmental justice poses a potentially serious, if generally unrecognized, danger to the minority and low-income communities it aspires to help. By discouraging citizens from thinking in terms of health and risk priorities... environmental justice can deflect attention from serious hazards to less serious or perhaps trivial ones...

From a health perspective, the [environmental justice] model's most serious drawback may be subtle opportunity costs. If one accepts that citizens inherently have limited time and energy to devote to their health, attention to distant or relatively minor health risks—
however politically compelling—very likely means less attention for some more substantive health problems. And if one accepts that low-income citizens, in particular, have even fewer resources, and greater vulnerabilities, than more affluent citizens, then a focus on relatively low or unlikely risks could have a particularly insidious effect.

More frequent resort to a rationalizing, if not solely economic, perspective would encourage minority and low-income citizens and community leaders to think more carefully about priority-setting and myriad tradeoffs. Might widespread successes of NIMBY (not in my backyard) initiatives keep older and dirtier pollution sources active longer and thus adversely affect minority and low-income persons living adjacent to those sources? By the same token, does local insistence on full treatment at some Superfund sites (that is, the obsession with Justice Stephen Breyer’s “last ten percent” [raised in his 1993 book, The Vicious Circle: Toward Effective Risk Regulation] mean that risks elsewhere might have been addressed under a more limited or flexible regime will not get attended to at all? …

If conventional environmental justice advocacy cannot confront risk magnitudes honestly, it cannot help much in the assessment and management of tradeoffs, either of the risk/risk or risk/benefit varieties. The notion that attacking some risks may create others is largely foreign to environmental justice—beyond a fear that attacking the risk of poverty with industrial jobs may expose workers to hazardous conditions. A focus on community inclusion, although necessary to the ultimate acceptability of decisions, offers no automatic or painless way to sort through tradeoffs.

When confronted with choices posing both risks and benefits—such as a proposed hazardous waste treatment facility that would create jobs, and impose relatively low risks, in a needy area—environmental justice offers, along with disgust that such horrendous choices exist, mainly community engagement and participation. But because such situations tend to stimulate multiple (and often harshly raised) local voices on both sides of the issue, activists are at pains to decide where (besides additional participation and deliberation) the community’s interest lies. Because an activist group will be in close touch with both the fear of toxics and the hunger for economic opportunity, the organization itself may be torn. The locally one-sided issue presents far preferable terrain for activists. It should surprise no one that activists are anxious to deemphasize community-level disagreement of this sort. Nor is it surprising to learn from the head of a prominent environmental justice organization that her group tries to avoid situations that pose precisely these locally polarizing tradeoffs, …

A further problem pervading environmental justice discourse is that some analysts insist on viewing the issue primarily through the prism of race, as environmental racism, and this is probably a misplaced focus. Although Clinton’s Executive Order 12898 presents environmental justice in terms of both race and class, many movement partisans unhesitatingly assign race a dominant causal role leading to unfair outcomes. Environmental historian Martin Melosi explains this insistence on a starkly racial analysis:

The core view that race is at the heart of environmental injustice is borne of an intellectual and emotional attachment to the civil rights heritage of the past several decades. Few would deny—including the EPA—that poor people of color are often disproportionately impacted by some forms of pollution. But the qualifiers are significant. Outside the movement, there has been serious questioning: Is the issue really environmental racism or just poverty? Even within the movement there are those who cannot cleanly separate race and class in all cases.

One additional, and especially disturbing, potential pitfall stems from an unwarranted focus on race as a dominant cause. Such analyses may encourage the dishearteningly
alienated frame of mind that leads substantial numbers of African Americans to embrace racial conspiracy explanations. If people of color have been deliberately targeted for environmental poisons, then it stands to reason that they were "set up" for AIDS and crack cocaine and other evils as well. Conversely, this conspiracy mindset doubtless contributes to the grassroots appeal of environmental racism rhetoric. America's legacy of slavery, segregation, and racism (epitomized in the health arena by the infamous Tuskegee syphilis study) has nurtured an understandable inclination among many African Americans to believe the worst of the system....

