Environmental Justice: Stakes, Stakeholders, Strategies

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Like the civil rights movement that preceded it, the U.S. environmental justice movement was propelled into mainstream political discourse and popular consciousness by grassroots activism. Long before the terms "environmental racism" or "environmental justice" were coined, ordinary men and women were thrust into extraordinary leadership roles as they struggled against environmental degradation in their communities and the decision makers who controlled their environment. They organized efforts against businesses and institutions and environmental, land, and transportation practices that too often left them bearing a greater share of pollution than their (usually) whiter and more affluent neighbors.

These activists—predominantly low income and/or people of color—were fed up with living in the shadows of industrial facilities, contaminated land, transportation corridors, concentrated animal feeding operations, mining operations, and other risk-producing and resource-depleting practices. They were also sick—literally—of unbearable smells, dust, noise, poisonous air, unexplained skin rashes, birth defects, respiratory illnesses, and rare cancers. Urban communities started to demand the right to clean, safe environments. Tribes and other indigenous peoples wanted recourse in the face of ruined sacred sites and degraded range-lands and forests.

During the last twenty years, these diverse, localized grassroots efforts have coalesced into a vibrant national and international political movement, leading protests, bringing lawsuits, and influencing policy at the highest levels of government.

The Legacy

The environmental justice movement began building momentum in the early 1980s, sparked by direct action protests over the siting of hazardous waste facilities in communities of color. The earliest of these high-profile events was a nonviolent 1982 demonstration against a polychlorinated biphenyl (PCB) landfill in predominantly African American Warren County, North Carolina. Although plans for the landfill went forward, the action led to more than 500 arrests and generated increased public interest in the idea that minority areas were targets for hazardous land uses. Arguably the best-known work documenting this inequitable distribution was the United Church of Christ Commission for Racial Justice's landmark 1987 national study finding that race was the most significant variable in determining the location of risk-producing facilities.

Later studies similarly found correlations between communities of color and exposure to a variety of environmental hazards. A 1991 review performed by the Environmental Protection Agency (EPA) confirmed that racial and ethnic minorities were disproportionately located near hazardous facilities and also suffered disproportionate exposures to air pollutants, contaminated fish, agricultural pesticides, and adverse health effects from exposure to lead, especially in children. That same year, the National Law Journal found significant disparities in the enforcement of federal environmental laws—for example, penalties for violations ran nearly 500 percent higher in predominantly white communities.
Contaminated sites in non-white areas were targeted for cleanup more slowly, and cleanup took longer and was less protective than in predominantly white areas. Unequal Protection: The Racial Divide in Environmental Law, NAT'L LJ., Sept. 21, 1992, at S1-12.

These findings sparked a controversy about the methodology of the studies. Various academics and commentators debated the underlying causes behind the disparities, posing a “chicken or egg” question about which came first—the hazardous facility (or noxious land use) or the minority community. Their premise was that poor, minority populations were “coming to the nuisance”—i.e., moving to neighborhoods that already had these hazardous facilities and, thus, cheap housing and land. Interestingly, one national study found that very poor areas tend to repel, rather than attract, hazardous waste facilities (contradicting the theory that low-cost land is the primary factor in a siting decision).

As one might expect, direct evidence rarely exists that communities of color are targeted for the siting of hazardous facilities. In fact, more recent regional studies suggest an intricate mix of social phenomena underlying the racial disparities. In the Los Angeles area, for example, the choice for siting hazardous projects usually is a community experiencing a demographic shift from one ethnic minority to another, which weakens the social ties and investment in such communities and renders them less able to mobilize a challenge. Environmental justice advocates argue that the “chicken or egg” debate obscures how historical discrimination in zoning, in addition to siting criteria that relies upon the legacy of similar practices, produces the current inequalities.

In contrast, some authorities have been more candid about targeting low-income communities. For example, a 1984 report prepared by a consultant to the California Waste Management Board advised that middle- and high-socioeconomic-strata neighborhoods should not fall within the one- and five-mile radius of a proposed site. In the international arena, the World Bank’s former vice president and chief economist, Laurence Summers (now president of Harvard University), suggested in an internal memorandum, “Shouldn’t the World Bank be encouraging more migration of the dirty industries to the LDCs [less developed countries] . . . I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that.” Because of civil rights and constitutional legal doctrine, however, exposing the interplay between race and class is problematic—there is no right to equality on the basis of class.

The Challenges
Despite the dismal track record of constitutional and civil rights claims in the courts and in the administrative agencies, these claims often are important components of a larger political and legal strategy to obtain relief for overburdened communities. Environmental justice advocates often use state and federal environmental laws along with media campaigns and other organizing strategies to keep future hazardous facilities out of these communities. Traditional environmental law cases have been more successful, but their drawback is that the legal framework uses the arcane terminology of pollution control requirements, not the racial, political, and economic considerations.

Challenges also have been made based on disparities that exist in deci-
Significant potential for racial disparity also occurs in the EPA’s pollution control programs. A recent successful challenge by the local activist group Communities for a Better Environment (CBE) to a California air pollution program revealed that a plan to reduce air pollution actually resulted in worsening air quality in predominantly Latino communities near three participating refineries. Workers at the terminals additionally faced increased risks of exposure. CBE successfully challenged the program, but the tradeable rights to pollute that were the program’s primary strategy continue to be touted as the most popular and efficient way to reduce pollution overall. This is evidenced in the Bush administration’s recently proposed legislation of the Clear Skies Act, which would adopt a pollution-credit-trading approach to regulate dangerous toxins from power plants. The EPA and state environmental agencies have yet to adequately address the potential of these market programs to cause or exacerbate toxic hot spots in vulnerable neighborhoods.

As the 1992 National Law Journal article reported, racial disparities also are apparent in enforcement policies for environmental laws; but other than “pattern or practice” administrative Title VI cases that remain unresolved, there is little legal activity on this issue. In the area of contaminated properties, some communities have become actively involved in government-sponsored brownfields initiatives or have aggressively campaigned for relocation of their communities, and a few toxic tort cases have been brought. Cleanup and redevelopment of abandoned contaminated land is a difficult area because federal and state authorities have significant discretion in cleanup remedies.

A thoughtful collaboration between civil rights and environmental law attorneys could result in dramatic improvements in the lives of millions of families living in toxic hot spots and contaminated areas. National priorities have shifted almost exclusively to concerns over national security, however, and critical funding sources have dried up. Wholesale and unaccountable devolution of authority to local levels companies increasingly narrow interpretations of civil rights and constitutional laws at all levels of the judiciary. As a result, the ability of dedicated activists to address the dire conditions in environmental justice communities is severely hampered. Environmental justice offers the civil rights bar a unique opportunity once again to unite with grassroots activists and environmental lawyers, to ensure a healthy recovery for endangered communities and increased quality of life for all.

Eileen Gauna is a law professor at Southwestern Law School and is coauthor of the casebook Environmental Justice: Law, Policy and Regulation (2002). Sheila Foster is a professor of law at Fordham University and is coauthor of From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement (2001). Much of this essay is adapted from Eileen Gauna’s An Essay on Environmental Justice: The Past, the Present and Back to the Future, 42 NAT. RES. J. 701 (2002).