* * *

Notes and Questions

1. As Professor Kuehn noted, a prominent criticism of the environmental justice movement is that the terms "justice" and "fairness" are too vague to translate into coherent environmental policy. Do you agree? Can you think of other instances in environmental regulation where broad, aspirational concepts generate regulatory and legislative initiatives? In your view, what would be the best way to incorporate environmental justice goals into environmental policy and implementation?

2. The criticisms made by Foreman are premised upon three main assertions: (a) environmental justice advocates focus too much on involuntary (public) risks and not enough on voluntary (behavioral) risks; (b) environmental justice advocates refuse to prioritize risks; (c) environmental justice advocates focus too much on procedural reforms. How would you evaluate the criticisms made by Foreman? Are his criticisms premised upon a lack of theoretical consistency or political viability? Does it matter? If premised upon political viability — and assuming Foreman's empirical observations are correct — might there be good strategic reasons why advocates focus on public risks and procedural reforms while refusing to engage in a debate about priorities and tradeoffs? How would you evaluate the "opportunity costs" born by adopting environmental justice strategies as described by Foreman? In other words, if environmental justice advocates were to change their focus in response to Foreman's criticisms, how would you predict their chances of success?

Just as Foreman criticized the work of various scholars and researchers, Foreman has been subsequently criticized for his failure to acknowledge studies with better methodology that supported the (criticized) seminal studies of environmental inequities, his failure to acknowledge the work of environmental justice scholars who advocate reform (rather than abolition) of risk assessment, and his "indulging in a superficial psychological deconstruction of the movement." Alan Ramo, Book Review, The Promise and Peril of Environmental Justice, 40 SANTA CLARA L. REV. 941, 942 (2000). See also David Lewis Feldman, 9 L. & POL. BOOK REV. 66 (Feb. 1999) (acknowledging Foreman's contribution but questioning his reliance on risk-based studies that are inconclusive and also noting that use of the emotion-packed rhetoric with which activists have been attributed is commonly heard among a wide range of stakeholders).

3. As you proceed to consider the various environmental justice campaigns that are described throughout this book and the writings on various subjects, bear in mind the fundamental theoretical questions posed by the foregoing discussion of what it means, within the context of environmental protection, to be "fair and just." Consider, too, whether there is a possibility of an "objective," "neutral" or "value-free" analysis of environmental justice — or are all analyses necessarily colored by the ideological perspective of the author?
4. From a taxonomic perspective, how would you categorize each of the principles of environmental justice that are set forth in the next section? Does it matter whether any given claim is based upon distributive, procedural, corrective or social justice? Do some categories of justice naturally lend themselves to more successful regulatory reform efforts? If so, why? Given the principle that impacted communities should speak for themselves, is it appropriate for academics to attempt to situate environmental justice claims within broader theoretical frameworks? Why or why not?

C. “We Speak for Ourselves”

Environmental justice advocates have long observed that environmental laws have not prevented disproportionate environmental harms from occurring. The reasons for this are examined in Chapter 3. With few exceptions, environmental regulation focuses on improving overall ambient environmental conditions, and does not consider the distributional consequences of where pollution is occurring. Therefore, the relationship between environmental justice activists, on the one hand, and conventional environmental organizations, industry and government stakeholders, on the other, has been marked by suspicion and hobbled to some degree by a framework that did not envision the considerations that environmental justice advocates bring to the table. Yet individuals in each of these groups understand the pragmatic need to work collaboratively to address serious problems. The wariness felt by environmental justice leaders toward environmental regulators, environmental laws, and mainstream environmental organizations is reflected in a 1990 letter sent by environmental justice activists to the leaders of the ten largest environmental organizations. In addition, many activists were concerned that business interests, academics and others were misinterpreting their positions. Thus, in 1991 environmental justice activists gathered in a historic summit and proposed a set of principles to guide their efforts and clearly state their positions. A decade later, a group of activists again sent a letter, this time to then-President George W. Bush. These writings reflect the strongly held view by many activists, a view that people living in heavily impacted communities, who are on the forefront of political campaigns, “speak for themselves.”

Letter, Circa Earth Day 1990

March 16, 1990

Addressed individually to Jay Hair, National Wildlife Federation; Michael Fisher and others from the Sierra Club; Frederick Sutherland, Sierra Club Legal Defense Fund; Peter Berle and others from the National Audubon Society; Frederick Krupp, Environmental Defense Fund; Mike Clark, Environmental Policy Institute/Friends of the Earth; Lack Lorenz and others, Izaak Walton League; George Frampton and others from the Wilderness Society; Paul Pritchard, National Parks and Conservation Association; John Adams, Natural Resources Defense Council:

Dear [ Representative ]:

We are writing this letter in the belief that through dialogue and mutual strategizing we can create a global environmental movement that protects us all.

We are artists, writers, academics, students, activists, representatives of churches, unions, and community organizations writing you to express our concerns about the role
of your organization and other national environmental groups in communities of people of color in the Southwest.

For centuries, people of color in our region have been subjected to racist and genocidal practices including the theft of lands and water, the murder of innocent people, and degradation of our environment. Mining companies extract minerals leaving economically depressed communities and poisoned soil and water. The U.S. military takes lands for weapons production, testing and storage, contaminating surrounding communities and placing minority workers in the most highly radioactive and toxic worksites. Industrial and municipal dumps are intentionally placed in communities of color, disrupting our cultural lifestyle and threatening our communities' futures. Workers in the fields are dying and babies are born disfigured as a result of pesticide spraying.

Although environmental organizations calling themselves the "Group of Ten" often claim to represent our interests, in observing your activities it has become clear to us that your organizations play an equal role in the disruption of our communities. There is a clear lack of accountability by the Group of Ten environmental organizations towards Third World communities in the Southwest, in the United States as a whole, and internationally.

Your organizations continue to support and promote policies which emphasize the clean-up and preservation of the environment on the backs of working people in general and people of color in particular. In the name of eliminating environmental hazards at any cost, across the country industrial and other economic activities which employ us are being shut down, curtailed or prevented while our survival needs and cultures are ignored. We suffer from the end results of these actions, but are never full participants in the decision-making which leads to them.

[Selected examples from the letter follow. Eds]:

Organizations such as the National Wildlife Federation have been involved in exchanges where Third World countries will sign over lands (debt-for-nature swaps) to conservation groups in exchange for creditors agreeing to erase a portion of that country's debt. In other cases the debt is purchased at reduced rates; the creditors can then write it off. This not only raises the specter of conservation groups now being "creditors" to Third World countries, but legitimizes the debt itself through the further expropriation of Third World resources. The question arises whether such deals are in the long term economic interests of both the countries involved and of the people living on the land.

The lack of people of color in decision-making positions in your organizations such as executive staff and board positions is also reflective of your histories of racist and exclusionary practices. Racism is a root cause of your inaction around addressing environmental problems in our communities.

Group of Ten organizations are being supported by corporations such as ARCO, British Petroleum, Chemical Bank, GTE, General Electric, Dupont, Dow Chemical, Exxon, IBM, Coca Cola, and Waste Management, Incorporated. Several of these companies are known polluters whose disregard for the safety and well-being of workers has resulted in the deaths of many people of color. It is impossible for you to represent us in issues of our own survival when you are accountable to these interests. Such accountability leads you to pursue a corporate strategy towards the resolution of the environmental crisis, when what is needed is a people's strategy which fully involves those who have historically been without power in this society.
Comments have been made by representatives of major national environmental organizations to the effect that only in the recent past have people of color begun to realize the impacts of environmental contamination. We have been involved in environmental struggles for many years and we have not needed the Group of Ten environmental organizations to tell us that these problems have existed.

We again call upon you to cease operations in communities of color within 60 days, until you have hired leaders from those communities to the extent that they make up between 35–40 percent of your entire staff. We are asking that Third World leaders be hired at all levels of your operations.

Sincerely,

/S/ 117 signatures of organizations and individuals.

* * *

Principles of Environmental Justice, Proceedings, The First National People of Color Environmental Leadership Summit

xiii (October 24–27, 1992)

WE THE PEOPLE OF COLOR, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to insure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.

2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

4. Environmental justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water and food.

5. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

6. Environmental justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.

7. Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.
8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.

9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.


12. Environmental justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.

13. Environmental justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.

14. Environmental justice opposes the destructive operations of multinational corporations.

15. Environmental justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.

16. Environmental justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth’s resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.

Adopted today, October 24, 1991, in Washington, D.C.

* * *

Letter, Circa Earth Day 2001

April 19, 2001
George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
USA

Dear Mr. President,

We are writing you today to express our profound concern with your new climate change policies with respect to their impacts on poor people and people of color in the United States and around the world.
It is our firmly held belief that climate change is not only an ecological, economic or political question, but it is a moral issue with profound ramifications for all of the inhabitants of this planet Earth. It is a question of environmental justice and human rights. It is also an issue of equity between nations.

Particularly hard hit will be low-lying countries like Bangladesh and small island states whose very existence is threatened. The poor here in the United States — especially poor people of color — will also bear the brunt of climate change. Your policies will only intensify those impacts.

Given its potentially profound ramifications, climate change must be tackled with serious and vigorous leadership and international cooperation rather than a misguided isolationist approach that protects a handful of powerful fossil fuel corporations.

The United States, whose four percent of the world’s population generates one-quarter of all man made carbon dioxide — the leading global warming gas — must take the lead in reversing its role as the main contributor to this looming global crisis.

Certainly, your predecessor’s climate change policies came up well short of the measures we believe are necessary to address the problem. But your administration’s response so far — your failure to follow through on campaign promises to reduce carbon dioxide emissions and your abandonment of the Kyoto Protocol — borders on nothing short of gross global negligence.

Your negation of the increasingly irrefutable scientific evidence on climate change is distressing. It is no longer a question of whether sea levels will rise, but rather of how many coastlines, people, communities, and entire island nations will be submerged.

Global warming is starting to make itself felt. The 1990s was the warmest decade and 1998 was the warmest year on record. The icecap atop Mount Kilimanjaro in Africa is melting away and will completely disappear in less than 15 years. It is an abuse of power to turn your back on this, the most serious environmental issue ever to confront humanity.

If it is not halted, climate change will probably result in increased frequency and severity of storms, floods and drought. And it will cause the spread of diseases, such as malaria. It will increase hunger and bring about displacement and mass migrations of people with ensuing social conflict.

Mr. President, you claim that you don’t want to harm the American consumer, yet you’re setting us all up to pay a huge price in the future. This is especially true for the poor. Earlier this year, the United Nations Intergovernmental Panel on Climate Change (IPCC) concluded that the impacts of global warming "are expected to fall disproportionately on the poor."

People who are highly dependent on farming, fishing or forestry, especially indigenous people, are most likely to see their livelihoods destroyed by climate change. Meanwhile, the urban poor — mostly people of color in the U.S. — will be most vulnerable to climate change-related heat waves, diseases and respiratory ailments.

Many of us come from or work with communities that are already directly affected by the oil industry. These are communities and workers that are suffering the social and environmental effects of oil exploration, production, transportation, refining, distribution and combustion. These communities are also some of those who will be hardest hit by climate change — whether they are in Nigeria’s Niger Delta, in Arctic Village Alaska, or in Louisiana’s "cancer alley." These communities face a "double whammy" suffering oil’s acute toxic impacts first and then its long-term effects in the form of the harsh hand of global warming.
Rather than cater to the socially and ecologically destructive oil industry, Mr. President, you should severely curb U.S. carbon emissions and support the Kyoto Protocol. At home you should also support a just transition for fossil fuel industry workers and fence-line communities while investing the United States' resources in energy efficiency and renewable energy resources, such as solar, wind and biomass.

Mr. President, we urge you to reconsider your position on climate change before the United States becomes universally known as an environmental rogue state, and you go down in history as G.W. Bush, the Global Warming President.

Sincerely,


Cc: Christie Todd Whitman, Administrator, U.S. Environmental Protection Agency

* * *

Notes and Questions

1. The writing of environmental justice activists is both aspirational and hard-hitting. To many, it strikes a dissonant chord with the brand of technical jargon used both by regulators and academics, perhaps intentionally so. What are the implications of a "bottom-up" perspective for addressing environmental problems in fora that are dominated by formal professionalization? As you consider the various strategies—legal and technical—available to reduce environmental disparities, consider which of them are better equipped to work with and utilize a grassroots perspective. Also consider which strategies are likely to build capacity within impacted communities to continue to ward off environmental assaults after the campaign at issue has concluded.

2. Some people believe that environmental policies to protect communities of color and low-income communities from environmental hazards are needed, but many environmental justice advocates resist top-down government approaches, noting that the decisions of scientists, bureaucrats, lawyers, and judges are often paternalistic and disempower them. Is there an inherent tension between the movement's process-oriented goals of having greater voice and power, and the movement's morality-based goals of eliminating risk of environmental harm altogether? In other words, is it possible that greater participa-
tion would not lead to the policies environmental justice activists desire, and that the adoption of regulatory policies that environmental justice advocates desire would not lead to improved empowerment of these communities.

D. Environmental Justice Communities in Context

The readings in the previous section sketch the history of the environmental justice movement, in the process providing a sense of the efforts of multiple and diverse groups to articulate a common critique of mainstream environmental approaches. These readings also provide a glimpse of the fact that this movement and its claims are not static. Instead, with the passage of time, the movement has identified newly pressing issues, enlisted alternative legal and other tools, and, at times, refined earlier approaches and theories.

Thus, as the readings above suggest, environmental justice advocates have crafted an inclusive, multi-racial and multicultural coalition on the ground, and scholars have attempted to articulate a coherent theoretical framework for the common claims of this movement. But it is nonetheless important to recognize that each environmental justice campaign is rooted in its locale and unique combination of culture and history. And, while community-based groups have sought to learn from efforts of sister organizations, often forging effective coalitions and regional networks, it is important to consider how each group is different and how the context—historical, social, cultural, political—in which each group’s effort takes place inevitably affects the relevant issues and claims. We will often use the term “environmental justice communities” or “environmental justice groups” throughout this book as a shorthand to refer to all of the various groups and subgroups that are affected by any particular issue. In doing so, we mean to embrace the inclusive posture of the environmental justice movement itself and to recognize common institutional and structural forces that generate environmental inequities. But, at the same time, we also mean to recognize that each group’s circumstances are, in fact, unique and that each group’s claims for justice can only properly be understood in context.

The following excerpt, written at a time when environmental justice advocates had had some success in bringing the issue of environmental injustice to the attention of the broader society, urges a refinement in framing and considering environmental injustices—namely, one that takes a contextual approach.

Eric K. Yamamoto & Jen-I. W. Lyman,
Racializing Environmental Justice
72 University of Colorado Law Review 311 (2001)

“[Racial c]ommunities are not all created equal.” Yet, the established environmental justice framework tends to treat racial minorities as interchangeable and to assume for all communities of color that health and distribution of environmental burdens are main concerns. For some racialized communities, however, environmental justice is not only, or even primarily, about immediate health concerns or burden distribution. Rather, for them, and particularly for some indigenous peoples, environmental justice is mainly about cultural and economic self-determination and belief systems that connect their history, spirituality, and livelihood to the natural environment....
The Established Environmental Justice Framework

... The roots of environmental injustice lie in what the Reverend Benjamin Chavis termed "environmental racism." Environmental racism is described as the "nationwide phenomenon" that occurs when "any policy, practice, or directive ... differentially impacts or disadvantages [whether intended or unintended] individuals, groups, or communities based on race or color." For most scholars, this "differential effect," measured against white communities, results in the unfair distribution of environmental hazards. The established environmental justice framework addresses this problem of environmental racism and seeks to achieve healthy and sustainable communities.

This vision of environmental justice has four general characteristics. First, it focuses on traditional environmental hazards such as waste facilities and resulting pollution.... Second, and closely related, the environmental justice framework focuses on the disproportionate distribution of hazardous facilities and on the re-siting of those facilities.... Third, the established environmental justice framework seeks to ensure that communities of color have equal representation in the administration of environmental laws and policies.... Fourth, the environmental justice framework emphasizes "a community-based movement to bring pressure on the person or agency with decision-making authority."....

The established [environmental justice] framework sometimes furthers, and at times undermines, environmental justice. It furthers environmental justice when it provides racial and indigenous communities the concepts and language they need to advocate effectively for the siting and health outcomes they desire.

The framework, however, at times also undercuts environmental justice struggles by racial and indigenous communities because it tends to foster misassumptions about race, culture, sovereignty, and the importance of distributive justice....

The first misassumption is that for all racialized groups in all situations, a hazard-free physical environment is their main, if not only, concern.... Not all facility sitings that pose health risks, however, warrant full-scale opposition by host communities. Some communities, on balance, are willing to tolerate these facilities for the economic benefits they confer or in lieu of the cultural or social disruption that might accompany large-scale remedial efforts....

The established framework also assumes that fair distribution of physical burdens is the primary, if not sole, means of achieving environmental justice. Sheila Foster rejects this assumption as "monolithic" and "one-dimensional," focusing "too much on outcomes and not enough on the processes that produce those outcomes." According to Foster, by not addressing why racial communities are overexposed to pollution, hazardous waste sites, and poisoned fish stocks, agencies like the EPA fail to confront: "discriminatory housing and real estate policies and practices, residential segregation and limited residential choices influenced by such discrimination, discriminatory zoning regulations and ineffective land use policies, racial disparities in the availability of jobs and municipal services, imbalances in political access and power, and 'white flight.'"....

Finally, the established framework tends to assume that all racial and indigenous groups, and therefore racial and indigenous group needs, are the same. In general, it assumes that in terms of cultural needs and political-legal remedies, one size fits all....

Courts usually forgo meaningful analysis of racial or cultural discrimination in considering environmental justice issues. In particular, when addressing claims of environmental racism, courts focus their equal protection inquiries on the disparate impact of a governmental decision and a search for racial animus by individual government actors.
Under this narrow approach, affected racial and indigenous communities need to establish that identified government decision-makers were motivated by some form of racial ill-will. This proof is not only difficult to muster, it focuses attention on government officials and tends to flatten racial and cultural distinctions into a monolithic “racial minority” victim. It does not call for participants to examine closely racial groups’ cultural or economic connections to the environment or the ways in which those connections have been damaged or possibly enhanced.

This narrow judicial focus is illustrated by ... R.I.S.E. v. Kay [768 F. Supp. 1144 (E.D. Va. 1991)], discussed in Chapter 14, Eds.]. [In this case,] the United States District Court for the Eastern District of Virginia rejected an equal protection challenge to the siting of a regional landfill near a historical African American church in an area populated primarily by African Americans. Three other landfills in the County were also sited in areas where the racial composition was ninety-five to one hundred percent African American. The court found that the County’s siting of landfills over the past twenty years did in fact have a disproportionate impact on black residents. It nevertheless held that plaintiffs failed to show that the siting was racially motivated, without examining what “racial motivation” might mean in this particular situation to the affected African American communities. The court, instead, simply declared that the “Equal Protection Clause does not impose an affirmative duty to equalize the impact of official decisions on different racial groups.” ... Without thoughtfully discussing the African American community’s spiritual and cultural concerns, which deeply animated its opposition to the siting decision, the court stated, as a seeming afterthought, that the Country had properly “balanced the economic, environmental, and cultural needs of the County in a responsible and conscientious manner” ...

[But] the court disregarded underlying social conditions ... The African American plaintiffs complained that the landfill would interfere with their community activities and their worship as African Americans in the Second Mt. Olive Church; they believed the landfill would desecrate the special significance of the historic church founded by freed slaves. The court discussed their claims without reference to history or context and was therefore able to conclude easily that the African American plaintiffs failed to state a claim of environmental racism.

For those African Americans, however, the church was historically and socially important to their existence as a racial community. Indeed the black residents had long been racialized and segregated and had been compelled by Southern racism to create their own African American institutions. Desecration of the church was, to that community, a racial act with profound social and cultural consequences. By summarily ignoring this historical context, the court undermined the black community’s ability to call the local government to account for the potentially devastating social and cultural impacts of its decision....

So how can environmental justice scholars, commentators, activists, and decision makers grapple with important differences among groups while advancing concepts, language, and methods for addressing concrete problems? [William] Shutkin and [Charlie] Lord suggest that “the legal system has perpetuated environmental injustice by misreading or disregarding [a] community’s history.” These scholars urge “a more complete history that incorporates not only a view of the past, present, and future, but also the question of justice.” ...

This suggested contextual approach moves closer to treating racial and indigenous groups and their relationships to the environment in light of cultural and social differ-
ences. The approach, however, needs both expansion and refinement in order to: (1) address explicitly how racial categories are constructed, racial identities forged, and racial meanings developed; (2) account for significant differences between groups traditionally described as racial minorities (African Americans, Asian Americans, Latinas/os, and indigenous peoples (including American Indians, Aleuts, Eskimos, Native Hawaiians)); and (3) recognize and deal more directly with the influences of whiteness in the formation and implementation of environmental law and policy. What is needed, then, is a framework that more subtly interrogates social, political, historical, cultural, and power interactions among whites and racial and indigenous groups.

*Racializing Environmental Justice*

Critical race theory offers communities and environmental justice proponents important critical tools for evaluating past experiences and present conditions. Beginning with a skepticism of legal impartiality common to all legal realists, critical race theory pays particular attention to the roles that race, racism, and nativism play in the formation of legal norms and the administration of justice...

"Racializing environmental justice," in part, is a method of inquiry and analysis that builds on critical race theory concepts of "differential racialization" and "differential empowerment." It recognizes that for traditional "racial minorities" and for America's indigenous peoples, "group and subgroup identities, political and socioeconomic goals, and 'available responses' may sometimes coincide and oftentimes differ"...

Critical race theory challenges the very concept of "race" as "immutable" or biological, as something objective and largely devoid of social content or historical context. It moves analytical understandings of "race" beyond its conception as "an independent variable requiring little or no elaboration."... This process of racialization extends "racial meaning to a previously racially unclassified relationship, social practice, or group." Racializing environmental justice thus entails interrogation into the ways evolving public perceptions and the particular struggles of a community have generated racial or cultural meanings for that community...

For example, for Asian Americans, different social forces lead to differential racialization of Asian American groups... "The problems encountered by a rich entrepreneur from Hong Kong and a recently arrived Hmong refugee are obviously distinct. The sites and types of discriminatory acts each is likely to encounter, and the range of available responses to them, differ by class location." Differential racialization may exist within subgroups, such as between a first generation Vietnamese American immigrant and a second generation Vietnamese American, or as between black descendants of Jamaica and Senegal...

The racialization process, furthermore, "fixes status and allocates power differentially among and within racial groups." So, for instance, more "'established' immigrant groups, with greater resources and access to political power may organize around mobility issues ("glass ceiling"), while recent immigrant groups may focus on 'survival issues' (funding for language classes and job-training programs)." As a result, differential racialization primarily pursues a framing of race that acknowledges that historical and contemporary social and cultural influences have important consequences for "individual identity and collective consciousness, and political organization."

For Native peoples, differential racialization fosters another kind of inquiry, one that addresses often substantial differences among immigrant racial populations in America, imported slaves, and conquered indigenous peoples. The inquiry focuses on the effects of land dispossession, culture destruction, loss of sovereignty, and, in turn, on claims to self-determination and nationhood (rather than to equality and integration).
To further refine the differential racialization analysis, "Jeff Chang suggests a notion of differential forms of disempowerment among communities of color." Differential disempowerment focuses on recognition of power differences among racial or Native groups and sees power in terms of status, locale, time, and economics.

For example, before Hawai‘i became a state, "white oligarchical control, Asian immigration and Native Hawaiian separation from land and traditional cultural roots constructed differing racial group identities." Native Hawaiians, as the subjects of a conquered sovereign, and Asians, as first or second generation immigrants, were differentially racialized. The two groups were differently situated although they had experienced similar hardships. Unlike Asian Americans, Native Hawaiians underwent land dispossession resulting in large-scale cultural destruction, along with "death and dying and spiritual suffering." Moreover, "the rhetoric describing group characteristics, the market distribution of labor, the opportunities for education, housing and economic advancement towards the middle of the century lifted Asian Americans above Native Hawaiians in terms of socio-economic status."

Thus, although mainstream America sometimes treats "Native Hawaiian" as a race—for example, the U.S. census classifies Native Hawaiians as a racial group—many Native Hawaiians view themselves and their social-political situation in terms of nationhood. Their claims are not to racial equality but to sovereignty....

Differential racialization and disempowerment concepts reveal how history has "present effects on group identity and group claims" and thus provide a preliminary framework for inquiry into particulars of environmental racism in a given setting. That framework enables us to ask meaningful questions about the interplay between race and the environment because it focuses on ways in which history and culture are linked to what we call "the environment." Specifically, what emerges from this framework is this: environmental justice must recognize that each racial or Native group is differently situated and that differing contexts contribute to differing group goals, identities, and differential group power. This idea is important because it enables scholars, activists, and others to analyze particular kinds of harms to specific racial or Native communities and to fashion appropriately tailored remedies for those harms. When applied, this framework illuminates the underlying racialized character of environmental justice claims and treats each racial or Native community separately according to its specific socio-economic needs, cultural values, and group goals.

* * *

Notes and Questions

1. Professor Yamamoto and Ms. Lyman urge the environmental justice community to rethink what they suggest is an undue emphasis on the distributitional aspects of traditional environmental hazards, an emphasis they argue may promote a misconception that facility siting and environmental hazards are of primary concern and that communities of color will always forgo economic development to resist the risks generated by these facilities. As noted above, however, the Principles of Environmental Justice reflect a much broader view by environmental justice activists, emphasizing fair process, self-determination, cultural and spiritual values, and sustainability. Is there a disjunction between the values as articulated in those principles and the various environmental justice campaigns undertaken throughout the United States and beyond? Some suggest there is, while others argue that the diversity of environmental justice campaigns and presence of sta-
ble coalitions among diverse environmental justice organizations suggests a much broader range of values is at play. If the latter is more accurate, the perception that environmental justice activists unduly emphasize siting challenges may be due to frequent media portrayals of environmental justice campaigns as single-mindedly anti-development and anti-siting. On the other hand, if the environmental justice movement is in fact too preoccupied with distributional issues and traditional pollution-generated risk, how can the broad group of community-based movements that comprises the environmental justice movement reorder its collective priorities or broaden its collective mission?

2. Yamamoto and Lyman advocate for the use of critical race theory to “racialize” environmental justice, meaning in part the process of using techniques such as outsider accounts to analyze the way in which different groups—variously situated historically, economically, culturally, and politically—are racialized, and how that process of racialization may generate different cultural meanings and political goals for different groups. In what ways might their approach be different from or similar to one of the stronger tenets that has emerged from the environmental justice movement: that impacted communities should “speak for themselves?” For example, one of the most effective political strategies used by environmental justice activists may be viewed as a variant of the “outsider account” described by critical race theorists. Community residents tell their own stories through compelling testimony, or at times by physically taking governmental officials and others to impacted areas. The experiential value of a site tour has proven a powerful counter-narrative to those that argue that the risk environmental justice communities are experiencing is negligible or that the impact is trivial. In a similar vein, Professor Robert Verchick has described how women of color in the environmental justice movement employ techniques long advanced by feminist theorists such as consciousness raising and unmasking. Robert R. M. Verchick, In a Greener Voice: Feminist Theory and Environmental Justice, 19 Harv. Women’s L.J. 23, 73–74 (1996).

3. As you consider the materials in the chapters that follow, notice the ways in which the various groups' circumstances, values, and goals are similar and the ways in which, as Yamamoto and Lyman suggest, each group’s “specific socio-economic needs, cultural values, and group goals” are unique.